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The Law on the Unilateral Termination of Occupation

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Abstract

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Abstract

This brief note discusses the legal ramifications of the unilateral termination of occupation. The note seeks to characterize the moment of termination and examines the obligations of the occupant during (and possibly after) the termination process.

A. Introduction: The Ways of Ending Occupations

In principle there can be four ways for an occupation to end. First, it can end by the loss of effective control. Second, occupation can end by the dissolution of the ousted sovereign, as has been recognized under the doctrine of *debellatio*. But this doctrine is now widely considered incongruent with the principle of self-determination of peoples and therefore widely accepted as *desuetude*. Third, occupation could come to an end by the signing of a peace agreement or an armistice agreement with the ousted government. Fourth and finally, occupation can end by transferring authority to an indigenous government endorsed by the occupied population through referendum and by international recognition. This brief note discusses the first type of termination. It seeks to characterize the moment of loss of control and examines the obligations the occupant has during (and possibly after) the termination process.

¹ For different types of terminations *see Adam Roberts* What Is A Military Occupation? British Yearbook of International Law 1984 (1985) 249, 257-260.

² See Eyal Benvenisti, The International Law of Occupation (1993) 94-96 (critique of the doctrine). Significantly, the doctrine was not invoked by the occupants of Iraq in 2003: *Eyal Benvenisti*, Water Conflicts during the Occupation of Iraq, American Journal of International Law (AJIL) 97 (2003) 860.

³ This type of ending seems to be gaining recognition in recent years. In principle, the acceptance of such an ending runs the risk of providing an incentive for occupants to circumvent the goals of the occupation regime that call for strict adherence to the *status quo ante bellum*. This concern is reflected in Article 47 of the 4th Geneva Convention which stipulates that the protection of the convention will remain in force regardless of any changes introduced, as the result of the occupation of a territory, into the institutions or government of the said territory. But at the same time, changes endorsed by the entire population of a given country through free and fair referendum, such as the ones affected in Iraq in 2005, are expected to be regarded as valid (Benvenisti (note 2) at 173, 215).

B. When Occupation Ends?

When will the withdrawal of the occupant from territory it held be considered as terminating the occupation? This section suggests that to answer this question it is necessary to make a rather careful factual determination, because often there would be a fine line that would distinguish between rearrangement of occupation forces which does not bring occupation to an end, and withdrawal of forces, voluntary or involuntary, whereby the occupant would lose its ability to control the area and thereby the occupation will terminate.

To understand when occupation ends one must consider the factual conditions that give rise to an occupation. The legal conditions for the commencement of occupation are determined by Article 42 of the Hague Regulations of 1907, considered as reflecting customary international law.⁴ Although seemingly straightforward, the conditions for occupation it sets forth have been the subject of controversy. No doubt that the test calls for a factual analysis. Two conditions need to be determined. There is no dispute about the first condition: as a result of the hostilities, the ousted government is incapable of publicly exercising its authority in that area. The second condition is the subject of dispute. The dispute relates to the question whether in addition to the incapacity of the ousted government, the foreign army must actually substitute its own authority for that of the ousted government (so that its authority "has been established") ("actual control"), or whether it is sufficient that the foreign army is actually controlling the area and therefore in a position to substitute its own authority for that of the former government (so that its authority "can be exercised") ("potential control"). If actual control was required, an army that controls an area but refrained from actually exercising it vis-à-vis the civilian population would not be considered an occupant, and thereby would be absolved from assuming responsibilities toward the local population. Similarly, if actual substitution

⁴ The text reads: "Territory is considered occupied when it is actually placed under the authority of the hostile army.

The occupation extends only to the territory where such authority has been established and can be exercised."

was required, an occupant who decides to terminate its direct relations with the local population could claim that it was no longer an occupant.

The negotiators and drafters of the Hague Regulations had been preoccupied by an altogether different question, and therefore did not debate this fine distinction. They were concerned with the opposite situation namely the possibility of a premature declaration of occupation by an invading army. The premise at the time had been that occupants would seek to establish an occupation regime, even if prematurely. However, this matter did not escape the attention of contemporary scholars who opted for the second reading. In subsequent years, as occupation became a liability more than an asset, occupying forces have tended to elude their responsibilities as occupants. One simple way to avoid responsibility was to refrain from actually establishing their authority vis-à-vis the local population in a foreign area under their control.

In the Case Concerning Armed Activities on the Territory of the Congo (2005)⁷ the International Court of Justice opted for a requirement of actual control, requiring proof that the foreign army has *actually* substituted its own authority for that of the ousted government. The court gave no reasoning for this rendition of the law, as if this was self-evident. But this matter is all but self-evident. Military manuals do

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⁵ The Oxford Manual on Land Warfare adopted in 1880 by the Institut de droit international stated in Art. 41: "Territory is regarded as occupied when, as the consequence of invasion by hostile forces, the State to which it belongs has ceased, in fact, to exercise its ordinary authority therein, and the invading State is alone *in a position to* maintain order there." (my emphasis). Institut de droit international, Session d'Oxford (1880); Manuel des lois de la guerre sur terre (Rapporteur : M. Gustave Moynier) (rep. in http://www.idi-iil.org/idiF/resolutionsF/1880 oxf 02 fr.pdf). The Oxford manual was a learned effort to develop the principles of the 1874 Brussels Declaration. Art. 41 echoed Art. 1 of the Brussels Declaration, who would ultimately become Art. 42 of the Hague Regulations.

⁶ For this reason I called for recognizing *a duty* to establish authority when such is possible: "The duty of the occupant to establish a system of direct administration in the occupied territory was self-evident to the framers of the Hague Regulations. Nowadays, faced with occupants' reluctance to abide by this rule, the point requires emphasis. The establishment of such administration is a decisive indication of the occupant's intentions regarding the treatment of the population under its rule and the final disposition of the territory." Benvenisti, (note 2), at 212.

⁷ Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), I.C.J. Reports 2005, paras 173. 177).

⁸ *Id.*, at para 173: "In order to reach a conclusion as to whether a State, the military forces of which are present on the territory of another State as a result of an intervention, is an "occupying Power" in the meaning of the term as understood in the *jus in bello*, the Court must examine whether there is sufficient evidence to demonstrate that the said authority *was in fact established and exercised* by the intervening State in the areas in question. In the present case the Court will need to satisfy itself that the Ugandan armed forces in the DRC were not only stationed in particular locations but also that they *had substituted* their own authority for that of the Congolese Government." (my emphases)

not provide a consistent position on this question. Scholarly opinion from the days of the 1880 Oxford Manual onwards supports the test of potential control. The test of potential control was endorsed by by a trial chamber of the ICTY in the case of Naletilic (2003), as well as by Judge Kooijmans in his separate opinion in Uganda/Congo case. It was also approved by the Israeli Court of Justice in 1982 when it required the Israeli Army to comply with the law of occupation in South Lebanon. Most recently the Israeli court followed the same test when it determined that following the disengagement of 2005, "the State of Israel had no permanent physical presence in the [Gaza] Strip, and it even has no real potential to fulfill the obligations [of the occupant] ... no real potential for effective control in what transpires in the Gaza Strip."

Under the test of actual control, occupation ends when the occupant no longer exercises its authority in the occupied territory. Under the test of potential control, occupation ends when the occupant is no longer capable of exercising its authority. Note, however, that even if occupation has ended (in either of those readings), and the occupant is relieved from its obligations under the Hague Regulations, it may still be bound by certain obligations under the 4th Geneva Convention of 1949. The 4th Geneva Convention enumerates several obligations – indeed quite substantial positive obligations ¹⁴ – applicable toward individuals who "find themselves in the hands of a

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⁹ The US Military Manual (The Law of Land Warfare FM 27-10 (1956)) insists that "the invader has successfully substituted its own authority for that of the legitimate government in the territory invaded" (para. 355) and that "the force in possession must have taken measures to establish its authority" (para. 356). The German Military Manual (Humanitarian Law in Armed Conflict – Manual (1992)) states that "the occupying power must *be able to* actually exercise its *authority*" (first emphasis mine). The 2004 British Manual appears to contain a contradiction. On the one hand it stipulates that "the occupying power [must be] *in a position to* substitute its own authority for that of the former government" (para. 13.3, my emphasis), but later it indicates that occupation "depends on whether authority is *actually being exercised* over the civilian population." (para. 13.3.2, my emphasis). *See* UK Ministry of Defence, The Manual of the Law of Armed Conflict (Cambridge University Press, 2004).

¹⁰ *Eyal Benvenisti*, Responsibility for the Protection of Human Rights under the Interim Israeli-

Palestinian Agreements, Israel Law Review 28 (1995) 297, 309. ¹¹ Case no. IT-98-34-T Prosecutor v. Naletilic, 31 March 2003.

¹² Tsemel v. The Minister of Defence, 37(3) PD 365 (1983); Benvenisti, (note 2) at 181-182.

¹³ Anonymous v. The State of Israel (not yet published, judgment of 11 June, 2008) at para. 11. On the question whether Gaza is still occupied after the disengagement see *Mustafa Mari*, The Israeli Disengagement from the Gaza Strip: An End of the Occupation? Yearbook of International Humanitarian Law 8 (2005) 359 (yes); *Yuval Shany*, Faraway So Close: The Legal Status of Gaza after Israel's Disengagement", Yearbook of International Humanitarian Law 8 (2005) 359 (no).

¹⁴ Note, for example, Art. 55 that goes way beyond the obligations under the Hague Regulations, and requires the power in whose hands protected persons are found "to the fullest extent of the means available to it, [to] ensur[e] the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate."

foreign army" also in occupied territories, but does not have its own definition of occupation, or of the circumstances where people "find themselves" in the occupant's hands. In principle, one could have argued that those provisions of the 4th Geneva Convention related to occupied territory had no independent existence and were complementary to the occupation regime established by the Hague Regulations, and thus become applicable only in situations defined by Article 42 of the Hague Regulations. 15 But such an interpretation would have meant, for example, that a foreign army that had not established its own authority over the civilian population was not precluded for example from deporting them or from transferring parts of its own civilian population into the territory. This outcome clearly runs contrary to the object and purpose of the 4th Geneva Convention to safeguard Protected Persons. Hence, at least with respect to obligations under the 4th Geneva Convention, the determination of the existence of occupation must not be dependent on actual authority being exercised by the foreign army. ¹⁶ This conclusion is apparently endorsed indirectly by the ICJ in Congo/Uganda judgment which states that a foreign army that has not established its authority nevertheless bears at all times the responsibility for all actions and omissions of its own military forces (as opposed to those of third parties) in the enemy territory in breach of its obligations under international humanitarian law which are relevant and applicable in the specific situation.¹⁷ The same paragraph adds that the foreign army, even if it is not formally an occupant, could still be responsible for violations by its troops of relevant and applicable rules of international human rights law.

Since the conditions for the applicability of either the Hague or the Geneva obligations depend on questions of fact, the determination whether such control exists or not at the relevant times and in the relevant place will be based on a case by case analysis. The declarations by the occupant on the establishment or dismantling of administration are legally irrelevant. Fulfillment (or lack thereof) of the two conditions for occupation (whatever the second condition is) does not depend on whether occupation forces are present in all places at all times. It is generally accepted

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¹⁵ According to Art. 154 of the Convention, the provisions of the Hague Regulations are supplementary.

¹⁶ The potential control requirement seems an appropriate test for imposing certain Convention obligations that are related to the administration of the occupied area in the post-hostilities stage. ¹⁷ Note 7 at para 180.

¹⁸ The Naletilic decision, (note 11) at para, 218.

that forces are considered "present" when the occupying force can, within a reasonable time, send detachments of troops to make its authority felt within the occupied area. The number of troops necessary to maintain effective occupation will depend on various factors such as the disposition of the inhabitants, the number and spread of the population, and the nature of the terrain. Battle areas may not be considered as occupied, but sporadic local resistance, even successful at times, will not render the occupation ineffective. But obviously, if the sending of troops requires them to engage in battle to recapture an area from the enemy, the area will no longer be considered occupied until the troops actually manage to establish their control over it.

C. The Occupant's Forward-Looking Obligations

The law on occupation is designed to apply while occupation lasts. This makes eminent sense when one envisions the typical 19th century short-term occupation, and also the more recent experiences: the law wishes to delimit the power of the occupant and to safeguard the interests and rights of the sovereign people and its government. So far the doctrine has not dealt with the question of the obligation of the occupant in the period leading up and during the period of the unilateral termination of the occupation. This is mainly due to the fact that most occupations ended either by force or by agreement to which the law deferred. 19 In recent years however, occupations often become more a liability than an asset. Consequently, occupants, although not driven out by force, have unilaterally decided to withdraw their forces and terminate their effective control, leaving the local population to face up the challenge of reestablishing public order. Situations like the termination the occupation by Israel of Southern Lebanon in 2000, or the so called "disengagement" from the Gaza Strip in 2005, raise therefore new questions with regard to the transition to the postoccupation era. The first question involves the present-tense obligations of the occupant: Do they entail also the taking into account of the needs of the population in the post-occupation era? The second question relates to the voluntary decision of an occupant to withdraw from a territory it controls. To what extent it must take into account the needs of the occupied population and ensure them during and immediately following the withdrawal?

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¹⁹ Roberts (note 1).

I. Forward-looking obligations of the occupant during the occupation My argument here is that the present tense obligations of the occupant toward the occupied population should be interpreted as entailing also obligations to ensure as much as the occupant possibly can the continuation of "public order and civil life" during and immediately after the termination of the occupation and the transition to indigenous rule.²⁰ This scope of this obligation deepens and widens in direct relations to the length of the occupation. This obligation is more pronounced in occupations where the occupant becomes actively involved in managing the daily life and controls the institutions that run the local public institutions, and the local population thus becomes reliant on them. As dependency on the occupant widens and deepens, so grows the responsibility of the occupant to ensure smooth transition to indigenous control. This is especially the case in the so-called humanitarian occupations²¹ or transformative occupations²² that had been prompted by the urge to protect the local population from internal persecution. These considerations imply that already during occupation the occupant must take into account the post-occupation period and make the necessary provisions in anticipation of the termination of its control.

II. Obligations of the occupant at the moment of ending the occupation It is possible, and indeed it is morally necessary, to argue that the unilateral decision to unilaterally terminate an occupation is not free of legal constrains. Obviously, occupants may often be driven out by force and under conditions that do not leave them time nor resources to consider the well-being of the local population they leave behind in their retreat. But when their withdrawal is a matter of choice, circumstances permitting a process of deliberation of a variety of options, the interests of the local population seem to merit attention. This does not mean that occupation should not be terminated, nor should this become a pretext for prolonging the occupation. What it means is that the plans for the termination should include ensuring public order in

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²⁰ The Hague Regulations of 1907, Art. 43: "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 safety [l'ordre et la vie publics], while respecting, unless absolutely prevented, the laws in force in the country."

²¹ For a comprehensive treatment of this type of occupations *see* Gregory H. Fox, Humanitarian Occupation (2008). *See also* Benvenisti (note 2), at 166-167.

²² Adam Roberts, Transformative Military Occupation: Applying the Laws of War and Human Rights, AJIL 100 (2006) 580 (referring to occupation "whose stated purpose (whether or not actually achieved) is to change states that have failed, or have been under tyrannical rule").

civil life for the duration of the termination process and immediately in its aftermath.

At times this attention would be minimal – some food, water and medical supplies – for the duration until the incoming power establishes control. When the withdrawal is planned and executed in an orderly manner, it should include the orderly transfer of control over public buildings and installations, police headquarters and prisons, ²³ private buildings such as banks and shopping centers that could become targets of looting, to responsible representatives of the local population, if such can be found. And if circumstances require, and time and resources allow for, the occupant may be called upon to build the capacity of the indigenous community before it retreats. The obligation to "ensure, as far as possible, public order and safety" persists till the very end of the occupation.

III. Obligations of state parties under human rights law

Similar questions arise with respect to obligations under human rights treaties because they too impose obligations on parties to such treaties that exercise effective control over territory during and after international armed conflicts.²⁴ The state party who is occupying a foreign land and is considering withdrawing from it may have certain responsibilities toward the population it contemplates leaving behind, in the hands of a power who may not be bound by the same human rights obligations, or who may not be able or willing to ensure them.

The era of state succession and brake-up during the 1990s brought to public attention the need to clarify questions related to the applicability of human rights and humanitarian obligation at times of transition. It was convincingly argued that "[G]reat social upheavals and even peaceful break-ups of States are painful events` in such times it becomes especially urgent for the international community to monitor closely human rights situations in the countries concerned," and that "the extension of human rights/humanitarian treaties is of special pertinence at times of social

²³ The 4th Geneva Convention specifically mentions the obligation to hand over protected persons who have been accused of offences or convicted by the courts in occupied territory together with the relevant records. (Art. 77).

²³ *Rein Mullerson*, Continuity and Succession of States, by Reference to the Former USSR and Yugoslavia, International and Comparative Law Quarterly (ICLQ) 42 (1993) 473, 492.

upheavals surrounding political transition (even the most peaceful ones)."²⁶ But the literature focused mainly on the obligations of the *incoming* regime, most often the newly established successor state. The issue was therefore framed as an issue of state succession, more specifically focusing on the question of "automatic succession" to human rights treaties. Under this highly contentious, however strongly desired, assertion, successor states would be bound by human rights treaties to which the former state had been bound.²⁷

The question of the responsibility of the former state was little discussed. But at least in one case, formally not one of succession, the matter was raised. The occasion was the transfer of authority over Hong Kong from the United Kingdom (who was a party to the ICCPR) to China (who was not). In the Concluding Observations of the Human Rights Committee concluded that before and in preparation of the transfer of authority, the transferring state must "take all necessary steps to ensure effective and continued application of the provisions of the Covenant."

In principle, a similar statement may be appropriate also in the context of preparations for the transfer of authority from the occupant to local elements. Obviously, the duty to take "all necessary steps" depends on the circumstances of the situation and the resources of the departing power. They cannot amount to obligations of result, nor will the departing power be responsible for acts or omissions of the new administration. But at such a time of social upheaval surrounding the political transition, it must do its utmost to alleviate the human condition it leaves behind.²⁹

The withdrawing power may also have a specific obligation in situations where there are substantial grounds for believing that particular individuals or groups are under a real risk of irreparable harm as a consequence of falling into the hands of the incoming power. A well-established principle of human rights law requires parties not

²⁶ Rhoda Mushkat, *Hong Kong and Succession of Treaties*, ICLQ 46 (1997) 181, 191.

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²⁷ On this doctrine see *Akbar Rasulov*, Revisiting State Succession to Humanitarian Treaties: Is There as Case for Automaticity? EJIL 14 (2003) 141, Mushkat, (note 27) at 190-191. Judge Weeramantry's separate opinion in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro) Preliminary Objections* ICJ Rep. 1996 (available at http://www.icj-cij.org/docket/index.php?p1=3&p2=3&k=f4&case=91&code=bhy&p3=4) upheld that doctrine, stating that human rights and humanitarian treaties can be regarded as an exception to the general "clean slate" approach in state succession because inter alia they "involve no loss of sovereignty or autonomy of the new State, but are merely in line with general principles of protection that flow from the inherent dignity of every human being which is the very foundation of the United Nations Charter." (at page 645).

²⁸ Concluding Observations of the Human Rights Committee (Hong Kong): United Kingdom of Great Britain and Northern Ireland. 18/11/96 (CCPR/C/79/Add.69).

²⁹ Yuval Shany, Law Applicable to Non-Occupied Gaza (draft 2008).

to remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as by torture, in the country to which removal is to be effected or in any country to which the person may subsequently be removed. A higher level of abstraction will stipulate that parties may not hand over persons to the incoming authority by leaving such persons behind. Such persons will definitely include individuals who acted as collaborators or informers to the occupying army and there is reason to believe that the incoming power would subject them to torture. Arguably the same case can be made for people expected to be persecuted by the incoming power, such as gays and lesbians, political dissidents or members of ethnic minorities. When Israel unilaterally withdrew from South Lebanon (2000) it opened its borders also to the fleeing members of the Israeli-backed militia called the South Lebanon Army. When it withdrew from Gaza in 2005 its Gazan collaborators were resettled within Israel.

D. Consequences of Failure to Comply

The obligations at the voluntary termination of occupation are obviously not obligations of result but rather of conduct. They require due diligence. The adequacy of their realization depend on the specific circumstances, including the nature and the duration of the occupation, the resources available to the retreating occupant and to the incoming power, the needs of the local population and the circumstances of the withdrawal. Ultimately, as is the case with other decisions the occupant must take, the occupant needs to balance the interests of the population against its own military interests.

The failure to undertake the necessary steps in anticipation of the transition could raise, in the aftermath of the occupation, the responsibility to correct its previous violations, under the general principles of the law on state responsibility. The application of these general principles to the specific situation of occupation should take into consideration all the relevant circumstances. Thus, for example, the remedy of restitution, namely the obligation to "re-establish the situation which existed before the wrongful act was committed," should be contemplated only in the most extreme and clear cases of "humanitarian occupations." The remedy of compensation would

³⁰ For the use of the same rationale in an even wider sense *see* Shany, (note 29) (p. 9).

³¹ Those are likely to qualify also as refugees under the 1951 Geneva Convention relating to the Status of Refugees (Article 35 on the prohibition of *refoulement*).

³² Art. 35 of the 2001 International Law Commission's Articles on State Responsibility.

often be meaningless where the population lacks basic infrastructure and public institutions. The more relevant type of satisfaction that the previous occupant would be legally expected to make would most often relate to the same services it provided or had to provide or ensure provision. These would entail at least the supply of resources required for basic subsistence. In addition, as part of the satisfaction, the previous occupant would be to provide access to or through its own territory for crucial services that are not available in the previously occupied area.

Obviously, these remedial obligations are by nature temporary. The incoming power must assume responsibilities as part of its assumption of sovereign authority. Gradually the burden to provide for the occupied population will shift to the incumbent authority.

E. Conclusion

Responding to a petition against the reduction of the supply of fuel and electricity to the Gaza Strip, the Israeli Court of Justice recognized a general obligation owed by Israel to the population in the Gaza Strip after the disengagement. The judgment corresponds to the analysis provided in this note.³³ The court determined that "since September 2005, Israel no longer has effective control over the events in the Gaza strip." It is not clear which test the court uses to determine effective control. On the one hand it says that "Israeli soldiers are not in the area on a permanent basis, nor are they managing affairs there" (which would correspond to the test of actual control), but later the court adds that Israel does not have "effective *capability*, in its present status, to enforce order and manage civilian life in the Gaza Strip" (which would correspond to the test of potential control).³⁴ But the court does not need to choose between the different tests since even the latter test, the less demanding one, is found to be not satisfied. This determination leads to the conclusion, that "the State of Israel does not have a general duty to look after the welfare of the residents of the strip or to maintain public order within the Gaza Strip pursuant to the entirety of the Law of Belligerent Occupation in International Law."35

³³ All the quotes are taken from para. 12 of the judgment in HCJ 9132/07 Jaber al Bassiouni Ahmed v. The Prime Minister (30 January 2008) (official translation).

³⁴ See supra text accompanying notes 4-13. The court also mentions the fact that "the military government that had applied to that area was annulled in a government decision," as if this fact was pertinent

pertinent. ³⁵ In a subsequent judgment, Anonymous v. The State of Israel (Note 13), the court more clearly adopts the test of potential control.

Then the court addresses the question of "duties of the State of Israel relating to the residents of the Gaza Strip." In addition to duties "derived from the situation of armed conflict that exists between it and the Hamas organization controlling the Gaza Strip [and] from the extent of the State of Israel's control over the border crossings between it and the Gaza Strip," the court recognizes a duty stemming "from the relations which has been created between Israel and the territory of the Gaza Strip after the years of Israeli military rule in the area, as a result of which the Gaza Strip has now become almost completely dependent upon supply of electricity by Israel." The court cites no authority to support this assertion. It is submitted that this welcome assertion can be based on the principles of the law of occupation and presumably also on human rights law.

In our collective memory, the termination of occupation is associated with the joy of liberation.³⁶ We tend to view this period as one of enormous excitement, of self- and collective fulfillment. But there may be different scenarios, especially in times when occupants experience the severe costs associated with their position. Unilateral withdrawals can be events as painful as other situations of political transition in which the protection of individual rights is particularly important. Probably given the rather idyllic connotation, the law of occupation has so far failed to seriously address the occupant's obligations in anticipation of and during the transitional period at the end of the occupation. It is time to fill this gap.

³⁶ The occupants of Iraq in 2003 tried to take advantage of this connotation by presenting the occupation as "liberation" (*see* Roberts (note 21)).