

1. Report Security Classification: UNCLASSIFIED			
2. Security Classification Authority:			
3. Declassification/Downgrading Schedule:			
4. Distribution/Availability of Report: DISTRIBUTION STATEMENT A: APPROVED FOR PUBLIC RELEASE; DISTRIBUTION IS UNLIMITED.			
5. Name of Performing Organization: JOINT MILITARY OPERATIONS DEPARTMENT			
6. Office Symbol: C		7. Address: NAVAL WAR COLLEGE 686 CUSHING ROAD NEWPORT, RI 02841-1207	
8. Title (Include Security Classification): Military Occupation and the Law of Armed Conflict: Discouraging Resistance			
9. Personal Authors: Major James W. Friend, USA			
10. Type of Report: FINAL		11. Date of Report: 3 FEB 2003	
12. Page Count: 21 12A Paper Advisor (if any):			
13. Supplementary Notation: A paper submitted to the Faculty of the NWC in partial satisfaction of the requirements of the JMO Department. The contents of this paper reflect my own personal views and are not necessarily endorsed by the NWC or the Department of the Navy.			
14. Ten key words that relate to your paper: Occupation; Law of Armed Conflict; Lawful and Unlawful Occupation Policies; Geneva Convention; Treatment of Civilians Under the Law of Armed Conflict; Historical Effectiveness of Lawful and Unlawful Policies.			
15. Abstract: This paper analyzes the effectiveness of lawful and unlawful occupation policies at discouraging resistance. It explains the protections and obligations afforded under the Law of Armed Conflict, identifies lawful methods for discouraging resistance, and using historical examples evaluates the effectiveness of both lawful and unlawful occupation policies at discouraging resistance.			
16. Distribution / Availability of Abstract:	Unclassified X	Same As Rpt	DTIC Users
17. Abstract Security Classification: UNCLASSIFIED			
18. Name of Responsible Individual: CHAIRMAN, JOINT MILITARY OPERATIONS DEPARTMENT			
19. Telephone: 841-6461		20. Office Symbol: C	

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MILITARY OCCUPATION AND THE LAW OF ARMED CONFLICT: DISCOURAGING
RESISTANCE

by

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A paper submitted to the Faculty of the Naval War College in partial satisfaction of the requirements of the Department of Joint Military Operations.

The contents of this paper reflect my own personal views and are not necessarily endorsed by the Naval War College or the Department of the Navy.

Signature: _____

3 February 2003

I. Introduction

With the advent of the Global War on Terror, America faces the prospect of being an occupying power again for the first time since the close of the World War Two.¹ This is an extraordinary step for a reluctant empire. But the terrorist attacks of September 11, 2001 were extraordinary events. America's sense of security collapsed with the Twin Towers, its will reborn in the ashes of ground zero. President Bush announced that the United States would follow a strategy of preemption to defend itself from terrorism and the proliferation of weapons of mass destruction (WMD).² Preemption may require U.S. forces to occupy some or all of a hostile nation in order to root out terrorist or WMD threats.

As the occupation of Iraq grows increasingly likely, many commentators and analysts seem confident that the Iraqi people will enthusiastically welcome U.S. forces as liberators.³ Hopefully these assessments will prove accurate. However, occupations that match the following description have been far more common throughout history:

Every locality is nothing but a fortress open to the sky. Not a single blade of grass that is not a stronghold; not a hollow that is not a retrenchment. The ground is mined everywhere; the enemy cannot take a single step forward without it going off under his foot or at his ear. He thus wanders at random, in the midst of terrible enchantment, where nature itself seems armed against him in order to repel him from the land. The trunk of a tree, the peak of a rock is an isolated sentinel, a mysterious sniper, always firing from close range. He walks in the mist of perpetual ambush, finding death at every minute, but

¹ Occupation is a legal term of art. It refers to situations in which one state takes over all or part of another state and substitutes itself as the actual government in the areas that it controls. No American conflicts since the end of World War Two involved the formal occupation of another state. The situation that most closely resembled an occupation happened at the close of the Persian Gulf War, when U.S. forces exercised control over a large area of Southern Iraq. U.S. forces determined that they were not an occupying force, but accepted all the obligations of an occupying power. Frederic L. Borch, *Judge Advocates in Combat: Army Lawyers in Military Operations from Vietnam to Haiti* (Washington, DC: U.S. Government Printing Office, 2001), 171.

² President of the United States, *The National Security Strategy of the United States of America*, (Washington, DC: U.S. Government Printing Office, 2002), 6, 13-16.

³ An example of this occurred during a four-person panel discussion on the January 19, 2003 TV program "Fox News Sunday." The panel was nearly unanimous that the Iraqis would welcome U.S. forces with open arms. Juan Williams alone seriously considered the possibility that some Iraqi people might resist a U.S. occupation.

without ever finding the enemy. If a soldier strays to forage, he's killed; if another stops to rest for a moment, he's dead.⁴

What can U.S. occupation forces do to discourage such resistance? American troops confronted similar resistance in Vietnam.⁵ In rare cases, they responded with unlawful violence.⁶ What can a commander do to convince his soldiers that such conduct is not only wrong but ineffective? These questions and more will face the operational commander who leads U.S. occupation forces under such circumstances. My goal in writing this paper is to assist U.S. occupation forces in developing lawful and effective policies for discouraging resistance.

My analysis occurs in three parts: First, I summarize the legal protections and obligations that exist during an occupation. Second, I identify the lawful methods available for discouraging resistance. Finally, using historical examples, I assess the effectiveness of both lawful and unlawful occupation policies.

II. Legal Protections and Obligations⁷

A. Protected Person Status

⁴ Karma Nabulsi, *Traditions of War: Occupation, Resistance, and the Law* (Oxford: Oxford University Press, 1999), 244-45, quoting Eugene Pelletan, *La Tragedie italienne* (Paris: Pagnerre, 1862), 13-14.

⁵ As Admiral Thomas H. Moorer stated, “[W]e had to cope with women concealing grenades in their brassieres, or in their baby’s diapers. I remember two of our marines being killed by a youngster who they were teaching to play volleyball.” Stanley Karnow, *Vietnam: A History*, (New York: Viking Penguin, 1983; reprint, Norwalk, Connecticut: the Easton Press, 1988), 16 (page citations are to the reprint edition).

⁶ *Ibid.*, 24.

⁷ The law governing military occupation includes Hague Convention No. IV, 18 October 1907, Respecting the Laws and Customs of War on Land, T.S. 539; Geneva Convention (IV), Relative to the Protection of Civilian Persons in Time of War, August 12, 1949, 6 U.S.T. 3316, T.I.A.S. 3365, 75 U.N.T.S. 287; and Protocol I of the 1977 Protocols Additional to the Geneva Conventions, December 12, 1977, 16 I.L.M. 1391. Although the United States is not a party to Protocol I, it considers those provisions of Protocol I dealing with the protection of civilians (except Article 51, paragraph 6, concerning reprisals) to be binding as customary international law. See The Judge Advocate General’s School (U.S.), *Operational Law Handbook* (Charlottesville, VA: U.S. Army, Judge Advocate General’s School, International Law Division, 2002), 11. The summary of occupation law that follows is not intended to be a comprehensive guide. Rather, it is intended to focus planners on those aspects of occupation law relevant to the issue of discouraging resistance. For a more comprehensive discussion of occupation law see Leslie C. Green, *The Contemporary Law of Armed Conflict*, 2d ed. (Manchester, UK: Manchester University Press, 2000), 229-267; Julius Stone, *Legal Controls of International Conflict: A Treatise on the Dynamics of Disputes and War Law* (New York: Rinehart, 1954), 693-732; Howard S. Levie, *The Code of International Armed Conflict*, vol. 2 (New York: Oceana Publications, 1986), 713-781; and Dieter Fleck, ed., *The Handbook of Humanitarian Law in Armed Conflicts* (Oxford, UK: Oxford University Press, 1995), 240-292.

For occupation forces seeking to discourage resistance, the most challenging aspect of occupation law is the extensive protection it provides to civilians in occupied territory. Those entitled to “protected person” status include civilians who find themselves in the hands of a foreign occupying power.⁸ Arguably, these people enjoy the most extensive protections available under the Law of Armed Conflict. Occupation forces must distinguish between protected persons and the belligerents or combatants who actively seek to do them harm.⁹ Indeed, occupation forces are expected to make these distinctions even when dealing with an overwhelmingly hostile population. The occupier is expected to restrain himself and follow the law, even if segments of the occupied population have committed terrible atrocities against his forces. Thus reprisals, mass or individual deportations, collective punishments, and hostage taking – traditional methods for deterring or punishing resistance--are unconditionally prohibited.¹⁰ Nor is an occupier permitted to use protected persons as human shields, coerce them into providing him information or intelligence, actively recruit them to serve in his armed forces, seize or destroy their property absent military necessity, or requisition their property for use by occupation forces without cash payment or a receipt.¹¹

The occupier may force protected persons who are over the age of eighteen to work in support of occupation forces or for the good of the occupied population. However, he may not compel protected persons to work without fair pay, under inhumane or unsafe conditions, or in direct support of military operations.¹² In addition, the occupier may not subject any person to

⁸ Geneva Convention IV, Art. 4. Although civilians in the hands of a foreign occupier are specifically protected by this convention, those persons with protected status under the other three Geneva Conventions (prisoners of war and the wounded, sick, or shipwrecked) are also protected.

⁹ Green, 230. Protected persons who take a direct part in the hostilities become belligerents and may be engaged. Protocol I, Art.51.

¹⁰ Geneva Convention IV, Arts. 3 and 32-34; Protocol I, Art 75; Green, 261; Stone, 702-704. Collective punishment refers to actions that punish the many for the acts of only one or a few.

¹¹ Geneva Convention IV, Arts. 28, 31, 40; Hague Regulation (Land), Arts. 23, 44-47, 50, 52.

¹² Geneva Convention IV, Art. 51.

murder, rape, torture, prolonged arbitrary detention, or any other inhumane treatment.¹³

Protected persons, as the drafters of the 1949 Geneva Convention so eloquently stated:

[A]re entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.

Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.

Without prejudice . . . to the state of their health, age, or sex, all protected persons shall be treated with the same consideration . . . without any adverse distinction based, in particular, on race, religion or political opinion.¹⁴

The occupying party cannot deprive protected persons of these rights through annexation or agreements reached with “puppet” local governments.¹⁵

B. Occupier Affirmative Duties

Occupation occurs when all or part of an enemy nation’s territory is placed under the actual control and authority of the occupying power.¹⁶

Military occupation is a question of fact. It presupposes a hostile invasion, resisted or unresisted, as a result of which the invader has rendered the invaded government incapable of publicly exercising its authority, and that the invader has successfully substituted its own authority for that of the legitimate government in the territory invaded.¹⁷

By displacing the government of the occupied territory, the occupier has removed the institution upon which the population had depended for their security. Thus, an occupying power is obligated to provide for public order and safety.¹⁸ In restoring public order, the occupier must respect, unless absolutely prevented, the laws that had been in force prior to the occupation.

However, an occupier need not permit local law to interfere with the security of his forces or the

¹³ Ibid., Arts. 3, 32.

¹⁴ Ibid., Art. 27.

¹⁵ Ibid., Art. 47.

¹⁶ Stone, 696.

¹⁷ *The Law of Land Warfare: FM 27-10*, (Washington, DC: U.S. Department of the Army, 1956), 139.

¹⁸ Green, 259; *FM 27-10*, 141; Levie, 715.

execution of his duties as an occupying power.¹⁹ Considerations of military necessity will trump local law.²⁰ Regardless, protected persons subject to deprivation of life or liberty are entitled to due process of law and the presumption of innocence.²¹

The occupier must also provide for the general welfare of the occupied population. In this sense, an occupying power is required to ensure, to the fullest extent of the means available to it, that the population has access to adequate food and medical supplies.²² Moreover, if the population is inadequately supplied, the occupier will permit and facilitate international relief efforts--unless precluded from doing so for reasons of urgent military necessity.²³ An occupier is also obliged to ensure, “to the fullest extent of the means available to it” and “with the cooperation of national and local authorities,” that the population has adequate medical care, hospitals, and public health and hygiene services.²⁴ Further, an occupier is responsible for the proper functioning of “all institutions devoted to the care and education of children.” If local institutions are inadequate, the occupier must make arrangements to properly educate and care for orphaned children--“if possible by persons of their own nationality, language and religion.”²⁵

In summary, the Law of Armed Conflict entitles protected persons to humane treatment, due process of law, the presumption of innocence, and noncombatant status, while simultaneously obliging the occupying power to ensure that the occupied population receives adequate food, medical care, education, and protection for its orphans.²⁶ This is an exacting standard of behavior, especially if occupation forces find themselves confronting determined resistance and a hostile population.

¹⁹ *FM 27-10*, 142.

²⁰ *Levie*, 715.

²¹ Geneva Convention IV, Arts. 65-77, 117-125; Protocol I, Art. 75.

²² Geneva Convention IV, Art. 55.

²³ *Ibid.*, Arts. 59-60.

²⁴ *Ibid.*, Art. 56.

²⁵ *Ibid.*, Art. 50.

III. Lawful Methods for Discouraging Resistance

The Law of Armed Conflict is a two-way street. Although it seeks to guarantee an occupied population's right to humane treatment, it also provides an occupation force with broad powers to ensure law, order and security:

The occupant is authorized to demand and enforce the population's obedience as necessary for the security of the occupying forces, the maintenance of law and order, and the proper administration of the country. The inhabitants are obliged to behave peaceably and take no part in hostilities.²⁷

These powers include internment and assigned residence, penal legislation, derogation, partial or total evacuations, and other measures of control.

A. Internment and Assigned Residence

Assigned residence involves moving people away from their domicile and forcing them to live in a place that is away from suspicious activity and can be more easily supervised.

Internment is a more severe form of assigned residence in which protected persons are required to live in a secure camp.²⁸ An occupier may subject protected persons to internment or assigned residence if he considers it necessary to do so for "imperative reasons of security."²⁹ This sweeping power is limited only by requirements that internees receive humane treatment and be afforded the opportunity to appeal their internment.³⁰

B. Penal Legislation

As previously noted, the occupying power has the duty to provide law and order and the need to assure its own security. Accordingly, the Law of Armed Conflict recognizes its power to:

²⁶ Of course, noncombatants lose that status if they take a direct part in the hostilities. Protocol I, Art. 51.

²⁷ *Operational Law Handbook*, 25. See also Geneva Convention IV, Art. 64. But see Stone, 721-26 (population has a legal, but perhaps not a moral, duty to obey occupant).

²⁸ Jean S. Pictet, *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva, Switzerland: International Committee of the Red Cross, 1958), 256.

²⁹ Geneva Convention IV, Art. 78.

³⁰ *Ibid.*, Arts. 79-117.

[S]ubject the population of the occupied territory to provisions which are essential to enable the Occupying Power to fulfill its obligations . . . , to maintain the orderly government of the territory, and to ensure the security of the Occupying Power, of the members and property of the occupying forces or administration, and likewise of the establishments and lines of communication used by them.³¹

This includes the power to make criminal laws and prosecute those who violate them.³²

While an occupying power is obliged to respect the occupied territory's existing laws and legal institutions, it may repeal or suspend any law that threatens its security or interferes with the execution of its duties.³³

Those who violate the occupier's new penal provisions may be prosecuted before "properly constituted, non-political military courts, on condition that said courts sit in the occupied country."³⁴ However, the occupying power has a duty to inform the population of these new laws before initiating any prosecutions. In addition, these laws may not be applied to acts that occurred prior to the occupation.³⁵

Thus, an occupying power may arrest, intern, or imprison protected persons who commit offenses intended to harm it.³⁶ The occupying power must provide defendants with a full array of legal rights, including humane treatment, notice of the charges preferred against them, a fair and speedy trial, the ability to call witnesses and present a defense, the assistance of counsel, the services of an interpreter, the presence of the protecting power at all hearings (usually the International Committee of the Red Cross), credit for time served in pretrial detention, and the right to an appeal.³⁷

³¹ Ibid., Art. 64.

³² Pictet, 337-40.

³³ Geneva Convention IV, Art. 64.

³⁴ Ibid., Art. 66.

³⁵ Ibid., Art. 65.

³⁶ Ibid., Arts. 68-69, 79.

³⁷ Ibid., Arts. 69-76.

Finally, the occupying power can impose the death penalty. It can only do so, however, in cases involving espionage, serious sabotage, and intentional homicide, and then only so long as the offender was not under the age of eighteen at the time of the offense, and the offense would have been subject to capital punishment under the law in force prior to the occupation.³⁸ Moreover, a death sentence may not be executed within six months of either notification to the protecting power or denial of pardon or reprieve.³⁹

C. Derogation

Spies, saboteurs and those “definitely suspected of or engaged in” activities hostile to the security of the occupying power forfeit their protected person status.⁴⁰ They may be detained as long as necessary and, where absolute military security requires, be deprived of their right to communicate with the outside world.⁴¹ Jean Pictet, renowned commentator on the 1949 Geneva Conventions, explained the drafters’ rationale for including this surprisingly harsh provision:

The effectiveness of the measures taken to deal with enemy agents and saboteurs depended on the secrecy of the proceedings; it was inconceivable that a State which had arrested one or more enemy agents should be obliged to announce their capture and let the persons under arrest correspond with the outside world and receive visits

. . . Those who take part in the struggle while not belonging to the armed forces are acting deliberately outside the laws of warfare. Surely they know the dangers to which they are exposing themselves.⁴²

The limitations on the occupying power in this regard are that its security interests be exceptional and legitimate, it treat these people humanely, and afford each of them the opportunity to receive a fair trial.⁴³

C. Partial or Total Evacuations

³⁸ Ibid., Art. 68.

³⁹ Ibid., Art. 75.

⁴⁰ Ibid., Art. 5. The burden of proof is satisfied here if the occupying power has a legitimate suspicion that a particular individual is a spy, saboteur, or has engaged in hostile activity. Pictet, 55.

⁴¹ Geneva Convention IV, Art. 5.

⁴² Pictet, 52-53.

⁴³ Ibid., 52-58.

Although forcible deportations and mass transfers to areas outside occupied territory are prohibited, “the Occupying Power may undertake total or partial evacuation of a given area if the security of the population or imperative military reasons so demand.”⁴⁴ If the occupying power decides that an evacuation is necessary, it is bound to ensure, “to the greatest practicable extent,” that the evacuees’ hygiene, health, safety, nutritional, and family needs are met.⁴⁵

E. Other Measures of Control

“The Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.”⁴⁶ Under this general provision falls every conceivable measure of control not specifically delineated elsewhere, to include broad powers of search and seizure, censorship, the collection of all privately owned weapons, the requirement of protected persons to register with the occupying power and carry identification, the power to establish and enforce curfews, prohibition of access to certain areas, and other means to restrict movement or regulate behavior for legitimate military or security reasons.⁴⁷

In short, the Law of Armed Conflict grants occupiers enormous discretion and flexibility for the exercise of firm, humane control over protected persons in occupied territory. To illustrate how these powers work, consider a hypothetical: a civil affairs team has been ambushed during a recent visit to an occupied town that is a hotbed of resistance. One member of the occupation force was killed and three were captured. Resistance forces beat and tortured the captured soldiers mercilessly for hours, then brutally executed one of them while forcing the others to watch. One of the soldiers escaped and relayed this information to his chain of command.

⁴⁴ Geneva Convention IV, Art. 49.

⁴⁵ Ibid.

⁴⁶ Ibid., Art. 27.

⁴⁷ Pictet, 207; FM 27-10, 143-44.

There are a variety of lawful responses available to the occupation force commander. He can move heavily armed forces to the town to search for the missing soldier and stabilize the situation. Any protected persons who commit hostile acts or show hostile intent toward the approaching occupation forces may be engaged.⁴⁸ The commander can also order a cordon and search of the entire town, without a warrant or probable cause, to look for incriminating information. He can intern--and possibly prosecute--any protected person he has good reason to believe participated in the ambush.

When the commander discovers who took part in the execution of the captives, he can prosecute those people before military courts and seek the death penalty.⁴⁹ If he definitely suspects specific people as leaders of the resistance forces involved, he can deny those people protected person status and detain them in isolation as long as necessary. The commander can also subject the town to a very restrictive curfew and other controls on movement.

Finally, the commander can compel suspected hostile families to live in separate assigned residences if military operations or safety considerations so require. If the security situation continues to deteriorate, the commander can evacuate the entire town and move its population to internment camps or assigned residences. The commander's legitimate concern about the safety of civil affairs, medical, or other occupation force personnel who must enter the town to provide legally mandated support justifies such drastic action.

What if these lawful methods fail to stabilize the situation? It is unreasonable to assume that even disciplined American soldiers will not be tempted to lash out when their friends have been tortured, brutalized, and murdered. If American soldiers responded to such acts with reprisals or collective punishments, how likely is it that these illegal methods would succeed at discouraging

⁴⁸ CJCSI 3121.01A, *Standing Rules of Engagement for U.S. Forces*, 15 January 2000; Protocol I, Art. 51(3).

resistance? The last section of this paper assesses, from a historical perspective, the effectiveness of lawful and unlawful occupation policies.

IV. Evaluating Effectiveness

Napoleonic France occupied Spain from 1808 to 1814. Bonaparte conquered Spain in response to a revolution in May 1808. The French routed the Spanish armies and were at first welcomed as liberators.⁵⁰ Napoleon installed his brother Joseph as King. Napoleon's attitude toward the peoples he conquered is revealed in a letter he wrote to Joseph in 1806 when he named him King of Naples:

The security of your dominion depends on how you behave in the conquered province. Burn down a dozen places which are not willing to submit themselves. Of course, not until you have first looted them; my soldiers must not be allowed to go away with their hands empty.⁵¹

Joseph did not disappoint his brother. He conscripted Spanish men, raised taxes, diverted scarce local resources to support his troops, and tried to undermine the influence of the Catholic Church.⁵² The Spanish people were outraged and fiercely resisted French rule.⁵³ The French reprisals were brutal.⁵⁴ The occupiers found themselves drawn into "a pitiless spiral of atrocity and retaliation."⁵⁵ The resistance efforts grew and experienced great success.⁵⁶ More Frenchmen were pulled into what Napoleon began to call "the Spanish Ulcer."⁵⁷

Spanish resistance fostered hope throughout Europe. Napoleon was not invincible. Austria fought back in 1809.⁵⁸ Russia stood up to a massive French invasion in 1812, its vast spaces and

⁴⁹ That is, of course, if they were over the age of eighteen when they committed the murder, and this crime was punishable by death prior to the occupation.

⁵⁰ David Gates, *The Napoleonic Wars: 1803-1815* (London: Arnold, 1997), 171-76.

⁵¹ Nabulsi, 22.

⁵² Charles J. Esdaile, *The Wars of Napoleon* (New York: Longman, 1995), 109-112, 126-127; Gates, 183.

⁵³ Esdaile, 126-127.

⁵⁴ Gates, 105.

⁵⁵ *Ibid.*, 187.

⁵⁶ *Ibid.*, 106-107, 186.

⁵⁷ Esdaile, 140.

⁵⁸ Gates, 109-116.

terrible weather sealing Napoleon's defeat.⁵⁹ Soon France, surrounded by vastly superior forces, was pounded into submission.⁶⁰ Napoleon's failure to discourage resistance in Spain marked the beginning of the end of his empire.

The German occupation of Yugoslavia from 1941-1944 gave rise to an indescribable orgy of violence and brutality. Hitler invaded Yugoslavia to help his incompetent ally, Mussolini, avoid defeat in Greece.⁶¹ At first, the Yugoslavs signed an alliance with Hitler. But only two days after it was signed, a coup replaced the old government and renounced the alliance. The Yugoslav people rejoiced.⁶² This was their first act of resistance. Hitler's response was vicious. His first reprisal was the terror bombing of Belgrade.⁶³ Thousands of innocent civilians were killed without warning.

This set the tone for the German occupation. Although the conquest was easy, the occupation was not.⁶⁴ Hitler underestimated the Yugoslavs. He broke the country up into small ministries and split it between his Axis cronies.⁶⁵ He began to drain it of all natural resources.⁶⁶ Resistance began almost overnight.⁶⁷ Hitler responded with characteristic savagery. He ordered that 100 civilians be shot for every German soldier killed.⁶⁸ In the short term, these operations seemed to work. A major Serb resistance group, the Chetniks, stopped its attacks.⁶⁹ But the communist leader Tito continued the fight and the resistance grew.⁷⁰

⁵⁹ Ibid., 203-218.

⁶⁰ Ibid., 254-59.

⁶¹ Ronald Bailey, *Partisans and Guerrillas*, ed. Time-Life Books (Chicago: Time-Life Books, 1978), 16-22.

⁶² Ibid., 24-25.

⁶³ Ibid., 26.

⁶⁴ Ibid., 27.

⁶⁵ Ibid., 74.

⁶⁶ *German Anti-Guerrilla Operations in the Balkans (1941-1944): Department of the Army Pamphlet 20-243*, (Washington, DC: U.S. Department of the Army, 1954), 33, 75.

⁶⁷ Ibid., 22.

⁶⁸ Bailey, 78.

⁶⁹ Ibid., 24, 77-79.

⁷⁰ Ibid., 81.

To defeat the partisans, the Germans launched seven major campaigns involving infantry, tanks, artillery, aircraft, and special operations forces. These had little lasting effect.⁷¹ By 1943, the Germans had 600,000 troops to deal with only 145,000 partisans.⁷² They desperately needed these men and their materiel elsewhere. The allied noose was beginning to tighten around Hitler's neck. Like Napoleon before him, Hitler failed to see that cruel, unlawful measures would only encourage resistance and hasten his fall.

The Soviet occupation of Afghanistan followed this familiar, tragic pattern. The Soviet invasion of 1980 was carried off with relative ease.⁷³ They installed a puppet communist regime against the wishes of the Afghanistan people.⁷⁴ The Afghans began to fight back. By the end of the first year of the invasion, 75 percent of Afghanistan was under the control of the resistance.⁷⁵

Soviet efforts at discouraging resistance included intimidation, genocide, and reprisal.⁷⁶ They indiscriminately bombed isolated villages they suspected of supporting the resistance.⁷⁷ After the bombardment, Soviet armor would roll in destroying all remaining houses and shooting at anything that moved. They then destroyed food, crops, livestock, and wells.⁷⁸ To intimidate the population, they dropped thousands of anti-personnel landmines and booby traps. Many were designed to look like watches, jewelry, books, and toys.⁷⁹

Ambushes of Soviet convoys triggered immediate reprisals against neighboring villages. On September 13, 1982, the Soviets massacred 105 men, women, and children in a village near Kabul. In April 1983 they terror bombed Afghanistan's third largest city, Herat, killing

⁷¹ Ibid., 86-88, 96-102.

⁷² *Operations in the Balkans*, 49.

⁷³ J. Bruce Amstutz, *Afghanistan: The First Five Years of Soviet Occupation* (Washington, DC: National Defense University Press, 1986), 46-48.

⁷⁴ Ibid., 51-52.

⁷⁵ Ibid., 127-32.

⁷⁶ Ibid., 144-46.

⁷⁷ Ibid.

⁷⁸ Ibid.

approximately 3,000 people. In October 1983 they killed 360 civilians in retaliation for casualties suffered in heavy fighting.⁸⁰

Predictably, these atrocities did not succeed at discouraging Afghan resistance.⁸¹ The Soviets ultimately suffered 35,000 killed and many more wounded. They withdrew their forces from Afghanistan in 1988 without accomplishing their mission. A few thousand primitive tribesmen from feuding clans had beaten the most feared and ruthless superpower in the world.⁸²

The unlawful occupation policies employed in Spain, Yugoslavia, and Afghanistan had two things in common: they encouraged resistance, and they failed to accomplish their missions.

The American occupations of Germany and Japan after the end of World War Two are often cited as textbook examples of effective occupations. American occupation planners took an approach in stark contrast to their unsuccessful Axis counterparts. Well before the occupations occurred, they set up schools of military government to teach future occupation authorities how to meet their responsibilities. These courses were demanding and required students to learn the language, history, and culture of the peoples they would to govern.⁸³ At a higher level, planners focused on questions concerning how long occupation should last, what forces would be needed to accomplish the task, how civilians in occupied territory should be treated, and whether local government institutions should be retained or discarded.⁸⁴ For Japan, the critical question became whether or not to retain the Emperor as head of state.⁸⁵ Resolution of this question would determine whether U.S. occupation forces encountered serious resistance. Ultimately,

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Addington, 312-14.

⁸³ Gordon Daniels, "The American Occupation of Japan, 1945-52," *Armies of Occupation*, eds. Roy Prete and A. Hamish Ion, (Waterloo, Ontario: Wilfrid Laurier University Press, 1984), 159-60.

⁸⁴ Ibid., 161-162.

⁸⁵ Ibid.

occupation planners recommended retaining the Emperor to ensure the cooperation of the Japanese people.⁸⁶

The U.S. occupations of Germany and Japan met very little resistance. Critical to this are a number of factors. First, U.S. occupation forces provided extensive support to the occupied populations, including money to rebuild their war ravaged countries and emergency relief supplies.⁸⁷ Second, they respected local cultures and institutions. Although U.S. forces exercised firm control, they did so in a manner that did not humiliate the conquered peoples.⁸⁸ Third, they built solid democratic institutions and immediately provided for cooperative government with local officials.⁸⁹ Fourth, and perhaps more importantly, they did not engage in mass reprisals against the German and Japanese people. Rather, they sought justice through legal process in the Nuremberg and Tokyo War Crimes Tribunals and discarded the failed cycle of atrocity and revenge.⁹⁰

The lawful U.S. occupation policies in Germany and Japan had two things in common: they did not encourage resistance, and they accomplished their missions.

V. Conclusion

Discouraging resistance is the key to a successful occupation. The people of an occupied territory will be less inclined to resist if they believe that occupation forces are serving their best interests. An occupation force that embraces its obligations under the Law of Armed Conflict

⁸⁶ Ibid.

⁸⁷ Earl Ziemke, "The Formulation and Initial Implementation of U.S. Occupation Policy in Germany," *U.S. Occupation in Europe After World War II: Papers and Reminiscences*, ed. Hans Schmitt, (Lawrence, Kansas: The Regents Press of Kansas, 1978), 39; F.S.V. Donnison, *Civil Affairs and Military Government North-West Europe: 1944-46*, (London: Her Majesty's Stationary Office, 1961), 329-339.

⁸⁸ Daniels, 169.

⁸⁹ Ibid., 166-170; Ziemke, 34-35, 39-42.

⁹⁰ Excellent bibliographies on the Nuremberg and Tokyo War Crimes Tribunals can be found on the University of California-Berkeley Human Rights Center Website at <<http://globetrotter.berkeley.edu/humanrights/bibliographies/warcrimes.germany.html>> and <<http://globetrotter.berkeley.edu/humanrights/bibliographies/warcrimes.japan.html>>

will do much to convince the people that it is working in their behalf. If resistance is encountered, the law affords a variety of effective responses. Regardless, a few soldiers will be tempted to retaliate against those who commit atrocities against their friends. Commanders will be most effective at deterring such conduct if they explain to their soldiers that reprisals are illegal, ineffective, and will not be tolerated.⁹¹

Occupation is a formidable task. Throughout history, it has been synonymous with cruelty, exploitation, and abuse. Gaining the trust of the occupied population will not always be easy. Helping to provide for their food, health care, and educational needs will be a good start. Respecting their local laws, institutions, and culture will also help. But the real test will come when one of their friends or relatives commits an offense against the occupying power. How is this person treated? Is he abused and run through a mockery of justice, as would have happened under the old regime? Or is he afforded the presumption of innocence, due process of law, and humane treatment? The establishment of reliable institutions of justice will lay the foundations for the success of U.S. occupation forces and the budding democracy they seek to foster.

⁹¹ As a Judge Advocate who has given ROE and Law of Armed Conflict training to thousands of soldiers, I cannot overemphasize the value of having a commander personally engage his soldiers in a discussion of the moral, ethical, and practical implications of these issues. Legal training alone is not enough. Many soldiers have definite--and sometimes surprising--views on how effective it is to comply with the Law of Armed Conflict. Commanders should not hesitate to stand in front of their troops and fully discuss of these issues. Based on my experience, such a dialogue will have an enormously positive impact.

SELECTED BIBLIOGRAPHY

- Amstutz, J. Bruce. *Afghanistan: The First Five Years of Soviet Occupation*. Washington, DC: National Defense University Press, 1986.
- Bailey, Ronald. *Partisans and Guerrillas*, ed. Time-Life Books. Chicago: Time-Life Books, 1978.
- Borch, Frederic L. *Judge Advocates in Combat: Army Lawyers in Military Operations from Vietnam to Haiti*. Washington, DC: U.S. Government Printing Office, 2001.
- Daniels, Gordon. "The American Occupation of Japan, 1945-52." *Armies of Occupation*, eds. Roy Prete and A. Hamish Ion. Waterloo, Ontario: Wilfrid Laurier University Press, 1984.
- Department of the Army. *German Anti-Guerrilla Operations in the Balkans (1941-1944): Department of the Army Pamphlet 20-243*. Washington, DC: U.S. Department of the Army, 1954.
- _____. *The Law of Land Warfare: FM 27-10*. Washington, DC: U.S. Department of the Army, 1956.
- Donnison, F.S.V. *Civil Affairs and Military Government North-West Europe: 1944-46*. London: Her Majesty's Stationary Office, 1961.
- Esdaile, Charles J. *The Wars of Napoleon*. New York: Longman, 1995.
- Fleck, Dieter, ed. *The Handbook of Humanitarian Law in Armed Conflicts*. Oxford, UK: Oxford University Press, 1995.
- Fox Television. "Fox News Sunday." 19 January 2003.
- Green, Leslie C. *The Contemporary Law of Armed Conflict*, 2d ed. Manchester, UK: Manchester University Press, 2000.
- Gates, David. *The Napoleonic Wars: 1803-1815*. London: Arnold, 1997.
- Geneva Convention (IV), Relative to the Protection of Civilian Persons in Time of War, August 12, 1949, 6 U.S.T. 3316, T.I.A.S. 3365, 75 U.N.T.S. 287.
- Hague Convention No. IV, 18 October 1907, Respecting the Laws and Customs of War on Land, T.S. 539.
- Joint Chiefs of Staff. CJCSI 3121.01A. *Standing Rule of Engagement for U.S. Forces*, 15 January 2000.

Judge Advocate General's School (U.S.). *Operational Law Handbook*. Charlottesville, VA: U.S. Army Judge Advocate General's School. International and Operational Law Department, 2001.

Karnow, Stanley. *Vietnam: A History*. New York: Viking Penguin, 1983. Reprint Norwalk, Connecticut: the Easton Press, 1988.

Levie, Howard S. *The Code of International Armed Conflict*, vol. 2. New York: Oceana Publications, 1986.

Nabulsi, Karma. *Traditions of War: Occupation, Resistance, and the Law*. Oxford: Oxford University Press, 1999.

Pictet, Jean S. *Commentary: IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War*. Geneva, Switzerland: International Committee of the Red Cross, 1958.

President of the United States. *The National Security Strategy of the United States of America*. Washington, DC: U.S. Government Printing Office, 2002.

Protocol I of the 1977 Protocols Additional to the Geneva Conventions, December 12, 1977, 16 I.L.M. 1391.

Stone, Julius. *Legal Controls of International Conflict: A Treatise on the Dynamics of Disputes and War Law*. New York: Rinehart, 1954.

University of California-Berkeley. Human Rights Center Website. <<http://globetrotter.berkeley.edu/humanrights/bibliographies/warcrimes.germany.html>>

_____. <<http://globetrotter.berkeley.edu/humanrights/bibliographies/warcrimes.japan.html>>

Ziemke, Earl. "The Formulation and Initial Implementation of U.S. Occupation Policy in Germany." In *U.S. Occupation in Europe After World War II: Papers and Reminiscences from the April 23-24, 1976, Conference Held at the George C. Marshall Research Foundation, Lexington, Virginia.* ed. Hans Schmitt, 27-44. Lawrence, Kansas: The Regents Press of Kansas, 1978.