

EXERCISE OF POWER DURING MILITARY OCCUPATION: A CASE STUDY OF MILITARY AND TRANSFORMATIVE OCCUPATIONS

РЕАЛІЗАЦІЯ ВЛАДИ ПІД ЧАС ОКУПАЦІЇ: КЕЙС-АНАЛІЗ ВИПАДКІВ ВІЙСЬКОВОЇ ТА ТРАНСФОРМАЦІЙНОЇ ОКУПАЦІЇ

Shmanatov M.S.,

*PhD student at the Political Science Department
V. N. Karazin Kharkiv National University*

The article examines the legal frameworks of military occupation (MO) and transformative military occupation (TMO), their impact on the sovereignty of occupied territories, and the peculiarities of implementing occupational authority. Through an analysis of two case studies – the occupation of Palestine by Israel and Iraq by the U.S. – led coalition, the study explores how these forms of occupation align with the «status quo ante» principle and compares their political governance activities. Military occupation is rooted in the Hague and Geneva Conventions, which define its temporary nature, restrict administrative control over the occupied territory, and mandate the preservation of its status until the conflict's resolution. Conversely, TMO extends beyond traditional legal regulation, focusing on profound transformations of the political, social, and economic structures of territories, often justified by human rights norms. Both forms of occupation demonstrate a tendency to leverage the institution of MO to serve strategic interests; however, they differ in legal foundations, scope of authority, and their impact on sovereignty. In the case of TMO, extensive reforms are implemented and legitimized through international law, while MO emphasizes maintaining effective control within limited powers, albeit creating conflicts over the boundaries of its authority. Overall, regardless of legal boundaries, the commonality lies in using MO as a political institution to influence the situation in occupied territories in favor of the occupying state. The article concludes that further research should focus on studying occupation as a political institution (practice) of foreign and international control.

Key words: military occupation, transformative occupation, occupied territories, political institution, Iraq, Palestine, territorial governance.

У статті розглянуто правові рамки режимів військової окупації (ВО) та трансформаційної військової окупації (ТВО), їхній вплив на суверенітет окупованих територій, а також особливості реалізації окупаційної влади. На основі аналізу двох кейсів – окупації Палестини Ізраїлем та Іраку коаліцією на чолі зі США, досліджено, як ці форми окупації співвідносяться з принципом збереження суверенітету та зроблено порівняння щодо політичної діяльності влади. ВО базується на Гаазьких та Женевських конвенціях, які передбачають тимчасовий характер окупації, обмеження адміністративного управління окупованою територією та збереження її статусу до завершення конфлікту. Натомість ТВО виходить за межі традиційного правового регулювання, спрямовуючи зусилля на глибинну трансформацію політичної, соціальної та економічної структури територій, часто з посиланням на норми захисту прав людини. Обидві форми окупації демонструють схильність до використання інституту ВО для реалізації стратегічних інтересів, проте різняться за правовими основами, обсягом повноважень та рівнем впливу на суверенітет. У випадку ТВО реалізуються масштабні реформи, легітимізовані через міжнародне право, тоді як ВО зосереджується на підтриманні ефективного контролю в рамках обмежених повноважень, але в той же час створює колізії щодо меж своїх повноважень. Загалом, незалежно від правових меж, спільним залишається використання ВО як політичного інституту задля впливу на ситуацію на окупованих територіях на користь держави-окупанта. Стаття підсумовує, що подальші дослідження мають зосередитися на вивченні окупації як політичного інституту (практики) іноземного та міжнародного контролю.

Ключові слова: військова окупація, трансформаційна окупація, окуповані території, політичний інститут, Ірак, Палестина, управління територіями.

Introduction. Military occupation (hereinafter – MO) is a complex political and legal phenomenon that causes debate due to its impact on sovereignty, human rights and political governance of territories. The problem lies in the need for the occupation authorities to ensure administrative control in compliance with international humanitarian law and its growing influence on the political transformation of the region. Particular attention should be paid to comparing the concepts of military occupation and transformative military occupation (hereinafter – TMO) under international humanitarian law, which manifests itself in different impacts on the sovereignty and political governance of the territories. The analysis of cases

of different manifestations of occupation allows us to identify the peculiarities of the realization of power during occupation, the impact of different concepts of occupation on sovereignty, and the approaches of the occupying power to governance.

The analysis of studies and publications shows that research on military occupation focuses on its legal aspects, the relation of real manifestations to IHL, as well as understanding the relevance of the concept to current practical challenges [7], [8], [9]. At the same time, researchers emphasize the growing influence of human rights on the manifestations of occupation, which leads to cases of foreign rule «beyond» the concept of military occupation laid

down in IHL, in particular in cases of occupation by a foreign actor [10] and an international (UN) actor [11], [12]. Some studies are devoted to specific cases of occupation, which reveal the peculiarities of territory management, the activities of the occupying power [13], as well as comparisons of cases of military occupation, determining their success or failure [14]. It is worth noting that discussions are ongoing regarding the need to develop the legal concept of military occupation in accordance with modern realities, the legitimacy of the transformation processes of the occupying and international authorities aimed at protecting human rights [15], [16].

Degree of Problem Elaboration. At the same time, there are not many works devoted to the political aspect of occupation, in particular, approaches to governance, exercise of power, policies applied, distribution of power and the place of the local actor in the occupation. In most cases, they either concentrate on a single case or focus on the relation to the concept of military occupation in IHL, the facts of its violation or compliance. At the same time, military occupation can be viewed as a political institution, a practice used by a foreign or international actor in which they either comply with IHL or not, and go beyond its «limits». In this context, the question arises whether a foreign actor uses the institution of military occupation for its own benefit regardless of its compliance with IHL, whether there is a difference between the impact on sovereignty and hence on governance in cases of MO and TMO.

Tasks and objectives. The purpose of the article is to define the legal framework of the institute of military occupation, to compare the concepts of MO and TMO, and to analyze two cases, the occupation of Iraq and Palestine – with focus on the impact on the sovereignty of these territories and the policies of the occupying power (use of the institute).

Main Section. The international legal regime of military occupation is determined primarily by the Hague Conventions of 1907 (in particular, the IV Hague Convention and its annex – the Rules of Warfare on Land) [3] and the Geneva Conventions of 1949 (in particular, the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War) [2] and the provisions of the Additional Protocol to the Geneva Conventions of August 12, 1949, adopted in 1977 [1]. It is used during armed conflicts to limit the means and methods of warfare. Being a part of international humanitarian law (hereinafter – IHL), these treaties are aimed at protecting civilians from the effects of armed conflict and those who have ceased to participate in hostilities. IHL is designed to limit the consequences of conflicts based on considerations of humanity [5].

Regarding the regime of military occupation, these documents establish the rights and obligations of the occupying power and protect the civilian population

in the occupied territories. The institution of military occupation is a set of legal, political, administrative and military mechanisms that regulate relations between the occupying power, the civilian population and the occupied territory. This institution is defined by international law and was created to regulate situations when a state or military formation controls the territory of another state without its consent.

The fundamental principle of MO is that sovereignty does not transfer to the occupying party (the principle of preservation – «status quo ante») until the conflict is over. This principle stems from the prohibition of the use of force, the inviolability of the territorial integrity of states in international law and the provisions of the above conventions [4, p. 193-197]. The key principles laid down by IHL in the provisions on MO are: preservation of the status quo of territories, mandatory application of the provisions of the conventions in case of occupation and protection of civilians in time of war [8, p. 68-107].

The establishment of occupation presupposes the existence of the so-called effective control over the territory by the occupying power. This concept is based on an assessment of the real state of affairs, in particular, whether the state or other entity exercises effective control over the territory. The territory is considered occupied only to the extent that effective control has actually been established and can be exercised, which implies the ability of the occupying power to perform the functions of an interim government in order to implement the provisions of the IHL Conventions [16, p. 10-15]. So, the MO provides for the establishment of an occupation regime temporarily carried out by the Occupying Power as a provisional government in the occupied territory. The main purpose of such temporary administration is to carry out a set of duties and powers, including administrative management, ensuring public order, observance of the legal regime, ensuring the basic needs of the population and compliance with humanitarian norms, limited management of property and resources in the occupied territory, compliance with international humanitarian law, cooperation with international organizations, etc. These conventions establish that the government of the occupying power is responsible for actions committed in the occupied territory, but do not provide much detail on who exercises these powers on the ground and how, limiting themselves to the concept of «occupying power».

The principle of «preservation» at the heart of the laws on military occupation implies the idea of temporary guardianship, which limits the possibility of constitutional changes that the occupying power can make. In accordance with these restrictions, which stem from the list of possibilities of the occupier, the occupying power was to be considered as a de facto administrator, not a sovereign and reformer [9, p. 585-594].

Such governance does not provide for the transfer of sovereignty until the war is over or annexation, and the political status of the territories is transformed. The end of the MO and, accordingly, the operation of its regime, is possible in three main ways: 1) loss of effective control – the absence or termination of the occupying power's real ability to exercise power in the occupied territory; 2) official consent to foreign military presence – legalization of the presence of troops through voluntary agreement between the parties to the conflict (implies the consent of the sovereign); 3) legitimate political settlement – reaching an agreement between the interested actors that formally ends the occupation and establishes new legal relations (does not imply unilateral annexation) [17, p. 69-72].

However, due to the historical practice of occupation processes and the activities carried out by the occupying power during various manifestations of occupation in the second half of the twentieth and early twenty-first centuries, the concept of MO codified in IHL has recently been revised by researchers. This is, among other things, due to the discrepancy between the actual manifestations and the principles of IHL, the variety of cases and gaps in the law of IHL, the unresolved nature of all possible problems arising in connection with MO, and the growing influence of international human rights law (hereinafter – IHRL). One of the concepts that has become the subject of discussion by researchers is Transformative Military Occupation (TMO).

The change in approaches to occupation reflects the evolution of international law and practice of managing territories in conflict. Transformative military occupation differs from military occupation not only in terms of its goals, but also in the realization of power. If, according to the logic of the Conventions, the regime of the MO cannot carry out political transformations of the territories, adhering to the principle of «preservation», the TMO regime is aimed at changing the socio-political structure of the occupied territory, under the auspices of international law and human rights principles. The MO involves temporary control over the territory by foreign armed forces, while the TMO is aimed at fundamentally changing the political, social and economic structures of the occupied territory, based on the provisions of human rights laws, but with the risk of ignoring local needs and the participation of the population in this process [18, p. 2-9].

Such cases, which are referred to as «transformative», include, at least, the cases of international territorial administration (hereinafter – ITA) of the UN in Kosovo, East Timor, as well as the occupation by the USA-led allies in Iraq in 2003. The UN played an important role in the ever-growing influence of IHRL during the occupation, which was reflected in numerous resolutions that defined the powers of international and foreign actors in the occupied territories,

which significantly expanded them beyond the law of MOs. And while the ITAs in Kosovo and East Timor were not defined by the UN as military occupations at all, in the case of the USA-led coalition's invasion of Iraq, the UN General Assembly resolution clearly recognized the USA and UK as occupying powers and, accordingly, the applicability of IHL to this case, but also the importance of promoting the protection of human rights (IHRL) [19, p. 4].

In this article we will focus on two cases of occupation: Israel's military occupation of Palestine and the transformative military occupation of the USA-led coalition in Iraq. Through the analysis of the exercise of power and political activities of the occupying power in these cases, we will trace their correlation with the highlighted principle of «preservation of sovereignty» in the laws on MO, compare them with each other, and draw a conclusion on how a foreign actor can use the institution of MO in practice.

The case of the occupation of Iraq (TMO)

In the case of the occupation of Iraq, after the overthrow of Saddam Hussein's regime, the UN Security Council Resolution 1483 was adopted. The resolution officially recognized the United States of America and the United Kingdom of Great Britain and Northern Ireland as the occupying powers within the framework of the unified administration, the so-called «Administration». The legal basis of the occupation was recognized by international humanitarian law (the Hague 1907 and Geneva 1949 Conventions) and the resolution, respectively.

The Coalition Provisional Authority (hereinafter – CPA), headed by the Administrator, concentrated all legislative, executive and judicial power. In the early stages of the occupation, the Administrator established the the Council for International Coordination to increase international involvement in the humanitarian and reconstruction sectors. In July 2003, the Iraqi Governing Council was also established as the highest representative local body, which was to precede the establishment of an internationally recognized representative government [20]. The CPA was divided into four geographical regions: North, Central, South-Central and South, which had common goals but were responsible to the Administrator for the respective territory.

Along with the formation of the Transitional Government Council, the key measures at the initial stage, under the chairmanship of Paul Bremer, were the introduction of the policy of de-Ba'athification (banning the Baath Party) and the disbanding of the Iraqi army and security agencies. The policy of de-Ba'athification included the fight against the pan-Arab political movement, the eradication of the influence of the former ruling Baath Party on state institutions [21, p. 1-4].

In March 2004, the Iraqi Transitional Administrative Law (TAL) was adopted, which became the basis

for the political transition in Iraq. The TAL came into force on June 28, 2004, after the transfer of sovereignty from the CPA to the Iraqi Interim Government (IIG).

The TAL defined the transition from temporary to permanent local representation in two stages: 1) approval of the IIG and elections to the provisional National Assembly (parliament); 2) approval of the permanent constitution, elections to the National Assembly, and formation of a permanent government [22].

During the period of transition of power from the interim government to the transitional parliament, the referendum and the election of a permanent parliament and government, assistance in coordinating and implementing this process was provided by an international actor – the Special Representative of the Secretary-General and the United Nations Assistance Mission for Iraq (UNAMI).

The referendum on the permanent constitution of Iraq was held in October 2005. Its purpose was to approve a new constitution that would enshrine the principles of democratic governance and administrative structure [23]. The approval of the constitution resulted in the establishment of the Republic of Iraq and the autonomous state entity (subject of the federation) of Iraqi Kurdistan. The main provisions of the Iraqi constitution included the declaration of the country as a federal state that recognizes the multinational and multi-religious nature of its population. In addition, significant powers were delegated to the regions, which provided greater autonomy to local authorities and consolidated the structure of power distribution between the center and regions (governorates) [6, p. 170-177].

The parliamentary elections of December 15, 2005, were held as part of the process of finalizing the establishment of a permanent government. Voters elected 275 members of the Council of Representatives, with more than 7,000 candidates running. These elections became a key stage in the formation of a multi-party government in the new Iraqi political system [24]. The main players were political coalitions: 1) Unified Iraqi Coalition – 41.19% (mainly Shiite coalition); 2) Iraqi National List – 8.02% (mainly represented secular, cross-community alternative); 3) Kurdistan Gathering – 21.67% (consisted of Kurdish parties that supported federalization); 4) Tawafiq Iraqi Front – 15.09% (a coalition of Sunni Arab parties and movements), initially boycotted the political process, but later joined the elections in an attempt to maintain influence on political decisions that they considered threatening to the Sunni community.

The process of forming the government was complex and required negotiations between ethno-religious groups. Jalal Talabani (Kurd) was elected president, emphasizing the important role of the Kurdish community in the new political system. After several

months of consultations, Nouri al-Maliki (Shiite) was elected Prime Minister, representing the United Iraqi Alliance and trying to form a different ethno-religious composition of the Cabinet. The political structure of the new government reflected the distribution of power among the main ethnic groups, but maintained internal tensions over different views on federalization, power sharing, and economic control over oil resources.

After the transfer of power to the IIG, the US presence in Iraq has been transformed into other forms. One of the main institutions, the US Embassy in Iraq, became the largest American embassy in the world. In 2008, through the mechanism of the Status of Forces Agreement (SOFA) with the Iraqi government, the legal framework for the US military and expert advisory presence in the country was formed, which guaranteed a gradual reduction of the US military contingent. From direct control of the territory, the US activities were reorganized into political and economic support of the Iraqi government and military presence to fight threats. With the signing of the Agreement on Troop Reduction and Strategic Partnership between the United States and Iraq in 2008, the occupation was effectively ended. According to this agreement, all U.S. combat troops were to leave Iraq by the end of 2011, which happened in December of that year.

Analyzing the political activities of the Administration during the period of occupation, we can identify the following measures [25]:

1) Implementation of the policy of de-Baathification, which essentially removed from the government the former top government circles and administrative staff, as well as a significant part of the Sunni community of the country;

2) Creation of the Iraqi Armed Forces, the Ministry of Defense, the Intelligence Service and other security and law enforcement agencies, as well as the prohibition of «unofficial» local armed groups;

3) Human rights reform, which included the implementation of internationally recognized human rights standards and the creation of an institutional framework for the observance of human rights in Iraq;

4) Criminal code reform and judicial reform, which repealed many provisions of the previous criminal code and provided for the establishment of a Central Criminal Court;

5) Comprehensive economic sector reforms aimed at transforming the Iraqi economy from a centralized to a market economy dominated by the private sector;

6) Adoption of a number of anti-corruption measures aimed at the formation of anti-corruption institutions and ensuring the accountability of civil servants [26, p. 195-208];

7) Ensuring the «transition of sovereignty» from the previous regime to the Iraqi Interim Government (IIG) in order to adopt a new Constitution, proclaim

the state, form government bodies and a new political elite;

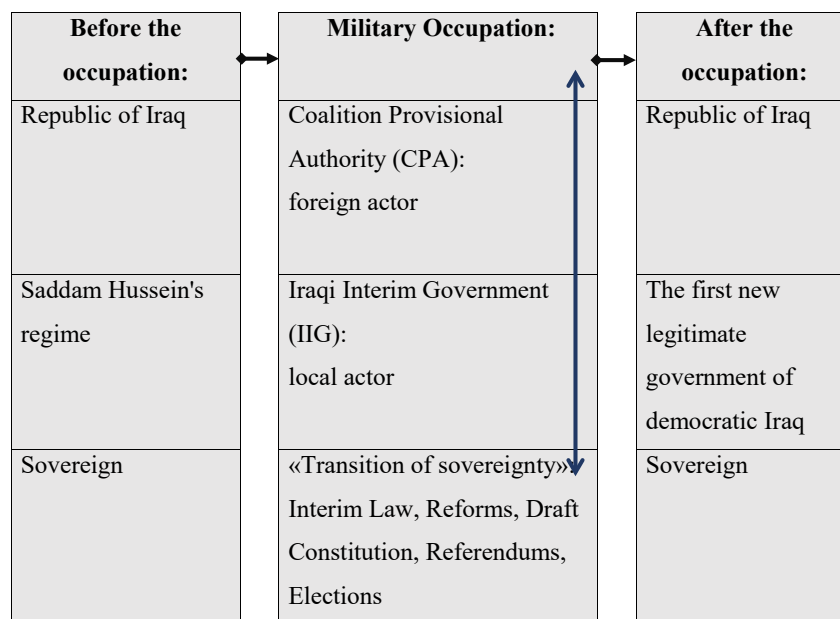
8) Ensuring the US military presence after the formal end of the occupation through agreements with the new sovereign.

To ensure continuity of legislation, a number of institutions were established and laws were passed. The Electoral Commission and the Joint Detainee Committee were established to coordinate detention policies between the IIG and the US-British multinational forces that remained in Iraq after the occupation. Electoral laws, a law on political parties, and an order disqualifying certain individuals from running for or holding public office were adopted, aimed at stabilizing the political process after the transition of power. One of the key steps in this direction was the decision that the laws adopted by the CPA would remain in force until they were repealed or amended by a lawful act of a new sovereign government.

Therefore, in the area of state-building, the occupation administration was able to lay the founda-

tions for the development of a liberal democratic state with international human rights standards and a market economy in a short period of time. At the same time, domestic politics was characterized by processes related to Iraq's historical features and the Allied invasion: polarization of ideologically opposed groups, isolation of the part of the population that, according to the logic of de-Baathification, was losing access to power, and a fierce struggle against those who did not «fit» into Iraq's new democratic structure. These three processes were clearly opposed to the principles that the Administration laid down as the basis of Iraq's governance (democracy, human rights protection, and decentralization). This ultimately determined further threats to Iraq's national security, lack of national unity and civil wars, as well as a surge in terrorist activity.

For this case, we propose below a model of the transformation of Iraqi state sovereignty during the occupation, **model 1**.



Note. The so-called «sovereignty problem» was already resolved in the UN Security Council Resolution that defined the transformational power of the CPA, which legalized its right to implement the «transition of sovereignty». The loss of legitimacy of the previous regime was internationally recognized by an international actor.

The case of the occupation of Palestine (MO)

Since 1948, Israel's occupation of the territory of Palestine has continued in various territorial dimensions. Israel maintains control over large parts of the West Bank and East Jerusalem, despite UN resolutions calling for an end to the occupation and the establishment of a Palestinian state. The conflict remains unresolved, periodically shifting from decline to escalation.

The UN has adopted a number of resolutions recognizing East Jerusalem, the Gaza Strip, the West

Bank and the Golan Heights as occupied, including Resolutions 242 (1967) and 338 (1973), which call for an end to the occupation and the start of a peace process. General Assembly Resolution 225 (2011) reaffirmed the sovereignty of the Palestinian people over these territories. The legal framework of the occupation is determined by the Hague Convention of 1907, the Geneva Convention of 1949 and the relevant UN resolutions (S/RES/242 (1967), S/RES/338 (1973), A/RES/66/225 (2011)) [27], [28], [29].

The occupation of the Palestinian territories began in 1948 during the first Arab-Israeli war, when Israel occupied a large part of the territory allocated by the UN mandate for the creation of a Palestinian state. After the Six-Day War of 1967, Israel occupied East Jerusalem, the West Bank, the Gaza Strip, the Sinai Peninsula, and the Golan Heights. They were governed by a military administration that regulated all aspects of life through orders, including the adaptation of previous legislation [30, p. 81-121]. The legal system of the occupied territories was complex, as Israel defined them as «disputed» rather than occupied. According to Israel's logic, IHL was applied «de facto», and previous laws in force in these territories were valid in the absence of contradictions with military orders of the occupation administration. Under such circumstances, Israel does not recognize violations of IHL if politically motivated decisions contradict it [31]. There were no mechanisms of influence for the Palestinian population, and the administration was carried out through the Ministry of Defense with the involvement of civilian personnel, under the general subordination of the Israel government.

An important event was the creation of the Palestinian National Authority (PNA) in 1994 as part of the Oslo Accords. The territories were divided into zones A, B, and C with different levels of Israeli and Palestinian control. The PNA received legislative, executive and judicial structures [32]. In 2006, Hamas election victory led to a political split between Hamas and Fatah, which complicated governance and deepened the crisis. The full functioning of the autonomy is constantly under the influence of interrelated factors: internal crisis, pressure from Israeli policy in the occupied territories, and outbreaks of violence between the populations of Israel and Palestine. These factors undermine both the negotiation process around a settlement and the progress of the PNA's functionality.

Despite internal reforms and UN support, these problems slow down state-building [33, p. 4-6]. General characteristics of governance of the occupied territories: 1) higher power has always belonged to Israel, 2) evolution of the power structure through negotiations, 3) the creation of the PNA was an important change, but its activities were under pressure from Israeli policy and directly dependent on the settlement of the problem as a whole, 4) strengthening of Hamas and loss of unity, which contributes to weakness, 5) continued violence.

Analyzing Israel's political activities during the period of long-term occupation, we identify the following measures:

1) Annexation and colonization. At the initial stage, the territories were not completely isolated, but Israel annexed East Jerusalem, expropriated about 40% of Palestinian land, established around 125 Jewish settlements, and the Jewish population on OT

reached near 60 thousand. Palestinians were involved in the Israeli economy, but they were forbidden to develop their own industry, limited mobility and powers of local municipalities [34, p. 30-32]. Of the more than 675,000 hectares of state land in the West Bank, 99% is intended for Israeli citizens, while in Area C, only 1.5% of Palestinian construction applications were approved from 2016 to 2021, which is many times less than the number of demolition orders. At the same time, more than 23,696 housing units were built in Jewish settlements in Area C between 2009 and 2020 [35].

2) Economic integration and restrictions. Prior to the First Intifada, up to 108 thousand Palestinians worked in Israel and were integrated into the general market, which was characterized by a general level of income growth [36]. However, the development of the local economy was hindered by restrictions preventing industrial establishment and by Israel's control over land and water resources [34], [37, p. 175-181]. After the second intifada, the unemployment rate among Palestinians reached 32.6%, and the share of the labor force employed in Israel decreased from 30% in 1992 to 7% in 1996 [34, p. 35-40].

3) Control over movement and access to resources. Palestinians are forced to obtain permits to move through checkpoints. After the introduction of the division into control zones A, B, C, the Palestinian population is concentrated in scattered areas, while Israel controls borders of the most of the territory as well as key resources [38, p. 104-137]. Israeli water consumption in the occupied territories is 4 times higher than that of Palestinians. Only 13% of East Jerusalem is reserved for Palestinian construction, while Israeli settlements occupy 35% of the territory [39].

4) Social and legal restrictions. The Palestinian population is subject to military courts, which mostly hand down guilty verdicts and were criticized for being biased, while Israeli settlers are subject in Israeli civilian courts [39].

5) Isolation of the Gaza Strip. In 2005, Israel withdrew from the Gaza Strip, but imposed a blockade since 2007. Permanent isolation and military operations, such as «Cast Lead» (2008-2009) and «Operation Protective Edge» (2014), have significantly worsened living conditions in Gaza [35].

The International Court of Justice has concluded that Israel's policies and practices in the occupied Palestinian territories grossly violate the right of the Palestinian people to self-determination. These actions lead to the fragmentation of the territories, change the demography, undermine the development of the Palestinians, and deprive them of sovereignty over their own resources. The prolonged nature of these violations increases their destructive effect, endangering the realization of the right to self-determination [40, p. 65-73].

It is also important to note that the overall Israel's occupation policy has evolved from «colonization» (integration) to «isolation». The former did have a certain positive impact on the coexistence of the population, the economic situation of the Palestinians, and contributed to the reduction of violence. However, its failure was caused by political uncertainty, which led to the uprising and Israel's transition to the policy of «isolation» after the PNA received «limited sovereignty» [34, p. 39-41]. In both cases, it looks like the primary goal was a politically motivated goal of establishing its own influence in the territories.

Israel justifies the vector of its policy by the fact that the initial period of occupation, the integration of Palestinians into a single market and the provision of

social services, did not stop the violence. The move to isolation and increased control was a reaction to the escalation of the conflict and terrorist threats. At the same time, Palestinian logic suggests that violence and terrorism are the result of the occupation policy and stagnant negotiations, while for Israel, radical measures are a response to these threats. However, no stage of the occupation policy has solved the problem of the status of Palestine, but only generated cycles of temporary «calm» and «new outbreaks» of violence. This situation shows that without resolving the issue of sovereignty, any policy will remain unstable and doomed to failure.

For this case, we propose below a model of the transformation of Palestinian state sovereignty under occupation, **model 2**.

Before the occupation:	Military Occupation:	After the occupation:
The British Mandate (until 1948), the UN Partition Plan for Palestine (Resolution 181)	Israel: foreign actor	Not resolved, completion depends on the resolution of the «sovereignty problem» between the actors.
Israel proclaimed sovereignty over the territory it had been allocated, but the Palestinian state was not created, beginning a long series of wars	PLO and PNA (proclamation of the State of Palestine, Oslo Accords): local actors («limited sovereignty»)	
Palestinian sovereignty is undefined due to war and multilateral occupation	Divided control zones: Areas A, B, C, with a total blockade of the Gaza Strip. There is no «transition of sovereignty», it depends on the negotiation process.	

Note. As we can see, the so-called «transition of sovereignty» does not occur as in case 1. The «problem of sovereignty» depends on the negotiations of the interested actors. During this period, the occupation has become a long-term one, and the decisions and activities of the occupying power affect both the general situation around of Palestine and the institutional capacity of the PNA on sovereign territory.

Conclusions. The analysis allows us to answer the arised research questions. Does a foreign actor influence the occupied territories for its own benefit? – Yes. Despite this commonality, is there a difference in manifestations between the MO and the TMO? – Yes,

there is no «transition of sovereignty». But in the first case, it was legitimized through the right of the strong, and in the second case, it is blocked by an interested actor in the external space, while the same actor takes personally motivated measures in the internal space.

Difference: the «sovereignty problem» is solved, which contributes to the end of the occupation on the one hand, and empowers the occupier on the other. **Commonalities:** activities that go beyond the role of the «interim government» that adheres to the principle of preservation, albeit to a significantly different extent. In the first case, openly and legitimately based on the recognition of an international actor, and in the other, disguisedly, avoiding recognition of IHL principles.

General conclusion. In both cases, both MO and TMO, there is a contradiction with the inherent principle of status quo ante in IHL regarding military occupation. Through occupation, a foreign actor, albeit temporarily, has full power, backed by force. If the international community or a local actor detects that a foreign actor is going beyond the principles of IHL (MO) or other accepted legal frameworks (TMO), there are no tools or mechanisms to deter it. The very fact of establishing a military occupation demonstrates the real balance of power and the

advantage of one of the parties. Therefore, in the event of an MO, even if it fits within or goes beyond the legal requirements, the author argues that a foreign actor may use the institution of military occupation for politically motivated mercenary purposes. During the occupation, a foreign actor may take measures that significantly change the economic, social, demographic, and political situation in the occupied territory. In other words, the right of the strong is realized in practice through the institution of military occupation, which can become a tool for weakening the opponent and strengthening its own influence, and follows military intervention. In this case, the difference between the MO and the TMO is the legal basis of the occupation regimes and the breadth of their powers. However, what remains common is the use of the institution of occupation in accordance with their own interests, within these established limits. It is proposed to continue the study of occupation as a political institution of foreign, international control.

REFERENCES:

1. Додатковий протокол до Женевських конвенцій від 12 серпня 1949 року, що стосується захисту жертв збройних конфліктів неміжнародного характеру (Протокол II), від 8 червня 1977 року. *Офіційний вебпортал парламенту України*. URL: https://zakon.rada.gov.ua/laws/show/995_200 (дата звернення: 20.12.2024).
2. Женевська конвенція про поводження з військовополоненими. *Офіційний вебпортал парламенту України*. URL: https://zakon.rada.gov.ua/go/995_153 (дата звернення: 21.12.2024).
3. IV Конвенція про закони і звичаї війни на суходолі та додаток до неї: Положення про закони і звичаї війни на суходолі. *Офіційний вебпортал парламенту України*. URL: https://zakon.rada.gov.ua/laws/show/995_222#Text (дата звернення: 20.12.2024).
4. Макаров І. М. Поняття і зміст режиму окупації у міжнародному праві. *Науковий вісник міжнародного гуманітарного університету*. 2012. № 3. С. 193–197. URL: <https://vestnik-pravo.mgu.od.ua/archive/juspradenc3/34.pdf>.
5. Міжнародне гуманітарне право. *Міністерство з питань реінтеграції тимчасово окупованих територій України*. URL: <https://minre.gov.ua/diyalnist/napryamku-proektiv-minreintegraciyi/mizhnarodne-gumanitarne-pravo/> (дата звернення: 20.12.2024).
6. Ямпольська Л. М. Курдський національний рух і «проблема Кіркуку» в контексті державотворчих процесів Іраку новітнього періоду. *Національний педагогічний університет імені М. П. Драгоманова, ВГО «Українська академія наук», вид-во «Гілея»*. 2019. Т. 8, № 147. С. 170–177.
7. Roberts A. What Is a Military Occupation?. *British Yearbook of International Law*. 1984. Vol. 55, no. 1. P. 249–305. URL <https://doi.org/10.1093/bybil/55.1.249>
8. Benvenisti E. *The International Law of Occupation*. Oxford : Oxford Academic, 2012. 352 p. URL: <https://doi.org/10.1093/law/9780199588893.001.0001>
9. Roberts A. Transformative Military Occupation: Applying the Laws of War and Human Rights. *The American Journal of International Law*. 2006. Vol. 100, no. 3. P. 580–622. URL: <http://www.jstor.org/stable/4091371>
10. Colonel D. A. W. *The Law of Occupation and Post-Armed-Conflict Governance*. Army University Press: Military review. 2007. P. 20–29. URL: https://www.armyupress.army.mil/Portals/7/military-review/Archives/English/MilitaryReview_20071231_art006.pdf
11. Benvenisti E. *The Applicability of the Law of Occupation to UN Administration of Foreign Territory*. University of Cambridge Faculty of Law Research Paper. 2019. Vol. 36. URL: <https://ssrn.com/abstract=3498872>
12. *International Administration of Territories and the Dilemma of Accountability* / M. Yacoub et al. *Asian Social Science*. 2017. Vol. 14, no. 1. P. 147. URL: <https://doi.org/10.5539/ass.v14n1p147>
13. Stirk P. M. R. *The Politics of Military Occupation*. Edinburgh : Edinburgh University Press, 2009. 252 p. URL: <http://www.jstor.org/stable/10.3366/j.ctt1r26dx>
14. Edelstein D. M. *Occupational Hazards: Why Military Occupations Succeed or Fail*. *International Security*. 2004. Vol. 29, no. 1. P. 49–91. URL: <https://www.jstor.org/stable/4137547>
15. Fox G. H. Transformative occupation and the unilateralist impulse. *International Review of the Red Cross*. 2012. Vol. 94, no. 885. P. 237–266. URL: <https://doi.org/10.1017/s1816383112000598>

16. Ferraro T. Occupation and other forms of administration of foreign territory. Expert meeting materials. International Committee of the Red Cross. 2012. URL: <https://www.icrc.org/en/doc/assets/files/publications/icrc-002-4094.pdf>
17. Melzer N., Kuster E. International Humanitarian Law: A Comprehensive Introduction. Geneva: International Committee of the Red Cross, 2022. URL: <https://www.icrc.org/en/publication/4231-international-humanitarian-law-comprehensive-introduction>
18. Gurmendi Dunkelberg A. Your Country, My Rules: Can Military Occupations Create Successful Transitions? SSRN Electronic Journal. 2015. URL: <https://doi.org/10.2139/ssrn.2563212>
19. United Nations Security Council Resolution 1483 (2003): S/RES/1483. URL: <https://digitallibrary.un.org/record/495555?ln=en&v=pdf>
20. Coalition Provisional Authority (2003): Reg. No. 6, Governing Council of Iraq, CP A/REG. URL: https://govinfo.library.unt.edu/cpa-iraq/regulations/20030713_CPAREG_6_Governing_Council_of_Iraq_.pdf
21. Coalition Provisional Authority (2003): Reg. No. 1, Implementation of De-Baathification Order, CPA/ORD/16. URL: <https://govinfo.library.unt.edu/cpa-iraq/regulations/index.html#Regulations>
22. Coalition Provisional Authority (2004): Law of Administration for the State of Iraq for the Transitional Period. URL: <https://www.refworld.org/legal/legislation/natlegbod/2004/en/39004>
23. Beehner L. Iraq's Parliamentary Elections: An Explainer. The Council on Foreign Relations (CFR). 2005. URL: <https://www.cfr.org/backgrounder/iraqs-parliamentary-elections-explainer>
24. Iraqi Council of Representatives 2005. Election Guide. *International Foundation for Electoral Systems (IFES)*. 2005. URL: <https://www.electionguide.org/countries/id/104/>
25. CPA Official Documents. *The Coalition Provisional Authority regulations*, University of North Texas: library. 2003-2004. URL: <https://govinfo.library.unt.edu/cpa-iraq/regulations/index.html#Regulations>
26. Fox G. H. The Occupation of Iraq. Law Faculty Research Publications. 2005. Vol. 36, no. 2. P. 195–208. URL: <https://digitalcommons.wayne.edu/lawfrp/198/>
27. United Nations Security Council Resolution 242 (1967), S/RES/242. URL: <https://main.un.org/securitycouncil/en/content/resolutions-adopted-security-council-1967>
28. United Nations Security Council Resolution 338 (1973), S/RES/338. URL: <https://digitallibrary.un.org/record/93466?ln=ru&v=pdf>
29. United Nations General Assembly Resolution 225 (2011), A/RES/66/225. URL: <https://documents.un.org/doc/undoc/gen/n11/472/32/pdf/n1147232.pdf>
30. Ruling Palestine: A history of the legally sanctioned Jewish-Israeli seizure of land and housing in Palestine. Centre on Housing Rights and Evictions (COHRE). Geneva: BADIL Resource Center for Palestinian Residency & Refugee Rights, 2005. URL: http://www.miftah.org/Doc/Reports/2005/RulingPalestine_full.pdf
31. Roth K. The ICJ has demolished Israel's claims that it is not occupying Palestinian territories. The Guardian. 2024. URL: <https://www.theguardian.com/commentisfree/article/2024/jul/22/the-icj-has-demolished-israels-claims-that-it-is-not-occupying-palestinian-territories>
32. The Amended Basic Law: Palestine Central Election Commission (2003). President of the Palestinian National Authority. Geneva: Centre For Security Sector Governance. URL: <https://security-legislation.ps/latest-laws/the-amended-basic-law-of-2003/>
33. Palestinian state-building: achievements at high risk, *UN Special Coordinator for the Middle East Peace Process*, UNSCO, Brussels, 2012. URL: https://unsco.unmissions.org/sites/default/files/unsco_ahlc_report_march_2012.pdf
34. Gordon N. From Colonization to Separation: Exploring the Structure of Israel's Occupation. *Third World Quarterly*. Vol. 29, no. 1. P. 25–44. URL: <https://www.jstor.org/stable/20455024>
35. A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution, *Human Rights Watch report*, 2021. URL: <https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>
36. Central Bureau of Statistics, National Accountability: Judea, Samaria and the Gaza Strip, 1968–1993, Tel Aviv: Central Bureau of Statistics, publication 1012. 1996. P. 18, 125.
37. Roy S. The Gaza Strip: The Political Economy of De-development. Washington : DC, 1995. 372 p.
38. Ron J. Frontiers and Ghettos: State Violence in Serbia and Israel. University of California Press, 2003. 286 p. URL: <https://www.degruyter.com/document/doi/10.1525/9780520936904/html>
39. Israeli Occupation: 50 years of dispossession, *Amnesty International report*, 2017. URL: <https://www.amnesty.org/en/latest/campaigns/2017/06/israel-occupation-50-years-of-dispossession/>
40. Advisory opinion legal consequences arising from the policies and practices of israel in the occupied palestinian territory, including east jerusalem. International Court of Justice, 2024. 83 p. URL: <https://www.icj-cij.org/case/186>