

Datafication of People in Occupied Territory: Limitations and Obligations

Dr. Mais Qandeel *

AI-enhanced surveillance is used as a tool to collect mass amounts of data in both times of peace and war. In situations of belligerent occupation, where surveillance takes a form of alien domination and subjugation, occupying powers heavily rely on collecting personal and sensitive data, including biometrics, to monitor and control the occupied people, the protected persons under international humanitarian law (IHL). IHL, particularly, the law of belligerent occupation, does not provide for a comprehensive framework on whether the occupying power has the authority to collect, retain, and disclose data nor how to maintain strict usage data collected through AI-enhanced surveillance. This paper examines the legality of mass datafication of occupied people and determines potential restraints on and obligations of the occupying power under the general principles of the law of belligerent occupation.

KEY WORDS: Artificial Intelligence – Datafication of Occupied People – Biometrics – Belligerent Occupation – Obligations of Occupying Powers – IHL

I. INTRODUCTION

AI-enhanced surveillance is used as a tool to collect mass amounts of data in both times of peace and war. Carried out by governments and tech companies in democratic and authoritarian countries, digital surveillance has already become a common practice.¹ In situations of armed conflicts, surveillance becomes a weapon upon which military operations rely.² In belligerent occupation, surveillance takes a form of alien domination and subjugation, where the occupying powers heavily rely on collecting personal and sensitive data, including biometrics, to monitor and control the occupied people,³ the protected persons under international humanitarian law (“IHL”).

* Lecturer of International Law, the Irish Centre for Human Rights, University of Galway, Ireland, and Associate Professor of International Law, Örebro University, Sweden. mais.qandeel@universityofgalway.ie.

¹ DAVID LYON, SURVEILLANCE AFTER SNOWDEN 13 (2015).

² Keith Spiller & Bryce Clayton Newell, *Introduction: Surveillance in Conflict and Crisis*, 21 SURVEILLANCE & SOC’Y 83, 83 (2023); Dean Wilson, *Military Surveillance*, in ROUTLEDGE HANDBOOK OF SURVEILLANCE STUDIES 469, 470 (Kirstie Ball, Kevin Haggerty & David Lyon eds., 2012).

³ Elia Zureik, *Colonialism, Surveillance, and Population Control: Israel/Palestine*, in SURVEILLANCE AND CONTROL IN ISRAEL/PALESTINE: POPULATION, TERRITORY, AND POWER 3, 12 (Elia Zureik, David Lyon & Yasmeen Abu-Laban eds., 2011).

Today, many countries—in whole or part—are subject to belligerent occupation of alien military forces, some of which are settler-colonial, genocidal, and brutal. Examples of ongoing belligerent occupation include the Israeli occupation of Palestine, the Syrian Golan Heights, and Southern Lebanon; the Russian occupation of parts of Ukraine; the Moroccan occupation of Western Sahara; and the Turkish occupation of Northern Cyprus. As a common conduct, these occupying powers have been subjecting the occupied population to AI-enhanced surveillance and data collection, some more intensively than others depending on their technological capability. To illustrate, Human Rights Watch (“HRW”) has examined the conduct of surveillance by, among others, i) Morocco in Western Sahara,⁴ ii) Russia in Ukraine,⁵ and iii) Israel in Palestine.⁶ In Western Sahara, the Moroccan occupying power has subjected Sahrawi individuals to “intimidation, surveillance and discrimination.”⁷ In Ukrainian occupied territories, the Russian Federal Security Service has engaged in widespread and extensive surveillance of social media and communications, spreading fear among people in the territories.⁸ In comparison, Israel’s surveillance practices directed against Palestinians in the occupied territories constitute one of the most expansive and technologically advanced AI-based surveillance regimes globally, which has led to genocide.⁹ It can be argued that the occupying power’s collection of mass data about the entire occupied population even when they go about their daily lives is conduct amounting to oppression and control as well as amounting to tools for intimidation. This conduct could be understood in the context of suppressing the right to resistance—an internationally recognized right—and undermining the right to self-determination. Thus, it can be argued that tracking everyone in occupied territory so that collected data can be used as an arbitrary tool by the occupying power, rendering such collection illegitimate and unlawful. Additionally, the conduct of mass data collection would not serve the interests of the occupied people, the protected persons, as dictated by the Fourth Geneva Convention¹⁰ nor is it strictly necessary for the security and military needs of the occupying power.

As a way of example, Israel, the occupying power in the Palestinian territory, has been subjecting Palestinians to extensive mass surveillance for almost a century, which was started by the British Mandate authorities in Palestine.¹¹

⁴ See HUM. RTS. WATCH, WORLD REPORT 2025: EVENTS OF 2024, at 318 (2025).

⁵ Jade McGlynn, *Russian Propaganda Tactics in Ukraine's Newly Occupied Territories*, 313 RUSSIAN ANALYTICAL DIG. 2, 2 (2024).

⁶ See HUM. RTS. WATCH, *supra* note 4, at 4 (2025).

⁷ Question of W. Sahara, Rep. of the S.C., at ¶ 18, U.N. Doc. No. A/79/229 (2024).

⁸ U.N. Human Rights Office of the High Commissioner, *Report on the Human Rights Situation in Ukraine: 1 December 2024 – 31 May 2025*, U.N. Doc. A/HRC/59/CRP.3, ¶ 82 (June 30, 2025).

⁹ See Mais Qandeel & Özgün Erdener Topak, *Genocidal Surveillant Assemblage in Palestine: A Socio-Legal Analysis*, J. GENOCIDE RSCH., Oct. 8, 2025, at 1, 20.

¹⁰ See Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 47–78, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287.

¹¹ Zureik, *supra* note 3, at 9.

With such surveillance, Israel has created a matrix of control.¹² Palestinians are constantly under the Israeli watch, as Elia Zureik described, with:

Body searches, identity documentation, standing in line for hours awaiting a signal from Israeli soldiers to either proceed or be turned away are emblematic of the checkpoint experience, which is characterized by dehumanization, lack of sovereignty, and overall limitation on free movement. Population registration – including the census and the permit regimes governing the movement of people that Israel introduced in the pre- and post-1967 periods in the name of state security – was crafted in such a way as to further spatial control.¹³

Today, these Israeli traditional conducts of surveillance and control is transformed by the excessive use of new technologies, including AI systems. As an Israeli official at Unit 8200 described it, “AI amplifies power” and when “you hold so much information you can use it for whatever purpose you want... [and the Israeli military] has very few restraints in this regard.”¹⁴ On the ground, Israel is deploying AI-enhanced surveillance against Palestinians, especially facial recognition technology, i.e. Red Wolf and Blue Wolf systems, and AI-surveillance drones and quadcopters, to determine targets in the Gaza Strip¹⁵ and the West Bank, including East Jerusalem.¹⁶ This practice of surveillance is put in place to systematically track and control Palestinians even as they go about their daily lives. Amnesty International has called this Israeli practice as “automated apartheid”, insisting that only Palestinians are subject to it.¹⁷ In addition, the use of surveillance drones to collect data and determine suspects for targeting has led to mass killings of civilians, including children. HRW concluded that the Israeli military’s use of surveillance technologies to determine targets to attack Gaza increase the risk of (i) civilian harm, (ii) violations of the law of war and (iii) violations of privacy and personal data rights.¹⁸

¹² *Id.* at 15.

¹³ Elia Zureik, *Strategies of Surveillance: The Israeli Gaze*, 66 JERUSALEM Q. 12, 14 (2016).

¹⁴ Harry Davies & Yuval Abraham, *Revealed: Israeli Military Creating ChatGPT-Like Tool Using Vast Collection of Palestinian Surveillance Data*, THE GUARDIAN (Mar. 6, 2025, at 07:00 EST), <https://www.theguardian.com/world/2025/mar/06/israel-military-ai-surveillance> [<https://perma.cc/5L7U-9UCF>].

¹⁵ *Israel: Stop Using Biometric Mass Surveillance Against Palestinians*, ARTICLE 19 (Apr. 9, 2024), <https://www.article19.org/resources/israel-stop-using-biometric-mass-surveillance-against-palestinians> [<https://perma.cc/TUT9-MEFJ>].

¹⁶ AMNESTY INT’L, AUTOMATED APARTHEID: HOW FACIAL RECOGNITION FRAGMENTS, SEGREGATES AND CONTROLS PALESTINIANS IN THE OPT 7 (2023), <https://www.amnesty.org/en/documents/mde15/6701/2023/en> [<https://perma.cc/QF4C-PFTB>].

¹⁷ *Id.*

¹⁸ *Questions and Answers: Israeli Military’s Use of Digital Tools in Gaza*, HUM. RTS. WATCH (Sep. 10, 2024, at 00:01 EDT), <https://www.hrw.org/news/2024/09/10/questions-and-answers-israeli-militarys-use-digital-tools-gaza> [<https://perma.cc/R48H-C8A8>].

Consequently, legal implications of the use of AI-enhanced surveillance and mass datafication of people in occupied territories go beyond a rare incident, as illustrated in the above example. It can be argued that the legal implications of such systematic surveillance affect the fabric of the occupied peoples' lives and undermine their fundamental rights and protections. Surveillance in everyday life is "involved in the constitution of subjectivities at the level of desire, fear [and anxiety], security, trust, and risk – all of which ultimately impact upon human dignity and individual autonomy."¹⁹ Thus, there is an urgent need to study these legal implications and clarify the duties and powers of the occupied territories within and beyond IHL.

This Article argues that IHL, including the law of belligerent occupation, does not provide for a comprehensive framework on whether the occupying power has the authority to collect, retain, and disclose data nor how to maintain strict usage of AI-enhanced surveillance. This Article examines the legality of mass datafication of occupied people and determines potential restraints on and obligations of the occupying power under the general principles of the law of belligerent occupation, if any. The Article concludes that the law of belligerent occupation, as *lex specialis*, is insufficient to protect the lives, dignity, and self-determination of occupied peoples. Even in the event of applying *lex generalis* and human rights law, insufficiencies remain. The Article further suggests the significance of identifying rights and obligations to safeguard against datafication of occupied people.

II. DATA PROTECTION AND COLLECTION IN TIMES OF CONFLICTS: A LITERATURE REVIEW

Legal scholarship has focused on data protection in times of conflicts and during the conduct of hostilities. Legal scholars have studied data protection and the right to privacy considering the technological advances in the fields of surveillance, social engineering, predictive algorithms, big data analytics, automated processing, biometric analysis, and targeted hacking and cyberoperations.²⁰ Legal scholarship has in fact grappled with the extraterritorial application of rights, with the limitations and possible derogations from these rights during war, and with their scope of application.²¹ Some argued that such practices in the conduct of hostilities violate the internationally protected right to privacy and other human rights.²² Others argued that the use of AI-based weapons and drones in decision making violates

¹⁹ Zureik, *supra* note 3, at 10.

²⁰ Russell Buchan & Asaf Lubin, *Introduction*, in *THE RIGHTS TO PRIVACY AND DATA PROTECTION IN TIMES OF ARMED CONFLICT* 1, 4 (Russell Buchan & Asaf Lubin eds., 2022).

²¹ IAN PARK, *THE RIGHT TO LIFE IN ARMED CONFLICT* (2018), at 70-71.

²² Rohan Talbot, *Automating Occupation: International Humanitarian and Human Rights Law Implications of the Deployment of Facial Recognition Technologies in the Occupied Palestinian Territory*, 102 INT'L REV. RED CROSS 823, 849 (2020).

the basic principles of IHL and most importantly, the inherent right to self-determination.²³

More specifically, the conduct of hostilities endangers digital rights, including the rights to privacy, data protection, cybersecurity, anonymity, access to information, access to the internet, freedom of expression, digital autonomy and dignity, and intellectual property.²⁴ Thus, the need to find solutions within the existing IHL frameworks has emerged in order to restrain militaries' data-invasive practices.²⁵ These existing frameworks of IHL are embodied in, for instance, the duty of constant care,²⁶ the principle of precaution,²⁷ and the principle of distinction.²⁸ Other scholars have debated that instead of taking existing rules applicable to armed conflicts concerning data, the principles of human rights law, including data protection, data security, and privacy, should be applied to military conducts.²⁹ The International Committee of the Red Cross argued that the use of digital tools risk military forces violating IHL, particularly the laws of war concerning distinction between military targets and civilians.³⁰ It called for the need to take all feasible precautions before an attack to minimize civilian harm.³¹ Human Rights Watch, in its report entitled *A Hazard to Human Rights: Autonomous Weapons Systems and Digital Decision-Making*, concluded that autonomous weapons systems, which rely on mass surveillance, "contravene different human rights obligations and principles,"³² including the right to life, the right to peaceful assembly, the principle of human dignity, the principle of non-discrimination, the right to privacy, and the right to remedy.³³

²³ Henning Lahmann, *Self-Determination in the Age of Algorithmic Warfare*, 16 EUR. J. LEGAL STUD. (SPECIAL ISSUE) 161, 166, 212–13 (2025).

²⁴ Buchan & Lubin, *supra* note 20, at 3–4.

²⁵ Asaf Lubin, *The Duty of Constant Care and Data Protection in War*, in BIG DATA AND ARMED CONFLICT: LEGAL ISSUES ABOVE AND BELOW THE ARMED CONFLICT THRESHOLD 229, 229 (Laura A. Dickinson & Edward W. Berg eds., 2023), at 229.

²⁶ *Id.*

²⁷ Eliza Watt, *The Principle of Constant Care, Prolonged Drone Surveillance and the Right to Privacy of Non-Combatants in Armed Conflicts*, in THE RIGHTS TO PRIVACY AND DATA PROTECTION IN TIMES OF ARMED CONFLICT, *supra* note 20, at 157, 159; Leah West, *Face Value: Precaution Versus Privacy in Armed Conflict*, in THE RIGHTS TO PRIVACY AND DATA PROTECTION IN TIMES OF ARMED CONFLICT, *supra* note 20, at 132, 138.

²⁸ Bence Kis Kelemen, *Protection of (Personal) Data in Armed Conflicts*, 17 BALTIC J.L. & POL. 1, 4 (2024).

²⁹ Robin Geiß & Henning Lahmann, *Protection of Data in Armed Conflict*, 97 INT'L L. STUD. 556, 556–72, 567 (2021).

³⁰ Int'l Comm. of the Red Cross, *International Humanitarian Law and the Challenges of Contemporary Armed Conflicts*, 106 INT'L REV. RED CROSS 1357, 1357–1450, 1365 (2024).

³¹ *Id.* at 1394.

³² BONNIE DOCHERTY, HUM. RTS. WATCH, A HAZARD TO HUMAN RIGHTS: AUTONOMOUS WEAPONS SYSTEMS AND DIGITAL DECISION-MAKING (2025), <https://www.hrw.org/report/2025/04/28/hazard-human-rights/autonomous-weapons-systems-and-digital-decision-making> [https://perma.cc/RGQ6-LBV2].

³³ *Id.*

The existing literature fails to address situations of belligerent occupation when the occupied people spend their daily lives under watch and are subject to around the clock data collection and behavior analysis online and offline. Omar Shehabi discussed the challenges in establishing a data privacy and protection regime for occupied territories, using the occupied Palestinian territory as a case study.³⁴ Shehabi sampled Israel's use of mass and targeted surveillance technologies against Palestinians and examined selective provisions of IHL and their potential reinterpretation to reach digital privacy.³⁵ He argued human rights are necessary but insufficient in such context,³⁶ because the procedural approach to such protection is "neither theoretically nor practically suited to the structure of military occupation — nor would such congruence be desirable."³⁷ This article builds on Shehabi's work and argues that obligations and limitations on occupying powers, generally, must be established within the framework of IHL and be comprehensively restrictive to mass surveillance and data collection of the occupied people. This is because datafication of occupied people does not only impede their privacy rights and violate the international rules of armed conflicts but also deprives them of the right to live in dignity. In fact, mass surveillance and collection of data can be considered a pretext to collective punishment, mass killings, and genocide.³⁸

III. THE LAW OF BELLIGERENT OCCUPATION: LEGALITY OF MASS SURVEILLANCE AND DATAFICATION OF OCCUPIED PEOPLE

The law of belligerent occupation, including the 1907 Hague Regulations, the 1949 Geneva Conventions, and the 1977 Additional Protocols offer very little guidance—if any—as to the protection of occupied people against mass surveillance and data collection. The Martens Clause can be referred to when IHL rules do not address the specific issue.³⁹ The Clause reads as follows:

Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages

³⁴ Omar Yousef Shehabi, *Emerging Technologies, Digital Privacy, and Data Protection in Military Occupation*, in *THE RIGHTS TO PRIVACY AND DATA PROTECTION IN TIMES OF ARMED CONFLICT*, *supra* note 20, at 87, 87–89.

³⁵ *Id.* at 89.

³⁶ *Id.* at 111.

³⁷ *Id.* at 112.

³⁸ Qandeel & Topak, *supra* note 9, at 1–22 (2025).

³⁹ Vaio Koutroulis, *Martens Clause*, OXFORD BIBLIOGRAPHIES (July 24, 2013), <https://www.oxfordbibliographies.com/display/document/obo-9780199796953/obo-9780199796953-0101.xml> [<https://perma.cc/LE5P-GURT>].

established between civilized nations, from the laws of humanity, and the requirements of the public conscience.⁴⁰

The Martens Clause is understood today as of a general applicability and has acquired the status of customary norm, thus legally binding.⁴¹ The International Court of Justice described the Martens Clause as “an effective means of addressing the rapid evolution of military technology.”⁴² Elaborately, “in the absence of specific regulations in the convention ‘populations and belligerents remain under protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of public conscience’.”⁴³ But even the general principles of IHL, the laws of humanity, and the requirements of the public conscience do not tailor comprehensive rules, standards, and norms to create a legal framework that could be responsive to the technological turns generated by the growing military conduct of mass datafication of occupied people.

The Hague Regulations of 1907 and the Fourth Geneva Convention (“GC IV”), including the law of military occupation, endeavor to accomplish a balance between the security needs of the occupying power and the interests of the local population.⁴⁴ Security needs of the occupying power, although lacking a definition, must be understood in a restrictive manner bound by human rights protections.⁴⁵ The GC IV allows the occupying power to enact certain provisions which are essential to enable it to maintain the orderly government of the territory, the security of the local population, and to ensure the security of the occupying power.⁴⁶ Security needs and military necessity—mentioned in few articles in GC IV and the Hague Regulation of 1907—appeared as the exception to the rule, as the occupier’s “stringent measures against the civilian population

⁴⁰ Convention (II) with Respect to the Laws and Customs of War on Land and its annex: Regulations Concerning the Laws and Customs of War on Land pmbl., July 29, 1899, 32 Stat. 1803, 1 Bevans 247.

⁴¹ See Koutroulis, *supra* note 39.

⁴² Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226, ¶ 78 (July 8, 1996).

⁴³ Jochen von Bernstorff, *Martens Clause*, MAX PLANCK ENCYC. OF INT’L L. (DEC. 2009), <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e327> [<https://perma.cc/Q8AQ-Y3BR>].

⁴⁴ *Occupation*, INT’L COMM. OF THE RED CROSS, <https://www.icrc.org/en/law-and-policy/occupation> [<https://perma.cc/L2U4-86MG>] (last visited Feb. 25, 2026, at 12:31 CST).

⁴⁵ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. 136, ¶¶ 111–13 (July 9, 2004) [hereinafter *Legal Consequences of Construction*]; *Case Concerning Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda)*, Judgement, 2005 I.C.J. 168, ¶ 178 (Dec. 19).

⁴⁶ Geneva Convention Relative to the Protection of Civilian Persons in Time of War, arts. 27, 30, 42, 49, 62, 64, Aug. 12, 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287.

[can] no longer be justified.”⁴⁷ The ICJ, in its Advisory Opinion on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (“*The Wall Advisory Opinion*”), asserted that the “construction of the wall and its associated régime cannot be justified by military exigencies or by the requirements of national security or public order.”⁴⁸ In other words, accomplishing the sought security needs or military necessity must not violate the protected rights and the general norms of IHL,⁴⁹ let alone systematic and calculated violations against protected persons.⁵⁰

Drawing parallels with the ICJ conclusions in *the Wall Advisory Opinion*, the conduct of mass surveillance and datafication of occupied people cannot be justified by security needs because it gravely infringes the rights of protected persons. Thus, this conduct constitutes breaches of various applicable provisions of IHL and human rights law. Subjecting those who are protected under the rules of IHL to mass surveillance and datafication, for the purpose of controlling their lives and spreading fear among them, under the claims of security necessity, contradicts the assumption of innocence and cannot be legally justified. If the security of the occupying power demands certain measures, these measures must be necessary, proportionate, and serve a legitimate purpose.

The remaining question is: whether constant video surveillance and mass collection of sensitive, personal, and biometric data of the occupied people are disproportionate and thus must be prohibited? An occupying power, when seeking to deploy mass surveillance and collect mass data, even if it seeks to protect the security of the local population or as measures of control and security of its own military, creates serious humanitarian consequences and digital risks for the civilian population from the use of AI-enabled surveillance and monitoring and other intrusive technologies.⁵¹ Examples include being targeted, arrested, facing ill-treatment, or suffering from psychological effects from the fear of being under constant surveillance.⁵² Thus, such extensive use that infringes upon the societal fabric and fundamental protections of occupied people cannot be legally justified.

⁴⁷ JEAN S. PICTET, *THE GENEVA CONVENTIONS OF 12 AUGUST 1949: COMMENTARY* 1, 63 (William S. Hein & Co., 1958) (commentating on Geneva Convention IV: Geneva Convention Relative to the Protection of Civilian Persons in Time of War).

⁴⁸ *Legal Consequences of Construction*, *supra* note 45, ¶ 137.

⁴⁹ See INT’L COMM. OF THE RED CROSS, *THE PRINCIPLES OF HUMANITY AND NECESSITY* (Mar. 2023), https://www.icrc.org/sites/default/files/wysiwyg/war-and-law/02_humanity_and_necessity-0.pdf [<https://perma.cc/5WS5-SD4N>].

⁵⁰ International humanitarian law protects civilians and civilian objects as well as combatants who no longer participate in hostilities (*hors de combat*) during armed conflict. More specifically, the Geneva Conventions and their Additional Protocols protect sick, wounded and shipwrecked people not taking part in hostilities, prisoners of war and other detainees, civilians and civilian objects.

⁵¹ Joelle Rizk & Sean Cordey, *What We Don’t Understand About Digital Risks in Armed Conflict and What to Do About It*, INT’L COMM. OF THE RED CROSS, HUM. L. & POL’Y (July 27, 2023), <https://blogs.icrc.org/law-and-policy/2023/07/27/digital-risks-in-armed-conflict/> [<https://perma.cc/9Q4B-Y9HE>].

⁵² *Automated Apartheid: How Facial Recognition Fragments, Segregates and Controls Palestinians in the OPT*, AMNESTY INT’L (2023), <https://www.amnesty.org.uk/files/2023-05/Automated%20Apartheid.pdf> [<https://perma.cc/YHG8-YYKT>].

The occupying power's responsibilities include, *inter alia*, the obligation to ensure humane treatment of the local population and to meet their needs. The Hague Regulations, Article 43,⁵³ obliges the occupying power to "take all the measures in his power to restore, and ensure, as far as possible, public order and safety."⁵⁴ The conduct of the occupier in the occupied territory must be guided to first ensure the protection, safety, and welfare of the civilians living in occupied territories.⁵⁵ In fact, the general rule is that "public order and civil life are not results that must be guaranteed by an occupying power, but only aims it must pursue with all available, lawful and proportionate means."⁵⁶

More specifically, Article 27 of The Fourth Geneva Convention outlines the core humanitarian principle, asserting that protected persons "are entitled, in all circumstances, to respect for their persons, their honor, their family rights, their religious convictions and practices, and their manners and customs."⁵⁷ In its Commentary of 1958, the ICRC considers that the principle of respect for human persons must be understood in its widest sense, as it covers

all the rights of the individual, that is, the rights and qualities which are inseparable from the human being by the very fact of his existence and his mental and physical powers; it includes, in particular, the right to physical, moral and intellectual integrity — an essential attribute of the human person.⁵⁸

The notion of protecting people's honor also emphasizes the prohibition of actions affecting people's reputation or reflecting humiliating punishment.⁵⁹ In addition, protected persons' "family dwelling and home are protected; they cannot be the object of arbitrary interference."⁶⁰ Beyond restraint, the occupying power has an affirmative obligation to safeguard civilians against abuses. This obligation extends to actions by private actors, such as tech and telecommunications companies or foreign contractors operating within the

⁵³ Convention (IV) Respecting the Laws and Customs of War on Land and its annex: Regulations Concerning the Laws and Customs of War on Land art. 43, Oct. 18, 1907, 36 Stat. 2277, 1 Bevans 631.

⁵⁴ *Id.*

⁵⁵ Francesca Albanese, (Special Rapporteur on the Situation of Human Rights), *Rep. on the situation of human rights in the Palestinian territories occupied since 1967*, U.N. Doc. A/HRC/40/73, ¶ 29 (Nov. 16, 2023); TRISTAN FERRARO, INT'L COMM. OF THE RED CROSS, EXPERT MEETING: OCCUPATION AND OTHER FORMS OF ADMINISTRATION OF FOREIGN TERRITORY (2012), at 12.

⁵⁶ Marco Sassòli, *Legislation and Maintenance of Public Order and Civil Life by Occupying Powers*, 16 EUR. J. INT'L L. 661, 664 (2005).

⁵⁷ Geneva Convention relative to the Protection of Civilian Persons in Time of War, pt. IV, arts. 27, 30, 42, 49, 62, 64, 12 Aug. 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287.

⁵⁸ *Commentary on the Fourth Geneva Convention: Relative to the Protection of Civilian Persons in Time of War 1958 art. 27*, ¶ 1(A), INT'L COMM. OF THE RED CROSS (1958), <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-27/commentary/1958?activeTab=1949GCs-APs-and-commentaries> [https://perma.cc/2S9J-5EHE].

⁵⁹ *Id.*

⁶⁰ *Id.*

occupied territory when attributed to the occupying State.⁶¹ Mass surveillance and datafication of occupied people and subjugating them under a constant watch infringes the occupied people's right to respect of their persons, their honor, their family rights, enshrined in Article 27 of the GC IV.⁶² Most importantly and affirmatively, mass surveillance and datafication are excessive, disproportionate, and indiscriminate, constituting a form of collective punishment. They fundamentally infringe upon the right of the occupied people to self-determination, including their right to resistance, as affirmed by the many United Nations General Assembly resolutions.⁶³

Although Articles 27 and 43 can be interpreted to provide a preliminary and basic protection to the occupied people against mass surveillance and datafication, IHL lacks a comprehensive understanding on how to approach the matter in occupied territories. Shehabi argues that even "adequately regulated uses of surveillance technologies might equally be viewed as legitimate measures to restore public order and civil life in a manner consistent with this evolving right to privacy, with its focus on data subject rights rather than the outright prohibition of mass surveillance."⁶⁴ This is, however, accepting the proposition that mass surveillance can be justified for the exceptions of public order and security needs. Based on the ICJ's conclusion discussed earlier, in its *Wall Advisory Opinion*,⁶⁵ it can be concluded that mass surveillance and datafication of occupied people cannot be justified by military exigencies or by the requirements of national security or public order because they profoundly violate human rights, humanitarian law, and general principles of international law. A total prohibition in IHL might not come to materialize, however, a regulatory framework that focuses on the peculiarities of situations of belligerent occupations is necessary. This framework must be centered in the best interest of the occupied people who are under alien control and subjugation. This point will be further explained in the next section, which suggests specific rights, limitations, and obligations to regulate the conduct of mass surveillance and datafication of occupied peoples.

Pictet's Commentary to the Fourth Geneva Convention underlines that, within the meaning of Article 27, para 4, "a great deal is ... left to the discretion of the Parties to the conflict as regards the choice of means."⁶⁶ The Commentary provides a non-exhaustive list of examples of permissible measures, including less intrusive restrictions such as requiring the carrying of identity cards, but

⁶¹ Sarah Saadoun, *Responsible Business in Occupied Territories*, HUM. RTS. WATCH (June 21, 2016, at 00:01 EDT), <https://www.hrw.org/news/2016/06/21/responsible-business-occupied-territories> [<https://perma.cc/B2BV-GTVH>]; Mais Qandeel, *Violence and State Attribution: The Case of Occupied Palestine*, 52 J. PALESTINE STUD. 43, 43–63 (2023), at 51–52.

⁶² Geneva Convention relative to the Protection of Civilian Persons in Time of War, *supra* note 57, arts. 27, 30, 42, 49, 62, 64.

⁶³ G.A. Res. 2672 (XXV) (Dec. 8, 1970); G.A. Res. 3236 (XXIX) (Nov. 22, 1974); G.A. Res. 67/146 (Mar. 29, 2012); G.A. Res. 67/158 (Feb. 26, 2013).

⁶⁴ Shehabi, *supra* note 34, at 100.

⁶⁵ DOCHERTY, *supra* note 32.

⁶⁶ PICTET, *supra* note 47, at 207.

what is essential here is “that the measures of constraint they adopt should not affect the fundamental rights of the persons concerned. As has been seen, those rights must be respected even when measures of constraint are justified.”⁶⁷ This approach is particularly problematic in the context of military occupation, as several legal concerns emerge concerning the assumption of the occupier’s good faith in implementing their duties under IHL, the full discretion of the occupier to control the occupied, and the permissible measures granted to the occupier. First, it is absurd to assume the good faith of the occupier in occupied territory. This line of thinking does not lead to fulfilling the interests of the local population, the protected persons. Although the conduct of military occupation is lawful, it cannot be assumed that the occupier operates in good faith in the occupied territory. The Israeli belligerent occupation of Palestine, for example, is evidence that proves, beyond a doubt, the bad-faith and brutality of the occupier that seeks to replace the Indigenous Palestinians.⁶⁸ In fact, the occupying power further imposes its brutality as it enjoys full discretion to decide on the choice of means for their military conduct, with few limitations, under the justification of security needs and public safety. This would allow for arbitrary justifications to advance belligerent logics while using permissible measures according to the legal norms, i.e. proportionality, security needs, and military necessity. Thus, it is vital to carefully specify restrictive obligations and limits to advance the rights of the occupied people. The next chapter deals with the questions of what rights should be granted to the protected persons and what are the limitations and obligations that should be imposed on the occupier.

IV. RIGHTS, LIMITATIONS AND OBLIGATIONS

Some argue that the core data protection, privacy rights, and AI regulations should be applicable in times of armed conflicts,⁶⁹ and in times of peace under the assumption of the rule of law and democracy.⁷⁰ Affirmatively, beyond IHL, as *lex specialis*, it is agreed upon that human rights law applies to occupied territories.⁷¹ Nevertheless, these two legal frameworks would not suffice to protect the occupied peoples and prevent the conduct of mass surveillance and datafication.

Subsequently, what limitations should be imposed on the occupying power and what rights should the occupied people have? This Article argues that there must be a comprehensive legal framework that specifically addresses situations of belligerent occupation, especially unlawful long-term military occupation, where the occupying power must not collect mass data about or subject the

⁶⁷ *Id.*

⁶⁸ AMNESTY INT’L, *supra* note 16, at 4.

⁶⁹ Buchan & Lubin, *supra* note 20, at 4.

⁷⁰ Daniel Groos & Evert-Ben van Veen, *Anonymised Data and the Rule of Law*, 6 EUR. DATA PROT. L. REV. 498 (2020), at 9.

⁷¹ See *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. 226, ¶ 25 (July 8); *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 2004 I.C.J. 136, ¶ 106 (July 9); General Comment No. 31 [80], *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, Human Rights Committee, Eightieth Sess., U.N. Doc. CCPR/C/74/CRP.4/Rev.6, (May 26, 2004).

occupied people to mass surveillance. This is because of the invasive nature of mass surveillance and datafication of occupied people who live under alien subjugation and control.

The occupied people must have the right to refuse, choose, and know about their data and the life cycle of its collection, usage, and processing. The right to know, right to consent or refuse, right to access and rectification, and right to redress together form a core framework of data self-determination.⁷² The right to know ensures transparency by requiring the occupying power to clearly inform individuals about the nature, scope, and purpose of data collection and processing. The right to consent or refuse complements this transparency by empowering individuals to control the use of their data, those not justified by narrowly defined security imperatives. In occupied territory, where power imbalances inherently limit (meaningful) consent, such consent must be freely given, specific, informed, and revocable. In addition, the right to access and rectification guarantees individuals the ability to view and correct their personal data to prevent harm or misuse, particularly in sensitive contexts such as surveillance of biometrics and their registration. Lastly, the right to redress provides a crucial enforcement mechanism: individuals must be able to challenge unlawful or arbitrary data practices and obtain remedies, including deletion of data and reparation.

However, the dynamic of powers as well as the unbalanced relationship between the occupied and occupier prevent compliance. In the matrix of the oppressed and oppressor, the oppressed would not have the power to reject, fully consent, or choose. Whereas the oppressor would have the power to collect, misuse and abuse. In the context of military occupation, where recourse to domestic legal institutions may be compromised, the presence of international monitors or third-party accountability frameworks becomes essential to uphold these fundamental principles and rights and prevent abuse. As the asymmetric relationship between the occupied and the occupier, such rights if unprotected within the current international legal framework and their permissible nature to limit the rights of the occupied people would lead to misuse and arbitrary implementation. Hence, it is vital that such rights must not be derogable under any circumstances.

Generally speaking, the occupying power must protect the protected rights of occupied people from violence and arbitrary interference, including data collection by state or non-state actors, within its obligation to restore and to maintain public order and civil life in the occupied territories.⁷³ Ultimately, the occupying power's responsibility extends to preventing surveillance or

⁷² This could further build on data protection regulations but offering more rigid protections. *See, e.g.*, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation), 2016 O.J. (L 119/1).

⁷³ *What Does the Law Say About the Responsibilities of the Occupying Power in the Occupied Palestinian Territory?*, INT'L COMM. OF THE RED CROSS (July 26, 2024), <https://www.icrc.org/en/document/ihl-occupying-power-responsibilities-occupied-palestinian-territories> [https://perma.cc/Y3T5-495E].

extraction of personal data by non-state actors such as tech and telecommunications companies, data brokers, or private security contractors. This includes regulating their activities, imposing legal obligations for data minimization and user consent, and ensuring that any data sharing is subject to strict oversight. Where the occupying power fails to impose these protections or enables or profits from such activities, it must be held internationally responsible for its failure to fulfil its protective duties. Emphasizing the asymmetrical power relationships in occupied territories, such protections are not merely procedural, but vital to preserving the dignity, autonomy, self-determination, including data sovereignty, and legal security of the occupied people.

V. CONCLUSION

The use of AI-enhanced surveillance technologies, such as facial recognition and other biometric data systems, in the conduct of belligerent occupation constitutes a profound evolution in how occupying powers exert authority and impose control over protected persons. In fact, this use has accelerated suppression and subjugation of protected persons in occupied territories. These technologies enable speedy and vast collection, retention, and analysis of massive volumes of personal data, often without transparency, legal safeguards, or the consent of those subjected to them.

The legal implications of such use are particularly acute in occupied territories, where asymmetrical power dynamics, the absence of local sovereignty, and limited access to legal remedies exacerbate and widen systemic violations and arbitrary conducts. Thus, this article demonstrated that the legal framework governing belligerent occupation, principally under the Hague Regulations of 1907 and the Fourth Geneva Convention of 1949, does not particularly regulate the mass collection and use of personal data or the deployment of algorithmic surveillance systems. However, this absence of specific provisions does not equate to the absence of legal constraint. The occupying power remains bound by the general principles of IHL, prohibiting measures that amount to collective punishment, e.g. mass surveillance and data collection, as well as intimidation and arbitrary interference with civilian life and privacy. Even with such basic protection, the occupied people remain vulnerable and exposed to a risks and threats.

Thus, significant substantive and procedural constraints on the occupying power are necessary and urgent. These include the imperative prohibition to mass data collection, the protection of the occupied people, and prevention of abuses by non-state actors. Absent these safeguards, the digital practices of an occupying power risk transforming belligerent occupation into a regime of technological domination, fundamentally incompatible with the legal and moral foundations of the law of occupation, which is witnessed today in Palestine.