

## The International Law of Belligerent Occupation

Belligerent occupations existed in both World Wars and have occurred more recently in all parts of the world (including Iraq, Afghanistan, the former Yugoslavia, Congo, Northern Cyprus, Nagorno-Karabakh, Georgia, Eritrea and Ethiopia). Owing to its special length – exceeding half a century and still in progress – and the unprecedented flow of judicial decisions, a special focus is called for as regards the occupation of Palestinian territories by Israel.

International law addresses the subject of belligerent occupation in some detail. This second, revised, edition updates the text (originally published in 2009) in terms of both State practice and doctrinal discourse. The emphasis is put on decisions of the Security Council; legislation adopted by the Coalition Provisional Authority in Iraq; and predominantly case law: international (Judgments of the International Court of Justice, the International Criminal Tribunal for the Former Yugoslavia and the European Court of Human Rights; Advisory Opinions and Arbitral Awards) as well as domestic courts.

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YORAM DINSTEIN



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## Preface

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This revised edition is a companion to three other volumes dealing with international and non-international armed conflicts published by Cambridge University Press: *War, Aggression and Self-Defence* (6th edn, 2017), *The Conduct of Hostilities under the Law of International Armed Conflict* (3rd edn, 2016) and *Non-International Armed Conflicts in International Law* (2014). The new edition updates the text (originally published in 2009), especially in terms of State practice, case law and doctrinal discourse.

It is occasionally suggested that belligerent occupation is an anomalous phenomenon and a side-issue in the present-day environment of international armed conflicts. But in reality quite a few contemporary occupations have cropped up in far-flung quarters of the world. They stretch from Israel to Iraq, from Northern Cyprus to the former Yugoslavia, from Afghanistan to Eritrea and Ethiopia, from Nagorno-Karabakh to Georgia, from Congo to Crimea.

This new edition goes in greater detail into some aspects of these occupations. In particular, there are extensive references to legislation adopted by the Coalition Provisional Authority during the short formal occupation of Iraq (in 2003–4). But, owing to its special length (exceeding half a century and still in progress) and the unprecedented flow of judicial decisions – dissecting a rich profusion of legal disputes in real time (while the occupation is ongoing) – it is only natural that much of the examination remains focused on the occupation of Palestinian territories by Israel. In the course of this prolonged occupation, numerous unique problems have surfaced. The practical experience acquired (for better or worse) as a result of the Israeli occupation has been of critical significance in assessing the interface between the theory and practice of belligerent occupation.

The author has the benefit of linguistic access to the Judgments of the Supreme Court of Israel, many of which are available only in Hebrew (although they have generally been excerpted in English in the *Israel Yearbook on Human Rights* and, in the more celebrated cases, have been translated in full and reproduced in other periodicals). The sheer mass of these Judgments, and even more so the compelling issues that they probe, invite serious consideration. Whether one agrees or disagrees with the interpretation of international

law offered by the Israel Supreme Court, its Judgments have become nonpareil signposts that no future decision-maker can afford to ignore. The new edition strives to bring up to date the analysis of these Judgments.

The international legal regime of belligerent occupation constitutes a segment of the *jus in bello*, complementing the compendium of norms governing the conduct of hostilities. The book addresses some fundamental quandaries concomitant of the regime of belligerent occupation. These pertain to the interrelationship between the Occupying Power, the displaced sovereign and the civilian population. But the text equally deals with more commonplace questions with which this *materia* is riddled. How does belligerent occupation commence; how is it maintained; and how is it terminated? What is the rudimentary distinction between belligerent and other types of occupation? Who are the persons protected under belligerent occupation, and what is the scope of their protection? What is the interaction between the law of belligerent occupation and the law of human rights? What jurisdiction does the Occupying Power wield in the legislative, judicial and executive spheres? What specific legal safeguards are offered to the civilian population under occupation from capital punishment, collective penalties, deportations, detention, compulsory work, destruction or seizure of property, and other measures curtailing ordinary freedoms? Conversely, what measures can an Occupying Power lawfully resort to when encountering forcible resistance – and direct participation in hostilities – by embittered inhabitants of an occupied territory?

The study of the law of belligerent occupation cannot be confined to lawyers. It is noteworthy that recent military manuals of the law of armed conflict devote full attention to the topic of belligerent occupation. This is how it should be: armed forces must prepare themselves for the task of coming to grips with the administration of an occupied territory in wartime. The only way to be mentally geared up for this daunting – and often unexpected – challenge is for military personnel to prepare themselves in peacetime for the possible eventuality. Primarily, officers must be trained for the sort of mission accomplishment that has little in common with ordinary military feats, but is indispensable for a successful and law-abiding government of an occupied territory. It is to be hoped that this new edition will assist in such preparation and training, not only by identifying points of discord but also by suggesting modes of action that can be engaged in without supererogatory controversy.

Two important caveats:

- (a) Although the book deals with the entitlement of an Occupying Power to resort to internment of protected persons as a security measure, it does not address the question of how persons under detention ought to be treated. The treatment topic calls for a comparative exegesis of the international legal rules governing the different categories of civilian detainees

in occupied territories; civilian detainees in general (i.e. in non-occupied territories) both in wartime and in peacetime; and prisoners of war.

- (b) While the book is replete with references to war crimes and to trials of war criminals, this is done only with a view to confirming the existence of – or shedding light on – the norms governing belligerent occupation. No attempt is made here to go into the intricate themes of individual penal accountability (or, for that matter, State responsibility for wrongful acts in the form of reparations).

To facilitate syntax, generic pronouns relating to individuals are usually drawn in masculine form. This must not be viewed as gender specific.

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## Abbreviations

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<i>ADRPILC</i>	Annual Digest and Reports of Public International Law Cases
<i>AFDI</i>	Annuaire Français de Droit International
<i>AJIL</i>	American Journal of International Law
<i>AYIL</i>	African Yearbook of International Law
<i>As.JIL</i>	Asian Journal of International Law
<i>BFSP</i>	British and Foreign State Papers
<i>BYBIL</i>	British Year Book of International Law
<i>Ber.JIL</i>	Berkeley Journal of International Law
<i>Brook.JIL</i>	Brooklyn Journal of International Law
<i>CFH</i>	Criminal Further Hearing
<i>CHRLR</i>	Columbia Human Rights Law Review
<i>CJICL</i>	Cambridge Journal of International and Comparative Law
<i>CLQ</i>	Cornell Law Quarterly
<i>CWC</i>	Chemical Weapons Convention
<i>CYIL</i>	Canadian Yearbook of International Law
<i>Cal.LR</i>	California Law Review
<i>Car.JICL</i>	Cardozo Journal of International and Comparative Law
<i>Car.LR</i>	Cardozo Law Review
<i>Chi.JIL</i>	Chicago Journal of International Law
<i>Col.LR</i>	Columbia Law Review
<i>Cre.LR</i>	Creighton Law Review
<i>DJILP</i>	Denver Journal of International Law and Policy
<i>ECHRJD</i>	Judgments and Decisions of the European Court of Human Rights
<i>EHRR</i>	European Human Rights Reports
<i>EJIL</i>	European Journal of International Law
<i>GJIL</i>	Georgia Journal of International Law
<i>GWILR</i>	George Washington International Law Review
<i>GYIL</i>	German Yearbook of International Law
<i>HCJ</i>	High Court of Justice
<i>HJLPP</i>	Harvard Journal of Law and Public Policy

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<i>HLR</i>	Harvard Law Review
<i>Har.ILJ</i>	Harvard International Law Journal
<i>Heid.JIL</i>	Heidelberg Journal of International Law
<i>Hous.JIL</i>	Houston Journal of International Law
<i>IACHRJO</i>	Judgments and Opinions of the Inter-American Court of Human Rights
<i>ICJ Rep.</i>	Reports of the International Court of Justice
IDF	Israel Defence Force
<i>ICLQ</i>	International and Comparative Law Quarterly
<i>ICLR</i>	International Community Law Review
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the Former Yugoslavia
IHL	International Humanitarian Law
<i>IJIL</i>	Indian Journal of International Law
<i>ILM</i>	International Legal Materials
<i>ILR</i>	International Law Reports
<i>ILS</i>	International Law Studies
<i>IRRC</i>	International Review of the Red Cross
<i>IYHR</i>	Israel Yearbook on Human Rights
<i>Int.Leg.</i>	<i>International Legislation</i> (M.O. Hudson ed., 1931–50)
<i>Is.LR</i>	Israel Law Review
<i>JCSL</i>	Journal of Conflict and Security Law
<i>JICJ</i>	Journal of International Criminal Justice
<i>JIHLS</i>	Journal of International Humanitarian Legal Studies
<i>JILE</i>	Journal of International Law and Economics
<i>JSAL</i>	Journal of South African Law
<i>KH</i>	Kovets Hatakanot [Secondary Legislation of the State of Israel [in Hebrew]]
<i>LLAICLR</i>	Loyola of Los Angeles International and Comparative Law Review
<i>LQR</i>	Law Quarterly Review
<i>LRTWC</i>	Law Reports of Trials of War Criminals
<i>LSI</i>	Laws of the State of Israel [in English]
<i>LSR</i>	Law and Society Review
<i>MPEPIL</i>	The Max Planck Encyclopedia of Public International Law (R. Wolfrum ed., 2012)
<i>MPYUNL</i>	Max Planck Yearbook of United Nations Law
<i>McG.LJ</i>	McGill Law Journal
<i>Mich.JIL</i>	Michigan Journal of International Law
<i>Mich.LR</i>	Michigan Law Review
<i>Mil.LR</i>	Military Law Review
<i>Minn.JIL</i>	Minnesota Journal of International Law

## List of Abbreviations

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<i>Minn.LR</i>	Minnesota Law Review
<i>NILR</i>	Netherlands International Law Review
<i>NTIR</i>	Nordisk Tidsskrift for International Ret
<i>NYULR</i>	New York University Law Review
<i>PD</i>	Piskei Din (Reports of the Israel Supreme Court [in Hebrew])
<i>PG</i>	Palestine Gazette
<i>PSILR</i>	Penn State International Law Review
<i>RBDI</i>	Revue Belge de Droit International
<i>RCADI</i>	Recueil des Cours de l'Académie de Droit International
<i>RHDI</i>	Revue Hellénique de Droit International
<i>RIAA</i>	Reports of International Arbitral Awards
<i>RGDIP</i>	Revue Générale de Droit International Public
<i>SCL</i>	Santa Clara Lawyer
<i>SDLR</i>	San Diego Law Review
<i>SH</i>	Sefer Hahukim [Primary Legislation of the State of Israel (in Hebrew)]
<i>SJIL</i>	Stanford Journal of International Law
<i>SLR</i>	Stanford Law Review
Supp.	Supplement
<i>TAULR</i>	Tel Aviv University Law Review [in Hebrew]
<i>TGS</i>	Transactions of the Grotius Society
<i>TIPH</i>	Temporary International Presence in Hebron
<i>TLCP</i>	Transnational Law and Contemporary Problems
<i>ULR</i>	Utrecht Law Review
UN	United Nations
<i>UNBLJ</i>	University of New Brunswick Law Journal
UNESCO	United Nations Educational, Scientific and Cultural Organization
<i>UNJY</i>	United Nations Juridical Yearbook
<i>UNTS</i>	United Nations Treaty Series
<i>VAC</i>	Various Applications, Criminal
<i>VAT</i>	Value Added Tax
<i>VJTL</i>	Vanderbilt Journal of Transnational Law
WWI	First World War
WWII	Second World War
<i>YIHL</i>	Yearbook of International Humanitarian Law
<i>YJIL</i>	Yale Journal of International Law
<i>YLJ</i>	Yale Law Journal

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