

Contents

List of Abbreviations

xv

Table of Cases

xvii

1. Introduction	1
1.1 The Concept	1
1.2 Challenges to the Law of Occupation	7
1.3 Legal Sources	11
1.3.1 Laws of international armed conflict	11
1.3.2 Human rights law	12
1.3.3 Law on the use of force, sovereignty, and self-determination: The “illegal occupation”	15
1.3.4 The law on state responsibility	18
1.3.5 Additional sources	18
1.4 Conclusion	19
2. Origins: The Evolution of the Concept of Occupation in the Eighteenth and Nineteenth Centuries	20
2.1 The Evolution of a Concept	21
2.1.1 The intellectual roots of an emerging European concept	22
2.1.2 The principle of humanity: The obligation to protect the property of enemy civilians	22
2.1.3 Enter national self-determination: “Occupation” becomes distinct from “conquest”	25
2.2 The Transformation of the Concept of Occupation into European and International Law	31
2.2.1 The doctrine on occupation arrives in the United States	32
2.2.2 Meanwhile in Europe: The Franco-Prussian War and its aftermath	37
2.2.3 Different conceptions of occupation beyond Europe	41
2.3 Conclusion	42
3. The Characterization of Occupation	43
3.1 Spatial Scope	43
3.1.1 Control of the land	43
3.1.2 A personal approach as an additional test	51
3.1.3 “Virtual occupation”?	53
3.1.4 Maritime resources and airspace	55
3.2 Temporal Scope	55
3.2.1 When occupation begins	55
3.2.2 When occupation ends	56
3.2.3 Pre- and post-occupation obligations	57

3.3 Occupation by Whom?	58
3.3.1 Who is a foreign power (the “hostile army”)	58
3.3.2 Occupation in a non-international armed conflict?	61
3.3.3 Occupation by proxies	61
3.3.4 UN-led occupations	62
3.4 The Lack of Sovereign Consent	67
4. The Law on the Administration of Occupied Territories	68
4.1 Background: Three Different Approaches to Regulate an Inherent Conflict of Interests	68
4.1.1 Article 43: “A seeming legal paradise”	68
4.1.2 Article 64 GCIV: Focusing on human welfare	72
4.1.3 The human rights dimension	74
4.2 The Scope of the Occupation Administration	76
4.2.1 Generally	76
4.2.2 The management of natural resources	81
4.2.3 The external relations of the occupied territory	83
4.2.4 The occupant’s forward-looking and post-occupation obligations	86
4.3 Stability versus Change: The Level of Respect for the Legal Status Quo	89
4.3.1 Article 43 Hague Regulations	89
4.3.2 Article 64 GCIV	95
4.3.3 Human rights	102
4.4 The Rights and Duties of the Ousted Government	104
4.5 Nationals of the Occupying Power	106
5. Occupations During and After World War I: Early Challenges to the Traditional Law of Occupation	108
5.1 The German Occupation of Belgium, 1914–18	108
5.1.1 Reorganization and regulation of the Belgian economy	110
5.1.2 Changes in the court system	115
5.1.3 Restructuring the Belgian political structure	116
5.1.4 Reactions to German occupation measures	118
5.1.5 The law of occupation in light of the occupation of Belgium	120
5.2 The Armistice Occupation of the Rhineland	122
5.2.1 Occupation policies	123
5.2.2 The German reaction	127
5.2.3 The law of occupation in light of the Armistice Occupation	129
6. The Law of Occupation in the Wake of World War II	131
6.1 Occupations by the Axis Powers	132
6.1.1 Japanese occupations	132
6.1.2 Italian occupations	135
6.1.3 German occupations	135
6.1.4 Occupations by the Soviet Union, 1939–40	138

6.1.5	The Finnish occupation of Eastern Karelia	139
6.1.6	The relevance of the Axis and Soviet occupations to the law of occupation: The status of illegal occupations	140
6.2	Allied Occupations during World War II	143
6.2.1	British occupation of African territories	143
6.2.2	The first US occupation of the war: French North Africa	151
6.2.3	Aftermath: The changing US attitude toward the administration of occupied territories	152
6.2.4	Unconditional surrender and <i>debellatio</i> : The occupations of Germany and Japan	159
6.2.5	Application and critique of the <i>debellatio</i> doctrine	161
6.3	The Law of Occupation in the Wake of World War II: The Surprising Resilience of the Doctrine on Occupation	164
7.	Occupations Since the 1970s	167
7.1	Introduction	167
7.2	Annexation: Kuwait, Western Sahara, and East Timor	169
7.2.1	The Iraqi occupation of Kuwait (1990)	170
7.2.2	The Moroccan occupation of Western Sahara (1975)	171
7.2.3	The Indonesian occupation of East Timor (1975–99)	172
7.3	Externally Imposed Regime Change: The Occupations of Afghanistan (by USSR), Grenada, and Panama	177
7.3.1	The Soviet intervention in Afghanistan (1978–88)	177
7.3.2	The US intervention in Grenada (1983–84)	180
7.3.3	The US intervention in Panama (1989)	183
7.4	Facilitating Internal Regime Change: Cambodia, Afghanistan (by a US-led Coalition), Bangladesh, Cyprus, Georgia	184
7.4.1	The Vietnamese occupation of Cambodia (1979–89)	185
7.4.2	The US-led “coalition” occupation of Afghanistan (2001–02)	187
7.4.3	India’s involvement in the creation of Bangladesh (1971)	188
7.4.4	The Turkish invasion of Cyprus and the establishment of the Turkish Republic of Northern Cyprus (1974–)	191
7.4.5	The Russian occupations in Georgia (2008–)	194
7.4.6	General observations on humanitarian and self-determination occupations	197
7.5	Security Zones: Israel in Lebanon, US-led Coalition in South/North Iraq, Turkey in North Iraq, and Uganda in Congo	200
7.6	Conclusion	201
8.	The Israeli Occupation of the West Bank and Gaza	203
8.1	The Status of the Territories Occupied by Israel since 1967	203
8.1.1	East Jerusalem	204
8.1.2	The West Bank and Gaza	206
8.1.3	The Israeli-Palestinian Interim Accords and their legal significance	209
8.2	The Actual Administration of the West Bank and Gaza	212
8.2.1	Institutional infrastructure	212

8.2.2	Legislation	213
8.2.3	Administration	213
8.2.4	The court system	215
8.2.5	The Israeli Supreme Court	217
8.3	1967–93: Integration of the Territories with Israel	224
8.3.1	Specific integrative measures	224
8.3.2	Extending the jurisdiction of the Israeli civil courts to transactions in the occupied territories	228
8.3.3	The Jewish settlements and their integration into Israel	233
8.4	1993–Onward: Segregating the Palestinian Population	238
8.5	Assessment According to the Law of Occupation	239
8.5.1	The settlements	239
8.5.2	The economic union	241
8.5.3	Long-term occupations and the law of occupation	244
8.5.4	Is there an obligation to end the occupation?	244
8.5.5	Changes in the occupant's powers during long-term occupations	246
9.	The Occupation of Iraq 2003–05	249
9.1	The Timeframe of the Occupation in Iraq	250
9.1.1	Pre-occupation responsibilities?	250
9.1.2	The beginning: When Iraq became occupied	251
9.1.3	The end of occupation	254
9.1.4	Post-occupation responsibilities	256
9.2	The Exercise of Authority by the Occupants in Iraq	257
9.2.1	Abolishing the existing political and military institutions	259
9.2.2	Amendments to criminal law and criminal procedure	260
9.2.3	Changes to the court system	261
9.2.4	Human rights legislation	261
9.2.5	Economic reforms	262
9.2.6	Good governance	263
9.2.7	Management of natural resources	264
9.2.8	The transition to democracy	266
9.3	Evaluation	268
9.3.1	The occupation of Iraq in light of the law of occupation	268
9.3.2	The law of occupation in light of the occupation of Iraq	274
10.	The Administration of Territory by the United Nations: The Case of UNMIK in Kosovo	276
10.1	Introduction	276
10.2	Case study: Kosovo	279
10.2.1	The exercise of legislative, executive, and judicial powers by the SRSG	282
10.2.2	Accountability mechanisms	288
10.2.3	Assessment	292
10.3	Conclusion: Recognizing the Responsibility to Occupy	296

11. The Law on Post-Occupation: The Lasting Effects of the Occupant's Legislation	299
11.1 First Period: Until World War II	300
11.2 Second Period: The Advent of the GCIV "Grave Breaches" Regime and Human Rights Law	304
11.2.1 Case study 1: Germany	305
11.2.2 Case study 2: Cyprus	306
11.3 Discussion	307
11.3.1 The distinction between the primary norms of the law of occupation and the secondary norms	307
11.3.2 Considerations in balancing the respective interests	312
11.4 Conclusion	317
12. Enforcement Mechanisms for Compliance with the Law of Occupation	318
12.1 Enforcement through Adjudication	319
12.1.1 Direct and indirect judicial review of the legality of the occupation or of occupation policies	320
12.1.2 Civil suits for compensation	333
12.1.3 Criminal proceedings	339
12.2 Enforcement through International Institutions	340
12.2.1 Protecting powers	340
12.2.2 United Nations bodies	343
12.2.3 Missions and Commissions	344
12.2.4 Transparency	346
12.3 Conclusion	347
13. Conclusion	348
<i>Bibliography</i>	353
<i>Index</i>	371