

Contents

| | |
|--|------|
| <i>List of Abbreviations</i> | xv |
| <i>Table of Cases</i> | 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 |