Contents

Pr	eface		page xiii
	ble of	Cases (a) Cases	xvii
		Treaties	xxvii
		Resolutions	xxxv
		bbreviations	xxxvii
15	oj m	The state of the s	AAATI
1	The (General Framework	1
50	I.	Belligerent Occupation as a Natural Phenomenon in War	1
	II.	Belligerent Occupation and the Legality of War	2
	III.	The Strata of the International Law of Belligerent Occupation	4
	****	A. Customary International Law	.V 4
		B. The Hague Regulations	5
		C. Geneva Convention (IV)	6
		D. Additional Protocol I	7
	IV.	A Brief Historical Outline	8
		A. The Past	. 8
		B. Recent Decades	10
	V.	The Occupation of Iraq	13
	VI.	The Case of Israel	16
		A. The Sinai Peninsula and the Gaza Strip	17
		B. The West Bank	19
		C. The 'Oslo Process' Accords	19
		D. East Jerusalem	22
		E. The Golan Heights	23
		F. The General Applicability of Geneva Convention (IV)	24
		G. Judicial Review by the Supreme Court Sitting as a High Court of Jus	tice 29
		H. The Domestic Applicability of Geneva Convention (IV)	31
2	The I	egal Nature and Basic Principles of Belligerent Occupation	35
25	I	Prerequisite Conditions for Belligerent Occupation	35
		A. Belligerent Occupation and Inter-State Armed Conflicts	35
		(a) The Linkage of Belligerent Occupation to War	35
		(b) Occupation Following Unconditional Surrender	36
		(c) Non-International Armed Conflicts	37
		B. The Non-Consensual Nature of Belligerent Occupation	38
		(a) Coercion as the Key to Belligerent Occupation	38
		(b) Occupation Based on Agreement Following War	40

	~	
VI	Cont	tent
T.A.	COLU	CLER

	AND THE STATE OF T	40
	(c) Consensual Occupation of Allied Territory during War	40
	(d) Occupation by United Nations Forces	41
II.		42
	A. The Origins of Belligerent Occupation	42
	B. Hague Regulation 42	42
	C. Belligerent Occupation and Invasion	43
	D. The Time Element	46
	 E. An Interval between Invasion and Belligerent Occupation 	46
III.	Effective Control	48
	A. The Substitution of Authority	48
	B. Variations of Effective Control	49
	(a) The Degree of Effective Control	49
	(b) Effective Control 'by Proxy'	50
	(c) Control and Stability	51
	(d) Territory and Population	52
	(e) Maintaining Effective Control	53
	(f) Fluctuations of Effective Control	54
IV.	Some Ancillary Comments	54
	A. Jurisdictional Rights	54
	B. Outlying Land Areas	55
	C. Maritime Areas and Air Space	56
	D. Proclamation	56
	E. Several Occupying Powers	57
V.		58
**	A. Sovereignty and Non-Annexation	58
	B. Transfer of Title over an Occupied Territory	60
	C. Nationality and Allegiance	62
VI.	The Military Nature of the Government in an Occupied Territory	64
٧1.	A. The Administration of an Occupied Territory	64
	B. The Overall Responsibility of the Occupying Power	66
	C. Self-Government	66
	D. The Employment of Local Officials	68
3711	Protected Persons in Occupied Territories	69
VII.	The state of the s	69
		69
	The second secon	69
		71
	(c) Nationals of Non-Contracting Parties	71
	(d) Persons Protected by the other Geneva Conventions	71
	B. Geneva Inclusions	72
	C. The Treatment of Saboteurs	73
VIII.		73
	A. The Theory	75
	B. The Practice	15
LI	on Rights and Relligerent Occupation	77
_	nan Rights and Belligerent Occupation	77
I.		79
II.		81
Ш.		81
	A. Derogations and War	82
	B. Procedural and Substantive Requirements	02

		Contents	vi
	IV.	Non-Derogable Human Rights	
	V.	Built-In Limitations of Human Rights	8
	٧.		
		D. Franklick Finalisations	8
	VI.	21 1 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2	8
	VII.		0
	V 11.	d V CYV Distan	8
		A. Convergence, Divergence and Complementarity	9
		(a) Convergence	9
		(b) Divergence	9
		(c) Complementarity	9
		B. The Advantages of the Law of Belligerent Occupation	9
		C. The Advantages of Human Rights Law	9
		D. The Lex Specialis Rule	9:
		A. Relief Consistences street Industries of the Constitution of th	
4	The N	Maintenance of Law and Order in Occupied Territories	99
	I.	Hague Regulation 43	99
	II.	The Structure and Scope of Regulation 43	100
	III.	Reestablishing and Ensuring Public Order and Life under Regulation	101
		A. The General Obligation	101
		B. Safety from Violence	102
		C. Economic and Social Order	104
	IV.	Violent Resistance to Occupation	103
		A. Occupation and Violent Resistance	105
			100
		C. Levée en Masse	100
	V.		108
	VI.	Hostilities in Occupied Territories and Temperature and Territories	110
		A. The Duality of Hostilities and Occupation	
		B. Direct Participation in Hostilities adultion Advisorition	113
		C. 'Human Shields'	116
5	Legis	lation by the Occurrying Power	119
	I.	The Meaning of the Phrase 'les lois en vigueur'	119
	II.	The Meaning of the Phrase 'empêchement absolu'	120
	Ш.	Article 64 of Geneva Convention (TV)	121
	IV.	The Specific Categories of Permissible Legislation	122
		A. Security Legislation	123
		B. Repeal of Legislation Inconsistent with Geneva Convention (IV)	123
		(a) Fundamental Rights and Elimination of Discrimination	123
		(b) Right or Duty?	124
		(c) Prevalence over Conflicting Domestic Law	125
		C. Legislation Geared to the Needs of the Civilian Population	126
		D. Other Legislation	127
	V.	Prolonged Occupation	128
	VI.	The Litmus Test	132
	VII.	Institutional Changes	134
	* ****	- AND THE RESERVE OF THE PERSON OF THE PERSO	

IX. Limitations of the Legislative Power 140

VIII. Taxation

X. Settlers

6	The	Judicial System in Occupied Territories		145	II. Women and Children	
08	I.	The Double-Tiered System of Courts		145	The state of the s	
	2.1	A. Local Courts		145	The state of the s	
		(a) Judicial Review of New Legislation by the Occupying Power		145	B. Children	
				145	(a) Protection and Respect	
				146	(b) Care and Education	
		(c) Judges in the Local Courts		147	(c) Identification	
		(d) Members of the Bar		148	(d) Preferential Treatment noisesuling to noise	
		(e) Appeals		149	(e) Enlistment and Recruitment	
		(f) Jurisdiction (8)		149	III. Medical Services	
		(g) Rights of Action		150	A. Medical Needs and Hospitals	
		B. Military Courts		150	B. Medical Personnel and an additional to be be a second and a second	
		(a) The Nature of the Military Courts		150	C. Medical Care by the Civilian Population and Red C	ross Societies
		(b) Appeals		151	IV. Civil Defence	
		(c) Special Cases		152	V. Humanitarian Relief	
		C. Concurrent Jurisdiction		153	A. Relief Consignments	
	II.	The Right to a Fair Trial		154	B. Relief Personnel	
	III.	Capital Punishment		157	D. Relief reformed	
	****	II. The Structure and Scope of Regulation 43		13/	9 Destruction, Spoliation and Pillage of Property in	
7	Prote	ection of the Civilian Population under Belligerent Occupation	1	160		
101	I.	Freedom from Genocide and the Right to Life		160	Occupied Territories	
	-	A. The Prohibition of Genocide		160		
		B. The Individual Right to Life			A. The General Jus in Bello Rule	
	TT			162	B. Article 53 of Geneva Convention (IV)	
	11.	Ensuring the Survival of the Civilian Population		162	C. Extensive and Wanton Destruction	
		A. The Prohibition of Starvation of Civilians		162	D. The Discretion of the Occupying Power	
		B. Sieges		163	E. Special Protection	
		C. Ensuring Essential Supplies		164	(a) Civilian Hospitals	
	III.	Respect for the Rights of Protected Persons		165	(b) Cultural Property	
	IV.	The Prohibition of Hostage-Taking		165	(c) Submarine Cables	
	V.	Collective Penalties and Reprisals		168	F. Demolitions of Houses as a Sanction	
		A. Collective Penalties		168	(a) The Israeli Case Law	
		B. Prolonged Curfews		169	(b) A Trade-Off of Sanctions?	
		C. Demolition or Sealing Off of Houses		170		
		D. Reprisals Powol gruyquooO adi yo nollalalaga		173		
	VI.	Deportations and Transfer		174	II. Spoliation and to have land another state of the notation of the state of the s	
		A. Voluntary Departure, Deportation and Relocation		174	III. Pillage	
		B. The Israeli Practice			A. The General Prohibition	
				176	B. Cultural Property	
		C. Individual versus Mass Deportations		177	10 an Occupied Territory	A. Admission
		D. 'Exclusion' versus Deportation		180	10 Seizure and Requisition of Property in Occupied T	erritories
		E. The State of Nationality versus Other Countries		181	I. General Observations	
		F. Occupying versus Occupied Territory		183	A. Definitions another	
	VII.	Evacuation		184	B. Challenging the Validity of Seizure	
	VIII.	Internment (Administrative Detention)		185	C. The Distinction between Public and Private Propert	VI. Freedom of Rey
		A. Internment as a Safety Measure		185	II. Public Property	IL Human Dignity
		B. The Difference between Internment and Imprisonment		187	A. Immovable Property	
		C. Appeal and Periodic Review		188	(a) The Rights of Usufruct	
	IX.	Assigned Residence		190	(b) Mining Rights molling and the best of	
	X.	Compulsory Work		192	(c) New Mines and Quarries	
		III. Taxation			(d) New Oil Wells	
3	Speci	ial Protection in Occupied Territories	1	194	(e) Permanent Sovereignty over Natural Resource	C Withdraw
		Refugees		194	B. Movable Property	D Binding D
					D. WIOYADIC PROPERTY	

Contents

ix

C. Withdrawal from an Occupied Territory

D. Binding Decision by the UN Security Council

292

293

	П.	Partial End of Belligerent Occupation	294
	11.	A. Agreement between the Parties	294
		B. The Tide of Hostilities	290
		C. Israel's Unilateral Withdrawal from the Gaza Strip	296
		(a) The Gaza Strip and the West Bank as a Single Unit	297
		(b) Israel's Continuing Links to the Gaza Strip	298
		(c) Use of Force	301
		(d) Effective Control	301
		(e) The Impact of the 'Oslo Accords'	302
I	II.	Post-Hostilities Belligerent Occupation	303
		A. Belligerent or Pacific Occupation?	303
		B. Article 6 of Geneva Convention (TV)	303
		(a) The Special Legal Regime	303
		(b) The Meaning of the Special Regime	304
		(c) When Is the Special Regime Applicable?	304
I	V.	The Consequences of the Termination of Occupation	306
		A. Legislation and Official Appointments	306
		B. Prisoners and Detainees	307
		C. Postliminium and Acquired Rights	308
		a se married care languard destring discourse	
onclu	isio	on	309
dex	of F	Persons	311
		Subjects	317
eren (1 0	Subjects .	317

Contents