

EVOLUTION OF THE LEGAL REGIME OF OCCUPATION IN THE CONTEXT OF INTERNATIONAL PEACE AND SECURITY OPERATIONS

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The modern architecture of international security demonstrates a profound evolution of the legal regime of military occupation: from the classical models of the early 20th century to complex hybrid forms within international peace and security operations. Although the Hague Regulations of 1907 [1] and the Geneva Conventions of 1949 [2] remain the foundational pillars, contemporary practice increasingly shows a departure from strict adherence to the actual "dictate of power" by an adversary in favor of more flexible models for regulating foreign presence [8, pp. 1-5].

A key stage of this transformation was the emergence of new formats of foreign military presence, particularly international territorial administration under the auspices of the UN. Such situations create unique legal collisions: they combine features of *de facto* territorial governance (inherent to occupation) with the legitimate aim of restoring peace. This necessitates a reimagining of classical norms of International Humanitarian Law (IHL) and their adaptation to cases where the line between occupation and an international governance mandate becomes blurred.

The pivotal criterion remains "effective control," as enshrined in Article 42 of the Hague Regulations. For occupation law obligations to be imposed on a party, the state of control must be factual rather than nominal. Since the law of occupation is part of customary law, it becomes automatically binding for the UN and other international organizations in situations where their forces establish *de facto* control over a territory, regardless of the mission's official status [3; 9, pp. 138-141].

Modern doctrine upholds the approach that the presence of voluntary consent from the host state is the primary factor distinguishing legitimate international administration from *de jure* occupation. The consent of the territorial sovereign effectively negates the state of conflict, transforming the presence of foreign forces into lawful governance based on an international treaty or mandate.

However, the quality of such consent requires critical analysis. If obtained under duress, from an unauthorized body, or amidst the total degradation of

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state institutions, its legal validity is nullified. In cases where a legitimate government is absent or consent is coerced, the international administration essentially converges with an occupational regime, necessitating the application of IHL protective mechanisms for the population [8, 63-65].

Contemporary scholarly discourse views the UN Security Council as an institution capable of dynamically "modulating" the boundaries of occupation law, relying on the hierarchical primacy of the UN Charter (Art. 103). This allows the Security Council to authorize deep structural reforms and suspend the application of classical principles of occupation (Art. 43 of the Hague Regulations), which under normal circumstances prohibit an occupant from altering local legislation.

At the same time, this discretion of the Security Council is not absolute. It is limited by *jus cogens* peremptory norms and the fundamental principle of human dignity. Common Article 3 of the Geneva Conventions serves as a universal legal threshold that international organizations may not ignore, even when possessing the broadest mandate for societal transformation.

The occupation of Iraq serves as an example where the status of the occupying powers (the US and the UK) was explicitly confirmed by UN Security Council Resolution 1483 [4]. This highlighted the priority of the "functional approach": IHL obligations are imposed on an entity as a result of the physical exercise of authority, regardless of the operation's political objective. The Security Council effectively expanded the powers of the occupying authority, allowing it to undertake the reformation of the state system. A vital conclusion from the Iraqi experience is that the law of occupation continues to apply until the factual cessation of effective control. Although Resolution 1546 [5] declaratively proclaimed the end of the occupation in June 2004, the norms of *jus in bello* remained relevant as long as foreign troops maintained real levers of territorial governance.

In contrast to Iraq, a *lex specialis* regime was established in Kosovo, where the international administration (UNMIK) was granted exceptional "quasi-state" powers. The International Court of Justice confirmed the legality of such activities, indicating that they transcend the limits of the classical Hague Regulations, as they are aimed at the fundamental reconstruction of the legal order in the interest of regional stability [7].

However, the refusal to formally recognize the status of occupation led to a "rule of law deficit" and the introduction of absolute jurisdictional immunities for personnel. As Siobhan Wills argues, relying on the standards of occupation law would have been more appropriate, as this legal regime is historically better adapted to balancing the interests of the administrator, the local population, and the nominal sovereign in conditions of a political vacuum [10, pp. 245-248].

In summary, the use of a clearly determined body of *jus in bello* norms provides the international administrator with a legitimate toolkit for stabilizing the situation. Relying on IHL not only restrains pressure from local political forces but also provides legal grounds for the temporary restriction of sovereign prerogatives to restore peace.

Despite the UN's institutional tendency to avoid the term "occupation," recognizing the factual circumstances of control and applying relevant protective standards is a necessary condition for protecting human rights and clearly defining the boundaries of responsibility for international forces. This allows for the adaptation of international governance to the needs of post-conflict settlement without losing legal certainty.

The experience of international administration in Kosovo and Iraq is critically important for Ukraine in the context of the future restoration of de-occupied territories. Applying a functional approach to international presence will help avoid legal uncertainty, ensuring a balance between the need for deep reforms and the protection of fundamental human rights guaranteed by the norms of *jus in bello*.

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