Introduction

> One of the methods of scientific research,
> particularly when it is concerned with the forms of life,
> is the comparison between similar phenomena;
> firstly in order to discover their essential characteristics;
> secondly in order to place them in the historical perspective
> which will throw light on their true nature
> and the seeds of development they bear within them.
>
> Max Huber, *On the Place of the Law of Nations in the History of Mankind*, 1958

For States with territorial ambitions, military occupation is still a tool of choice. Traditional occupation law allows the occupant to use the resources of an occupied territory and to transform its economy, so as to make it dependent upon the occupying State. The similarities between military occupation and historic colonialism are apparent. Notably, military occupation *per se* is not illegal. It is only illegal to start the war that precedes the occupation. But even if the occupant started the war, his economic rights under occupation law apply regardless. This is due to the distinction of *ius ad bellum* and *ius in bello* – meaning that, no matter who started, the same rights apply to each party. The prohibition of the use of force in the Charter of the United Nations is thus powerless against traditional occupation law and the economic benefits it grants to the occupant.

While historic colonialism has been largely defeated under the Charter, military occupation has not received the same treatment. With the help of Chapter XI, historic colonies may have been freed, but foreign domination persists elsewhere. Notably, Chapter XI does not speak of 'colonialism'. It is not a historic relic, but a timeless provision. Chapter XI simply refers to territories that do not govern themselves. An occupied territory is governed by the occupant and not by itself, and therefore should fall under Chapter XI. Yet, so far, the application of Chapter XI to

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military occupations has not been thoroughly explored. The time is ripe to take a fresh look at Chapter XI and how it can counter the economic incentive to occupy that still comes with traditional occupation law.

A contemporary interpretation of Chapter XI will reveal that it subjects an occupant to extensive economic obligations. Chapter XI prescribes that all interests belong to the inhabitants and not to the foreign power. Under Chapter XI, an occupant does not dispose of the land and its proceeds and cannot transform the economy at will. He also must not make a foreign territory dependent upon him by isolating it from the world economy. These obligations render it economically unattractive to stay in foreign territory by force.

Military occupation is a state of war not of peace, and it suspends the equality of an occupied territory. But peace and equality are the main goals of the United Nations as stated in the Charter. Therefore, the Charter must offer an alternative to traditional occupation law and its incentive to occupy. This alternative is found in Chapter XI. Chapter XI is the neglected link in the Charter towards the goal of peace and equality.

This book operates in two parts. It compares the rules of traditional occupation law (Part I) with the rules of Chapter XI (Part II). Both parts show how each legal regime applies and how other rules of international law interplay. Part I illustrates the dire economic situation of an occupied territory subjected to traditional occupation law. The territory and its inhabitants largely find themselves at the mercy of the occupant. In stark contrast, Part II shows how the economic situation of an occupied territory would improve legally, if Chapter XI were applied. Finally, the Synopsis recalls that Chapter XI presents a paradigm shift for the law of military occupation while leaving the right to self-defense intact.

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