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Foreword

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Foreword

Dr Waad Abualrob's book, *Protection of the Environment under International Law during Occupation: International Humanitarian, Human Rights and Environmental Law*, is a welcome addition to scholarship on the law of occupation. The book is a great example on how research on international law and the administration of occupied territory is evolving in order to address new challenges and advance the protection of human interests in occupied territory.

Exploring the legal regulation of occupied territory is far different today than it was in the past. Albeit the rights and duties of occupying powers are still today governed by rules of international humanitarian law codified in 1907, 1949, and (to a less extent) 1977 – the so-called law of occupation –, it is increasingly accepted that other branches of international law apply in occupied territory along with international humanitarian law. This shift is likely caused by the realisation that international humanitarian law only applies to certain conduct in armed conflict, while other activities are not regulated by it.¹ In situations of occupation, the occupying power is tasked with administering the occupied territory during an armed conflict: during occupations, people are born and die, they marry and they divorce, they go on strike and they go on holidays. From this perspective, the administration of an occupied territory is as complex as the peacetime administration that a government undertakes over the territory of a state. The law of occupation struggles to address all the issues that might affect human life in occupied territory. Some of these issues were not perceived as relevant at the time of the codification of international humanitarian law and were left out. Other issues involving long-term actions were neglected because the drafters of the law of occupation had in mind short-term occupations. Yet, practice has demonstrated that, contrary to this assumptions, occupations can last several decades, and the human needs to be addressed in occupied territory are broader than the traditional understanding of the scope of the law of occupation.

The protection of the environment is one of the issues that is not directly addressed by the law of occupation. Indeed, when the 1907 Hague Regulations and the 1949 Fourth Geneva Convention were adopted, states assumed that they had more pressing concerns than the protection of the environment in relation to the administration of occupied territory. Thus, international humanitarian law does not provide any specific rule on environment in occupied territory. Even the subsequent codification of the 1977 Additional Protocol I is applicable to occupied territory only in relation to the employment of means and methods of warfare, which are typical of conduct of hostilities rather than of occupations.

However, these considerations did not discourage Dr Abualrob, who explores in this book the topic of the protection of the environment pursuant to a rigorous and effective analysis. First, the book tries to apply to the protection of the environment rules of international humanitarian law that were adopted with different issues in mind. Dr Abualrob considers both specific rules binding the occupying power, for instance, in relation to the protection of property, and general principles governing the administration of occupied territory, such as the duties to restore and ensure civil life in occupied territory and to preserve the legal framework that existed before the occupation. Dr Abualrob demonstrates that international humanitarian law can offer some protection to those elements of the environment that can be considered to be either private or public property, advancing at the same time a compelling argument that the occupying power must restore and ensure environmental protection in occupied territory as part of its obligations in relation to civil life. In doing so, the occupying power must apply the local legislation in force prior to the occupation, which can include rules protecting the environment.

Is this enough to protect the environment in occupied territory? Of course not, since the rules of international humanitarian law that form the law of occupation were not drafted with the protection of the environment in mind, and are often framed as obligations of diligent conduct. Correctly, then,

¹ International Court of Justice, *Legal Consequences of the Constriction of a Wall in the Occupied Palestinians Territory*, Advisory Opinion, I.C.J. Reports 2004, para 106.

Dr Abualrob moves on to analyse the impact on the application of international human rights law in occupied territory. Indeed, the enjoyment of many human rights is strictly linked to the availability of a clean environment. Accordingly, after having recalled the consistent approach of international judicial decisions on the application of international human rights law conventions in occupied territory, the book argues that within the framework of the law of occupation, applicable international human rights law can contribute to the protection of the environment in occupied territory. This is a correct and farseeing conclusion, which is reached also paying due consideration to the current debate on whether a new and autonomous human right to a clean environment has emerged.

Finally, Dr Abualrob analyses whether international environmental law conventions apply in occupied territory and to what extent they may contribute to the protection of the environment in occupied territory. This is quite a novel question that deserves attention. Why should we integrate the law of occupation with international human rights law conventions only? The variety of situations that an occupying power must address in relation to the protection of human interests in occupied territory justifies enquiry into whether other branches of international law may apply as well. Correctly, Dr Abualrob argues that international environmental law convention may apply in occupied territory if their scope of application is not limited to peacetime and to the territory of the contracting states. Even though, currently, there is no international judicial decision on this point, the announcement of some litigations pertaining to the application of international environmental law treaties in formerly occupied Nagorno-Karabakh – which Dr Abualrob has analysed in previous publications² – demonstrates how topical is the analysis of this book.

Overall, when Dr Abualrob told me that his PhD dissertation has been accepted to be published in book form I was not surprised. This book fills a lacuna of international law scholarship by bringing together the different fields of international humanitarian law, international human rights law, and international environmental law. The approach that the reader will find here should be applied in the future to other issues pertaining the protection of human interests in occupied territory, which should be addressed taking into account international humanitarian law, international human rights law, and the specific international law branch at stake case by case (here, international environmental law; in other contexts, other branches such as international health law or international labour law).

We live in a time when new occupations are becoming more and more frequent, as demonstrated by the 2022 invasion and occupation of Ukraine by Russia, and when old occupations are becoming increasingly brutal for the local population, as shown by the 2023 and 2024 atrocities in the Gaza Strip. The study of the law of occupation needs rigorous and future-looking analysis as the one in the present book. I am sure that Dr Abualrob's work will be of interest for both experts of international humanitarian law and of international environmental law. The reader might disagree with some of the findings presented here but no future discussion on the protection of the environment in occupied territory could prescind engaging with this work.

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² Waad Abualrob, Marco Longobardo and Ruth Mackenzie, 'Applying International Environmental Law Conventions in Occupied Territory: The Azerbaijan v. Armenia Case under the Bern Convention', *EJIL:Talk!*, 12 May 2023, <https://www.ejiltalk.org/applying-international-environmental-law-conventions-in-occupied-territory-the-azerbaijan-v-armenia-case-under-the-bern-convention>