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The International Law of Occupation

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BOOK NOTES

BENVENISTI, EYAL, THE INTERNATIONAL LAW OF OCCUPATION; Princeton University Press, Princeton, NJ (1993); ($29.95); ISBN 0-691-05666-8; 241 pp. (hardcover) Index.

Eyal Benvenisti charts the history of the law of occupation, examines contemporary responses to it, and prescribes guidelines for the lawful management of occupation in this thorough introduction to the topic. One chapter is devoted exclusively to the Israeli occupation of the Golan Heights, West Bank, Gaza, and the Sinai. Another chapter examines a plethora of occupations that have occurred in the past twenty-three years, including those in Afghanistan, Kuwait, and Bangladesh. Mr. Benvenisti, a lecturer at the Hebrew University of Jerusalem, offers a historical view of enforcing international occupation law before concluding with his own response to lawfully monitoring an occupied territory in view of the difficulties of enforcing customary international law.

A framework of applicable international law provides the background for the author's discussion. Two documents have generally been recognized as the customary law on the law of occupation: Article 43 of the 1907 Hague Regulations and its successor, Article 64 of the Fourth Geneva Convention. Article 43 imposes a general responsibility on the occupying power to maintain public order and unless prevented, respect the laws of the occupied country. Early attitudes toward Article 43 viewed occupation as a transient situation, eventually leading to territorial concessions by the defeated party. However, as time passed, the economic and political rifts between occupier and occupant lead to profound economic stagnation, among other problems. Article 64 attempted to enforce Article 43, and the author argues, introduce new elements into the law of occupation, such as further delineation of an occupier's duties.

Benvenisti's examination of the occupied Israeli territories is succinct, without sacrificing the relevant historical facts. He discusses both the judicial and economic response to the occupations, briefly mentioning the import, export, taxation, and employment ramifications. He is obviously comfortable with his history here, describing all facets of the occupation, from the Jewish settlements to the applicable international law.

The chapter on "Occupations Since the 1970s and Recent International Prescriptions" is no less interesting or informative. From the Iraqi occupation of Kuwait to the Indian occupation of Bangladesh, Benvenisti

peruses the globe in his assessment of the legality and policies of various invasions. Because he covers so many occupations, he limits his discussion of each country to a page, tying up the loose ends in his analysis at the end of the chapter.

In his final two chapters, the author discusses the success of existing institutions in enforcing international occupation law and offers his own recommendations on enforcement policies. He suggests the main problem of supranational tribunals, such as the International Court of Justice, is the obvious lack of states' consent to have occupation issues adjudicated. In addition to international covenants and agreements, Benvenisti advises that the "most promising concerted and hence powerful reaction to unlawful occupation measures is the collective power behind international global and regional organizations." In his concluding remarks Benvenisti outlines the duties and powers of the occupying force, leaving the reader with his hope that deficiencies in current occupation law "will pave the way for the creation of international institutions [designated to monitor and enforce international occupation law]."

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CLAPES, ANTHONY LAWRENCE, SOFTWARS: THE LEGAL BATTLES FOR CONTROL OF THE GLOBAL SOFTWARE INDUSTRY; Quorum Books, Westport, CT (1993); ISBN 0-89930-597-0; 325 pp. (hardcover) Index.

The title of Mr. Clapes' latest effort, *Softwars*, refers to the debate over how much proprietary protection should be granted to the creators of computer programs. The literal elements of software, source and object code, are widely established as proper subjects for copyright protection. But the debate rages fierce—in courtrooms, legislatures, and professional symposia throughout the industrialized world—over the extent copyrights protect the nonliteral elements; i.e. "look and feel," "structure sequence and organization," and user interface.

To what extent does the copyright protect the screen displays, menus, audio input and response, assignment of function keys, command language, use of color, and iconography of a software package? When are these elements capable of such limited expression that they merge into the unprotected idea of the program? Is software predominantly utilitarian, with a limited number of efficient methods of operation for a given use? Or is software more artistic and creative, with endless possibility for expressive variation?

These legal issues cannot be separated from the public policy question. Will the broad protection of software maximize innovation by supplying the impetus to create, or will it unnecessarily stifle the free flow of information and thereby curtail innovation? "One side in the softwars vigorously avers that without strong legal protection for computer programs, the industry will stagnate. The other side swears that unless legal protection for computer programs is weakened, a few large monopolists