

**BOOK REVIEW:****MARCO LONGOBARDO: “THE USE OF ARMED FORCE IN OCCUPIED TERRITORY”<sup>1</sup>**

The International Law of Belligerent Occupation, a branch of International Law and part of International Humanitarian Law (IHL), has been well regulated and analyzed. The foundation of this branch of law dates back to the 19<sup>th</sup> century and most of its primary sources that were enacted dozens of years ago are still valid. However, state practice has developed since then and so has the legal research in identifying new issues and in unveiling new doctrines and approaches within the modern context. *Marco Longobardo's* book “*The Use of Armed Force in Occupied Territory*” is a valuable example of such scholarly research.

Besides the academic and scientific value of the book, we decided to write and publish a review of it in the *Levan Alexidze Journal of International Law (LAJIL)*, because *Marco Longobardo's* book was presented to a wide audience in Tbilisi, at an event hosted by the *Levan Alexidze Foundation* in January 2020 to celebrate the start of The International Law Weekend and the launch of the First Edition of the LAJIL. At that time, a book on the Law of Occupation by the author of this review was also presented. The considerable interest for the topic and for *Longobardo's* book among the students and academics gathered at the event triggered our desire to publish a review of the latter in the current (second) Edition of the LAJIL.

The book deals with a yet unexplored issue, namely the use of military force during occupation. *Longobardo* provides an insightful, thorough examination of the use of armed force through the different prisms of occupation. In particular, he studies (i) the applicability and relevance of *Jus ad Bellum* and of the rules of self-defense to military occupation; (ii) the admissibility of armed resistance against the occupying Power; (iii) law enforcement operations in occupied territories; and (iv) human rights standards in the context of the right to life during occupation. In short, *Longobardo* attempts to examine all possible scenarios where different actors might resort to the use of force during occupation. Among those actors are, first and foremost, the occupying Power but also local armed resistance groups, terrorists or the civilian population, as well as police and other law-enforcement bodies. Therefore, the provisions of the law of occupation are examined through the lens of international law of the use of force, of self-determination, and of human rights.

The theme of the book is quite challenging in the modern context, because examples of various occupations demonstrate that, although occupation is meant to re-establish a “peace-time like” situation, armed confrontations occur frequently, especially when the occupation is of long duration. The occupation of the Palestinian Territories is perhaps the clearest demonstration thereof. The need of an in-depth analysis of this issue is warranted

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<sup>1</sup> Dr. Marco Longobardo is a Lecturer in International Law at the University of Westminster where he is teaching public international law, international human rights law and international criminal law. He has written extensively about the various aspects of occupation. This review relates to his latest book on “The Use of Armed Force in Occupied Territory”, Cambridge, CUP, 2018, XXIX and 320 pp. ISBN: 9781108473415.

by the fact that the rules regulating the use of force in occupied territory are not explicitly laid down in hard or soft law instruments and therefore interpretations of existing rules by legal scholars gain momentum as more and more frequently armed clashes are reported from occupied territories. *Longobardo's* research in this respect is very timely and important, as his book constitutes a first attempt to study the use of force in occupied territory from all angles and to provide useful insights and conclusions. Apart from students, academic and scientific circles, the target audience of this book also includes the international courts and tribunals,<sup>2</sup> international organizations and most importantly military commanders, state authorities, as well as non-state groups that are engaged in hostilities in occupied territories.

The Book consists of seven Chapters and a Foreword by Professor Eyal Benvenisti,<sup>3</sup> a renowned expert, who has extensively published on the law of occupation.

The first two Chapters examine law and practice of military occupation. The Author extensively analysis how the classical typology of belligerent occupation has undergone changes due to contemporary practices in different parts of the world. Referring to scholarly works on the use of armed force in occupied territories both before and after WWII, *Longobardo* highlights examples of post-WWII occupations, starting with Namibia, continuing with Palestine, Northern Cyprus, and concluding with the more recent “beyond the norm“ occupations of Nagorno Karabakh, Transnistria, Abkhazia and South Ossetia, in which occupation as such is not explicitly occurring since the occupying Powers are using proxy regimes to control the territory. Subsequently, the Author provides a detailed analysis of the elements and basic principles of military occupation. He concludes that occupation is a factual situation that once established, activates a special legal regime. This legal regime consists of three layers (i) domestic legislation in force at the time when occupation commences; (ii) military rules adopted by the occupying Power; and (iii) international law norms applicable during occupation. (p.83) *Longobardo* notes that in light of the *erga omnes* character of some provisions of international humanitarian law, the law of occupation leads to multifaceted legal relations among the occupying Power, the displaced government/sovereign, the population of occupied territories, as well as all actors of the international community who support compliance with IHL. (p.86) This is a rather broad interpretation of the law of occupation which was previously perceived as strictly regulating legal relations between the occupying Power and the ousted government on the one hand, and relations between the occupying Power and the civilian population of the occupied territory on the other hand. Contemporary state practice and the development of IHL norms, however, demonstrate that States, other than the ones directly involved, might also have an interest in ensuring that the rules and customary provisions of the law of occupation are duly respected, and thus making compliance with the law of occupation a global concern that engages the collective interest of the entire international community.

<sup>2</sup> In fact, the Book has already been cited by the Prosecutor of the International Criminal Court. See OTP, Prosecutor's Response to “Sentencing Appeal Brief” in the case of The Prosecutor v. Bosco Ntaganda, ICC-01/04-02/06, 14 April, 2019, n.174, p. 33/72.

<sup>3</sup> Dr. Eyal Benvenisti is a Whewell Professor of International Law at Cambridge University, having also taught at many other prestigious universities around the world.

The Author is, therefore, right to identify first the concept, principles and premises on which the law of occupation is established, and subsequently to address the use of force during occupation. In short, the two Chapters serve as a gateway into the realm of the law of occupation, describing the general notions of military occupation and paving the way towards more specific issues related to the use of armed force in occupied territory.

Chapter Three analysis the role of *Jus ad bellum* in relation to the law of occupation. In particular, the Author discusses the relevance and applicability of the norms governing the use of force by states and self-defense rules as provided in Articles 2(4) and 51 of the UN Charter. *Longobardo* examines the possibility of claiming the right to self-defense from the perspective of both the occupying Power and the occupied State. In analyzing an albeit limited state practice and case law of international courts, the Author concludes that the rules of self-defense are not applicable to justify the occupying Power's use of force. Furthermore, *Longobardo* examines why the occupying Power cannot invoke *jus ad bellum* norms during occupation, referring to the ICJ's famous *Wall* Advisory Opinion of 2004 in which the Court affirmed the inapplicability of *jus ad bellum* but did not explain why. (p.118) According to the Author, the main reason for precluding the application of *jus ad bellum* is the fact that belligerent occupation amounts to ongoing armed conflict which is fully governed by international humanitarian law, even if there are no active hostilities; that the rules on the use of force are irrelevant in this regard because their applicability would have to be raised before belligerent occupation begins in order to determine legality of action, which prompted commencement of occupation. *Longobardo* also examines the possibility to invoke the right of self-defense by the occupied State, when a part of that state is under the control of an alien occupant. He rightfully notes that international law allows the state whose territory is occupied to use armed force in individual or collective self-defense since the occupation of a portion of its territory is considered to be an armed attack within the meaning of Article 51 of the UN Charter. (p.126) At the same time, the Author acknowledges that the international community usually supports peaceful mechanisms to terminate an occupation, which would render a military response as self-defense unlawful since not necessary. It is crucial to distinguish between the right to self-defense of the occupying Power and that of the occupied State. With regard to the former, such right does not exist at all, while the latter can justify the legality of armed force used in self-defense against the occupying Power because occupation should be considered as an armed attack, which creates a continuing right of self-defense of the occupied State.

Chapter Four provides an insightful study of a challenging topic - the admissibility of armed resistance against the occupying Power. The Author makes it clear that the IHL instruments do not impose a duty of obedience upon the civilian population of the occupied State, but that they acknowledge a people's fight against oppressive regimes in enjoyment of their right to self-determination. Based on this analysis, *Longobardo* draws an important conclusion, which in my view best summarizes the objective of the entire book: He notes that international humanitarian law does not prohibit armed resistance against the occupying Power, even if conducted by civilians. However, IHL does not provide a 'right' to [such] resistance either. (p.149) Most importantly, the Author underscores that

the legitimacy of such resistance is dependent on the conduct of hostilities in compliance with the rules of IHL. In other words, if the population under an occupying Power wants to resist occupation with military means, they should carry out armed attacks in line with international law, since otherwise such resistance would inevitably be illegitimate. I agree with the Author that the legality of armed resistance may appear ambiguous since the law of occupation does not address this issue directly. (p.148) However, I would respectfully add that it is within the spirit of the law of occupation to maintain a normal, peacetime-like life in the occupied territory and to ensure public order and security for the local population, and that therefore armed resistance against the occupying Power might be unlawful, unless all peaceful means have been exhausted.

Given the primary duty of the occupying Power to restore and ensure public order and civil life in occupied territories, *Longobardo* in Chapter Five describes the possibility of the use of force during law-enforcement operations. He argues that police operations are governed by domestic legislation and international human rights law and that the law of occupation requires the application of these branches of law during law-enforcement operations. Since the scenario and the standards in such situations do not differ from the ones that would have been applicable in peacetime if the displaced sovereign had been in power, the threshold for the protection of human rights is much higher for the occupant to comply with, than in other situations. The Author also discusses a second paradigm, which is the conduct of hostilities in occupied territory. In such a situation, armed violence between the army of occupation and various local groups amounts to armed conflict and IHL rules related to the conduct of hostilities are activated. The observance of human rights standards with regard to law-enforcement operations on the one hand and the conduct of hostilities on the other hand is further demonstrated with regard to the right to life in Chapter Six. The Author's analysis of the right to life viewed through the two paradigms referred to above, once again clearly demonstrates that the threshold for the protection of human rights standards is relatively low during the conduct of hostilities in occupied territory and rather high during police operations.

The “*Use of Armed Force in Occupied Territory*“ is an original, comprehensive, and professional study of the various aspects of the law of occupation. What seemed most attractive to me in this book and what I greatly enjoyed when reading the book is the courage of the Author to express new ideas, sometimes to divert from conventional understandings of the law of occupation, and to interpret existing norms in taking into account the new realities on the ground and State practices in the world we live in - without ever forgetting the objective and purpose of those norms. It requires considerable expertise to study novel and yet unexamined issues of the law of occupation and after a thorough analysis to conclude that the use of armed force is indeed a common phenomenon of occupations; Although regulated by international law it has attracted surprisingly few scholarly studies. (p.270) *Marco Longobardo's* Book is therefore a highly welcome contribution to the scientific literature that will be used as a point of reference for many years to come.

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