

From 'Assigned Residence' to 'Zone': Introduction to the Book Review Symposium on The ABC of the OPT

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I. The Laboratory

Israel's occupation or "control" (as the book prefers to call it) of Palestinian Territory that began with six days in June 1967, presents a depressing and tragic political and moral conundrum. For the international lawyer, it is also a legal laboratory of global relevance. "The Israeli occupation of Palestine embodies a fateful and troubling paradox regarding international law that we must acknowledge and think our way through", writes Michael Lynk, the United Nations Special Rapporteur for the situation of human rights in the Palestinian Territory occupied since 1967, in his contribution to this symposium. A paradox, because the legal texts produced around it have on the one hand contributed to the progressive development of international law and have shaped key principles ranging from self-determination to the non-recognition of unlawful territorial acquisitions, but have on the other hand undermined international law because the actors involved in the management of the conflict have "consistently marginalized the promise and power of the rule of law as a political and diplomatic touchstone", writes Lynk.

For the authors of the ABC, what matters most is that – far from being a space of lawlessness – , the Israeli occupation is "filled to the brim with legalism" (ABC, at p 21). The control of the Palestinian territories is probably "the most legalized such regime in world history" (ABC, at p. 2). It is therefore a "laboratory", and "[a] careful scrutiny of the experiments carried out in Israel's legal laboratory may well generate lessons that are relevant to other situations, and indeed to the course of the development of international law itself" (ABC, p. 5).

II. The Book

Israel's half-a-century long rule over the West Bank and Gaza Strip has been the subject of extensive academic literature, also in international law. Yet, there had been no comprehensive, theoretically informed, and empirically based academic study of the role of various legal mechanisms, norms, and concepts in shaping, legitimizing, and responding to the Israeli control regime. *The ABC of the OPT. A Legal Lexicon of the Israeli Control over the Occupied Palestinian Territory*, the most timely and award-winning new book by Orna Ben-Naftali, Michael Sfard and Hedi Viterbo (Cambridge University Press 2018) fills this gap and offers a comprehensive and yet detailed study of law's role in constructing and maintaining this protracted and highly institutionalized regime. Through the format of an A-Z legal lexicon, the

book critically reflects on, challenges, and redefines the language, knowledge, and practices surrounding the Israeli control regime.

The book is structured in a lexicon format with 26 alphabetically ordered entries – only one for each letter of the alphabet. The choice of words selected for commentary is subversive. The gamut ranges from familiar legal terms such as “combatant”, “proportionality”, and “war crimes” to unsettling and disturbing ones such as “house demolition”, “quality of life: Putting the Gazans on diet”, and “X-rays: surveillance and profiling”.

As the authors explain in their introduction, while the title of their book invokes the commonly used term “OPT” (short for “The Occupied Palestinian Territory”), widely used in reference to the West Bank and Gaza Strip under Israel’s control, the book, in general, avoids reducing Israel’s rule over the West Bank and Gaza Strip to “occupation” and oscillates between the concepts “occupation”, “control”, and “rule”, depending on the context under examination and the chosen analytical approach.

The ABC is first of all committed, engaged legal scholarship in its best sense. It takes the law of occupation seriously, treating it as authoritative, and criticizing it with legal, even legalist arguments, so to speak from “inside the legal universe”. But the ABC also espouses an external perspective by showing how the law of occupation is an epiphenomenon to power, both the product of relationships of domination and the precondition for sustaining them. The combination of both perspectives means, as Orna Ben Naftali writes in the introduction to the ABC, to pursue the “perhaps impossible yet imperative ideal of simultaneously conserving and destroying the law” (ABC, p. 21).

The ABC is a true work of critical legal studies to the extent that at its “heart” – as the authors write – is the analysis of “the role of law in structuring and sustaining the regime” (ABC, at p. 4). The second and related methodological feature is the “narrative” approach building on Robert Cover’s work on nomos. All entries seek to shed light on the narratives which locate the legal institutions and give them meaning.

The combination of an ingenious choice of keywords, solid legal technical craftsmanship, deep knowledge of the law as it stands, the critical spirit, and the embedding in narratives make the book a brilliant piece of scholarship. Unsurprisingly therefore, *The ABC of the OPT* has won much praise. It has been selected for a honourable mention in the category “Certificate of Merit in a specialized area of international law” (2019) by the American Society of International Law’s Book Awards Committee and has also been included in the American Library Association’s Outstanding Academic Titles for 2018.

III. The Book Launch in Berlin

In November 2018, the Max Planck Institute for Comparative Public Law and International Law’s Berlin Office and *Recht im Kontext* (Humboldt-Universität zu Berlin) hosted a Book Launch Conversation on *The ABC of the OPT* with Michael

Lynk, Orna Ben Naftali, Charles Shamas, Yuval Shany and Hedi Viterbo. This symposium takes up a number of the questions and challenges that were discussed on that winter night in Berlin.

Why Berlin? That night, our panelist Charles Shamas (who took a rather sober stock of the role of international law in the conflict) asked the very direct question that might have been also on other participants' minds.

It is Berlin where we currently witness a vibrant and wonderful revival of Jewish cultural life in Germany, with ever more Israelis moving to the city, among them many academics and intellectuals who have made the city their temporary home. And it is, of course, also Berlin where the impact and lasting legacy of the “negative symbiosis” that both unites and divides Germans and Jews, a term first used by Hannah Arendt in a 1946 [letter](#) to Karl Jaspers, later taken up by [Gershom Scholem](#), and by Dan Diner in his [lead article](#) in the first issue of the journal *Babylon* (1986), is ever present and can be intensely felt. As the historian Diner put it: “Since Auschwitz—what a sad twist—we can indeed speak of a ‘German-Jewish symbiosis’—admittedly a negative one: for both Germans and Jews, the aftermath of mass destruction has become the starting point for their respective self-conception; a kind of communality of opposites. For both Germans and Jews have been brought into a new relationship with each other through this event.”

With the renaissance of Jewish life in Germany in recent years, and generational shifts and transformations, this assessment might no longer be entirely true, as Katja Behrens [has argued](#) already in 2000. But the Holocaust was indeed a rupture in civilisation, a *Zivilisationsbruch* (Dan Diner) that ties us, as German international law scholars, in particular ways to the Israeli-Palestine conflict. And it prompts a responsibility to stand up against rising antisemitism as well as to cultivate and protect spaces for free and refined academic and political critique and discourse.

IV. The Epistemic Traditions and Entanglements

Although the lexicon (especially one as the ABC on the OPC, which cunningly chooses only one single word per letter) is not exactly the same genre as the more handbook-like and more complete encyclopedia, we would like to mention, as a historical footnote, that the outstanding Jewish encyclopedia of the interwar period, the German-language *Encyclopaedia Judaica*, was published in Berlin from 1928–1934. Planned to appear in 15 volumes, it remained incomplete (*Encyclopaedia Judaica. Das Judentum in Geschichte und Gegenwart, 10 vols. [A–Lyra], Eshkol, Berlin 1928–1934; in Hebrew: Entsiklopedyah yisra’elit, 2 vols., Berlin/Jerusalem 1929–1932*). Inspired by the groundbreaking encyclopedic projects of the 18th and 19th century, the great modern Jewish encyclopedias were – as Arndt Engelhardt [has shown](#) – important producers and repositories of knowledge, and at the same time instruments to foster collective self-understanding in times of crisis and transformation.

The ABC of the OPT, it should also be noted, has partly been written during Orna Ben Naftali's research visit at the Institute in Heidelberg – where the [Max Planck Encyclopedia of Public International Law](#) seeks to fulfil similar functions.

In earlier days of German (and French) legal scholarship, these functions were fulfilled by the many legal *encyclopaediae* of the 18th and 19th century, written and published in times of ever increasing legal fragmentations. This was an era in which, as Rainer Maria Kiesow writes in his lexicon-format Frankfurt habilitation thesis [Das Alphabet des Rechts](#), completed at the Max Planck Institute for European Legal History, almost every German law student had to attend a compulsory lecture “Juristische Enzyklopädie”.

To us, *The ABC of the OPT* is therefore also an inspiration to revisit, rediscover and revive such traditional, sometimes long-forgotten formats, and to explore new forms of legal writing and teaching.

V. The Blog Symposium

On *Verfassungsblog*, we open the symposium today with a contribution by Michael Lynk, Professor of Law at Western University, London, Ontario, and the United Nations Special Rapporteur for the situation of human rights in the Palestinian Territory occupied since 1967. Lynk deplores a marginalization of “the promise and power of the rule of law as a political and diplomatic touchstone when constructing the negotiation principles for the Oslo peace process” and strongly encourages a courageous re-engagement with international law. “This book reminds us that legal and political exceptionalism is an anathema to a secure and cooperative global society”, he stresses.

Yael Berda, Assistant Professor in the Department of Sociology and Anthropology at the Hebrew University of Jerusalem, argues, in her contribution, that “the format of the lexicon revives the colonial and imperial phantoms that have created international law“ and demonstrates how the use of the lexicon cuts through „the colonial political grammar of the occupation“, taking a closer look on two entries, the ones on “nomos” and on “military courts”.

Yuval Shany, Hersch Lauterpacht Chair in Public International Law at the Hebrew University in Jerusalem, observes that “[t]he book seems to downplay the fact that Israeli politicians, lawyers and judges have not adopted a uniform approach towards the laws of belligerent occupation. To the contrary, the laws of belligerent occupation remain a battleground for pursuing competing legal and political conceptions.”

Nadija Samour, a practising international criminal lawyer based in Berlin, finds in the volume “straight-forward analyses of Israeli policies in Palestine“. Yet, she critically states that “the most urgent task remains unaddressed: to provide an adequate legal framework that moves beyond international humanitarian law – and perhaps one that focuses on ending the occupation“.

A rejoinder by the authors, Orna Ben-Naftali, Michael Sfard, and Hedi Viterbo, shall conclude the symposium.

