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Document type:	Article
Title:	Between consented and un-contested occupation
Author zone:	Kyo Arai
Host item entries:	Israel law review,
Languages:	English
General Note:	Photocopies
Abstract:	<p>It has long been recognised that 'non-consent' is a fundamental element of the law of occupation. Under modern international humanitarian law (IHL), the consensual presence of foreign military forces is generally not seen as belligerent occupation. However, if we accept the principle that the application of IHL should rely on the objective situation on the ground and not on the subjective judgment of the situation of parties to the conflict, it may be natural to diminish the significance of consent by the territorial states in relation to the application of the law of occupation. It may be somewhat harmful to deny such protection based solely on the existence of the territorial states' consent without considering the relationship, in reality, between the occupier and the population in the occupied area. According to a teleological interpretation of IHL, especially when it is obvious that the latter has no allegiance to the former, the tense relationship between them should be regulated by the law of occupation. This article discusses whether and how state consent could be a humanitarian ground to negate the legal protection for its own people, and highlights situations where the local population needs protection by the law of occupation (or comparable rules) in consensual military occupations.</p>
Authors:	Arai, Kyo
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Keyword in French:	OCCUPATION MILITAIRE DIH APPLICABILITE CONFLIT ARME NON INTERNATIONAL

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