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Complementing occupation law ? : selective judicial treatment of the suitability of human rights norms / Ralph Wilde

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Abstract:	<p>This Article offers a critical evaluation of the treatment of the suitability of applying human rights law to occupation situations offered by the English House of Lords in the Al-Skeini judgment of 2007. Al-Skeini concerned the application of the European Convention on Human Rights (ECHR) to the United Kingdom in Iraq. In the decision, the majority asserted that the application of human rights law would amount to a form of "imperialism" in requiring an occupying State to impose culturally inappropriate norms in occupied territory. They also found that its application would undermine the status quo norm contained in occupation law, by obliging an occupying State to transform the legal system in occupied territory in order to bring it in line with the human rights standards in play. This Article argues that these two assertions are based on a mistaken understanding of the substantive meaning of human rights obligations in occupation situations, and the effect on this meaning of the interface with other areas of international law. It is suggested that the fear of "human rights imperialism" is, as articulated here, misconceived; that applying human rights law to occupation situations may not actually involve breaching the law of occupation; and that in any case a more sophisticated approach to the question of clashes in normative regimes needs to be adopted.</p>
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