Introduction

Die Pfosten sind, die Bretter aufgeschlagen,
Und Jedermann erwartet sich ein Fest.
Sie sitzen schon mit hohen Augenbrauen
Gelassen da und möchten gern erstaunen.

Allein sie haben schrecklich viel gelesen.
Wie machen wir's, dass alles frisch und neu
Und mit Bedeutung auch gefällig sei?

Johann Wolfgang von Goethe, Faust,
Vorspiel auf dem Theater

The twentieth century has witnessed a proliferation of forms of international engagement in areas that were typically governed by states. The involvement of international actors in the administration of territory is one of them. The League of Nations assumed a significant role in territorial administration in the 1920s when undertaking functions of guarantee and administration under the Treaty of Versailles. This type of engagement gained new attention in the era of the United Nations (UN). Both the emergence of peacekeeping and the revitalisation of the collective security system after the end of the Cold War sparked a revival of experiments in international administration. Today, there is growing confidence that the UN can perform tasks of governance in post-conflict situations. The Handbook on United Nations Multidimensional Peacekeeping Operations includes international administration of territory as one of

* “The posts are now erected and the planks, And all look forward to a festal treat, Their places taken, they, with eyebrows rais’d, Sit patiently, and fain would be amaz’d, But then appalling the amount they’ve read. How make our entertainment striking, new, And yet significant and pleasing too?” Johann Wolfgang von Goethe, Faust, Prologue for the Theatre.
the functions of multidimensional peacekeeping. However, the format and practice of these engagements is still subject to considerable debate. The enthusiasm about robust UN governance missions that prevailed at the time of the establishment of UN Interim Administration in Kosovo (UNMIK) and the UN Transitional Administration in East Timor (UNTAET) at the end of the 1990s has been tempered by criticism of the UN’s style of governance and calls for a move to “a light footprint” agenda, limiting the role of the UN to the provision of assistance to existing governing authorities and local actors. At the same time, there are some doubts whether and to what extent tasks of territorial administration can be successfully managed without input and expertise from the UN (Iraq).

Both, the historical tradition of territorial administration and its contemporary use as an organising model for the management of transitions from conflict to peace make it likely that the technique of international territorial administration (understood here as “the exercise of administering authority by an international entity for the benefit of a territory

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1 The Handbook on United Nations Multidimensional Peacekeeping Operations notes that peace operations may be required to “administer a territory for a transitional period, thereby carrying out all the functions that are normally the responsibility of a government”. See United Nations, Department of Peacekeeping Operations, Peacekeeping Best Practices Unit, Handbook on United Nations Multidimensional Peacekeeping Operations, December 2003, at 2.


5 This expression was used by the Special Representative of the Secretary-General, Lakhdar Brahimi, see United Nations Assistance Mission in Afghanistan (UNAMA): Mission Structure, UN/IMTF Working Paper No. 2, 14 January 2002.


that is temporarily placed under international supervision or assistance for a communitarian purpose\(^8\) will be replicated in other contexts. However, future experiments of this kind require a thorough analysis of the existing law and practice. International administration has thus far been dominated by “piecemeal” approaches. One experiment has followed another, without a systematic analysis of the flaws and benefits of each engagement. International administration has been criticised for lacking planning and coherence.\(^9\) It is thus important to revisit some of the shortcomings and achievements of the different individual experiments in this area throughout the twentieth century.\(^10\)

1. **Why a study of the law and practice of international territorial administration?**

Such a retrospective is long overdue. Until now, the project of international territorial administration has only been reviewed in a cursory fashion in law and practice. The UN has not undertaken a comprehensive assessment of the practice, but confined itself to a review of individual missions. The “Brahimi Report” devoted only a few paragraphs to the topic of transitional administration, without addressing the substantial tensions and challenges underlying the practice.\(^11\) The Report of the High-level Panel on Threats, Challenges and Change and the Outcome Document of the High-Level Plenary Meeting of the General Assembly in September 2005 recommended some further institutional reform, by favouring the establishment of a Peacebuilding Commission, but failed to list responsibilities in the field of transitional administration as one of the functions of the Commission.\(^12\)

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\(^8\) For a closer analysis of this definition, see below Part I, Introduction.


\(^11\) See paras. 76–83 of the Report of the Panel on United Nations Peace Operations (“Brahimi Report”), UN Doc. A/55/305, S/2000/809 (21 August 2000). The report concluded with one key recommendation, namely to “evaluate the feasibility and utility of developing an interim criminal code, including any regional adaptations potentially required, for use by such operations pending the re-establishment of local rule of law and local enforcement capacity”.

A similar picture prevails in legal doctrine. The issue of international territorial administration has long remained a “sleeping beauty” in terms of legal scholarship.\textsuperscript{13} Although the body of literature is growing,\textsuperscript{14} on the reconstruction and institution-building efforts necessary for recovery from conflict and support the development of integrated strategies in order to lay the foundations for sustainable development”.

\textsuperscript{13} Numerous writings were dedicated to international administration under the Mandates System of the League of Nations or the UN Trusteeship System. See Quincy Wright, *Mandates under the League of Nations* (1930); Hessel Duncan Hall, *Mandates, Dependencies and Trusteeship* (1948); Ramendra N. Chowdhuri, *International Mandates and Trusteeship Systems: A Comparative Study* (1955); Charmian E. Toussaint, *The Trusteeship System of the United Nations* (1956). But few authors explicitly addressed the topic of the administration of territories by international organisations. Some works were dedicated to the practice of the internationalisation of territories. See Alessandro Marazzi, *I Territori Internazionalizzati* (1959); Meir Ydit, *Internationalised Territories: From the “Free City of Cracow” to the “Free City of Berlin”* (1961); Raimund Beck, *Die Internationalisierung von Territorien* (1962); Hurst Hannum, *Autonomy, Sovereignty and Self-Determination* (1996), 375. Later in-depth study was devoted to the analysis of single UN missions or singular problems arising in the context of the assumption of administering authority by the UN. See e.g. John V. Czerapowicz, *International Territorial Authority: Leticia and West New Guinea* (1975); Michael J. Kelly, *Restoring and Maintaining Order in Complex Peace Operations* (1999), 65–90. However, few attempts have been made to put the various fragments of the mosaic together.

several aspects of this phenomenon deserve further scholarly analysis, including issues such as the theorisation of governance\textsuperscript{15} and


\textsuperscript{15} See generally Joseph S. Nye and John D. Donahue (eds.), \textit{Governance in a Globalizing World} (2000). See also below Part III, Chapter 12 and Part V, Chapter 18.
accountability\textsuperscript{16} or the role of international administration in the transformation of the international legal order.\textsuperscript{17}

1.1. Ending misconceptions

In contemporary scholarship, international territorial administration is often treated as a modern phenomenon,\textsuperscript{18} which is misleading.\textsuperscript{19} The wheel was not invented yesterday.\textsuperscript{20} The idea of international territorial administration has a long-established tradition in international law and must be viewed in its evolutionary context.

1.1.1. International territorial administration and modernity

The concept of the internationalisation of territories\textsuperscript{21} became established in the nineteenth century, when groups of states, usually victors after war, shared administering authority over territories, in order to settle competing claims among themselves or to establish multinational zones of power. The first experiment in territorial internationalisation\textsuperscript{22}

\textsuperscript{16} See below Part IV, Chapter 14.


\textsuperscript{22} Waterway commissions, such as the Central Rhine Commission (1804) were created even before that time. See generally on the functional internationalisation of special international regimes, Rüdiger Wolfrum, \textit{Die Internationalisierung Staatsfreier Räume} (1984), 284.
dates back to 1815, when the Final Act of the Congress of Vienna vested Austria, Prussia and Russia with the authority to supervise the local executive and legislative authorities of the “Free City of Cracow” (1815–46) through the Permanent Delegates of the Three Protecting Powers in the city. This example was later followed by multinational administrations of the City of Shanghai (1845–1944), the Island of Crete (1897–1909) and the International Zone of Tangier (1923–57). The notion of direct administration of territories by international organisations emerged in the first quarter of the twentieth century with the establishment of the League of Nations by the Treaty of Versailles. The creation of the League initiated a new era of territorial administration, by placing several territories under the direct authority of the League, instead of conferring administering power exclusively on a restricted group or a consortium of leading European Powers.

The Treaty of Versailles charged the League with a 15-year mandate to administer the Saar Basin through a Commission directly responsible to the League. Similarly, the League assumed an open-ended mandate to guarantee and supervise the administration of the Free City of Danzig through a High Commissioner appointed by the League. Furthermore, the League administered the Colombian Town of Leticia

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23 The legal basis for the Free City of Cracow was a Treaty between Austria, Prussia and Russia of 3 May 1815. Article 1 of the Treaty provided: “La ville de Cracovie avec son territoire sera envisagée à perpétuité comme cité libre, indépendant et strictement neutre, sous la protection des trois hautes parties contractants.” For a full analysis, see Ydit, *Internationalised Territories*, at 95.

24 For a full account, see Ydit, *Internationalised Territories*, at 127–53.


28 See Section XI of the Treaty of Versailles, Articles 100–8. According to Article 103 of the Treaty of Versailles, the Constitution of Danzig was subject to approval by the Council of the League of Nations which assumed the responsibility of guaranteeing it. Furthermore, the League appointed a High Commissioner who was charged with the task of deciding, in the first instance, all disputes between Poland and the Government of Danzig. See generally Ian F. D. Morrow, *The International Status of the Free City of Danzig*, British Yearbook of International Law, Vol. 18 (1937), 114–6; Ydit, *Internationalised Territories*, at 185–230.
between 1933 and 1934 and exercised partial control over the Memel Harbor. These early experiments in internationalisation count among the most inventive examples of international administration of territory. They introduced a significant conceptual leap, by removing territorial administration from the ambit of the exercise of administering power in the name of a single sovereign or a group of states, and linking it to the concept of direct administration by and on behalf of an independent international institution with a distinct legal personality.

The early experience of the League in the field of international territorial administration lost some of its impetus after the end of World War II. Attempts to apply the model of internationalisation to the disputed cities of Trieste and Jerusalem in the immediate aftermath of the creation of the UN Charter failed due to the onset of political rivalries brought on by the Cold War. Instead, the practice of international territorial administration gained new attention in the realm of the maintenance of international peace and security. The UN came to exercise extensive executive powers in the absence of local authorities within the framework of the UN Operation in Congo (ONUC). Furthermore, in 1962 the UN established the UN Temporary Executive Authority (UNTEA) following a Dutch-Indonesian agreement requesting the UN...
to supervise the transfer of West Irian, the western half of New Guinea, from Dutch rule to Indonesian authority after a short period of transitional UN administration. Together with the UN Council for Namibia, which was created in 1967 to "administer South West Africa until independence" after the termination of the South Africa's League of Nations Mandate over the territory, these undertakings constituted the hallmark of international territorial administration under the auspices of the UN until the end of the Cold War.

A more systematic revival of the technique of international territorial administration began only in the 1990s when the performance of administrative functions became, inter alia, an essential component of multidimensional peacekeeping, which placed the objectives of democratisation, human rights protection and the promotion of justice on an equal footing with the traditional aims of ensuring security and promoting development. The UN moved from the level of assistance missions in the cases of Namibia (UN Transition Group in Namibia, UNTAG) and Western Sahara (UN Mission for the Referendum in Western Sahara, MINURSO) to experiments in statebuilding or governance in Cambodia (UN Transitional Authority in Cambodia, UNTAC), Somalia (UN Operation

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38 See Article V of the Agreement Between the Republic of Indonesia and the Kingdom of the Netherlands Concerning West New Guinea (West Irian), 15 August 1962, UNTS Vol. 437, 274, 276.
in Somalia, UNOSOM II,43 Eastern Slavonia (UN Transitional Administration for Eastern Slavonia, UNTAES),44 Kosovo (UN Interim Administration in Kosovo, UNMIK)45 and East Timor (UN Transitional Administration in East Timor, UNTAET).46

Much of the contemporary analysis focuses on the UN Transitional Administrations in Kosovo and East Timor.47 These two missions are, in particular, described as “unprecedented in scope and complexity”,48 because

43 Security Council Resolution 814 (1993) charged UNOSOM II with a broad mandate, including the reconstruction of the Somali police and judicial system, the establishment of regional councils and the maintenance of law and order. For a survey, see Chopra, Peace-Maintenance, 124–60.
45 Security Council Resolution 1244 (1999) authorised the Secretary-General to establish UNMIK. See on the background, Tomuschat, Yugoslavia’s Damaged Sovereignty, at 324.
48 Hans Corell, former UN Legal Counsel, noted at a keynote address on 1 December 2000: “Peace operations under the auspices of the United Nations have become quite different from what they were in the early years of the Organization. It is true that the United Nations also performed administrative functions in West Irian, in Namibia and in Cambodia. However, the two missions in Kosovo and East Timor are unprecedented.” See also Matheson, United Nations Governance of Postconflict Societies, at 79. See also Alexandros Yannis, The UN as Government in Kosovo, Global Governance, Vol. 10 (2004), 67, at 71 (“sui generis and a novel arrangement”). See also Hans-Jörg Strohmeyer, Making Multilateral Interventions Work: The U.N. and the Creation of Transitional Justice Systems in Kosovo and East Timor, Fletcher Forum of World Affairs, Vol. 25 (2001),