International actors have played an active role in the administration of territories over the past two centuries. This book analyses the genesis and law and practice of international territorial administration, covering all experiments from the Treaty of Versailles to contemporary engagements such as the conflict in Iraq. The book discusses the background, legal framework and practice of international territorial administration, including its relationship to related paradigms (internationalisation, Mandate administration, Trusteeship administration and occupation). This is complemented by a discussion of four common legal issues which arise in the context of this activity: the status of the territory under administration, the status and accountability of administering authorities, the exercise of regulatory powers by international administrations and the relationship between international and domestic actors. Alongside surveys of the existing approaches and conceptual choices, the book also includes relevant case-law and practice and lessons learned for future engagements.

Dr Carsten Stahn is a reader in Public International Law and International Criminal Justice at the School of Law, Swansea University. He was Legal Advisor at the International Criminal Court and is visiting Research Fellow at the Grotius Centre for International Legal Studies, Leiden University. He has also worked as a research fellow at the Max Planck Institute of Comparative Public Law and International Law in Heidelberg (Germany) and as a research assistant at the Institute of European Law and International Law of Humboldt University Berlin. Dr Stahn is Managing Editor of the Criminal Law Forum, Senior ICC Editor of the Leiden Journal of International Law and Correspondent of the Netherlands International Law Review.
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The Law and Practice of International
Territorial Administration
Versailles to Iraq and Beyond

Carsten Stahn
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Foreword

The present work on the international administration of specific territories deals not only with the latest examples of UN operations launched by the Security Council under Chapter VII of the UN Charter, but endeavours to confront the reader with the wider panorama of all regimes of internationalisation since the time of the League of Nations. It is on this broad basis that the author succeeds in establishing a balance sheet which shows all of the achievements, but also all of the failures that have occurred in processes of internationalisation implemented since the end of World War I. Notwithstanding the wealth of information displayed, the reader of the book does not lose the requisite orientation. It is indeed not the aim of the author to give primarily an historical account. He intends instead to define the legal premises upon which, under the conditions of an emerging world of common values, any international territorial regime must be founded.

From the inter-war period, Danzig and the Saar are the most prominent examples of internationalised territories. The UN Charter does not provide for a mandate of the world organisation to assume governmental functions in a given country, either permanently or for a limited period of time. Nonetheless, as from its beginning, the world organisation was faced with territorial disputes as heated as those surrounding Jerusalem and Trieste, attempting to reduce national and religious tensions by sophisticated regimes of internationalisation – vainly, as we know with hindsight. As for future developments, the drafters of the Charter had hoped that any people reaching independent statehood would be able to govern itself in a responsible manner. No special powers were set aside for emergency situations during which a nation might fall into chaos and self-destruction. The Trusteeship Council was to lead the peoples still under the trusteeship system to independence. After that occurrence, it
was not supposed to play any further role with a view to helping an infant state find its way on the international stage. Given that the General Assembly has been denied true powers of decision, it was the Security Council which had to fill in the gap left by the lack of imagination of the drafters. Today, it has become an established proposition that the Security Council is authorised to take any measures whatsoever in instances where temporarily an international regime constitutes the only viable solution for a territorial conflict.

It is at that point, however, that difficult questions arise. On the one hand, it is certain that the Security Council enjoys a large measure of discretion in making use of the powers conferred on it by Chapter VII. On the other hand, it pertains to an organisation which has not been endowed with sovereign powers. The Security Council must first of all respect the limitations specified in the UN Charter itself. On the other hand, if it interferes in the interest of the populations concerned it should not deny to those populations the enjoyment of fundamental human rights which the UN has set out to promote and respect. In an ideal world, a UN administration would of course apply in favour of all the persons concerned the full gamut of the human rights enshrined in the major human rights treaties established at worldwide level. This is easier said than done. When the UN is called to perform governmental functions in a given territory or country, the reason is mostly a general breakdown of law and order. Even with the best of intentions, measures must be taken which can easily be criticised as being not in full conformity with the human rights requirements of the International Bill of Rights. In particular, judicial machinery cannot be available as from the very first day of such an emergency operation. Clearly, therefore, compromises must be struck which it is never easy to justify.

Another conundrum is posed by the principle of democratic self-government. Necessarily, an internationalisation process introduces elements of alien domination, albeit by a well-minded custodian. The UN is normally called to intervene in situations where a human community has deprived itself of its capability to rule on its own destiny. In fact, for a democracy to thrive, its members must be prepared to respect the rights of minorities which did not approve of decisions taken by the majority. In many instances, it will be incumbent upon a UN administration first of all to instil in the majority the sense of responsibility which makes life acceptable for all the members of society. In the case of Jerusalem, the desired institutional equilibrium was not reached; in any event, the proposals by the UN were rejected by the parties concerned. In Kosovo,
steps are still being taken with a view to preparing all of the groups of the population for a peaceful coexistence – which requires not only elaborate institutions, but also a spirit of tolerance which cannot be produced ad hoc and ex nihilo. Should the UN administration withdraw even under circumstances which do not augur well for the future? This problem is, as everyone knows, even worse in Iraq which, notwithstanding the unlawful invasion by US and UK forces, was placed under UN authority as a measure of last resort. Once the evil had been done, it could not be made to disappear by the usual means provided for in the rules on state responsibility. A hasty withdrawal as “reparation” would have made matters worse.

Carsten Stahn is fully aware of the intricacies of the many contradictions which are involved in the topic he deals with. Although recognising the hard facts of life, he nonetheless advocates resolving the many ensuing conflicts by complying with the rule of law to the greatest possible extent. In particular, he shows that a UN administration which makes determinations on the destiny of individual human beings cannot shield behind the traditional rule of immunity which otherwise protects the UN against attempts to encroach upon its rights and privileges as a subject of international law. Where the UN steps down to regulate, as a governing authority, the destiny of a human community, it must accept the rules which in the modern world of today shape the relationship between governmental institutions and the persons subject to their jurisdiction. That the king can do no wrong is not an adage suitable to our time.

It stands to reason that the UN is not ideally qualified to assume governmental functions. Since it is composed of 192 states, that variety will also be reflected in any administrative apparatus established by it and the corresponding procedures. However, the international community has not yet come up with better recipes. It may be, though, that in the future the new Peacebuilding Commission, established in 2006, will elaborate appropriate mechanisms which correspond to a greater extent to the requirement of efficiency than the operations of the past. Whatever such prospects, Carsten Stahn has provided us with a nearly complete blueprint for the necessary structure of an interim administration which is destined to end as soon as the population in the territory concerned is able once again to take its fate into its own hands. Although no operation can be implemented exactly in consonance with plans established, the existence of such plans is an indispensable necessity. Whoever takes up such a challenge without sufficient pre-programming, will
end up in a mess or in an outright disaster. Carsten Stahn’s masterful book is therefore compulsory reading not only for scholars interested in the issue, but also for international officers entrusted with any relevant responsibilities.

Christian Tomuschat, Berlin
Preface

The phenomenon of the administration of territories by international actors has a long tradition in the history of international law. State-based forms of administration, such as the internationalisation of territories, Mandate administration, Trusteeship System administration or multinational forms of occupation have been studied in some detail throughout the twentieth century. The exercise of territorial authority by international entities, however, has received less attention. Experiments of this kind were addressed at particular moments in time in the pre-, inter- and post-war years and the 1990s. But scholarship has remained focused on classical questions of public international law (e.g. the legal basis of territorial administration, the status of territories, legal personality) and an analysis of specific phenomena (e.g. the engagements of the League of Nations in the Saar Territory and Danzig and individual United Nations missions).

This focus has slightly changed over the last decade. The topic of international territorial administration has grown into a discipline of legal scholarship, with an ever-increasing amount of literature on different aspects of this type of activity. International territorial administration is thus no longer perceived as the sum of some “sui generis” type of international engagement, but as a distinct form of international authority that may serve as tool of dispute settlement and conflict management. This type of authority shares some conceptual groundwork with related forms of administration, but it has at the same time its own distinct features and problems.

This book seeks to offer a problem-oriented analysis of the project of international territorial administration. It examines the law and practice of international territorial administration before the background of broader themes and debates in contemporary international law, such as
the normative heritage of international law, issues of governance beyond
the state, models of accountability and the theorisation of sovereignty
and neutrality under the United Nations Charter. This perspective re-
quires empirical and theoretical analysis. It is impossible to give a nu-
anced account of the existing practice without a study of the historical
background of individual missions. Moreover, issues of legality and le-
gitimacy are closely linked in this enterprise. Positivist legal research is
thus combined here with considerations of legal policy and reference to
scholarship and critiques from other disciplines.

The research for this work started during my activity as a Research
Fellow at the MPI in Heidelberg (2000–2) and my academic year as a
Doctoral Research Fellow of the Max Planck Society for the Advance-
ment of Science at New York University. Both experiences have laid the
foundation for this book and my perception of law and scholarship.

The initiative for this work goes back to Professor Jochen Frowein
(Heidelberg), who pointed my attention to the legal problems of lawmak-
ing by United Nations administrations shortly after the establish-

In fall 2005, this work was submitted as a doctoral thesis at the Faculty
of Law at Humboldt University, Berlin. The thesis was defended by the
author at Humboldt University on 19 April 2006. It was revised and
finalised in its current form in March 2007. The work was supervised
by Professor Christian Tomuschat who has been a mentor, supporter
and critical observer of my work since my first steps in the field of
international law. His comments, wisdom and guidance throughout the
years have been invaluable. Equal gratitude is owed to Professor Frowein
and Professor Rüdiger Wolfrum (Heidelberg), who have supported my
academic development as a scholar during my years at the Max Planck
Institute in Heidelberg and the time thereafter.

A great number of people have helped me develop and refine my
thoughts on the topic, including my former teachers at New York Univer-
sity (Professor Joseph Weiler, Professor Benedict Kingsbury and Professor
Tomas Franck) and Professor Gerd Seidel, who served as my supervisor
at Humboldt University between 1997 and 1999.

I am further indebted to Judge Tuiloma Neroni Slade and Judge
Ekaterina Trendafilova, who supported my academic work during my
professional activity as legal officer in the Pre-Trial Division of the Inter-
national Criminal Court and encouraged me to complete this book.

I also wish to express my gratitude to Professor James Crawford
(Cambridge) and Professor John S. Bell (Cambridge) for accepting this
work as part of the Cambridge Studies in International and Comparative Law. Thanks are also due to Cambridge University Press, in particular, to Finola O'Sullivan, Richard Woodham and Elisabeth Doyle, for their help in turning this manuscript into a book.

My deepest thanks are owed to my parents, Erdmuthe and Hartwig Stahn. Without their warm support and encouragement, this work would not have been possible. This book is dedicated to them.

Carsten Stahn
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List of abbreviations

AC
 Appeal Cases (England and Wales)

AU
 African Union

BiH
 Bosnia and Herzegovina

CFSP
 Common Foreign and Security Policy

COMKFOR
 Commander of KFOR

CPA
 Coalition Provisional Authority

CRPC
 Commission for Real Property Claims of Displaced Persons and Refugees

DMU
 Detention Management Unit

DPA
 Dayton Peace Agreement

DRC
 Democratic Republic of Congo

ECHR
 European Convention on Human Rights

ESA
 European Space Agency

EU
 European Union

EUAM
 European Union Administration of Mostar

EUFOR RD Congo
 European Union Force Democratic Republic of Congo

FRETILIN
 Revolutionary Front for an Independent East Timor

FRY
 Federal Republic of Yugoslavia

FUNCINPEC
 United National Front for an Independent, Neutral, Peaceful and Cooperative Cambodia

GA
 General Assembly

HPCC
 Housing and Property Claims Commission

HPD
 Housing and Property Directorate

IAC
 Interim Administrative Council

ICC
 International Criminal Court
### List of Abbreviations

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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
</tr>
<tr>
<td>ICJ</td>
<td>International Court of Justice</td>
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<tr>
<td>ICR</td>
<td>International Civilian Representative</td>
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<td>ICRC</td>
<td>International Committee of the Red Cross</td>
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<td>ICTR</td>
<td>International Criminal Tribunal for Rwanda</td>
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<td>ICTY</td>
<td>International Criminal Tribunal for the former Yugoslavia</td>
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<td>IFOR</td>
<td>Implementation Force</td>
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<td>ILA</td>
<td>International Law Association</td>
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<td>ILC</td>
<td>International Law Commission</td>
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<td>ILO</td>
<td>International Labour Organization</td>
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<td>ILM</td>
<td>International Legal Materials</td>
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<td>ISAF</td>
<td>International Security Assistance Force</td>
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<td>INTERFET</td>
<td>International Force for East Timor</td>
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<td>IWG</td>
<td>International Working Group</td>
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<td>JIAS</td>
<td>Joint Interim Administrative Structure</td>
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<td>KCAC</td>
<td>Kosovo Claims Appeals Commission</td>
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<td>Kosovo Force</td>
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<td>KJPC</td>
<td>Kosovo Judicial and Prosecutorial Council</td>
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<td>KPNLF</td>
<td>Khmer People's National Liberation Front</td>
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<td>KTC</td>
<td>Kosovo Transitional Council</td>
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<td>LNOJ</td>
<td>League of Nations Official Journal</td>
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<td>League of Nations Treaty Series</td>
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<td>LON</td>
<td>League of Nations</td>
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<td>MINURSO</td>
<td>United Nations Mission for the Referendum in Western Sahara</td>
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<td>MINUSTAH</td>
<td>United Nations Stabilization Mission in Haiti</td>
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<td>MONUC</td>
<td>United Nations Mission in the Democratic Republic of Congo</td>
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<td>NATO</td>
<td>North Atlantic Treaty Organization</td>
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<td>OECD</td>
<td>Organization for Economic Cooperation and Development</td>
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<td>OHR</td>
<td>Office of the High Representative</td>
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<tr>
<td>ONUB</td>
<td>United Nations Operation in Burundi</td>
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<tr>
<td>ONUC</td>
<td>United Nations Operation in Congo</td>
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<td>ONUSAL</td>
<td>United Nations Observer Mission in El Salvador</td>
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<tr>
<td>ONUVE HEN</td>
<td>United Nations Observer Mission for the Verification of the Elections in Nicaragua</td>
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<td>Abbreviation</td>
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<td>ONUVEH</td>
<td>United Nations Observer Mission for the Verification of the Elections in Haiti</td>
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<td>OSCE</td>
<td>Organization for Security and Cooperation in Europe</td>
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<td>PCIJ</td>
<td>Permanent Court of International Justice</td>
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<td>PIC</td>
<td>Peace Implementation Council</td>
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<td>POLISARIO</td>
<td>Front for the Liberation of Sagua el Hamra and Rio de Oro</td>
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<td>PSC</td>
<td>Peace and Security Council</td>
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<td>SC</td>
<td>Security Council</td>
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<td>SCAP</td>
<td>Supreme Commander for the Allied Powers</td>
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<td>Security Force</td>
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<td>SG</td>
<td>Secretary-General</td>
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<td>SNC</td>
<td>Supreme National Council</td>
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<td>SOFA</td>
<td>Status of Forces Agreement</td>
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<td>Special Representative of the Secretary-General</td>
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<td>TAL</td>
<td>Transitional Administrative Law</td>
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<td>Transitional National Council</td>
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<td>United Nations Assistance Mission in Afghanistan</td>
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<td>UNAMI</td>
<td>United Nations Assistance Mission in Iraq</td>
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<td>UNAVEM</td>
<td>United Nations Angola Verification Mission</td>
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<td>United Nations Emergency Force</td>
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<td>UNIFIL</td>
<td>United Nations Interim Force in Lebanon</td>
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<td>UN-IPTF</td>
<td>United Nations International Police Task Force</td>
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<td>Unified Task Force</td>
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<td>United Nations Interim Administration in Kosovo</td>
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<td>UNMIL</td>
<td>United Nations Mission in Liberia</td>
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<td>UNMISET</td>
<td>United Nations Mission of Support in East Timor</td>
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## List of Abbreviations

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<th>Abbreviation</th>
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<tr>
<td>UNOCI</td>
<td>United Nations Operation in Côte d'Ivoire</td>
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<td>United Nations Observation Group in Lebanon</td>
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<td>United Nations Operation in Somalia</td>
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<td>United Nations Office in Timor-Leste</td>
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<td>United Nations Transitional Authority in Cambodia</td>
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<td>UNTAES</td>
<td>United Nations Transitional Administration for Eastern Slavonia</td>
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<td>United Transitional Administration in East Timor</td>
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<td>UNTAG</td>
<td>United Nations Transition Group in Namibia</td>
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<td>US</td>
<td>United States</td>
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<td>WHO</td>
<td>World Health Organization</td>
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<td>World Trade Organization</td>
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