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978-0-521-87800-5 - The Law and Practice of International Territorial Administration:
Versailles to Iraq and Beyond

Carsten Stahn

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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.

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the functions of multidimensional peacekeeping.¹ 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)² and the UN Transitional Administration in East Timor (UNTAET)³ at the end of the 1990s has been tempered by criticism of the UN's style of governance⁴ and calls for a move to "a light footprint" agenda,⁵ limiting the role of the UN to the provision of assistance to existing governing authorities and local actors.⁶ 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).⁷

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

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.

² See SC Resolution 1244 (1999) of 10 June 1999.

³ See SC Resolution 1272 (1999) of 25 October 1999.

⁴ Chopra compared the United Nations Transitional Administration in East Timor to a "pre-constitutional monarch[y] in a sovereign kingdom". See Jarat Chopra, *The UN's Kingdom of East Timor*, *Survival*, Vol. 42 (2000), 27, at 29. For a critical assessment of UN practice, see also Joel C. Beauvais, *Benevolent Despotism, A Critique of U.N. State-Building in East Timor*, *NYU Journal of International Law and Politics*, Vol. 33 (2001), 1101; David Marshall and Shelley Inglis, *Human Rights in Transition: The Disempowerment of Human Rights-Based Justice in the United Nations Mission in Kosovo*, *Harvard Human Rights Journal*, Vol. 16 (2003), 95.

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.

⁶ See generally Simon Chesterman, *Walking Softly in Afghanistan: The Future of UN Statebuilding*, *Survival*, Vol. 44 (2002), 37–46.

⁷ For a critical account of the dilemmas of the occupation, see Rüdiger Wolfrum, *Iraq – From Belligerent Occupation to Iraqi Exercise of Sovereignty: Foreign Power versus International Community Interference*, *Max Planck Yearbook of United Nations Law*, Vol. 9 (2005), 1; Nehal Bhuta, *The Antinomies of Transformative Occupation*, *European Journal of International Law*, Vol. 16 (2005), 721. The case for UN involvement is further confirmed by a comparative study of US and UN "Ways of Nation-Building". See James Dobbins et al., *The UN's Role in Nation-Building: From The Congo to Iraq* (2005), at 244.

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that is temporarily placed under international supervision or assistance for a communitarian purpose⁸) 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

⁸ For a closer analysis of this definition, see below Part I, Introduction.

⁹ See Edward Mortimer, *International Administration of War-Torn Societies*, Global Governance, Vol. 10, No. 1 (January–March 2004), 7, at 10.

¹⁰ See also David Harland, *Legitimacy and Effectiveness in International Administration*, Global Governance, Vol. 10, No. 1 (January–March 2004), at 15–19.

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”.

¹² See Report of the High-level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, UN Doc. A/59/565 (2 December 2004), paras. 262–4. See also GA Resolution 60/1 (World Summit Outcome) of 24 October 2005, paras. 97–105. Paragraph 98 of the resolution specifies that “[t]he Commission should focus attention

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A similar picture prevails in legal doctrine. The issue of international territorial administration has long remained a “sleeping beauty” in terms of legal scholarship.¹³ Although the body of literature is growing,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”.

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); Méir 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.

¹⁴ Contemporary writing on the topic started in the mid- to late 1990s when Ratner and Chopra addressed the practice of civil administration within in the broader context of works on peace-maintenance. See Steven R. Ratner, *The New UN Peacekeeping: Building Peace in Lands of Conflict After the Cold War* (1995); Jarat Chopra, *Peace Maintenance: The Evolution of International Political Authority* (1999). See also Frank-Erich Hufnagel, *UN-Friedensoperationen der zweiten Generation. Vom Puffer zur Neuen Treuhand* (1996). These works were later followed by research on UN missions of the late 1990s and several contributions directly focusing on the concept of “international territorial administration”. See the articles by Ralph Wilde: *From Danzig to East Timor and Beyond: The Role of International Territorial Administration*, *American Journal of International Law*, Vol. 95 (2001), 583; *Representing International Territorial Administration: A Critique of Some Approaches*, *European Journal of International Law*, Vol. 15 (2004), 71; *From Bosnia to Kosovo and East Timor: The Changing Role of the United Nations in the Administration of Territory*, *ILSA Journal of International & Comparative Law*, Vol. 6 (2000), 467. See also Michael J. Matheson, *United Nations Governance of Postconflict Societies*, *American Journal of International Law*, Vol. 95 (2001), 76; Erika De Wet, *The Direct Administration of Territories by the United Nations and its Member States in the Post Cold War Era: Legal Bases and Implications for National Law*, *Max Planck Yearbook of United Nations Law*, Vol. 8 (2004), 291; Rüdiger Wolfrum, *International Administration in Post-Conflict Situations by the United Nations and Other International Actors*, *Max Planck Yearbook of United Nations Law*, Vol. 9 (2005), 649; Carsten Stahn, *The United Nations Transitional Administrations in Kosovo and East Timor: A First Analysis*, *Max Planck Yearbook of United Nations Law*, Vol. 5 (2001), 105; Carsten Stahn, *International Territorial Administration in the Former Yugoslavia: Origins, Developments and Challenges Ahead*, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, Vol. 61 (2001), 108; Alexandros Yannis, *Kosovo under International Administration: An Unfinished Conflict* (2001); Matthias Ruffert, *The*

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several aspects of this phenomenon deserve further scholarly analysis, including issues such as the theorisation of governance¹⁵ and

Administration of Kosovo and East Timor by the International Community, *International & Comparative Law Quarterly*, Vol. 50 (2001), 555; Christian Tomuschat, *Yugoslavia's Damaged Sovereignty over the Province of Kosovo*, in *State, Sovereignty and International Governance* (Gerard Kreijen et al. eds., 2002), 323; Michael Bothe and Thilo Marauhn, *UN Administration of Kosovo and East Timor: Concept, Legality and Limitations of Security Council Mandated Trusteeship Administration*, in *Kosovo and the International Community* (Christian Tomuschat ed., 2002), 217–42; Outi Korhonen, *International Governance in Post-Conflict Situations*, *Leiden Journal of International Law*, Vol. 14 (2001), 495. See also the more recent contributions by Kirsten Schmalenbach, *Die Haftung Internationaler Organisationen im Rahmen von friedenssichernden Manahmen und Territorialverwaltungen* (2004); Leopold von Carlowitz, *UNMIK Lawmaking Between Effective Peace Support and Internal Self-determination*, *Archiv des Völkerrechts*, Vol. 41 (2003), 336–93; Bernhard Knoll, *Beyond the "Mission Civilisatrice": The Specific Properties of a Normative Order within an "Internationalized" Territory*, *Leiden Journal of International Law*, Vol. 19 (2006), 275–304 and *From Benchmarking to Final Status? Kosovo and the Problem of an International Administration's Open-Ended Mandate*, *European Journal of International Law*, Vol. 16 (2005), 637; Kristen Boon, *Legislative Reform in Post-Conflict Zones: Jus Post Bellum and the Contemporary Occupant's Law-Making Powers*, *McGill Law Journal*, Vol. 50 (2005), 285; Mariano J. Aznar-Goméz, *Some Paradoxes on Human Rights Protection in Kosovo*, in *Völkerrecht als Werteordnung*, *Festschrift für Christian Tomuschat* (Pierre-Marie Dupuy et al. eds., 2006), 15–40 as well as the articles on specific missions in *Global Governance*, Vol. 10, No. 1, January–March 2004 and *Max Planck Yearbook of United Nations Law*, Vol. 9 (2005). Some monographs have addressed the topic of trusteeship. See Richard Caplan, *A New Trusteeship? The International Administration of War-torn Territories*, *Adelphi Paper* 341 (2002); William Bain, *Between Anarchy and Society: Trusteeship and the Obligations of Power* (2003). However, few systematic and comprehensive legal analyses of the role and functions of international organisations in the area of territorial administration exist. The existing literature includes: Outi Korhonen and Jutta Gras, *International Governance of Post-Conflict Situations* (2001); Outo Korhonen, Jutta, Gras and Katja Kreuz, *International Post-Conflict Situations: New Challenges for Co-Operative Governance* (2006), 55–244; Aspen Institute, *Honoring Human Rights Under International Mandates: Lessons from Bosnia, Kosovo and East Timor* (Alice H. Henkin ed., 2003); Simon Chesterman, *You, the People: The United Nations, Transitional Administration and State-Building* (2004); Richard Caplan, *International Governance of War-Torn Territories* (2005); Nigel D. White and Dirk Klaasen (eds.), *The UN, Human Rights and Post-Conflict Situations* (2005); Robert Kolb, Gabriele Porretto and Sylvain Vité, *L'Application du Droit International Humanitaire et des Droits de l'Homme aux Organisations Internationales: Forces de Paix et Administrations Civiles Transitoire* (2005); Michaela Salamun, *Democratic Governance in International Territorial Administration: Institutional Prerequisites for Democratic Governance in the Constitutional Documents of Territories Administered by International Organisations* (2005); Daniel Smyrek, *Internationally Administered Territories – International Protectorates? An Analysis of Sovereignty over Internationally Administered Territories with Special Reference to the Legal Status of Post-War Kosovo* (2006); Dominik Zaum, *The Sovereignty Paradox: The Norms and Politics of International Statebuilding* (2007); Ralph Wilde, *International Territorial Administration* (2008).

¹⁵ See generally Joseph S. Nye and John D. Donahue (eds.), *Governance in a Globalizing World* (2000). See also below Part III, Chapter 12 and Part V, Chapter 18.

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accountability¹⁶ or the role of international administration in the transformation of the international legal order.¹⁷

1.1. Ending misconceptions

In contemporary scholarship, international territorial administration is often treated as a modern phenomenon,¹⁸ which is misleading.¹⁹ The wheel was not invented yesterday.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 territories²¹ 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 internationalisation²²

¹⁶ See below Part IV, Chapter 14.

¹⁷ See generally Benedict Kingsbury, *The International Legal Order*, in Oxford Handbook of Legal Studies (Peter Cane and Mark Tushnet eds., 2003), 271, at 289; Bruno Simma, *From Bilateralism to Community Interest in International Law*, Recueil des Cours, Vol. 250 (1994), 219, at 243–9; Hermann Mosler, *The International Society as a Legal Community* (1980); Christian Tomuschat, *Obligations Arising for States without or against Their Will*, Recueil des Cours, Vol. 241 (1993), 195, at 219–36; Christian Tomuschat, *Die Internationale Gemeinschaft*, Archiv des Völkerrechts, Vol. 33 (1995), 1; Jochen Abr. Frowein, *Konstitutionalisierung des Völkerrechts*, in Völkerrecht und Internationales Privatrecht in einem sich globalisierenden internationalen System – Auswirkungen der Entstaatlichung transnationaler Rechtsbeziehungen (2000), 427.

¹⁸ See, *inter alia*, Wendy S. Betts, Scott N. Carlson and Gregory Gisvold, *The Post-Conflict Transitional Administration of Kosovo and the Lessons-Learned in Efforts to establish a Judiciary and Rule of Law*, Michigan Journal of International Law, Vol. 22 (2001), 372; Dianne M. Criswell, *Durable Consent and a Strong International Peacekeeping Plan: The Success of UNTAET in Light of the Lessons Learned in Cambodia*, Pacific Rim Law and Policy Journal, Vol. 11 (2002), 577; Boon, *Legislative Reform in Post-Conflict Zones*, at 312–15.

¹⁹ See also Ralph Wilde, *Taxonomies of International Peacekeeping: An Alternative Narrative*, ILSA Journal of International & Comparative Law, Vol. 9 (2003), 391, and *Representing International Territorial Administration*, at 75–80.

²⁰ See Ralph Wilde, *The United Nations as Government: The Tensions of an Ambivalent Role*, American Society of International Law, Vol. 97 (2003), 212, and *From Danzig to East Timor*, at 585–7.

²¹ See Rüdiger Wolfrum, *Internationalisation*, in Encyclopedia of Public International Law, Vol. II (1995), 1395; James Crawford, *Creation of States in International Law*, 2nd edn (2006), 233–44.

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, *Die Internationalisierung Staatsfreier Räume* (1984), 284.

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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.²³ This example was later followed by multinational administrations of the City of Shanghai (1845–1944),²⁴ the Island of Crete (1897–1909)²⁵ and the International Zone of Tangier (1923–57).²⁶ 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.²⁷ 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.²⁸ Furthermore, the League administered the Colombian Town of Leticia

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 envisagé 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.

²⁵ See Gorges Streit, *La Question Crétoise sur le Point de Vue de Droit International*, *Revue Générale de Droit International Public*, Vol. 1897, 61–104, 446–83; Vol. 1900, 5–52, 301–69; Vol. 1903, 222–82. See also Ydit, *Internationalised Territories*, at 109–26.

²⁶ See generally Graham H. Stuart, *The International City of Tangier* (1955); Ydit, *Internationalised Territories*, at 154–84.

²⁷ See Section IV of the Treaty of Versailles, Articles 45–50 and Annexes, Articles 1–40. The Governing Commission consisted of five members appointed by the Council of the League of Nations for one year. See generally Fritz Münch, *Saar Territory*, in *Encyclopedia of Public International Law* (Rudolf Bernhardt ed.), Vol. IV (2000), 271; Ydit, *Internationalised Territories*, at 48–50.

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.

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between 1933 and 1934²⁹ and exercised partial control over the Memel Harbor.³⁰ 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,³¹ and linking it to the concept of direct administration by and on behalf of an independent international institution with a distinct legal personality.³²

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 Trieste³³ and Jerusalem³⁴ 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.³⁵ The UN came to exercise extensive executive powers in the absence of local authorities within the framework of the UN Operation in Congo (ONUC).³⁶ Furthermore, in 1962 the UN established the UN Temporary Executive Authority (UNTEA)³⁷ following a Dutch-Indonesian agreement requesting the UN

²⁹ See Francis P. Walters, *A History of the League of Nations* (1952), 525–6, 536–40; L. H. Woolsey, *The Leticia Dispute Between Columbia and Peru*, *American Journal of International Law*, Vol. 27 (1933), 317, Vol. 29 (1935), 94; Ydit, *Internationalised Territories*, at 59–62.

³⁰ Germany renounced its sovereignty over the Memel Territory in favour of the Allied and Associated Powers in Article 99 of the Treaty of Versailles. See John L. Knudson, *A History of the League of Nations* (1938), 185–6.

³¹ See Chopra, *Peace-Maintenance*, at 38–9.

³² The question whether the League had legal personality under international law has been subject to some dispute. Some authors denied its international legal personality. See Percy E. Corbett, *What is the League of Nations*, *British Yearbook of International Law*, Vol. 5 (1924), 119, 119–23. But most observers recognised the League as a juridical person, because it enjoyed the power to conclude treaties, to declare war and to administer territories. See Lassa Oppenheim, *Le Caractère Essentiel de la Société des Nations*, *Revue Générale de Droit International Public*, Vol. 24 (1919), 234, at 244.

³³ For the background, see Leprette Jacques, *Le Statut International de Trieste* (1948); Ydit, *Internationalised Territories*, at 231–72.

³⁴ See the proposal for a Statute of the City of Jerusalem, drafted by the UN Trusteeship Council, 26 May 1950, in *The Jerusalem Question and its Resolution: Selected Documents* (Ruth Lapidoth and Moshe Hirsch eds., 1994), 117; Ydit, *Internationalised Territories*, at 273–315.

³⁵ See Ratner, *The New UN Peacekeeping*, at 97.

³⁶ For an assessment of the UN Operation in Congo, see Georges Abi-Saab, *The United Nations Operation in the Congo, 1960–1964* (1978); Chopra, *Peace-Maintenance*, at 44–5.

³⁷ See William J. Durch, *UN Temporary Executive Authority*, in *The Evolution of UN Peacekeeping* (William J. Durch ed., 1994), 285; Rosalyn Higgins, *United Nations*

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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.³⁸ Together with the UN Council for Namibia,³⁹ 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 multi-dimensional 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)⁴⁰ and Western Sahara (UN Mission for the Referendum in Western Sahara, MINURSO)⁴¹ to experiments in statebuilding or governance in Cambodia (UN Transitional Authority in Cambodia, UNTAC),⁴² Somalia (UN Operation

Peacekeeping 1946–1967, Documents and Commentary, Vol. 2 (1970), 93–100; Michla Pomerance, *Methods of Self-Determination and the Argument of “Primitiveness”*, Canadian Yearbook of International Law, Vol. 12 (1974), 38; Thomas M. Franck, *Nation Against Nation: What Happened to the U.N. Dream and What the U.S. Can Do About It* (1985), 76–82.

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.

³⁹ The General Assembly created the United Nations Council for Namibia in 1967. See GA Res. 2248 (S-V) of 19 May 1967. For an assessment, see Lawrence L. Herman, *The Legal Status of Namibia and the United Nations Council for Namibia*, Canadian Yearbook of International Law, Vol. 13 (1975), 306.

⁴⁰ The United Nations Transition Group in Namibia (UNTAG) was created in 1989. See generally Marrack Goulding and Ingrid Lehmann, *Case Study: The United Nations Operation in Namibia*, in United Nations, *The Singapore Symposium: The Changing Role of the United Nations in Conflict Resolution and Peace-Keeping*, 13–15 March 1991, 33–41; Virginia Page Fortna, *United Nations Transition Assistance Group*, in *The Evolution of Peacekeeping*, at 353.

⁴¹ See SC Resolution 690 of 29 April 1991; Report of the Secretary-General, UN Doc. S/22464 (1991); William J. Durch, *United Nations Mission for the Referendum in the Western Sahara*, in *The Evolution of Peacekeeping*, at 406; Chopra, *Peace-Maintenance*, at 161–98.

⁴² The 1991 Paris Peace Agreements, which were signed by four Cambodian factions, entrusted the United Nations Transitional Authority in Cambodia (UNTAC) with key aspects of civil administration. See generally, Steven R. Ratner, *The Cambodia Settlement Agreements*, American Journal of International Law, Vol. 87 (1993), 1; Trevor Findlay, *Cambodia: The Legacy and Lessons of UNTAC* (1995); Michael W. Doyle, *UN Peacekeeping in Cambodia: UNTAC’s Civil Mandate* (1995).

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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.

⁴⁴ On 15 January 1996, the Security Council created the United Nations Transitional Administration for Eastern Slavonia (UNTAES) in order to prepare the local population for the full transfer of authority to Croatian rule. See Michael Bothe, *The Peace Process in Eastern Slavonia*, *International Peacekeeping*, December 1995/January 1996, at 6, and *The New Mission in Eastern Slavonia*, at 11.

⁴⁵ Security Council Resolution 1244 (1999) authorised the Secretary-General to establish UNMIK. See on the background, Tomuschat, *Yugoslavia's Damaged Sovereignty*, at 324.

⁴⁶ Security Council Resolution 1272 (1999) created UNTAET. For the background, see J. Toole, *A False Sense of Security: Lessons Learned from the United Nations Organization and Conduct Mission in East Timor*, *American University International Law Review*, Vol. 16 (2000), 199.

⁴⁷ See Jochen Abr. Frowein, *Notstandsverwaltung von Gebieten durch die Vereinten Nationen*, in *Völkerrecht und Deutsches Recht*, Festschrift für W. Rudolf (H. W. Arndt et al. eds., 2001), 43; Tomuschat, *Yugoslavia's Damaged Sovereignty*, 323; Ruffert, *The Administration of Kosovo and East Timor*, 555; Bothe and Marauhn, *UN Administration of Kosovo and East Timor*, 217; Hans-Jörg Strömeyer, *Collapse and Reconstruction of a Judicial System: The United Nations Missions in Kosovo and in East Timor*, *American Journal of International Law*, Vol. 95 (2001), 46; Tobias H. Irmscher, *The Legal Framework for the Activities of the United Nations Interim Mission in Kosovo: The Charter, Human Rights, and the Law of Occupation*, *German Yearbook of International Law*, Vol. 44 (2001), 353, at 383; Evelyn Lagrange, *La Mission Intérimaire des Nations Unies au Kosovo*, *Nouvel Essai d'Administration Directe d'un Territoire*, *Annuaire Française de Droit International*, Vol. XLV (1999), 335–70; Thierry García, *La Mission d'Administration Intérimaire des Nations Unies au Kosovo*, *Revue Générale de Droit International Public*, Vol. 104 (2000), 61; Boris Kondoch, *The United Nations Administration of East Timor*, *Journal of Conflict and Security Law*, Vol. 6 (2001), 245; Aspen Institute, *Honoring Human Rights Under International Mandates: Lessons from Bosnia, Kosovo and East Timor* (2003).

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 Strömeyer, *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),