

The administration of territory by non-State entities has been on the agenda of international law since the WWI. However, last two decades brought with them intensive developments in this field. The post-Cold War conflicts in various parts of the world – Asia, the Balkans or Africa – have increasingly resulted in some territories being administered by international organisations. The multiple international legal questions – competence to establish territorial administration, the powers of such administrations, their relationship to State and non-State actors, their liability and immunity – arise in the discourse of international law almost routinely.

The appearance, nearly at the same time, of two monographs covering the wide range of conceptual and practical issues of international territorial administrations under the aegis of international organisations – and also being the culmination of both authors’ efforts in this field over a number of years – responds to the acute doctrinal need of having such analysis available, especially given the speedily developing practice in this field. The United Nations and regional organisations increasingly engage in the post-conflict administration and management of territories that either constitute self-determination units, or form part of an independent State.

Both monographs constitute the instances of comprehensive analysis of international territorial administration, focusing over broad range of issues of establishment, mandate, powers, applicable law, liability, immunities, and so on. A methodological difference in approach between the two monographs is that while Carsten Stahn’s monograph accounts for the legal framework of international territorial administration to be followed by its conceptualisation, Ralph Wilde’s monograph first offers a conceptual framework of territorial administration as policy institution and form of governance, and then embarks on the analysis of the applicable international legal framework.

Stahn’s monograph offers a detailed analysis of the history of creation of international territorial administrations such as UNMIK, UNTAET, UNTAES, and also of the Coalition Provisional Authority (CPA) in Iraq after the US-led invasion in 2003. Having evaluated individual cases, Stahn goes on to conceptualise the existing legal framework and practice. This systemic analysis of conceptualising the nature of international territorial administration is very valuable, and the same should be said of the analysis of UN powers in this field as examined in Part III of Stahn’s monograph. Wilde’s monograph adopts a different framework of analysis, and is aimed at locating the merit of international territorial administration as a policy institution, to be viewed at the same level as other policy institutions, such as intervention and peace-enforcement. In line with this aim, international territorial administration is understood as an aspect of governance which is aimed at addressing various problems, including territorial status, democracy and economic reform, natural resources, and migration (see Chapter 6.4). To his policy institution and purposive approach, Wilde adds the analysis of the relevance of colonialism and colonial ideas in explaining the essence of international territorial administrations (see Chapter 8). In this context, the analysis of various institutions, such as occupation of territory and trusteeship, are developed against the background of colonial experience and ideology. Both in historical and
conceptual perspectives, Wilde’s analysis and coverage of international territorial administration is impressive. The analysis of individual instances of territorial administration from the League of Nations period onwards is rich in references to legal instruments and doctrinal commentary. Most interestingly, in Chapter 5 Wilde analyses the development of the concept of self-determination of peoples in terms of its relevance for international territorial administration.

It has to be asked whether and to what extent the commonly acceptable definition of international territorial administration can be formulated, and whether such definition should be merely descriptive. Wilde adopts a broad and flexible definition of territorial administration, “which refers to a formally-constituted, locally-based management structure operating with respect to a particular territorial unit, whether a State, a sub-State unit of a non-State territorial entity” (21). Stahn defines international territorial administration as “the exercise of administering authority (executive, legislative, or judicial authority) by an international entity for the benefit of a territory that is temporarily placed under international supervision or assistance for a communitarian purpose” (44-45). More broadly, Stahn considers the process of establishment of international territorial administrations as an incidence of communitarian character of international law (31). Later in the monograph, Stahn views international territorial administration as an aspect of post-conflict engagement of liberal intervention (409). This leads one to thinking that Stahn’s approach is, at least to some extent, ideologically driven.

Under this view, territorial administrations are established because this corresponds to the increasing reflection of common interests of States and peoples in international law and politics. On the other hand, it is important to bear in mind that territorial administrations are not product of any ideology or perception of world order, or any particular cultural perspective. They are product of consensual framework of international law. They are established and operate because this follows from consensus States achieve, in one way or another, on the relevant matter. Organs such as the UN Security Council can establish territorial administrations because this follows from their consensually determined powers. If these powers are exceeded, the case can be made for the *ultra vires* character of the relevant territorial administration or the breach of international law by the relevant institution.

International law applies to the activities of international territorial administrations because it applies to the acts of organisations that establish those administrations. Thus, ITAs are obliged to observe international human rights law and international humanitarian law just like any State occupying foreign territory would be. Another problematic question is whether the activities of territorial administrations can be denoted as sovereign activities. The concept of sovereignty is sometimes used to describe the activity of territorial administration that can legislate for the territory it administers. However, the concept of sovereignty is far more complex than the power to exercise certain “sovereign” functions then and there.

Controversially enough, Stahn views the establishment of international territorial administration in specific cases as indicative of the UN Security Council’s endorsement of the previous situation that has led to the establishment of the relevant territorial administration. Under this view, the establishment of UNMIK in Kosovo under resolution 1244 (1999) constitutes the retrospective approval of the use of force by NATO against the FRY, among others because the establishment of UNMIK served the goals sought by that use of force (407-408). However, it is doubtful if the Council’s approval of the legality NATO intervention can be inferred in the absence of any evidence in this regard. Nothing in the relevant resolutions of the Security Council suggests that this organ intended to retrospectively approve the legality of the NATO air strikes against the FRY.