

■ BOOK REVIEW

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Bernhard Knoll, *The Legal Status of Territories Subject to Administration by International Organisations*, Cambridge University Press, 2008, ISBN 978-0-521-88583-6, 519 pp.

The subject of the international administration of territory has attracted and continues to attract much attention from legal scholarship, as proven by the increasing amount of existing literature on the subject over the past decade.¹ The developments in this area of the law – most notably the missions in East Timor and Kosovo launched in 1999 – are fascinating from a legal conceptual and practical point of view. To offer a complete review of a book of more than 500 pages in a few pages is of course impossible; I will therefore focus on the general approach and conception of the book, and on some specific issues that drew my attention.

Writing on a subject which might possibly lose any relevance in the coming years – perhaps to resurface several years later –, or which may on the contrary be just the starting point of an evolution, is challenging since it implies that one inevitably vacillates between the need to conceptualize certain trends, and the sometimes obvious reality of 'ad hoc-ism'. Bernhard Knoll, in a very interesting and well-researched book, clearly favors the former approach. The book focuses on the concepts and theories behind the international administration of territory, and in particular on issues pertaining to the legal status of territories under international administration. The subject of the book therefore complements well already existing literature on the subject. Knoll's approach combines discussions relating to the legal underpinning of the international administration of territory, with practical examples from recent and less recent cases, to support the developed arguments. However, Knoll has an inclination to enter into debates on conceptual legal-technical aspects which at certain points substantially raises the

1 See for instance: N. Azimi, M. Fuller and H. Nakayama, (eds.), *Post Conflict Reconstruction* (New York / Geneva: United Nations Publications, 2003); S. Chesterman, *You the People – The United Nations, Transitional Administration, and State-Building* (Oxford: Oxford University Press, 2004) ; R. Caplan, *International Governance of War-Torn Territories: Rule and Reconstruction* (Oxford: Oxford University Press, 2005); R. Wilde, *International Territorial Administration. How Trusteeship and the Civilizing Mission Never Went Away* (Oxford: Oxford University Press, 2008); C. Stahn, *The Law and Practice of International Territorial Administration. Versailles to Iraq and Beyond* (Cambridge: Cambridge University Press, 2008), M.J. Aznar Gomes, *La administración internacionalizada del territorio* (Barcelona: Atelier, 2008) and E. De Brabandere, *Post-conflict Administrations in International Law. International Territorial Administration, Transitional Authority and Foreign Occupation in Theory and Practice* (Leiden / Boston: Martinus Nijhoff Publishers, 2009).

level of theoretical abstraction which I have found, at certain points, difficult to follow. This is further intensified by Knoll's considerable use of German and less common Latin legal terminology, particularly in the first four chapters which contain the theoretical 'backbone' of the book, and in which Knoll introduces Roman law concepts into the discussion on agency and international legal personality. The use of examples and references to cases, particularly in the subsequent chapters, nevertheless provides a good counter-balance.

The book is structured in a coherent set of eight chapters, resulting in an all-inclusive approach to the legal status of territories under international administration. In general, one could say that the first three chapters concern the legal status of territories and states under international administration *sensu stricto*; chapter four deals with the functions of international administration; chapters five and six principally use the case Kosovo as a test for the theories developed in the previous chapters; the legitimacy of international administrations is discussed in chapter seven; chapter eight finally deals with the law applicable in territories and states under international administration. Each chapter is closed by a very helpful 'résumé' which both synthesises the argument of the previous chapter, and makes the connection with the subsequent one(s).

The first chapter of the book under review offers a complete analysis of the international law relating to the *creation* of international administrations. Chapter one embodies what I would call a 'back to basics' approach by reintroducing basic legal concepts in the debate on the too often neglected necessity to distinguish between sovereignty, title, and the exercise of state competences. Chapter one is entitled 'Creation of Internationalised Territories', but Knoll does not offer any further explanation on his use of the concept of 'internationalization', with the exception of a brief mention in the 'résumé' at the end of this chapter. 'Internationalisation' is there defined as a concept "whereby territories are put under international tutelage in order to create independent polities to balance the conflicting interests of competing states" (p. 51). However, this definition seems rather limited in comparison to the scope of the book, since it does not seem to accommodate situations such as Kosovo or East Timor, in which the 'internationalisation' was not the consequence of competing claims by states.² In his second chapter, Knoll continues the approach of the first chapter in respect of fiduciary administration, mandate, and trusteeship.

The third chapter, in my view one of the most interesting and original ones, focuses on self-determination, legal personality and the concept of agency. In the first part of this chapter, the author identifies his understanding of the legal personality of states and territories under international administration. The limited subjectivity of territories such as the Free City of Danzig, the Palestinian Territories -which are however not comparable to a territory under international administration, and Kosovo is according to Knoll a consequence of "a legal process through which internationalized territories were 'carved out' by the international community and 'given life' in the law of nations" (p. 130). The legal relation between the administering and administered entity is characterized by

2 See also on this: R. Wilde, 'From Danzig to East Timor and Beyond: The Role of International Territorial Administration', 3 *American Journal of International Law* 583 (2001)

Knoll as a relation between 'agent' and an 'entity under its temporary protection' (p. 134). The author, by his use of the concept of agency, claims that the international legal personality of territories under international administration is "nothing but a shorthand for the proposition that an entity is endowed by international law with a set of entitlements and obligations (subjectivity) which it effectively discharges through international agency" (p. 142). Although the use of the municipal law institution of 'agency' in this respect is not entirely accurate in my view, Knoll is indeed right in pointing out that if an 'international agent' has been given the capacity to perform international legal acts on behalf of a non-state entity, and that such acts are imputed or attributed to that non-state entity this by definition implies recognition of a certain form of (limited) legal personality of that entity. However, the role played by the 'internationalization' of the territory, in the sense that the entity is represented by an international rather than a national 'agent'³, is not so clear. The fact that the entity entitled to represent the territory is national or international is in my view not so determinant. The status of the territory, rather than the status of the representative of the territory defines the powers of the latter. The mandate then plays a substantial role, since it will define whether or not the 'agent' can exercise those powers. This is to a certain extent similar to what Knoll calls 'latent subjectivity' (p. 148), in the sense that the 'agent' enables the *effective exercise* of international legal competences. However, the subjectivity is not so latent: in the case of Kosovo for example, the capacity for UNMIK to enter into practical arrangements with neighboring countries on behalf of Kosovo is an essential consequence of the fact that Kosovo's status as a Province of Serbia, temporarily subtracted from Serbia's exclusive competences. Prior to the 'internationalization' of Kosovo's governing structures, the legal competences of that Province were exercised by the Serbian Government. The 'internationalisation' is not therefore a decisive element, nor does it automatically amount to the creation of a 'new' legal person.

The fourth chapter is an interesting analysis of the dual functions of international administrations, and the tensions which accompany it. The dual role of international administrations, as Knoll points out, is the pursuance of a wider collective interest – which is in recent cases nothing more than the maintenance of international peace and security as the primary responsibility of the Security Council – and secondly, the interest of the territory. As Knoll points out, this is essentially an application of the theory of *dédoublement fonctionnel* or *functional duality*, a concept which had already been developed by Michel Virally when he discussed the dual role of the agents of the states which were administering Germany after the Second World War.⁴

The book's fifth and sixth chapters draw extensively on the practice of Kosovo to apply the theories and findings developed in the previous chapters. These two chapters, as said earlier, offer a good balance with the preceding more theoretical chapters. Kosovo particularly provides a good case to support and highlight the difference that needs to be maintained between sovereignty (title over territory)

3 Although a government cannot be seen as an agent of the state, since it "is" the state.

4 Virally, M., *L'administration internationale de l'Allemagne du 8 mai 1945 au 24 avril 1947* (Paris: Pedone, 1948), p. 46 et s.

and effective control or state competences, and to illustrate the dual role of international administrations, which is further examined in chapter six.

Building further on the preceding ones, chapter seven contains a discussion of the dual legitimacy of international administrations, called "domestic legitimacy" and "internationalist legitimacy" (p. 298). This dual legitimacy goes hand in hand with the dual function of international administrations, and the different interests that are pursued by international administrations. The legitimacy of an international organization, when performing the role of national governments, is of course, unlike the latter, not dependent on popular consent. In such scenarios, the legitimacy of the transitional structures, and the confidence of the population in them, is by definition the subject of controversies. As rightly pointed out by Knoll "(i)n the domestic sphere, the legitimacy of the UN territorial governance mission thus depends upon its availability to incorporate the view of the people's representatives. Conversely, organizations that lack acceptable legitimated accounts of their activities are vulnerable to claims that they are negligent and unnecessary." (p. 297) The reason why, as a consequence, there should be an obligation to give primary consideration to the interests of the territory is not persuasive, however (p. 325), since, and this is one of the implications of the recent 'Chapter VII' administrations, the existence of such missions is precisely to pursue international *and* national interests at the same time.

Chapter eight complements the previous one, and consists of an analysis of the transitional legal order in territories under administration. Transitional is here used both in the sense of temporary, and in the sense of 'between to régimes'.

To conclude, Knoll's challenge to conceptualize and define the legal status of territories under international administration is convincing and accompanies well existing literature on the subject. Despite the title of the book which might lead some to think that the author only presents a legal-technical appraisal of the legal status of territories subject to international administration, Knoll offers a complete and logical analysis of legal issues pertaining to the exercise of governmental functions by international administrations, including the nature of authority, the mandate of international administrations, and an analysis of the legal order in such territories. Knoll's book is particularly excellent in untangling sovereignty and state competences, and in denuding the inherent tensions of international administrations, since they act as national and international actors at the same time, pursuing both national and international interests. I have no hesitation in recommending the book to anyone interested in either international territorial administration, statehood, the law of international organizations and general international law.

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