

ONLINE SESSION – 2021

**13 RES EN
13th Commission
4 September 2021**

13th COMMISSION

**Territorial Administration by the United Nations and other International Institutions
Authorized by the United Nations**

Rapporteur: Mr Linos-Alexandre Sicilianos

RESOLUTION

The *Institute of International Law*,

Emphasizing that States in principle have responsibility for exercising powers of public authority vis-à-vis peoples and populations, in accordance with the Charter of the United Nations (UN Charter) and general international law, including the principle of equal rights and self-determination of peoples, international human rights law and international humanitarian law,

Acknowledging, however, that in exceptional circumstances the United Nations or other international institutions may be called upon to establish a temporary and transitional territorial administration regime, particularly in the context of maintaining peace and security,

Emphasizing that in view of the fundamental role of the United Nations in this sphere, any international administration regime established by the United Nations or by another international institution authorized by the United Nations must be consistent with the UN Charter, and in

particular with the purposes and principles of the United Nations, including the principle of equal rights and self-determination of peoples,

Bearing in mind that international administration regimes to a certain extent share common features with other phenomena entailing administration of a State or a non-State territorial entity,

Considering, nevertheless, that in view of their exceptional and singular nature, international territorial administration regimes must be subject to legal regulations that are both more precise and geared to the particular circumstances of each case,

Observing that in recent international territorial administration regimes, notably on account of the lack of appropriate supervisory mechanisms, the protection of human rights has not always been fully secured,

Recalling the Resolution adopted by the *Institut* at its Wiesbaden session in 1975, concerning the Conditions of Application of Rules, other than Humanitarian Rules, of Armed Conflict to Hostilities in which United Nations Forces may be engaged,

Convinced of the need to guarantee full observance of the principle of the rule of law and to strengthen the accountability of the United Nations and other international institutions exercising powers of public authority within a particular territorial entity vis-à-vis the persons subject to their authority,

Emphasizing that any international administration regime must be temporary and transitional in nature and that the ultimate beneficiary of the process must be the population or people concerned,

Adopts the following Resolution:

CHAPTER I

GENERAL PROVISIONS

Article 1

Definitions

For the purposes of this Resolution, the expressions and terms hereunder shall be defined as follows:

- (a) “International territorial administration regime” (or “administration regime” or “international administration”) shall mean a system of governance whereby the United Nations or another international institution authorized by the United Nations:
 - (i) substitutes itself for a State in exercising all powers of public authority within a non-State territorial entity or a State (hereinafter “substitution regime”);

or
 - (ii) exercises certain specific powers of public authority within a State, for the purpose of supervising the exercise by the national institutions of their own powers of public authority in relation to certain requirements laid down in international law (hereinafter “supervisory regime”).
- (b) “Territorial entity” shall denote a non-State territorial entity or a State.
- (c) “International institution” shall denote a regional or sub-regional intergovernmental organization, or another analogous specific institution authorized by the United Nations to establish an administration regime in a particular case.

- (d) “Founding act” shall mean the legal act whereby the United Nations establishes, or authorizes another international institution to establish, an international territorial administration regime.
- (e) “International body” shall denote the body appointed by the international institution responsible for the regime, that is, the United Nations or an international institution authorized by the United Nations, to exercise powers of public authority on the ground in accordance with its mandate.
- (f) “Multinational force” shall denote a military force established by United Nations Member States or another international institution, with the authorization of the Security Council under Chapters VII and VIII of the UN Charter, and with the task of assisting the international body in discharging its mandate.
- (g) “Mandate” shall denote the provisions of the founding act of the international territorial administration regime governing the activities of the international body and/or a multinational force.
- (h) “Local authorities” shall mean the authorities (legislative, executive or judicial) belonging to the territorial entity subject to an international administration regime.

Article 2
Scope of the present Resolution

1. This Resolution shall apply to all international territorial administration regimes established by the United Nations.
2. This Resolution shall apply to situations where the Security Council, under Chapter VII or, as the case may be, Chapter VIII of the UN Charter, authorizes another international institution to establish an international body with the task of exercising powers of public authority within a territorial entity.

3. This Resolution shall not apply to administration regimes established with the agreement of the interested parties and in accordance with their constitutive instrument by other international institutions not authorized by the United Nations. The principles set forth in this Resolution may apply by analogy to such regimes.
4. This Resolution shall not apply to situations where the United Nations or other international institutions perform technical assistance missions, or any other missions relating to peacekeeping operations, which do not involve the exercise of powers of public authority within a territorial entity.

CHAPTER II

BASIS OF THE INTERNATIONAL TERRITORIAL ADMINISTRATION REGIME

Article 3

General principles

1. The founding act of the administration regime and the mandate set out therein shall be consistent with the UN Charter, in particular the purposes and principles of the United Nations, with the relevant norms of general international law and, where appropriate, with the constitutive instrument of the international institution authorized by the United Nations.
2. The international body must act in accordance with the founding act and with its mandate.
3. The administration regime shall, where possible, be established with the consent of the interested parties.
4. Throughout its existence, the administration regime shall give the population or people concerned the opportunity to be effectively involved in the exercise of powers of public authority or, if applicable, take due regard of views expressed by national democratically elected organs.

5. Whatever its particular purpose, and subject, where appropriate, to a decision of the Security Council in the case of an administration regime established under Chapter VII of the UN Charter, the administration regime shall be temporary and transitional in nature, it being understood that the ultimate beneficiary of the process must be the population or people concerned. Consequently, powers of public authority must be returned as soon as possible to the population or people concerned in order to be exercised within the framework of a State respecting democratic principles, the rule of law and human rights.

Article 4

**Administration regimes established by the United Nations
with the consent of the interested parties**

The United Nations may establish, with the agreement of the interested parties and subject to the limits of such agreement, an administration regime for a territorial entity in accordance with the provisions of the UN Charter, and in particular the purposes and principles of the United Nations, including the principle of equal rights and self-determination of peoples. The consent of the interested parties may be given in an international agreement or other instrument, to be endorsed by the competent United Nations body in accordance with the UN Charter.

Article 5

**Administration regimes established unilaterally by the Security Council
under Chapter VII of the UN Charter**

1. In order to maintain or restore international peace and security, the Security Council, acting under Chapter VII of the UN Charter, is empowered to establish an international administration regime.

2. In the circumstances set out in paragraph 1 above, the Security Council may authorize another international institution, where appropriate in accordance with the provisions of Chapter VIII of the UN Charter, to establish an international body with the task of exercising powers of public authority within a territorial entity and/or a multinational force with the task of assisting the

international body in discharging its mandate. Pursuant to Article 53, paragraph 1, of the UN Charter, no international administration regime with an enforcement role may be established by a regional or sub-regional organization without the authorization of the Security Council

3. In defining the purpose of the administration regime, the Security Council shall act in accordance with the purposes and principles of the United Nations. In particular, it shall have regard to the principle of equal rights and self-determination of peoples and shall not impose permanent territorial regulations.

Article 6

**Participation of an international institution in an administration regime
established by the United Nations**

In accordance with Chapters VII and VIII of the UN Charter and in compliance with its statutory powers and procedures, a regional or sub-regional international institution may participate, where appropriate pursuant to a specific agreement with the United Nations, in an international administration regime established by the United Nations.

CHAPTER III

RULES APPLICABLE TO THE INTERNATIONAL ADMINISTRATION REGIME

Article 7

Mandate

1. As an integral part of the founding act of the administration regime, the mandate shall govern the exercise of powers of public authority by the international body.
2. The mandate should specify the following aspects, among others, particularly in the case of substitution regimes:
 - (a) the purpose and exact duration of the administration regime, as well as the conditions under which this duration may be extended;

- (b) the formal responsibilities of the international body;
 - (c) the substantive fields of activity of the international body; and
 - (d) the applicable law, including the standards on human rights protection, within the territorial entity subject to the administration regime.
3. All acts of the international body, in particular its regulatory and executive acts, must be consistent with its mandate.
4. The preceding paragraphs shall apply, *mutatis mutandis*, to the situations provided for in Article 5, paragraph 2, of this Resolution.

Article 8

Local law

- 1. In supervisory regimes, local law shall denote the national legal order of the State which is subject to the regime and within which the international body exercises specific powers with a view to supervising the activities of the national institutions in relation to the requirements set forth in its mandate.
- 2. In substitution regimes, local law shall denote the specific temporary legal order put in place by the international body with a view to exercising its powers of public authority in accordance with its mandate. This legal order shall include the regulatory acts issued by the international body pursuant to its mandate and the standards on human rights protection applicable under local law in accordance with Article 14 of this Resolution. Prior legislation shall continue to be applicable within the limits of its compatibility with the regulatory acts of the international body and the standards on human rights protection.

Article 9

Treaties

1. Treaties that were applicable to the territorial entity subject to the administration regime prior to the establishment of that regime by the United Nations or another international institution authorized by the United Nations shall not be binding on those institutions that are not parties to it. However, subject to the provisions of a mandate adopted pursuant to a Security Council resolution on the basis of Chapter VII of the UN Charter, any rights and obligations which result from treaties establishing border regimes or other territorial regimes and which relate to the entity subject to the administration regime shall not be affected.
2. Without prejudice to paragraph 1 above, and in order to guarantee legal certainty in treaty relations, the mandate or a regulatory act of the international body may declare that any treaties previously concluded by the territorial State must be honoured by the international body under local law, provided that they are not incompatible with the discharge of its mandate.
3. Treaties concluded with States or international institutions by the international body while discharging its functions in accordance with its mandate shall be binding at international level on the international institution with authority over the body. The mandate, or else an act of the international body, must specify the position of the treaties thus concluded in local law.

Article 10

General international law

1. Subject to the provisions of a mandate adopted pursuant to a Security Council resolution on the basis of Chapter VII of the UN Charter, while discharging its functions the international body shall be required to abide by the relevant norms of general international law.
2. In the exercise of their functions, the United Nations, including the Security Council, international institutions and international bodies shall respect, in all circumstances, peremptory norms of general international law.

Article 11

Protection of civilians

Subject to the provisions of a mandate adopted pursuant to a Security Council resolution on the basis of Chapter VII of the UN Charter, the customary rules of the law of occupation relating to the protection of civilians may be applicable by analogy and on a strictly supplementary basis:

- (a) to civilian administration operations established by the Security Council under Chapter VII of the UN Charter with an integrated military component; and
- (b) within the limits of the powers of public authority actually exercised in a particular case, to multinational forces established with the authorization of the Security Council under Chapter VII of the UN Charter by United Nations Member States or another international institution and tasked with assisting a United Nations civilian administration operation in discharging its mandate.

CHAPTER IV

PROTECTION OF HUMAN RIGHTS UNDER THE INTERNATIONAL ADMINISTRATION REGIME

Article 12

General obligation to promote respect for human rights

In accordance with Article 1, paragraph 3, and Article 55 of the UN Charter and the principles of general international law, the United Nations, and any other international institution authorized by the United Nations, shall have a general obligation to promote universal and effective respect for human rights and fundamental freedoms for anyone under their authority in connection with an international administration regime.

Article 13

Establishment of a precise legal framework for human rights protection in local law

1. In all circumstances the international body has the duty to respect the norms concerning the protection of human rights applicable under local law.
2. To discharge the general obligation set forth in Article 12, the United Nations or another competent international institution should specify in the international body's mandate the standards on human rights protection that will be applicable under local law, where appropriate with reference to the main international treaty instruments in this field.
3. The mandate should lay down a clear duty for the international body to observe, while exercising its regulatory or executive functions, the standards of general international law on human rights protection applicable under local law.

4. In the absence of any such provision in the mandate, the international body should specify by means of a regulatory act the standards on human rights protection applicable under local law, where appropriate with reference to the main international treaty instruments in this field.
5. The international body must ensure that the local institutions, while discharging their own functions, observe the standards on human rights protection applicable under local law.

Article 14

Binding instruments on human rights protection

1. Subject to the provisions of a mandate adopted pursuant to a Security Council resolution on the basis of Chapter VII of the UN Charter, in discharging its functions the international body must abide by the terms of the treaty instruments on human rights protection incorporated in the prior legislation applicable under local law in accordance with Article 9 of this Resolution.
2. To strengthen the protection of human rights during the administration regime, the international body shall:
 - (a) extend the applicability of the terms of certain binding instruments on human rights protection within the territorial entity subject to the administration regime, where those instruments were not previously applicable under local law in that territory;
 - (b) enter into specific agreements or arrangements with the competent international institutions for the purpose of enabling the relevant treaty bodies to perform their functions of monitoring observance of the relevant instruments on human rights protection applicable under local law within the territorial entity subject to the administration regime.

3. Where the Security Council authorizes Member States, under Chapter VII of the UN Charter, to establish a multinational force with the task of assisting an international body in discharging its mandate, the instruments on human rights protection to which the States concerned are parties shall apply subject to Article 15, paragraph 4, of this Resolution.

Article 15

Power of derogation

1. The mandate should expressly specify whether, and to what extent, the international body, while discharging its functions, is entitled to derogate from the standards on human rights protection forming part of local law.
2. Where the mandate expressly allows derogations, it should specify the relevant procedure and supervisory mechanism.
3. Treaty provisions imposing a duty on the States Parties to notify the relevant treaty body of derogating measures may apply on the basis of a specific arrangement between the international body and the international institution to which the relevant treaty body reports, in accordance with Article 14, paragraph 2(b), of this Resolution.
4. Where the Security Council authorizes United Nations Member States, under Chapter VII of the UN Charter, to establish a multinational force with the task of assisting an international body in discharging its mandate, it should specify in the mandate whether, and to what extent, the States concerned, while discharging their functions, are entitled to derogate from the obligations resulting from treaty instruments on human rights protection to which they are parties.

5. In the absence of any such provision in the mandate, the establishment by the Security Council, or by another international institution authorized by it, of an international administration regime under Chapter VII of the UN Charter shall not automatically mean that the international body, or the States authorized in accordance with paragraph 4 above, have the power to derogate from standards on human rights protection.
6. No derogation shall be permitted from the peremptory norms of general international law (*jus cogens*) relating to human rights protection.

CHAPTER V

SUPERVISION OF ACTS OF THE INTERNATIONAL BODY AND ACCOUNTABILITY MECHANISMS

Article 16

Supervision of acts of the international body

1. Unless the mandate or regulatory acts of the international body provide otherwise, the local courts shall not have jurisdiction to supervise the compliance of regulatory or executive acts of the international body with its mandate and the standards on human rights protection applicable under local law.
2. The mandate, or in the absence of any express provision therein a regulatory act of the international body, shall establish specific mechanisms for supervising the compliance of regulatory or executive acts of the international body with its mandate and the standards on human rights protection applicable under local law. Such mechanisms should take the form of a body with jurisdiction to receive and investigate complaints by anyone under the authority of the international body who considers that his or her rights have been infringed by an act of that body.

3. In accordance with Article 14, paragraph 2(b), and Article 15, paragraph 3, of this Resolution, the international body should enter into specific agreements or arrangements with the appropriate treaty bodies in order to ensure effective international supervision of its compliance with the treaties on human rights protection applicable under local law.

Article 17

Privileges and immunities

1. The United Nations and any other international institution authorized by the United Nations shall enjoy, within the territorial entity subject to the administration regime, the legal capacity and the privileges and immunities necessary for them to exercise powers of public authority entirely independently and to achieve the aims set by the mandate.

2. In the absence of any mechanism of dispute resolution in matters of contracts or other private-law disputes, including in relation to damage sustained by individuals through acts of the international body, whether provided by the institution or agreed upon with the other party in the particular case, the United Nations and any other international institutions acting on its behalf shall not enjoy jurisdictional immunity before competent courts, except in relation to acts committed *jure imperii*.

Article 18

Alternative dispute resolution mechanisms

1. In return for the immunities referred to in Article 17, the mandate shall provide for the institution of alternative mechanisms for resolving contractual or other private-law disputes involving the international body, including in relation to damage sustained by individuals through acts of the international body.

2. In the absence of any such provision in the mandate, the international body shall introduce alternative mechanisms for resolving the disputes referred to in paragraph 1 above.

3. The alternative dispute resolution mechanisms must be appropriate and effective, that is, they must offer every guarantee of independence and impartiality in accordance with the relevant international principles in this sphere.

Article 19
International responsibility

1. The international responsibility of an international institution establishing an international territorial administration regime shall be governed by the relevant provisions of the Articles on the Responsibility of International Organizations and, by analogy, the Articles on Responsibility of States for Internationally Wrongful Acts drawn up by the International Law Commission.
2. The conduct of the international body shall be considered an act of the international institution with authority over that body under international law.
3. Where the Security Council, under Chapter VII of the UN Charter, authorizes United Nations Member States or another international institution to establish a multinational force with the task of assisting an international body in discharging its mandate, the conduct of those States or that institution shall not in principle, subject to the Articles on the Responsibility of International Organizations drawn up by the International Law Commission, be considered an act of the United Nations.
4. The provisions of paragraphs 2 and 3 above shall be without prejudice to any question of shared responsibility of the United Nations, the States participating in a multinational force or another international institution authorized by the United Nations that may arise in connection with an international administration regime.
5. In the case of a substitution regime, the conduct of the local authorities shall be considered an act of the international institution that established the regime.

6. The international body referred to by the present Resolution is under an obligation to make reparation for any damages caused in accordance with the applicable rules on responsibility.

7. The preceding provisions shall be without prejudice to the individual criminal responsibility, under local or international law, and, in particular, to the role of international jurisdictions, such as the International Criminal Court.

Article 20

Advisory function of the International Court of Justice

Should an important and complex question arise concerning the interpretation or implementation of the mandate or any other relevant instrument, the competent United Nations bodies, and in particular the body that established the administration regime, should take due account of the possibility of submitting a request for an advisory opinion to the International Court of Justice.
