

Jonas Attenhofer

The Application of UN Charter Chapter XI to Military Occupations



Nomos

Beiträge zum
ausländischen öffentlichen Recht und Völkerrecht

Edited by

the Max Planck Society
for the Advancement of Science
represented by Prof. Dr. Armin von Bogdandy
and Prof. Dr. Anne Peters

Volume 318

Jonas Attenhofer

The Application of UN Charter Chapter XI to Military Occupations



Nomos

The publication was supported by the Swiss National Science Foundation (SNSF).



SCHWEIZERISCHER NATIONALFONDS
ZUR FÖRDERUNG DER WISSENSCHAFTLICHEN FORSCHUNG

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available on the Internet at <http://dnb.d-nb.de>

a.t.: Bern, Univ., Diss., 2020

ISBN 978-3-7560-0282-5 (Print)
978-3-7489-3554-4 (ePDF)

British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library.

ISBN 978-3-7560-0282-5 (Print)
978-3-7489-3554-4 (ePDF)

Library of Congress Cataloging-in-Publication Data

Attenhofer, Jonas

The Application of UN Charter Chapter XI to Military Occupations

Jonas Attenhofer

198 pp.

Includes bibliographic references.

ISBN 978-3-7560-0282-5 (Print)
978-3-7489-3554-4 (ePDF)

1st Edition 2022

© Jonas Attenhofer

Published by

Nomos Verlagsgesellschaft mbH & Co. KG

Waldseestraße 3–5 | 76530 Baden-Baden

www.nomos.de

Production of the printed version:

Nomos Verlagsgesellschaft mbH & Co. KG

Waldseestraße 3–5 | 76530 Baden-Baden

ISBN 978-3-7560-0282-5 (Print)

ISBN 978-3-7489-3554-4 (ePDF)

DOI <https://doi.org/10.5771/9783748935544>



Onlineversion
Nomos eLibrary



This work is licensed under the Creative Commons Attribution 4.0 International License.

Contents

Table of Cases	9
Table of Treaties	13
Table of Materials	15
UN Documents	15
Other Materials	19
Introduction	21
Part I Military Occupation	
1 The Scope of Application of the Status of Military Occupation	25
1.1 Hague Regulations, Article 42 and Customary International Law	25
1.2 'Territory of the Hostile State'	26
1.2.1 The Scope of the Term 'Hostile State'	26
1.2.2 Equal States as a Territorial Order	30
1.2.3 The Territorial Delimitation of Equal States	32
1.2.3.1 Delimitation in General	32
1.2.3.2 Practical Scenarios	36
1.2.4 Self-Determination and Related Claims to Territory	37
1.3 'Hostile Army'	41
1.4 'Military Authority'	43
1.4.1 Instances of Authority	43
1.4.2 The Relationship to Peace	46
1.4.3 The Relationship to Sovereign Equality	46
2 The Use of Force and Military Occupation	51
2.1 The Legality of Occupation	51
2.2 The Prohibition to Acquire Territory by Force	56

3	The Applicable Law Pertinent to the Economy	59
3.1	The General Scope of Authority	59
3.1.1	Measures for ‘Public Order and Safety’ (Article 43 of the Hague Regulations)	59
3.1.2	New Legislation and Existing Laws	64
3.2	Administration of Property (Usufruct)	66
3.3	Rights and Duties to Support the Military Authority	71
3.3.1	Taxes	71
3.3.2	Contributions for the Needs of the Army	71
3.3.3	Confiscation of Munitions of War	73
3.3.4	Spoils of War	74
3.4	Exceptions	75
3.4.1	‘Imperative Military Necessity’	75
3.4.2	Prolonged Occupation	77
4	The Relationship of Occupation Law to Other International Law	81
4.1	Human Rights	81
4.2	Measures of UN Administration	84
4.3	International Investment Law	86
4.3.1	Foreign Direct Investment	86
4.3.2	Permanent Sovereignty over Natural Resources (PSNR)	87
4.4	International Trade Law	90
5	Concluding Summary of Part I	93
Part II UN Charter Chapter XI: Non-Self-Governing Territories		
6	The Scope of Application of Chapter XI	99
6.1	Chapter XI, Articles 73 and 74	99
6.2	The Practice of the United Nations Regarding Chapter XI	102
6.3	‘Members’ and ‘Territories’	106
6.4	To ‘Have or Assume Responsibilities for the Administration of Territories’	108
6.4.1	‘Responsibilities for the Administration of Territories’	108
6.4.2	To ‘Have’ Responsibilities	111

6.4.3	To ‘Assume’ Responsibilities	113
6.5	‘Full Measure of Self-Government’	114
6.5.1	Occupied Territories	114
6.5.1.1	Following Invasion	114
6.5.1.2	Invitation Turned to Coercion	115
6.5.2	Historic Colonies	116
6.5.3	UN Administration	119
6.5.4	Trusts	120
6.6	‘Not Yet Attained’	121
6.6.1	The Question of a Historic and Closed Catalogue of Territories	121
6.6.1.1	Independence v Self-Government	121
6.6.1.2	The Role of the General Assembly	124
6.6.2	Meaning in Context	128
6.6.3	Meaning in the Light of the Object and Purpose of the Charter	132
6.6.3.1	In the Light of Peace	132
6.6.3.2	In the Light of Sovereign Equality	137
6.6.4	Historic Interpretation	140
7	The Economic Regime of Chapter XI, Article 73	145
7.1	Four Main Elements of Article 73 Pertinent to the Economy	145
7.2	‘The Interests of the Inhabitants’	147
7.3	‘Well-Being of the Inhabitants’	150
7.4	‘Economic Advancement with Due Respect for the Culture of the Peoples’	153
7.5	‘Constructive Measures of Development’	154
8	The Relationship of Chapter XI to Other International Law Pertinent to the Economy	157
8.1	Priority of Chapter XI	157
8.1.1	Priority over Occupation Law	157
8.1.2	Priority over Measures of UN Administration	160
8.1.3	Priority over the Interests of the Occupant from Foreign Direct Investment	161
8.2	Survival of Human Rights and PSNR	162
8.3	Safeguarding of International Economic Ties per Article 74	163
8.4	Reconciliation with the Munitions of War Rule	166

Contents

9	Excursus: Maritime Zones	169
10	Concluding Summary of Part II	173
	Synopsis	177
	Bibliography	179
	Books	179
	Contributions to Collections	183
	Articles	192
	Other works	198