

## Table of Contents

Abbreviations	9
Introduction	11
I. Problematic issues of democratic governance in international territorial administration	13
A. The problem of the delineation of international personality	14
1. Shortcomings of definitional categories	15
a. Internationalisation of territories	15
b. Modern trusteeship administration	17
c. Modern protectorates	21
d. Peace-keeping, peace-maintenance or peace-building operations	23
e. International territorial administration (ITA)	26
2. Different conceptions of the conferral of sovereignty	31
a. Sovereignty of the former state	33
b. Sovereignty of the territory	36
c. Sovereignty of the international organisation	37
d. Sovereignty of the population	39
e. Sui generis subject of international law	40
B. Problems relating to the applicability of the concept of democracy and the enforceability of human rights	41
1. Problems relating to the applicability of the concept of democracy	41
a. Definitional evasiveness of the concept of democracy in constitutional law	42
b. State-centeredness of the concept of democracy in constitutional and international law	43
c. Differing concepts of democracy in international and constitutional law	44
d. Controversy about the applicability and the scope of self-determination in the post-colonial context	45
e. Democracy as a mere foundation in the concepts of international law governing the territorial administration of international organisations	49
i. Prevention of the adverse effects of war on the population	49
ii. Application of the principle of or right to self-determination	51
iii. Reestablishment of stability	55
iv. Conflict resolution and respect for human rights	57
v. Democracy-building	58
f. Perception of the human "right to democratic governance" as an emerging right	60
g. Perception of the absence of "democratic maturity" of certain local elements	62

2. Problems relating to the enforceability of human rights	66
a. Unclear legal quality of human rights law	66
b. Immunity of international peacekeepers	68
c. Possibility for derogations from human rights treaties in a state of emergency	72
II. Legal framework for democratic governance in international territorial administration	74
A. Scope of the authority of direct governance of international organisations (and former states)	74
1. Restricted powers of direct governance	75
2. Partial powers of direct governance	83
3. Comprehensive or full powers of direct governance	87
a. Territorial administration by the League	87
b. Planned territorial administration by the UN	89
c. Realised territorial administration by the UN	91
d. Realised territorial administration by the EU	96
B. Scope and nature of the authority of governance of local institutions	97
1. Complete absence of co-governance of local institutions	98
2. Mere consultative powers	98
3. Partial decision-making powers	105
4. Largely independent decision-making powers	111
C. Construction of the subjects of governance	112
1. Inhabitants	113
2. People	113
a. Legal subjectivity of the people	114
b. Ethnic and political notion of people	116
3. Citizens	116
D. "Constitutionalised" governance	119
1. Role of the population in the adoption of the constitutional document(s)	120
a. Comprehensive inclusion of the population	120
b. Partial inclusion of the population	121
c. Exclusion of the population	122
2. Applicability of constitutional rules to the political decision-making processes	123
3. Function of the constitution as the highest law in the hierarchy of norms	125

III. Principles of democratic governance in the constitutional documents governing international territorial administration	128
A. Separation of powers and independence of the judiciary	128
1. Separation of powers	128
a. Full separation of powers	129
b. Partial separation of powers	131
c. Absence of separation of powers	131
2. Independence of the judiciary	134
B. Popular sovereignty	139
1. Functions of a constitution	140
a. Investing the people with sovereignty	140
b. Reflection of the will of (the majority of) the people	142
2. Legitimation of constitutional organs	143
3. Participation of the population in the legislature	145
4. Role of the population in the determination of status	147
C. Accountability and review	151
1. Accountability of the executive to the legislature	151
a. Political accountability	152
b. Legal accountability	153
c. Financial accountability	154
2. Supervision of the international executive by the international organisation	155
3. Judicial review of executive and legislative acts	157
4. Review by the Ombudsperson	163
D. Legal guarantees	166
1. Political rights	166
a. Freedoms of expression, association and assembly	166
b. Rights to vote and to stand for elections	168
2. Special political participation rights of ethnic or religious minorities	172

IV. Democratisation of governance in international territorial administration	181
A. Increased transfer of power and popular participation	181
B. Modification of the institutional structures of the international and local levels of government	183
1. Institutional structures of the international level of government	183
a. Supervision by political or international "executive" institutions	183
b. Independent review mechanisms	184
2. State organisational structures of the local level of government	185
a. Separation of powers and independence of the judiciary	185
b. Accountability to the legislature	185
c. Judicial review and review by the Ombudsperson	186
Summary and conclusions	187
Bibliography	196
Selected Documents	213
Index	217