

reconstruction of key infrastructure, maintain civil law and order, promote human rights and assure the return of refugees. Administrative structures have been established and elections held. The first regulation adopted by the Special Representative of the UN Secretary-General appointed under resolution 1244 vested all legislative and executive authority in Kosovo in UNMIK as exercised by the Special Representative.<sup>169</sup> This regulation also established that the law in the territory was that in existence in so far as this did not conflict with the international standards referred to in section 2 of the regulation, the fulfilment of the mandate given to UNMIK under resolution 1244, or the present or any other regulation issued by UNMIK. A Constitutional Framework for Provisional Self-Government was promulgated by the Special Representative in May 2001.<sup>170</sup> This comprehensive administrative competence is founded upon the reaffirmation of Yugoslavia's sovereignty and territorial integrity (and thus continuing territorial title over the province) and the requirement for 'substantial autonomy and meaningful self-administration for Kosovo'.<sup>171</sup> Accordingly, this arrangement illustrates a complete division between title to the territory and the exercise of power and control over it. It flows from a binding Security Council resolution, which refers to Yugoslavia's consent to the essential principles therein contained.<sup>172</sup>

The United Nations Transitional Administration in East Timor (UNTAET) was established by Security Council resolution 1272 (1999) acting under Chapter VII. It was 'endowed with overall responsibility for the administration of East Timor' and 'empowered to exercise all legislative and executive authority, including the administration of justice'.<sup>173</sup> Its widespread mandate included, in addition to public administration, humanitarian responsibilities and a military component and it was authorised to take all necessary measures to fulfil its mandate. UNTAET's mandate was extended to 20 May 2002, the date of East Timor's independence

<sup>169</sup> Regulation 1 (1999). This was backdated to the date of adoption of resolution 1244.

<sup>170</sup> See UNMIK Regulation 9 (2001).

<sup>171</sup> Resolution 1244 (1999).

<sup>172</sup> See S/1999/649 and Annex 2 to the resolution.

<sup>173</sup> East Timor, a Portuguese non-self-governing territory, was occupied by Indonesia in 1974. These two states agreed with the UN on 5 May 1999 to a process of popular consultation in the territory over its future. The inhabitants expressed a clear wish for a transitional process of UN authority leading to independence. Following the outbreak of violence, a multinational force was sent to East Timor pursuant to resolution 1264 (1999); see also the Report of the Secretary-General, S/1999/1024; <http://www.un.org/peace/etimor/etimor.htm>.

as the new state of Timor-Leste.<sup>174</sup> It was thereafter succeeded by the United Nations Mission of Support in East Timor (UNMISET).<sup>175</sup>

### Taiwan<sup>176</sup>

This territory was ceded by China to Japan in 1895 by the treaty of Shimonoseki and remained in the latter's hands until 1945. Japan undertook on surrender not to retain sovereignty over Taiwan and this was reaffirmed under the Peace Treaty, 1951 between the Allied Powers (but not the USSR and China) and Japan, under which all rights to the island were renounced without specifying any recipient. After the Chinese Civil War, the Communist forces took over the mainland while the Nationalist regime installed itself on Taiwan (Formosa) and the Pescadores. Both the US and the UK took the view at that stage that sovereignty over Taiwan was uncertain or undetermined.<sup>177</sup> The key point affecting status has been that both governments have claimed to represent the whole of China. No claim of separate statehood for Taiwan has been made and in such a case it is difficult to maintain that such an unsought status exists. Total lack of recognition of Taiwan as a separate independent state merely reinforces this point. In 1979 the US recognised the People's Republic of China as the sole and legitimate government of China.<sup>178</sup> Accordingly, Taiwan would appear to be a non-state territorial entity which is capable of acting independently on the international scene, but is most probably *de jure* part

<sup>174</sup> See resolutions 1388 (2001) and 1392 (2002).

<sup>175</sup> See resolution 1410 (2002).

<sup>176</sup> See e.g. *China and the Question of Taiwan* (ed. H. Chiu), New York, 1979; W. M. Reisman, 'Who Owns Taiwan?', 81 *Yale Law Journal*, p. 599; E. P. Morello, *The International Legal Status of Formosa*, The Hague, 1966; V. H. Li, *De-Recognising Taiwan*, Washington, DC, 1977, and I. C. Chiu, 'The International Legal Status of the Republic of China', 8 *Chinese Yearbook of International Law and Affairs*, 1990, p. 1. See also *The International Status of Taiwan in the New World Order* (ed. J. M. Henckaerts), London, 1996; *Let Taiwan be Taiwan* (eds. M. J. Cohen and E. Teng), Washington, 1990, and J. I. Charney and J. R. V. Prescott, 'Resolving Cross Strait Relations Between China and Taiwan', 94 *AJIL*, 2000, p. 453.

<sup>177</sup> See Whiteman, *Digest*, vol. III, pp. 538, 564 and 565.

<sup>178</sup> See Crawford, *Creation of Statehood*, p. 145. Note that the 1972 USA-China communiqué accepted that Taiwan was part of China, 11 *ILM*, pp. 443, 445. As to the 1979 changes, see 73 *AJIL*, p. 227. See also 833 *HC Deb.*, col. 32, 13 March 1972, for the new British approach, i.e. that it recognised the Government of the People's Republic of China as the sole legal Government of China and acknowledged the position of that government that Taiwan was a province of China, and see e.g. *UKMIL*, 71 *BYIL*, 2000, p. 537. See also *Reel v. Holder*, [1981] 1 *WLR* 1226.