Aims & Objectives

Is it possible to establish the conditions for legitimate and sustainable national governance through a period of benevolent foreign autocracy? This seminar explores the emergence of international administration of territory from colonial administration and military occupation to more recent efforts to govern post-conflict territories. This new governance practice makes it important to analyse and refine the rules and institutions that channel and constrain the exercise of such powers, and to strengthen the remedies available when it is abused.

Students will develop a critical understanding of modern notions of sovereignty, the nature of modern states, and the possibilities and limitations of external efforts to resolve internal problems. Through emphasizing primary materials, students will also develop the ability to analyse different forms of public documents, ranging from legal reasoning (judgments), political compromises (treaties and resolutions), policy positions (statements), and advocacy (non-governmental organization papers).

State-building through external intervention will be the primary empirical focus, though the seminar will also consider less coercive and extensive engagement in national governance structures through humanitarian relief, development assistance, and electoral supervision.

Key themes to be explored are the sources and content of norms governing activity in this area, the forms of accountability for the actors concerned, and the costs, benefits, and practicality of possible reforms.

Prerequisites

This is a demanding course that requires extensive preparation before class. Above and beyond reading the assigned materials, this means spending time reflecting on their content and preparing responses to the various questions that have been provided. Note in particular the required reading for the first class.
Assessment

Assessment will be on the basis of a class presentation and a 6,000 word research paper on a topic approved by the instructor.

Class presentation

The class presentation should be a very brief overview of the material assigned for the class and a first attempt to address the questions posed in the reading guide. This is intended to open up discussion. You may distribute printed material but PowerPoint is not to be used. The entire presentation (including all speakers in the case of joint presentations) should last between 15-30 minutes.

Research paper

Approval of paper topics will be on the basis of a title and one paragraph outline emailed to chesterman@nyu.edu. This should explain the question you intend to answer or the argument you will to make, rather than simply denoting a broad area you will survey. The topic must be approved before the mid-semester recess (18 September 2009).

The model for a good paper is a good journal article. Rather than simply surveying a topic, journal articles — if they are to be worth publishing — have a point to make, an argument to assert, a reason why they should be read. Some of the very best papers submitted for this course have subsequently been published. For information on the publication process, see the link available from www.SimonChesterman.com

You don’t have to produce a publishable paper in order to pass or do well. More basic information on writing law essays is available in Simon Chesterman and Clare Rhoden, *Studying Law at University* (2nd edn; Sydney: Allen & Unwin, 2005), ch 8. This is available in the library and excerpted in the IVLE workbin.

Papers are to be submitted by email to chesterman@nyu.edu on the last day of formal instruction (13 November 2009).

Footnotes are not counted in the word limit but should include citations only (rather than additional text). Ten percent either side of the word limit is acceptable (i.e. your paper should be 5,400 words to 6,600 words). Anything outside that range may be penalized. All papers will be checked for originality using the www.Turnitin.com service.

Text & References

State-Building & Int'l Administration - Materials distributed electronically through IVLE.


# Outline of classes

Part I: Introduction
1. Can International Organizations Build States?

Part II: Norms
2. Law of Military Occupation & Regime Change
4. Colonialism, Trusteeship, & Decolonization
5. A Responsibility to Protect?
6. Immunities & Responsibility of International Organizations

Part III: Assistance
6. Refugees & Internally-Displaced Persons
7. Relief & Non-Governmental Organizations

Part IV: Coercion
8. Law Applicable to Troops Participating in UN Peace Operations
9. Private Military Companies
10. Governance & Accountability in International Administration of Territory

Part V: Institution-Building
11. Constitutions, Elections & Exit Strategies
12. The Future of State-Building

Additional Readings
Part I: Introduction

1. CAN INTERNATIONAL ORGANIZATIONS BUILD STATES?

Introductions. Background to the course. Underlying questions.

Is it possible to establish the foundation for sustainable national governance through external intervention? What does this assume about the nature of the state? What international and domestic legal and political constraints are there on interventions by international organizations? What norms govern such actions by external actors and to whom are they accountable? What does work in this area tell us about the nature and adequacy of the law applicable to UN operations? What should be different?


Part II: Norms

2. LAW OF MILITARY OCCUPATION & REGIME CHANGE

International humanitarian law provides a legal basis for an occupying power to exercise temporary authority over territory that comes under its control. What rights and obligations go with this authority? What norms govern the aftermath of an intervention? Is military occupation, as provided for in the Hague Regulations and the Fourth Geneva Convention, consistent with “regime change”?

Primary materials:

2.1. Convention (IV) Respecting the Laws and Customs of War on Land and Its Annex: Regulations Concerning the Laws and Customs of War on Land (1907 Hague Regulations), done at The Hague, 18 October 1907, 36 Stat 2277, 1 Bevans 631 .............................................................. 33

2.2. Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), done at Geneva, 12 August 1949 ......................................................................................................................... 40
2.3. UN Security Council resolution 1483 (2003) .................................................................72
2.4. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion) (International Court of Justice, 9 July 2004) .................................................................77
2.5. Beit Sourik v. Israel (Israeli High Court, 30 June 2004) HCJ 2056/04 ..........133

Further reading:

VIDEO SCREENING: “THE BATTLE OF ALGIERS”

In the 1960s, Gillo Pontecorvo’s classic film of urban terrorist insurgency was studied by the campus left for its lessons in revolutionary-cell organization and was obligatory viewing for Black Panthers. In August 2003, a special screening was organized in the Pentagon, with the following included in an internal flier about the movie: “How to win a battle against terrorism and lose the war of ideas. … Children shoot soldiers at point blank range. Women plant bombs in cafes. Soon the entire Arab population builds to a mad fervor. Sound familiar? The French have a plan. It succeeds tactically, but fails strategically.” Is this the lesson of “The Battle of Algiers”?

[This will be screened out of class hours]

3. COLONIALISM, TRUSTEESHIP, & DECOLONIZATION

What obligations were assumed by mandatories and the administering powers of trust territories? What powers did the organs of the League of Nations and the United Nations have to supervise the exercise of these obligations? What was the difference between a non-self-governing territory and a trust territory? What is the content of the right to self-determination?

Primary materials:
3.1. President Wilson’s Fourteen Points.................................................................172
3.2. Covenant of the League of Nations, art 22.....................................................176
3.3. United Nations Charter, chh XI-XIII.............................................................177
3.4. Declaration on the Granting of Independence to Colonial Countries and Peoples, GA Res 1514 (XV) (1960) ......................................................181
3.5. Principles Which Should Guide Members in Determining Whether or not an Obligation Exists to Transmit the Information Called for Under Article 73e of the Charter, GA Res 1541 (XV) (1960) ....................... 183
3.7. Trusteeship Council Resolution 2199 (LXI), UN Doc T/RES/2199 (25 May 1994) ........................................................................................................ 190
3.9. UN Security Council resolution 956 (1994) ........................................................................ 193

Further reading:


*Case Concerning East Timor (Portugal v Australia)* [1995] ICJ Rep 90.


4. **A RESPONSIBILITY TO PROTECT?**

*When a country is unable or unwilling to protect its own population, is there a right to assist that population? Is there an obligation? Who is trying to make new international law in this area? Why? Is it a good idea? What changes in the notion of “responsibility to protect” in the various documents? (Look in particular at the threshold for action and the institutional role of the UN Security Council.)*

Primary materials:


4.4. World Summit Outcome Document (Follow-up to the Outcome of the Millennium Summit), UN Doc A/60/L.1 (20 September 2005), paras 138-140.........................................................................................................................223

Further reading:


5. IMMUNITIES & RESPONSIBILITY OF INTERNATIONAL ORGANIZATIONS

*To whom are UN officials accountable for their conduct? What mechanisms are available to challenge the abuse of power by UN staff? What more should be done?*

Primary materials:


5.2. International Law Commission, Draft Articles on Responsibility of International Organizations.................................................................................................229

5.3. The Management of the United Nations Oil-for-Food Programme: Volume 1 - The Report of the Committee (New York: Independent Inquiry into the Oil-for-Food Programme, 7 September 2005), Preface (pages 1-5)...................................................................................................................262


Further reading:

Part III: Assistance

6. REFUGEES & INTERNALLY-DISPLACED PERSONS

What are the operational obligations of international organizations in relation to refugees and other displaced persons? Are they sufficiently accountable? What rights does a refugee have? Which, if any, of the following persons are refugees under the 1951 Convention: (a) someone crossing a border to flee a war; (b) someone crossing a border to flee famine; (c) someone who has not crossed a border; (d) someone on the high seas?

How should displaced populations be managed when they settle in an area for months or years? Do human rights norms bind the United Nations or its agencies?

Primary materials:

6.2. UNHCR, Lessons Learned from the Rwanda and Burundi Emergencies (1 December 1996)..........................................................369

Further reading:


7. RELIEF & NON-GOVERNMENTAL ORGANIZATIONS

What norms govern the behaviour of NGOs? To whom are they accountable?

What governance responsibilities (if any) are assumed when an external actor undertakes to provide humanitarian relief to a population? What accountability structures (if any) are available to an aggrieved national in the event of negligence or abuse? How can the perverse effects of a sudden inflow of foreign money be minimized? Do current approaches properly include women?

Primary materials:
7.1. Code of Conduct for The International Red Cross and Red Crescent Movement and NGOs in Disaster Relief .........................................................430
7.4. UN Security Council resolution 1325 (2000) .................................................................454
7.7. UN Security Council resolution 1820 (2008) .................................................................475

Further reading:


Part IV: Coercion

8. LAW APPLICABLE TO TROOPS PARTICIPATING IN UN PEACE OPERATIONS

What norms govern the practical use of force under UN auspices? When troops enter a conflict environment, what obligation is there to protect civilians? What mechanisms should be available to hold peacekeepers or civilian police to account? What mechanisms will sending states accept?

Primary materials:

8.2. Institut de Droit international, Conditions of Application of Humanitarian Rules of Armed Conflict to Hostilities in Which United Nations Forces May Be Engaged (1971 Zagreb Resolution) ..............485
9. **PRIVATE MILITARY COMPANIES**

What structures of accountability govern private military companies? How effective are codes of conduct? What are the prospects for regulation through international mechanisms such as the International Convention Against the Recruitment, Use, Financing and Training of Mercenaries or the Convention for the Elimination of Mercenaries in Africa? What are the prospects for regulation through domestic legal mechanisms, such as those adopted in France, South Africa, and the United States? What are the prospects for self-regulation?

Primary materials:


9.2. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I), 8 June 1977 ............................................ 531

9.3. International Convention against the Recruitment, Use, Financing, and Training of Mercenaries, 4 December 1989 ..................................... 532

9.4. International Peace Operations Association Code of Conduct v.12, 2009 ........................................................................................................ 537


9.7. Coalition Provisional Authority Memorandum Number 17, Registration Requirements for Private Security Companies (PSC), CPA/MEM/26 June 2004/17 ...................................................................................... 554

9.8. Coalition Provisional Authority Order Number 17 (Revised), Status of the Coalition Provisional Authority, MNF-Iraq, Certain Missions and Personnel in Iraq, CPA/ORD/27 June 2004/17 ................. 567
Further reading:


10. GOVERNANCE & ACCOUNTABILITY IN INTERNATIONAL ADMINISTRATION OF TERRITORY

Is the United Nations (or any other international actor) well-suited to governing post-conflict territory? To whom are such actors accountable?

Primary materials:

10.1. UN Security Council resolution 1244 (1999) ................................................................. 583
10.2. UNMIK Regulation 1999/1 (25 July 1999), On the Authority of the Interim Administration in Kosovo ......................................................................................... 591
10.3. UNMIK Regulation 1999/24 (12 December 1999), On the Law Applicable in Kosovo ............................................................................................... 594

Further reading:


Part V: Institution-Building

11. CONSTITUTIONS, ELECTIONS & EXIT STRATEGIES

What international standards, if any, should apply to constitutional structures put in place by external actors? How should a constitution be drafted? By whom? What role should political parties play? Is democracy a requirement? What structures will best minimize the likelihood of a return to conflict?
Are first elections the appropriate point for an international presence to depart? What obligations, if any, remain upon the United Nations after the conclusion of a mission?

Primary materials:


Further reading:


12. THE FUTURE OF STATE-BUILDING

Materials to be provided.
ADDITIONAL READINGS

Further general reading:


