New York University School of Law

Proposal for a new seminar, Spring 2006

SELECTED PROBLEMS IN UNITED NATIONS LAW:
STATE-BUILDING, GOVERNANCE, AND ACCOUNTABILITY

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Prerequisites:
None.

Recommended:
Some background in international law or political theory or history of international relations is highly desirable.

Course description:
This course examines the normative framework within which international organizations operate through detailed study of legal issues arising in the exercise of quasi-governmental powers by the United Nations. This new governance practice makes it important to analyse and refine the rules and institutions that channel and constrain the exercise of this power, and to strengthen the remedies available when it is abused.

State-building through external intervention will be the primary empirical focus, though the course 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.

Assessment
A class presentation and a 25-page paper (exclusive of footnotes). Students may enrol for the additional writing credit if they wish to take course for three credits.
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## 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 consistent with “regime change”?

Primary materials:


Further reading:


Bhuta, Nehal, “Occupation Law and Regime Change” [forthcoming]

[OPTIONAL] 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?

Primary materials:


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?

Primary materials:


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:


Further reading:

Wellens, Karel, Remedies Against International Organisations (Cambridge: Cambridge University Press, 2002).

Part III: Assistance
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? How should displaced populations be managed when they settle in an area for months or years?

Primary materials:


Further reading:


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:

- Code of Conduct for The International Red Cross and Red Crescent Movement and NGOs in Disaster Relief, available at [http://www.ifrc.org/publicat/conduct](http://www.ifrc.org/publicat/conduct).

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? How can a permissive environment for reconstruction be established? When troops enter a conflict environment, what obligation is there to protect civilians?

Primary materials:


Special Reference by the Morobe Provincial Executive (Supreme Court of Papua New Guinea, SCR No 2 of 2004, decision of 13 May 2005), available at http://www.paclii.org/pg/cases/PGSC/2005/1.html.

Further reading:


Chesterman, You, The People, ch 3.

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 of self-regulation?

Primary materials:


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:


Further reading:


Part V: Institution-Building
11 CONSTITUTIONAL STRUCTURES & POLITICAL PARTIES

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?

Primary materials:


[updated Iraq information tbc]

Further reading:


12 ELECTIONS & EXIT STRATEGIES

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:

13 NOTES FROM THE FIELD

Guest lecturer from a post-conflict operation (to be announced).

Part VI: Conclusions

14 THE FUTURE OF STATE-BUILDING

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?

How did plans for a Peacebuilding Commission change during negotiations at the United Nation?

Primary materials:


Further reading:


**ADDITIONAL READINGS**

Further general reading:


