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Review Essay: International Territorial Administration and the Limits of Law

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Eric De Brabandere, *Post-Conflict Administrations in International Law: International Territorial Administration, Transitional Authority and Foreign Occupation in Theory and Practice*, Leiden: Martinus Nijhoff, 2009, ISBN 9789004170230, 332 pp., €100 (hb).

Carsten Stahn, *The Law and Practice of International Territorial Administration: Versailles to Iraq and Beyond*, Cambridge: Cambridge University Press, 2008, ISBN 9780521878005, 828 pp., £95 (hb).

Ralph Wilde, *International Territorial Administration: How Trusteeship and the Civilizing Mission Never Went Away*, Oxford: Oxford University Press, 2008, ISBN 9780199274321, 607 pp., £64.95 (hb).

Two thousand and nine was a year of many anniversaries for the state-building project. It marked ten years since the United Nations began its bold experiments of state-building in East Timor and Kosovo, now the independent state of Timor-Leste and the embryonic Republic of Kosovo. It was twenty years since Namibia held elections in the course of becoming independent, heralding a new post-Cold War activism.[1] It was also ninety years since the League of Nations established the Mandates System, which — even though it applied only to the colonies of enemy states defeated in the Great War — marked the beginning of the end of colonialism.

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[1]   See generally M. R. Berdal and S. Economides (eds.), *United Nations Interventionism, 1991-2004* (2007).

From the perspective of international law, the century in which all these things took place saw two remarkable transformations in content, and one major change in structure. The structural change was the move from bilateralism to multilateralism; the shift from, as it were, contract to social contract. This could be seen in, among other things, the creation of the League of Nations, its successor the United Nations, and vague reference to an 'international community'.[2]

The first change in the content of international law was clearly related to this new structural paradigm: the prohibition on the use of force.[3] The twentieth century was, of course, the bloodiest in human history. But it remains remarkable that today we tend to regard peace as the norm and war as the exception. For most of human history it had been the other way around: the very word 'peace' derives from the Latin *pax*, meaning an agreement — a pact — to refrain from hostilities.[4]

The second major change in content was more ambiguously related to the new paradigm: the discrediting of colonialism. When the United Nations was established, around 700 million people — about a third of the world's population at the time — lived under foreign control. Today the number of people in non-self-governing territories is more like 700,000.

Many of the drivers of these changes were political. It took two world wars to entrench the prohibition on the use of force; resistance on the part of colonial peoples clearly played a key role in throwing off the yoke of oppression. Some drivers were economic: new powers such as the United States, for example, found more efficient means of obtaining the benefits of colonialism without actually having to run a formal empire.[5]

But it was law that typically provided the vocabulary and the tools for consolidating and implementing these changes. It seems an appropriate moment, then, to reflect on what has been learned about state-building and, in particular, what a legal

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[2]   Cf. J. H. H. Weiler, 'The Geology of International Law: Governance, Democracy and Legitimacy', (2004) 64 *Heidelberg Journal of International Law* 547. On the parallels with the domestic move from status to contract, see H. Maine, *Ancient Law* (1861), 100.

[3]   I. Brownlie, *International Law and the Use of Force by States* (1963).

[4]   S. C. Neff, *War and the Law of Nations: A General History* (2005), 29-38.

[5]   See, e.g., C. Raghavan, *Recolonization: GATT, the Uruguay Round, and the Third World* (1990).

analysis can provide. The three books considered in this essay, all by younger scholars with bright futures ahead of them, are suggestive of the promise and the limitations of such an approach.

1 (Re)birth of a literature

The literature on state-building is, by now, enormous. Part of that size is because of the slippery definition of what, exactly, is being discussed. For some, 'state-building' means the very limited set of cases in which external actors have assumed some or all of the trappings of sovereignty. This embraces the most prominent cases such as Kosovo, East Timor, and Iraq.

As it became clear that these cases were rather unusual, however, a broader definition has been adopted by many commentators and practitioners. This encompasses a wider range of efforts to support the institutions of the state and places more emphasis on the role to be played by national actors. A Report by the UN Secretary-General issued in June 2009, for example, repeatedly emphasizes that primary responsibility lies with national actors, though the 'international community' can play a critical role.[6] The danger, of course, is that one slips into the language of 'peacebuilding' — a term often defined so broadly as to embrace virtually all forms of international assistance to or engagement with countries that have experienced or are at risk of conflict.[7]

Across these definitional divides, most of the literature tends to focus on one or more of four basic questions. The first is, simply, what happened? This encompasses the wide range of historical studies of particular cases, with shelves of books on some cases, such as Bosnia, alone.[8] We may think of these as the travel guides of the field.

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[6] Report of the Secretary-General on Peacebuilding in the Immediate Aftermath of Conflict, UN Doc A/63/881-S/2009/304 (2009), para. 4.

[7] E. M. Cousens, 'Introduction', in E. M. Cousens and C. Kumar (eds.), *Peacebuilding as Politics* (2001), 1 at 5-10.

[8] See, e.g., M. W. Doyle, *UN Peacekeeping in Cambodia: UNTAC's Civil Mandate* (1995); S. L. Woodward, *Balkan Tragedy: Chaos and Dissolution After the Cold War* (1995); D. Chandler, *Bosnia: Faking Democracy After Dayton* (1999); J. Saltford, *The United Nations*

The second question is: how can we do this better? Initially this literature had to push against the exceptionalist understanding of Kosovo and East Timor: the view that these operations were the first time anything like this had ever happened, and the last time it ever would happen. A cottage industry of grants and conferences now offers endless opportunities to revisit Alvaro de Soto's epithet on UN policy planning: 'No wheel shall go un-reinvented.'[9] These are, perhaps, the functional equivalent of 'State-building for Dummies' — the RAND Corporation has, in fact, published a *Beginner's Guide to Nation-Building*[10] — with subgenres on security sector reform, running elections, promoting the rule of law, kick-starting the economy, and so on.

A third set of books examines some of the interesting legal questions that have arisen in this context, such as the legal basis for the activity, the status of such territories, and the accountability structures applicable to so-called 'internationals'.[11] These tend to be more narrowly targeted in their appeal, often deriving from doctoral dissertations. The cliché here is sometimes accurate, with the academic expert learning more and more about less and less — though the explosion of literature on the rule of law and transitional justice suggests the wider appeal of a broader examination of the role of law in establishing the conditions for peace.[12]

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and the Indonesian Takeover of West Papua, 1962-1969: The Anatomy of Betrayal (2002); M. Ignatieff, *Empire Lite: Nation Building in Bosnia, Kosovo, Afghanistan* (2003); J. Dobbins et al., *Occupying Iraq: A History of the Coalition Provisional Authority* (2009).

[9] See, e.g., J. Dobbins et al., *America's Role in Nation-Building: From Germany to Iraq* (2003); R. Paris, *At War's End: Building Peace After Civil Conflict* (2004); V. Page Fortna, *Peace Time: Cease-Fire Agreements and the Durability of Peace* (2004); R. Caplan, *International Governance of War-Torn Territories: Rule and Reconstruction* (2005); J. Dobbins et al., *The UN's Role in Nation-Building: From the Congo to Iraq* (2005); C. T. Call (ed.), *Building States to Build Peace* (2008); V. Chetail (ed.), *Post-Conflict Peacebuilding: A Lexicon* (2009); M. R. Berdal, *Building Peace After War* (2009).

[10] J. Dobbins et al., *The Beginner's Guide to Nation-Building* (2007). The RAND Corporation is a non-profit think tank originally formed to offer research and analysis to the armed forces of the United States.

[11] See, e.g., B. Knoll, *The Legal Status of Territories Subject to Administration by International Organisations* (2008).

[12] See, e.g., R. G. Teitel, *Transitional Justice* (2000); J. Stromseth, D. Wippman, and R. Brooks, *Can Might Make Rights? Building the Rule of Law after Military Interventions* (2006); Naomi Roht-Arriaza (ed.), *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice* (2006).

The fourth set of books ponders the more theoretical question of what this phenomenon means for sovereignty and the institution of the state. Some writers approach this as indicating the arrival of a brave new post-sovereign world;[13] others see in it echoes of the colonialism — even if benevolent in intent — of the past.[14] This last category is the most speculative and blends into the wealth of literature on sovereignty and the state more generally. A vast amount was written in the 1990s on globalization and the death of the state — I wrote some of it myself — and the vast majority of it was utterly wrong.[15]

Sovereignty, of course, has changed. With a few exceptions, the state is no longer identified with the person of the prince; in 2005 every member state of the United Nations accepted the vague formulation of a 'responsibility to protect' those within their jurisdictions.[16] But the state remains the fundamental political unit. Human rights activists would largely agree that although states are the primary violators of rights, legitimate and sustainable state institutions are the only viable means to protect and promote them. Security hawks since September 11 have worried more about failing states than conquering ones.[17] And, more recently, we have seen that despite the enormous transformations associated with globalization, rescuing the global financial architecture required the coordinated action of state agencies.

So it is good that we have this literature on state-building. But surveying the field it is striking that there is a lot more energy spent on *how* to do this than on *why*. The 'why' question is important because it leads to the corollary *for whom*.

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[13] See, e.g., D. Zaum, *The Sovereignty Paradox: The Norms and Politics of International Statebuilding* (2007).

[14] See, e.g., K. M. Zisk, *Enforcing the Peace: Learning From the Imperial Past* (2004); D. Chandler, *Empire in Denial: The Politics of State-building* (2006).

[15] See, e.g., S. Chesterman, 'Law, Subject and Subjectivity in International Relations: International Law and the Postcolony', (1996) 20 *Melbourne University Law Review* 979 and sources there cited.

[16] 2005 World Summit Outcome Document, UN Doc A/RES/60/1 (16 September 2005), available at <http://www.un.org/summit2005>. See generally G. Evans, *The Responsibility to Protect: Ending Mass Atrocity Crimes Once and for All* (2008); A. J. Bellamy, *Responsibility to Protect: The Global Effort to End Mass Atrocities* (2009).

[17] See, e.g., The National Security Strategy of the United States of America, (President of the United States, Washington, DC, September 2002), available at <http://www.whitehouse.gov/nsc/nss.html>.

So why do we find ourselves engaged in this enterprise? Why did the Bush administration move from announcing that 'we don't do nation-building'[18] to attempting two of the most ambitious state-building projects in modern history? Why did the United Nations, which could not agree on saying anything substantive about state-building in the 2000 Brahimi report,[19] create a Peacebuilding Commission just five years later?[20]

The formal justifications offered tend to focus on the target states. Broadly two-and-a-half categories of cases can be identified. The first is situations in which internal governance structures are incapable of exercising effective control. This may be in the aftermath of conflict — as in East Timor, Afghanistan, and Iraq — but also encompasses circumstances in which developmental and political efforts are intended to prop up weak governments. The second is situations in which internal governance structures might be effective but are deemed illegitimate. This may be due to the unrepresentative nature of the regime, or to fears that a regime will use the powers of the state to oppress minority groups. Examples include Bosnia and Kosovo.

We can think of these as the *incapacity* and *malevolence* scenarios and they have some descriptive appeal.[21] But as an analytical tool they are weak. Notably they imply that this is a demand-driven enterprise when none of the most important cases cited above occurred in the continent with the biggest need: Africa. Following the slightly broader definition I have adopted there are, of course, state-building operations in various African countries. But it is noteworthy that these have enjoyed neither the broad mandates nor the deep resources given to operations in Europe and elsewhere.

So let us consider the 'why' questions on the supply side. Here different schools of international relations would point us in different directions. Realists would point to self-interest: Kosovo stabilized the Balkans and avoided an embarrassing loss

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18 M. Doyle and E. Schrader, 'Emphasis on Small, Covert Operations', *Los Angeles Times*, 6 October 2001.

19 Report of the Panel on United Nations Peace Operations (Brahimi Report), UN Doc A/55/305-S/2000/809 (21 August 2000), available at <http://www.un.org/peace/reports/peace_operations>, paras 76-83.

20 GA Res. 60/180 (2005).

21 S. Chesterman, *You, The People: The United Nations, Transitional Administration, and State-Building* (2004), 153.

of face before the upstart Milosevic; East Timor prevented a flood of refugees into Australia; Afghanistan is an ongoing attempt to remove a base for terrorism; Iraq was a failed attempt to assert US dominance in the Middle East that became a desperate effort to stabilize the country with the second largest oil-reserves in the world.[22]

Idealists or liberal institutionalists might point to the role that law and international organizations played: Kosovo stood up for the promise of human rights in Europe; East Timor was a concluding chapter in the dark history of colonialism; Afghanistan and Iraq were wars of necessity and choice, respectively, but both acknowledged the obligation to leave behind a better state than one found. (This has become known as the 'Pottery Barn principle', articulated by Colin Powell before the Iraq war: 'You break it, you own it.'[23] Interestingly, Pottery Barn itself — an upscale home-furnishing store with outlets across the U.S. and Canada — has no such rule and just writes off broken merchandise as a loss.[24])[25]

Constructivists would look to the manner in which ideas shaped the foreign policy choices available: Kosovo saw Europe trapped by its human rights fetishism and NATO by its ill-considered ultimatums to Milosevic; East Timor was a perfectly timed crisis that allowed the West to say they didn't only rescue white-skinned victims in Europe; Afghanistan began as revenge but quickly transformed into a hearts and minds exercise driven by the moralistic rhetoric of the US; Iraq also saw the US trapped in its own rhetoric of benevolent imperialism.[26]

And so on. It is not possible to come up with a conclusive answer to the 'why' question, except to say that the various hypotheses sketched out are broadly consistent

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[22] On realism, see generally K. Waltz, *Theory of International Politics* (1979); J. Mearsheimer, *The Tragedy of Great Power Politics* (2001).

[23] B. Woodward, *Plan of Attack* (2004), 150.

[24] H. Huntley, 'Rule that Isn't Its Rule Upsets Pottery Barn', *St Petersburg Times*, 20 April 2004.

[25] On idealism and liberal institutionalism, see generally R. O. Keohane, *After Hegemony: Cooperation and Discord in the World Political Economy* (1984); A. Stein, 'Neoliberal Institutionalism', in C. Reus-Smith and D. Snidal (eds.), *Oxford Handbook of International Relations* (2008), 201.

[26] On constructivism, see generally A. Wendt, *Social Theory of International Politics* (1999); J. Der Derian, *Critical Practices in International Relations* (2009).

in that they reflect a divergence between the interests of national actors and those of their international counterparts. This deduction is borne out in practice, with the political, military, economic, and human resources available being driven more by the interests of the supplier than the needs of the recipient.[27]

Which returns us to the 'for whom' question, with very different answers, say, if the purpose of a state-building operation is to reduce the chances of a terrorist attack on Americans or maintain the flow of oil, as opposed to making Afghanistan or Iraq a decent place in which to live.[28]

2 Send in the lawyers

The three books under review here fall broadly into the third category. All three are based on doctoral dissertations and reflect the positive and negative aspects of that format. The positive side includes a measure of rigour and episodically deep analysis not possible in a journal article or a book hastily written between lectures or on sabbatical. The downside is that weighty analysis may be compromised by the weight of the volume: together the three books comprise some 1,800 pages. Books on such topics are unlikely to be impossible to put down, but there remains the danger that they are difficult to pick up.

The three authors are legal academics with some modest practical experience in the field. Ralph Wilde is a reader in the Law Faculty at University College London who prefaces his book with reminiscences of a summer at a refugee camp in Kenya. Eric De Brabandere is a lecturer in International Law at Leiden University's Grotius Centre for International Legal Studies who practised as an attorney at the Brussels Bar. Carsten Stahn is an associate professor at Leiden Law School who previously served as a legal officer at the International Criminal Court.

Wilde's book took by far the longest path from doctorate to publication — around four years — and it profits from the delay enormously by adding confidence and clarity to the analysis. His aim is to situate international territorial administration in a wider context than post-conflict state-building. Conceiving these operations as

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[27] See Chesterman, supra note 21, at 244-6.

[28] Cf. A. Hehir, 'The Myth of the Failed State and the War on Terror: A Challenge to the Conventional Wisdom', (2007) 1(3) *Journal of Intervention and Statebuilding* 307.

'post-conflict' is historically inaccurate and politically pernicious:[29] if the situation into which an external actor steps is understood as a governance gap, it falsely assumes that the United Nations or some other actor finds itself in a political vacuum, or confronting a blank slate on which a new political order can be inscribed. Instead, Wilde suggests that the purposes of administration can be understood as a response to one or both of two 'problems'. The first is a 'sovereignty problem', when the identity of appropriate national actors is uncertain. The second is a 'governance problem', when the policies being pursued by national actors is problematic.[30]

A key theoretical argument is that international territorial administration can be understood as a policy institution. 'Institution' is used here in the international relations sense of an established practice rather than meaning an organization as such, with the focus on the implementation of policy rather than its definition or formulation.[31] This move allows a wider range of activities to be considered in a coherent theoretical framework, ranging from the state-building operations of Kosovo and East Timor to the administration of refugee camps. But it presents problems later, as one of the more interesting themes in the book is the purposive inquiry that links the long and deep history of administration through the twentieth century to the projects for which it has been deployed.

Here the book's somewhat breathless subtitle — 'How Trusteeship and the Civilizing Mission Never Went Away' — offers only limited guidance. Wilde argues that his aim is not to discern the 'real' reasons for the projects that he considers, but 'to identify a justificatory framework to explain how the projects are understood in international policy discourse.'[32] This broadly constructivist approach is pursued in refreshingly clear language. He first makes the relatively easy argument that international territorial administration can indeed be considered an established practice, before turning to the more complicated question of whether that practice is in fact unified in the perceived ends to which it has been directed. The assumption frequently made in this context is that the United Nations or some other actor has

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[29] R. Wilde, *International Territorial Administration: How Trusteeship and the Civilizing Mission Never Went Away* (2008), 12-19.

[30] Ibid., at 435. Cf. the *incapacity* and *malevolence* scenarios described supra note 21 and accompanying text.

[31] Ibid., at 36-7.

[32] Ibid., at 39.

assumed sovereignty over the territory in question; Wilde distinguishes plenary control from a claim to *title* and argues that simplistic analogies with sovereignty are therefore misconceived.[33] Having challenged the reductionist approach to international territorial administration, he then maps out a more complex taxonomy grouped under his two 'problems'. Sovereignty problems include situations in which there are questions about the status of a territory and its appropriate administrator (e.g., Kosovo); governance problems comprise a wider range of circumstances including a perceived lack of capacity for governance at all (e.g., East Timor but also refugee camps) and a lack of capacity for 'good' governance (e.g., Bosnia).

3 Problem-solving

The other two books are more conservative in their approach, essentially looking to the legal foundations of international territorial administration, the context in which it is today exercised, and examining some concrete problems. They might broadly be considered as falling within the positivist tradition, though neither would claim that their major contribution is theoretical.

De Brabandere conceives international administration as a *method*.[34] His aim is to situate these operations in their international legal context to see what impact that has on the practice of administration and the questions that it raises. This is done in part by categorizing the various operations and identifying the rules that apply to them, but also the limits to the powers that may thus be exercised. He then applies this analysis — through an underspecified 'functional approach' — to Kosovo, East Timor, Afghanistan, and Iraq in three issue-specific chapters. The first looks at civil administration, comprising economic reconstruction, security sector reform, and humanitarian relief. The second chapter considers reconstruction of the judicial system; the third, institution-building and democratic governance. A group of chapters then offer up some lessons learned: the need for exit as well as entry strategies; the difficulty of balancing the need for consultation and local ownership against the

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[33] Ibid., at 188-9.

[34] E. De Brabandere, *Post-Conflict Administrations in International Law: International Territorial Administration, Transitional Authority and Foreign Occupation in Theory and Practice* (2009), 3.

imperatives that led to intervention in the first place; and the challenge of planning for such operations.

The book, which is clearly written and probably the most accessible to a non-specialist, includes some curious hangovers that may be attributable to the doctoral thesis on which it was based. In particular, it states bluntly that it is 'descriptive and analytical rather than normative' and that the functional perspective adopted justifies excluding theoretical debates except as necessary for the subject matter.[35] This modesty — perhaps intended to deflect the challenges of doctoral examiners — is unfortunate, not least because the closing pages of the book suggest that the author has considerably more to contribute. Notably, he mounts a provocative challenge to the increasingly frequent use of the term *jus post bellum* to indicate the legal framework of international administration. De Brabandere argues that this is bad law but also misidentifies the major problem in such operations as being uncertainty as to the applicable law as opposed to the absence of structures and institutions by which those who wield power can be held accountable.[36]

Stahn — who has a stake in the *jus post bellum* debate[37] — also seeks to offer a 'problem-oriented analysis' of international territorial administration,[38] but this is premised on an understanding of the modern state as an agent or trustee for its citizens.[39] Such a conception echoes the findings of the International Commission on Intervention and State Sovereignty, which built on Francis Deng and other's work on sovereignty as responsibility to devise the doctrine of 'Responsibility to Protect', a watered down version of which was adopted by the UN General Assembly in 2005.[40] Yet it is too much to say that this reflects a communitarian transformation in the

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[35]   Ibid., at 7-8.

[36]   Ibid., at 289-93.

[37]   C. Stahn and J. K. Kleffner (eds.), *Jus Post Bellum: Towards a Law of Transition From Conflict to Peace* (2008).

[38]   C. Stahn, *The Law and Practice of International Territorial Administration: Versailles to Iraq and Beyond* (2008), xxi.

[39]   Ibid., at 31.

[40]   World Summit Outcome Document, supra note 16; F. Deng, *Sovereignty as Responsibility: Conflict Management in Africa* (1996).

international legal order.[41] One may, as Stahn does, draw analogies with the administration of natural resources, such as the international seabed under Part XI of the Convention on the Law of the Sea, which declares the seabed to be the common heritage of mankind.[42] Such reference to the common heritage of mankind is not new, dating back in principle to the treaties of the late 1950s onwards concerning Antarctica, Outer Space, and the Moon.[43] There is a clear distinction, however, between areas defined as outside the scope of sovereign control and the temporary administration of territory that will revert to such control — and, in any case, has a population with rights and interests of their own. Stahn raises but does not pursue such issues — indeed, he appears to endorse both communitarianism[44] and cosmopolitanism,[45] while asserting that his approach is basically functional in nature. Like De Brabandere, this renders the work a little incoherent in terms of its relationship to theory, which is touched on at the beginning and the end of the book but scarcely mentioned in the intervening 700 pages of close historical and legal analysis.

Stahn's work offers the most methodical and thorough account of the history of international territorial administration, beginning with a survey of its various forms: internationalization, the Mandate System, the Trusteeship System, and post-

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[41] Stahn, supra note 38, at 31.

[42] United Nations Convention on the Law of the Sea (UNCLOS), done at Montego Bay, 10 December 1982, in force 16 November 1994, available at <http://www.un.org/Depts/los>, art. 136; Stahn, supra note 38, at 32.

[43] The Antarctic Treaty, done at Washington, DC, 1 December 1959, in force J. 1961, available at <http://www.nsf.gov/od/opp/antarct/anttrty.jsp>, preamble (referring to the 'interest of all mankind'); Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (Outer Space Treaty), done at London, Moscow, and Washington, 27 January 1967, in force 10 October 1967, available at <http://www.oosa.unvienna.org>, preamble (referring to the 'common interest of all mankind'); Agreement Governing the Activities of States on the Moon and Other Celestial Bodies (Moon Treaty), done at New York, 18 December 1979, GA Res 34/68 (1979), in force 1984, available at <http://www.unoosa.org/oosa/SpaceLaw/moon.html>, art. 11 (the moon and its natural resources 'are the common heritage of mankind'). See generally E. Guntrip, 'The Common Heritage of Mankind: An Adequate Regime for Managing the Deep Seabed?', (2003) 4(2) *Melbourne Journal of International Law* 376.

[44] Stahn, supra note 38, at 31-2, 758-9.

[45] Ibid., at 36-40, 761-3.

war occupation. A detailed study of the various cases follows, stretching from the administration of the Saar Basin by the League of Nations to Iraq, with brief consideration of the more recent operations in Liberia, Congo, and Côte d'Ivoire. Subsequent chapters consider the authority of the United Nations to undertake such operations and argue that, although there is no serious question that they fall under the peace-maintenance provisions of the UN Charter, the powers thus exercised are not unlimited. In particular he argues that the applicable legal framework goes beyond the law of international organizations (i.e. the UN Charter) and must include the law of occupation and human rights law, as well as the right to democratic governance.[46] The last substantive part addresses four specific legal problems: the legal status of such territories, the status of the administering authorities, the exercise of regulatory authority, and the relationship with national actors.

4   The use and abuse of history

All three volumes struggle with the need to include the basic facts of historical examples that are familiar in the specialized literature but not well known outside it. Stahn devotes more than 200 pages to his historical survey; De Brabandere offers a compressed account in 35 pages; Wilde attempts to squeeze much of the detail into footnotes — with the result that the first three pages of the introduction consist of a total of thirteen lines of text above a cramped mass of notes. The need to manage the range of examples and intersecting issues also raises structural problems. De Brabandere offers a relatively simple structure of fourteen chapters in four parts, but with 1,306 footnotes numbered in sequence. Wilde presents nine chapters that vary in length from seven to 143 pages. Stahn's 18 chapters in five parts are subdivided in legal numbering that would challenge the average word processor, including a heading in chapter 14 numbered '3.2.3.2.2.b(2)'.

More substantively, the historical sweep of the subject matter leads to a point made by each of the three volumes but to very different effect. Though it is now trite to observe that there are similarities between the practice of international territorial administration and military occupation or the late colonial period, the impact of these historical echoes is understood in quite distinct ways. De Brabandere uses this history to frame his four case studies, but rejects the idea that analogies with trust territories

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[46]   Ibid., at 530-1.

provides a coherent legal framework.[47] Stahn and Wilde explicitly tie international administration to the colonial legacy: though there tends to be less discussion of 'standards of civilization', there are clear echoes in the application of concepts such as 'good governance' and 'capacity-building' that aim to shape the institutions of the state according to the Western liberal tradition.[48] Wilde is by far the most thorough and effective in his examination of the colonial legacy. His subtitle notwithstanding, this is not a radical critique. (Frantz Fanon does appear in one footnote, but immediately after a quote from John Stuart Mill.[49]) The discussion is illuminating both in the comparisons of the dual mandate of 'trust' territories and the various altruistic and self-interested purposes of international territorial administration,[50] as well as the ongoing relevance of the 'standards of civilization' in tutoring 'unskilled peoples' in the ways of government.[51]

In discrete ways, the three books also demonstrate the limitations of a purely doctrinal analysis. All discuss the case of West Irian, for example. Today the Indonesian province of West Papua, this territory was briefly administered by a little-studied operation called the UN Temporary Executive Authority (UNTEA) in the period 1962-1963.[52] West Irian had remained under Dutch colonial administration after the independence of Indonesia in 1945. Pursuant to an agreement between the Netherlands and Indonesia, the territory was transferred from the former to the latter with UNTEA exercising provisional control, after which the UN would monitor an 'act of free choice' on the question of whether the territory should 'remain' or 'sever ties' with Indonesia. De Brabandere summarizes the diplomatic record, correctly noting that the operation included interesting features that 'presaged similar engagements in more complex operations.'[53] Stahn goes a little further in suggesting that the UN 'failed to exercise strict scrutiny' over the plebiscite, making the West Irian case 'one of the less flattering experiences of the UN in the supervision and

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[47]   Brabandere, supra note 34, at 296.

[48]   Stahn, supra note 38, at 19; Wilde, supra note 29, at 359.

[49]   Wilde, supra note 29, at 386 n3.

[50]   Ibid., at 447-8.

[51]   Ibid., at 408-13.

[52]   See generally Saltford, surpa note 8.

[53]   Brabandere, supra note 34, at 23-4.

realisation of claims of self-determination.'[54] (Elsewhere, he describes the massacre of more than 7,000 civilians in Srebrenica as 'rather ambiguous crisis management'.[55]) Wilde more accurately writes that the vote in West Irian was 'widely criticized as a sham', but then somewhat coldly concludes that during the UNTEA period it had been, for his taxonomical purposes, a 'non-state territory with a special international legal status as a self-determination unit.'[56]

On the better known cases, the three authors are in general agreement. Bosnia was *sui generis* and hamstrung by dysfunctional international structures as well as ambivalence about local ownership.[57] Kosovo was ground-breaking in the exercise of sovereign powers by the UN, but ambiguity as to its final status under Security Council resolution 1244 (1999) left the territory in a state of political paralysis.[58] East Timor was comparatively simple in terms of the custodial role of the UN as agent for the Timorese state-in-waiting, but that new state was left with unresolved internal political difficulties and a severely underdeveloped economy.[59] Afghanistan's light footprint makes it a marginal case of international administration, but such under-resourcing was an error (compounded by the shift of attention to Iraq).[60] Iraq itself was an atypically explicit case of military occupation plagued by best-case scenario planning and terrible management.[61]

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[54]   Stahn, supra note 38, at 246-52.

[55]   Ibid., at 288.

[56]   Wilde, supra note 29, at 168-70.

[57]   Brabandere, supra note 34, at 32-3; Stahn, supra note 38, at 287-300; Wilde, supra note 29, at 64-9.

[58]   Brabandere, supra note 34, at 37-40; Stahn, supra note 38, at 330-2; Wilde, supra note 29, at 144-6.

[59]   Brabandere, supra note 34, at 40-1; Stahn, supra note 38, at 345-7; Wilde, supra note 29, at 178-88.

[60]   Brabandere, supra note 34, at 41-5; Stahn, supra note 38, at 361-2; Wilde, supra note 29, at 90.

[61]   Brabandere, supra note 34, at 45-9; Stahn, supra note 38, at 380; Wilde, supra note 29, at 455.

5 Conclusion: Trustees and beneficiaries

For the most part, all three authors rely on the official record rather than interviews. Nevertheless, the lack of meaningful reference to 'local' voices is striking. The books are well-indexed, but despite the extensive discussion of East Timor and Kosovo as paradigm examples of their subject, there is not a single reference to, say, Xanana Gusmão, José Ramos-Horta, or Ibrahim Rugova. Wilde is, at least, explicit about this and emphasizes that his focus is on international policymakers rather than how such operations are experienced 'on the ground'.[62] Yet if one of the merits of his book is that it takes seriously the idea of trusteeship, it is striking that even here the emphasis remains solely on the trustees and not the beneficiaries.

As we celebrate these various anniversaries — the nine decades since the Mandates Commission, two decades since Namibia, one since Kosovo and East Timor — it is useful to look back on what we have learned about state-building. In this proliferation of practice and literature, much of it boils down to a single word. If we have learned anything — if we *should* have learned anything — it is modesty.

Modesty about our ability to understand and take decisions for populations that have their own history, their own culture, and their own political aspirations. Modesty about our ability to match the powerful and blunt means at our disposal to the nuanced and complicated ends of a self-sustaining political system. And modesty as to our ability to manage the process when that political system begins to run itself and realizes that the trustees may be getting in the way.

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[62] Wilde, supra note 29, at 41.