Seminar C:
The Rule of Law in Post-Conflict Situations:
Conflict Termination, Legitimacy, and Peace Building

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Using the seminar’s title as a thesis statement and recent events in Kosovo, Afghanistan, and Iraq as case studies, the group attempted to identify significant legal concepts illustrated by these conflicts. Referencing primary documents such as UN Security Council Resolutions, accords like the Bonn Agreement that re-established permanent government institutions in post-conflict Afghanistan, and the scholarly knowledge of the participants, the group developed by consensus nine broad criteria to compare the post-conflict situations in Kosovo, Afghanistan, and Iraq. The first two meetings considered these nine criteria. The final session considered the influence of history and other factors for state building and the rule of law in post-conflict situations.

In list form, the nine criteria identified and examined were: 1) the legal framework of the post-conflict state; 2) the reason for the international presence on the territory of the post-conflict state; 3) the chapter of the UN Charter that provides authority for actions; 4) specific tasks of the international presence; 5) the role of the United Nations; 6) the role of agreement by the post-conflict state; 7) identification of who is in charge; 8) the role of local institutions; and 9) the timeframe for post-conflict resolution. In the three meetings held by the group the sharp contours of each topic graphically presented themselves.

In describing the first criteria, the legal framework of the post-conflict state, the interplay of multiple layers of law quickly became apparent. In addition to UN Security Council resolutions, cease-fire agreements, armistices, and peace treaties that attempt to control or characterise actions in the post-conflict state, other laws

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have important effect. These start with international humanitarian law (the law of war or the law of armed conflict) that specifically describes expected conduct and processes during an occupation. Human rights law may require actions where obligations created in international humanitarian law do not control. International treaties establish legal responsibilities either because they were acceded to and have continuing effect on the post-conflict states or because they bind forces of sending states. Status of forces agreements also formalise and create legally enforceable relations between the post-conflict state and sending state forces. Customary international law is always present in the interactions of states during a post-conflict period. So also is the pre-existing domestic or municipal legal code of the post-conflict state, the domestic law of any sending states of foreign military forces, and any emerging law established by the creation of a new constitution or domestic and municipal codes.

While the sources of law for a post-conflict state may be rich and numerous, it was recognised that this legal tapestry can be accurately described by only referencing the political and historical context in which it exists. To this end the second criteria used by the group posed the question, “What were the reasons for an international presence on the territory of the post-conflict state?” For each of the three case studies considered, circumstances produced a unique answer. In Kosovo the reason given for the international intervention was to prevent the continuance of a humanitarian disaster. In Afghanistan the international presence sprang from the response to the devastating attacks of 11 September 2001 on the United States. With regard to Iraq, the United States and Great Britain described their reason for the conflict in 2003 as an exercise of pre-emptive self-defence in response to threatening a rogue regime.

The third criteria used by the group – what chapter of the UN Charter authorised action – found Chapter VII was cited by states in all three cases although only in the case of Afghanistan did Security Council resolutions precede the conflict. However, inquiries about the specific tasks of the international presence on the territory of the post-conflict state, the actors, and the role played by various international organisations including the UN – the fourth and fifth criteria; agreement by the post-conflict state concerned – the sixth criteria; the question of who was in charge – the seventh criteria; the role of local institutions – the eighth criteria; and, finally, a timeframe for post-conflict resolution – the ninth criteria; all produced distinctly different results for the three post-conflict situations examined.

In Kosovo the primary actors were found to be NATO and the United Nations. The concrete tasks of security and demining were determined to be military responsibilities undertaken by NATO. The task of reconstruction was found to be a civilian responsibility conducted by various international humanitarian organisations generally co-ordinated and controlled by an Interim Authority appointed by the United Nations. The date of a hand-over of these military and civilian tasks to an established local government in Kosovo was hard for Seminar C to determine or predict.