Humanitarian Occupation

In Bosnia, Kosovo, East Timor and Eastern Slavonia, the international community took the extraordinary step of assuming powers of a national government. With the backing of the UN Security Council, the international administrators passed laws, engaged in law enforcement and even signed agreements on behalf of the territories. Most importantly, they sought to create democratic political institutions. These “humanitarian occupations” turned traditional notions of sovereignty on their head: the international became the national.

This book explores two aspects of these remarkable missions. First, it argues that, contrary to much recent literature, the missions strongly affirm the centrality of the state in the international order. Each of the missions sought to preserve existing borders and populations, consistently rejecting efforts to change either. In so doing the missions followed on important trends in international law that seek to create civic notions of citizenship within existing national territories. Second, the book argues that conventional legal justifications for the missions are inadequate. Each employs rules designed to restrain individual states in competition with each other. But humanitarian occupation is undertaken by the international community in pursuit of collective goals. Existing state-centric norms are ill-suited to judge the missions, since Security Council actions already embody many of the collective goals advanced by those norms.

Gregory H. Fox is Associate Professor of Law (tenured) at Wayne State University Law School, where he is the Inaugural Cohn Family Scholar in Legal History.
Established in 1946, this series produces high quality scholarship in the fields of public and private international law and comparative law. Although these are distinct legal sub-disciplines, developments since 1946 confirm their interrelation.

Comparative law is increasingly used as a tool in the making of law at national, regional and international levels. Private international law is now often affected by international conventions, and the issues faced by classical conflicts rules are frequently dealt with by substantive harmonisation of law under international auspices. Mixed international arbitrations, especially those involving state economic activity, raise mixed questions of public and private international law, while in many fields (such as the protection of human rights and democratic standards, investment guarantees and international criminal law) international and national systems interact. National constitutional arrangements relating to ‘foreign affairs’, and to the implementation of international norms, are a focus of attention.

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Gregory H. Fox
For Sharon, with all my love.
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Acknowledgments

I received truly remarkable research assistance from Christian Nagy, Christi Patrick, Allyson Miller and Tricia Roelefs. Their work was essential to the final product. Brad Roth was exceptionally helpful in reading portions of the manuscript and in sharing insights on many of the topics discussed here. And Sharon Lean gave me the invaluable gifts of her patience and understanding during the seemingly endless process of writing this book.