School of Oriental and African Studies

Centre for the study of Colonialism, Empire and International Law

In association with the

Centre for International Studies and Diplomacy

NEW APPROACHES TO SELF-DETERMINATION CONFERENCE

12-13 June 2008

Khalili Lecture Theatre, College Buildings, School of Oriental and African Studies, University of London, Thornhaugh Street, Russell Square, London WC1H OXG
CONFERENCE PROGRAMME

Thursday 12 June 2008

8.45: Coffee and Registration

9:30: Welcome: Robert Murtfeld, Centre for the study of Colonialism, Empire and International Law, School of Oriental and African Studies, University of London

Keynote: Professor Christine Bell, Chair of Public International Law, University of Ulster
The New Law of Hybrid Self-Determination

Commentator: Professor James Crawford, Whewell Professor of International Law, University of Cambridge

Chair: Professor Christine Chinkin, Professor of International Law, London School of Economics

11.00: Coffee

11:30 Plenary Panel: International Approaches to Self-Determination

Dr Ralph Wilde, Reader and Vice Dean for Research, Faculty of Laws, University College London, University of London
The Legitimacy of Trusteeship in the Post-colonial Era of Self-Determination: Some Questions for Discussion

Alice LaCourt, Assistant Legal Adviser, Foreign & Commonwealth Office
HMG’s Approach to Recognition of Kosovo

Professor Colin Warbrick, Barber Professor of Jurisprudence, University of Birmingham
Kosovo is Not a Precedent: What is it then?

Chair: Rose Parfitt, Centre for the study of Colonialism, Empire and International Law, School of Oriental and African Studies, University of London

1.00 pm: Sandwich Lunch

1.45: Concurrent Panels

1) Red Approaches to Self-Determination: The Soviet Legacy (Room B111)

Professor Bill Bowring, School of Law, Birkbeck College, University of London
The Return of Politics to Self-Determination: from Lenin to Lavrov: from the Baltic states and Georgia to Abkhazia and Transdniestria

Scott Newton, Centre for the study of Colonialism, Empire and International Law, School of Oriental and African Studies, University of London
The Over-Determination of Self-Determination: The Soviet Juridification of Culture

Dr Akbar Rasulov, School of Law, University of Glasgow
Post-Soviet Lessons in Self-Determination: The Opiate is the People, or, the Politics of a Right Whose Subject is Simply Not There

Chair: Robert Murtfeld, Centre for the study of Colonialism, Empire and International Law, School of Oriental and African Studies, University of London
2) Post-Colonial Approaches to Self-Determination (Room B104)

Claire Charters, Victoria University of Wellington, New Zealand
The Legitimacy of an Indigenous Peoples’ Right to Self-determination

Tracie Scott, Birkbeck College, University of London
Culture and Self-Determination: Balancing Rights and Power in the Nisga’a Final Agreement

Yong-Shao Tan, Birkbeck College, University of London
Genealogy of Self-Determination: The Non-Determining Approach

Chair: Milena Robotham, Centre for the study of Colonialism, Empire and International Law, School of Oriental and African Studies, University of London

15:15: Afternoon Tea

15:45 Concurrent Panels

1) Transnational and Sub-National Approaches to Self-Determination (Room B111)

Nesrine Badawi, School of Law, School of Oriental and African Studies, University of London
The Right to Rebel in Islamic Law

Richard Joyce, School of Law, Birkbeck College, University of London
The Promise of Self-Determination

Chair: Owen Taylor, Centre for the study of Colonialism, Empire and International Law, School of Oriental and African Studies, University of London

2) Governance, and Constitutional Approaches to Self-Determination (Room B104)

Kirsty Gover, School of Law, New York University
Inter-Tribal Self-Determination: Membership Governance and Tribal Constitutionalism in Western Settler States

Edefe Ojomo, Department of Law, The American University in Cairo
Liberia’s GEMAP: A New Wave in International Development Intervention

Vijayashri Sripati, Visiting Researcher, European Law Research Center, Harvard Law School
Faking or Crafting Genuine Constitutionalism? A Critique of the UN’s Constitutional Assistance in Afghanistan

Chair: Sarah Mann, Centre for the study of Colonialism, Empire and International Law, School of Oriental and African Studies, University of London
CONFERENCE PROGRAMME

Friday 13 June 2008

9:30: Plenary Panel: Feminist Approaches to Self-Determination: From the Individual to the Group

Gina Heathcote, Centre for the study of Colonialism, Empire and International Law, School of Oriental and African Studies, University of London
*International Feminist Legal Theories and Approaches to Self-Determination: Individual/Internal/External*

Dr Nadje Al-Ali, Centre for Gender Studies, School of Oriental and African Studies, University of London
*Violation of Women’s Rights and the failures of State building in Iraq*

Professor Shelley Wright, Aboriginal Studies Program, Langara College, Vancouver
*Nunavut- Sikavut: Self-Determination and Sovereignty in the Canadian High Arctic*

11:00: Coffee

11:30: Keynote:
Professor Nathaniel Berman, Brooklyn Law School
*The Fire Next Time: Self-Determination and the Discourse of Destabilization*
Chair: Professor Christine Bell, Chair of Public International Law, University of Ulster

1:00pm: Sandwich Lunch

2.00pm: Close
PANELISTS’ ABSTRACTS

Plenary Panel: International Approaches to Self-Determination

Dr Ralph Wilde, Reader and Vice Dean for Research, Faculty of Laws, University College London, University of London

The Legitimacy of Trusteeship in the Post-colonial Era of Self-Determination: Some Questions for Discussion

In a book published by OUP, *International Territorial Administration: How Trusteeship and the Civilizing Mission Never Went Away*, I argue that there is a general concept of ‘international trusteeship’ in international law and public policy which can be traced across the norms of occupation law, colonial trusteeship, the League of Nations Mandate system, the United Nations Trusteeship system and the administration of territory by international organizations, what I term ‘International Territorial Administration’ (ITA). This concept denotes a relationship of administrative control by a foreign actor or a group of such actors – whether states or international organizations – over a territorial unit whose identity is understood as something ‘other’ than that of the administering actor or actors, in most cases because of the lack of sovereignty in the sense of title, and which is conceptualized in terms of the administering actor or actors performing this role on behalf of the administered territory. In many cases it has a twin-track approach, seeking both to remedy perceived local incapacities for governance, and to build up such capacities so that people can run their own affairs. The connection my argument makes between the complex ‘state-building’ peace operations of today and the civilizing mission of the colonial era provides one way into a consideration of the legitimacy of contemporary missions, since colonial and anti-colonial thought brings with it a rich set of important questions relevant to such an enquiry. In this presentation I will map out some of these questions.

Alice Lacourt, Assistant Legal Adviser, Foreign & Commonwealth Office

HMG’s Approach to Recognition of Kosovo

On 18 February 2008, the UK recognised Kosovo as an independent state. How did the UK assess Kosovo as constituting a state, bearing in mind the operation of UNSCR 1244 (1999), and what role did arguments on self-determination play in this analysis?

Professor Colin Warbrick, Barber Professor of Jurisprudence, University of Birmingham

Kosovo is Not a Precedent: What is it then?

This paper shall consider what the uncertainty (or, even, for some, the certainty) about Kosovo’s status indicates about the international legal system.

Concurrent Panel: Red Approaches to Self-Determination: The Soviet Legacy

Professor Bill Bowring, School of Law, Birkbeck College, University of London

The Return of Politics to Self-Determination: from Lenin to Lavrov: from the Baltic states and Georgia to Abkhazia and Transdniestr

This paper starts with an assessment of the recent books by Karen Knop (2002) and Antony Anghie (2005). I make the case that both of them, while in their own ways providing a new and powerful critique of traditional international law, avoid entirely the role of V. I. Lenin from the early years of the 20th century in working out and concretising in practice the principle of the "right of nations to self-determination". For example, Lenin actively supported independence for Finland and the Baltic states, and would have done so for Georgia. They also miss the role of the USSR – in a highly contradictory manner, witness the
"Brezhnev Doctrine" – in pursuing through diplomatic means the implementation of self-determination as a right in international law, and in supporting materially the National Liberation Movements. In both these texts the influence of Thomas M. Franck can plainly be seen. In recent years the focus has been on "internal self-determination", and even "deliberative democracy". Now the wheel appears to have come full circle. The botched emergence of Kosovo as a sovereign state has opened a Pandora's box, to the evident satisfaction of S. V. Lavrov, the Russian Foreign Minister. Once again Georgia is the centre of attention. What should become of Abkhazia and South Ossetia? What about Transdniestria and Nagorno-Karabakh? Issues of self-determination now, once more, become inextricably tied to state recognition and state sovereignty.

Scott Newton, School of Law, School of Oriental and African Studies, University of London

The Over-Determination of Self-Determination: The Soviet Juridification of Culture

Among European empires, the Romanov Empire was unique in its contiguous geographic juxtaposition of European and numerous non-European peoples. The Leninist/Stalinist theory and practice of nationalism—call it 'self-determination in one country,' reflected in Soviet ethnonterritorial federalism on the one hand and nationalities law on the other, both in the context of avowedly developmentalist (and residually colonialist) ideology —can be understood as a response to this extraordinary overland colonialist legacy: the cultural anxieties it generated, the perils it posed, and the emancipatory potential it promised for a project of revolutionary socialism. Leninist/Stalinist self-determination can usefully be analysed from a specifically legal-institutional perspective by comparison with the Wilsonian theory and practice of nationalism, as reflected in the framework for Ottoman, Hapsburg, and German decolonisation/deimperialisation, including the minorities treaties and the Mandates system. The Soviet 'constitutional law of nationalism' (or internal self-determination avant la lettre) turns out to have been much more innovative and complex in its elaboration of constitutional devices for defining, organising and managing national/ethnic difference and simultaneously constituting and determining national/ethnic selves than the then-contemporary international law of nationalism, though nourished by the same springs of culturalist/racist/colonialist assumptions. If the horizontal Versailles-era comparison is instructive, so too is the longitudinal comparison with modern 'internal self determination.' The wars of the Soviet succession (Chechnya, Tajikistan, Abkhazia, Karabakh and others) suggest that legal-institutional forms do not just domesticate (either for Bolshevik or liberal projects) nationalist desire and its volatility, they condition and provoke it.

Dr Akbar Rasulov, School of Law, University of Glasgow

Post-Soviet Lessons in Self-Determination: The Opiate is the People, or, the Politics of a Right Whose Subject is Simply Not There

The traditional concept of self-determination as developed in the mainstream international law discourse, especially in the context of decolonization, implies a certain vision (background understanding) of the typical political entity assumed to be the subject of the self-determination process. A systematic examination of the historical experiences of the post-Soviet states (particularly in Central Asia) with regard to the trajectories of their domestic legal-structural reforms suggests that this vision is fundamentally insupportable in the context of the contemporary legal-political conjuncture. A stronger version of the same thesis would be that that vision has never, in fact, had any real historical foundation and that the conceptual foundation on which it rests is both theoretically spurious and ideologically reactionary. To the extent to which these conclusions are accepted as more or less correct, the practical implication of this argument would be that the traditional law of self-determination as we know it has, in fact, always been, in the best case, fundamentally miscalibrated with regard to the kind of protective and enabling entitlements it provided to the decolonizing polities; in the worst case,
Concurrent Panel: Post-Colonial Approaches to Self-Determination

Claire Charters, Victoria University of Wellington, New Zealand
The Legitimacy of an Indigenous Peoples’ Right to Self-Determination

The UN General Assembly (UNGA) adopted the Declaration on the Rights of Indigenous Peoples (the Declaration), which includes the right to self-determination, in September 2007. In so doing, and with the exception of only four negative votes, the international community endorsed the inclusion of Indigenous collectives in the legal category of peoples who have the right to self-determination. It is an appropriate moment to reflect, then, on the legitimacy of an Indigenous peoples’ right to self-determination. Drawing on an inclusive approach to international relations and international legal theories,1 this paper presents “markers” of norm legitimacy, grouped under three broader types: procedural, substantive and engagement legitimacy. Procedural legitimacy relates to the process followed in the evolution of the norm, substantive legitimacy to the content of the norm, including its fairness, justice and coherence, and engagement legitimacy to states’ internalisation of norms through interaction with, and interpretation of, such norms.2 It is argued that the greater the legitimacy of the norm, the greater the likelihood that states will internalise a pull to voluntarily and habitually obey such norms, even when it is not in their interest to obey and despite the lack of sovereign or sanction.3

The legitimacy of Indigenous peoples’ rights is important because it indicates the likelihood that Indigenous peoples’ rights will benefit Indigenous communities – some of the most marginalised in the world. An in-depth empirical analysis of the twenty-five year process leading up to the UNGA’s adoption of the Declaration, including best-available records of state and Indigenous peoples’ interventions in relevant UN fora, reveals both legitimacy-positive and legitimacy-negative elements of an Indigenous peoples’ right to self-determination. On the one hand, an Indigenous peoples’ right to self-determination suffers from legitimacy deficits. Its development was procedurally unclear in that it did not follow, nor was prescribed by, a certain, known and fixed secondary law determining how international law is made.4 The process was, to some extent, ad hoc. There were a number of international institutions involved, and those institutions continued to proliferate during the development of the right. For example, the Human Rights Council replaced the Human Rights Commission in the final years of negotiations on the Declaration, which resulted in confusion as to how the Declaration would progress up to the UNGA. Second, substantively, the content of an Indigenous peoples’ right to self-determination remains somewhat unclear such as when, and if, Indigenous peoples’ can secede as a matter of international law. On the other, legitimacy-positive, side, the Declaration acquires a good deal of legitimacy from the inclusivity of the procedures and institutions that were instrumental in developing the Declaration.5

Indigenous peoples negotiated the text of the Declaration sitting alongside their state counterparts. An Indigenous peoples’ right to self-determination is also substantively fair in that it goes some way to removing the discriminatory, and literally nonsensical, legal position that Indigenous peoples were

1 Including the work of Thomas Franck in The Power of Legitimacy Among Nations (Oxford University Press, New York, 1990); and Fairness in International Law and Institutions.
3 This is a combination of concepts derived from Koh and Franck in particular.
5 Here, I pick up on, and expand on, Karen Knop in Diversity and Self-Determination in International Law (Cambridge University Press, Cambridge, 2002).
excluded from the definition of peoples, not to mention the historical and colonial bias in international law against non-Western communities. Importantly, too, while some uncertainty as to the content of an Indigenous peoples’ right to self-determination remains, it has become clearer with the adoption of the Declaration. It can also be expected that states, which have now accepted an Indigenous peoples’ right to self-determination, will engage more with Indigenous peoples’ claims to self-determination.

Tracie Scott, Birkbeck College, University of London

Culture and Self-Determination: Balancing Rights and Power in the Nisga’a Final Agreement

The signing of the Nisga’a Final Agreement (NFA) in 1999 has elicited vociferous criticism from both Aboriginal rights proponents and more ‘right-wing’ organizations such as the Fraser Institute. Indeed from within the Nisga’a Nation similar tensions are manifest. In this paper it will be argued that this polarized criticism is a manifestation of, as Bhabha would describe, the “complex, on-going negotiation that seeks to authorize cultural hybridities that emerge in moments of historical transformation”[1]. In the NFA this negotiation can be seen through the mediation between concepts of rights and power that attempt to support ‘traditional culture’ whilst also cultivating governance powers that allow for non-traditional economic and social development. If, however, we analyze this agreement through a postcolonial framework it can be recognized as reflecting a postcolonial understanding of Nisga’a culture that is dynamic and wrought with difficult and agonistic negotiations. Through understanding culture in this way, the NFA demonstrates how actualizing self-determination in a postcolonial world will not be a straight-forward contemporary ‘recognition’ of pre-existing national sovereignties, but a difficult and awkward process of negotiation. In the author’s view, it is this process that should be seen as a positive move towards decolonization.

Yong-Shao Tan, Birkbeck College, University of London

Genealogy of Self-Determination: The Non-Determining Approach

This paper does not prescribe any new resolution. It cannot be prescriptive: it is non-self-determining. A brief account of the evolution of self-determination will be presented, with an emphasis on its juridification and the various mainstream juristic approaches to understanding it. Tracing its key developments from being hoisted by both Wilson and Lenin as a political principle in the early 20th century, to being enshrined as a non-derogable norm in international law, this conventional evolutionary account of self-determination seems to have wandered into a legal cul-de-sac. What we now have, is an unprecedented amount of literature on a so-call fundamental right in international law, which is still plagued by indeterminacy, unenforceability and controversy. In attempting to apply self-determination as a workable legal right, patchwork constraints were imposed by the legal pragmatists, limiting its application by prescription and entitlement. Seeking to resolve the apparent arbitrariness of those limitations, legal reformists injected into self-determination a substantial amount of hope in attempts to re-understand and re-construct the ‘concept’. Throwing in the white towel, post-modern jurists pointed out how unaccountable the hope is, how inherently indeterminate it is, and wishes to jettison the whole notion of self-determination as a legal right. The work on self-determination by these jurists has contributed to the richly-textured complexity of the legal right to self-determination that cannot simply be brushed aside. In surveying some of the different juristic approaches to understanding self-determination, this paper tries to understand

6 See, amongst others, Anthony Anghie

7 For example, in a case against the Government, the Supreme Court of Belize recently, when upholding Mayan claims to property rights, spoke of the Declaration reflecting general principles of international law: (2007) Claim Nos 171 and 172 of 2007, Conteh CJ (Belize Sup Ct).
why and how we have created this legal anomaly that is seemingly unenforceable and simultaneously central to international law. It will also explain the arbitrariness of the limitations, the futility in finding the real concept of self-determination, and why it is impossible to cast it all aside now. To do so, a genealogy of self-determination using autopoietic systems theory will be presented to highlight the problem raised by the conventional evolutionary account, to show that it is conflating the meaning of self-determination with its origin. This genealogy will point out the inter-systemic lost-translation to explain the disappointment, frustration and difficulties we face when trying to deal with self-determination as a legal right. The non-self-determining approach has to be taken to put things into perspective. It is one that does not wish to contribute more to the already saturated discourse before it can understand how we have arrived at where we are today. The non-self-determining approach is not adopted simply to provide lexical amusement. We need to pause if we want to move beyond pedantic calculative thinking. The paper simply invites us to take pause, to think about the way we have been trying to understand self-determination, and how that has taken us down a very narrow and difficult path. We are beginning to lose sight of the complexity of self-determination. The non-self-determining approach wishes to reintroduce its complexity, and it is hoped by taking pause, we can have a better understanding of what we are dealing with.

Concurrent Panel: Transnational and Sub-National Approaches to Self-Determination

Nesrine Badawi, School of Law, School of Oriental and African Studies, University of London
The Right to Rebel in Islamic Law
The field of international legal studies is accustomed to a state-centric sovereignty based approach to regulation of international issues. One of the obvious examples of the influence the nation-state has had on the dynamics of development of international law is the law of armed conflict and its distinction between international and non-international armed conflicts and between combatants and civilians, whereby non-state combatants in non-international armed conflict are expected to abide by criteria set by states in treaty and customary law. The criteria often put such groups at a significant disadvantage in their conduct of hostilities if they wish to enjoy privileges of combatants. Critical work has dedicated a significant effort to highlighting the disparity and bias of IHL. However, less effort has been made in the use of alternative legal systems to prove that the international legal system is simply one of many alternatives available for the regulation of non-international armed conflicts, including self determination wars. This paper attempts to use the distinction and targeting regulations in Islamic law to portray the underlying assumptions and biases in International law. Unlike international law, Islamic jurisprudence offers a more protective framework to wars of rebellion (Muslims rebelling against the Muslim ruler) than wars with non-Muslim entities. This paper does not suggest that Islamic jurisprudence is any less biased in its development and reasoning than international law. On the contrary, it argues that analysis of the underlying assumptions and interests informing both systems (rather than rule based comparison) can potentially inform scholars specialised in either to understand better the paradigms shaping each of them. In order to do so, it offers a summary of the laws regulating rebellion in Islamic law as developed by early Muslim jurists and contrasts these laws to laws regulating wars with non-Muslims with the objective of portraying the ideological foundations shaping Islamic law of armed conflict. In its analysis of classical Islamic jurisprudence on rebellion, the paper addresses briefly the right to rebel in Islamic law. It argues that identity of the rebels plays a more important role in Islamic law and looks at the rights of Muslims and non-Muslims to rebel in the Islamic state. Additionally, it examines the most commonly agreed upon rules governing
the conduct of the ruler in its conflict with rebels and again shows how the identity of the rebels shapes jurisprudence in the development of such rules. Finally, the paper discusses the potential benefits from examining Islamic law on rebellion to analysis of the law of armed conflict regulating non-International armed conflict and argues that a debate on the concepts informing these two legal systems could enrich critical scholarship in both fields.

Richard Joyce, School of Law, Birkbeck College, University of London

The Promise of Self-Determination

The principle of self-determination posits free and independent collective subjectivity at the heart of political existence. And yet, in the standard view, the 'self' of this self-determination is an incipiently 'national' self. And what is, or remains to be, determined, is a new or revived national entity. There seems little scope for the 'self' to be any other kind of entity, or for it to determine something other than its own status as 'national'. Given the particular history of 'nation', this poses a difficulty which has been well documented by post-colonial scholars. As Anghie argues, the process of decolonisation saw non-European societies presented ‘with the fundamental contradiction of having to comply with authoritative European standards in order to win recognition and assert themselves.’

As such, in an apparent contradiction, self-determination seems to be determined in advance and from outside. If, in thinking about new approaches to self-determination, we are to take the concept seriously, it would seem necessary that we leave open both the identity of the self making the claim and what it seeks to determine. At the very least, it would need to be possible to conceive of a claim to self-determination which does not have nationhood as its goal. In this paper, I wish to consider an example of such a claim: the claim of local and indigenous groups in India to 'sovereignty' over the law concerning traditional knowledge and biological resources. Sovereignty, of course, is a concept closely aligned to self-determination and one also most commonly conceived of in national terms. But in this example, the claim to sovereignty is precisely not to a 'national' sovereignty, but to a local one. It is set directly against the authority of the state and of international organisations (such as the WTO), but has no designs on establishing an independent state (or even an independent territory within a state). With some help from post-structural theory, I will argue that in this claim we can see the possibility of a self-determination whose form is not predetermined, and perhaps expose ourselves to a more fluid understanding of self-determination which is truer to its radical promise.

Concurrent Panel: Governance, and Constitutional Approaches to Self-Determination

Kirsty Gover, School of Law, New York University

**Inter-Tribal Self-Determination: Membership Governance and Tribal Constitutionalism in Western Settler States**

Giving effect to tribal self-determination activates an *inter-tribal* governance system within settler states. This order should be recognized and facilitated by settler governments as part of the official recognition of tribes as self-governing communities. The presentation is based on the empirical study conducted for my doctoral dissertation, for which I coded and analyzed the constitutions and membership codes of 586 officially recognized tribes in Australia, Canada, New Zealand and the United States. Recognized tribes in each state have the largely unencumbered jurisdictional freedom to choose their members. The analysis shows that tribes often elect to use membership rules with inter-indigenous effect, including by using pan-tribal concepts of indigeneity (Indianness, Maoriness and Aboriginality), and rules governing inter-group transfers and multiple membership. I outline some of the findings from the study and propose that these membership rules are forms of inter-indigenous comity, and are an important, but so far under-interrogated element of tribal self-governance. A significant challenge of engaging with an inter-indigenous governance system is that its internal operations are relatively opaque to outsiders, including settler governments. Studies of tribal membership rules offer a useful lens through which to observe inter-indigenous relations. In particular, these rules reveal some of the “collateral” inter-indigenous boundaries that emerge when tribal governance is recognized and given formal legal effect. Even while the process of recognition is conceived by settler governments as a primarily bilateral exercise, its effects are to formalize multiple indigenous-indigenous boundaries. Inter-indigenous membership rules invite observers to see settler governments in relation to this inter-tribal order, rather than as parties to a series of agreements with individual tribes. The human boundaries created by tribal membership law are important and influential, but they are also “on the move” and constantly evolving. They will never be finally settled and should not be unduly constrained in their evolution by the operations of state law or the preference of settler governments for finality and certainty in tribal governance arrangements. I argue that the role of settler governments is to facilitate inter-tribal external relations in membership governance, in order to improve the associational choice and agency of indigenous persons, to strengthen inter-indigenous cooperation, and to enhance the capacity of tribes to adapt to changes in their demographic environments.

Edefe Ojomo, Department of Law, The American University in Cairo

**Liberia’s GEMAP: A New Wave in International Development Intervention**

Universal standards are proposed in international law to foster domestic as well as international development, peace and security, a condition that blurs the line between necessary intervention and unjustified interference. The different actors on the international scene try to take advantage of universal standards in promoting their interests. While universal concepts like sovereignty decry intervention, universal standards of good governance and accountability may provide justification for intervention in the absence of adherence. Many of the problems of Third World States are viewed as having domestic ramifications, so that the practice is to ignore historical factors and international actors that affect governance practices and are therefore very closely tied to these problems. Liberia’s Governance and Economic Management Assistance Programme (GEMAP) was introduced by Liberia’s international partners to promote economic governance. It raises questions of governance and sovereignty as universal givens that sometimes find themselves on opposite sides of development discourse, as they have done in the case of the GEMAP. While complaints and reports of
Corruption fuelled the process leading to the establishment of the mechanism, claims of sovereignty delayed its acceptance and adoption. This paper seeks to show how the international community, acting widely through development organisations, has sacrificed efficacy for formalism, a practice evident in usages of universalism, and how Third World governments continue this trend.

Vijayashri Sripati, Visiting Researcher, European Law Research Center, Harvard Law School

"Faking or Crafting Genuine Constitutionalism? A Critique of the UN's Constitutional Assistance in Afghanistan"

Traditionally, international law has not addressed domestic constitutional issues such as how a constitution is made or concerned itself with legitimacy of the internal structures of states. However, today, constitution-making—traditionally, the signature feature of sovereignty and epitomizing an expression of a people's right to self-determination—has become a shared international effort. Indeed, a new species of constitution-making that is characterized by a high degree of external involvement and monitoring has emerged in recent years in international protectorates like Namibia, Cambodia, Bosnia, East-Timor, Afghanistan, and Iraq. As some of these post-conflict constitution-making cases demonstrate, the United Nation's [UN] involvement in constitution-making stems from its peace-building mandate and strategy that have as their essential components the promotion of human rights, democracy, elections, constitutionalism, and neo-liberal economics mandate. This paper points out that the peace-building/peace processes literature has concentrated primarily on the following themes: the UN's role in territorial administration, post-conflict elections, judicial reform, and transitional justice. However, the UN's role in post-conflict constitution-making processes has received scarce scholarly attention. This paper analyzes the role of the UN (and by extension, its agencies such as the United Nations Development Program [UNDP]) in Afghanistan's constitution-making process from the Third World Approaches to International Law [TWAIL] perspective and argues that constitution-making—arguably one of the first and most important steps in the post-conflict peace-building process—is a theoretically significant site for interrogating the assumptions underpinning the neoliberal democracy discourse. The UNDP has long since moved from being a traditional development assistance provider to a crucial player in the peace-building landscape with an active and openly political role. In Afghanistan, it supported the Constitutional Loya Jirga and the drafting of the constitution and its activities included assisting in the conduct of a nation-wide public information, civic education and consultation campaigns, collaborating with civil society in the holding of workshops and the preparation and conduct of elections for the delegates to the Constitutional Loya Jirga. These political assistance activities were carried out as part of its “good governance” agenda. By drawing on information about these programs, Afghanistan constitution-making related documents, UNDP policy documents, country reports and evaluation reports, this paper argues that the UNDP has—far from empowering Afghans—contributed to constructing a space where authoritarian practices and elite capture flourish. Finally, this paper will show how despite all talk of neutrality—the UN's embrace of a neo-liberal politico-economic template impacted its [the UN's] structuring of Afghanistan’s constitution-making processes and also the constitutional outcome.
Plenary Panel: Feminist Approaches to Self-Determination: From the Individual to the Group

This panel is sponsored by CCEIL Gender Stream and the International Feminist Legal Theory Network and funded by the Roberts Researcher Fund of the London School of Economics.

This panel considers what feminist legal theories and gender theories bring to self-determination discourse. The purpose of the panel is to connect feminist and gender studies which engage the limitations of the attainment of individual self-determination for women and men with the international legal conceptualisation of the right of peoples to self-determination. The panel explores conceptual analogies that can be made and the descriptive relevance of such an approach as well as strategies for change. The panel not only engages self-determination on a continuum from the individual to the group but also defines self-determination broadly from the rights of indigenous communities, through post-colonial states and peoples within prior colonial boundaries to recent endeavours by the UN in state building as a form of self-determination.

Gina Heathcote, Centre for the study of Colonialism, Empire and International Law, School of Oriental and African Studies, University of London

International Feminist Legal Theories and Approaches to Self-Determination: Individua/Internal/External

The panel will begin with a presentation from Gina Heathcote. This paper will provide a theoretical overview of the relevance of feminist legal theories to conceptions of agency and victim status under law. By highlighting feminist engagements with the tensions between victims/agents that frustrate the full legal subjectivity of women links can be made with the tensions between victim and agency potential self-determining communities must traverse under the international legal regime. Law’s role in excluding some forms of knowledge from its enquiry will also be examined to suggest that legal scholars need to be prepared to look outside narrow international legal methods to develop a greater understanding of the complicity of law in social and cultural narratives.

The second and third presentations will place this knowledge in the context of specific communities seeking self-determination, autonomy or full statehood.

Dr Nadje Al-Ali, Centre for Gender Studies, School of Oriental and African Studies, University of London

Violation of Women’s Rights and the failures of State building in Iraq

Dr. Nadje Al-Ali will present a paper on the failure of the state building structures imported to Iraq, post-2003 invasion, to provide adequate guarantees of women’s rights (autonomy), to challenge violence against women or to guarantee the participation of women in the political structures of the reformed state. The paper links violence against women, often characterised as individual acts of violence with the violence that legal accounts characterise as state, group or communal violence. Implicit in this approach is the understanding that group identity will be limited without attention to women’s autonomy and rights as full actors in the ‘new’ Iraq. In this sense Al-Ali’s work indicates the nexus between the conceptual analogy from ‘peoples’ to ‘women’ as self-determining subjects under law as also having descriptive purchase. A failure to attend to women’s autonomy in state building will, in this case, be a strong indicator of the future of the failure of the state. This paper is a cross-disciplinary paper which focuses on the social and cultural discourse associated with state building in a specific context, demonstrating the need for feminist and other approaches to self-determination to provide a willingness to ask (and answer!) non-legal questions within the legal academy.
The final presentation by Shelley Wright offers a reflection on what a gendered approach to self-determination means for Indigenous and non-Indigenous participation in the creation of self-determination at both the individual and community level for those usually excluded by international legal processes. Professor Wright will reflect on her experiences in the Canadian Arctic working with Inuit at the Akitsiraq Law School in the new Canadian territory of Nunavut, as well as some broader reflections on the complexity of achieving self-determination for Indigenous people. For the Inuit of the Canadian Arctic gender roles have not remained static as traditional lifestyles have been undermined by modern government and economic realities. These are reflected in the contemporary balance between a market and subsistence economy, the heavy influence of federal and territorial governments and the ongoing impact of settlement in towns and hamlets. This last included forced relocation and removal of children with long term negative effects. Recent discussion of education and language policies have reinforced these concerns, including the work of the Akitsiraq Law School where eleven Inuit law students graduated with LLB degrees in 2005 — ten women and one man. But the challenges go much deeper than this. What is the relation between individual rights and community cohesion for Inuit? Is there any room for a feminist perspective in Nunavut? What might a gendered analysis of governmental, trade and industrial policies tell us about the future of Nunavut? What does either individual or communal self-determination mean in a world where climate change is literally melting the Inuit homeland from under their feet? This presentation, including images of the Arctic taken by Shelley, begins a discussion of how these intersecting concerns can be applied to a specific Indigenous group struggling with both group and individual self-determination at every level.
BIOGRAPHIES

Nadje Al-Ali
Nadje Al-Ali is Director in Gender Studies, Centre for Gender Studies, SOAS. Her main research interests revolve around gender theory; feminist activism; women and gender in the Middle East; transnational migration and diaspora mobilization; war, conflict and reconstruction. Her publications include *Iraqi Women: Untold Stories from 1948 to the Present* (2007, Zed Books); *New Approaches to Migration* (ed. Routledge, 2002); *Secularism, Gender and the State in the Middle East* (Cambridge University Press 2000) and *Gender Writing – Writing Gender* (The American University in Cairo Press, 1994) and as well as numerous book chapters and journal articles. Her forthcoming book (co-authored with Nicola Pratt) is entitled *What kind of Liberation? Women and the Occupation in Iraq* (University of California Press). She is also a founding member of Act Together: Women’s Action for Iraq. (www.acttogether.org) and a member of Women in Black UK.

Nesrine Badawi
Nesrine Badawi is a PhD student at the School of Oriental and African Studies. Her PhD project focuses on the regulation of armed conflict in Islamic law. Nesrine received and LLM and a BA in political science from the American University in Cairo and a Licence en Droit from Ain Shams University, Egypt. Research Interests: Islamic law, public international law and legal theory.

Christine Bell
Christine Bell was born and brought up in Belfast. She is currently Co-Director of the Transitional Justice Institute, and Professor of Public International Law at University of Ulster (based at Magee Campus). She read law at Selwyn College, Cambridge, (1988) and gained an L.L.M. from Law at Harvard Law School (1990), supported by a Harkness Fellowship. She subsequently qualified as an Attorney-at-law in New York, practicing for a period at Debevoise & Plimpton, NY. From 1997-9 she was Director of the Centre for International and Comparative Human Rights Law, Queen's University of Belfast. She has been active in non-governmental organisations, and was chairperson of Belfast-based Human Rights organisation, the Committee on the Administration of Justice from 1995-7, and a founder member of the Northern Ireland Human Rights Commission established under the terms of the Belfast Agreement. She has authored the book, Peace Agreements and Human Rights (Oxford University Press 2000). Her new book, On the Law of Peace: Peace Agreements and the Lex Pacificatoria is being published by Oxford University Press this summer.

Nathaniel Berman
Nathaniel Berman's scholarship focuses on the relationship between nationalism, colonialism, and international law. He has written on international legal responses to conflicts ranging from Upper Silesia and Morocco in the 1920s to Bosnia and Jerusalem in the 1990s. He has also written on the law of war and its relationship to nationalist conflicts and the "war on terror". Professor Berman's work is broadly interdisciplinary, drawing on literary theory, cultural history, and post-colonial studies. He has just published a collection of his writings translated into French (N. Berman, *Passions et Ambivalences: Le Colonialisme, Le Nationalisme et Le Droit International*, Editions Pedone, 2008). Other publications include: "Intervention in a 'Divided World': Axes of Legitimacy," 17 *European Journal of International Law* 743 (2006); "Legitimacy through Defiance: From Goa to Iraq" 23 *Wisconsin International Law Journal* 93 (2005); and "Privileging Combat? Contemporary Conflict and the Legal Construction of War," 43 *Columbia Journal of Transnational Law* 1 (2004). In February 2008, he delivered the inaugural lecture of the Centre for the study of Colonialism, Empire and International Law (CCEIL) at SOAS. Professor Berman is currently a professor at Brooklyn Law School. In 2009, he will take up a position as the Rahel Varnhagen Professor of International Affairs, Law, and Modern Culture at Brown University's Watson Institute for International Studies.
Claire Charters
Claire Charters, LLB (Hons, First Class), LLM (NYU), is Maori from Ngati Whakaue, Tainui, Nga Puhi and Tuwharetoa in Aotearoa/New Zealand. She is a senior lecturer in law at Victoria University of Wellington in New Zealand and teaches and publishes in international and constitutional law on the rights of Indigenous peoples. As a barrister, Claire represented the Aotearoa Indigenous Rights Trust in negotiations on the Declaration from 2003 onwards, and other Maori tribes before the UN Committee on the Elimination of Racial Discrimination. She has also been active in the UN Human Rights Council on behalf of the American-based International Indian Treaty Council. Claire is completing her PhD at Cambridge University and is currently on a research fellowship at Yale University.

Christine Chinkin
Christine Chinkin is Professor of International Law at the LSE and a barrister, a member of Matrix Chambers. Together with H. Charlesworth, she won the American Society of International Law, 2005 Goler T. Butcher Medal ‘for outstanding contributions to the development or effective realization of international human rights law’. She is an Overseas Affiliated Faculty Member, University of Michigan and has been a Scholar in Residence for Amnesty International (2005), as well as Visiting Professor at Columbia University (2004) and at the Arts and Humanities Research Centre, Australian National University (2003).

James Crawford
James Crawford is Whewell Professor of International Law, Director of the Lauterpacht Centre for International Law, University of Cambridge and a Fellow of Jesus College, Cambridge. He was a member of the United Nations International Law Commission from 1992-2001 and Special Rapporteur on State Responsibility (1997-2001). In addition to scholarly work on statehood, self-determination, investment law and international responsibility, he has appeared frequently before the International Court of Justice and other international tribunals, and is actively engaged as expert, counsel and arbitrator in international arbitration.

Kirsty Gover
Kirsty Gover is a JSD candidate and IILJ Graduate Scholar at NYU School of Law. She has recently defended her doctoral dissertation, entitled Constitutionalizing Tribalism: States, Tribes and Membership Governance in Australia, Canada, New Zealand and the United States. Kirsty received her BA/LLB, with honors, from the University of Canterbury, New Zealand, and her LL.M. from Columbia University, United States. She was a Columbia University School of Law Human Rights Fellow and James Kent Scholar, and was the first full-time Institute Fellow at NYU Law School's Institute for International Law and Justice (IILJ). Prior to coming the United States, Kirsty was a Senior Advisor and then consultant to the New Zealand government on international and domestic policy on indigenous peoples, and taught in this field at the University of Canterbury Law School. Her research and publications address the law, policy and political theory of indigenous self-governance and self-constitution.

Gina Heathcote
Gina Heathcote is Co-Director of the Gender Stream of CCEIL, and is a Teaching Fellow at the School of Oriental and African Studies, where she convenes the Public International Law course. She is also completing a doctorate at the London School of Economics on the international laws on the use of force. Gina has a research history in feminist theories and methodologies, women’s rights with particular interest in anti-trafficking initiatives, the use of force and international humanitarian law.

Richard Joyce
Richard Joyce is a PhD candidate at the School of Law, Birkbeck, University of London and in September 2008 will take up an appointment as a lecturer in law at the University of Reading. His research focuses on theories of sovereignty in the context of the relationship between the World Trade Organisation, the nation-state and indigenous
groups, with particular reference to traditional knowledge and intellectual property.

**Alice Lacourt**
Alice Lacourt joined FCO Legal Advisers in 1994, and was posted to the UK Mission to the United Nations 2000 - 2003. She has advised on a wide range of issues, including Balkans’ matters, arms control, sanctions and international criminal tribunals, and was involved in the establishment of the Special Court for Sierra Leone. A qualified barrister, before joining the FCO, she worked in Kuwait processing claims to the UN Compensation Commission which was set up following the Iraqi invasion.

**Sarah Mann**
Sarah Mann is an MA student in International Law at the Centre for the Study of Colonialism, Empire and International Law. Her primary interest is in inter-war British colonialism, particularly in mandate Palestine. She has previously lived in both Spain and Canada, obtaining a BA Hons in History from the University of Victoria, BC, Canada.

**Robert Murtfeld**
Robert Murtfeld is currently in the midst of a PhD in Law at the School of Oriental and African Studies (SOAS). His thesis is entitled "How to Prevent and Punish Genocide" with its primary focus being the Jewish-Polish émigré lawyer Raphael Lemkin. There are also two cases of alleged genocide that underpin his work as his Oriental and African case studies. Prior to his involvement with law, he completed a degree in social psychology and political economy.

**Scott Newton**
Scott Newton is Director of the Centre for Central Asia and the Caucasus, and Co-Director of the Centre for the study of Colonialism, Empire and International Law at the School of Oriental and African Studies, University of London. His research interests lie in the fields of legal and institutional reform in Central Asia; role of law in post-socialist transition; law, markets, and globalisation in developing and transitional states; law, governance and post-conflict reconstruction; and human rights.

**Edefe Ojomo**
Edefe Ojomo is a graduate fellow in the LL.M program at the American University in Cairo, Law Department. She obtained an LL.B from the University of Lagos in Lagos, Nigeria in 2005, and a qualifying certificate (B.L) from the Nigerian Law School, Abuja, Nigeria in 2006. Her research interests are in post-conflict development, with particular reference to African States.

**Rose Parfitt**
Rose Parfitt graduated from the University of Edinburgh in 2002 with the J.P. Heatley Prize for Politics. She spent the following year at City University training for a Postgraduate Diploma in Periodical journalism, then freelancing for three years as a music, style and health journalist. She graduated with Distinction in 2006 from the MA programme at SOAS's Centre for International Studies and Diplomacy, and moved to the Department of Law in September of that year to begin her PhD. Her research is being funded by the Arts and Humanities Research Council, and supervised by Dr. Catriona Drew and Professor Matthew Craven. Rose’s thesis takes a critical look at "earned sovereignty", the name given to proposals for the resolution of "sovereignty-based conflicts" (e.g. Israel/Palestine, Serbia/Kosovo) to the effect that sovereignty is being and should be transferred gradually from parent states to sub-state entities if and when certain conditions have been fulfilled under the supervision of the "international community". The thesis traces earned sovereignty back to a distant ancestor: the conditions attached to Ethiopia's membership of the League of Nations in 1923, together with subsequent conflict-resolution proposals made by the League following Italy's 1935-36 invasion of Ethiopia. It is argued that “earned sovereignty” is neither new nor peace-promoting but rather a long-established international legal mechanism of colonisation.
Akbar Rasulov
Akbar Rasulov teaches international law at the University of Glasgow. He was educated in Uzbekistan, the UK, and the US and is a member of the Uzbek bar. Before he turned to international law, he used to practice commercial transactions and banking law and (a long time ago) was one of the drafters of the Uzbek law on financial leasing. A recovering positivist, he has no idea why so many people in academia find the law of commercial transactions boring. Akbur likes green tea and supports Pakhtakor [pakh-tah-KOR] Tashkent.

Milena Robotham
Milena Robotham (LLB) is an LLM candidate at the School of Oriental and African Studies. She hopes to carry on her studies with a focus on international law. Her research will centre around Marcus Garvey's conception of self-determination and its place in international legal thought.

Tracie Scott
Tracie Scott completed her BA and LLB at the University of Alberta before completing her LLM on the topic of Aboriginal land claims jurisprudence. In 2004 she started her PhD at Birkbeck College researching the Nisga’a Final Agreement. Her research interests are in relating postcolonial theory to the law, the intersection of law and sovereignty, and other issues pertinent to indigenous peoples in the modern world. She has been active in the British Association of Canadian Studies, and has published articles in the European Network Canadian Studies Journal.

Vijaya Sripati
Vijaya Sripati is a human rights scholar from India who has pursued graduate studies in human rights, international politics, and constitutionalism in the United States, United Kingdom, and Canada. A recipient of the Social Sciences & Humanities Research Council of Canada (SSHRC) doctoral award, she is pursuing her doctoral studies at Osgoode Hall Law School (Toronto). The United Nation’s role in Afghanistan’s constitution-making process is the topic of her research. She is currently serving as a visiting scholar at the European Law Research Center, Harvard Law School. She has published widely in the fields of constitutionalism and international human rights law and has taught human rights in India and Denmark. Her most recent article on the role of the Indian National Human Rights Commission in stemming trafficking in South Asia received the Sheldon M. Chumir Memorial Essay Prize from the Sheldon M. Chumir Memorial Foundation, Canada.

Yong-Shao Tan
Yong-Shao Tan normally pretends that he is doing serious legal research at Birkbeck College, working on his PhD thesis titled Self-Determination: The Impossibility of Letting Go. In fact, he is a closet amateur writer, currently scribbling up a novel of a similar title, Letting Go. The book draws on the lives of four characters, coping and coming to terms with their relationships, with the dire straits of Taiwan as the backdrop. He hopes that by intimately engaging with these characters, and by deliberately silencing the legal-political narratives that had undoubtedly permeated and affected their lives, he could communicate more directly with the people most affected by the problems related to the right to self-determination. He also hopes that everyone attending this conference would buy a copy (or two) of this novel-to-come, and that it will become a best-seller...if it does indeed get published sometime in the somewhat distant future. He received his legal education from the University of Nottingham (BA Law) and the LSE (LLM), specialising in Jurisprudence. He teaches Jurisprudence at the LSE.

Owen Taylor
Owen Taylor is an MA student at the School of Oriental and African Studies, specialising in Law, Development and Globalisation, where he has been awarded the SOAS Open Scholarship and Bursary. He is currently on the student editorial board of the Journal of Empire, International Law and Colonialism. He graduated with first class honours in International Relations at Keele University in 2005, where he was given a departmental award for academic achievement and extra-
curricula contribution. He established a branch of Student Action for Refugees at Keele in 2005, and headed Keele’s delegation to the World Model United Nations that year, winning a diplomacy award. His research interests focus on the structures of exclusion that operate within political and legal regimes, and the historical and cultural narratives that inform them. His work at SOAS has focused on the legal pluralism that informs indigenous rights to land, and how this relates to conceptions of statehood, earned sovereignty and structures of global order.

Colin Warbrick
Colin Warbrick became Barber Professor of Jurisprudence at Birmingham Law School in October 2006. He is an international lawyer with interests in Statehood and the powers of the Security Council. He has been a visiting professor at the University of Iowa, and a consultant to the Council of Europe and the OSCE on human rights and criminal cooperation matters, as well as a specialist adviser to the Select Committee on the Constitution of the House of Lords. He is a co-author of Harris, O'Boyle and Warbrick, The Law of the European Convention on Human Rights and a co-editor (with Vaughan Lowe) of The United Nations and the Principles of International Law and (with Stephen Tierney) of Towards an International Legal Community: the Sovereignty of States and the Sovereignty of International Law.

Ralph Wilde
Ralph Wilde has been a member of the Faculty of Laws at University College London, University of London since July 2002, where he is currently Vice Dean for Research. He is also an Adjunct Professor at Georgetown University Law Center. Ralph works in the fields of international law and international relations. His current research focuses on the administration of territory by international organizations and foreign states, the concept of trusteeship in international law and public policy, and the extraterritorial application of human rights norms. His book addressing the first two of these topics, International Territorial Administration: How

Trusteeship and the Civilizing Mission Never Went Away was published by OUP in 2008. Ralph works as a consultant on international law to governments, international organizations and private clients, and in this capacity represented the UK at a diplomatic meeting with the Chinese government on China’s possible ratification of the ICCPR, assisted the Chagos Islanders in their legal action against the UK in relation to their removal from what is now called the British Indian Ocean Territory (BIOT), and is currently advising the Palestinian Authority on possibilities for internationalization and joint sovereignty over Jerusalem. At the International Law Association (ILA) Ralph is a member of the international Executive Council and the International Committee on Human Rights Law, and serves as Rapporteur of the Study Group on UN Reform and Joint Honorary Secretary of the British Branch. At the American Society of International Law Ralph is a member of the Executive Council. He is also a Trustee and a member of the Management Committee and Board of Directors of the AIRE (Advice on Individual Rights in Europe) Centre in London, and a member of the executive Committee of the UK Human Rights Lawyers’ Association.

Shelley Wright
Shelley Wright teaches Aboriginal Studies and is the former Northern Director of the Akitsiraq Law School based in Iqaluit, Nunavut. Her interests include International law, Human rights, Intellectual Property, Indigenous Rights and Legal theory. She is the author of International Human Rights, Decolonisation and Globalisation: Becoming Human (2001).