

## ■ BOOK REVIEW

*Bernhard Knoll*

**Ralph Wilde, *International Territorial Administration: How Trusteeship and the Civilizing Mission Never Went Away*, Oxford University Press, 2008, ISBN 978-0-199-27432-1, 640 pp.**

Since the mid-1990s, the United Nations and other multilateral bodies have asserted authority over the administration of war-torn territories and shouldered the responsibility of placing them on the trajectory of political change. The UN's far-reaching engagement in the process of state and institution-building was the result of an increased multilateral effort to create democratic institutions and market economies as a basis for sustainable peace in societies exiting conflict. As such, these efforts were facilitated by a changed security architecture in the post-Cold War era and the redefinition of the notion of 'threat to the peace' in Art. 39 of the UN Charter, resulting in an extension of the Security Council's enforcement powers to internal armed conflicts and grave humanitarian crises.

The authorisation of peace-building operations, characterised by an increasing use of powers under Chapter VII of the UN Charter and at the same time by a willingness to apply diverse enforcement measures under Art. 41, has grown both quantitatively and qualitatively. The growing number of international organisations involved in 'state-building' and the scope of authority they exercise has raised a number of important questions under international law and policy – as to the nature of UN authority and its management of territories, its legal basis in the UN Charter, and its limitations. Among scholars, these new approaches to conflict management and state building have ignited a debate over the fundamental purposes of such practice.

Ralph Wilde's work is a welcome addition to this debate. He examines the relation between political processes of 'internationalisation' of territory with key concepts of public international law, such as mandates, trusteeship, and military occupation. His stimulating analysis represents a highly valuable contribution to the functional approach to the administration of territory under international control. His book is woven around two central arguments. First, he submits that international territorial administration has evolved into a 'policy institution' which the international community deploys in anomalous circumstances. Second, as the title of the book already suggests, Wilde sees pertinent parallels between practices of colonialism and its paradigmatic '*mission civilisatrice*', an updated version of the international society's interest in advancing and transmitting 'standards of civilisation'.

## 1. INTERIM ADMINISTRATION AS 'POLICY INSTITUTION'

In his previous prolific writing on the subject, Ralph Wilde's achievement had been to delineate clearly the outer margins of the scope of what came to be called territorial administration by international actors. In a definition, expanded upon in this book, that has meanwhile been adopted by a majority of scholars, 'territorial administration' is, first of all, an "activity referring to a formally constituted, locally-based management structure operating with respect to a particular territorial unit, whether a state, a sub-state unit or a non-state territorial entity" (p. 21). International administrations are, indeed, temporary management projects, as Wilde points out, (p. 36), designed to transit a territory's governance structure by importing and subsequently super-imposing foundational concepts of a supposedly ideal-type legal order. An institution-building mandate consists precisely in the creation of conditions under which those concepts are absorbed into local cultures and practices – presumably by a lengthy and gradual process.

Such experiments should, however, be differentiated from what Wilde calls 'policy institutions'. Bodies such as the United Nations Interim Administration Mission in Kosovo (UNMIK) or the United Nations Transitional Administration in East Timor (UNTAET) were certainly created with rational objectives in mind, and Wilde's attempt at "identifying a justificatory framework to explain how the projects are understood in international policy discourse" (p. 39), is laudable. Their classification as 'institutions' is, however, subject to challenge. Not one of these activities was established as a feature to be permanently woven into the institutional fabric of domestic government. They were 'established' because of a governance vacuum; their existence is intrinsically associated with one sole purpose: to build local capacity so that in the medium run they work themselves out of their task. In his discussion of 'administration projects', Wilde discusses activities such as the United Nations Temporary (sic) Executive Authority which, operating between Dutch and Indonesian authority over West Irian (West New Guinea), administered the island for seven months between 1962 and 1963. To term UNTEA, which gravely mishandled its mandate, a 'policy institution' is as problematic as assigning this status to temporary UNHCHR refugee camps, (p. 60), despite it arguably being a "locally-based management structure operating with respect to a particular territorial unit" run by international appointees. While temporary UN jurisdiction may be established, these ad-hoc responses to international emergencies do not constitute 'institutions'.

In his wide-ranging historical parallels ranging from League of Nations territorial organs to present-day instances of internationalisation of territories, Wilde does not sufficiently account for the temporary nature and the unstable and ever-changing political equilibria in which such projects are situated. UNMIK's genuinely ambiguous mandate, its awkward attempts at privatising socially owned enterprises, and its general inability to delineate the extent to which it may exercise authority in the field of corporate governance is only the latest example that could have persuaded Wilde that a 'privatisation policy' was indeed sorely lacking, along with an effective policy of minority participation in the political process, a sound property restitution policy, or a human rights policy vis-à-vis international agents, to name a few. Under closer scrutiny, the legal and administrative measures of an international administration appear to be crafted

through trial and error processes, sculpted by a long succession of moves, deadlocks, and breakthroughs. 'Administration' it is, but a stable set of 'policies' are hard to come by, and a common 'United Nations policy' on interim administrations does not yet exist.

Instead, individual administration 'projects' are undertaken in environments of fast-changing rules and norms, often in circumstances where acts and policy proposals of the administrative UN subsidiary organ are being second-guessed and later revoked by UN Headquarters, which maintains constant supervision over the former, sometimes to the extent that a local UN mission has to reverse gear after a 'policy pronouncement' has been made. Such instances of close supervision render a UN administrative body an implementing organ rather than a 'policy institution'. Wilde's claim that 'purposive communalities' (p. 38), could be identified between, say, the administration of South-West Africa, Eastern Slavonia, and East Timor is questionable. It is impossible to consider whether those projects were somehow constitutive of an 'institution' in a normative sense. They were, and remain, patchwork creatures established under punishing timelines that work in an ad-hoc manner with the intention to establish local capacity so everyone can go home, or hop onto the next mission. This, in short, is the disheartening reality of international administrations, their "practice and policy" (p. 38). Wilde's assertion that the international administration of territories is an 'established practice' is as helpful as terming the 'war on terror' an 'institution' or 'established practice'. It is neither. Instances of international administration are serial yet disconnected activities, neither stable nor firmly embedded in the normative sphere. While they may be informed by a cosmopolitan agenda designed to respond to a perceived threat to international peace and security, they remain subject to the ever-changing imperatives of the Security Council (or other multilateral supervisory bodies).

If a second critical remark can be added on a related note, it would be that Wilde's analysis falls short of his declared intention of explaining "how [international territorial administration] projects are experienced 'on the ground'" (p. 41). Because of its generalist nature, Wilde's work could have benefited from a closer focus on the changing patterns of legitimacy within internationalised territories in Chapter 8 of the book, and an analysis of the legal and ethical shortcomings of liberal 'institution-building' operations. Such arrangements constitute loosely bounded political systems in which policies are made by both international and national institutions, and their exercise depends on the coordination of a range of political and military organisations. Throughout an unfolding institution-building sequence, 'international appointees' (in Wilde's rendering) are regularly vested with a decreasing measure of authority to draw up a constitution, to choose a system of government, to adjudicate sensitive cases, and to obtain means to enable the territorial government to execute its increasing functions.

In this dynamic environment, the legitimacy of international actors will mainly depend on the degree to which their 'alien rule' is perceived to set in motion processes that fill the initial administrative vacuum and later shape the political structure's transition while nurturing participation. Wilde's analysis could have focused more on the actual patterns of power-sharing in such situations to give the reader a genuine taste of the frail texture of legitimacy. His work is of abstract

nature, intent on unearthing the cosmopolitan precedents behind the deployment of international instruments. As such, his work reflects much of the predominant strain of literature on peace-building that is concerned with 'problem-solving': focused on policy specifics, but less concerned with structural factors that shape the life of those under interim administration and its hybrid political and legal orders.

## 2. ANALOGY TO COLONIALISM

The author, on the other hand, devises a number of useful functional classifications to categorise experiments of international jurisdiction over territories, and divides them neatly between those designed to respond to 'sovereignty problems' and those used to deal with 'governance problems'. The reader is, however, at times left unsure how to include other instances of international meddling in local affairs in this matrix and to distinguish properly 'internationalised' territories, in legal terms, from protectorates, international servitudes, neutralised zones, and leases, on the one hand, and from fiduciary arrangements under the Mandate- and Trusteeship systems, on the other. The answer, clearly, should have been found in the extent to which a territory is submitted to international law. The reader does at times wish that Wilde had focused less on 'policy institutionalism' but on what he professes to practice: public international law scholarship. Wilde seeks to comprehend the functions and purposes of an activity, and he succeeds admirably. Yet he leaves the reader somewhat suspended with regard to his indeterminate positions towards sovereignty and other normative issues such as accountability and responsibility.

This is, to some extent, regrettable as Wilde's second central thesis concerns itself with the "connection between the humanitarianism of 'internationals' today and the humanitarianism of colonial administrators a century ago." (ix). It appears that the author oversubscribes to Roland Paris' reformulation of a peace-building agenda as mere '*mission civilisatrice*' and its testimony to a liberal bias in an international mission's promotion of 'Western' conceptions of human rights.<sup>1</sup> Such associations and analogies, as introduced in Chapter 8 of the book ('Colonialism and Trusteeship Redux?'), are bound to fail; they misrepresent the extent to which the international community has undertaken to perform thick moral and political obligations towards itself and the people under its temporary administration. The author's assertion that there exist various "parallels" (p. 313), between colonial projects of the exploitative sort and administrations such as those still present in Kosovo or Bosnia must be distressing to anyone who has ever worked in the service of a 'modern trusteeship'.

While colonialism enabled the conditions for metropolitan structures to engage in unhindered exploitation, recent ambitions aimed at the internationalisation of territory seek to draw the periphery into a wider area of shared standards in order to deal with the treacherous issues of group identity in divided societies and the provision of remedies necessary to counter mass violations of human

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1 Roland Paris, 'International Peace-building and the "*Mission Civilisatrice*"', 28 *RIS* 637-656 (2002).

rights. Wilde is certainly correct that the trusteeship paradigm continues to inform plenary administrations, as current institution-building agents aspire to nothing less than the temporary yet wholesale import of foreign constitutional and administrative systems.

Yet what is missing from his *exposé* is an understanding that democratic regime-building by an international organ are instances of pure transnational norm entrepreneurship. Administrative bodies such as UNMIK or the Office of the High Representative for Bosnia and Herzegovina (OHR) cannot, by mandate or intent, be compared to those that have in the past implemented "colonial-era population transfers" which, according to the author, "resonate with the use of an [international territorial administration] to enable migration policy, such as the work of the OHR ... in using property legislation as a way of enabling the transfer of displaced persons to their pre-war homes". OHR's policy of IDP re-settlement, including its efforts to resolve property issues and create 'return axes' was motivated to give effect to the (voluntary) right to return, not to instigate a mass exodus comparable to that in the wake of the Lausanne treaty, as the author appears to insinuate (Ch. 8, FN 278, with reference to FN 73 to which FN 174 refers). It is, frankly, disconcerting to see Wilde state that when juxtaposing colonialism and Chapter VII administrations "there is a clear link, and in many of the substantive policies the same ideas are in play" (p. 359). In a book on the 'policy and practice' of international administrations, references to the unpalatable 'civilising mission' add a layer of historical meaning which may not at all be helpful in understanding present practice.

These associations have considerable appeal and are undoubtedly easily comprehensible. Yet the author should have invested more effort to investigate into their distinct and mutually exclusive identities. The fiduciary exercise of administrative powers with the authorisation of the UN Security Council differs significantly from imperial or colonial rule where tasks were carried out in the interest of the metropolitan center, powered by a machinery of exploitation and slavery. As William Bain observed, "the attempt to trade on the paternal discourse of empire, which embraced trusteeship in a righteous mission of civilisation ordained by divine providence is, in this particular context misleading".<sup>2</sup> Detached from the context of decolonisation, references to the alleged resurrection of the UN's Trusteeship system also do not suffice to capture the most important features of the phenomenon of internationalisation. The existence of a fiduciary bond between the administrative agent and the territory clearly distinguishes the exercise of power in East Timor or Kosovo from constellations under the Mandate and Trusteeship Agreements in which 'alien' administering authorities were only constrained by the somewhat obscure concept of 'sacred trust' when pursuing their national interest.

While Wilde succeeds in establishing a 'justificatory framework' for administration experiments in anomalous circumstances, the reality on the ground gnaws away on two of his central theses: first, that an interim administration constitutes an 'institution', and not, as it is argued here, merely a hiatus in which

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2 William Bain, *Between Anarchy and Society. Trusteeship and the Obligations of Power* (Oxford: OUP, 2003), at 148 and 149.

the general rules of international law and sovereignty do not necessarily apply. Second, as UN-sponsored interim administrations are precluded from imposing permanent forms of government upon a population, analogies to colonial administrations are, as a matter of 'practice and policy', unsuitable. Despite their occasional authoritarian reflexes, gentle institution- and democracy builders, as opposed to the discredited agents of colonialism, seek to leave an irreversibly liberalising impact, to internationalise, where the bounded has produced conflict, to transcend where the local had collapsed, and to constitutionalise where the previous coercive order was devoid of virtue.

Despite these imperfections, the research presented in Wilde's book strikes at the heart of the current debate over the powers which the United Nations exercises both within an internationalised territory and from outside, as its supreme organ, the Security Council, is increasingly called upon to balance the weight of the sovereign's inviolable and static borders against indigenous bids at determining the dynamic 'self' in a people. The book represents a rich contribution to the study of the evolution of one of the key concepts that underlie the core of the international legal system as well as constitutional law and political theory, namely, the concept of trustee administration. As such, the book has as much practical relevance as it has theoretical interest.

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