

Contents

<i>Acknowledgments</i>	<i>page xi</i>
Introduction	1
Section I Historical antecedents	
1	The historical origins of humanitarian occupation I: governance in service of outsiders 17
	I. Origins in the nineteenth century 19
	II. Territories administered as a result of the 1919 settlement 20
	III. League of Nations mandates 23
	A. Fashioning international authority 23
	B. The mandatories' governance obligations 26
	C. The locus of sovereignty debate 28
	IV. United Nations trusteeship territories 33
	V. Conclusions 39
2	Historical origins of humanitarian occupation II: internationalized territory in service of insiders 41
	I. The rise of post-conflict reconstruction 45
	II. Common tasks and objectives 48
	A. Territorial integrity 51
	B. Democratic politics 52
	C. Human rights 55
	III. Centrality of consent 58
	A. The role of consent in post-conflict missions 59
	B. Actual consent 64

	C. Constructed consent	68
	IV. Conclusions	69
3	Full international governance	72
	I. The Bosnia mission	74
	A. Following the territorial imperative	74
	B. Creating consent	76
	C. The Dayton model of statehood	78
	II. The Kosovo operation	84
	A. The genesis of the conflict and early international involvement	84
	B. Escalating international involvement	87
	C. The Rambouillet conference	89
	D. War and peace	91
	E. The interim international administration	93
	F. Final status negotiations	95
	G. Observations	97
	III. The East Timor mission	98
	A. From voting to violence	98
	B. Pressure to internationalize	100
	C. The UNTAET mandate	102
	D. United Nations statehood?	103
	IV. The Eastern Slavonia mission	106
	V. Conclusions	110
 Section II Why humanitarian occupation?		
4	Rejected models of statehood	115
	I. Introducing the policy options	118
	II. Legal constraints on exclusionary nationalism	121
	A. No legal support for homogeneity achieved through murder, subordination or forcible conversion	123
	B. No legal support for secession or partition	125
	1. The argument for separation	125
	2. The rejection in practice	126
	3. Procedural limitations and transaction costs	132
	4. Negotiated partition	134
	C. No legal support for mass population movements	136
	III. Conclusion: what remains? The politics of inclusion	140

5	Constructing the liberal state	142
	I. The stubborn persistence of a state-centered order	143
	A. The empirical claim	144
	B. The normative claim	148
	II. Norms of governance	154
	A. The mainstreaming of democracy promotion	154
	B. Procedural versus substantive democracy	157
	III. Elections	162
	IV. Human rights	167
	V. Conclusions	172
Section III Legal justifications		
6	Conventional legal justifications	177
	I. First legal framework: consent to humanitarian occupation	177
	A. The coercion problem	177
	B. The prohibition on coerced treaties	179
	C. The humanitarian occupation agreements	181
	D. Potential complications	188
	1. The nature of the coercion	188
	2. The nature of the agreement	192
	3. Justifiable force?	195
	E. Conclusion	200
	II. Second legal framework: Security Council fiat	200
	A. Limits on Council authority within the Charter	201
	B. Limits on Council authority outside the Charter:	
	<i>jus cogens</i>	205
	1. The self-determination claim	205
	2. Difficulties with <i>jus cogens</i> limitations	211
	3. An alternative methodology: implied consent	214
	III. Conclusion	217
7	The international law of occupation	218
	I. Applicability of occupation law to multilateral humanitarian occupations	222
	A. UN ratification of humanitarian law treaties	223
	B. The UN and the customary law of occupation	225
	C. The nature of UN customary law obligations	230
	II. Is humanitarian occupation fundamentally inconsistent with occupation law?	233

A.	The prohibition against altering legal and political institutions in the occupied territory: the conservationist principle	233
B.	Limited exceptions to the conservationist principle	237
1.	Military necessity	237
2.	Obligations imposed by the Fourth Geneva Convention	238
C.	Broader challenges to the conservationist principle	242
1.	A reformist reading of occupation law	242
a.	Looking to international standards	242
b.	Consistency with international human rights norms	249
2.	Is the conservationist principle an anachronism?	249
III.	Two transformative occupations: challenging the conservationist principle	255
A.	The occupation of Germany	255
B.	The Iraq occupation	259
1.	Social engineering in Iraq	259
2.	Did the Security Council endorse a “transformative occupation”?	263
3.	Resolution 1483 as precedent	269
IV.	Conclusions	270
8	Reforming the law: the Security Council as legislator	273
I.	Transcending state-centric norms	274
A.	Normative origins	275
B.	The reciprocal nature of state-centric norms	279
C.	State-centric norms and a collective agenda	285
D.	Lack of adjudicatory mechanisms	286
II.	Security Council legislation	288
A.	A distinct competence	289
B.	Council legislation in practice	290
C.	Legitimizing legislative acts	294
1.	Subjective element: norms and state interests	295
2.	Objective element: supportive practice	299
III.	Conclusions	303
	Conclusions	305
	<i>Index</i>	309