

GOVERNANCE AND SOVEREIGNTY IN FAILED AND FAILING STATES

a conference organized by the
Center on Democracy, Development, and the Rule of Law
at the **Stanford Institute for International Studies**
Stanford University, April 16-17, 2004

CONFERENCE AGENDA, topics and speakers:

April 16

8:30-10:30 Mapping the Problem

Robert Rotberg, Harvard University's John F. Kennedy School of Government, "Why States Fail"
William Reno, Northwestern University, "Why Do Failed States in Africa Continue to Exist?"
Chester Crocker, Georgetown University, "State Failure and State Building"

11:00-1:00 The Role of the United Nations

Bruce Jones, New York University, "UN Responses to State Failure"
Steve Stedman, Stanford University and the UN, "Global Security and the United Nations"

2:00-4:00 The International System

Thomas Risse, Free University (Berlin), "Sovereignty Under Siege and the Future of the International System"
Peter Gourevitch, University of California-San Diego, "Legitimacy, Delivery and Capacity"
Marina Ottoway, Carnegie Endowment for International Peace, "Partition, Annexation and Shrinking as Alternatives to Restoring Sovereignty"
Paul Collier, Oxford University and the World Bank

April 17

8:30-10:30 Case Studies: Bosnia, Iraq and Russia

Gerald Knaus, European Stability Initiative, "The European Raj Revisited"
Larry Diamond, Stanford University, "Building Democracy in Iraq"
Michael McFaul, Stanford University, "Russia 1991-92/Iraq 2004?"

11:00-1:00 Sectors: Trade, Policing Governance and the Rule of Law

Richard Steinberg, Global Trade and National Development
Matt Vaccaro, Naval Postgraduate School, Monterey, Calif., "From Cop to Code"
Patrick Cronin, Center for Strategic and International Studies, "Corruption and Misgovernance Lessons from U.S. Foreign Aid"
Tom Heller, Stanford University, "The Rule of Law and Economic Development: Failed Practice, Questionable Theory?"

2:00- 4:00 Policy Alternatives

Stephen Krasner, Stanford University, "Bad Governance and Alternatives to Sovereignty"
Robert Keohane, Duke University, "Political Authority After Intervention: Gradations in Sovereignty"
James Fearon, Stanford University, "Post-modern Imperialism"

SUMMARY OF PRESENTATIONS

Mapping the Problem

Robert Rotberg presented on why states fail, William Reno on why failed states in Africa persist, and Chester Crocker on state failure and state building. The discussion that followed focused on (1) whether abusive states are failed, (2) why policy-makers in developed countries should worry about weak or failed states, and (3) how to prevent state failure given limited resources.

Robert Rotberg argued that a failed state is defined by its inability to serve its citizens and act by international norms. They have weak domestic legitimacy. Lack of legitimacy is caused by the government's inability to provide political goods. Further research should identify indicators and trajectory of failure.

William Reno argued that the presence of failed states is not new, particularly in Africa. The unusual phenomenon is that, since 1945, political units have been uniform and borders stable. He argued that sovereignty reinforces state weakness in two ways. (1) Weak states are manipulated by commercial interests. Investors seek out the status of sovereignty among the partners they choose in order to avoid legal liabilities associated with doing business with insurgents. (2) Weak-state leaders can use international human rights law to capture rebel leaders who wish to overturn the status quo.

Chester Crocker proposed a qualitative measure of state failure that includes: (1) the income stream of state officials (including police), (2) who is coming into the country in an average week, who is leaving, and why, (3) the balance of power in rural areas, and (4) the quality of government services. Crocker noted that state building, which entails stronger policing and bank oversight, will involve a variety of international institutions, professions and coalitions.

The discussion addressed whether "abusive states" are failed by definition. For example, Uzbekistan today has substantial capacity, but little legitimacy. Or, should failed states be those where the central government lacks coercive ability within its legal boundaries? Answers to this question revealed a relationship between these two typologies. Abusive regimes weaken state institutions, which increase the likelihood of civil war, which is strongly associated with a central government's inability to project power.

The discussion also questioned why policy-makers in developed countries should worry about weak or failed states. Participants raised characteristics that make weak or failed states threatening, such as the potential for terrorism, humanitarian disasters, health epidemics, drug trading, and money laundering. Do all of these concerns threaten the interests of developed countries or only the prospect that terrorists in weak or failed states will obtain weapons of mass destruction?

Finally, the discussion also considered how to prevent state failure given limited resources. Some argued that preventing failure is less expensive than post-conflict reconstruction. But others argued that, since predicting the next civil war with accuracy is impossible, prevention strategies must be diffuse, and may not be worth the cost. States in post-conflict constitute a short, easily identifiable list, and are often responsible for initiating more conflict.

The International System

Thomas Risse presented “Sovereignty Under Siege and the Future of the International System,” Peter Gourevitch on “Legitimacy, Delivery, Capacity,” Marina Ottaway on “Partition, Annexation, and Shrinking as Alternatives to Restoring Sovereignty,” and Paul Collier on how the international community can induce reform in weak states. The discussion that followed focused on how to map from types of state failure to sources of recovery.

Thomas Risse argued that the presence of failed states is not new in the international system. What is new is the concern they present to the international community. Risse sees sovereignty as “under siege,” meaning that the instruments to fix failed states abrogate the norm of non-intervention. He observed that our language is still state-centered; we assume that state recovery implies the establishment of authority as we know it in advanced industrialized societies. Instead, a hybrid of statehood is occurring. He suggested that analysis invoke the theme of failing and failed states to rethink political authority and order more fundamentally.

Peter Gourevitch raised three issues in the relationship between failed states and the international community. The first is legitimacy. Receivers will perceive an intervention as legitimate to the extent that it is multilateral. Second, different sectors require different institutional designs. Keeping order requires a different type of intervention than sustaining water supply. Third, the delivery vehicle might need to vary within or between sectors. Some aspects of sectors may best be contracted out to foreign governments, others to the private sector.

Marina Ottaway asked under what conditions external actors should let states collapse given that the international community has limited resources (in a political and absolute sense). She observed that it seems inconceivable to intervene in the Democratic Republic of the Congo to the same degree that as in Bosnia. She also noted that external actors faced greater potential for success in trying to recover Bosnia than they would have if they tried to piece Yugoslavia back together. She argued that approaches to recovery should account for the capacity that exists within the targeted failed states.

Paul Collier argued that we should think about templates and codes of behavior in specific sectors without raising questions about borders themselves. He argued that we have a right to intervention because of the duty to protect, because of adverse effects of civil wars for other states, and because rents to sovereignty are large and growing. External actors could compel governments to accept international templates – standards and codes – with an objective to extend accountability to domestic populations. For example, a template could guide governments in managing natural resource revenue. Leaders might adopt standards and codes if given incentives, such as prestige, preferential trade access, or avoiding travel restrictions / banking scrutiny.

The discussion assessed the challenge of mapping from types of state failure to institutions that could help states recover. For example, under what conditions will a template be useful? What type of sub-national institutions would facilitate peaceful secession? Participants noted that sources of recovery are unclear.

The discussion also focused on alternative forms of sovereignty. The international system has witnessed different institutions of sovereignty over time, such as protectorates, which are today pushed aside as viable alternatives. New forms seem to be developing. For example, the contracting out of basic services may represent a new form of sovereignty.

Sectors: Trade, Policing, Governance and the Rule of Law

Richard Steinberg presented “Global Trade and National Development,” Matt Vacaro presented “From Cop to Code,” Patrick Cronin on “Corruption and Misgovernance Lessons from US Foreign Aid,” and Tom Heller on “The Rule of Law and Economic Development: Failed Practice/Questionable Theory.” The discussion that followed raised (1) how external actors can compel local ownership of state-building and (2) links between aid, reform and conflict.

Richard Steinberg assessed the effects of global trade rules on state capacity. He argued that GATT and WTO rules have created opportunities and incentives for national institutional change. These changes have included increases in state capacity, shifts of authority, and changes in policy-making processes. For much of the last fifty years, least developed countries have “been left for dead” by European and U.S. trade policy-makers, who have not consistently demanded their compliance with GATT/WTO rules. In contrast, developing countries have been pressured to transform their state institutions in order to gain or maintain access to the enormous European and U.S. markets. These state transformations constitute a bounded convergence towards state models that resemble those of Europe and the United States, which should not be surprising because those two territories have powerfully influenced the development and content of GATT/WTO rules.

Matt Vacaro assessed the criminal justice sector. Vacaro identified tasks associated with creating a criminal justice sector, including external provision of public security, creation of a legal code, police force and penal system, engagement of domestic groups, and the professionalization of the justice system. A successful criminal justice sector will require a macro-sector strategy that does not undermine its activity. The most critical sectors include (1) the political (arrangements for power-sharing) (2) criminal justice (basic public security), (3) the demobilization of combatants, and (4) economic security (jobs).

Patrick Cronin assessed the operational side of assistance. He proposed improvements in policy, such as (1) making a major investment in multilateral institutions at international and regional levels that can share in state-building, (2) transforming foreign aid into a flexible state-building tool, (3) strengthening American capacity to provide domestic security, and (4) increasing coordination among the different offices intervening in state-building. In general, Cronin argued, policies should seek to influence and support local reformers.

Tom Heller raised undeveloped links between law and state-building. In particular, aid has generally focused on improving institutions that would help economies deal with complex contracts, improve constitutional rights, and substitute judicial decision-making for administrative decision-making. The results are disheartening because legal culture has not changed with the institutions. For example, general courts have expanded, but judges understand what they are supposed to do as being the same as what they did before the reforms. Heller speculated that an alternative solution might be to absorb these states into another legal system, which may create overlapping and competing jurisdictional authorities that stimulate innovation.

The discussion focused on how external actors can compel local ownership of state-building. Three central questions were identified: (1) how can external policy-makers identify stakeholders? (2) Is reform possible without local ownership? (3) How will local “buy in” within one sector affect other sectors? A challenge for external actors is that stakeholders may seek “buy in” from actors with an incentive to subvert reforms.

The discussion also considered links between aid, reform, and conflict. Why should aid respond to good governance if aid might prevent conflict in countries with poor governance?

Participants noted that the empirical relationship between aid, reform and conflict is unclear. Aid may reduce conflict if it increases economic growth. It might increase conflict if it weakens administrative capacities by removing an incentive for governments to develop administrative structures that stimulate internal revenue generation.

The Role of the United Nations

Bruce Jones opened the section by tracing the tools that the United Nations employs while building “transitional” authority structures in the wake of an intervention. His talk was motivated by an ongoing dialogue within the United Nations about how to manage international expectations and domestic authority structures during interventions. He drew upon the recent experiences in Liberia, Afghanistan, and the West Bank and Gaza to show regional variation in the role of the UN, both in its own eyes and in the eyes of would-be interveners. His talk concluded with a forthright critique of the administrative and bureaucratic failures that continue to hamper the effectiveness of the United Nations as a robust intervention force.

Steve Stedman centered his presentation on the changing opportunity structure for intervention that has emerged in the last decade at the United Nations. As the Security Council has liberally interpreted “threats to international security” in Article VII of the UN Charter in recent years, the gap between states’ rhetorical defense of traditional sovereignty norms and the myriad of de-facto “exceptions” that are used to justify and authorize interventions by the Security Council is widening. There is still no constituency for a broad-based critique of the rhetoric of sovereignty, either at the UN or in host governments. But he suggested that there is great room for creative and pragmatic enlargement of and engagement with the United Nations authority, by deploying vague and non-threatening rhetoric, especially notions of “partnership” and “assistance.”

Patrick Cronin helpfully framed the discussion as being less about the nature of failed states and more about the self-imposed limitations of the problem solvers. The real question at stake is whether and when the United Nations is going to place its “stamp of approval” on a pragmatic intervention policy. One dilemma is that the legitimacy of the UN rests (to some degree) on accumulating a record of successful interventions, but the successful interventions tend to be poorly publicized and coercion-light. There is not much of a road map to guide the United Nations on the question of managing coercion, which will always be the bottom line when it comes to failed state intervention. Michael McFaul added to this point, suggesting that it might be useful to imagine the United Nations as a firm with a “monopoly on the provision of legitimate security” – but a firm whose services are under competition from the World Bank and other well-funded transnational institution builders.

Both Steve Stedman and Bruce Jones followed these points by noting that the UN is not staffed like a corporation, and that the capacity (in terms of competent and creative personnel) is really quite thin. They also noted, optimistically, that there have been some very dramatic success stories in UN mediation and peace building since the end of the Cold War – in difficult cases and against the odds. The question is whether the member states of the UN will find the confidence to use the offices of the UN to act *preventatively* – which would require a minimally shared definition of a threat to international security. Realizing that in the context of state building, the UN is very bad at some things (acquiring and processing local knowledge) very good at other things (providing cultural sensitivity and a shared sense of legitimacy to missions) and inexplicably bad at some things that everyone agrees it *should* be good at (aiding in civilian

administrations) is important progress. To correct these actions, however, will probably take sustained effort by interested member states – especially the US – to reform the UN from within.

Anders Mellbourn shifted the tone of the conversation by noting that one of the tensions in a discussion of UN legitimacy is that the intervener with the most deployable military capability – the US – has proven unwilling to use its offices to legitimize its actions. Jim Fearon followed this point up by suggesting that while it is convenient to pay lip service to the “threat” of failed and failing states, the main threat to United States security interests will come from functioning, deviant states acquiring WMD. Michael McFaul ably closed the discussion by bringing tying this observation together with Stedman’s discussion of legitimate, UN-sanctioned, *preventative* use of force: If there were ever to be a “coalition of the willing” to intervene preventatively with military force, it would surely be used for regime change, rather than arresting state failure.

Case Studies: Bosnia, Iraq and Russia

Gerald Knaus opened the morning session with an assessment of the successes and failures of state building efforts in Bosnia and Kosovo. In many ways, as previous presenters had noted, Bosnia is a “deluxe” mission, staffed by interveners with staying power and deep pockets. The unfolding map of the “transitional” governance institutions reflects this in perverse ways. The international intuitions have proven quite adequate at putting things back together – moving slowly, operating in concert and conversation with local power structures, and preventing a backslide into violence and bloodshed. Where they have failed – comprehensively – is in building new institutions that facilitate economic growth, state administrative centralization, locals’ stake in the politics of the center, and the general conditions that would facilitate general withdrawal. His was a general plea for interveners to move beyond the “rhetoric of permanent emergency” which is used to put off difficult questions of how to actually build lasting institutions.

Larry Diamond provided a candid insider view on the current US state building experience in Iraq. He asked that his comments not be for attribution.

Michael McFaul followed by comparing contemporary Iraq with Russia, noting that there has been no systematic study of how external actors should promote democratic regime change. The absence of theories, appropriate analogies, or templates is mirrored in the policy community with an absence of bureaucratic institutions and professional practitioners to manage the transition, even in states where the United States has an enormous stake in the outcome. There is no reason to be optimistic about sustained US attention to the mechanics of building stable democratic institutions in failed states – which, virtually by definition, do not really constitute vital threats to US interests.

A spirited discussion followed, centering primarily on the proper role of the United States in state building by proxy in Iraq – an emerging failed state, in some estimations. Peter Gourevitch, Robert Keohane, Thomas Risse, and others articulated a consensus position that many of the mishaps and failures in Iraq were really quite foreseeable, and it is only willful negligence on the part of political leaders to not prepare realistically for the challenges of establishing governance. While this pessimistic position was not directly challenged, a number of constructive observations emerged. Paul Collier, William Reno, Stephen Stedman, and Steve Krasner all noted (in different ways) that a key challenge is identifying constituencies that might support intervention and change, and then building institutions to reinforce their interest in a foreign presence.

Richard Kohl suggested that a viable research agenda – for policy practitioners and academics alike – would be to study the successful cases of state consolidation, and to try to create a basic typology of the sorts of strategies that have been sustained over time. He also noted that the institutional culture and goals of the intervening state might prematurely shut down some of the most successful empirical pathways to state consolidation – but that is an empirical question that requires research and testing, and even preliminary testing does not yet exist. Chester Crocker followed this up by suggesting that we might profitably separate cases by whether the intervener is trying to rebuild in the wake of a civil war, a negotiated peaceful end to a civil war, state collapse, regime change, or imposed regime change. The conversation ended with the consensus that the temptation to pursue regime change operations will not disappear, despite the fact that we do not have tools to rebuild the “failed state” left in the aftermath.

Mixing Authorities

Robert Keohane suggested that we approach the question of influencing states’ internal politics humbly, since most of our accumulated knowledge amounts to a handful of folk wisdoms about things to avoid. What is clear, however, is that we must unbundle the notion of sovereignty and alter the perverse incentive system which creates a “winner-take-all” environment for the victors of civil war. The ability of international institutions to selectively distribute the rights and rents of sovereignty to post-conflict leaders is an essential means to secure compliance with standards of appropriate state behavior and human rights. Withholding aspects of traditional sovereignty can therefore encourage movement toward a political situation in which substantial, although not necessarily complete, sovereignty can be restored. . Furthermore, arrangements for partial sovereignty, and guarantees of minority rights, can best be provided, in a legitimate way, through dense networks of international institutions. Unfortunately, however, these institutional networks are clustered geographically, leaving the most desperate and difficult societies least able to move toward greater self-government within the context of institutionalized arrangements that provide incentives for responsible governance and guarantees for minorities.

Steve Krasner followed this point by arguing that however we unbundled sovereignty, all conference participants agreed that decent self-enforcing institutional arrangements had to emerge from these environments in order to arrest state failure. The problem for external interveners is that there are many domestic environments where domestic actors, left to their own devices, have settled upon institutional equilibria that are wholly undesirable and intolerable. So the question is whether it is possible to use external actors to nudge domestic politics in the right direction, and whether there are general guides that we can use to tell us exactly how to do so. There are a number of possible institutional arrangements to tie the hands of locals with historical antecedents, such as shared sovereignty in specific issue areas such as finance, but they have yet to map coherently into our package of appropriate intervention options.

James Fearon gave the final presentation, noting that the fundamental problem with the contemporary world system is that a number of persistent civil wars have hollowed out the machinery of governance in a number of states. As this reality sinks in, it will present a growing dilemma to would-be interveners: Where the target state capacity is very low, committed forces cannot leave their temporary missions, which makes interveners loathe to commit troops in the first place. The central challenge for the next generation of multilateral “postmodern imperialists” is to confront the provision of this international public good of restored order in collapsed states. A secondary challenge – but a necessary one, if we are to avoid a cycle of

regime change – is how to provide local incentives to build the right *kind* of states in the wake of collapse.

The discussion that followed centered on three issues. First, there is a need for political scientists to systematically map the universe of “shared sovereignty” institutions. Second, a number of participants echoed themes from earlier in the conference, noting that the real challenge is that in failed states there may be no local *demanders* who want these problems solved in a way that is acceptable to the international community. Third, though the UN brings potential organizing power and impartial legitimacy to an intervention, the intervention that is actually implemented tends to be quite different than the initial vision of the negotiating parties. This reinforces the necessity of quickly creating a constituency for the intervention while also protecting the losers. One of the best ways to accomplish this would be to force the “winners” to tie their own hands against would-be veto players and accept gradations of sovereignty as part of the bargain.

Steve Krasner closed the conference with three observations about the consensus for future research on this area. The first is that there needs to be a more systematic and synthetic historical mapping of what states have done in the past, comparing military and other kinds of interventions into other states’ domestic structures since WWII. Even if no strong theoretical insights emerged from such a project, a survey of successful and unsuccessful external interventions would allow scholars and policymakers to step beyond the image of rebuilding Germany and Japan as the model for the contemporary world. Second, rather than look at how to deal with “failed states,” external interveners should be looking at the micro-politics of structuring incentives for local actors within states. The short-term goal of an intervention should be to create self-enforcing equilibria that arrest the backslide into violence and serve the interests of the intervening state; the long term goal of the intervention must be to make those equilibria self re-enforcing, so that the intervener can leave. Third and finally, it is necessarily to think creatively about how to deploy our rhetoric to modify the status quo system, since the discourse of sovereignty will likely remain with us for some time.