



Democracy,

Conflict and

Human Security

Further Readings

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Handbook Series

The International IDEA Handbook Series seeks to present comparative analysis, information and insights on a range of democratic institutions and processes. Handbooks are aimed primarily at policymakers, politicians, civil society actors and practitioners in the field. They are also of interest to academia, the democracy assistance community and other bodies.

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Preface

International IDEA has entered its second decade of work as an intergovernmental body dedicated to supporting democratization worldwide. The key messages of its founding mandate—the importance of local ownership, dialogue processes and context-appropriate design—are increasingly relevant. For many across the world, democracy is in a crisis of legitimacy and credibility. The idea that people have the right to control their government and that a government is legitimate only if and when it is controlled by the people has won almost global recognition, hardly matched by any other world view in modern history. It transcends cultures, religions and languages; it takes multiple forms and survives in the most inhospitable environments.

However, the way in which the idea of democracy is translated into practice can leave much to be desired. In a world characterized by rising inequality, democratic systems will be judged on how they include and deliver to constituent populations.

Democratization processes are in themselves conflictual, involving the reconfiguring of power relations, and competition for resources and representation. Informed analysis and local involvement are key to any positive outcome. In societies emerging from war, they are essential for preventing reversal and securing a just peace. While the promotion of democracy is more central in foreign policy debate and conduct than ever before, it is also true that democracy building is increasingly viewed by many with suspicion. There is a polarization of views on both intent and approach, and undemocratic regimes are exploiting the situation.

This book addresses the nexus between democracy, conflict and human security in a way which recognizes that this is highly political, not technical, terrain. It places at centre stage the fundamental need for democratic practice, and reminds us that in every society, North and South, the democratic project is a long-term, ongoing one. This book is part of IDEA's efforts to contribute to a major ongoing debate and, hopefully, to the strengthening of a democratic practice that responds to the quests for human dignity and development.

International IDEA would like to express particular appreciation to the Human Security Program of the Department of Foreign Affairs and International Trade, Canada, which has supported this project and publication. Thanks are also due to the Geneva Centre for Security Policy for their cooperation and shared interest in the theme.

Of the two lead writers, Judith Large spearheaded the 2004–5 'Confronting 21st Century Challenges' enquiry process at IDEA. Timothy Sisk provided the initial theoretical framework and manuscript for this meeting, and it was out of robust deliberations over this first draft that the focus on human security emerged for subsequent development.

Our appreciation and thanks go to them both for bringing the two volumes of *Democracy, Conflict and Human Security: Pursuing Peace in the 21st Century* to completion, for their careful attention to a complex agenda and a multitude of voices, and for offering it as a vehicle for action.

IDEA also expresses its warmest thanks to the authors of the studies in this volume; to the members of the Consultative Advisory Group convened for the Confronting 21st Century Challenges project in April 2005—Abdoulkadir Yahya Ali, Ilan Bizberg, Béchir Chourou, Andrew Ellis, Alvaro Garcia, Joao Gomes Porto, Enrique ter Horst, Khabele Matlosa, Arifah Rahmawati, Paikiasothy Saravanamuttu, Massimo Tommasoli, Nkoyo Toyo and Bernard Wood. Several committed staff members have helped us see the process through, including Goran Fejic, Katarina Jørgensen and Cecilia Bylesjö. Thanks also go to Fran Lesser, to Eve Johansson for her patience and attention to detail, to IDEA's dedicated publications manager Nadia Handal Zander, and in particular to Anh Dung Nguyen.

Finally, we express our gratitude to the member states of IDEA, without whose support the work would not have been possible. To them, and to all our readers, we hope that these selected readings related to *Democracy, Conflict, and Human Security* will stand as a useful contribution to the challenges we all face, in varying contexts and circumstances.

A handwritten signature in black ink, reading "Vidar Helgesen". The script is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Vidar Helgesen
Secretary General, International IDEA

Acronyms and Abbreviations

ABRI	Angkatan Bersenjata Republik Indonesia (Armed Forces of the Republic of Indonesia)
AFRC	Armed Forces Revolutionary Council (Sierra Leone)
ANC	African National Congress
APC	All People's Congress (Sierra Leone)
AU	African Union
AV	Alternative Vote
BCP	Basutoland Congress Party (Lesotho)
BJP	Bharatiya Janata Party (India)
BNP	Basotho National Party (Lesotho)
Brimob	Brigade Mobil (Mobile Brigades) (Indonesia)
CFA	Cease Fire Agreement (Sri Lanka)
CIS	Commonwealth of Independent States
CivPol	Civilian Police
COB	Central Obrera Boliviana (central trade union organization, Bolivia)
CPP	Cambodian People's Party
CSO	Civil society organization
DDR	Disarmament, demobilization and reintegration
DFID	Department for International Development (UK)
DRC	Democratic Republic of the Congo
DUP	Democratic Unionist Party
ECOMOG	ECOWAS Monitoring Group
ECOWAS	Economic Community of West African States
EISA	Electoral Institute of Southern Africa
EMB	Electoral management body
ESPA	El Salvador Peace Agreement
EU	European Union
FAES	Fuerza Armada de El Salvador (Armed Forces of El Salvador)
FLP	Fiji Labour Party
FMLN	Frente Farabundo Marti de Liberacion Nacional (Farabundo Marti National Liberation Front, El Salvador)
FPTP	First Past The Post
FRELIMO	Frente de Libertação de Moçambique (Front for the Liberation of Mozambique)
GBP	British pound (£)
GFA	Good Friday Agreement
HIV/AIDS	Human immunodeficiency syndrome/Acquired immunodeficiency syndrome

ICG	International Crisis Group
ICGL	International Contact Group on Liberia
IEC	Independent Electoral Commission (Lesotho)
INP	Indonesian National Police (Kepolisian Negara Republik Indonesia)
IPA	Interim Political Authority (Lesotho)
IRA	Irish Republican Army
JVP	Janatha Vimukthi Peramuna (Sri Lanka)
LCD	Lesotho Congress for Democracy
LRA	Lord's Resistance Army
LTTE	Liberation Tigers of Tamil Eelam (Sri Lanka)
LURD	Liberians United for Reconciliation and Democracy
MDC	Movement for Democratic Change (Zimbabwe)
MFP	Marematlou Freedom Party (Lesotho)
MICAH	Mission Civile d'Appui en Haïti (Civilian Support Mission in Haiti)
MICIVIH	Mission Internationale Civile en Haïti (International Civilian Mission in Haiti)
MINUSTAH	Mission des Nations Unies pour la Stabilisation en Haïti (UN Stabilization Mission in Haiti)
MMP	Mixed Member Proportional
MNR	Movimiento Nacionalista Revolucionario (National Revolutionary Movement) (Bolivia)
MODEL	Movement for Democracy in Liberia
MP	Member of Parliament
MTP	Marema-Tlou Party (Lesotho)
NGO	Non-governmental organization
NRM	National Resistance Movement (Uganda)
OAS	Organization of American States
OAU	Organization of African Unity
ONUSAL	United Nations Observer Mission in El Salvador
OSCE	Organization for Security and Co-operation in Europe
PA	People's Alliance (Sri Lanka)
PN	Policia Nacional (National Police, El Salvador)
PNC	Policia Nacional Civil (National Civil Police, El Salvador)
PNH	Police Nationale d'Haïti (Haitian National Police)
PR	Proportional representation
PRSP	Poverty Reduction Strategy Paper
PSNI	Police Service of Northern Ireland

PTOMS	Post Tsunami Operational Management Structure (Sri Lanka)
RENAMO	Resistência Nacional Moçambicana (Mozambican National Resistance)
RSLAF	Royal Sierra Leonean Armed Forces
RUC	Royal Ulster Constabulary
RUF	Revolutionary United Front (Sierra Leone)
SADC	Southern African Development Community
SDLP	Social Democratic Labour Party
SLFP	Sri Lanka Freedom Party
SNTV	Single Non-Transferable Vote
SRSR	Special representative of the (UN) secretary-general
SSR	Security sector reconstruction
SSR	Security sector reform
STV	Single Transferable Vote
TNI	Tentara Nasional Indonesia (Indonesian National Military)
TSE	Tribunal Supremo Electoral (Supreme Electoral Tribunal) (El Salvador)
TWEA	Trading With the Enemy Act (USA, 1917)
UK	United Kingdom
UN	United Nations
UNAMSIL	United Nations Mission in Sierra Leone
UNDP	United Nations Development Programme
UNMIH	United Nations Mission in Haiti
UNMIL	United Nations Mission in Liberia
UNP	United National Party (Sri Lanka)
USD	US dollar
UUP	Ulster Unionist Party
VLV	Christian Democrat Alliance (Fiji)
ZANU/PF	Zimbabwe African National Union–Patriotic Front

INTRODUCTION

INTRODUCTION

Introduction

Judith Large and Timothy D. Sisk

The notions of both democracy and security are severely contested in the new millennium. Contrary to the post-cold war optimism which followed the fall of the Berlin Wall in 1989, the promise of ‘democracy’ worldwide remains a distant possibility, and ‘hot wars’ continue, at times informed by newly framed international justification and intervention, as reflected in debates on ‘pre-emptive’ action. Likewise, there are tensions between traditional concerns with state security and new-found emphasis on ‘human security’ as a more compelling, or at least complementary, notion. International IDEA’s ‘Confronting 21st Century Challenges’ project in 2004–2005 invited debate about and scrutiny of what had changed since the mid-1990s and an appraisal of experience in democratic transition in relation to peace building and development. Why was there documented disillusionment with new democracies? What had changed since the fall of dictatorships in Latin America, and peace settlements intent on democratic frameworks, such as the Dayton and Belfast agreements? How were democratic systems in Africa, Asia, the Caucasus or Latin America perceived by their populations? What trends in assistance to democracy building were perceived as positive or negative?

The answer to a wide-ranging consultative exercise was a clear message that the focus should be on two key areas: the *legitimacy* of democracy assistance in the light of the fact that *democratization can in itself be conflict-inducing*, and the *relationship between democratic systems and human security*. There was a message that democracy as a political form cannot be imposed from the basis of external needs or by an external actor. It must be desired by and directed from social actors inside a society. Moreover, the test of its internal credibility and sustainability will be whether it can ‘deliver’ human development to the population who are its citizens.

This book, a companion volume to *Democracy, Conflict and Human Security: Pursuing Peace in the 21st Century*, contains specific studies which were contributed to the debate, from diverse experiences and contexts. This volume complements and enriches the first

volume in two ways: by providing perspectives by leading scholars, analysts and policy makers, and by offering a more in-depth look at critical themes and case studies.

In section 1, ‘Democracy and Human Security: Essential Linkages’ by **Todd Landman** expands on the notion of human security as a significant paradigm shift in the ways in which security is conceived, the way in which policies for its protection may be formulated, and the different ways in which it may be related to democracy:

By grounding the concept in the individual, the concept of human security challenges the hegemony of state-centric approaches to analysing security problems and policies designed to alleviate them. In using the ideas of freedom from fear and freedom from want, which parallel concerns over personal integrity and personal dignity, the notion of human security adds many more dimensions to the security agenda that overlap with other policy agendas in the fields of development, democracy and human rights (Landman: 21–2).

Landman explores how democratic institutions ‘understood in their fullest sense’ can contribute to the exercise of human agency and the protection of human security. In particular he identifies the importance of having in place institutions for accountability (vertical and horizontal), for constraint and representation—themes which run throughout the studies in their particular contexts.

One arena which demonstrates these linkages to the full is Bolivia, where critical human security issues of poverty, exclusion, distribution, representation and participation have proved to be the litmus test for democracy. Although declared a showcase for the smooth implementation of International Monetary Fund (IMF) reforms in the 1990s with ‘capitalized’ (privatized) state industries in oil and gas, telecommunications, electricity, the railways and airlines, marginal economic growth did not translate demonstrably into meaningful development. The failure of economic policies to deliver poverty reduction, and their exacerbation of profoundly entrenched inequality in the country, led to a backlash and divisions which pushed the country to the brink, seemingly, of civil war. Bolivia today is symbolic in some ways of broader trends and concerns in the Americas with the shortcomings of democracy.

Water privatization in Cochabamba was revoked in 2000 after riots in protest. In October 2003, 67 people were killed by troops under the government of Gonzalo Sánchez de Lozada, in protests calling for nationalization of Bolivia’s hydrocarbons (gas and oil). Sánchez de Lozada was forced to flee. In 2005 residents of El Alto (following the earlier precedent) forced the government to end the contract with the privatized water utility, due to rising water prices and its failure to extend the water and sewerage network to many residents. Renewed protests at natural gas nationalization brought the country to a standstill for three weeks. General elections in December 2005 brought in a government with populist policies and a redistribution agenda, in response to mass discontent and historical inequalities. Severe tests still await Bolivia, not least managing devolution policies amid competing claims for autonomy and more. **George Gray**

Molina examines the historical trajectory leading to the present day in his study on 'The Crisis in Bolivia: Challenges of Democracy, Conflict and Human Security'.

In Bolivia, as in apartheid-era South Africa, Nepal in the 1990s and, currently, in Aceh and West Papua, Israel and Palestine, popular needs for recognition, for rights, and for development and human security take on political force when unmet over time. Responses to enduring structural inequalities will reflect strongly in the perceived legitimacy of government. Popular movements, as in the case of the indigenous peoples of Latin America, can be forces for democratization.

Section 2, 'Democratization after the Cold War: Managing Turbulent Transitions', traces patterns of democratization particularly the 1990s and 2000s, the role of social mobilization and politics for setting the human security agenda, democratization as conflict-inducing, and 'transition' findings relevant for policy today. **Reg Austin** draws on earlier experience of the liberation wars in Africa when tracking approaches to democracy assistance from the 1979 Lancaster House Agreement on Zimbabwe to recent developments in Afghanistan. **Arifah Rahmawati and Najib Azca** give their first-hand account and analysis of multi-level work in Indonesia's new democracy, in 'Police Reform from Below: Examples from Indonesia's Transition to Democracy'. They examine the outbreak of localized violent conflict and consider the 'pyramid of power in New Order Indonesia with civil-military links'. Rahmawati and Azca explore the key areas of participation and local ownership in reform processes. The Indonesia experience has broad implications for considering approaches to multi-level participation and security sector reform in transitional situations.

Section 3, 'Democratic Practice: Managing Power, Identity and Difference', explores key principles and features that facilitate conflict management, with measures for social inclusion as a key theme. **Andrew Ellis** examines 'Dilemmas in Representation and Political Identity' with a sharp eye to the politics of identity, leadership, electoral choice and electoral system design. **Feargal Cochrane's** study 'Stop-Go Democracy: The Peace Process in Northern Ireland Revisited' offers lessons in both the opportunities and the pitfalls of power-sharing arrangements. **Khabele Matlosa** presents a case study of effective violence reduction and conflict mitigation in 'Electoral System Design and Conflict Mitigation: The Case of Lesotho'. **Gurpreet Mahajan** expands further on the the critical areas of balancing majority prerogatives and minority rights, electoral and institutional design, and consensus building in divided or diverse societies in her study on 'Negotiating Cultural Diversity and Minority Rights in India'.

Security crises may be used as a justification for suspension of democratic processes, in both North and South. 'When Democracy Falters' is the theme of section 4. In this section, the need for constitutional and procedural safeguards for accountable balance of power, and the critical dimension of honouring international human rights conventions, are examined by both **Aziz Z. Huq** in 'Democratic Norms, Human Rights and States of Emergency: Lessons from the Experience of Four Countries', and **Judith Large's** 'Democracy and Terrorism: the Impact of the Anti'.

Section 5, 'Democracy in War-torn Societies', is concerned with human security in the aftermath of war—human rights and local-level participation for peace building, demobilization and security sector reform, power sharing and the question of legitimacy. **Enrique ter Horst** draws on first-hand experience of United Nations operations for 'El Salvador and Haiti Revisited: The Role of the UN Peace Operations'. **J. 'Kayode Fayemi** takes a critical look at the cases of Liberia and Sierra Leone in 'Pursuing Security in the Post-conflict Phase: Reflections on Recent African Cases and Their Implications for Current and Future Peace Operations'. **Khabele Matlosa** then considers election processes in post-war settings and the long-term human security issue of reconciliation in his comprehensive study on 'Electoral Processes and Post-settlement Peace Building: Perspectives from Southern Africa'. Finally, in a departure from standard 'post-conflict' thinking, a constitutional democracy-at-war receives in-depth consideration in 'Democratization of the Peace Process: Sri Lanka' by **Paikiasothy Saravanamuttu**.

The final section of the volume, on 'Strengthening International Assistance for Promoting Peace through Democracy Building', begins with **Olayinka Creighton-Randall** who offers insights for donors and external actors in 'The Role of the International Community in Supporting Democratization Processes and Why It Matters for Human Security: The Case of Sierra Leone'. **Yash Ghai** and **Guido Galli** complete the volume with 'Constitution-building Processes and Democratization: Lessons Learned'.

These readings are offered in the interest of advancing the understanding of the relationship between democracy and (a) enabling environments of inclusion and human dignity, and (b) addressing the structural causes of conflict, and in order to identify ways to improve and strengthen national and international democracy building in pursuing human security goals. They represent a plurality of 'democracies', evidence that no 'one size fits all', and the validity of diverse experience.

Democracy is in crisis worldwide at the very time when there needs to be a renewed emphasis on democratic practice as the key to the attainment of 21st-century human security aims, and human development goals. This matters for human security, in that well-designed and inclusive political institutions and processes are the key to preventing deadly conflict and to managing and building peace, and because human rights and public participation are essential for achieving the human development objectives that can address the root causes of such conflicts in the long run.

The test of 21st-century democracy will not be limited to the cultivation of widespread free and fair elections (a challenge in its own right), but will be determined equally by whether human rights standards are reclaimed as universal, inequalities reduced and social justice furthered. Key will be issues of 'delivery'—measures to meet human needs, and the recognition that human insecurity is one of the main root causes of the many violent conflicts the world is facing and that insecurity is often linked to exclusion and lack of access to resources and power. It is hoped that these selected readings offer windows of experience, in their specific ways, as a basis for both informed debate and constructive action.

SECTION 1

Democracy and Human Security

Essential linkages: democratic practice and the contemporary challenges of human security

Democracy and Human Security: Essential Linkages

Todd Landman

The Crisis in Bolivia: Challenges of Democracy, Conflict and Human Security

George Gray Molina

Democracy and Human Security: Essential Linkages

Todd Landman, University of Essex

The concept of human security represents a significant paradigm shift for scholars and practitioners working in the fields of development, democracy, human rights and humanitarian assistance. Traditional approaches and policies in international relations have placed the state and its interests at the centre of concern, while the interests, grievances and collective experiences of individuals remained subsumed under the larger analytical unit of the state. In such approaches, security is thus thought of in terms of state security, conceived in such terms as territorial integrity, political viability, power, prestige and economic interests, where threats to state security include interstate conflict and warfare; traditional and nuclear weapons proliferation; intra-state conflict, rebellion, revolution and terrorism; trade disputes, retaliation and protectionism; and in some instances, environmental degradation.

In contrast, the idea of human security shifts the focus away from the state and makes the individual the primary unit of analysis, who is meant to live under socio-economic and political conditions that seek to guarantee the twin values of *freedom from fear* and *freedom from want*. Here, many of the threats to human security are the same as those that confront states and the role of the state is by no means diminished. Rather, the state is still seen as the main organ with the capacity to provide the necessary institutions for realizing human security. The key difference is that the idea of human security, like the idea of *human development*, reorients the analytical focus away from state interest to that of human dignity.

But not all states are alike in terms of their domestic political institutions. Since the 1974 Portuguese transition to democracy, the world has witnessed a dramatic spread of democratization such that 60 per cent of the countries in the world could now be considered at least nominally democratic. The Community of Democracies boasts that over 100 countries have attended its various ministerial meetings in Warsaw (2000), Seoul (2002) and Santiago (2005). This new democratic universe comprises countries

from all the continents and represents a significant development in world politics. But what does this spread of democracy mean for human security? In what ways is democracy good for human security? What are the essential linkages between key normative and institutional features of democracy and the main components of human security?

This essay provides some answers to these questions by moving beyond some of the declaratory language of the international community (e.g. ‘all good things go together’) and examines the reasons why democracy may be good for human security. It first outlines the evolution of the concept of human security. It then examines the conceptual and theoretical linkages between democracy and human security. This is followed by an examination of the empirical linkages between democracy and certain features of human security, including the protection of human rights, economic development, and interstate and intra-state warfare. It concludes with a summary of the main arguments and discusses their implications.

Human Security¹

The genealogy of the term ‘human security’ can be traced back to the establishment of the United Nations (UN) in 1945 and draws on the views of then US Secretary of State Edward R. Stettinus, Jr, who said:

The battle for peace has to be fought on two fronts. The first is the security front where victory spells freedom from fear. The second is the economic and social front where victory means freedom from want. Only victory on both fronts can assure the world of an enduring peace . . . No provisions that can be written into the Charter will enable the Security Council to make the world secure from war if men and women have no security in their homes and their jobs (quoted in Grimm 2004).

These two ideas—freedom from fear and freedom from want—have been in the background of UN development and human rights policies and programmes ever since the signing of the UN Charter, but they have become linked to debates on security more recently.

By lowering the level of analysis to individuals and combining it with the notions of fear and want, the concept of human security shifts attention to the threats to human integrity and the conditions under which the promotion of human dignity is made possible. Scholars, policy makers and advocates for human security have not yet defined threshold conditions for fear and want, but it is possible to define what personal integrity and human dignity mean for human security. The protection of personal integrity means that individuals can go about their daily lives free from arbitrary incursions carried out by state and non-state actors, such as detentions, torture, harassment, assassination, disappearance, and other abusive acts. The promotion of human dignity means that individuals have access to basic levels of food, shelter, education and health and that with such access they are capable of exercising personal autonomy, control over their own lives, and participation in the public sphere.

Such a distinction between integrity and dignity mirrors the long-standing debate surrounding the promotion and protection of human rights, where civil and political rights had been seen to be *negative* rights (i.e. 'freedom from') while economic and social rights had been seen to be *positive* rights (i.e. 'freedom to'). But over the latter half of the 20th century this distinction between different sets or 'generations' of rights has been transcended to the extent that we now speak of human rights as having both positive and negative dimensions, such that economic resources are needed for the protection of all rights and all rights can be violated in some way (see Holmes and Sunstein 1999; Landman 2006b). Thus, even though they have different starting points, human rights and human security arrive at similar conceptions of which aspects of the human condition ought to be protected.

With the individual at the centre of concern, it is then possible to specify a number of dimensions of human security as well as potential threats to human security that move beyond those considered important for maintaining state security. The United Nations Development Programme (UNDP) (1994: 24–33) identifies seven main dimensions to human security, including economic security, food security, health security, environmental security, personal security, community security and political security. Beyond the inability of states to provide basic sustenance and meet the basic needs of their populations in terms of access to food, education and health care, threats to human security include interstate and intra-state conflict, warlords and domestic terrorism, international terrorism, natural disasters such as the Asian tsunami and hurricane Katrina, and disease and epidemics such as malaria and HIV/AIDS (Elbe 2003). Interstate and intra-state conflicts have ravaged countries and regions throughout the 20th century, where state violence towards citizens has caused more deaths overall than interstate conflict; and intra-state conflicts have both outnumbered and outlasted interstate conflicts into the 21st century (Mueller 2004).

Natural disasters hit specific communities at specific times, while health epidemics and pandemics can expand geographically over long periods of time. Roughly 70 per cent of HIV cases (adults and children) are in Sub-Saharan Africa; the remaining cases are distributed across the rest of world, most notably in South and South-East Asia (14 per cent), Latin America (4 per cent), Eastern Europe and Central Asia (3 per cent), and East Asia and the Pacific (3 per cent) (Elbe 2003: 15). For some, the HIV/AIDS problem goes beyond health concerns and is seen to be a significant threat to human and state security (see Elbe 2003).

These various dimensions and threats suggest that there are significant international and domestic factors that can affect human security. The international factors include primarily the post-cold war 'policing wars' (e.g. in Panama, the first Gulf War, in Somalia, Haiti, Bosnia, Kosovo, East Timor, Sierra Leone and Afghanistan, and the second Gulf War), the spread of global terrorism (and the efforts to combat it), and the uneven and perverse outcomes of the expansion of global capitalism (Pogge 2002; Mueller 2004). The domestic factors include the type and quality of political institutions that are in place: human security is most threatened in so-called 'failed' states (Rotberg 2004),

authoritarian states, and those with little capacity for governance, which allows violent forms of predation, abuse and killing. But human security should also be a concern in those states that are not failing (Henk 2005), are not fully authoritarian, and are not subject in the near future to any form of predation. It is therefore important to consider what role democracy can play in addressing the main threats to human security.

There has been a tendency within the international policy discourse to make ‘declaratory’ linkages between democracy and human security, without specifying the causal mechanisms between them or empirical features of democracy that may make it an appropriate form of government for providing human security. These declaratory linkages define democracy as including features that overlap significantly with the elements of human security (e.g. the protection of fundamental human rights) or by simply claiming in tautological fashion that human security lies at the core of democracy. But what is it about democracy that makes it the best form of government to provide human security? Do different conceptions and definitions of democracy entail different empirical linkages with human security? What are the key institutional features of democracy that help provide human security? Or, more importantly, what are the features of democracy that *reduce the threats to human security*? Answers to these questions are considered in turn.

Popular Sovereignty and Collective Decision Making

At a fundamental level, democracy is a form of governance based on some degree of popular sovereignty and collective decision making (Landman 2005a: 20). So-called ‘procedural’ definitions of democracy claim that *contestation* and *participation* capture the notions of collective decision making and popular sovereignty, and presume the legitimacy of the opposition, the right to challenge incumbents, protection of the freedoms of expression and association, the existence of free and fair elections, a consolidated political party system, and the protection of the right to vote with universal suffrage (see Dahl 1971). Moving beyond pure proceduralism, liberal definitions of democracy include an *institutional* dimension that captures the idea of popular sovereignty realized through accountability, the existence of constraints on political leaders, representation of citizens and universal participation; and a *rights* dimension, upheld through the rule of law and the protection of civil, political, property and minority rights (see Foweraker and Krznaric 2001). Finally, social definitions of democracy maintain the institutional and rights dimensions found in liberal definitions of democracy but expand the types of rights that ought to be protected beyond civil and political rights to include social and economic rights.

It is crucial to understand that different conceptions of democracy have different degrees of connection with human security. Procedural democracy addresses only partially some of the key features of human security. The assumed rights protections necessary for contestation begin to address freedom from fear, while there may be an indirect link between participation and the elimination of freedom from want, where protections for the right to vote provide the potential (but limited) political space for voicing socio-

economic grievances. Liberal conceptions of democracy are more explicit about the protection of civil rights, including the right to a fair trial, habeas corpus, and freedom from arbitrary detention. Such rights protections as these are directly linked to the question of freedom from fear, where under a liberal democracy it is less possible for the state to exercise arbitrary authority over its citizens.

Like procedural conceptions of democracy, however, liberal conceptions of democracy have little to say about freedom from want since their primary focus is on the protection of civil and political rights. In addition to insisting on the rights protections necessary for providing freedom from fear, social conceptions also insist on rights protections necessary for providing freedom from want. Rights to work, health, and education all address significantly the main factors related to poverty, malnutrition, social exclusion and ill-health that threaten individual and collective freedom from want. Social conceptions of democracy therefore address the largest number of features that comprise human security.

Despite these different ‘thick’ and ‘thin’ conceptions of democracy, it is democracy’s key features of *accountability*, *constraint on power* and *representation* that are meant to have the most direct bearing on human security.

The notion of *vertical accountability* means that leaders can be held accountable for their actions, popular disaffection with policies, programmes and decisions of leaders can result in the leader being removed from power. This removal from office is typically carried out through periodic elections, votes of no confidence in parliamentary systems, and impeachment proceedings in presidential systems. The notion of *horizontal accountability* means that different branches within a democratic government can hold each other to account for their actions. The Madisonian model of separation of powers formulated in the United States’ founding era and adopted throughout Latin America provides institutional checks and balances between and among branches, where the executive, legislature and judiciary have various powers to limit the actions of the other respective branches. In the United States, the principle of judicial review has developed since the *Marbury v. Madison* case to give significant power of the Supreme Court to strike down laws that it deems unconstitutional.

And across presidential systems, legislatures have varying degrees of power to *constrain* executive authority (see e.g. Jones 1995). The Westminster model of democracy that evolved in the United Kingdom and has been adopted throughout Commonwealth countries has fewer such mechanisms for ensuring horizontal accountability (Lijphart 1999), but within the United Kingdom (UK) the judiciary is developing its own sense of judicial review, while the 1998 Human Rights Act has become a new standard with which law in the UK must increasingly comply.

Finally, democratic theory rests on the notion that there is some sort of connection between government decision making and the *collective preferences of the population*. Collective preferences can be represented through formal procedural and institutional

means such as political parties and voting, or through extra-institutional means such as social movement organizations, civil society organizations and pressure groups. But there is never a direct correspondence between citizen preferences and the outcomes of government policy within democracies (or in other governmental systems for that matter). Significant differences in the ways in which interests are aggregated and ultimately reflected in the policy agenda and policy programmes of democratic governments depend on the electoral system, the political party system, the basic institutional design (e.g. parliamentary or presidential, federal or unitary) and the overall structure of political opportunities for contentious politics (Tarrow 1994).

Taken together, accountability, constraint and representation provide significant institutional mechanisms within democracies that make them suitable for protecting human security. With leaders reliant on popular support, serious threats to human security cannot remain unaddressed, which is one of the main reasons Amartya Sen has given for the empirical observation that there has never been a famine in a democracy (see e.g. Sen 1999). Bad as the US federal response to hurricane Katrina has been, the aftermath has shown that leaders from all levels of government and from a variety of agencies have desperately sought to legitimate themselves in the eyes of the US population. The long-term fallout of the hurricane and its aftermath within the US political system are not yet known, but there will be electoral responses across party lines, and naming and shaming across different policy areas (environment, welfare, homeland security, and foreign policy), and leaders will lose their offices within government at all levels. In this way, short- and long-term threats to human security can be addressed through the democratic process and through democratic institutions.

However, beyond these conceptual debates about different types of democracy, the various constellations of their institutional arrangements, and their possible links to human security, it is important to examine the empirical record to test various linkages, including those between the protection of human rights, interstate and intra-state conflict, and development.

Protection of Human Rights

The extant global comparative and statistical literature on human rights has shown a consistent and positive effect between the level of democracy and the protection of ‘personal integrity rights’, which include freedom from arbitrary detention and arrest, torture, political imprisonment, extrajudicial killing, and exile (see e.g. Poe and Tate 1994; Carey and Poe 2004; Landman 2005b, 2005c). Such a democratic effect is observable even within the first year of a democratic transition (Zanger 2000). But the relationship between democracy and human rights is neither tautological (see Beetham 2004) nor perfect (e.g. de Mesquita et al. 2005). While the protection of civil and political rights is an essential feature found across many conceptions of democracy, the empirical record shows that there is significant variation among democracies in their ability to protect personal integrity rights.

Regimes that have some democratic features but that cannot provide full protection of civil rights are variously known as ‘pseudo-democracies’, ‘hollow democracies’, or ‘illiberal democracies’ (e.g. Diamond 1999; Zakaria 2003). More importantly, de Mesquita et al. (2005) show that the imperfect relationship between democracy and personal integrity rights is best explained by significant differences in political participation through multiparty competition and accountability, where human rights abuses are significantly lower among those democracies that have institutionalized competitive party systems and have in place significant constraints on the executive.

Ironically, and despite the advantages for human rights associated with fully institutionalized and competitive democracies, the current ‘war on terror’ has led many advanced democracies to enact significant pieces of anti-terror legislation in an effort to maintain national security and to obtain intelligence on terrorist networks. In adopting a hybrid response to terrorism that combines a criminal justice and a military model (Large 2005), democracies have curbed traditional civil liberties such as freedom of movement, freedom from arbitrary arrest, and rights to privacy and correspondence in an effort to track down terror suspects. Of the 72 countries that have filed their post-11 September anti-terror legislation with the United Nations, 39 are considered at least procedural democracies (see Landman 2006a). In its response to the 7 July 2005 terror bombings in London, the UK Government is now actively considering reviewing its obligations under the 1951 European Convention on Human Rights, with significant policy speeches being made by the home secretary (the minister of the interior) and the head of MI5 (the UK security service). These examples suggest that the healthy relationship between democracy and human rights is being eroded during the war on terror, and that individual freedom from fear is being compromised even among some of the oldest and most economically advanced democracies.

Democracy and Development

The empirical research on democracy and human rights has concentrated primarily on the protection or violation of civil and political rights, with very little research on the relationship between democracy and the protection of economic and social rights. This dearth of research is partly explained by the American origins of modern political science and to the methodological problems associated with measuring the protection of economic and social rights (Landman 2005b). Significant steps have been taken to provide measures of some worker rights and women’s economic rights (see <<http://www.humanrightsdata.com>>), but little definitive research has yet been published in this area. A lateral move that is often made among researchers is to concentrate on the relationship between democracy and development, since the protection of social and economic rights is meant to be realized progressively and relies on the relative fiscal capacity of states.

Global empirical research has shown that democracies are no better at promoting economic growth than states with other forms of government and equally indifferent in their effects on the distribution of income, but they are better at promoting human

development (see Leftwich 1996; and Przeworski et al. 2000). Human development, at least as it is conceived and measured by the UNDP, combines life expectancy, educational achievement, literacy and per capita gross domestic product (GDP) measures, all of which serve as close proxy indicators for the relative freedom from want that may exist within a country. Moreover, among poor countries, democracies outperform autocracies on most measures of economic development. (Halperin, Siegle and Weinstein 2004).

The Democratic Peace

The final area to consider is the relationship between democracy and peace at international and domestic levels. Drawing on Kant's 1795 essay *The Perpetual Peace*, scholars in international relations and comparative politics have examined the relationship between democracy and international conflict on the one hand, and democracy and civil conflict on the other. In both cases, the analysis focuses on the potential pacifying effects of democratic norms and democratic institutions that reduce the propensity for international warfare and for quelling domestic mobilization of combatants. In the international sphere, the very large literature on the democratic peace has shown that since the late 1800s pairs of democracies (i.e. dyads) do not go to war with one another (Ray 1995; Doyle 1997). Some commentators have argued that this empirical finding is the closest thing to a law that political science has established (Levy 2002: 359).

Further research argues that democracies are less conflict-prone than non-democracies (e.g. Russett and Oneal 2001) and that democratizing countries that have well-managed transitions are less likely to be engaged in interstate warfare (Ward and Gleditsch 1998). These sets of findings are based on large and complex data sets that combine dyads of states between the 1880s and the 1990s, where the analysis controls for other factors such as relative power differentials, contiguity, and measures of international interdependence.

Critics of the idea of the democratic peace have made two arguments. First, since the data sets comprise multiple instances over time of countries that became advanced democracies, the finding that democracies do not fight one another is a spurious one (Mueller 2004: 167). Second, there is very little theoretical or empirical support for the pacifying norms and institutions found within democracies (Rosato 2003; 2005).

In terms of norms, historical evidence shows that democracies do not necessarily externalize the norms of conflict resolution, and do not display any sense of trust between one another when their interests clash (Rosato 2003; 2005). Institutionally, democratic leaders are not vulnerable to removal by pacifist publics, they are not encumbered by their publics in mobilizing for war, and in theory open competition and freedom of information makes war-making less likely (Rosato 2003; 2005). These claims are supported by an examination of 33 cases of war in which democracies failed to externalize their norms, 18 cases in which democracies failed to trust one another, and 15 'easy' cases in which the democratic peace logic should have applied but did not do so in 12 of them (Rosato 2005: 468). It is important to stress, however, that neither

of these criticisms undermines the empirical observation that democracies do not fight each other or that democracies are less conflict-prone. Rather, there has not yet been an adequate explanation for the observation.

But what of domestic conflict? Again, cross-national research has shown that ‘coherent’ democracies (i.e. those that are fully institutionalized and stable) experience fewer instances of civil war—which is also true of highly authoritarian states. The problem of civil war tends to arise in those ‘incoherent’ or ‘intermediate’ states in which authority patterns are not clear and in which political institutions are weak (see e.g. Hegre et al. 2001). Moreover, in comparing such incoherent states to full autocracies, it emerges that the democratic ‘civil’ peace is more both more durable and more stable (ibid.: 33).

The claims for the democratic civil peace are somewhat less strong than the main claims of the democratic peace, since civil wars have been analysed as wholly internal affairs (which in itself is a questionable assumption) and since democracies have had many experiences with civil war. For example, while secessionist demands were managed in democracies such as Canada and Belgium, they were not well managed in Switzerland and the United States in the middle of the 19th century. Democracies have also been involved in prolonged conflicts in the colonial possessions, particularly after World War II when advanced democracies were withdrawing from empire (Mueller 2004: 168). Moreover, many countries struggling to consolidate democracy found themselves mired in severe domestic conflicts such as those in Peru from 1980 to 2000 and in El Salvador in the late 1970s and 1980s.

The threat of international terrorism fomented by immigrants, first-generation immigrants, or so-called ‘native’ citizens poses a series of challenges for protecting human security under the auspices of democracy. As noted above, democracies have responded through the implementation of anti-terror legislation, which, while designed to protect citizens, may have the perverse effect of presenting a greater threat to human security. The 7 July bombings in London showed that domestic-born militants and the state’s response have created a triple threat for a large section of the British population. Non-whites, particularly Asians and blacks, fear attacks from the terrorists, fear vengeance attacks from the white majority, and fear suspicion, arbitrary arrest, and possible deportation by the government.

Implications

This study has shown that the notion of human security represents a significant paradigm shift in the ways in which security is conceived, the way in which policies for its protection may be formulated, and the different ways in which it may be related to democracy. By grounding the concept in the individual, the concept of human security challenges the hegemony of state-centric approaches to analysing security problems and policies designed to alleviate them. In using the ideas of freedom from fear and freedom from want, which parallel concerns over personal integrity and personal dignity, the notion of human security adds many more dimensions to the security agenda that

overlap with other policy agendas in the fields of development, democracy and human rights.

This study has argued that development and democracy both appear to have positive effects on the protection of human rights, since increased levels of economic development provide countries with resources to alleviate the worst forms of suffering, and democracy provides mechanism for the expression of grievances. Moreover there is now a growing scholarly and practical consensus on the ways in which development, democracy and human rights when realized effectively provide the best environment for 'human agency'. Donnelly (1999) argues for an effective abandonment of the ideas of development and democracy, and argues that we should focus instead on 'rights-protective' regimes, but rights are understood in their fullest sense to include civil, political, economic, social and cultural rights. In similar fashion, Ignatieff (2001) argues that human rights are a set of basic protections that guarantee human agency, while O'Donnell et al. (2004) argue that human agency lies at the core of human development, democracy, and human rights.

But, as Hobbes reminds us, human agency on its own may not necessarily be a good thing, since the history of the world has shown us how the exercise of human agency without constraint can lead to disastrous consequences. Combining human agency and human security suggests that there are limits to the raw pursuit of self-interest if human security is to be protected as well. And it is democratic institutions understood in their fullest sense that have thus far provided the best set of guarantees for the exercise of human agency and the protection of human security. By having in place institutions for accountability (vertical and horizontal), constraint and representation, fully developed democracies provide but do not necessarily guarantee more freedom from fear and more freedom from want.

Notes

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Web Sites

<<http://www.humanrightsdata.com>>

The Crisis in Bolivia: Challenges of Democracy, Conflict and Human Security

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Bolivia has long attracted attention for its political instability, with vivid images of *coups d'état* in the 1960s and late 1970s, as well as for its poverty and ethnic diversity. It is one of the most multi-ethnic countries in the American hemisphere, with one of the highest levels of inequality. However, it has rarely been noted for its degree of social or political violence—at least not on the scale of other Latin American countries that are also marked by poverty and ethnic, regional and class cleavages (Molina 2004)—that is, until recently. Since 2000, heightened social and political conflict has claimed the lives of civilians, police and military, and intensified conflict to a degree unprecedented since the National Revolution of 1952.

The questions many Bolivians ask themselves are: Are conflict and violence here to stay? Have the popular mobilizations of April and September 2000, February and October 2003, and most recently June 2005, ruptured a tense calm? Should we characterize the current crisis as a social or a political crisis, perhaps a 'state crisis' that merits more than just a change in elected authorities and a new constitution? From the outside, many observers ask other, sometimes more disturbing, questions. Why have the Bolivian economic and political reforms of the 1980s and 1990s 'failed'? Is Bolivia joining the ranks of the 'failed states' that have lost control over law and legally constituted authority? Is a fundamental ideological shift taking place towards a new form of political populism, 'Chavez populism' (so-called following developments in the Venezuela of President Hugo Chavez) in the words of political analysts and newspaper editors?

This study re-frames these questions by proposing a re-description of current events in the light of Bolivian history—a re-description that describes the current crisis not as a terminal crisis but as a 'modus vivendi' that is regrouping and changing as circumstances evolve (Molina 2005). In a sense, the key element in describing current Bolivian affairs is to think of the crisis itself as a modus vivendi that has not completely vanished over the past 20 years, but has merely resurfaced, with new consequences for

democracy, conflict and human security in Bolivia. This description, of course, is not meant to undermine the significance or importance of current developments, but it does moderate the temptation to describe the current conflict in terms of something absolutely new, as the ‘unravelling of a failed state’, or as a repetition of an old script, the script of ‘Latin American political instability’.

‘Crisis as Modus Vivendi’

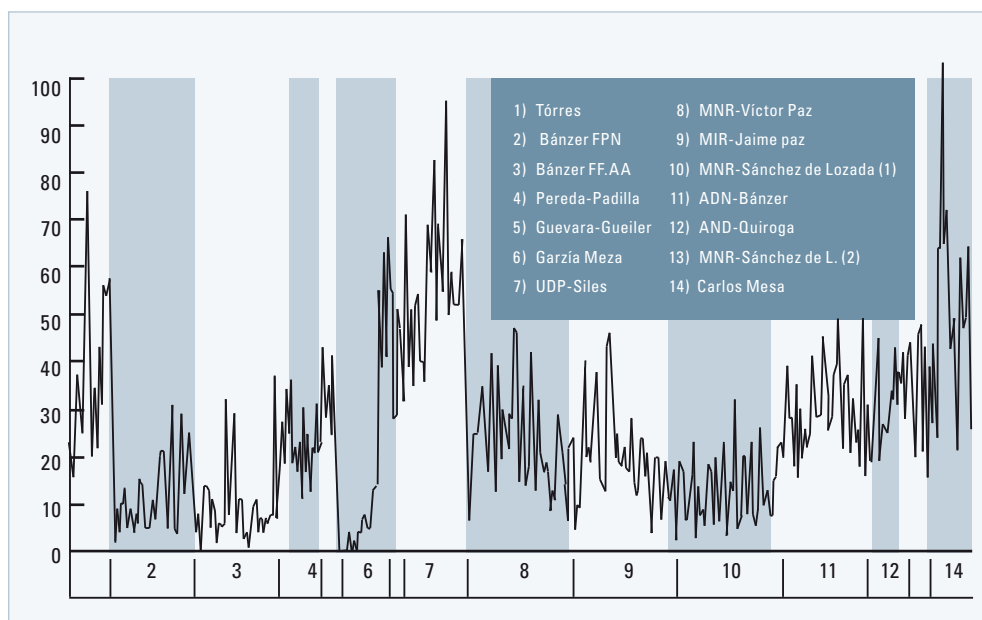
When the Bolivian Congress met on 9 June 2005, in the city of Sucre, to accept or reject President Carlos Mesa’s resignation, the question most citizens posed was not the procedural question of who should assume the presidency, or even the political question of whether this would be well received by public opinion, but rather a security question—the question whether whoever assumed the presidency could last in office long enough to call elections before the political order disintegrated. The outcome was surprising. The new president, Eduardo Rodriguez, pulled together sufficient political authority within a couple of weeks to call both presidential and regional elections on 4 December 2005, thus quelling regional and social confrontation over natural gas and land. Political support emerged both from Parliament and from social movements. The political parties and the unions agreed on a temporary ‘ceasefire’ that would lead to elections and a much-anticipated Constituent Assembly at some time in 2006.

This vignette illustrates many of the dimensions of the current Bolivian crisis. While social and political conflicts have definitely increased over the years, there is a sense that an underlying ‘crisis’ has always simmered underneath the political surface. This seismic metaphor is illustrated by figure 1, which shows the numbers of documented social and political conflicts month by month since 1970. Two peaks suggest a heightening of conflicts, mostly against the government, which reach extremes during the administrations of Hernan Siles Suazo (1982–5) and Carlos Mesa (2003–5). Both were forced to resign a year before the end of their presidential mandate and presided over turbulent political transitions. The first involved a ‘democratic transition’ from 20 years of de facto military rule and the second is likely to prove to have been the start of a ‘second democratic transition’ from party politics to some form of popular politics.

If the idea of crisis as *modus vivendi* is correct, then the obvious question is how the Bolivian political system processes high levels of conflict without greater levels of social and political violence. What is indeed surprising from the past 18 months of turbulence is the absence of large-scale violence. Although President Mesa made a specific vow to not use violence, the scale of the protests was unprecedented in the democratic era.

An important factor is that the forms of social and political conflict have shifted over time. In the 1980s and 1990s most conflicts between state and civil society took the form of passive protest (hunger strikes, rallies and other forms of peaceful protest). Over the past five years, however, most conflict has taken the form of active conflict (road blocks, land invasion, taking over public buildings and so on), often pitting civilians against civilians.

Figure 1: Bolivia: Social Conflicts Month by Month, 1970–2005



Key: The dates of the respective presidencies are as follows: General Juan José Torres Gonzales, 1970–1; Colonel Hugo Banzer Suarez, August 1971–8; Pereda, Padilla and Geiler, 1978–July 1980; General Luis Garcia Meza, July 1980–2; Siles Zuazo, 1982–5; Paz Estenssoro, 1985–9; Jaime Paz Zamora, 1989–93; Gonzalo Sanchez de Lozada, 1993–7; Hugo Banzer Suarez, 1997–2001; Jorge Quiroga, 2001–2; Sanchez de Lozada, 2002–October 2003; Carlos Mesa, October 2003–June 2005.

Source: Centro de Estudios de la Realidad Económica y Social (CERES), 2005.

The ‘Bolivian Way’: Mobilization, Negotiation and Unfulfilled Promises

Without appealing to Bolivian ‘exceptionalism’, one could argue there is a distinct ‘Bolivian way’ of processing high levels of conflict in the current political system. A key feature of this process is that conflict itself is not resolved but ‘recycled’ into new agreements or other venues of institutionalized or informal politics. New ‘deals’ between government and social actors create commitments between them that usually lead to future rounds of conflict.

There are three ingredients to this stylized process. The first is what we might describe as the ‘political system’. In Bolivia there is a clear and pervasive coexistence of congressional politics and mobilized politics on the streets. Both constitute what we might call the political system and both are currently undergoing a severe crisis of representation (see Calderón and Gamarra 2002). Traditional political parties, just as much as urban neighbourhood and rural union leaders, are perceived as discredited by a history of clientelism, patronage and co-optation. Many politicians have moved from one stage

(formal party politics) to the next (social movements) and vice versa. Increasingly, candidates for the Senate, the Chamber of Deputies and regional administrations are criticized as being part of the 'traditional political class', whatever their party or union affiliation ('El transfugio en todo su apogeo y esplendo' 2005).

The second ingredient is the process of dealing with social and political conflict. The most recent crisis also illustrates this process well. The crisis started to unravel after the Bolivian Congress in May 2005 approved a controversial Hydrocarbons Law, which included a tax and royalty fee, together amounting to 50 per cent, on revenues from the extraction of natural gas. Opponents of the law called for nationalization and marched to demonstrate against the law in the city of La Paz in the following week. The calls for nationalization became more radical and included demands for a Constituent Assembly to discuss an array of changes to the constitution. The mobilizations forced President Mesa to call for a broadly-based Citizen's Council to draft a consensus law for a Constituent Assembly and regional autonomies. As the legislative agenda expanded it also pitted social, regional and political actors against each other. By 6 June, the massive scale of the protests, roadblocks and marches led to Mesa's resignation. On 9 June, after three days of tense negotiations, the president of the Supreme Court, Eduardo Rodríguez, was sworn in as president. The process repeats itself for many conflicts: first, mobilization in favour of or against a policy or legislative proposal; second, the executive power's scramble to reach an agreement under duress, including as many social and political actors as needed in a prolonged negotiation; and, third, a 'deal' that usually involves a new piece of legislation, new institutions or a new president.

The third ingredient is expected outcomes. Most 'deals' signed between a beleaguered executive and empowered social movements are never enforced. In the 17 months of President Mesa's administration the executive power in Bolivia signed 820 such deals (accords, pacts and 'dialogues', among others). A vicious cycle of unfulfilled promises erodes the government's capacity to deliver and, over a prolonged period, erodes the public's perception of democratic governments' ability to deliver public goods, welfare improvements and the basic rule of law.

The increasing disenchantment with traditional politics, the conflict resolution process and expected outcomes has increased demands for 're-foundational' changes. Among these, the demand for a Constituent Assembly is foremost on the public agenda.

Delivery under Democracy: 'Harmony of Inequalities' Revisited

How has Bolivian democracy 'delivered' in this context? How has the political system dealt with pent-up social and economic demands and needs, including a long legacy of income and asset inequality? Bolivian history suggests a long-lasting legacy of colonial relations sustained through collective and individual mechanisms of social and political inclusion. During the second half of the 20th century, elite political and economic rule was replaced by a more complex system of political accommodation that transcends ethnic, class and regional cleavages. This system of accommodation assumes both a

weak and heterogeneous state and differentiated and fragmented social actors. It is sustained by a chronic imbalance that forces elites to accommodate social demands by formal and informal means.

Five such informal institutional mechanisms that emerged in the aftermath of the National Revolution provide a repertoire of collective action for social and indigenous movements. They are ethnic politics, clientelism, 'dual powers', co-government and self-government. Persistent horizontal inequality, sustained by collective forms of discrimination, exclusion or domination, is functional to this elaborate system of political checks and balances.

Ethnic Politics: Weak Parties but Strong Movements

The first question worth considering is why episodes of ethnic politicization, such as those facing Bolivia today, are not followed by the establishment of ethnically-based political parties that might institutionalize ethnic differences within the formal system of democratic governance. How is the combination of the poor performance of indigenous parties and the strength of indigenous social movements to be explained?

The electoral performance of the Tupac Katari Revolutionary Movement (MRTK) and Tupac Katari Indian Movement (MITKA) in the late 1980s is illustrative of this pattern (Calla 2003). The Katarista movement, which attained such influence within the *campesino* (peasant farmer) union system, never crossed the 3 per cent election threshold between 1979 and 1989. One answer might be electoral 'engineering'. Did institutional design hinder indigenous political participation? Formally, Bolivia's proportional representation (PR) electoral system would seem to favour ethnic representation, as close to two-thirds of uninominal electoral districts are predominantly Quechua, Aymara or lowland indigenous districts. The low appeal of all-indigenous political parties might rather be explained by a system of clientelist and corporatist inclusion inherited from the early 1900s and developed by the National Revolutionary Movement (Movimiento Nacionalista Revolucionario, MNR) which enjoyed near-hegemony in the mid-1950s.

However, while ethnically-based political parties never caught on in the Bolivian highlands or lowlands, ethnic representation has increased steadily, first in municipal politics and, since 2002, in national politics. Today nearly one-third of congressional districts are represented by indigenous deputies or senators, another third are represented by urban-based popular workers or candidates from the informal sectors, and a third of deputies or senators are middle-class *mestizo* (of mixed race) representative of the 'traditional' political class. As Calla (2003) points out, however, the mainstreaming of indigenous political demands—constitutional reform, land tenure reform, bilingual education and a Constituent Assembly—has been achieved mostly by indigenous social movements, on the streets rather than in the Congress. Since the early 1990s indigenous movements have successfully introduced a multi-ethnic political agenda in Bolivia. It is the slow pace of reforms and achievements that is behind a recent backlash against conciliatory and reformist proposals.

While changes in formal institutional design do not appear to explain patterns of social and political inclusion, a number of informal institutions organize ethnically-based local and class-based collective action around the state. These informal institutions include clientelistic relations, ‘dual powers’ (*poderes duales*), and mechanisms of co-management (*cogestión*) and collective self-management (*autogestión*), among others.

Clientelism: The Strength of Weak Ties

The most pervasive form of inclusion—clientelism—is a legacy of the conservative and liberal periods at the turn of the 19th and 20th centuries. A strong elite hold over political and economic power was buttressed by clientelism between the mining-based elites, the urban middle classes and the indigenous communities. In 1936, President David Toro consolidated his political support by bringing in compulsory unionization in urban and rural producers’ associations under the nascent Bolivia’s militant trade union organization (Central Obrera Boliviana, COB). However, the most significant consolidation of clientelistic relations emerged during and after the National Revolution. *Campesino* and worker unions provided critical social and political support in the early stages of the revolution. Unionization in rural areas provided direct access to state patronage for *campesino* and indigenous communities.

Political clienteles shifted away from the MNR in the 1960s and towards the military between 1964 and 1982. The democratic transition was followed by a wave of decentralization reforms in the 1990s which moved patronage relations from the capital cities to small towns and municipalities. Political ‘capture’ by local elites accentuated a patrimonial style of government and pushed political reform and disenchantment to the fore in the late 1990s. Today, the Bolivian political parties are suffering from the lowest level of public credibility for 40 years. Since October 2003, both President Mesa and President Rodríguez have appointed non-political cabinets and dismantled many of the clientelistic networks that participated, from public employment and patronage, in the executive power. While clientelistic relations are an integral part of democratic politics in present-day Bolivia, there is increased pressure to open up political participation to non-clientelistic and meritocratic forms of politics.

Dual Powers: Splitting the State

The National Revolution institutionalized a dual form of government that has recurred institutionally since the 1950s. In the early years of the revolution, one power was constituted by a worker and *campesino* militia, associated with the COB, while the other emerged from the MNR leadership that led the revolutionary government. Dual powers allowed the popular movement access to political power. A key feature of dual powers is that the government does not hold real political power: rather it secures governance and political support by ‘sharing power’. The close association between the COB and the government has attracted much scholarly scrutiny, most notably by René Zavaleta Mercado, who recalls the Marxist concern with dual powers during and after the October Revolution of 1917 (Zavaleta Mercado 1986).

A remarkable aspect of dual powers is its persistence beyond the hegemonic period of the National Revolution. The design of the Popular Participation reform in the 1990s, for example, institutionalized dual powers at the local level by granting veto power to a civil society oversight committee in each municipality. The oversight committee was itself made up of territorial grass-roots organizations, most of which developed from the *campesino* and urban union movement. At a time when the union movement was at its lowest ebb, after the collapse of tin mining and the privatization of state companies, the Popular Participation reform created a new arena for union-based collective action. The recent Poverty Reduction Strategy Paper (PRSP), elaborated by the Bolivian Government and discussed at a National Dialogue table, also institutionalized dual powers by delegating oversight and accountability powers to a civil society Mecanismo de Control Social.

Have dual powers eroded formal political parties and congressional checks and balances? In a sense, in a dual-power arrangement checks and balances are institutionalized outside the reach of formal government bodies or powers. They allow social movements or local grass-roots organizations arms-length oversight over government policy decisions in contexts of weak state legitimacy. In extreme cases, dual powers are discarded for more radical power sharing, via *cogestión* or *autogestión*.

Co-government: Power Sharing without Power

Power sharing also has a long tradition in Bolivian political history. The radicalization of worker politics under the COB in the early years of the National Revolution induced a shift from *poderes duales* to *cogestión*. The difference between union and party politics was eventually assimilated into left and right wings of the MNR, understood no longer as a party but as a loose coalition of movements strung together by strong political clienteles. The most memorable instances of *cogestión* emerged from within the mining sector in the 1950s and 1960s. In economic terms *cogestión* meant joint state–worker management, but in political terms it represented a fusion of social movements and political parties within—and under the auspices of—a non-neutral state.

Zavaleta Mercado (1986) recalls the precarious political balance implied by partial or joint worker ownership. The experience of *cogestión minera* was only fully understood as a form of nationalization, which eventually made up the core of the revolution's early economic programme. Likewise, *cogestión* in the military–revolutionary government of President Juan José Torres in 1970–1 was eventually overtaken by a more radical demand for full constituent power. The Asamblea del Pueblo, which replaced the Parliament in 1971, was the beginning of the end for the Torres national/popular experiment. The military *coup d'état* of August 1971 installed as president Hugo Banzer Suarez, who presided over the heyday of dictatorial politics in modern Bolivian history.

As with *poderes duales*, *cogestión* has risen and fallen in periods of severe political crisis. Both represented hybrid forms of political inclusion, based on strong corporate representation, itself sustained by the National Revolution's failed hegemonic project.

Self-government: Hegemony or Inclusion?

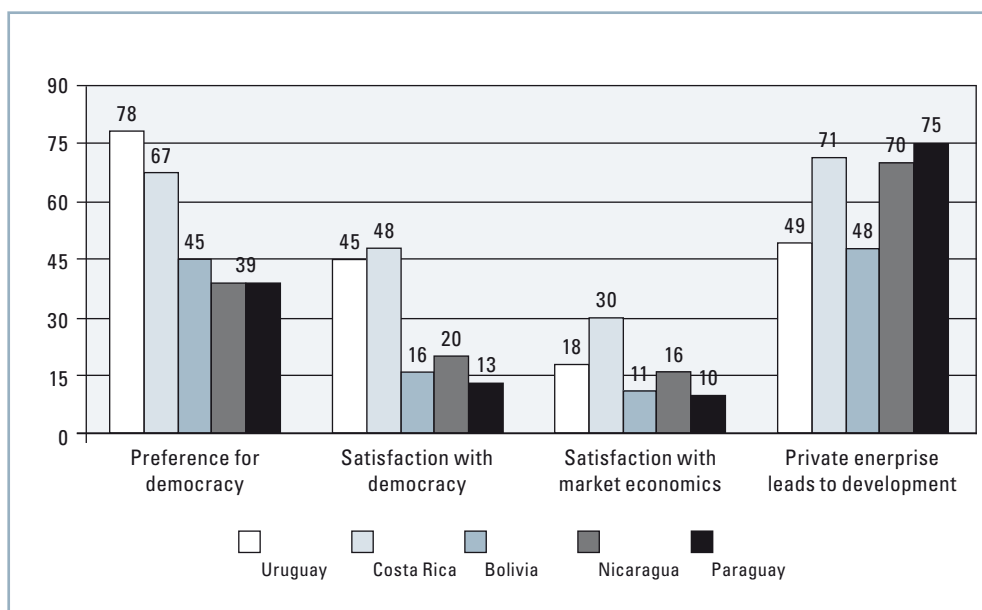
Ethnic politicization, contestation and open rebellion have permeated Bolivian history since pre-Hispanic times. In Silvia Rivera's analysis, the 'long memory' of colonial resistance converges with the 'short memory' of republican or national revolutionary contestation in future projects of autonomous self-government or *autogestión* (Rivera 1983). The historical discussion is split as to whether demands for *autogestión* are to be understood in the light of inter-elite conflict, as implied by Irurozqui (1994), or whether autonomous self-government is to be construed as an actual historical project for indigenous emancipation in the late 19th century and at present (Patzí 2003; Hylton 2004). Does a demand for ethnic self-determination emerge in times of crisis and conflict accentuated by the politicization of ethnic cleavages, or does it imply a continuous historical project that permeates periods of crisis and subjugation? When is ethnicity a driver of social and political change and when is it induced by failures in cross-cutting alliances led by economic and political elites?

Demands for autonomy and ethnic self-government are recurrent in colonial and republican history all the way through the liberal and Chaco war periods in Bolivia, but are muted in the second half of the 20th century. The collapse of the National Revolutionary political project in the 1960s and 1970s opened up a new period of ethnically-based politicization, led mostly from the Aymara highlands and urban centres. Are present-day demands for ethnic autonomy or self-government to be understood as demands for social and political inclusion, or as autarkic political projects aimed at establishing hegemony within a heterogeneous multi-ethnic state? The 'pluri-multi' period of political and institutional reforms can be described as successfully inducing ethnic politicization and empowerment, or alternatively as incomplete in terms of achieving more radical aims of hegemony or self-government. Current demands for indigenous autonomy can be analysed against the backdrop of a re-foundational moment in Bolivian history. The new Constituent Assembly is likely to revisit many of the themes discussed in previous re-foundational moments in the 1920, 1938, 1948 and 1961 and 1967 constitutional reforms, including further elaboration on the 'national' and 'indigenous' questions that have figured prominently in public discourse throughout the 20th century.

The Implications for Democracy in Latin America

What does the Bolivian case imply for democratic rule in Latin America? On some measures of democratic support and legitimacy, Bolivia would seem to reflect the current wave of disenchantment with democratic politics in Latin America. On others, such as disapproval of private enterprise, privatization and market economics, Bolivia would seem to reflect an extreme rejection of the mood of the 1980s and 1990s, in comparison with other countries in the region (see figure 2). An important feature of Bolivian democracy—uninterrupted since 1982—is its apparent resilience to political conflict and ethnically-based as well as regionally-based polarization. The unanswered question is whether this 'exceptional' quality will hold over the following months and years. Bolivia will soon face presidential elections and a Constituent Assembly—the first in over 30 years. Will democracy flourish or survive?

Figure 2: Bolivia: Selected Public Opinion Responses on Democracy and Markets



Source: Latinobarómetro 2004.

If recent events are any guide, democratic rule, as described by both formal political parties and mobilized social movements, will continue to thrive in Bolivia beyond the current political turbulence. There are indications, however, that the quality of democratic politics may soon shift towards a more polarized system of contending political fronts.

The weakening of the political centre in Bolivia has a number of consequences for both the form and the substance of democratic politics in the future.

First, the conciliatory politics of coalition government that sustained democratic governance over the past 20 years may expire. For 20 years, after 1985, minority parties governed in broad multiparty alliances that created incentives for conciliatory and pragmatic governance.

Second, the absence of a strong political centre amplifies regional and ethnic cleavages that have not been politicized at the national level. Today, many of these cleavages threaten the very essence of majority rule and national unity.

Third, the absence of a political centre suggests a winner-take-all form of politics that thrives upon an economy that is based on a single natural resource—natural gas. This, of course, is not new to the Bolivian economy, which relied on silver for over three centuries and on tin for close to a century, and today faces the challenge of reliance on another narrowly-based commodity. As in the past, the single-commodity development

pattern tends to centralize political power and create additional pressures for clientelistic and patronage-driven politics.

Today Bolivia, like many countries of Latin America, faces two very distinct processes of change that accentuate the mismatch between national politics and international economics. The fast pace of political reform and constitutional change that looks inward contrasts with the relatively slow pace of economic change that looks outward, and is anchored in past institutions and practices meant to redistribute rents rather than compete for markets and create wealth.

Perhaps this mismatch is most obvious in younger generations, born and reared under democratic rule since the 1980s, who make up over 50 per cent of the population and close to one-third of the current electorate. If the experience of democracy—this democracy—is all that this younger generation knows, then democracy is both the best and the worst of all possible political systems—the best, because it allows liberties and rights that have taken many generations to attain; the worst, because there are only tenuous memories of dictatorship, de facto governments and human insecurity on a massive scale. Graffiti on the avenue that leads to the La Paz international airport would seem to summarize this feeling: ‘No more realities please, just give us dreams’.

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SECTION 2

SECTION 2

Democratization after the Cold War: Managing Turbulent Transition

Preventing violent conflict during turbulent transitions

Transition Processes Revisited: The Role of the International Community

Reginald Austin

Police Reform from Below: Examples from Indonesia's Transition to Democracy

Arifah Rahmawati and Najib Azca

Transition Processes Revisited: The Role of the International Community

*Reginald Austin, University of Zimbabwe,
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This study is an essentially personal return to and reflection on over 40 years of intellectual, practical and emotional involvement with both the idea and some of the practice of the international community's efforts to intervene in the affairs of sovereign states in order to bring about a political and governmental transition. These interventions have been combined with 'peacekeeping' operations seeking to end violent conflicts associated with one form or another of unrepresentative and/or repressive government, and to bring about a transition to that more peaceful means of dealing with conflicting interests which is election-based representative government and what is still somewhat loosely described as 'democracy'.

My initial involvement was with transition in my own country (what is now Zimbabwe but was then Southern Rhodesia). The ideas, the standards and the arguments which framed the legitimacy or otherwise of that national struggle for transition, as well as the instruments and institutions by which such change was to be achieved or resisted, peacefully or by force, had a significant and constant 'international content'. Indeed, colonization, which provided much of the country's historical framework, and was itself the source of the demand for 'transition', was essentially a product of that 19th-century European and British 'internationalism' which was imperialism. Likewise the Wilsonian anti-colonialism which emerged after World War I, and was reinforced by the reaction of the post-1945 reinvented 'international community' to the Nazi and Fascist aggressive expansionism, was a specific source of the demand for a 'transition' from colonialism to self-determination and independence.

The United Nations (UN) Charter (although it never mentioned the word 'democracy'), the International Trusteeship System, and especially Chapter XI of the UN Charter (the Declaration Regarding Non-Self-Governing Territories) as interpreted and expanded by the UN General Assembly, provided the 'text' which was both the inspiration and

rationalization for those who became committed, in the late 1950s, to the demand of a Black Nationalist movement (soon to describe itself as Zimbabwean) for 'democracy' under the slogan 'One Man One Vote'.

More important and more relevant to this discussion of democracy, conflict and human security is the fact that the involvement of the 'international community', and the UN in particular, in the long, violent (although ultimately more or less peaceful), but specifically *electoral* transition to democracy in colonized Southern Africa persisted, deepened and expanded beyond the region. The apparently successful 'peaceful' outcome of the international community's interventions with transitions from colonial racial minority rule to democracy in Zimbabwe, Namibia and Mozambique (although not successful in Angola) all employed a fairly common methodology. This evolved, in the highly political context of the final years of the cold war, into something of a model. An essential component and objective of these transitions was the creation of a 'representative' rather than a 'revolutionary' democracy, with a matching liberal economy. The critical hallmark of the legitimacy of the governments resulting from such transitions became its foundation not on 'bullets' but on 'ballots' cast in elections that had some claim to being 'free and fair'. This was itself an extrapolation from the UN experience with earlier peaceful transitions from trusteeship to independent status involving a plebiscite.

Not surprisingly, the international community has subsequently sought, despite the very different contexts and political conditions, to apply this model elsewhere. For purposes of this personal reflection I have, without any pretence that this is based on a comprehensive or sufficiently scientific analysis, roughly separated the short history of international interventions for transitions to democracy into three phases, in each of which I have had some involvement. All have had in common the aim of ending violent conflict in the competition for state power and the employment of what are described as 'peace elections' as a specific part of the intended transition. These phases are:

First are the decolonization transitions in Southern Africa (1979–94), each associated with some degree of violent conflict. These were relatively well-defined, UN-authorized and -monitored transitions from colonization to self-determination and independence. This phase was a good example of the international community carrying out an essentially peaceful, reasonably regulated, cohesive, predictable and clearly articulated international policy.

Second, beginning in the 1990s and still continuing, are the spasmodic and generally UN-authorized ad hoc interventions in 'failed' or conflict-ridden states. These were variously linked to the ending of the cold war and of the totalitarian regimes which had (ironically) survived until then with the encouragement and support of one or other of the major cold war powers. Apart from seeking to end the conflicts, they aimed at a transition which could, with continued support, become a steadily strengthening democracy. They aimed to replace (on an unpredictable basis for selection) some of

the repressive, illiberal, unelected (or dubiously elected) regimes, such as that which continued to exist in Cambodia after the overthrow of the Khmer Rouge regime.

Third are the more aggressive/defensive interventions initiated following the attacks by international terrorists based in Afghanistan on the USA in September 2001, and in response to the alleged threat posed by Iraq from what turned out to be Saddam Hussein's non-existent weapons of mass destruction. These interventions involved both deliberate 'regime change' by force of arms and the insertion of democratic institutions, including elections. Such transitions to democracy are claimed to be justified as necessary not only to benefit the targeted society to be 'transformed', but also because they are necessary for the defence of the intervening democracies and democracy everywhere. The distinctive character of this third phase has been the readiness on the part of the international interveners to initiate the regime change and transition by the use of force, with or without UN authority. These initiatives have been undertaken as primarily military-led operations by a newly emerging 'coalition' of like-minded Western democracies determined to inject electoral, representative democracy in place of defeated regimes characterized as 'rogues'.

There is no reflection here on the historic and equally, if not more, significant interventions for transition undertaken by the victorious Western powers to 'revive' representative democracy and constitutionalism in the wake of the post-World War II regime changes in Germany, Italy and Japan. It is noted in passing that some have been tempted to compare them with the activities in the third phase above.

Some General Problems of Good-Faith Transitions and Governmental Reform

The reform of government systems within the confines of a single state is a difficult and challenging project. Entrenched interests, established institutions, procedures and practices, culture and the fact that one is dealing with unpredictable human beings make this inevitable. The process becomes even more complex and difficult when a foreign element is introduced. The international interventions for government reform over the past decades have been to a considerable extent an ongoing experiment without a clear or structured policy base. Unsurprisingly, there have been mistakes, misjudgements and problems as well as successes. This study seeks to underline some of the worries and concerns which have been noted during involvement in the various cases mentioned, as well as to underline some of the achievements of and advances associated with these international efforts at national reform in an area which, it still often argued, is the most 'domestic' aspect of a state—its governance.

A common aim of these interventions for systemic and practical reforms can in general terms be described as an intention to introduce a system of representative government similar to that enjoyed in Western-style democracies. With regard to the first phase, such a liberal government system was a part of the liberation rhetoric and was understood by the liberation movements' leaders. Once the possibility of achieving a revolutionary

democracy faded with the prospect of a total victory in the revolutionary war, it was revived as an acceptable alternative route to power for those beneficiaries of the first-phase transitions. Thus the context in the first phase generally favoured such a transition. It did not, however, guarantee its success, although electoral democracy was introduced in such a sympathetic, informed environment. Even less should the apparent ease with which the implantation was accepted in that first context have led to the assumption that it would work elsewhere. However, the concern in general is that the model evolved in that first phase has continued to be applied in the subsequent phases.

Another concern is the degree to which such international activities have become stereotyped and based on the almost automatic application to the 'target' states of concepts and institutions which may be the hallmarks of 'good governance' in the interveners' own polities, with little consideration of the realities and cultures of the targeted societies. On the one hand those intervening in the current era earnestly protest their respect for national values and culture; yet much of the reforms represents a direct challenge to those values. One does not need to share their values to understand how the target society, or significant parts of it, will resist reform to defend them. This can place those implementing the reform and working in that society in a difficult, contradictory position. For example, in Afghanistan the doctrine of political pluralism was enshrined in the 2001 Bonn Agreement, allegedly accepted by the Afghan negotiators. In fact the prospect of active and effective political parties competing for power is anathema to most Afghan leaders for substantial reasons that are connected with their recent brutal history. Similarly, anyone who becomes familiar with that country is conscious that it has a long and deeply ingrained political culture of effective decentralized government. Yet the reformed constitution, shaped significantly by the influential international supporters of democracy, promotes the concept of a powerful centralized government. Again, whatever may be the convictions of the 'internationals' involved in such operations, how as democrats do they deal with such contradictions?

The problems which have attended some of these international reform processes raise, among others, the question What are the best conditions for such a reform to work? The first phase had a clear vision that some form of representative democracy and self-determination was being demanded and would be accepted and embraced. It took place in the context of a reasonably well-thought-out policy, but on the ground in some of these transitions, and now reflecting on the process overall, one may wonder how much thought had been specifically given to the feasibility of the continued reforming intervention, and the prospect of the reform working. What were the guidelines for undertaking these interventions? Was pressing on with the reform at this or any particular point likely to work and improve the prospect of achieving and maintaining good governance in the long term? Was the prospect of sustainable democracy in the beneficiary state the real objective or were the motive and reasoning some narrower self-interest of the intervening state?

John Stuart Mill, a classic writer in the Western tradition, had relevant observations. 'Political machinery', he pointed out

‘does not act of itself. As it is first made so it has to be worked, by men and even by ordinary men. It needs not simply their simple acquiescence, but their active participation and must be adjusted to the capacities and qualities of such men as are available. This implies three conditions:

The people for whom the form of government is intended *must be willing to accept it*, or at least not be so unwilling as to pose an insurmountable obstacle to its establishment.

They *must be willing and able to do what is necessary to keep it standing*.

And, *they must be willing and able to do what it requires of them to enable it to fulfil its purposes*.

A failure of any of these conditions renders a form of government . . . unsuitable to the particular case’ (Mill 1991, p. 13, fn. 1 (emphasis added)).

Mill went on to repeat his view that this ‘theorem of the circumstances in which that form of government may be wisely introduced’ was useful ‘also to judge in cases in which it had better not to be introduced’ (Mill 1991: 54).

This was an instructive reminder that, no matter how desirable and sensible Mill believed reform to introduce representative government might be, and however much he was convinced of that system’s superiority, he was equally at pains to stress that such reform was only possible if certain basic and rather obvious conditions were met. It is these conditions which contemporary international reform policy makers, as well as those who negotiate and implement the interventions designed to carry out democratic reform, seem often to forget or deliberately ignore. The concern expressed is not merely over the possibly arrogant assumptions of the superiority of the intervener’s institutions. More substantially it is the worry that inadequately thought-out reforms and the way in which they are negotiated and implemented may not achieve the better governance and democracy which are the desired objective. Is there a need, especially if the democratization project is to be spread with the energy and speed now being suggested, to give more thought to the possibility that ‘democratic government’ is not simply that form of administration with which Western governments are most familiar? This is a daunting challenge, but one which is important if the objective is a truly universal system which is understood honestly and accepted, ‘kept standing’ and able to fulfil its purposes. If this challenge is ignored, the ambition to create democracy universally will not only continue—as it has so far—to result in cases of false, unsustainable and discredited ‘democracy’, but also spoil the prospects of various different but reasonable national systems of governance surviving, and reduce any prospect of their real reform.

Phase One

The first-phase transitions involved negotiating techniques aimed at a constitutional framework for ending violent conflicts combined with electoral mechanisms to endorse the framework, elect the government and mark the successful implantation and acceptance of representative democracy. Both aspects were conducted within

sufficiently well-contained time frames to make them manageable and acceptable to the international community. The deep enmity resulting from the degeneration of the dispute between the minority rulers and their rebellious subjects into often very brutal armed conflict typically made an international mediating presence a positive (although not indispensable) asset in the establishment and conduct of the negotiations and gave it an important dual role as the neutral manager and referee in the electoral contest.

This transition (from deep-seated conflict to 'democracy' and peace) was regarded by the international interveners as sufficiently well founded by agreement on a constitution. The subsequent conduct of a credible election in relative peace made this event for them, and many other observers, synonymous with the proven advent of democracy. But the first-phase 'colonial liberation' model of transition took place in very specific political, military and cultural post-conflict conditions. In essence, the interventions in the conflicts in Zimbabwe, Namibia and South Africa (unlike those in Angola and Mozambique) arose from the ruling racial minorities denying 'representative government' to the majority. An election in these specific situations was not only the final stage in, and symbol of, the negotiated transition from war to peace. It could be acclaimed as *the* objective for which the war was fought. It would win for the elected representatives possession of the 'political kingdom' which Kwame Nkrumah, the first victorious leader of the African anti-colonial struggle, saw as the first prize, both symbolically and in substance. The possibility of successful interventions in favour of the representative democracy preferred by the West improved and was more energetically pursued as the liberation movements' Marxist/Leninist slogans, along with the prospects of achieving 'revolutionary democracy', waned with the decline of Soviet power. 'Electoral democracy' became the alternative path and offered the additional advantage for fledgling governments of guaranteeing the automatic approval of the increasingly dominant 'Western democracies'. The latter were increasingly comforted after the apparent success of their management of the Zimbabwean transition in securing both 'democracy' and a 'market economy'.

But some aspect of the formula were insufficiently rooted in the genuine and convinced support for the product of the transition on the part of its 'beneficiaries'. The United Kingdom (UK), the mediating/stakeholding designer of the Zimbabwean transitional conference and formal implementer of the transition, assumed or persuaded itself that an instant and lasting liberal democracy under a constitution agreed under its 'dominant chairmanship' would be the reality. The interveners were prepared to ignore and discount the fundamentally important and deeply held (but to them unpalatable) additional objective of the transition for the liberation movement, namely a radical land reform which went beyond political liberation. They assumed that winning power through an election would be enough, and that this satisfaction, combined with the restrictions of a tightly drafted constitution and external pressures, would keep subsequent change within limits and ensure a secure future.

An illustration of this shallow and somewhat naïve approach was the overnight transformation of Robert Mugabe, after his 1980 election victory, from 'Marxist

terrorist' to 'democratic prime minister' in the Western media and policy circles. This belief, real or feigned, in 'instant democratization' was vital for the UK and other Western powers which, from their 'dominant third-party mediation' position (Davidow 1984; see also Renwick 1997) had managed to force him, Nkomo and the liberation movement to sacrifice in the ceasefire and constitutional negotiations their parallel *casus belli* and recruitment slogan—freedom for ancestral land expropriated by the colonists. It went with their conviction that, in return for an election and power, a government constitutionally bound by instantly digested and assimilated liberal politics and economics was the real climax of this particular 'end of history'. This, they convinced themselves, would ensure the permanent protection of both the existing economic core—white-owned commercial farmland—and the sustainability of a range of liberal political rights and freedoms.

These transitions from anti-colonial conflicts should be regarded as atypically simple, comparatively 'black and white' cases where the electoral element was naturally elevated to being the hallmark of the acceptance of representative democracy and the authoritative sign of the end of the struggle for peace, security and democracy. In addition however, the shortcomings of these interventions need to be noted.

The Entrance and Exit of Transitional Interventions

One of the attractions which emerged from these first-stage elections was that they served both the beneficiaries and the international community as the appropriate and natural climax of the process and a convenient event to mark the end of the intervention and an exit point. While the election went on in the second stage to remain, although with less reason, the convenient indicator of the end of the intervention, no clear reference point has been developed and agreed to substitute for the Declaration on Non-Self Governing Territories (Chapter XI of the UN Charter) and indicate when an intervention should commence. The nearest mechanism is the unstructured and unpredictable judgement of the UN that the time is ripe for intervention and that this decision coincides with a political will among UN member states to carry it out. The crisis in Kosovo forced by the potential repetition of the Bosnia and Herzegovina disaster provided (albeit rather ambiguously) a potentially radical new triggering mechanism to signal the need for intervention and support for a transition to democracy on humanitarian grounds. Generally, however, the potential 'interveners for democratic transition' have preferred to avoid or postpone serious consideration (beyond the post-colonial, post-apartheid consensus) of the difficult question When does or when should intervention for 'transition' properly commence? The tendency has been, and remains, to wait until 'bad governance' and the violent conflict it engenders have reached such outrageous proportions as genocide; but even such extremes, as the cases of both Rwanda and Sudan have shown, are not a reliable nor automatic trigger. Both the concept and the very confused reality of humanitarian intervention by the UN or any other coalition of the international community remain uncertain—encouraging declarations of a right to democracy notwithstanding.

The Second (Post-Colonial) Phase of Transitions

After the first phase of interventions within the fairly structured framework of decolonization, it was naturally tempting to draw on that apparent success. Any inadequacies and possible misjudgements were initially buried under the euphoria at the peaceful nature of the transitions. Majority rule was achieved, but it has not yet been proved in the long term that stable representative democracy was the overall result in the region. Moreover, the best of the transitions—South Africa's—was, as is explained below, the exception to the model of transitions associated with international interventions which was common to the other Southern African transitional exercises and has tended to be adopted in the second phase of transitions.

Having helped resolve conflicts and violence which arose from the demand for the transition of colonies to independent states, the international community found itself intervening in new situations. Mainly in the shape of the UN, it was intervening in countries described as 'failed states' or which were facing serious internal armed conflicts over the control of state power. But what were the conditions or the criteria which triggered this second phase of interventions for transition? Why was the intervention in one country rather than another? Was the international community, in most cases the UN, best qualified and able to manage a transition to democracy? What were the guidelines for the transition? What were the resources required for such operations? How much time should be expended on the process? These were seldom posed as general or serious policy questions at the start or during the second phase of transitions. There was no preordained policy. The answer was provided by ad hoc decisions of the UN Security Council exercising its power to deal with threats to the peace. The answer was as simple as it was obvious: the incumbents and their opponents in certain countries had been and still were involved in particular long-standing armed conflicts with dangerous consequences for their neighbours. These should be resolved if the Security Council was so inclined by international interventions. But this would not be limited to ceasefire and peacekeeping patrols. The new intention would be to find a more comprehensive and permanent solution to the conflict by assisting the parties to accept a transition to a democratic form of governance which would bring peace and prosperity.

Given the extreme and mutual distrust between the conflicting parties, the UN, as a clearly neutral organization, was the natural body to mediate in the negotiations, to help in or to conduct an election in the conditions prevailing in a war-torn country and to find a way to move forward to constitutional government. An early example of this approach was Cambodia, where, after over a decade of negotiation, an unlikely agreement to accept a UN-brokered transition was agreed between such antagonistic parties as an alliance including the Khmer Rouge and the Vietnamese-installed Cambodian People's Party (CPP) incumbent. This was in 1991, soon after the successful transition from war to peace negotiated between the apartheid South African occupant of South-West Africa and the Liberation Movement of Namibia, which led to an election and a new majority-rule government under a democratic constitution. The time and the mechanism for another transition had come conveniently together with the political will in the UN to act and resource the transition.

There was, however, no standard answer to these questions, and there were no agreed guidelines for the conduct of the transitions. Consequently much was done by rule of thumb, and the provision of such important resources as time and money was dealt with ad hoc.

Some Recurrent and Novel Issues

Time

Among the most insistent problems with the international promotion of democratic transitions is time. The leading intervening states had not accepted the reality that such transitions need considerable time, as well as human resources. The task tended to be managed and influenced by diplomats and diplomatic pressures. The main task was to solve the problem and move on. Thus to seek short cuts and quick fixes was natural. This tendency was exacerbated by the earlier first-phase experience with the relatively smooth elections appearing to provide the cut-and-dried indicator of the end of the transition. The temptation was to assume that the remarkable first-phase phenomenon of the liberation movements' enthusiasm for and the incumbents' acquiescence in the inevitable and totally transforming election outcome would be replicated by contestants competing for power in a much less familiar and much less predictable electoral environments. The tough nature of the negotiations which led up to agreement on the transition in Cambodia should have served as a warning to the planners of the initiative there of the possible consequences if the incumbent CPP were later to face the prospect of losing power: it might not value peace and democracy more highly than the security of continued control. The Paris Agreement which licensed the UN to conduct the comprehensive transition had taken over a decade to achieve. Equally, in the later case of the transition in East Timor, it should have been no surprise to the organizers that the Indonesian agreement to provide security for the initial Consultation on possible secession from Indonesia was potentially an empty promise.

For even the short post-colonial history of representative government in Africa has shown that there is much more to democracy than an election, or even a series of elections. The negotiations associated with the transition can be critical to the long-term success or failure of representative government. These typically include the negotiations for a ceasefire and the establishment of a credibly stable context for the election. Most important, they may include the negotiation of the constitution, or occasionally of the constitution-making machinery for laying down the ground rules for the democratic government of the country. The intervening international community has typically been a central player in all such negotiations associated with an intervention. It is a natural role for the neutral UN outsider, but it can be as pernicious as it is often proclaimed to be miraculous because, among other problems, of the reluctance of an outsider to respect the need for the time required to achieve real agreement and commitment to the new democratic order.

Transition by its nature should be recognized as a process rather than an event. Time and timing are critical at every stage from the earliest engagement with the situation: from the proper identification of the relevant negotiating parties, throughout the negotiations,

in the preparation of the law and the context for the conduct of any election, and the preparations for the polls, the demobilization and disarming of the opposing forces, the control of the police, the inauguration of the elected government and opposition, and the delivery of the necessary reconstruction, through to the establishment of an administration and the rule of law. Yet time is something that international interveners, until perhaps the recent third-stage interventions, characteristically (and understandably) give in strictly limited quantities. 'Mission creep' has been the watchword, and must be avoided as far as possible.

The use of strict time limits to negotiations was a feature of the chairman's management of the Lancaster House conference on Zimbabwe. It was justified by the need to prevent the 'unravelling' of deals already 'sewn up'. Most critically, this included the closure of further negotiations on the vital land issue. Part of the price of that successfully forced time-saving exercise has been the unravelling of the entire constitutional framework 20 years later.

A similar scenario emerged at the Constitutional Loya Jirga in Afghanistan. The new constitution for that country is the most vital formal building-block for sustainable democracy and, as Mill emphasized, the acceptance of such a crucial part reform is fundamental to its success and sustainability. It contains a wide range of radical political and cultural changes as well as vital but unfamiliar institutions. Yet, in a context of persistent pressure from its international democratic sponsors, it was agreed to complete it within the time frame set in Bonn two years previously by the international supporters of the Bonn Agreement. A real consensus on and a solid understanding of the document and its consequences were regarded, not unusually, as less important by those who would not have to live with it. The substantial result of such a time-limited consideration and discussion will not be clear for years to come, but the *timely* (i.e. successful) management of its production was unreservedly celebrated by its international supporters. A similar caveat must arise in relation to the new constitution of Iraq, which was only 'virtually agreed' within similarly limited time frames.

Funding

Transition interventions have been costly operations. Transitions undertaken as part of UN peacekeeping operations, as in Cambodia and East Timor and now Liberia, have been funded from the assessed budget of the UN. This has meant that activities such as those associated with elections could be planned and delivered in a timely and effective manner. A new pattern has emerged with the advent of the Afghanistan and Iraqi operations, where there is no UN peacekeeping mission and thus very limited access to the UN budget. As a consequence the electoral planning and implementation process in Afghanistan has been vulnerable to the uncertainty of international donors' voluntarily funding. This is dysfunctional not only because of the unpredictability and unreliability of states' capacity and will to pay, but also because of the inevitable delays in the actual delivery of promised funds. In Afghanistan this led to the abandonment of two scheduled starts to voter registration and other critical preparations for the 2004 presidential election, and created an unhelpful uncertainty and tensions among all concerned.

Security

A similar change occurred in the transition processes in Afghanistan in relation to security. The normal relationship in a peacekeeping operation combined with a 'peace election' as part of the transition is for the UN's election component to rely on the UN forces for security if necessary. This is important in the delicate circumstances where trust of the process on the part of the stakeholders is vital. UN forces by virtue of their neutrality, their rules of engagement and their general demeanour and deployment are generally regarded positively by nationals. The consequence of a UN election component having to rely for much of its security, especially in particularly vulnerable sectors, upon an active combatant force such as the US Marines in the coalition in Afghanistan is that its neutrality can be easily tarnished and it and its staff, especially the vulnerable national staff, may become a target of the specific enemies in the war against the coalition, as well as those opposed to the transition. Another development in this regard has been the increasing need to rely on the growing armies of private security services. These are extremely costly and in some cases may not be easy to integrate into the electoral style and mode of activity.

Real Participation and the Ownership of the Transition

In this context it is useful to reflect further on the case which has been regarded as the most impressive success in what was widely regarded as the most important and potentially the most dangerous of the first-phase transitions—South Africa's. South Africa was in fact the exception to the other heavy international interventions in the other three processes in Southern Africa—in Zimbabwe, Mozambique and Namibia. The transition to the 'New South Africa' was characterized by a process which, although it took place within a context that had long been 'internationalized' to a considerable extent, was (a) negotiated essentially and exclusively by and between the *national* stakeholders and (b) within a significantly *extended time frame* set and managed by the parties themselves.

Moreover this was in a country where the first and continuous demand for transition to democracy came from the African National Congress (ANC). When it became the elected majority and formed the representative government following the first universal franchise election in 1994, the ANC was a 92-years-old organization. More than that, it was a movement whose members had spent thousands of hours in open and subversive discussion of democracy. After several years of secret discussions, it took four years of official negotiations between the incumbent regime and the liberation movement to reach an agreement on the 'kind of country and constitution' the South African political actors wanted. The ANC deliberated at length to create the new national electoral machine and to ensure the inclusive participation in a credible election for the Constituent Assembly. Altogether it took almost seven years, including a massive nationwide popular consultation, to produce a final national constitution and a start to democratic government. This transition and its institutions are as a result really owned by the leaders and people of South Africa. By contrast, the constitution of Zimbabwe was always, for its first 20 years of existence, dismissively referred to as the Lancaster House constitution.

This contrasts with the restricted time frames and preparations allowed by the international managers of negotiations on constitution- and electoral system-making, electoral education and preparations in societies such as Afghanistan, Iraq, East Timor and Cambodia, where the stakeholders had all arguably given much less time and consideration over the years to what democracy and the demands of the democratic representative government they were entering into really were. At one level they all, especially the citizens who had suffered variously from repression, accepted and welcomed the prospect of this transition. But the democracy they and their leaders would have to 'keep standing' and be ready to 'do what would enable it to fulfil its purposes' would have benefited from much longer and deeper consideration and discussion which was even a fraction of that which the South Africans had allowed themselves.

The Transition of Organizational Attitudes

In this context note should be taken of a common and quite specific gap in 'post-conflict' efforts at transition. This is the habit of paying insufficient, if any, attention to the time and the means to ensure the transformation as part of the transition of the *attitudes* of militarized organizations and their leaders. The focus has been on the physical demobilization and reintegration into civilian life of their combatants. These organizations, which usually purport to transform themselves overnight into political parties, have typically been forged by the armed conflict into tightly disciplined military bodies in order to confront the state power of colonial masters, occupying powers or other incumbent regimes. They are not easily turned overnight into convinced 'civilianized' bodies and individuals which understand or respect democracy as a system. In particular they will not easily accept that there is a critical role for civil society and the rule of law to play in governing a country of which they may be the elected government. The election which brought them power would in some ways only have been accepted as an imperfect substitute for a 'real' military victory. This is the more so where the election is part of a 'settlement' imposed upon them by external pressures.

The long-established, powerful and practised civil society in South Africa plays and will play at least as significant a role in any sustainable democracy achieved there as the constitution, the Parliament and the courts. One wonders whether the internationals promoting hasty and unprepared transitions without attention to these wider aspects have been thoughtless, insensitive or merely motivated by a short-term, selfish political agenda? A leadership with only a brief exposure to the vital interrelated elements of a sustainable representative democracy may easily turn out to be more interested in the power and wealth which go with control and possession of the state than in the responsibilities of democratic government. Leaders who are not convinced democrats may conclude from the hasty, under-resourced transitions which almost inevitably included an imperfect first election that the primary symbol of democracy is the election rather than its conduct in a credible democratic context. If that is the case they will quickly discover that possession of state power, rather than democracy, can be retained by running their own imperfect (but probably acceptable) elections.

The Third Phase

This reflection comes at a time when transition, in the sense of ‘regime change’, has experienced a takeover by a powerful coalition with a much-vaunted policy commitment to ‘building democracy’ worldwide. The coalition consists of a varying combination of the major Western democracies, energetically led, in both of its versions so far, by the USA and the UK. It claims to be entitled to act both within and, when it deems it necessary, without the UN framework. Creating and managing transitions to democracy is now a central plank of its foreign policy. Democracy worldwide, it argues, is the panacea for a range of international and domestic problems, ranging from the development of poor and weak states to the protection of rich and powerful states from international terrorism. This ‘democracy’ to which regimes must be ready or pressured to transform is generally understood to be a mixture of representative government, signalled by a credibly free and fair election, and based on a constitution providing political freedoms and liberal economics. The deliberate and urgent spread of such democracy is advocated and justified not only as the best form of governance and economics for the societies required to receive and embrace them but also, in the wake of the al-Qaeda terrorist attacks on the USA in September 2001, as vital to defending the national security of the coalition states and representative democracy itself. That system, along with modern liberal constitutional rights and a liberal economy, is proclaimed to be the central political value of the coalition democracies.

This conviction and the coalition’s power and will to implement and enforce it have taken the idea of international intervention to bring about a transition to democracy—up until now based on the ‘consent’ (however contrived) of the ‘transformee’ regime and society—a dramatic and critical step further. On the basis of this conviction, combined with an arguable case for the use of force in self-defence, a massive, on this occasion UN-approved, armed intervention was launched by the US-led coalition against the Taliban regime and al-Qaeda bases in Afghanistan. Parallel with this military invasion was the initiation of a programme for ensuring the transition of Afghanistan to democracy. This was to be assisted by the UN and a combination of states under the Bonn Agreement, but was to be the formal responsibility of the notional victors over the Taliban regime, a national Transitional Administration installed by the coalition and endorsed by the UN Security Council. To this end a constitution has been made and two elections have been held, for the president and for the Parliament.

This model has been followed in Iraq, following a more massive and dubiously rationalized armed intervention, by a different US-led coalition. This invasion lacked UN endorsement. As indicated above, the coalition’s justification for the invasion has been inconsistent and weak. Significantly, as in Afghanistan the coalition is deeply involved in the critical and notionally purely national transitional processes. Accordingly the process is very dependent upon the coalition (now assisted by the UN) and vulnerable to its pressures. This means that once again not only the substance but, crucially, the timing of the process is influenced less by considerations of what is best in the long term for the ‘beneficiaries’ than by the ‘benefactors’ priorities, which at some stage

will include the need or desire to extricate themselves from an expensive, dangerous and possibly domestically unpopular intervention. In both these recent cases, despite the apparent consent and cooperation of an (eventually) elected national, notionally sovereign, administration, violent local opposition to the transition to democracy continues, and the hoped-for peace remains (especially in Iraq) in doubt.

This third stage has been shunned and criticized by many potentially supportive 'democracies'. Thus, in a considerably changed atmosphere, the coalition, like the colonizers which engaged in the 'civilizing missions' in the 19th century, has been faced with, and more remarkably is possibly ready to accept, that radical changes will need to be made to the transitory commitments of the model used in the earlier phases. The realities of this new generation of transitions demands that the interventions will need both extended time and expanded commitments. Neither a successfully managed and brief constitution-making process nor a time-constrained election will now provide a credible closure to the transition and an exit point. This may mark the emergence of a more serious conviction among the coalition, if not among other potential intervening democratic states as well, that representative democracy in the context of the reality of international terrorism is indeed vital as part of the defence of the democratic world at large. If that is true, what one might call the 'international governance reform agenda' for democratic transitions will be long and arduous, if not always a consistent or logical.

Long-Term, Low-Profile International Support for Transition

Apart from these two recent and ongoing examples of what might be termed 'aggressive democratization', it is clear that the fashion (if that is partly what it is) for international involvement in democratic transition is growing. This is by no means only the result of the initiative of or pressure from the international community: the idea that a changed regime should maintain the credibility of its transition by some element of continued international involvement has been embraced by national leaders. It has indeed become a widespread practice for 'developing' countries to invite international involvement in their ongoing stages of transition, usually in the form of electoral assistance, electoral institution and capacity building and observation in later elections. In addition, the 'failed states' requiring assistance to undergo a transition, and internal armed conflicts demanding peacekeeping and a transition, continue to press for international assistance. Thus, the UN Electoral Assistance Division (UNEAD) has currently 49 election assistance and/or management projects to deal with.

Among the most positive developments since the decolonization interventions to promote transition in Southern Africa has been the idea that it is legitimate to offer and accept a different form of consent-based bilateral or multilateral international intervention. This is provided in a variety of forms of practical advice, support or assistance for democratic institutions and capacity building in states which are consolidating their governance. This practice continues to spread and grow steadily in parallel to the more dramatic and publicized interventions dealing with more newsworthy international interventions in post-conflict transitions. This practice has been significantly institutionalized,

for universal application in the UN system (both the UN and the United Nations Development Programme, UNDP), in the Commonwealth and in International IDEA. Regionally it is offered by among others the Organization for Security and Co-operation in Europe (OSCE), the Organization of American States (OAS), the African Union, the Southern African Development Community (SADC) and the European Union (EU). It is also provided by a range of non-governmental organizations with considerable expertise in democratic transition.

One element of this support takes the form of the observation of elections to judge compliance with what have become clear international electoral standards. Apart from this judgemental dimension there is a great variety of, in some regions very well-resourced and expert, assistance in the constitutional, administrative and electoral areas. This intervention is generally regarded as non-intrusive, although by its nature electoral observation can be controversial, as the recent confrontation between the EU and Commonwealth election observation teams and the government of Zimbabwe have shown. The support and assistance includes capacity building as well as financial support for the conduct of elections. The latter is open to the criticism that it encourages unrealistic expectations on both sides in that such support encourages levels of election activity the costs of which are unsustainable. This, however, is the result of the pressure from the Western democracies on developing states to replicate, or even improve on, the democratic institutions of stable, rich democracies.

One interesting by-product of this relationship has been the 'reverse infection' of the rather modern concept of an independent election commission to manage elections, from the developing world to the old democracies. Until recently elections in these states have typically been managed by professional (and generally trusted) civil servants in a government ministry.

Another useful example of the creative potential of such practical but low-profile interventions was the presence of teams from the EU and the OSCE in the presidential election in Afghanistan. Both organizations had a legitimate interest in the possible democratic transition in Afghanistan, and both were aware of the fact that the security situation precluded them from a formal observation exercise consistent with their established standards. Instead they sent 'democracy support teams' to carry out a selective 'witnessing' of the process. They produced a report on their findings, not as a judgement on the election but as a source of advice on possible changes and improvements in various respects for possible application in the subsequent parliamentary elections, which they would also be ready to support.

Finally, the Cambodian case demonstrates a creative development of the idea of intervention. This was the unique establishment of a UN Human Rights Commission in Cambodia, showing a flexibility and readiness on the part of the UN to try a relevant response to the country's specific history of genocide.

The idea of *preventing* the deterioration of good governance has also begun to be seen as an alternative to *restoring* democracy, but this too lacks a structured and predictable framework within which it will in fact take place. The consent of the sovereign incumbent, whether real or engineered, remains, rather contradictorily, the most common basis for either ex post facto intervention or prevention of its own 'bad governance'.

Conclusion

This selective collection of reflections indicates that interventions in transitional processes have shown significant limitations. Compared with the earlier and quite circumscribed activities in the first phase, such interventions are now much less predictable and regulated by the wider international community represented by the UN. Which transitions will be initiated and how they will be undertaken will continue to depend upon the ad hoc judgements of the UN. The more substantial armed interventions for transition will probably increasingly depend upon the unpredictable and unregulated judgement and auto-interpretation of the coalition. If a degree of order is to be restored in this regard, some consensus on standards and guidelines will be needed. Equally important is the need for a more serious consideration of this 'democracy' to which governments worldwide should transform. This should include the identification of what, after focused and representative consultations, really are the essential common standards of good governance in the contemporary world, rather than the automatic assumption that the model used in the West is the only or the best system. Further, in all interventions which might continue to be made with the intention of reforming regimes and introducing representative government, a proper consideration of and compliance with the conditions suggested by J. S. Mill remain a sensible basis for reform which is seriously intent on a credible and sustainable transition to that system.

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Police Reform from Below: Examples from Indonesia's Transition to Democracy

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The process of political reform in Indonesia that began in 1998 has been accompanied by a sharp increase in the number of violent conflicts in many parts of the country—Maluku, Aceh, West Kalimantan, Central Sulawesi, Papua and North Maluku. These conflicts have had serious negative consequences for both Indonesian society and the Indonesian Government. The outbreaks of violence have cost many lives, caused the destruction of infrastructure and facilities, resulted in increased numbers of internally displaced persons, and disrupted local socio-political and economic systems and opportunities. When facing such extreme hardship, citizens tend to turn to the government for aid. Unfortunately, government institutions, such as the police and local government, have not been effective in taking action to this end. The legitimacy and function of the government in the eyes of the citizens are then called into question. As a result, the power of government weakens and this encourages citizens and community groups to challenge its authority. More seriously, this 'anarchic' situation sharpens horizontal disputes among citizens and community groups, and generates vertical disputes between the community and the government. The process of political reform in some parts of Indonesia, especially in local areas, has become uncontrollable and unmanageable.

One of the government institutions that have suffered the most (and may have been responsible for making the situation worse) is the Indonesian National Police (INP, *Kepolisian Negara Republik Indonesia*). The function of the INP as a government institution responsible for maintaining security and public order has come into conflict

* The Center for Security and Peace Studies was established in 1996. One of its focuses is on supporting police reform as a strategic entry point for strengthening democracy and security sector reform in Indonesia. The work of the centre in supporting police reform includes an exploratory study, seminars and workshops for the police in conflict-prone (and potential conflict) areas. In 2005, the work of supporting police reform was being continued by the Master's Program in Peace and Conflict Resolution of Gadjah Mada University, which provides scholarships for police officers to study at the Master's Program together with non-police students.

with its responsibility to protect and serve the community. At the same time, the INP personnel lack the skills to intervene neutrally and have been perceived as taking sides. For example, in Maluku, the police have been perceived to be siding with the Christian group (about 80 per cent of police personnel are Christians) while in Papua the police have been perceived as siding with migrants (some 80 per cent of the police are non-Papuan). It is therefore extremely important to strengthen the professionalism and skills of the police, especially the personnel who work on the front line. This study argues that the ability of police officers to provide effective service and be responsive to the public need depends heavily upon their knowledge and skills. In other words, strengthening the police force 'from below' is necessary in order to make their performance in law enforcement and the maintenance of order in society more effective, and to heighten their professionalism at both an institutional and the individual level.

Police reform is a vital priority in the process of Indonesia's transition to democracy. This is a very challenging and demanding process, especially as it is a major part of security sector reform. The authors believe that the work of police reform from below cannot be isolated from the reform of the Indonesian Government and military. For more than three decades the INP has been under the control of the government—in this case in a junior relationship to the armed forces. The police reform process cannot be expected to succeed unless the government stands firm in fighting corruption, enforcing law and human rights, sharing power with local government, inviting public participation, and practising transparency and accountability in all its policies.

This study will first present a profile of the INP, and specifically its history and its social and political context during the Suharto era (1966–98). Second, it will demonstrate the relationship between Indonesia's transition to democracy, the rise of communal violence and the beginning of police reform in Indonesia. Third, it will present some experiences of the Center for Security and Peace Studies of Gadjah Mada University, in Yogyakarta, Indonesia, in supporting police reform from below and the lessons learned. Finally, it will attempt to draw some conclusions regarding Indonesia's experience of police reform from below during its democratic transition.

The Indonesia National Police: History and Socio-Political Context

Throughout its history, the INP has had a unique relationship with the military. According to Lowry (1996), it was the first official security institution created by the new state, followed by the creation of the military several months later. The INP was a direct offspring of its predecessors under colonial rule and the Japanese occupation. Like its colonial counterparts, the post-war police force had two wings—the general police, responsible for law enforcement, and the Mobile Brigades (Brigade Mobil—Brimob), charged with maintaining internal security. The Brimob were responsible for dealing with security threats that the general police did not have the capacity to handle, or for containing these threats until such time as the army could be summoned.

The rivalry between the army and the police increased in the post-colonial era, especially regarding which force should handle internal security affairs hitherto controlled by Brimob. This dispute, according to Lowry (1996), was driven by the status gained by the army during the Indonesian Revolution of 1945–59 and by the army's resentment of the colonial origins of the police. In October 1958, the National Council (Dewan Nasional) decided to make the National Police part of the Functional Forces (Angkatan Karya) together with the army, navy and air force (Said 2001). In 1959 a separate Police Ministry was set up, and in 1961 it became part of the armed forces. In 1964 its status changed to become the same as that of the other three forces (Lowry 1996). After that, up to the end of the New Order, the police were placed under the military.

From 1966 to 1998, General Suharto ran the country under the banner of the 'New Order' with the military, the bureaucracy and the military-sponsored party Golkar (Golongan Karya, the Functional Groups) as its backbone. The main features of the military during the New Order era were (a) a territorial structure throughout the archipelago paralleling that of the bureaucracy—see table 1; (b) the militarization of the bureaucracy through *hekaryaan*—a doctrine that justified the placing of military personnel in bureaucratic and non-military posts; (c) its control over the intelligence services; and (d) its extensive involvement in building a wide business network. Through its territorial structure throughout Indonesia—from the national, provincial, district and sub-district to the village levels—the military developed an extensive and very strong instrument with which to play a key political role in society. In addition, many military officers, both active and retired, occupied critical positions in government and the bureaucracy, from the national to the village levels. In 1980, members of the military occupied 53.5 per cent of central government positions: for example, they accounted for 47.5 per cent of ministers, 73.6 per cent of secretaries general, 29.5 per cent inspectors general, 78.9 per cent of directors general, 44.4 per cent of heads of non-departmental institutions, and 53.5 per cent of ministerial secretaries and assistant ministers. They were also appointed as governors (70.3 per cent), heads of district (56.6 per cent), mayors (33.3 per cent), and ambassadors (44.4 per cent) (Notosusanto 1984: 378–9).

The dominant position of the military was enhanced by its full control over the intelligence services in both civilian and military institutions. The intelligence organizations of the Indonesian state, as discussed by Tanter (1992) in his excellent account, were used by Suharto and the military to support their totalitarian ambitions and practices. Compared with other types of domestic intelligence regime, the Indonesian intelligence service used a low level of violence but an intense degree of surveillance, targeting many groups (although not in any sophisticated way).

Military domination was expressed through the doctrine of the *Dwifungsi ABRI*—the dual-function military (Angkatan Bersenjata Republik Indonesia, Armed Forces of the Republic of Indonesia). *Dwifungsi* was an ideology by which the military legitimized and justified its multiple roles, as both a security and a defence force as well as a social–political force. (On the way in which the *Dwifungsi ABRI* worked to legitimize military rule in the New Order era and to maintain the regime, see e.g. the discussion

in Langenberg 1992 and Azca 1998.) As a result, the military became the ruling force during the New Order era.

Table 1: The Pyramid of Power in New Order Indonesia (Civil–Military Links)

President		
Other ministers	Minister for Home Affairs	Commander Armed Forces
Provincial Office	Governor (Gubernur)	Territorial commander (Kodam/Korem)
District Office	District (Bupati)	Territorial commander (Kodim)
Sub-district*	Sub-district chief (Camat)	Territorial commander (Koramil)***
Village**	Village chief (Kepala Desa)	Village NCO (Babinsa)****
	Neighbourhood associations	

* Other ministry matters at sub-district and village level were handled directly by officials from the district office, by the sub-district or village chiefs or heads of executive. ** Not all districts had a dedicated military commander. Some encompassed two or more districts or sub-districts in remote areas such as Kalimantan and Irian Jaya/Papua. *** Similarly, the Babinsa normally covered a cluster of villages. **** Relative ranks were Kodam (major general), Korem (colonel), Kodim (lieutenant colonel), Koramil (captain/lieutenant) and Babinsa (non-commissioned officer, NCO).

Source: Lowry, Robert, *The Armed Forces of Indonesia* (St Leonards, New South Wales: Allen & Unwin, 1996), p. 60.

Beginning with the New Order and continuing to the present day, the police force has been organized along territorial lines parallel to the army structure, with a vertical national chain of command and links to the civil administration. Within this chain of command the police force is also organized on functional lines, the main operational divisions being (a) Intelligence and Security (Intelpam); (b) Criminal Investigation (Reserse); (c) Patrol (Samapta); (d) Traffic (Lantas); and (e) Community Guidance (Bimmas). The work of these functional divisions can be reinforced by air, marine and paramilitary mobile brigade units, and by technical support units (International Crisis Group 2001). In 2001 the strength of the police force was estimated about 250,000, up from 190,000 in 1998. The rise in numbers was achieved by increasing the annual intake of recruits to 13,000 and extending the retirement age for other ranks from 48 to 58. The total number of police includes 40,000 Brimob and 22,000 detectives.

In addition to the police, there are over 200,000 private security guards (Satpam), providing security services to government and private buildings and facilities. There are also two kinds of non-police investigators—a civil defence force (Hansip) and the municipal force (*polisi pamongpraja*) (International Crisis Group 2001).

The distinction between domestic security, which was assigned to the police, and external defence, which was assigned to the military, became blurred during the Suharto period. Through the organizational and authority structures of the police, according to Meliala

(1999), the military had legal approval to use extra-legal methods, such as intimidating the press, detaining its critics and generally repressing mass protest. After over 30 years as part of the military, the police developed a 'younger brother' mentality and were unable to uphold the law. They therefore, as Meliala puts it, 'lost their self-confidence'. Thus, the placing of the police under the military, according to the International Crisis Group (2001), was a critical cause of the abuse of power by the military and led to a 'militarization' of the police.

The popular image of the INP during the New Order era was one of ineffectiveness, inefficiency, brutality and corruption (International Crisis Group 2001). Portraying the chronic problems within the national police, former Chief of National Police General Kunarto (2000) described it as understaffed, inadequately equipped, completely corrupt, and lacking any institutional memory of independence as a result of the degradation of its power by the New Order and the appropriation of its authority by the army. Thus, the police were in a weakened state by the time the post-Suharto era began.

Indonesia's Transition to Democracy: Communal Violence and Security Sector Reform

As mentioned above, Indonesia has witnessed the mushrooming of communal violence during the early stages of a transition towards electoral democracy following the fall of Suharto's authoritarian regime in 1998 (Tadjoeddin 2002; Varshney, Panggabean and Tadjoeddin 2004). According to Azca (2004), the outbreak of communal violence can be seen as a symptom, and simultaneously a consequence, of the poor performance of the security sector during the transition period. The lack of capacity and the unprofessional attitude and behaviour of the security forces in dealing with social unrest led to the eruption of social or communal violence in some areas in the archipelago. Furthermore, as discussed by Azca (2004), the outburst of communal violence will probably hinder security sector reform (SSR) in the future. SSR is a critical item on the agenda for newly democratic countries, since the core of the security sector, particularly the military, is usually the backbone of the old authoritarian regime. Reliable governance of the security sector, as Ball, Bouta and van de Goor (2003) argue, is crucial for the success of democratic consolidation and sustainable economic and social development. It is also essential for the quality of security, in terms of creating a safe and secure environment for the state and for the public. The security sectors in many developing countries in transition to democracy fail to provide the safe and secure environment required for sustainable economic and political development. Furthermore, in many countries, politicized or ineffective security bodies and justice systems are a source of instability and insecurity.

SSR began in Indonesia soon after the fall of the Suharto regime. According to the late military reformist Major General Agus Wirahadikusumah (1999), it was the end of the 'invulnerability' of the Indonesian National Military (Tentara Nasional Indonesia, TNI). Following the extensive exposure by the mass media of massive human rights violations and abuses of power by the TNI in the New Order era, as in Aceh, Irian Jaya

and East Timor, as well as the kidnapping of pro-democracy activists, the image of the TNI reached its nadir. The abrupt breakdown in its public image, according to the International Crisis Group (2000), led to a significant decline in the military's morale and brought the TNI to a defensive position such it had never before experienced. During this period, the abolition of the dual-function ABRI became a major demand of the pro-democracy movement (Said 2001: 169). A research team from the Indonesian Science Institute (Lembaga Ilmu Pengetahuan Indonesia, LIPI) even argued that the Dwifungsi ABRI was 'the source of the national disaster' (Bhakti et al. 1999: 59).

Responding to the public demand for the abolition of the Dwifungsi ABRI, on 5 October 1998 TNI headquarters declared a set of political reforms within the TNI called the Paradigma Baru (New Paradigm). The New Paradigm included the following elements: (a) 'a change in its position and methods such that [the TNI] would no longer necessarily be in the forefront'; (b) 'a change from the concept of occupation to one of influence'; (c) 'a change in the method of influencing from direct to indirect means'; and (d) 'a readiness to engage in political role-sharing (joint decision making in the case of important national and governmental issues) with other components of the nation' (Sukma and Prasetyono 2003: 23).

The New Paradigm then translated into several programmes:

- (1) the separation of the police from the military;
- (2) the liquidation of social-political posts within the military at national and regional levels;
- (3) the replacement of the office of social and political affairs (Kassospol) with an office of territorial affairs (Kaster);
- (4) the winding down of the posts responsible for assigning active members of the military to civilian positions;
- (5) the requirement that military officers choose between military and civilian careers, either through early retirement or through a tour of duty;
- (6) the reduction of the number of military representatives in the national and local parliaments;
- (7) the termination of the ABRI's involvement in day-to-day politics;
- (8) the severance of organizational ties with the Golkar political party and the adoption of a stance that is equidistant from all political parties;
- (9) the exercise of neutrality in elections;
- (10) a change of relationship between the TNI and its affiliates;
- (11) a revision of the TNI's doctrines according to the spirit of reform and the role of TNI in the 21st century; and
- (12) changing the name of the ABRI to TNI (Sukma and Prasetyono 2003).

Thus, the separation of the police and the military has been one of the main items on the agenda of SSR in Indonesia. In mid-1999, the INP published a 'blue book' on police reform that addressed three aspects of the problem—structural, instrumental and cultural issues. According to Kelana (2005), structurally police reform aims at building a police force with the following characteristics: a strong institutional identity as an independent organization; compatibility with professionalism and universal police standards; a modern organization based on science and technology; and an orientation to serving the public. Instrumentally, it aims to formulate a guide to police reform consisting of the philosophy, the principles, the vision and mission, and the code of conduct of the police force. Culturally it aims to enhance the performance of police forces in line with the structural and instrumental reforms, thus producing a (new) 'culture of Indonesian National Police'. At the end of 2000, the blue book was followed by a development paper that addressed police human resource requirements, structure, personnel management, and community policing issues. However, according to the International Crisis Group (2001), both documents were more ideal–normative in character than practical and were not fully successful in detailing how the programmes would be implemented.

The separation of the police and the military has also created a distinct function for each of the two forces. As formulated in *Garis-garis Besar Haluan Negara* [the General Principles of State Guidelines] 1999, the TNI is a tool of the state that is used to protect, maintain, and defend the sovereignty of the unitary state of the Republic of Indonesia; the INP is a tool of the state used to uphold the law and give shelter and protection to people in accordance with local autonomy law. The separation of the two forces and the distinction between them were established in the amended 1945 Basic Constitution and paragraphs VI/MPR/2000 and VII/MPR/2000 of the new constitution, formulated as part of SSR. Under the new constitution, the INP comes directly under the president, assisted by the National Police Council (Lembaga Kepolisian Nasional)—also known as the National Police Commission (Komisi Kepolisian Nasional)—in making national police policy. However, as a consequence of lack of political will and lack of initiatives by the Megawati and Susilo Bambang Yudoyono governments, this institution has not yet been set up.

Another critical step accomplished at the national level was the issuing of the Indonesian Police Law, no. 2/2002. According to this new law, the INP is one of the government agencies responsible for maintaining security and public order, enforcing law, giving protection and shelter, and providing public service. This law has been the main basis of police reform in Indonesia under the new democratic system.

Several efforts have also been made to improve and enhance the capacity and capability of the INP in dealing with many new problems in the post-authoritarian regime. However, many of these efforts were made at the symbolic and structural level, such as changing the uniform and 'code of rank' of the police in order to eliminate the 'military look' inherited from the New Order regime. As Meliala (2002) observes, there has been

no change in police attitudes, nor have new practices been institutionalized. Meliala also suggests that no steps have been taken to improve accountability, to make the police more representative of the population, or to improve skills. In addition, the INP has not yet set target dates for reform or stated its criteria for measuring progress (such as a reduction in the crime rate). According to Meliala, the police remain a 'reactive organization, and still defensive, arrogant and insensitive to major segments of the population such as women, the vulnerable and the elderly'.

In such a situation, 'police reform from below' is crucial in order to enhance and empower police institutions. This should enable them to deal with the many new problems which have emerged in the new democratic society and be compatible with the new democratic system.

By police reform from below we mean an approach which assumes that police reform will be most effective and valuable if it is conducted with not only a 'top-down' but also a 'bottom-up' strategy. This approach is complementary in character rather than exclusively opposed to 'police reform from above'. It is clear that from organizational theory that leadership from the top level plays an important role in implementing reform. As Meliala (2002) argues, reform must start from the top with 'a very strong person' who ensures that new attitudes and practices are taken seriously. However, in order to ensure that every step of reform can be implemented and operated effectively at lower levels, reforms should also consist of actions and efforts originating from below. The word 'below' means two things: first, from lower (and middle) levels of the police force; and, second, from societal actors, particularly civil society.

The next section of this study will present and discuss some experiences of the Center for Security and Peace Studies in supporting police reform 'from below'.

Police Reform from Below: Learning Experiences

In 1998 the Center for Security and Peace Studies carried out an exploratory study entitled 'Police Performance and Professionalism'. The general objective of the study was to examine the many factors that influence the professionalism and performance of the police. Specifically, the study examined the influence of basic profile, institutional profile, education, and human resource development programmes of the police in the political, social and cultural contexts. It took place in six provinces, and in each province the study targeted three sub-district regions—one rural, one urban and one suburban. Using purposive random sampling procedure, representative samples of police personnel, citizens and institutions that relate to the police (attorney, police academy, police school) were interviewed. In-depth interviews, group interviews, surveys and observation were used. Roughly 263 police staff and 190 community members were interviewed and about 1,520 police officers and 1,175 community members were chosen as respondents to the survey. The study found that the profiles of police professionalism and performance were influenced by (a) institutional profile (ethics, mission, organization structure); (b) human resources (raw input quality, training, human resource development);

(c) basic equipment (personnel, equipment, finance); and (d) organizational behaviour and culture (content of occupation, organizational context).

Many basic problems relating to the performance of the police were found in the study. These include (a) a fear of crime within the community, (b) the complexity of the complaint procedures, (c) a community perception of the police presence as threatening rather than reassuring; (d) a high number of unsolved crimes; (e) widespread violations of law and professional ethics by police personnel; and (f) an overall negative impression of the police. At the same time, the study found several problems relating to police professionalism: (a) excessive interest in material gain; (b) the militaristic character of police officers; (c) a low level of creativity and proactive approaches; (d) a tendency on the part of the police to safeguard officers' safety and careers over and against the public interest; and (e) a low level of institutional independence.

However, despite the negative findings above, the study also found some positive aspects of both professionalism and performance: (a) professional pride; (b) a high level of education and police training among the middle-level staff; and (c) a great commitment to duty.

From the findings above, the study came up with three types of recommendation. The first is a reorientation to the ethic of police professionalism. This reorientation includes a change away from a militaristic ethic towards a civilian ethic, back to a role as protector and servant of the community. The second is reorganization of the police institution to make it more independent, accountable and decentralized. The third is the development of institutional management so that the police can provide for staff and personnel specialization. The police institution should also guarantee a fair career path for each employee and strive to increase job satisfaction.

Directly following the completion of the study, the Center for Security and Peace Studies discussed the results with the Jakarta police chief and his senior staff. Some of the findings were adopted in the police blue book of 1999. In its report on police reform in Indonesia, the International Crisis Group (ICG) noted that the blue book was a 'normative and inspirational document rather than detailed plans for implementing reform' (International Crisis Group 2001). However, from the Center's point of view there was evidence that the senior police staff had become more open-minded to outsiders' views. Also evident was their interest in police reform. The Center then gave continual feedback and advice to the police through a variety of forums and seminars, particularly regarding the issue of the separation of the police from the military.

Workshop on Conflict Management and Problem Solving

The Center for Security and Peace Studies ran a series of training programmes on Police: Conflict Management, Conflict Prevention, and Problem Solving in 2001. The training targeted the police chiefs at the district level, those working directly in the field and with the local community. The training was conducted with POLDA (provincial police) located in three selected provinces—Maluku, West Timor and Riau.

Below are the summaries of the five-day training programme in each of the three regions.

1. *Maluku*. In Maluku province, the training was convened at the provincial police office in Ambon from 3 to 8 February 2001. Out of 30 police officers selected, 27 participated. They were selected by the local police office using the criterion suggested by the Center—equal representation in regard to religious background. The conflict in Maluku had resulted in the society becoming divided, fracturing along religious lines. Communities had become physically segregated, using separate public services as well as markets and transport services. Indeed, the Maluku provincial police had two separate offices: one, the original office, was located in a Christian area, and could therefore only be used by Christian police personnel, while Muslim police personnel used the office of the Ambon Municipal police, located in a Muslim area. The first day of training showed how tense relationships were within the police force owing to their different religious backgrounds. This was the first time the participants had gathered and sat together after three years of ongoing violent conflict in that area. The situation was much better by the second day, especially after a series of exercises and games conducted on the first day of training. At the end of the programme, the chief of provincial police in Maluku asked the facilitator team to extend the training for an extra day. Although the training finally ended as planned, the chief took the initiative to continue the training by himself, and the facilitator team provided him with materials and guidelines for the continued training.

The Center for Security and Peace Studies conducted the training by using various learning methods and strategies, such as group discussion, role-play, games and lectures. At the end of the training session, participants came up with action plans consisting of:

- officers getting together through informal financial draws called *arisan*;
- joint daily routine ceremonies for police officers (morning and afternoon);
- joint activities to clean up the environment and rebuild staff houses;
- joint religious services at the office;
- participation in local/traditional ceremonies in their community; and
- joint patrols in both Muslim and Christian areas.

One week after the training, one facilitator showed that several joint activities that had been planned had in fact been implemented. One was joint sports activities for police officers together with armed forces personnel and administrative staff of the Maluku provincial government, which took place in a public yard in front of the governor's office. The police also started to do joint sports as routine activities among themselves. One facilitator met the chief of police a couple of weeks after the training and the chief showed how he had used the training material for a speech to his staff across the province.

2. *West Timor.* In West Timor, the training programme was conducted from 19 to 23 June 2001 at the School of Police in Kupang. There were 32 participants selected from 3,700 personnel.

According to participants, one of the major problems for local police was the very low salaries. This problem became a cause of corruption among police officers, and such abuses finally resulted in a negative image of police officers and a low level of credibility in the community, as well as reducing confidence on the part of the police and their ability to deal with community problems. Other issues raised by participants related to the involvement of army personnel in gambling and smuggling. At the same time they also had to deal with problems such as refugees from East Timor and militias. It was believed that members of the army were involved in supplying weapons to refugees, especially to relatives and friends of militia members. In return, the militias provided army personnel with protection.

After identifying the problems, the participants worked on designing plans to solve them. They wanted to set up a joint committee to prevent violent conflict, especially between local people and refugees. They planned to talk to community and traditional leaders, refugees and local government officials. Specifically, the objectives of the committee were:

- (1) *to reduce inter-village crime.* The plan sought to improve relations within the community and develop an early-warning system so that the community could work closely with local police in combating inter-village crime;
- (2) *to reduce the incidence of traditional duels.* The plan sought to prioritize law enforcement and at the same time persuade people to live in harmony with their neighbours with the guidance of traditional and religious leaders; and
- (3) *to resolve conflicts between police and army forces.* There was no specific plan of action for these problems, but the participants mentioned some root causes, such as excessive intervention by the army in police work, and army officers' resentment of police officers' prosperity.

The chief of the West Timor Police was very grateful for the training conducted by the Center and asked for similar activities to be conducted for the heads of police offices at the district level.

3. *Riau.* In Riau, the training took place in the local police school from 25 to 28 June 2001. There were 40 participants selected from 6,580 police personnel in Riau. Riau is one of the richest regions in Indonesia. Conflicts often occur between companies (oil or palm oil companies or factories) and local people, management and workers, and between local people and local government. According to participants, some of the topics in the training programme (or at least the theory) had already been taught in the police academy. However, on the basis of the evaluation, participants found the

training interesting because of the scope for practical application. The training also gave them a new general understanding of conflict. At the conclusion of the programme, the head of the Riau police office asked 15 of the participants to present what they had learned during the training to other police officers in Riau Province. A month after the workshop, the Center received a complete Riau police plan of action regarding conflict prevention and resolution, consisting of:

- (1) *the development of a new mechanism of cooperation/networking with the community.* People in the community tended to take a cynical attitude to police attempts at 'cooperation'. In the name of cooperation, police were allowed to extort money and other goods from people who had no choice but to comply. The Riau police knew about this community cynicism and were willing to develop a more genuine system of cooperation. They planned to talk with community, religious and traditional leaders, set up regular meetings to discuss community problems, pay regular visits to villages, open a police hotline, and carry out joint activities with the community; and
- (2) *the development of a Quick Response Unit for conflict prevention.* This unit is meant as an early-warning system. Police will coordinate the unit, and the members of the unit will consist of people from the army, local government, non-governmental organizations (NGOs), private companies, community leaders and journalists.

The series of training for police officers in the three provinces demonstrates the need to solicit community participation and involve the community in problem solving.

Conclusion

The rocky transition from authoritarianism to democracy in Indonesia has been marked by the rise of communal violence in many part of the archipelago. This phenomenon can be perceived as a symptom as well as a consequence of the poor performance of the security forces during the early stages of the Indonesian transition period. Security sector reform, which began soon after the collapse of the New Order regime, has brought about progress in some security sectors, including the police force. However, many of the steps taken by the government have approached the problems from a 'top-down' perspective. This study has argued that, although it can be started and initiated 'from above'—for instance, by separating the police from military—it should be continued by conducting reform 'from below'.

The study has presented some learning experiences arranged by the Center for Security and Peace Studies in supporting police reform from below. The Center's work on the training of police officers in the three provinces has highlighted the need to equip police officers with community policing and problem-solving skills. The results of the workshop also showed that police at the local level, especially in conflict-prone areas, have the capability to deal with their local context and situation and shared a passion for working closely with the community.

At the same time, the process of transition in Indonesia has generated demands for greater equality, justice, citizen participation and greater decentralization to local government. These are serious challenges for the new democratic government and need to be addressed consistently. The issues of participation and decentralization are important as both are methods of expanding and improving public services. This would in turn help the government to gain legitimacy in the eyes of its citizens, and thus help to maintain a stable democracy. It is also part of the deepening of democracy that involves democratizing the state by allowing citizens more direct participation in deciding public policy, and by ensuring that public services reach those at all levels of society.

A further challenge for those attempting police reform from below in Indonesia is to empower and encourage the community to engage with the police. Community cynicism towards the police is still there as many members of the community have had bad experiences of dealing with the police. A series of training sessions such as 'making community work', with participants from both police and the community, should be organized. Such forums will allow the community to interact more directly with the police and perhaps help change the discourse of the police being 'enemies' of the community.

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SECTION 3

SECTION 3

Democratic Practice: Managing Power, Identity and Difference

The key principles, characteristics, elements, and features of democracy that facilitate conflict management in contemporary societies

Dilemmas in Representation and Political Identity

Andrew Ellis

Stop-Go Democracy: The Peace Process in Northern Ireland Revisited

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Dilemmas in Representation and Political Identity

Andrew Ellis, International IDEA

Much of the conventional wisdom relating to the development of political systems contends that political party systems are most likely to be effective and stable when they reflect ideological divisions, and that electoral debate and campaigning consists ideally of offers by parties to the electorate of competing ideologies and policies. Leaving aside the extent to which this paradigm exists even within developed democracies, its value when conflict and human security issues play an important role is highly questionable. The politics of identity and/or the politics of leadership may be an inevitable part of the environment in which democracy builders are working.

The Politics of Identity

Electoral choice may be influenced, or largely determined, by the politics of identity. In post-conflict transition, it is well recognized that such identification can entrench the warring factions into the political process, leaving little or no space for new and cross-cutting political forces to develop. However, identity can work in very different ways outside post-conflict transition. To take three examples not usually considered as falling within the 'conflict' paradigm, compare and contrast the ethnic political identification of the vast majority of the people of Guyana; the collective and tribe- or village-based politics of Papua New Guinea; and the *aliran* or 'channel' identification—secular nationalist, traditionalist Islamic and modernist Islamic being the major examples—which has long been a major aspect of political loyalty in Indonesia. The first is a reflection of the entrenchment of two communities in what most participants perceive as zero sum politics. The second reflects a society where a state which was never strong has delivered less and less and has not had reserves of popular loyalty on which to fall back but identity, if arguably only an inevitable element of tradition, is a barrier to complete atomization. The third has been a mechanism which has assisted the development in the democratic era since 1999 of a coherent political system in a vast and diverse country which nonetheless does for the most part possess legitimacy—and

formed the underlying basis of loyalties going back to the first free and fair elections in 1955.

The Politics of Leadership

Equally, the politics of leadership poses questions. One question unanswered by the conventional wisdom relates to less developed countries where poverty levels are high and the subsistence economy remains a primary way of life. Even when the state has managed to achieve some relevance and legitimacy in the minds of most of the people, those people are unlikely to view programmatic competition between contestants in an election as very relevant. It is likely that all parties or candidates participating in the election will be advocating similar, developmental policy aims—improvements in education or health or infrastructure. There will not be a clash of ideologies between pro-development and anti-development political forces. There may be differences in the pecking order that they give to different geographical communities as candidates for government expenditure, tending to make the election a head count between competing areas. Otherwise, it probably makes sense in practice for voters to judge competing politicians and parties on how good they will be at practical service delivery. How competent will they be? How corrupt will they be? Will they appropriate public resources for sectoral or private purposes? The result is a choice based on leaders, not on programmes.

Another unanswered question derives from the changing nature of communication and information gathering in almost all societies. The clash of programmes was conceived in an age where direct communication was paramount, and could be sustained when radio became the primary medium of communication. The same was much less true when television became the primary medium of communication, which is probably now most common: to attract and retain attention, messages needed to be simultaneously visual and aural, not merely verbal, and not in the form of a carefully developed line of argument. Leadership and identity are probably both easier concepts than programme to promote through the televisual medium. Effective democracy building takes place in the world as it is, and the evidence that programme-based political systems may in theory perform better should not cause democracy builders to assume—still less try to recreate—a previous world of communication whose obsolescence may or may not be desirable but is nonetheless a reality.

Political Competition and State Building

A further question is posed by societies where the state is weak or almost non-existent. Robert Dahl stated the issue thus: ‘the democratic process presupposes a unit. The criteria of the democratic process presuppose the rightfulness of the unit itself. If the unit itself is not considered proper or rightful . . . it cannot be made rightful simply by democratic procedures’ (Dahl 1989: 207). Barnett Rubin describes the problem in general terms as a prelude to his analysis of Afghanistan: ‘where the population is fragmented and not integrated into a single national society, the state cannot represent a common interest.

The state is instead another particular interest' (Rubin 2002: 15). While the existence of such conditions is not synonymous with violent conflict, such conflict is likely to have weakened or destroyed much of the capability and penetration of the state—as can be attested from Afghanistan to Haiti to Somalia to the Democratic Republic of the Congo. The design of democratic institutions in transition will be linked with the legitimacy of the state of which they form part—yet the pressure within the international community for a success and an exit strategy pulls in the opposite direction. In such circumstances, political competition may take many forms, some of which may lead towards a more sustainable democracy, others of which do not. It is not self-evident that the politics of ideology and programme provide the only benign approach.

All these issues need further consideration as knowledge of the relationship between constitutions, political legislation, electoral systems and party systems continues to develop. Each solution is complex, tailored to the constraints of the political and power dynamics in which it is formed and the negotiating skills of the parties involved. The devil is always in the detail, and some provisions of transitional agreements may turn out to have unintended and surprising effects.

Institutional Frameworks after Conflict

Electoral system design has been an area of particular debate in transitions. The tendency of many post-colonial states to adopt the electoral arrangements of the former colonial power led initially to much use of majoritarianism and winner-takes-all solutions, whether of the First Past The Post (FPTP) variety in many former British colonies or the Two-Round variety in many former French colonies. The record of such systems was, however, not good. As Sarah Birch recently showed in a study of some 70 transitions, 'countries which chose majoritarian systems either abandoned majoritarianism, or abandoned democracy' (Birch 2005).

As Larry Diamond puts it:

If any generalisation about institutional design is sustainable, given the bloody outcomes of countless political systems that appeared to exclude major cleavage groups from power, it is that majoritarian systems are ill-advised for countries with deep ethnic, regional, religious or other emotional and polarizing divisions. Where cleavage groups are sharply defined and group identities (and intergroup insecurities and suspicions) deeply felt, the overriding imperative is to avoid broad and indefinite exclusion from power of any significant group (Diamond 1999: 104).

Many democracies, however, have followed the proportional representation (PR) approach, particularly in Latin America, Southern and Eastern Europe, and Southern Africa. This approach has made inclusion of political actors a priority. In divided societies, list-based proportional representation (List PR) is an essential element of the consociational model, which is linked above all with the name of Arend Lijphart (see Lijphart 1977). Representation is defined at the group level: voters make a choice between

groups through the List PR mechanism, and any group with more than minimal support gains seats in the elected assembly. Government formation requires a grand coalition of all major groups, giving each an effective veto, both legislative and executive posts are distributed between the actors, and groups enjoy considerable autonomy in their respective areas of strength. In the context of a transition, its mechanics are simple, with no need for example for messy and time-consuming delimitation of electoral district boundaries, and may be more likely to be acceptable to leading conflict participants.

Vote Pooling: Adventurous or Foolhardy?

In contrast to the consociational approach, a more adventurous and individualist perspective has been developed by Donald Horowitz and others (see e.g. Horowitz 1985 and 1997), the concept of vote pooling. The advocates of vote pooling viewed the consociational approach as giving no incentive to groups to make the compromises necessary to build a stable and inclusive political system in the longer term. If a party sought to reach out to groups other than its own in a polarized society, it would probably gain few votes because trust across a group divide did not exist; rather it would run the risk of losing the votes of its own group to a party which denounced actual or potential sellout. Under a preferential electoral system such as the Alternative Vote (AV) or the Single Transferable Vote (STV), voters would be required to express not only a first choice (which would inevitably go to a candidate of a party of their own ethnic group) but also second and subsequent choices, which would have to be given to candidates of parties of other ethnic groups. Parties and candidates would therefore have an incentive to take moderate positions in order to attract these voters. However, for this approach to be effective, electoral districts with a degree of heterogeneity would also be required.

The vote-pooling approach can also be used to address one of the major deficiencies for which consociationalism, or indeed any polity using an electoral system that recognizes the primacy of some form of group identity, is criticized—the lack of any clear link between individual elected representatives and those they represent. However, the conventional wisdom on the importance of this link is inadequate, and assessing its value is complex. John Curtice and Phil Shively (2003) have shown that in the perception of the electorate, in a broad range of countries the link is significant only to that small group of people who make actual contact with their elected representative between elections. The distinction these people draw is between systems in which they vote for parties, and systems in which they vote for candidates.

However, the pressures on elected legislators may also be an important factor in incentives for accommodative behaviour. Do elected legislators respond primarily to voters, party members, party activists, party leaders, or—as when their terms of office are time-limited—to whoever is going to give them their next job? It is intuitively likely that the party base of the consociational approach may be associated with stronger discipline over elected members. Equally, the candidate-based approach usually associated with the vote-pooling electoral systems may tend to give more freedom of action to elected legislators. Which is more helpful to accommodation and coalition building?

Theory into Practice

The transitions of the 1990s brought several high-profile opportunities for this debate to be played out in practice. The institutions developed in Bosnia and Herzegovina under the 1995 Dayton peace agreement contained strong elements of consociationalism, with a variety of institutions at different levels in which the different ethnic communities were represented and initial elections conducted within nine months using List PR. The entrenchment of the warring parties as the political contestants in these institutions has been widely regarded in retrospect as a mistake (see Volume I of *Democracy, Conflict and Human Security*, chapter 5).

The debate on elections and institution building within the international community was also highly relevant throughout Africa during the 1990s. The consociational and vote-pooling approaches were both put forward during the transition in South Africa as potential mechanisms. South Africans chose to use the consociational approach, leading to the involvement of the National Party in the first post-1994 government despite the overall majority in both votes and seats gained by the African National Congress (ANC).

The List PR approach has also been followed in many of the internationally-driven transitions undertaken by the United Nations, most recently in Iraq in 2005. The motivation has often been not so much a conviction as to the virtues of consociationalism as a recognition of timetable pressures and administrative possibilities. The reality of such transitions can be a political momentum, even a euphoria, in which political actors are insisting on elections in order to get on with things (even more so if they fear that they personally will be overtaken by events if they do not establish a firm position for themselves in the new system). At the same time, these actors are involved in negotiating the new political framework, and know that good negotiators get maximum value for concessions if they are made at the last moment, beyond the planned date for political agreement. Election administrators therefore inevitably have both a short time frame and less time than planned to implement the election, and electoral systems that are capable of implementation in a short time frame and which avoid, for example, the need for boundary delimitation exercises are likely to emerge.

Timothy Sisk has reflected that election systems and laws are not self-contained, and that they interact with other parts of the political framework. He recommended that mediators in transitions ‘consider a wide range of conflict regulating institutions and practices beyond just the nature of the election and the electoral system . . . seek other avenues of innovation such as the decision rules of a parliament and incentives for intergroup bargaining’ (Sisk and Reynolds 1998: 166). He also recognized the need to take a long view in the development of institutional frameworks, considering not only their form in the immediate transitional period but through the second and third elections under a new framework. Despite the pressure on the most visible interventions of the international community to ‘declare victory and go home’, this lesson still applies.

Fiji: A Test Bed for Vote Pooling?

What may be regarded as the major test of the vote-pooling approach took place in the design process in Fiji. The Fiji Constitution Review Commission was established in 1995 ‘to review the Constitution promoting racial harmony and national unity and the economic and social advancement of all communities and bearing in mind internationally recognised principles and standards of individual and group rights’ (<<http://www.elections.gov.fj>>). The commission sought international and comparative input: both Horowitz and Lijphart gave evidence. It put a high priority on multi-ethnic government, and substantially accepted the arguments for the vote-pooling approach, recommending the use of AV in multi-member electoral districts. Although envisaged as a package, the commission’s proposals were amended in their passage through Parliament, resulting in the use of AV in single-member districts.

What may have been the major weakness in the Fiji provisions was found in both the original recommendations and the revisions. Voters were given the option to vote either ‘above the line’, selecting a party of first choice and allowing second and subsequent preferences to be allocated as specified by that party, or ‘below the line’, expressing preferential choices directly. In addition, the use of the ‘below the line’ option required preferences to be given to at least three-quarters of the candidates—a provision to force the expression of cross-ethnic preferences.

This ‘ticket voting’ provision was strongly supported by Fiji’s political parties at the time of the commission’s deliberations, during which its specific impact does not appear to have been addressed in great detail. The desire of parties and their leaderships to reduce uncertainty by limiting the power given to voters is not surprising. As the political process unfolded, the parties acquired a great deal of control over the redistribution of preference votes, and this influenced electoral outcomes in several unpredicted ways.

Voters Have One Interest; Parties May Have Another

Parties and voters do not necessarily act in the same way. Parties generally aim to maximize their own support and influence, and therefore seek the votes of those who have previously not been supporters as well as of those who have. The electors targeted by a party are far more likely to be the previous supporters of a party that is adjacent in the spectrum of ideology or identity than previous supporters of a party which is far distant. If a party is to grow in a significant and sustained way while the composition of the electorate remains roughly constant, another party or parties will become correspondingly weaker over time. This would appear to hold under any electoral system. It may be particularly true in systems where an electoral threshold, actual or effective, exists—because once a party falls below that threshold, all its votes are more likely to be up for grabs. The strategic imperative for the Liberal Democrats in the United Kingdom (UK) to eliminate the continuing Social Democratic Party (SDP), the group which stayed outside the 1988 merger of the Liberal Party and the previous SDP, is one clear example of this process in action.

In the 1999 Fiji elections, 92 per cent of those who voted chose the ‘above the line’ option, voting for a party and accepting that their vote would follow the order of preferences between candidates put forward by that party. The Fiji Labour Party (FLP), the largest party of the Indo-Fijian community, won 2 per cent of the first-preference votes of ethnic Fijians, 34 per cent of the first-preference vote overall—and 52 per cent of the seats. In six of the seats elected from a common register of all electors, the FLP’s success rested on preferences received from the Christian Democrat Alliance (VLV), a radical indigenous Fijian party. This was part of a general pattern: the FLP and the VLV both declared preferences which put parties far away in the political spectrum above parties which were closer. Only those parties specifically identified with moderation and ethnic accommodation regularly transferred their preferences to neighbouring parties (data from Fiji Election Commission; and Fraenkel and Grofman 2006). In short, ‘nice guys finished last’. Yash Ghai’s 1997 comment that ‘the Commission may have underestimated the difficulties of persuading political parties and communities . . . to move away from the essentials of the old system of representation’ appears prescient (Ghai 1997: 158). The result did not command sufficient legitimacy, and the majority government which resulted was unseated as a result of the attempted coup in 2000.

The behaviour of the FLP in 1999 appears entirely consistent with the incentive for ambitious parties to seek to weaken their neighbours in the political spectrum, the more likely source of new votes. Success for the National Federation Party (NFP), the moderate Indo-Fijian party, would be likely to reduce the number of FLP elected legislators: so the placing of the NFP at or near the bottom of the FLP’s order of preferences for vote transfers is understandable.

A further reason for the Fiji failure may be that in practice AV as a preferential system does not produce more proportional results than FPTP: contrary to the common perception, far from moderating disproportional results, there can frequently be circumstances where the reverse is true. Projections have been made for contexts as varied as the UK in 1997 and Indonesia in 1999 of the results of using AV instead of FPTP in the first case, and both AV and FPTP instead of List PR in the second. In both cases (introducing the assumption that voter choice was not affected by the use of FPTP rather than AV), AV appears likely to generate a more disproportional result even than FPTP; and the results of the 1999 election in Fiji have made this fact even more prominent. The overall majority that the FLP and its partners achieved in Fiji under AV was a more extreme result than that obtained under FPTP—never mind any proportional system option. Proponents of AV have argued that the system may result in party behaviour being modified over time towards moderation; but the idea that the 1999 election results might have encouraged the FLP to modify its behaviour is an unlikely one.

It’s Not Just the Plan . . . It’s How You Get There

This leads towards two conclusions. The first is that, while the vote-pooling approach may still have strong attractions, many of the mechanisms proposed to make it work

have thus far been unsuitable either in their implementation or in principle, and the way in which political parties work in practice may be much more integral to the process than realized hitherto. The second is that even if a model that works can be devised, the process of getting to it may be fraught with danger. Political actors may make amendments to it in the course of debate and adoption which lead the institutional framework onto different courses with less desirable outcomes.

It is easily possible, for example, to imagine the Fijian parties combining to introduce ticket voting as an amendment even if the original commission report had not included it. A more direct illustration of how thoughtfully devised plans can be modified during the political process is afforded by Afghanistan. International technical advice sought to recommend an Open List PR system, suggesting that this would lead to representation within the national elected assembly of all significant forces within the country and its regions, promote inclusion and encourage integration, and enable voters to make choices between both parties and people. President Hamid Karzai and those close to him disagreed on two grounds: first, that the legacy of the communist period made the use of the 'party' concept undesirable in any form; and second, that levels of literacy and understanding meant that Afghans should only be required to make a single mark on the ballot paper.

If both these objections were accepted, the lack of reliable voter registration, accepted boundaries and time to establish either of these would hugely restrict the available options and lead inevitably to the adoption of the Single Non-Transferable Vote (SNTV)—an unpredictable system which is probably the nearest the world of electoral systems comes to a fruit machine. The technical advisers concentrated their argument on undermining Karzai's first objection, and failed to convince him, so SNTV was adopted. It is interesting to speculate on whether an attempt to tackle the second objection would have been more successful, at least opening up STV and Block Vote as possible choices.

Back to the Drawing Board?

Ben Reilly argued in 2001 that the vote-pooling approach 'has not yet received the prominence it deserves as an alternative democracy and inter-ethnic accommodation in divided societies', considering its potential application to the urban areas with demographics of intermixed ethnicity which are becoming more prevalent worldwide (Reilly 2001). He looks also at its historical record in the highly diverse society of Papua New Guinea—an arena in which it is now being introduced again, with what appear encouraging results in the first six by-elections held under the new system. As vote pooling is a mechanism which can involve individual voters in making choices across divisions, it might be thought good as a matter of democratic principle if he were right. But for democratic reformers and technical advisers involved in the design of political frameworks, the experience so far may look like a return to the drawing board.

In some ways it is. It is perhaps better viewed as an accretion of richness and variety of knowledge, an opportunity to learn from mistakes and experience, a series of lessons in the need to think design issues through in a political as well as a technical context, and an understanding that it is not good enough to have the right answer without a route map to get there with buy-in from those whose lives it will affect. The importance of learning those lessons is shown by the salutary reminder that Fijians of all communities have had to live with the results while the process of experimental learning has evolved.

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Stop–Go Democracy: The Peace Process in Northern Ireland Revisited

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‘Today is only the beginning, it is not the end’ (*Irish News* 11 April 1998)

This front-page headline the day after the Good Friday Agreement was reached was a prophetic warning about the difficulties that would lie ahead in implementing the negotiated deal.

Introduction

Political conflict and community sectarianism have plagued Northern Ireland’s society for several generations. The Good Friday Agreement (GFA) of 10 April 1998 was seen by many to be an end-point to this particular period of instability and to herald a new beginning for the region based on a carefully constructed range of institutions based on power sharing between the unionists and the nationalists, negotiated through inclusive consensus. This study seeks to examine the problems and difficulties that emerged after the GFA and will attempt to answer the questions What went wrong? and Why has this peace process experienced difficulties and setbacks during the implementation phase?

The central argument presented in this study is that the Northern Ireland example illustrates that negotiating a political settlement is often more straightforward than implementing it within deeply divided communities that have experienced violent conflict. The study will try to illustrate what problems have emerged in the attempts to implement the institutions of the GFA and explain the wider reasons behind these and why they have become such difficult sticking points in the peace process.

From Negotiation to Implementation

To understand the stop–go nature of the GFA it is essential to understand both the dynamics of the negotiations that led to the agreement and the specific terms of the agreement itself. While it is often seen as a negotiated settlement, the GFA can more

accurately be viewed as a framework for a settlement, setting out a number of institutions and relationships that could, over time, develop into an agreed settlement that would be capable of transcending political and cultural differences within Northern Ireland's deeply divided society. By viewing it as a framework for, rather than the achievement of, a settlement, it is easier to understand why it has been beset by so many implementation problems.

The GFA was the product of a protracted set of often fractious negotiations that were unique in terms of their inclusiveness and in the extent of third-party involvement. In terms of their structure, the multiparty negotiations that took place from 1997 until 1998 were ambitious in terms of the range of conflict parties involved, and in the roles of the British and Irish governments as well as the US Administration. Achieving *any* level of political agreement between both republican and loyalist sets of paramilitary groups as well as the main constitutional parties (with the exception of the Democratic Unionist Party, DUP) was no small feat in the context of the history of failed political dialogue of the past. The inclusive nature of the negotiations was a vital element in terms of building a constituency of support for whatever agreement was eventually reached. The importance of this was reflected by the actions of Mo Mowlam, then British secretary of state for Northern Ireland, who visited the Maze prison during the latter stages of the negotiations to 'sell' the basic GFA architecture to leading loyalist paramilitary prisoners. This was a serious political risk taken by one of the leading negotiators, undertaken because of the importance of attaining the agreement of paramilitary factions to the settlement. This focus on achieving inclusive support for the negotiated settlement is highlighted by Hampson (1996), among others, as being inextricably linked with the chances of successful implementation.

There were two other specific elements of the negotiations that have had a bearing upon subsequent difficulties in achieving its full implementation. The first concerns the fact that several key issues (mainly the precise conditions for weapons decommissioning and the future of policing) were avoided in the negotiations and the details were left outside the terms of the agreement. Second, in their latter stages, the negotiations were conducted in a pressurized atmosphere, designed to produce a result, which may have been better at engineering an outcome than at achieving an agreed settlement. It is also fair to say that the precise terms of paramilitary weapons decommissioning and the future structures of policing were left out of the GFA precisely because it was impossible to achieve agreement on them in 1998.

It was in this necessary ambiguity within the carefully balanced text of the GFA that the seeds of subsequent difficulties took root. Just what had been agreed by these negotiators on 10 April 1998? Despite the fact that a printed copy of the agreement was delivered to every home in Northern Ireland in advance of a referendum, to be held as a mechanism for determining popular support for the terms of the settlement, there was confusion among many nationalists and unionists over both its terms and its long-term political implications. This was not helped by the fact that several of the negotiators disagreed with one another about what the GFA amounted to and provided dramatically differing

narratives of its terms and conditions. ‘Inevitably, proGFA unionists and nationalists presented the Agreement to their supporters in very different terms. For unionists it entrenched the Union and was a disaster for republicans, while for republicans, it was a further step towards Irish unity’ (Dixon 2001: 271). Sinn Féin’s chief negotiator, Martin McGuinness, defended his party’s acceptance of the new institutions provided for by the GFA in the following statement: ‘I think the mood all over the island is that moving into the assembly to further our republican objectives towards our ultimate goal of a united Ireland is at this moment in time the sensible thing to do’ (BBC 10 May 1998). This comment reflected what many Irish nationalists regarded as an inescapable political reality, but was far from advancing their constitutional objectives in the sense of Irish national self-determination. In other words, the GFA was sold to Catholic nationalists by Sinn Féin as ‘jam today’ in terms of the civil rights agenda, with the promise of ‘jam tomorrow’ in terms of the goal of reuniting the island of Ireland politically. What McGuinness did not articulate so loudly was that he was prepared to participate in a British political institution and recognize the constitutional apparatus of the United Kingdom (UK) in the hope that this would evolve into a form of Irish unity in the future.

Conversely, the leader of the Ulster Unionist Party (UUP), David Trimble, claimed a rather different set of outcomes from the GFA in a speech on the 17 April 1998. ‘The new Agreement reached at Castle Buildings is a disaster for Sinn Féin/IRA [Irish Republican Army]. Violent republicanism has failed to “smash the Union”; in fact it has failed in all its stated objectives. Instead, Northern Ireland’s place within the United Kingdom has been secured’ (Trimble 17 April 1998).

One of the central explanations for the stop-go nature of the peace process from this point onwards is that there was never an agreement between the main parties either about the short-term modalities concerning the rate of weapons decommissioning and the link between this and Sinn Féin’s presence within the GFA’s institutions of governance, or about the longer-term implications of the GFA for Northern Ireland’s constitutional position between Britain and Ireland. This lack of clarity can be explained. The leaderships of Sinn Féin and the UUP came under sustained attack following their negotiation of the GFA on the basis that this was an unacceptable compromise. The UUP visibly fractured, with one of Trimble’s senior colleagues at the negotiations, Jeffrey Donaldson, walking out before the details of the agreement were announced. Donaldson, along with several other senior party figures, subsequently campaigned against the GFA for several years in an attempt to change UUP party policy. As Tonge (2003: 39) has pointed out, 11 special meetings of the party’s ruling Ulster Unionist Council (UUC) have been held since 1998, each one narrowly backing the policy of party leader David Trimble by an average of 56 per cent to 44 per cent, indicative of the divisions within the unionist community.

This succeeded only in destabilizing the party, weakening it vis-à-vis its DUP rivals and undermining the implementation of the institutions of the agreement. Jeffrey Donaldson subsequently defected from the UUP to the DUP in 2004. The effect of

unionist opposition to the GFA from within his party and from the DUP acted as a form of Chinese water torture on Trimble's leadership of the UUP and was fundamental to the implementation problems that beset the GFA.

On the other side of the political fence, the Sinn Féin leadership came under attack for supporting the GFA by radical republicans who disagreed with the above analysis of Martin McGuinness and viewed the agreement as anathema to traditional republican objectives. The most violent example of this opposition was provided on 15 August 1998 when the dissident republican group the Real IRA exploded a car bomb in Omagh which killed 29 people, including an unborn child.

The important point to draw from this is that both Sinn Féin and the UUP were driven to promote competing narratives of the GFA to justify their support of the settlement. These narratives differed fundamentally from each other in terms of what could be expected from the deal and what was expected from the different parties to the negotiations. Once again, this is not unnatural within the context of an intractable political conflict that is emerging out of violence. Given these circumstances it was highly unlikely that either unionists or nationalists would view the GFA (publicly at least) as a messy compromise that they could reluctantly accept, rather than the achievement of fundamental objectives that they could readily endorse.

The fact that the negotiators themselves were only giving the GFA two cheers rather than three was highlighted in their lacklustre campaigns in the referendum during May 1998. The parties campaigned separately rather than together (indicative of the fundamental divisions over their reading of the agreement); coherence and energy only entered the campaign when an Independent Yes Campaign was formed to coordinate the messages of the parties supporting the GFA with wider civil society initiatives. Even during the honeymoon period, therefore, with the ink on the GFA barely dry, enthusiasm for the settlement was ambivalent, even among its supposed advocates. As Dixon suggests, 'Although the Good Friday Agreement had been endorsed in the referendum by a majority of both Catholics and Protestants, they were each probably endorsing contrasting interpretations of the Agreement' (Dixon 2001: 274).

The subsequent problems in the implementation of the GFA therefore need to be seen against the background context of the negotiations, the fact that several important issues were avoided completely or were drafted ambiguously within the GFA, and the main political parties' constructed alternative narratives about what it meant for Northern Ireland's constitutional position.

It's Democracy, Jim, But Not As We Know It

While it is possible to cite disagreements between the central political actors as being chiefly responsible for the stop-go nature of the peace process, there is also a view that the implementation problems that beset the GFA were linked to the unique political architecture contained in the provisions for a new Assembly.

The GFA sought to establish a hybrid system of power sharing between unionist and nationalist political parties to encourage cooperation and consensus between them. The plan for the Assembly was based on a form of consociational democracy, predicated on the need for cross-community power sharing between nationalist and unionist parties to lock both main ethno-national blocs into a positive-sum relationship of interdependence. Consociational theory was developed by Arend Lijphart in response to the view that deeply divided societies are not inevitably condemned to violence, and that a significant role could be played by the character of political institutions in determining whether such tensions could be contained within the political system (Lijphart 1969). The GFA was based on the consociational logic that institutions should be built which primarily contain and manage societal divisions and that regulate existing sectarian tensions, rather than attempting (at the outset) to transcend or overcome them. This system of governance was based on the prioritization of group rights and identities over individual ones, the premise being that checks and balances in the distribution and exercise of power had to be woven into the fabric of the institutions, to reflect and obviate the central political cleavage between Ulster unionism and Irish nationalism.

This produced a form of sectarian mathematics within the new political system where, to ensure cross-community support, either by parallel consent or by weighted majority, members of the Legislative Assembly (MLAs) were required to designate themselves as 'unionist', 'nationalist' or 'other'. This produced the criticism (Taylor 2001; Wilford and Wilson 2003) that the institutions that evolved out of the GFA contained the seeds of their own destruction by institutionalizing sectarian divisions within the fabric of the Assembly, rather than transcending or overcoming them. 'The fundamental problem with consociationalism is that it rests on precisely the division it is supposed to solve. It assumes that identities are primordial and exclusive, rather than malleable and relational: high fences, in other words, make good neighbours' (Wilford and Wilson 2003: 11). From this perspective, therefore, the implementation problems suffered by the GFA were rooted in the undemocratic and sectarian nature of the institutions that were set up as part of the political settlement. Critics of this perspective (O'Leary and McGarry 1996; Horowitz 2001) have, however, argued that the conflict within Northern Ireland required consociational structures of this type to reflect the dynamic realities of that conflict and protect the nationalist minority community from domination by the majority (which was one of the fundamental causes of the conflict after 1969), and represented the only viable institutional structures capable of containing the various tensions between the unionist and nationalist blocs. The consociational nature of the GFA was an inevitable consequence of the divisions among those who negotiated it, given that one group defined itself as British and wished to remain constitutionally within the UK, while the other main bloc viewed itself as Irish, and wanted to break with the UK.

If these were the starting points of political negotiation, then it is hardly surprising that the institutional structures of the GFA attempted to contain vastly differing goals through a consociational mechanism. As McGarry puts it, 'what is needed, therefore,

are political institutions, like those in the Agreement, that cater to the bi-national nature of Northern Ireland's society' (McGarry 2001a: 23).

Todd has pointed out that the consociational structure of the new political institutions was designed to evolve over time rather than act as a barrier to transformation taking place in the conflict relationships between nationalists and unionists; 'the consociational elements exist in the context of an agreement that was conceived holistically, not just as a stable set of institutions but as institutions that would themselves develop and transform in the course of their functioning' (Todd 2005: 101). Those who believe that this consociational structure institutionalizes sectarianism suggest that this lies at the heart of the reasons why the GFA has not been effectively implemented. 'It is neither obvious nor logical that ethno-nationalism can be cured by prescribing more of it through constitutional engineering. There is no *prima facie* case to suppose that this will occur' (Taylor 2001: 38–39). For those who see consociational theory as an inappropriate basis for political institutions to mediate the ethno-national divisions in Northern Ireland, the stop-go nature of the peace process since 1998 was unsurprising. How can we be surprised that sectarian tensions and ethno-national distrust have undermined the implementation of the GFA when that very logic has been woven into the sinews of the political institutions that emerged out of it in the first place? Conversely, for those who regard the consociational nature of the GFA as being an appropriate way of recognizing existing realities and regulating entrenched ethno-national conflict, the problems of implementing the GFA lie outside the technicalities of the institutions themselves.

Northern Ireland's Groundhog Day

Even within the context of Northern Ireland's fractious political history, the implementation of the GFA was slow, tortuous and often tedious, with claim and counter-claim from the unionist and nationalist sides to the effect that one group or the other was reneging on commitments made in the text of the GFA. The agreement itself slowly bled to death by a thousand cuts, as the various political parties and other factions argued around the corpse.

The first difficult issues context of the precise circumstances in which Sinn Féin would enter the new Executive, which would be drawn from the Northern Ireland Assembly on the basis of party strength, and how and when paramilitary weapons would be disposed of. Fundamentally this problem is at the heart of the reasons why the GFA has not been implemented successfully: the main negotiators, and their respective constituencies, did not trust one another to keep their part of the bargain. As a result, the wording of the GFA on decommissioning was picked at like an infected scab, with allegations of bad faith hurled backwards and forwards from Sinn Féin and the UUP in particular.

The critical paragraph here within the GFA reads as follows:

All participants accordingly reaffirm their commitment to the total disarmament of all paramilitary organisations. They also confirm their intention to continue

to work constructively and in good faith with the Independent Commission [on Decommissioning] and to use any influence they may have, to achieve the decommissioning of all paramilitary arms within two years following endorsement in referendums North and South of the agreement and in the context of the implementation of the overall settlement' (*The Agreement: Agreement Reached in Multi-Party Negotiations*: 20).

It was this tortured paragraph more than any other which holds the key to the implementation problems experienced by the GFA. The main players in this drama did not trust one another, despite having negotiated a settlement. The wording of this paragraph was vague in places and open to interpretation, and, crucially, the paramilitary groups themselves were not signatories to the GFA. Thus, while the UUP claimed that Sinn Féin was not working in 'good faith' with the Independent Commission on Decommissioning, or was not using 'any influence they may have' with the IRA, Sinn Féin would respond by claiming that it was doing so and, moreover, that the UUP's lack of commitment to the overall structures of the GFA was making it impossible for Sinn Féin to argue the case for weapons decommissioning. This was a circular zero-sum argument driven by two negative yet omnipresent features of the post-GFA period—first, a lack of trust between the two ethno-national blocs (chiefly Sinn Féin and the UUP) and, second, internal pressure within these blocs (again featuring Sinn Féin and the UUP) over conceding ground to the other side. For Sinn Féin the central issue concerned the decommissioning of IRA weapons within the context of a total disarmament that did not single republicans out for special treatment and that linked paramilitary weapons with the legally held arms of the Royal Ulster Constabulary (RUC)/Police Service of Northern Ireland (PSNI) and the British Army.

The consistent position of Sinn Féin from 1998 onwards was that it wished to see *all* weapons taken out of Irish politics and that the constant prevarication of the UUP over implementing the GFA in full was making it impossible for Sinn Féin to achieve its end of the bargain. Needless to say, unionists in general and the UUP in particular were unconvinced, and believed that Sinn Féin was merely paying lip service to the decommissioning issue while pocketing 'gains' related to the implementation of other aspects of the GFA, chiefly its presence in the Executive, the creation of the North–South institutions and the implementation of the Patten Report on policing which saw the RUC become the PSNI.

The political consequences of this disagreement over weapons decommissioning were an intensification of internal divisions within the UUP and constant instability in the peace process more generally, as both David Trimble and the British Government precipitated repeated suspensions of the GFA institutions. In fact, despite the media attention that has been given to the issue of IRA weapons decommissioning, there is no specific connection between this and Sinn Féin's presence in the structures of government contained within the GFA. This linkage only occurs if you believe that the IRA and Sinn Féin are one and the same organization, which of course unionists for the most part do believe and Sinn Féin adamantly rejects. Technically, of course,

neither the IRA nor the Ulster Freedom Fighters on the loyalist side were signatories to the GFA, and any movement on weapons decommissioning was defined by them as a voluntary act of good faith rather than a requirement of the GFA.

This confusion contained within the carefully worded paragraphs of the GFA over who promised what to whom (and by when) was magnified by particular third-party involvement during the last-minute negotiations on the deal in April 1998. In an effort to persuade Trimble to gamble with internal dissent within his party over the precise terms of weapons decommissioning, British Prime Minister Tony Blair wrote to the UUP leader at the 11th hour with a series of pledges and to insist that *for him* weapons decommissioning was a requirement that had to be adhered to by the paramilitary factions.¹ Trimble placed much faith in these promises from the British prime minister but could not avoid the fact that this was the personal position of the prime minister rather than part of the terms of the GFA itself, and thus held no sway with either Sinn Féin or the various sets of paramilitary groups.

The political structures set up as part of the GFA have been suspended on four separate occasions during this period, while the four elections that have taken place have resulted in a radicalization of the electorate at the expense of the moderate centre. This has reflected unionist disillusionment with a divided UUP and the peace process more generally, and growing support within the nationalist community for Sinn Féin from an electorate incensed by the unionist reluctance to participate fully in the structures of government agreed in the GFA, aided and abetted by a vacillating British Government.

More than eight years after the GFA was signed, the blunt fact is that, despite the 71 per cent vote in favour of it in the Northern Ireland referendum in 1998, it has failed at the implementation stage. This failure was caused by insufficient effort being put into combating the mistrust between the UUP and Sinn Féin and inadequate clarity over the precise terms of the agreement itself. The UUP had split down the middle following the GFA negotiations in 1998 and has remained divided ever since, with several of its leading members being openly opposed to party policy and lobbying against it internally, as well as during election campaigns. Symbolically, a group of these dissidents resigned from the UUP when they failed to change party policy over the GFA and joined Ian Paisley's anti-agreement DUP. This internal meltdown within the UUP, precipitated by the GFA, has had predictable impacts in terms of the party's behaviour and its electoral fortunes. On the one hand, desperate to achieve some movement over IRA decommissioning and anxious to satisfy critics within the party, the UUP has caused the GFA institutions to be suspended on several occasions in a bid to wrestle concessions out of Sinn Féin and preserve what was left of party unity. This only resulted in further political crisis and inertia, as Sinn Féin blamed the UUP for a lack of commitment to the implementation of the political settlement. The other impact of this ambivalent attitude towards the GFA was electoral decline. While half of the UUP seemed to be in support of the agreement, the other half appeared to be opposed to it. The DUP took a much more coherent line of opposition and gradually overtook the UUP as the largest

unionist party in terms of both number of seats and share of the popular vote. In the 2003 Assembly elections, the DUP won 30 seats and 25 per cent of the vote, compared the UUP's 27 seats and 22 per cent of the vote.

This reversal of fortune for the UUP was significant for two reasons. First, it indicated that its divisions over the GFA had damaged its electoral support and that a substantial number of its supporters were opposed to implementation of the GFA, at least under the existing conditions. Second, the political architecture of the GFA meant that, as the largest party in the new Assembly, the anti-agreement DUP had the right to nominate a candidate from its own party to become the next first minister. Given the fact that the other major story of the 2003 Assembly election was the strengthening of Sinn Féin relative to the Social Democratic Labour Party (SDLP), the prospects for reviving the flagging peace process appeared bleak. As Sinn Féin had become the largest nationalist party it had the right to nominate its candidate for deputy first minister, holding out the unlikely prospect of a DUP and Sinn Féin team as first and deputy first ministers of a new Assembly and Executive.

While repeated efforts have been made to resurrect the GFA, the political structures that were central to it (most notably a functioning Assembly and Executive) have been suspended since 14 October 2002. Since this date the structures of the GFA have only had a nominal existence and Northern Ireland has been governed by direct rule from Westminster. While a new round of talks took place from September to December 2004 in an attempt to revive the GFA, a conclusive deal remains elusive. Although some progress was made between the DUP and Sinn Féin during this phase of negotiations, the initiative ended in failure. Once again, the central reason for this failure related to a lack of trust between the parties to the conflict. While movement on weapons decommissioning by the IRA seemed possible, in return for a more robust set of institutions that could not be so easily suspended, the DUP demanded photographic evidence of the decommissioning process before it was willing to enter the Executive alongside Sinn Féin. The IRA was reluctant to grant this and by December 2004 the initiative had collapsed in mutual recriminations, sparked off by DUP leader Ian Paisley's comment that the IRA should 'wear sackcloth and ashes' and demonstrate 'repentance' for its past actions.

This illustrated once again that there had been little transformation in the attitudes of the conflict parties towards one another since the GFA was reached in 1998; old enmities had been preserved (and in some cases had been intensified), with many unionists viewing the IRA (and by extension Sinn Féin) as unreconstructed terrorists, while republicans viewed the unionist community as reluctant partners in the peace process who were intent on undermining it.

Events that Damaged the Peace Process

Aside from the on-again-off-again nature of the political structures, a number of specific events have served to confirm communal suspicions since 1998, further heightening

mistrust, generating mutual recriminations and fuelling the collapse of the peace process. On 4 October 2002, the PSNI raided Sinn Féin's offices at Stormont as part of a police investigation into alleged intelligence-gathering operations by the IRA. This was a highly public event which embarrassed Sinn Féin and resulted in the UUP forcing the British Government to suspend devolved government on 14 October. This raid and the subsequent arrest of a leading Sinn Féin member for 'possessing documents likely to be of use to terrorists' allowed unionists to make a connection between Sinn Féin and the IRA, as well as fuelling the unionist perception that republicans were not committed to totally democratic methods. The fact that this public raid on Sinn Féin was not accompanied by a significant amount of evidence, or by a prosecution nearly three years later, has led many nationalists to believe that this was a cynical attempt to blacken the reputation of Sinn Féin and undermine the peace process and the institutions of the GFA. Notwithstanding the dearth of evidence, the PSNI raid on Sinn Féin's Stormont offices served to further strengthen the unionist view that republicans were not committed to exclusively peaceful methods and could not therefore be trusted in the devolved structures associated with the GFA.

Unionist trust in Sinn Féin's bona fides continued at a nadir at the end of 2004 following a massive 26 million GBP robbery of the Northern Bank in Belfast on 20 December. Responsibility for the largest bank raid in UK history was laid squarely at the door of the IRA by the PSNI, and by leading politicians in Britain and Ireland, with the inference that if the IRA had carried it out, then the leadership of Sinn Féin must also have been aware of it. Hugh Orde, chief constable of the PSNI, was quick to lay the blame for the robbery at the door of the IRA. 'In my opinion the Provisional IRA were responsible for this crime and all main lines of inquiry currently undertaken are in that direction' (BBC 7 January 2005). Despite an IRA statement denying any involvement in the robbery, few unionists were inclined to believe them, not least because Irish Prime Minister Bertie Ahern seemed happy to take the PSNI chief constable at his word: 'An operation of this magnitude . . . has obviously been planned at a stage when I was in negotiations with those that would know the leadership of the Provisional movement' (BBC 7 January 2005). While, significantly, no evidence has yet been produced by the PSNI that links the IRA with this robbery, perceptions are all-important, and Sinn Féin has been damaged by such allegations, as has the peace process more generally.

The Northern Bank robbery was followed by the murder of Robert McCartney, allegedly by members of the IRA, in the Short Strand area of Belfast on 30 January 2005. McCartney's murder heaped further pressure on the IRA and Sinn Féin over allegations that republicans had attempted to cover up the murder and had pressurized witnesses not to come forward to the police with information. McCartney's sisters led a public campaign to assist the PSNI investigation that involved a public rally in Belfast, worldwide media appearances and an invitation to the US White House to meet US Senator Edward Kennedy and President George W. Bush on St Patrick's Day (17 March 2005). These meetings provided disastrous public relations for Sinn Féin, as Gerry Adams was not invited to meet either Kennedy or Bush, and the contrasting treatment of Adams and the McCartney sisters was a deliberate and highly symbolic

slap in the face for the republican movement. This event cast the IRA (and its defenders) in the role of community parasites rather than community defenders, and such criticism coming from within its own community was a bruising experience for the Sinn Féin leadership. While the IRA issued a statement threatening to shoot those responsible for McCartney's murder, this was rejected by the family. Given that the IRA was supposed to be on a ceasefire, and committed to the peace process, this offer to murder its own 'volunteers' responsible for the McCartney murder was an alarming development to many. British Secretary of State Paul Murphy declared that 'there is no place for those who signed up to the Good Friday Agreement for the sort of arbitrary justice and murder that is being suggested here' (BBC 9 March 2005). The DUP leader, Ian Paisley, called for the leaders of Sinn Féin to be arrested following the IRA statement. 'The offer to shoot those responsible for the murder of Robert McCartney confirms again that terrorism is the only stock and trade of Sinn Féin/IRA' (BBC 9 March 2005).

While Sinn Féin denied any knowledge of this murder or any attempt by republicans to cover up the evidence or suppress statements to the police, few people within the unionist community were inclined to believe it.

These events were emblematic of a more endemic malaise in the peace process, namely the total lack of trust between the main ethno-national blocs, both at the community and at the elite political levels. The architecture of the GFA played some part in this, in that its institutions and procedures (e.g. parallel consent) tended to recognize and nourish ethno-national differences rather than transcending them. The British Government also has some responsibility here, as its repeated interventions to suspend the structures of the GFA acted as a safety net for nervous or recalcitrant unionists, and provided no sense of collective responsibility that went beyond the zero-sum ethnic equations. In short, it has allowed politicians (and the wider public) in Northern Ireland to squabble like children in the knowledge that the adults will intervene when the fighting gets too serious and restore order. 'The existence of this failsafe device [suspension of devolved powers] has perhaps not focused the minds of politicians in Northern Ireland hard enough on making the institutions work within the existing framework and has allowed the creation of crises in which one could prove that one remained a true believer in the cause, Republican or Unionist' (Wolff 2003: 18). It has also been suggested that the personalities of British Prime Minister Tony Blair and Irish Taoiseach Bertie Ahearn, and their habits of pragmatic deal-making, were more suited to the negotiations that led to the GFA than to the difficulties surrounding its implementation. 'The governments have tended to act as power-brokers, swaying to different pressures, rather than as upholders of an agreement . . . These skills and habits allowed the leaders to broker agreement in the first place. They were, however, less suited to the process of implementation, which required more formal respect for the principles of the agreement. Instead, government actions encouraged power-play within the institutions of the agreement' (Todd 2005: 105).

The GFA has failed to be implemented because there was never a clear agreement about what it amounted to in the first place or how its modalities would progress, and no one

is sufficiently afraid of what will happen if and when it fails. Muddling through and the 'cold peace' of direct rule from London, closely linked with British–Irish cooperation and internal reforms within Northern Ireland, has proved to be most people's least worst option. However, the troubled implementation of the GFA does not mean that political progress has not taken place in Northern Ireland since 1998.

Conclusion

While the stop–go nature of the peace process has been frustrating for many of its supporters, the picture is not completely bleak, despite the inertia associated with the establishment of the institutions associated with the agreement. Behind the headlines of the GFA's various implementation problems, significant changes have nonetheless been taking place in Northern Ireland since 1998 that hold out the possibility of progress in the future. Crucially among these, all the major political parties, including Sinn Féin, now accept that Northern Ireland will remain within the UK for as long as a majority of the people living in the region wish to do so, and the main paramilitary factions show no desire to return to violence in pursuit of their political objectives. By endorsing the terms of the GFA and enthusiastically playing their part in the political institutions derived from it, Sinn Féin has de facto made Northern Ireland a 'successful political entity'. Pro-GFA unionists, meanwhile, have recognized that Northern Ireland is not *exactly* the same as other regions within the UK, and even the DUP are not seriously quarrelling with either power sharing or a North–South dimension in principle.² While Sinn Féin has recognized Northern Ireland as a political reality to be reformed/terminated by democratic means, unionists (even those critical of the GFA) have accepted the principle of devolved government based on power sharing with an Irish dimension. In other words, despite the implementation problems plaguing the GFA, its basic political geometry has been accepted by the vast majority of people living there.

While ethno-national divisions remain, and have in some cases have become entrenched, the divisions between unionists and nationalists have narrowed significantly, and revolve around emotional issues such as mistrust and bitterness rather than the political mechanics of the GFA itself, or indeed disagreements over the constitutional sovereignty of Northern Ireland. While the success of the DUP and Sinn Féin at the 2003 Assembly elections seems to preclude progress, it does provide inter-ethnic stability for future agreements, as it is unlikely that either the SDLP or the UUP would be willing (or able) to undermine any agreement that was reached. There are signs that beyond the rhetoric both the DUP and Sinn Féin are preparing their parties and their wider constituencies of support to enter government together. At the 2005 Sinn Féin Ard Fheis (annual convention), for example, there was evidence that the party was laying the groundwork for Sinn Féin's entry onto the Policing Board of the PSNI, with more traditional republican motions criticizing British 'crown forces' being heavily defeated. Similarly, the DUP now regularly participates in television debates that include members of Sinn Féin (which it would have boycotted in the past) and Ian Paisley himself visited Dublin for meetings with the Irish Government in 2004. So there are signs that the main protagonists have been tiptoeing slowly towards one another despite the ongoing inertia with the implementation of the GFA.

Nevertheless, as a framework for political settlement, the GFA has so far failed to impact upon the grass-roots communities in Northern Ireland, especially in urban interface areas where community conflict is most acutely experienced. As Todd has argued, the institutions of the GFA became assimilated into old patterns of interaction, where the revolutionary innovations of the agreement were not matched by similarly radical changes in the wider political context within which the GFA and its institutions tried to operate (Todd 2005: 92). The GFA, for instance, had very little to say about community sectarianism, focusing more upon elite-level political institutions, and as a consequence it has lacked relevance at the grass-roots level. This is illustrated by the fact that, despite the existence of the GFA and the long-standing paramilitary ceasefires, the number of non-fatal shootings rose from 216 in 1998 to 330 in 2001 (Wolff 2003: 15) while in 2000 there were 262 punishment shootings and beatings (Tonge 2002: 212).

The key difference between these statistics on violence and those before 1998 is that after 1998 most violence was directed inwards by paramilitary groups and generated by intra-ethnic rivalries, rather than directed outwards across the ethno-national divide. In this sense, the political conflict within Northern Ireland as previously defined (zero-sum ethno-national dispute between two polarized blocs) is in its death throes, but violent conflict remains and will do so for the foreseeable future. This is both predictable and natural given the past 40 years of low-intensity warfare and sectarianism within the region. It is within this context that the peace process in Northern Ireland should be assessed, where moving out of conflict is seen as a complex, difficult and long-term process, where setback rather than breakthrough is the norm. Given this set of more realistic performance indicators, the stop-go nature of the Northern Ireland peace process begins to look less disappointing and perhaps provides a more realizable way forward for the future.

Notes

1. During a pre-referendum speech and photo-opportunity on 20 May 1998, Tony Blair unveiled the following handwritten pledges to the people of Northern Ireland, intended to sway nervous unionists to support the terms of the agreement. 'I pledge to the people of Northern Ireland:
 - No change in the status of Northern Ireland without the express consent of the people of Northern Ireland.
 - Power to take decisions returned to a Northern Ireland Assembly, with accountable North/South co-operation.
 - Fairness and equality guaranteed for all.
 - Those who use or threaten violence excluded from the Government of Northern Ireland.
 - Prisoners kept in unless violence is given up for good'.
2. The DUP's manifesto for the 2005 Westminster general election, entitled 'Leadership That's Working', focused on what it was demanding from Sinn Féin before devolution is restored to Northern Ireland, but did not reject the underlying political architecture embodied within the GFA (<<http://www.dup.org.uk/>>).

Appendix

Chronology of Events Since 1998

10 Apr. 1998	Good Friday Agreement is concluded and published
10 May 1998	At a special conference in Dublin, Sinn Féin votes to change its constitution, ending its abstention policy and allowing its candidates to take seats in a new Northern Ireland Assembly
22 May 1998	Referendums on the Agreement in Northern Ireland and the Republic of Ireland. In this first all-Ireland poll since 1918, 71% of people vote for the GFA in Northern Ireland with 28% voting against it. The turnout is 81%. In the Irish Republic, 94% vote in favour with only 5% voting against it and a turnout of 56% of the electorate
25 June 1998	Northern Ireland Assembly elections are held, to a new 108-member Assembly
1 July 1998	First meeting of the 'Shadow' Assembly and election of David Trimble as first minister-designate and Seamus Mallon as deputy first minister-designate. This is referred to as the shadow assembly as powers have not yet been devolved to it from Westminster
15 Aug. 1998	29 people are killed following a bomb explosion in Omagh. The bomb was planted by the Real IRA and was the single worst incident in 30 years of conflict in Northern Ireland
29 Nov. 1999	The Northern Ireland Assembly meets, triggering the d'Hondt mechanism and the nomination of 10 ministers to the Northern Ireland Executive
2 Dec. 1999	Devolved powers formally pass from Westminster to Belfast and the new Executive meets for the first time
11 Feb. 2000	After 72 days, the Assembly and Executive are suspended by British Secretary of State Peter Mandelson due to lack of detailed timetable from the IRA on weapons decommissioning
6 May 2000	The IRA releases a statement saying that it is willing to begin a process that would 'completely and verifiably' put its weapons beyond use
27 May 2000	UUP leader and First Minister David Trimble secures his party's support to re-enter power-sharing Assembly and Executive with Sinn Féin despite the absence of IRA weapons decommissioning
30 May 2000	The devolved powers suspended in February are restored to Northern Ireland
23 Oct. 2001	The IRA begins weapons decommissioning, in its own words, 'in order to save the peace process', in an act verified by the Independent Commission on Decommissioning as 'significant'
4 Nov. 2001	New Police Service of Northern Ireland (PSNI) formally comes into being, replacing the Royal Ulster Constabulary (RUC)
4 Oct. 2002	Sinn Féin offices at Stormont are raided by the PSNI as part of alleged investigation into an IRA intelligence-gathering operation. The UUP subsequently threatens to walk away from the Assembly unless action is taken by the British Government
14 Oct. 2002	British Secretary of State John Reid announces the suspension of devolved government and the return of direct rule

1 May 2003	British Prime Minister Tony Blair announces the postponement of new elections to the Northern Ireland Assembly because of a lack of clarity over the IRA position on decommissioning
26 Nov. 2003	The delayed Assembly election finally takes place. The DUP and Sinn Fein emerge as the largest parties within unionism and nationalism
3 Feb. 2004	A review of the working of the Good Friday Agreement begins at Stormont, involving all the major political parties
18 Sep. 2004	Three days of intensive negotiations at Leeds Castle end with the parties failing to secure an agreement over the restoration of devolved government
4 Oct. 2004	DUP leader Ian Paisley has a landmark meeting in Dublin with the Irish Taoiseach, Bertie Ahern. This is the first time the DUP has officially met an Irish prime minister in Dublin
29 Nov. 2004	Sinn Fein President Gerry Adams holds first-ever meeting with Chief Constable of the PSNI Hugh Orde
20 Dec. 2004	The largest bank raid in UK history takes place at the Northern Bank in Belfast where over 26 million GBP is stolen. The PSNI, as well as senior members of the Irish Government, place responsibility for the robbery on the IRA, although the IRA denies any involvement. Despite such allegations, no charges have yet been brought against any members of the IRA in relation to the robbery
30 Jan. 2005	Robert McCartney, a Catholic from the Short Strand area of Belfast, is murdered in a bar, allegedly by members of the IRA. This murder and its alleged cover-up by republican sympathizers cause huge embarrassment for Sinn Fein
17 Mar. 2005	Senator Edward Kennedy and President George Bush meet Robert McCartney's sisters in Washington and refuse to meet Gerry Adams, who is also in Washington as part of the St Patrick's Day celebrations
5 May 2005	The date set for the Westminster general election

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Electoral System Design and Conflict Mitigation: The Case of Lesotho

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While the initial transition to multiparty democratic governance in Southern Africa in general, and Lesotho in particular, seems to have been relatively easy and straightforward, its institutionalization and consolidation seem to pose enormous difficulties. It was relatively easy for the small mountain kingdom of Lesotho to shake off military rule and institutionalize a multiparty democracy in 1993, but conflict—much of it election-related—followed.

The trajectory of governance in Lesotho since it achieved independence in 1966 has been propelled by different kinds of logic which correspond to six successive periods.

First, in the immediate aftermath of independence (1966–70), Lesotho experienced what could aptly be termed an embryonic democracy logic, characterized by infant democratic institutions and a rather less conducive culture of political intolerance. The second phase of Lesotho's political development can be called the era of one-party authoritarianism, which spanned the years 1970–86, and this period was marked mainly by a rather unsophisticated Machiavellian politics of repression combined with accommodation during the reign of the Basotho National Party (BNP). The third phase was the military authoritarian rule of the years 1986–9, when political parties were banned by law and the country experienced the most horrendous human rights abuses in its political history. To all intents and purposes, this was the climax of undemocratic rule in the country. The fourth phase was the re-institutionalization of multiparty democracy following the 'graceful' withdrawal of the military from state power and power politics between 1993 and 1998. Lesotho's young democracy now became a turbulent and conflict-ridden political experiment, mainly because of three factors: a power struggle among the political elite (contestation over state power); a struggle over meagre resources, access to which is facilitated by control of the state machinery (resource conflict); and the personalization, rather than institutionalization, of the political process (the personality cult syndrome).

The fifth phase, spanning the years 1998–2002, is that of a fragile and enfeebled democracy. This era was different from the political instability of the period 1993–8 in that not only did Lesotho manage to scale down considerably the political culture of violent conflict, as seen in 1998, but it also made considerable strides in nurturing and consolidating its democracy. The sixth phase is that of a relatively stable democracy following prudent electoral and constitutional engineering, which culminated in the electoral reforms of 2002 and the ongoing parliamentary reforms.

After many years of turbulence and political instability, Lesotho is now seeing a period of relatively stable democracy following prudent electoral and constitutional engineering which culminated in the electoral reforms of 2002 and the ongoing parliamentary reforms. Among the most important milestones of the reform programme are (a) the peaceful resolution and constructive management of the former violent conflict; (b) the successful negotiation process, inclusive of all key stakeholders, which facilitated consensus on major agreements and was mediated by South Africa; (c) the establishment of an Interim Political Authority (IPA) which was able to bridge the wide political divide between the ruling party and the opposition parties in the aftermath of the 1998 conflict; and (d) the widely acclaimed successful electoral reform process which witnessed the replacement of the British-style First Past The Post (FPTP) electoral model with a new Mixed Member Proportional (MMP) model for the 2002 general election. This is the main focus of this chapter—how Lesotho’s electoral system design was useful in mitigating violent conflict and instability and what lessons could be learnt from that experience for democracy building in other post-conflict societies.

This study is organized as follows. The next section sets the stage by sketching out Lesotho’s transition trajectory over the years and the challenges that still confront the country if it is to achieve a stable democracy. This is followed by a discussion of electoral politics in Lesotho, highlighting the entrenchment of the political culture of violent conflict and instability that has always bedevilled the country’s democracy project since independence; this then leads to a discussion of the electoral system design that started in earnest in 1999 and was aimed at, *inter alia*, redressing the incidence of violent conflict and political instability. Finally, some lessons for other post-conflict societies are drawn.

A Democratic Transition Without Consolidation

Lesotho today has transformed itself from an enfeebled and fragile democracy to a relatively stable one. In the immediate aftermath of independence, up to 1970, political development in the country was marked by what can be termed an embryonic democracy with the new government constituted by the BNP following the highly contested pre-independence election of 1965. Embryonic as it was, Lesotho’s young democracy did not experience any major political turbulence and there were all the signs that a democratic culture was in the making. Thus, there was enormous optimism among observers of Lesotho’s political process that independence and its immediate aftermath presented a golden opportunity to build firm foundations of democratic governance premised upon

a Westminster-style constitution inherited from the British colonial administration. This optimism was further reinforced by the positive developments of the first five years of independence, which were generally characterized by legitimate constitutional rule, political stability, the rule of law and political tolerance.

However, the positive political developments of the first five years of independence were reversed by what can best be termed the era of *de facto* one-party rule, spanning the years 1970–86. Lesotho held its first post-independence election in January 1970, which to all intents and purposes became an embarrassing political fiasco. Fearing political defeat by a fairly strong and well-organized opposition—the Basutoland Congress Party (BCP)—the ruling BNP disrupted the election process mid-stream and declared the whole process null and void. The official results were never publicly announced and published, although anecdotal evidence suggests that there would have been a landslide victory for the BCP. The ruling BNP entrenched a one-party rule predicated upon a politics of simultaneous accommodation and repression. It is certainly to this era of *de facto* one-party rule that the roots of Lesotho's major political problems can best be traced back, for this heralded the beginning of various types of violent conflict that became the hallmark of its instability (see Weisfelder 1979).

De facto one-party rule was followed by the military dictatorship between 1986 and 1993. The political culture of military rule has never been a feature of the political systems of Southern Africa, and it is interesting to note that of the countries in the region only Lesotho has experienced this extreme form of authoritarian governance. The same security establishment upon which the BNP based its one-party iron rule turned against the same party, dislodging it from power and seizing power on its own behalf. Needless to say, this situation further entrenched authoritarian governance and moved Lesotho further and further away from democratic governance. The worst forms of human rights abuses in Lesotho were experienced during years from 1970 to 1993. Interestingly, too, the era of military dictatorship was the period that saw the mushrooming of vibrant civil society organizations in Lesotho. Although they were rather weak, fragmented, relatively disorganized, and unable to mount any meaningful political lobbying or advocacy for democratic governance and respect for human rights, civil society organizations played an important role in contributing to Lesotho's historic return to multiparty democracy in 1993 thanks to the overall coordination of the Lesotho Council of Non-Governmental Organisations (LCN).

The military relinquished power and withdrew back to barracks in the early 1990s. This ushered in the turbulence and conflict that were to be a feature of the political system between 1993 and 1998. It was turbulent because, although the transition to democracy had been achieved, various forms of conflict between and within key institutions had generated so much instability that the very consolidation of democracy was severely threatened. Even so, this was democratic governance, and there are encouraging signs that it is likely to be nurtured and consolidated in future.

The fifth epoch of Lesotho's political development, between 1998 and 2002, was that of fragile and enfeebled democratic governance. Major violent conflict was considerably scaled down after 1998, some political tension, but mistrust and a veiled political intolerance persisted and posed serious threats to the building of democracy.

The sixth and current epoch of the democratic transition in Lesotho—since 2002—is marked by a relatively stable and inclusive democracy. The most widely acclaimed success of the current governance regime in Lesotho is surely the recent electoral reform process from which a number of post-conflict African states could learn important lessons. Given that much of the election-related conflicts have (at least indirectly) been associated with the British-style FPTP electoral system, the government and the IPA agreed that the electoral model should be changed to a new system—MMP. This new system was put to the test during the 2002 general election and observers of Lesotho's political scene are agreed that it has delivered a desirable outcome for Lesotho's democracy, judging, for instance, by the broadly representative nature of the new National Assembly (Elkilt 2002; Matlosa 2003; Makoa 2004).

Be that as it may, the electoral system alone is not a panacea for Lesotho's many and varied political woes. Much more still needs to be done, especially in terms of the institutionalization of democratic governance. The main challenge revolves around the extent to which violent conflict (often emanating from or exacerbated by electoral contestation) is managed in a constructive manner. The next section highlights how the conflicts related to electoral politics have generated profound political instability in the country and how part of the imperative for electoral system reform or redesign was in part triggered by this conflict and political instability.

Electoral Politics in Lesotho: An Entrenched Culture of Conflict and Instability

Independence for Lesotho was preceded by two crucial events (a) the 1960 district council elections and (b) the 1965 National Assembly election. The populist BCP won the district council elections overwhelmingly, thus consolidating its mass support and popularity. At the time, in the light of this victory it was generally thought that the BCP would become the first party to govern post-independence Lesotho, although within conservative circles some parties (grudgingly) harboured the belief that the conservative BNP might surprise its rivals in the coming general election (Matlosa 2002). To all intents and purposes, the royalist Marematlou Freedom Party (MFP), which had just suffered a split, was not considered a critical force in the race. In the event, the BNP won the 1965 general election by a razor-thin majority, much to the chagrin of the BCP and to the dismay of many observers (Weisfelder 1979). Table 1 shows the outcome of the 1965 election.

Table 1: The Results of the General Election for the Lesotho National Assembly, 1965

Contestants	No. of Votes	% of Votes	No. of Seats Won
BNP	108,162	41.6	31
BCP	103,050	39.7	25
Marematlou Freedom Party (MFP)	42,837	16.5	4
Marema-Tlou Party (MTP)	5,697	2.2	0
Independents	79	0.03	0
Total	259,825	100	60

Source: Macartney, W., 'The Lesotho General Election of 1970', *Government and Opposition*, 8/4 (1973).

Like all other subsequent elections up to and including that of 1998, the 1965 election was conducted on the basis of the Westminster-style single-member district plurality/majority system bequeathed to Lesotho by the British colonial power. The election process was very peaceful and no violent conflicts were reported. The electorate exercised its right to vote in a climate marked by peace and tranquility. However, although the general administration of the electoral process did not encounter serious hiccups, the outcome was a minority government, for the BNP had won only 42 per cent of the total valid votes while the BCP, the MFP, the Marema-Tlou Party (MTP) and independent candidates taken together had secured a total of 58 per cent of the votes. The BCP felt cheated by the electoral system while the MFP and the MTP felt excluded. The opposition parties contested the outcome, alleging that the BNP had rigged the process with the tacit collaboration of the British colonial administration. This was followed by violent conflicts which not only cost lives but also tarnished the image of the monarchy. Increasingly, the relationship between the king and the BNP government deteriorated.

Aware of the narrowness of its victory of 1965, the BNP did not relish the prospect of another election in 1970 (the constitution provided for elections every five years).

The election took place in January of 1970 and a fierce contest was expected between the BNP and the BCP. Unsure of its prospects of retaining power and aware of the exclusionary tendency of the FPTP electoral system, the BNP put in place contingency plans for the assumption of power by undemocratic means. As the election campaign progressed, the BNP became convinced that it was losing and would be displaced by the BCP. It then acted swiftly to stem the tide of history. Administratively, the election was a resounding success, contrary to widely voiced fears. The state-run Radio Lesotho, the security establishment and independent newspapers announced periodically that all was calm and peaceful (Macartney 1973).

Early returns broadcast on the radio showed dramatic gains for the BNP in the Leribe district in the northwest, hitherto an opposition stronghold, but also the home ground of the influential Molapo family to which Chief Jonathan belongs. In accordance with instructions, the radio reported the results in pairs, one National Party for one Congress, although this meant holding up the broadcasting of some

results favourable to the BCP close to the capital. Eventually the results were ‘frozen’ at twenty-three each. The remaining fourteen were never broadcast (Macartney 1973: 484).

On 31 January 1970, the prime minister and the leader of the BNP announced jubilantly that ‘I have seized power. I am not ashamed of it. I may appear undemocratic, but I have most of the people behind me’ (Macartney 1973). Among the reasons advanced by the BNP for annulling the electoral process were allegations of intimidation of voters by opposition parties, the threat of communism to Lesotho, which is a Christian country, and the irrelevance of the Westminster-style constitution within the context of the local form of democracy.

The constitution was suspended; the king was sent into exile in the Netherlands; a de facto one-party state emerged and displaced the embryonic multiparty political system with regular elections every five years; the judiciary was suspended; and the prime minister declared a moratorium on politics for five years. This was a transparent ploy to quell criticism and frustrate the opposition. Lesotho was not to see another democratic election until 1993, some 23 years down the road. The official final result of the election was never announced, but declarations at polling stations in various electoral districts reveal the pattern illustrated in table 2.

Table 2: The Results of the General Election for the Lesotho National Assembly, 1970

Contestants	No. of Votes	% of Votes	No. of Seats Won
BCP	152,907	49.8	36
BNP	108,162	42.2	23
MFP	22,279	7.3	1
Other	1,909	0.7	0
Total	285,257	100	60

Source: Macartney, W., ‘The Lesotho General Election of 1970’, *Government and Opposition*, 8/4 (1973).

Had Lesotho adopted either proportional representation (PR) or a mixture of the proportional and FPTP systems after independence, the form of representation and the nature of government would have been different. Participation and representation would have been engrained in the political culture of the country, thereby allowing for coalitions and alliances among parties. In this way, not only would the political parties have realized that for political stability to prevail there is a need for cooperation, but the institutions of government would have acquired the necessary legitimacy. What more could be asked? The losing parties would not have resorted to extra-parliamentary methods of protest in the way they did, which in the process tarnished the image of the king. It is also highly probable that the BNP annulled the 1970 election because it knew that under the FPTP system the prospects for a losing party to play a role in Parliament are slim. Hence its temptation to subvert the system and sustain its rule by means other than the ballot box.

It is clear that the first two elections did not help greatly in deepening the fledgling democracy in independent Lesotho. Instead, the outcome in both cases led to violent conflicts as the opposition parties felt cheated and the ruling party showed no readiness to accept and respect the verdict of the electorate. In 1965, a minority government led the country into self-rule, while in 1970 the ruling party disrupted the electoral process and usurped power by force. All these events were a recipe for the instability that has marred the development of Lesotho's political system.

This instability was intensified when the country was steered towards authoritarian rule of both the civilian and the military variety during the period 1970–93. Between 1970 and 1986, Lesotho experienced mono-party praetorian rule. The military dictatorship of 1986–93 followed. It is instructive to note that the 1986 military coup that displaced the BNP government followed closely on the abortive election of 1985 (Southall and Petlane 1995) and a bitter political tug of war between the executive organ of the state and the security establishment. The military ruled the country for close to eight years—a phenomenon that not only further undermined the fragile roots of democratic governance, but raised the stakes of the military in the political arena (Matlosa 1998).

Only in 1993, after the military peaceably withdrew to barracks, did the Basotho regain their political right to choose their national leaders through the ballot box. This followed after both internal and external forces exerted pressure upon the military command to withdraw from politics and open up the political marketplace for free and fair competition by the political elite. The major donor countries exhorted the military government to yield to the international pressure for multiparty democracy, while an organized local civil society threw its full weight behind efforts to democratize Lesotho's polity. The overall result was the transition from military rule to civilian rule—a process which was stage-managed by the military itself.

The process leading up to the 1993 election started in 1991. The amendment of the independence constitution was undertaken by a structure called the Constitutional Assembly, whose members were appointed by the military government. In 1992, the military government promulgated the 1992 National Assembly Election Order which spelled out the mechanics of election administration and increased the number of seats in the Assembly from 60 to 65. An electoral office was established and the registration of voters began in good time. However, the political parties expressed both reservations and grievances with respect to the capacity of the military government to conduct the process in a free and fair manner. They insisted that a neutral and politically disinterested authority would be desirable to run and administer the process.

Through the Commonwealth Secretariat, the military government secured the services of the director of elections in Jamaica, Noel Lee, who became the chief electoral officer. Subsequently an Electoral Advisory Committee, comprising representatives all 12 registered parties, the police, the military, the Council of Churches and the Lesotho Council of Non-Governmental Organisations was established to assist the chief electoral officer. Noel Lee was later recalled to Jamaica and replaced, again through the assistance

of the Commonwealth Secretariat, by Joycelyn Lucas, director of elections in Trinidad and Tobago, who, in liaison with the government and the Advisory Committee, successfully ran the 1993 election. As with the previous elections, the 1993 election was well administered with only the usual hurdles of late opening of polling stations or limited supplies of election materials, which in themselves cannot cast doubt on the outcome. The outcome was a landslide victory for the BCP, as table 3 shows.

Table 3: The Results of the General Election for the Lesotho National Assembly, 1993

Contestants	No. of Votes	% of Votes	No. of Seats Won
BCP	398,355	74.7	65
BNP	120,686	22.6	0
MFP	7,650	1.4	0
Other	6,287	1.2	0
Total	532,978	100	65

Source: Southall, R. and Petlane, T. (eds), *Democratization and Demilitarisation in Lesotho: The General Election of 1993 and Its Aftermath* (Pretoria: Electoral Institute for Southern Africa, 1995).

Among all the contestants during the 1993 election, not only was the BCP the favoured winner from the start, but the party itself was confident of overwhelming victory. This is not difficult to explain. It had a splendid historical record as a populist party, with a considerable mass base and resilient grass-root structures throughout the country. It did not have any record as a party in government on which it could be judged by the electorate. It entered the election as a victim of the 1970 seizure of power by the BNP, which then denied it its rightful opportunity to govern the country. Essentially, the 1993 election was all about the 1970 election. The electorate had vowed to right the historical wrong that happened in 1970 by punishing the BNP and rewarding the BCP. As it turned out, the BCP won overwhelmingly, leaving other parties stranded in its wake. This was accentuated by the FPTP system, which provided the basis for a one-party government without loyal opposition.

Regrettably, this was yet another recipe for protracted instability and violent conflict. With 75 per cent of the total valid votes, the BCP took all the 65 seats in the National Assembly, while the BNP with its 23 per cent and the MFP with its 1 per cent had absolutely no voice in the Assembly. Once more the opposition parties' sense of exclusion grew stronger. A crisis of legitimacy also dogged the single-party government. At the centre of this crisis was the extent to which the government was representative. Did it have a broad enough mandate if some 25 per cent of the voters felt unrepresented in Parliament?

Although the BNP challenged the election outcome, the courts of law did not find irregularities in the administration of the election. The problem did not lie with the purported rigging and/or fraud during the 1993 election, but with the electoral system

which, as already mentioned, is exclusionary in both form and content. The BCP did not recognize this inherent flaw in the electoral system in 1965, and on this occasion, after the 1993 election, the BNP was not able to identify the key problem.

Without opposition in Parliament, the executive arm of the government quickly found itself pitted in protracted and internecine conflicts with other key organs of the state such as the army, the monarchy/chieftaincy, the bureaucracy and the judiciary. This conflict scenario rendered the government increasingly unable to deliver on its own manifesto and, worse still, unable to govern effectively and authoritatively. The temporary dismissal of the BCP government by the king in August 1994, and its reinstatement upon a compromise solution enshrined in the Memorandum of Understanding brokered by Botswana, South Africa and Zimbabwe in September 1994, is a clear case in point.

Since then, these three countries have remained the guarantors of the young democracy of Lesotho, and this has had its own dire consequences for an already fragile sovereignty. Single-party rule and continued external intervention perpetuate the enfeeblement of government institutions. In addition, the legitimacy, representativeness and inclusiveness of these institutions are always contested within an entrenched culture of sectarian politics which marks the polarization of Basotho society today. Besides conflicts with other organs of the state, the ruling party has also experienced internal faction fighting, mainly over the leadership of the party and the sharing of the spoils emanating from the control of the state.

This internal feuding within the ruling party, which was not based on any ideological or policy differences, resulted in a rupture of the party and the emergence of a splinter group known as the Lesotho Congress for Democracy (LCD) in 1997. Led by the prime minister, this newly established party enjoyed the support of a majority of seats in Parliament, and subsequently displaced the BCP. The BCP was then declared part of the official opposition in Parliament, a designation it publicly rejected. The fact of the matter, however, is that the LCD became the *de facto* authority, replacing the BCP government, in a perfectly constitutional manner, despite allegations of a *coup d'état*. Again during this episode, the constitution and the electoral system failed the country. The constitution does not debar this. The electoral system allows members of Parliament (MPs) to cross the floor of the house, even without prior consultation with their constituents. Under a PR system, BCP MPs would not have been allowed to cross the floor and form a new government. They would simply have lost their seats in the National Assembly as representatives of the party.

Be that as it may, the LCD then won the 1998 election overwhelmingly and the popular choice seemed to legitimize the 1997 split of the BCP and the emergence of the LCD, which now assumed the reins of power simply on the basis of its parliamentary majority. Table 4 shows the outcome of the election.

Table 4: The Results of the General Election for the Lesotho National Assembly, 1998

Contestant	No. of Votes	% of Votes	No. of Seats Won
LCD	355,049	60.7	79
BNP	143,073	24.5	1
BCP	61,793	10.5	0
MFP	7,460	1.3	0
Other	16,244	2.9	0
Total	584,740	100	80

Source: Lesotho Independent Electoral Commission (IEC), Provisional Results, 27 May 1998.

As with the 1993 election, the outcome was one-party rule with all the implications for legitimacy, representativeness and inclusiveness. The LCD won 61 per cent of votes but secured 79 seats out of a total of 80. The BNP won 25 per cent of votes but secured only one seat in the National Assembly, while the MFP received about 1 per cent of the votes but not even a single seat in the Assembly. As another writer recently remarked, ‘once again, the first-past-the-post constituency system seriously disadvantaged the losing parties and exposed the new government to intervention by its opponents’ (Rule 1998: 11).

The main opposition parties felt cheated by the ruling party and the other parties felt excluded by the system. The result was that the opposition parties, having no place in Parliament from which to challenge the ruling party, vented their anger in the street. What started purely as a political conflict escalated into a violent conflict which even drew the military into a general conflagration that nearly sparked a civil war. The deteriorating security situation in Lesotho also encouraged military intervention by Botswana and South Africa.

The negotiation process, which was brokered by South Africa on behalf of the Southern African Development Community (SADC), delivered a peace settlement involving the establishment of the IPA to liaise with the government and the Independent Electoral Commission (IEC) in preparing for the next election and the holding of a fresh election at some time in March 2000.

Under a different electoral system, both the 1993 and the 1998 elections would have produced a different outcome. Either PR or a mixture of PR and FPTP would have broadened representation and participation in the political system. This would have ensured the relative stability of the political system based on a multiparty Parliament, with an opposition participating constructively in the process of governance. A different political arrangement would have helped to contain the many different conflicts that beset the country during the period 1994–7. Electoral reform might not have completely resolved the conflict situation which exists in Lesotho, but the country could probably have been spared the violent conflict that raged after the 1998 election. The conflict led to loss of life and property and to the deepening political polarization of an otherwise homogeneous nation.

Essentially, an electoral system must act as a conflict resolution mechanism in order to stabilize the political system and encourage the political elite to engage in politics of consensus, compromise, dialogue and tolerance.

As early as 1998, there emerged a general clamour for a reform of the electoral system that would allow a vibrant opposition in Parliament. In its report after the 1998 election the IEC observed: 'It appears that the plurality system works best when it is able to produce a reasonably effective parliamentary opposition. It is a matter of record that the last two general elections in Lesotho (1993 and 1998) have produced little or no parliamentary opposition. This appears to suggest that the time is now ripe for a serious debate on the electoral system of Lesotho' (Lesotho Independent Electoral Commission 1998: 46).

Indeed, such a debate took place—under the auspices of the IPA. Sponsored mainly by the United Nations Development Programme (UNDP), this public debate involved academics, non-governmental organizations (NGOs), and representatives of government, the political parties, the trade unions, the business community, development agencies and both houses of Parliament, as well as the College of Chiefs. A consultative conference took place on 21–23 February 1999. At this time, both government and opposition parties as well as other participants agreed that the current electoral model needed to change. There was an overwhelming preference for a mixed system, which could combine the advantages of PR and FPTP. It was therefore no wonder that, following the violent conflict of 1998, a considerable majority of the political forces and observers of the political scene in Lesotho advocated electoral reform as part of the package for the constructive management of conflict in the country.

Ultimately, the ruling party and the opposition parties, through the IPA, resolved that Lesotho's electoral model should be changed from the British-style FPTP to the new MMP system. This was by far the most progressive step taken in Lesotho's political history, aimed in the main at addressing and redressing the entrenched culture of political violence and intolerance. Moreover, when the MMP system was immediately put to use in the country's general election of 2002, the results pointed to the enormous prospects it offered for instilling a culture of consensual, as opposed to coercive, politics, a representative Parliament, inclusive governance arrangements and accountable government structures—witness the contrast between the outcome of the 2002 election (see table 5) and the results of all previous elections since 1965.

Table 5: The Results of the General Election for the Lesotho National Assembly, 2002

Main Parties	No. of Votes	% of Votes	No. of Seats
Lesotho Congress for Democracy (LCD)	304,316	54.8	77
Basotho National Party (BNP)	124,234	22.4	21
Basutoland African Congress	16,095	2.9	3
Basutoland Congress Party (BCP)	14,584	2.7	3
Lesotho Peoples' Congress	32,046	5.8	5
National Independence Party	30,346	5.5	5
Lesotho Workers Party	7,788	1.4	1
Marematlou Freedom Party (MFP)	6,890	1.2	1
Khoeetsa ea Sechaba/ Popular Front for Democracy	6,330	1.1	1
National Progressive Party	3,985	0.7	1
Total	554,386	100.0	118

Electoral Reform in Lesotho: Towards a Culture of Tolerance and Stability

The basic features of the MMP system in Lesotho are as follows:

- The National Assembly is made up of 118 seats, of which 78 are elected in single-member electoral districts under the FPTP system and 40 are compensatory seats elected under the List PR system.
- The link between the members of the National Assembly and the electoral districts they represent is preserved.
- Party-based seats are introduced, representing a party vote.
- A specific formula is developed to regulate entry into Parliament and the calculation of the number of seats to be allocated to each party. The threshold for a party to receive a seat in the National Assembly is a quota—a minimum share of valid votes cast.
- Voting may take place on the basis of either two ballot papers or a single ballot paper. (The latter is used in New Zealand and could prove convenient and cost-effective for the SADC region.) Lesotho uses a rather cumbersome system of a double ballot paper, which has a great potential for bureaucratizing the voting process and is also costly financially.

Although the MMP system seems poised to resolve Lesotho's age-old political instability, it should be noted that this system is rather more complex than FPTP because it combines two systems. The most difficult aspect of this system has to do with the formula for the allocation of seats. Table 6 illustrates that the share of parliamentary seats won is not in exact proportion to the share of votes.

Table 6: The Allocation of Seats to Parties on the Basis of the New MMP System in Lesotho, 2002

1 Party	2 Total Party Votes (valid votes)	3 No. of Constituency Seats Won	4 Party's Allocation of Compensatory Seats	5 Total No. of Seats	6 % Party Votes (valid votes)	7 % Seats Won (constituency seats plus compensatory seats)
Basotho National Party (BNP)	124,234	0	21	21	22.4%	17.8%
Basutoland African Congress (BCP)	16,095	0	3	3	2.9%	2.5%
Basutoland Congress Party (BCP)	14,584	0	3	3	2.6%	2.5%
Christian Democracy Party	1,919	0	0	0	0.3%	0.0%
Khoeetsa ea Sechaba/Popular Front for Democracy	6,330	0	1	1	1.1%	0.8%
Kopanang Basotho Party	1,155	0	0	0	0.2%	0.0%
Lesotho Congress For Democracy	304,316	77	0	77	54.9%	65.3%
Lesotho Peoples' Congress	32,046	1	4	5	5.8%	4.2%
Lesotho Workers Party	7,788	0	1	1	1.4%	0.8%
Marema-Tlou Freedom Party	6,890	0	1	1	1.2%	0.8%
National Independence Party	30,346	0	5	5	5.5%	4.2%
National Progressive Party	3,985	0	1	1	0.7%	0.8%
New Lesotho's Freedom Party	1,671	0	0	0	0.3%	0.0%
Sefate Democratic Union	1,584	0	0	0	0.3%	0.0%
Social Democracy Party	542	0	0	0	0.1%	0.0%
United Party	901	0	0	0	0.2%	0.0%
Independents	0	0	0	0	0.0%	0.0%
TOTAL	554,386	78	40	118	100%	100%

Source: Lesotho Independent Electoral Commission.

Table 6 shows how the 40 compensatory seats were distributed on the basis of number of votes. It illustrates the strength of the MMP system in the way in which it neutralizes the exclusionary tendency of the FPTP system. Because of the skewed nature of the FPTP system, the ruling LCD won the majority of the single-member district/FPTP seats, and because of this it was excluded from the allocation of compensatory seats. The BNP did not win a single FPTP seat, but was able to get 21 compensatory seats because of the new model. Herein lies the magic of this model in terms of ensuring broadly representative, inclusive and participatory governance.

However, the electoral reform process should not be confined to the political elite alone. The process must involve all sectors and sections of society from the planning stages, through the design stages up to the implementation and review stages. This is an area where the Lesotho reform process has been weakest, and this required vigorous voter education prior to the 2002 election, despite the consultative conference of February 1999 and the involvement of all key stakeholders in the negotiation process. Also, it must not be assumed that the reform process in a particular country will lead to the adoption of a particular electoral system; electoral reform must be in accord with the particular political culture of each country. In other words the electoral reform process must be home-grown and driven by a national vision rather than being externally derived and driven by aid donors.

Lessons from the Lesotho Electoral System Design

This concluding section draws lessons from the Lesotho electoral reform process with a special focus on (a) the negotiation process; (b) the constitutional review process; (c) institutional engineering or design; (d) electoral system design; and (e) the management of election-related conflict.

The Negotiation Process

Any reform process should, of necessity, be the outcome of negotiation involving key stakeholders in the political system. It is clear that the electoral reform process in Lesotho involved public debate as well as a formal negotiation process involving the political parties mediated by South Africa.

The Constitutional Review Process

There is no denying that political reforms which, of necessity, bring about changes to the political system have a bearing on constitutional arrangements too. In countries where the electoral process and elected institutions such as the parliament are governed by the constitution, electoral reform ought therefore to be accompanied by some form of constitutional review and amendment. Besides the constitution, elections are also governed by electoral laws which will also need to be revisited when the electoral reform process is under way. This has indeed been the case in Lesotho, which has had to amend its 1992 Electoral Order (as amended) as well as its 1993 constitution.

Institutional Reform

A general trend in the SADC region in terms of the institutional arrangement for the management and administration of elections since the 1990s has been the establishment of independent electoral commissions as relatively autonomous election management bodies (EMBs) that have the necessary credibility and integrity to run elections. This positive development has had the desired effect of insulating the sensitive business of protecting such a highly contested process from undue interference, especially by the state and ruling parties, given their added advantage of incumbency. Lesotho adopted this new institutional arrangement for its 1998 election and the current IEC comprises a chair and two commissioners. The secretariat of the IEC is headed by the director. It is established by act of Parliament and its autonomy and independence are protected by the same act.

Related to the project of institutional engineering is the reality that electoral system design is almost always bound to affect the nature, character and composition of the national representative assembly. In Lesotho the election results of 2002 compared to those of all previous elections demonstrate this beyond any shadow of doubt. Today, the speaker of the National Assembly presides over a complex Parliament involving MPs who are bound to their electoral districts and party-bound MPs, and in a way this situation does have implications for the work of the Parliament and the rules and procedures of the house. Consequently, the Lesotho Parliament is currently undergoing important reforms whose objectives are:

- to create the bedrock for sustainable democratic practice in Lesotho;
- to empower the Parliament as a custodian of the values and practices of democracy in order to fulfill its constitutional mandate of lawmaking, oversight and representation;
- to raise the visibility and image of the Parliament;
- to increase public participation in the parliamentary process; and
- to review the conditions of service for members and staff of the Parliament.

Electoral System Design

The Lesotho experience has brought to the fore the major deficiencies of the British-style FPTP system and its costs for democratic governance in Africa. It is abundantly clear that the major deficiencies of this electoral model are the following: (a) it tends to produce minority government (a legitimacy deficit); (b) it does not lend itself easily to broad representation of different political forces in the legislature (an inclusivity deficit); and (c) it tends to generate, rather than reduce, various types of conflict (a stability deficit). It is no wonder that countries such as Lesotho and Mauritius felt compelled to reform this system towards the MMP electoral model in 2002. As a general rule, electoral system review, design and reform should be guided by the following criteria:

- ensuring a representative parliament;
- making elections accessible and meaningful;
- providing incentives for conciliation;
- facilitating stable and efficient government;
- holding the government and representatives accountable;
- encouraging political parties;
- promoting a parliamentary opposition;
- making the election process sustainable (in terms of cost and administrative capacity; and
- taking into account 'international standards' (Reynolds, Reilly and Ellis 2005: 9–14).

It is worth noting that Zambia is currently undergoing electoral system design and there are pointers that the country is likely to adopt MMP in place of FPTP.

Managing Election-related Conflicts

During a regional conference held in Mozambique jointly by the Electoral Institute of Southern Africa (EISA, in Johannesburg) and the Centre for Development and Democracy Studies (CEDE) (in Maputo) in July 2003, participants emphasized the need for flexible approaches in addressing and redressing election-related conflicts. What came out forcefully from this conference was the stark reality that when dealing with election-related conflicts both legal channels and mediation should be used extensively. Although the Lesotho experience is rather weak in this regard, it is important to note that mediation tends to be much more useful than formal legal channels in dealing with election-related conflicts. This truism is borne out vividly by the South African experience with extensive conflict panels that cover the entire country and deal with conflicts as they emerge, and are complemented by the Electoral Tribunal, a special court dedicated to resolving election-related conflicts. What emerges from this as lessons for other post-conflict African states is (a) the need to resort more and more to mediation in managing election-related conflicts without necessarily disbanding the legal channels; and (b) the need for the establishment of an Electoral Tribunal that deals mainly with election disputes so that election cases do not take far too long to deal with.

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Negotiating Cultural Diversity and Minority Rights in India

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India is among the most diverse societies in the world. It has people from all the major religions in the world—Hindus, Muslims, Christians, Sikhs, Buddhists, Jains and Zoroastrians (Parsis). Even though Hindus constitute about 82 per cent of the population, there are more than 149 million Muslims in the country, making it the second-largest population of Muslims in the world. Religious diversity is coupled with enormous linguistic and cultural diversity. The 1991 census showed that 114 languages were spoken by 10,000 or more people in the country; of these, 22 were spoken by more than one million people. The state lists 630 communities as Scheduled Tribes, and some of the identified communities, such as Kukis, are themselves internally heterogeneous, comprising several different tribes. There is therefore religious and cultural diversity of enormous dimensions in the country. When India gained independence in 1947, the political leadership and the framers of the constitution took note of this diversity, and they deliberated on a framework that would provide for a unified but culturally diverse nation state.

Pursuing Equality in a Diverse Society

In Europe, democracies evolved against the backdrop of considerable cultural homogeneity. The classical liberal wisdom also advocated indifference to social and cultural identities. It suggested that the law should not take note of the identity of a person; instead all individuals as citizens must be treated alike. Identical treatment, or equality before the law, was regarded as the sine qua non of a liberal democracy that signalled the absence of discrimination on grounds of religion, race or gender. This was the liberal model before the Indian leadership, and it received serious consideration. However, in a situation where social and cultural identities had been mobilized, there were several imponderables. Some communities had received separate representation under British colonial rule; moreover, colonial rule ended with the partition of the

country and the creation of a separate homeland for the Muslim community. Even though a significant number of this community chose to stay back in India, there were several anxieties about the future of the Muslims in a Hindu-dominated society.

Independent India had to address these anxieties and its leadership was called upon to make good its promise to ensure equality for all communities. There was also the issue of lower castes—communities that were excluded from the rest of the society and denied access to social and economic goods in society. Faced with this complex reality, the political leadership was confronted with the need to innovate and boldly rethink some of the received truths of liberalism.

What was distinctive in the approach that India adopted at this time was that it *linked equality for the individual with equality for diverse communities*. It began with the understanding that equality for individuals required that different communities within the polity should exist as equals. The presence of diverse communities was thus acknowledged. Indeed, the existing cultural diversity was deeply valued. It was felt that respect for the individual requires respect for the diverse beliefs and ways of life that these persons embody. Besides, the individual could not possibly exist as an equal if the community to which he or she belongs were disadvantaged or marginalized in the public domain.

It was therefore argued that, while the principle of equality before the law was extremely important, it was not enough. If equality was to be actualized in practice, then members of minority communities should have the liberty to lead a life in accordance with their cultural practices. In concrete terms this meant that minority religious communities needed religious liberty and protection against the threat of cultural homogenization. Similarly, different linguistic communities needed opportunities to promote their culture and identity; and the lower castes had to be assured access to social and public goods. Over the years this orientation has been suitably encapsulated in the slogan Unity in Diversity.

Unity in Diversity articulates the sentiment that India can be a strong and unified country while simultaneously affirming its cultural diversity. Cultural homogeneity is not, in other words, seen as a necessary condition for forging a political identity as a nation state. The commitment to this norm has been put to test at various moments in the country's history, and the experience of the past 55 years has highlighted the complexities involved in keeping this pledge. The route India embarked upon at the time of independence has been a difficult and arduous journey, but it seems to have been a step in the right direction. In the challenges that have confronted the Indian state, what stands out is that the willingness to experiment with different ways of accommodating diversity has enabled the country to remain a strong and unified whole. Most political analysts in the 1960s and 1970s had predicted the fragmentation of India. If they have been proved wrong it is primarily because the existing framework of democracy makes room for diversities of various kinds—religious, linguistic and ethnic—in many different ways.

Accommodating Religious Diversity

India has no official or established state religion. Most other states in its neighbourhood affirm a religious identity: Pakistan and Bangladesh are Islamic states; Sri Lanka gives a special status to Buddhism; and Nepal is a Hindu state. India, however, has no established religion and this is the first sign of its commitment to treat all communities as equal. This is supplemented by the constitutional provisions that protect religious liberty. Article 25 gives all religious communities the right to 'profess, propagate and practice' their religion. It is pertinent to note that the right to propagate one's religion was included in deference to the concerns of the minority communities, particularly Muslims and Christians, who maintained that preaching and propagating their faith was an essential part of their religion.

While most societies grant individuals the right to *religious belief*, in India communities enjoy the right to continue with their distinct *religious practices*. Perhaps the most significant part of this is that in all matters of family, individuals are governed by their *community personal laws* (see Larson 2001). Religious communities also have the right to set up their own religious and charitable institutions; they can establish their own educational institutions, and, above all, these institutions can receive financial support from the state. Taken together, these are ways by which public recognition has been granted to different religious communities and space made for them to continue with their way of life (Mahajan 1998). On the symbolic plane, policies pertaining to the declaration of public holidays, permissible dress in educational institutions and public jobs, and the naming of public places also acknowledge and give due recognition to the different communities living in India.

Dealing with Linguistic Diversity

While religious diversity was openly celebrated it was hoped that a shared language, in the form of Hindi written in the Devanagri script, would be the binding cement. Hence, the constitution declared it as the national language of the country with the proviso that English, which had been the language of administration, would continue to be used for all official purposes of the Union for which it was used previously. Thus, in the initial years, homogeneity was likely to come through language, and the choice of the Devanagri script subtly privileged the Hindu community.

This framework came under challenge shortly after independence. Several states in the southern part of India resisted the imposition of Hindi as the national language. At the same time there were strong movements across different regions of the country for linguistic reorganization of regional boundaries. The Union state initially resisted both demands but eventually, with some reluctance, agreed to allow English to continue as the language of official communication along with Hindi. If states did not wish to communicate in Hindi they could continue to use English.

Even more significantly, the Union state accorded recognition to linguistic communities so that communities occupying contiguous territory could constitute one state.

The linguistic reorganization of regional state boundaries has been a major instrument for protecting and nurturing linguistic diversity. The creation of linguistic identity-based units, each with political rights to govern itself within the framework of the federal system, meant that a specific linguistic community became a majority within a region. Its language became the official language of that state and the medium of instruction, public examination, communication and media networks. As a consequence, the language of the regional majority grew and flourished. On another plane, the creation of linguistically defined federal units provided opportunities to regional linguistic elites which might otherwise have remained marginalized in the national level. It brought in more and more people into the political process, giving them opportunities to participate actively and debate the issues that concerned them immediately. The growth of regional languages has not only been an asset for the local elites and the regional population; it has also benefited speakers of that language living in other parts of the country. They now have access to literature and information in their own language, and it is so much easier for them to pass on this cultural capital to their children.

Today the constitution recognizes 18 languages as official languages of the Union state in addition to Hindi and English, which enjoy the status of national languages. Recognition for specific languages has not always been easy. It has come after strong popular movements, but what has become evident is that, despite liberal apprehensions, the creation of linguistic identity-based states has not weakened the nation state. If anything, it has strengthened democracy, made it more inclusive, and given opportunities to previously excluded groups to share in the political decision-making process. This has strengthened India and minimized discontent against the Union.

Special Rights for Tribal Communities

Besides religious and linguistic diversity, India paid some attention to the diversity embodied in tribal ways of life. The constitution identified some areas where tribal communities lived with some form of 'protective segregation' as 'excluded' or 'partially excluded' regions. Here, the free movement and passage of outsiders was curtailed, and within the identified area tribal communities were given special rights to govern themselves in accordance with their customary law and distinct social and religious practices. In this way, cultural difference and diversity were protected; but to ensure that these communities are not entirely segregated or from the Indian polity, separate representation was provided to members of Scheduled Tribes. Separate representation was intended to bring in the voice of these communities without undermining their cultural distinctiveness. Indeed, it was to protect the latter that certain *identified regions, and areas within a regional state, were given special status*. Over the years, the special status has enabled vulnerable communities to survive and protect themselves from large-scale influx of 'outsiders' (Baruah 1989). In areas, for example in Tripura, where similar provisions for exclusion and protection for tribal communities did not exist,

their share in the total population has fallen enormously, with migrants, particularly from the neighbouring regions both within and outside the country, coming in.

The special status accorded to these communities and regions brought into effect what has since been called *asymmetric federalism*. What this means is that the constituent units of the federal polity do not all enjoy identical powers. Some, on account of their socio-cultural needs and political history, enjoy special powers. Article 371, clauses A and G, of the Indian Constitution, for instance, gives the states of Nagaland and Mizoram special rights to govern themselves in accordance with their distinct social practices, customary laws, and community control over ownership and the transfer of land and its resources. Special status has also been granted to the state of Jammu and Kashmir in accordance with the accession treaty signed at the time when this state joined the Union of India.

Over the years, the Indian state has also introduced new political and administrative structures, in the form of *multi-level federalism*, to accommodate the special concerns of communities within a region. To take an example, in response to the demands of the Bodos—tribal populations living in the plains of Assam as distinct from the hill tribal communities—the Bodoland Autonomous Council was formed in 1993. This was intended to give the Bodos within the state of Assam an institutionalized structure of autonomy, with powers to legislate on 38 identified subjects, including matters related to education, ethnic and cultural affairs, and social and economic issues (Dasgupta 1998). Institutional arrangements of this kind have also been applied in other parts of the country: the Telengana region in Andhra Pradesh is a case in point. Such frameworks of governance have, by and large, been developed in response to popular mobilizations and struggles. The success of these arrangements is heavily dependent upon the attitude of the different levels of the federation. But there is little doubt that the willingness of the state to experiment with such frameworks of federalism and decentralized governance has played a significant role both in meeting minority aspirations and minimizing ethnic discord.

Asymmetric and Multi-level Federalism

Even though there is no coherent policy in this regard, attempts to grapple with identity-based ethnic conflict and competing claims for recognition have led to experimentation with *multi-level federations*. The success of these new institutional arrangements has varied but, in a region where diverse communities have coexisted for long periods of time and where movement across boundaries has been relatively more free, this may well be a way of accommodating diversities.

Contemporary theories of multiculturalism often recommend self-governance rights for communities that have lived on a particular territory for long periods of time with their distinctive way of life. However, such forms of accommodation are possible only when a given community constitutes an overwhelming majority in a given region. In areas such as north-east India, where many communities that are a minority in the national

context live close together and see the land they occupy as their homeland, separate territorial jurisdiction for each cultural community only produces unsustainable constituent units. What is needed is alternative ways of accommodating different groups and communities in the region. Multi-level federalism could offer a viable option in just these circumstances.

Multi-level federation entails the creation of what might be called sub-federations—a separate structure of governance with powers to deliberate on issues that contribute to the distinctiveness of a cultural community. In a culturally diverse region, one option is to have separate representation in legislative bodies and other decision-making institutions for different communities. But here the minorities remain a minority in each unit and may have only limited opportunity to influence policy. By contrast, in multi-level federalism, territorially concentrated minorities in a region can enjoy certain rights to govern themselves on matters that are considered central to the survival of those communities as a distinct cultural groups. This gives the elites within the community power to influence decisions on crucial cultural and political issues, and the opportunity to access valued resources and positions. Thus, a kind of dual membership is constructed: the community exists as a separate entity in a defined area, but for purposes of participation and representation it remains a member of the regional state.

Frameworks of Accommodation: A Synoptic View

The complex framework India has used for accommodating different kinds of diversity can be summarized briefly as follows. Religious communities enjoy extensive cultural rights but no separate political rights. Identified linguistic communities enjoy cultural rights as well political rights. In many regions they form the federal units which have some degree of political autonomy to govern themselves. Tribal communities, particularly in the Hill regions, have special cultural rights, political rights of separate representation and the right to govern themselves. There is a lingering mistrust, or liberal anxiety, about granting political rights to religious communities. In any case, most religious communities are scattered through the country. Linguistic communities and tribal populations, particularly when they are concentrated in a given region, enjoy some political rights. These rights have promoted diversity while simultaneously deepening democracy.

Lessons from India

The experience of the past five decades has underlined the need to accommodate cultural diversities in the public arena. But the path India has pursued has also drawn attention to the problems that we may confront in realizing this goal of accommodation. The cumulative experience has yielded some valuable lessons that we should reflect upon as we confront issues of peaceful coexistence in democratic polities today.

The common tendency when addressing questions of cultural diversity is to treat given communities as near-natural groups, with clearly identified boundaries that demarcate

them from other communities. Similarly, when we speak of cultural diversity, it is usually assumed that the communities to be accommodated are empirically given and there is little room for dispute there. These are assumption in the contemporary discourse on cultural diversity that must be scrutinized and interrogated.

If we take the example of India, what we have are diversities of religion, language and culture. Each kind of diversity, whether of religion, language or tribe, has been subject to construction, both by the state and by the agents themselves. Through its practices of enumeration and codification, the state has created categories that form the basis of recognized diversity today. The Hindi language includes within it several dialectics and related languages, such as Bhojpuri and Maithli. In the case of personal laws, too, the Hindu community includes Sikhs and Buddhists—communities that see themselves as distinct religious groups. The state is not the only actor here. Identities have at times also been constructed and reconstructed by the agents themselves. The Nagas, for instance, have created an identity for themselves by forging together and bringing into one fold seven different tribes. Examples of this can easily be multiplied. The relevant point is that identities that exist and which are seeking equal space in the public arena are far from natural entities. We need to approach the issue of coexistence and accommodation by taking note of this, and recognizing that issues of identity cannot be settled by merely referring to history or the original position. What we need are political—normative and institutional—solutions that take note of communities and identities as they exist and assert their claims.

However, addressing issues of identity and cultural diversity is never a simple affair. In developing societies, like India, identities not only define who we are; they also operate as objects that are *open to manipulation and instrumental use*. Identities can be mobilized to secure access to valued social and economic goods. In other words, claims for due recognition of a given identity-based community may come both from the desire to seek some redistribution of goods as well as deeply felt expressive needs. Most often the two are combined, and this poses serious challenges. The tendency on the part of the state is to ignore these demands and treat them merely as claims for more resources. The point that is forgotten in the process is that, when identities are mobilized, it is necessary to address concerns of recognition. Ignoring the latter often alienates a community. At the same time, when recognition is accorded in the form of political autonomy in a given region, these communities tend to become exclusivist and to recreate in the region a kind of cultural nationalism that has no place for internal minorities. In situations of considerable scarcity, therefore, recognition given with a view to accommodating diversity can often pose new challenges. The task that confronts developing democracies then is to find ways of accommodating differences in the public arena *while simultaneously protecting the rights of other minorities*.

This is not an easy task, and there are few universalizable answers. The only thing that can be said is that when the state endorses and expresses the identity of one community, other communities within the polity are disadvantaged. This is a common source of ethnic conflict at the national and the regional level. To minimize these conflicts the

state has to explore ways of accommodating all communities as equals. *According formal recognition to the language of minorities can be an important way of opening opportunities* and giving access to valued social and economic positions in society. It can, to put it more pointedly, be a means of combining recognition concerns with those of redistribution. Conversely, de-recognition of a language can limit the opportunities available to a community. It is therefore almost always met with resistance from the affected minority and often it becomes a cause of simmering and persistent discontent. Emerging democracies therefore need to move in the direction of greater linguistic diversity. If the Indian experience tells us something it is that *recognition of linguistic identities can coexist fairly easily with national identity*. The two can be mutually reinforcing. After all, a strong nation requires its citizens to have a sense of identity and belonging. This sense is best nurtured when communities receive recognition, respect and opportunities to enter the public arena. Language policies that can accommodate diverse communities are for this reason always desirable.

Over the past 55 years India has moved in this direction, albeit with some initial reluctance. The problem that persists is that, in a country where there are more than 100 languages in use, it is almost impossible to give equal status and recognition to all languages. Hence, which language receives official status or a territorial jurisdiction of its own has been subject to political construction. It is communities with a greater degree of political and economic power that have succeeded in obtaining recognition. So far, no tribal language has been given the status of an official language, even though some of them have more than 1 million users. Likewise, recognition has taken many different forms. Not all languages that are recognized in the Eighth Schedule of the constitution have a demarcated territory (Kamat 2003). While languages that have what may be called a 'home state' have consolidated and flourished, the status of languages that have been recognized but have no corresponding state is dependent primarily upon the rights granted to internal minorities within a region.

Eventually, if diversities have to be nurtured, there is a need for various supplementary policies: formal recognition must be buttressed with such policies as second-language status, the option to receive education and official information in the language of the minority, and the facility to address the authorities in one's own language. In India, space for diversity has been appropriately made in the constitutional and legal structure, but policy measures needed to back that structure have often fallen short of expectations. The constitution, for instance, provides that in areas where a minority community constitutes more than 30 per cent of the population, education should also be provided in the language of that minority. But this provision has not always been implemented; in some cases second-language status has not been accorded to the language of the minority for long periods of time. Hence, the task of protecting diversity is more complex and challenging than meets the eye. In the first instance, formal recognition for the language/s of the minorities is itself contested within the nation state. Even when this hurdle is overcome, a web of policies is needed to ensure that formal status translates into actual reality on the ground. This is not always easy and is dependent upon the will of the political party in power and the extent of mobilization on the issue.

Thus, accommodating diversity requires not just innovation and bold initiatives, but also sustained commitment.

Despite these failings, linguistic diversity has been nurtured in India and in many regions, even when the government has done little, internal minorities have sustained themselves. This has been possible because minority communities, both religious and linguistic, have the right to *establish and administer their own institutions*. There are today a growing number of minority institutions using their own language as the medium of instruction. This has helped to provide options for minorities within the region as well as the general population.

At one level, it appears that the general framework India has used to accommodate different kinds of diversity can have wide applicability. Linguistic diversity is formally recognized and brought into the public arena; specific linguistic communities have also been transformed into regional majorities through the territorial reorganization of state boundaries. Hence, many more citizens have the option of receiving education and competing for public jobs in their mother tongue. Similarly religious diversity is duly acknowledged and communities enjoy considerable religious liberty; and the diversity of tribal ways of life is also acknowledged. Yet, even as we take note of this, it is necessary to add that *accommodation of diversity can take many different forms*. What is the appropriate form for a particular country depends on a number of coexisting conditions, the most important being the history of the nation state and the relationship between the state and the community in question. Whether religious communities are to be accommodated with some special political rights, and whether linguistic communities are to be granted special cultural rights but no corresponding jurisdiction in a given territory, are matters on which a the decision taken needs to be context-based.

What can, however, be said at the general level is that states that are unable to formally recognize their internal diversity, and those who seek to weld a strong nation state on the basis of a single cultural identity, are increasingly faced with identity-based conflict. And, perhaps even more importantly, when such conflicts are ignored or suppressed with the might of the state, they tend to take on a more violent and intractable form. The longer and more violent the conflict is, the less will it be possible to resolve it by granting some special cultural rights. Often what is needed is special political rights along with accommodation on the cultural and symbolic plane.

Giving communities cultural rights brings with it a different set of anxieties. The most significant of these relate to the treatment of women. Almost all cultures, the world over, place women in a subordinate position. Hence, not only can granting special political rights, or self-governance rights, to a minority community raise concerns of minority nationalism (which is as dangerous as majority nationalism) but cultural community rights can be a source of unfair treatment for women and other vulnerable groups within the community. Hence, even though there is a compelling need to accommodate diversity, the concern for diversity has to go hand in hand with the equally important concern for equal rights for all citizens. Diversity, in other words, is not intended to

supplant equality. It must supplement it, and for this there is again no one policy that can be recommended.

In India, on matters of family—marriage, divorce, inheritance, alimony, the custody of children and so on—individuals are governed by the personal laws of their community. The constitution recognizes the personal laws of four communities—Hindus (which includes Sikhs, Jains and Buddhists), Muslims, Christians and Parsis. The personal laws of each of these communities, as they existed at the time of independence, disadvantaged women. The Union state legislated and reformed the Hindu personal laws, which are now more gender-just. It refrained, however, from interfering in the personal laws of minority communities. Respect for the religious liberty of minority communities thus translated into unjust treatment for women. In response to the women's movements the state eventually framed the Special Marriage Act; now, at the time of marriage individuals could choose not to be governed by the personal laws of their religious community. This gave individuals a choice; they could opt out of their religious community laws and be governed by the state civil law.

Giving individuals exit options can be a viable way of reconciling diversity with equality. However, in India, where the level of literacy is fairly low, most people did not know of this law. Even those women who were aware of this option felt that they were in no position to exercise this choice at the time of marriage. Making a choice assumes a degree of empowerment in social and economic terms, and this is what is missing for most women. Hence, this option has not been very effective; on the whole the Special Marriage Act has done little to improve the status of women. Some women's groups are now asking for what has been termed 'reverse optionality': that is they would like the state civil code to apply to all citizens unless individuals make a choice at the time of marriage and opt out—that is, ask to be governed by their religious personal law—the assumption being that large number of people, unaware fully of the options available to them, will then be governed by the more just state civil law on matters pertaining to family. This suggestion has found little favour with the state so far.

What is evident across the board is that special cultural and political rights, once they are granted, are exceedingly difficult to withdraw. Even when something is done for the sake of promoting equal treatment for all, state actions meet with suspicion and mistrust. It is for these reasons that the Union state has refrained from reforming the personal laws of the minority communities. Over time, the personal laws of both the Parsi and the Christian community have been reformed internally through the initiatives of the members themselves. The same has not, however, occurred in the case of the Muslim Personal Law. The question what role the state can play in ensuring more just treatment for Muslim women is an issue that has divided the community and the nation. Respect for diversity suggests an absence of direct state action and greater room for communities to govern themselves, but can the state act as a catalyst in this process of reform? Should it set targets and timetables for reforms to be undertaken by the community? Should it lay down the boundary conditions, or the parameters of what is acceptable, and within those parameters allow communities to govern themselves? Which of these strategies

should the state adopt? Which will be an effective way of combining the concern for diversity with equality? Judgements on these questions are likely to vary from context to context. What we need therefore is an affirmation of the principle while the policies by which we give effect to that norm can be deliberated upon keeping the specifics in mind.

The experience of India highlights two other elements that also need to be mentioned here.

First, *formal recognition of diversity by the state is indispensable*; it can minimize the disadvantages faced by a community in the public arena and create new opportunities for it. But state policies of cultural homogenization are just one site of disadvantage and discrimination in society. Often minority communities suffer because they are stigmatized and represented negatively in the cultural history of the nation. Hence, policies seeking to promote cultural diversity need to be accompanied by a positive acknowledgement of the contribution of minority communities. Multiculturalism can best flourish when there is an accompanying spirit of inter-culturalism. Greater exposure and interaction between communities needs to be fostered in order to overcome negative stereotypes. If multiculturalism suggests official recognition for different languages, inter-culturalism requires that the majority be encouraged to learn the language, and with it the literature and culture of a minority, and vice versa, and that the minority be encouraged to learn about other minorities as well as the majority.

Second, the commitment to cultural diversity has been challenged very fundamentally by episodes of communal violence, where members of one community are systematically targeted by another. Even though incidents of communal violence have decreased over the years, they remain a permanent reminder of the vulnerability of the minority communities. Communal violence not only vitiates existing bonds but also generates a feeling of mistrust among communities. It thrives by systematically demonizing the 'Other', and this undermines even existing structures of interaction. What is strengthened, on the one hand, is intra-community rather than inter-community bonds and, on the other, a traditional and more orthodox leadership, which is more insular and hostile to the expression of differences within the community. The paradox then is that, while cultural diversity finds space in the public arena, inter-cultural dialogue and interactions have diminished. The majority community sees the accommodation of diversity as 'appeasement' of the minority and the minority remains vulnerable and diffident, unable to contribute significantly to the public and political life of the polity.

The point that must be emphasized here is that policies that promote cultural diversity are not in themselves sufficient to check communal violence. Ignorance about the Other certainly provides a fertile ground for breeding sentiments of hatred and animosity. But the presence of diversity in the public arena is not a sufficient deterrent against systematic victimization of the Other. In situations of communal violence, what victims require is strong and quick action by the state to protect the life and property of the targeted

community while simultaneously punishing the guilty. In seeking this, the victims are not asking for special treatment; rather they wish to be treated like all other citizens. They want their basic rights as citizens to be protected. Communal violence suggests that they are not being treated like others; they are being singled out on account of their identity. In sharp contrast to this, to protect cultural diversity, sameness is de-emphasized. The reference usually is to the predicament and special needs of a minority community. The latter seeks recognition for the difference it embodies.

Peaceful coexistence of different communities therefore requires both a vigorous defence of the basic rights of individuals as citizens and an institutional and normative framework that acknowledges and values diverse ways of life. The latter often entails special consideration for members of a community, in the form of exemptions from existing legal codes or recognition for specific cultural institutions and practices. In other words, it is not an either/or situation. If individual rights by themselves provide little protection against forces of cultural homogenization, then accommodating diversity through special consideration for vulnerable groups also neglects the primary concerns of individuals as citizens. It is only when both sets of concerns are suitably addressed that democracy is deepened and multicultural polities are nurtured and made more sustainable.

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SECTION 4

When Democracy Falters

When do democracy's institutional failings, practical inadequacies, or acute social conflicts precipitate crises and breakdowns, leading to doubts about democracy's ability to manage conflict and enable positive solutions to human security challenges?

Democratic Norms, Human Rights and States of Emergency: Lessons from the Experience of Four Countries

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Democracy and Terrorism: The Impact of the Anti

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Democratic Norms, Human Rights and States of Emergency: Lessons from the Experience of Four Countries

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Democracies young and old confront violent challenges from internal social conflict, insurgencies and transnational terrorist organizations. The new millennium seems to be bringing such challenges with more and more frequently. To parry them, national constitutions, in setting out ground rules for government and basic rights for citizens, often allow derogation from the ordinary procedures for passing legislation and the curtailment of basic rights in response to emergencies. Such mechanisms may be termed states of emergency. Woven into the constitutional fabric or embedded in statutory infrastructure, a state of emergency may allow suspension of the whole constitutional edifice, or merely offer a limited quiver of emergency powers alongside the continued operation of the body of democratic machinery. States of emergency, while necessary, raise unique questions of institutional design—the architecture of legislature, executive branch and judiciary—because of the risk that temporary suspensions of democratic rules and rights may become a gateway to the permanent usurpation of political power and curtailment of human rights. Paradoxically, therefore, emergencies can facilitate the destruction of the democratic values they exist to preserve. Deepening the paradox, it is the executive branch, unencumbered by the need for collegiality or majority voting, that is both optimally tailored to respond quickly to crisis and the branch that poses the gravest risk of overreaching and entrenching its powers due to its unitary nature, its decision-making power and its control of administrative and military resources.

This study maps these dynamics of emergencies. It begins with an analysis of the tensions inherent in emergency powers. Then four case studies are presented—India, Pakistan, the United Kingdom (UK) and the United States. Snapshots of US and Indian history cast light on the possible roles of elected bodies. Accounts from Pakistani and British history illustrate variants on the judicial function. These case studies focus less on the precise constitutional texts at issue, which turn out to be less than path-determinant, than on the interaction over time between different branches of government.

To be sure, the political environments of the four studied countries differ widely. Yet some general lessons of institutional design do emerge.

- First, the singular dilemma of emergencies is the question how to constrain the executive branch, whereas much political theory has focused on the problem of domineering legislative majorities.
- Second, legislatures and judiciaries often acquiesce in their own emasculation, but on rare occasion they do shift the path of emergencies. Of special importance is the role of these other branches prior to an emergency. At this earlier moment, courts and legislatures either facilitate or hinder executive overreaching. Facing naked claims of executive authority, courts and legislatures are unlikely to overcome the executive branch, although the case of India is a counter-example of an electoral process, and hence a legislative body, upending an abusive emergency regime.
- Third, the actions of legislatures and courts over time, before an emergency emerges, shape the political culture—the presumptions, inclinations and values of the elite who occupy positions in the legislature, judiciary and executive branch. Since these branches of government are stocked from the same class of people, the shared culture of this elite influences the likely use of emergency powers.

The four case studies suggest that problems raised by emergencies are best approached as issues of institutional design. Hitherto, international attention to emergencies has focused on the establishment of a baseline below which human rights cannot be reduced. The 1966 International Covenant on Civil and Political Rights (article 4), the 1950 European Convention on Human Rights (article 15), and the 1969 American Convention on Human Rights (article 27) all stipulate rights from which no derogation is possible. Yet, in the absence of a supranational agency that is capable of real-time enforcement (and the International Criminal Court poses no threat of playing this role for the time being), some domestic institution is needed to protect rights. The 1984 Paris Minimum Standards of Human Rights Norms in a State of Emergency, drafted by the International Law Association, reflect the importance of basic rights, but add important institutional checks. Building on the Paris Minimum Standards, the study concludes by surveying recent innovative thinking on constitutional engineering.

Emergencies and Tragic Choices

The decision to declare a state of emergency ought to be a conservative measure: emergencies are intended to safeguard the elementary lineaments of the constitutional order from violent threat. Yet history shows that emergency powers, even though necessary, bring destabilizing hazards. Herein lie the tragic choices posed by states of emergencies. The need for emergency mechanisms can be traced at least back to the Roman republics of the 5th century BCE. The Roman constitution of that era authorized Senate appointment for a fixed six-month term of a ‘dictator’ who would be able to raise an army, issue decisions free from Senate or tribunal review, and establish the strategies and tactics necessary for victory. A dictator could authorize the suspension of rights and

legal processes to deal with threats of invasion or insurrection, and would face neither punishment nor accountability upon the close of his term. Rome's model of dictatorship saw frequent service, with 95 dictatorships over a 300-year period. Significantly, the Romans recognized the threat to constitutional order implicit in the dictatorship model; they thus maintained an absolute separation between the appointing body (the Senate) and the dictator himself, and a clear prohibition on the dictator's ability to promulgate new legislation.

The overthrow of France's absolute monarchy at the close of the 18th century and the installation of limited government forced fresh consideration of the terms of emergency powers. Article 92 of the revolutionary constitution of 22 Frimaire Year VIII allowed the 'suspen[sion of] the rule of the constitution'. In the tumultuous century that followed, French governments' organic laws contained many such provisos. British legal theorists, lacking France's experiences of confrontation and sudden political transformations, assimilated rarely-used emergency powers to the government's general common-law right to self-defence, pursuant to which it could maintain public order no matter what the cost in blood or property. The fledgling German republic was less fortunate. Between 1919 and 1932, emergency powers granted by article 48 of the Weimar constitution were put to extensive use (more than 250 times), principally to confront major economic emergencies fostered by the Versailles reparations regime and the inter-war global depression. Although article 48 stated that a law would be passed regulating emergencies, no such law was ever enacted. As invocation of article 48 became increasingly regular, Weimar Germany's political classes accepted its broad use as normal. On ascending to the chancellorship in 1933, Hitler found in that provision a ready tool for usurping unfettered control. Thus, institutional design facilitated change in political culture, which in turn generated new, subversive institutional consequences.

This historical experience suggests that emergencies pose unique threats to a constitutional order. Rather than furthering conservative ends, states of emergency can facilitate the transformation of the constitutional political order. During an emergency, checks upon and monitoring of the executive branch fall away. In the absence of inter-branch constraints, a temporary majority may seek to entrench itself in political power. Recent events in Nepal provide a dramatic example. In 1990, Nepal transitioned from an absolute monarchy to a democratic, constitutional monarchy. From 1996 onwards, a succession of coalition governments foundered in the face of a rural Maoist insurgency. Failing to counter the rebels either politically or militarily, these governments relied increasingly on the palace for authority. In 2002, a prime minister suspended elections, with royal support, only to be dismissed by the king and replaced by a royal appointee. February 2005 saw further entrenchment of royal power, with an outright coup, a new overtly monarchist dispensation, and an explicit state of emergency. During this state of emergency, 'preventive' detention and torture of political opponents and independent journalists became widespread. In short, as the emergency deepened, one political faction entrenched itself and eliminated political competition.

Moreover, there is a creeping logic of escalation that afflicts emergency powers. This logic arises because of the difficulty of anticipating clear boundaries to necessary emergency powers, either in time or in terms of subject matter. Initially, the public may see the suspension of a handful of rights as acceptable. Yet, as an emergency wears on and public nerves fray, or as subsequent emergencies arise, the initial suspension of rights or curtailment of democratic process may come to appear mundane, even unobjectionable. Public demand for more substantial measures may grow, with the executive being only too keen to oblige. In short, emergency powers tend to grow as executive branches find new reasons to claim ever more dramatic authority. The events surrounding the terrorist attacks of July 2005 in the UK illustrate this dynamic. A previous, stringent set of restrictions on human liberty, which the British Parliament had enacted in the immediate wake of the September 2001 attacks on New York and Washington, was presumed inadequate in the light of the London bombings. Within days of the second wave of bombings, the British Government pressed for new detention and deportation powers, new curtailments of asylum rights, more stringent immigration rules, and expanded proscription of certain religious organizations. Although the case for any given security measure may be weak, public pressure for visible change combines with executive desire for power to extinguish hesitations.

Exacerbating this concern, emergencies tend to provoke tragic violations of human rights. Reductions in individual liberties at times of crisis are justified by invoking new, allegedly more serious, threats. Terrorism or insurgencies are said to call for a 'new balance' between liberty and security; but, contrary to the balancing metaphor, not every loss of liberties yields a gain in security. Many measures also disproportionately burden a minority: the targeting of Arab-Americans and Muslims in the aftermath of the 11 September 2001 attacks in the USA exemplifies this dynamic, while the price the majority pays for feeling secure is a small one. Such distributional inequalities allow the liberties of the few to be traded off too quickly against the security of the many.

Finally, temporary measures can outlast the emergency, remain embedded in the legal system, and become tools in the service of the erosion of the legal order. An ominous contemporary example may be the US presidential authorization of indefinite detention of persons designated as 'unlawful combatants', an ill-defined category of which the boundaries shift and which is of doubtful legal provenance. US government lawyers also have invoked the emergency to justify torture. At the time of writing, these measures have seen relatively limited (but nonetheless excessive) use. Nevertheless, it is hard to avoid the suspicion that such tactics will be revived with renewed vigour if another crisis emerges.

Examination of four case studies paints these risks in more detail. The United States and India provide different insights into the role of the legislature. Pakistan and the UK, by contrast, illustrate lessons about judicial behaviour.

The United States and India: Legislative Action or Abdication?

Emergency powers, even if parcelled out incrementally, have corrosive consequences. Indeed, incremental measures attract less attention and render the extraordinary normal in the public eye. Hence they may be more dangerous than sweeping seizures of emergency powers. The US experience with emergency powers in the second half of 20th century highlights this risk, and casts into relief legislatures' responsibility for the development of emergency powers.

Drafted in the summer of 1787, the world's oldest currently operating constitution gives the US Government no explicit power to declare a state of emergency, but implies that emergency decisions are a function of the legislative, rather than the executive, branch. The constitution's first article describes the federal legislature, Congress. In so doing, it tersely states that the remedy of habeas corpus (a vehicle to challenge unlawful executive detention) cannot be suspended except 'in cases of Rebellion or Invasion'. That article also vests Congress with authority to call out states' militias to 'suppress Insurrections and repel Invasions'. By contrast, article II, which sets out presidential powers, makes no mention of emergency powers. In an early exercise of these powers in 1861, President Abraham Lincoln defied the constitutional text, suspending habeas corpus and spurning an order of the chief justice. Lincoln, nevertheless, did not attempt to square his actions with law, rather justifying his unlawful action later before Congress as warranted by the necessities of the moment.

In the post-World War II era, congressional restraint on executive power eroded. Faced with Soviet nuclear threats, Congress acquiesced in and abetted the president's growing power to respond unilaterally to foreign affairs crises. In so doing, it not only recognized but also augmented presidents' advantages in decisiveness, ability to act quickly and access to intelligence. Between the end of World War II in 1945 and the mid-1970s, Congress authorized separate emergency powers in 470 different pieces of legislation. In the mid-1970s, the executive branch was weakened by the tempestuous scandals surrounding President Richard Nixon. Since September 2001, however, the executive branch has sought, and gained, sweeping powers to confront terrorism, partly by exploiting the quiescent political culture of congressional complacency built up since 1950.

We can consider two examples of cold war-era statutorily authorized emergency powers in the USA. First, the 1950 Emergency Detention Act permitted executive detention of persons when an official of the executive branch (not a court) thought it reasonably likely that the person would commit or conspire to commit acts of espionage or sabotage. Second, the 1950 Defense Production Act gave presidents power to direct industry's basic procurement and contracting decisions. Additionally, the 1917 Trading With the Enemy Act (the TWEA, as it is commonly known) was used with special vigour during the cold war, facilitating extensive presidential dabbling in the economy and permitting even seizure of property and commodities. The potentially enormous powers available under the TWEA became apparent in 1971, when President Nixon invoked it to impose

his economic policy by fiat: declaring a national emergency, he suspended the dollar's convertibility into gold and imposed a 10 per cent surcharge on imports.

Efforts in the 1970s to restrain presidential overreaching under the cloak of emergency powers proved too little, too late. Four efforts to restrain executive power, all of which failed in whole or in part, demonstrate how enfeebled Congress had become.

First, in 1971 Congress repealed the Emergency Detention Act, alarmed by calls for mass detention of black radicals after the urban riots of the 1960s, and also concerned to forestall a repetition of the mass internment of Japanese citizens during World War II. That year, Congress also enacted a Non-Detention Act, barring executive detention. That effort to stymie executive detention collapsed, however, after the September 2001 attacks. Making the elegant, but nonsensical, claim that the 1971 legislation only referred to civil and not military authorities, the administration of George W. Bush has locked up at least three persons seized on US soil, without the benefit of any process, merely on a presidential 'designation' that the persons are 'enemy combatants'.

Second, the 1976 Congress enacted the National Emergencies Act, terminating existing emergencies, demanding public declaration of all new emergencies and requiring subsequent reporting by the president. Nevertheless, presidents continued to deploy emergency powers regularly to block foreign assets and to bar travel to foreign countries, such as Cuba and Iraq. The consultation and reporting requirements imposed in 1976 largely have been diluted or ignored by Congress.

Third, the 1977 International Emergency Economic Powers Act limited the TWEA to wartime. Yet, by stipulating the existence of an 'unusual and extraordinary' foreign threat during peacetime, a president nonetheless can invoke the TWEA's broad unilateral power over domestic affairs.

Finally, in 1973, Congress enacted a War Powers Resolution mandating preliminary reporting of troop deployments in areas of imminent hostilities within 48 hours and a full presidential accounting 60 days after hostilities begin. If Congress does not then approve a deployment, presidential authority to use force expires. This resolution has been flouted repeatedly in South-East Asia, Iran, several Central American states, Grenada, Libya and the Persian Gulf. Only once, in the Lebanon crisis of the early 1980s, did Congress even acknowledge the applicability of the War Powers Resolution, but then went on to negotiate a compromise giving President Ronald Reagan authority to keep troops in place for a further 18 months.

The political climate cultured in half a century of congressional apathy bore fruit after the 11 September 2001 attacks. On 18 September, Congress passed a joint resolution authorizing 'use [of] all necessary and appropriate force' against 'nations, organizations, or persons' the president deemed responsible for the attacks. Seizing on this uncertain and nebulous authorization, the Bush administration and its lawyers asserted authorization to sideline the 1949 Geneva Conventions, to ignore international law on torture, and

to hold people indefinitely without charges. By August 2005, two federal courts had agreed with the executive's startling assertion that even the minimal standards of decent treatment provided in common article 3 of the 1949 Geneva Conventions did not apply to those held at Guantánamo. Documentary proof of abuses at Abu Ghraib prison in Iraq was merely the most dramatic evidence to suggest that torture and cruel, inhuman and degrading treatment had seeped into US military practice on an extensive scale and was routinely deployed against many who had not even the slightest connection to terrorism.

In short, years of congressional abetting of executive aggrandizement in emergencies rendered the US legislature systematically incapable of confronting the president. Congress failed even after committing itself through mechanisms such as the War Powers Resolution, which had purported to recognize the need for expeditious executive action but restrain it with requirements for post hoc approval. Courts, too, explicitly abdicated their duty of oversight, interpreting statutes in such a way as to give broad leeway for presidential manoeuvre, and taking refuge in the facile notion that judges have no expertise in intelligence and security matters. (This dearth of expertise, of course, never prevents courts dealing with, for example, complex commercial cases.) These failures suggest that, in the absence of a political climate that encourages inter-branch collaboration, even finely calibrated procedural schemes will collapse under executive pressure. The US experience, if nothing else, underscores the need to preserve a political culture of vigilant and coequal branches of government, policing each other to the best of their ability.

The US experience, however, should not be a counsel of despair. To be sure, in the crucible of a crisis, legislatures typically prove no match for the dispatch and determination of the executive. Legislators' tendency to rally round the flag exacerbates these institutional frailties, while their want of concern for minorities burdened by emergency measures means that they cannot be relied on to raise red flags on excessive measures.

By contrast, India's experience of national emergency between June 1975 and March 1977 (known as 'the Emergency') provides a stark example of how the parliamentary electoral mechanism can provide surprising constraint. The lessons of the Indian emergency are far from unambiguous: throughout the emergency, the Indian legislature acquitted itself disgracefully, yielding ground time and again to Indira Gandhi's Congress Party, which held the emergency powers; and in the 1980 elections, conducted three years after the emergency wound to a close, the Congress Party won roughly the same share of the popular vote it had won in 1971, while Mrs Gandhi secured her seat by a safe margin of 51,592 votes. Nevertheless, the emergency itself was ended solely by a surprise electoral revolt.

Like the USA's founding document, India's constitution, drafted between December 1946 and December 1949, was established in the rosy glow of independence from colonial domination. Emergency protocols were debated until August 1949 and were so contentious that at one point they had to be withdrawn for further attention from the

drafting committee. The eventual provisions on emergencies, comprising nine articles in part XVIII of the constitution, were partly inspired by the US habeas corpus suspension clause, and permitted a president, 'for the purpose of removing any difficulties', to make 'such adaptations, whether by way of modification, addition or omission, as he may deem to be necessary'. Internal disturbances, external aggression and threats to the fiscal credit or stability of the nation could justify such action. Measures had to be set before Parliament, and would expire automatically after two months unless they received a parliamentary seal of approval. For the duration of an emergency, in addition, judicial enforcement of any right specifically named by presidential order could be prohibited. Such an order could apply to all or part of the country, and could last for all or part of an emergency.

In the heat of crisis, this framework found little traction. The story of the emergency's inception and initial course thus reflects a significant constitutional lapse as a prime minister, with the aid of her 'kitchen cabinet', outmanoeuvred parliamentary and judicial controls. Only after two years was legislative control re-established, and then thanks solely to a fortuitous combination of circumstances. The Indian experience in short demonstrates how a transient majority can try to use an emergency to seize political power and entrench a monopoly on governance, but fail.

To retell the story of the emergency is to recount a chapter in the tangled history of one politician—Indira Gandhi. Mrs Gandhi first obtained national office in January 1966, following the unforeseen death of Prime Minister Lal Bahadur Shastri. She quickly proved her electoral mettle in the general election of 1967. But from the moment she won re-election in March 1971 she found herself plagued not only by rising inflation and high oil prices but also with accusations of election rigging in her home constituency of Rae Bareilly in Uttar Pradesh. Legal proceedings instituted by her political opponent dragged on until 12 June 1975, when Justice Jagmohan Lal Sinha ruled that Mrs Gandhi had been guilty of the 'corrupt practice' of using government services in her campaign. Obtaining a conditional stay of the ruling, which would have voided her election and barred her from standing for office for six years, Mrs Gandhi bypassed her own cabinet and secured a declaration of emergency from the president, Fakhruddin Ali Ahmed. Before dawn the following day, 676 members of the opposition had been detained.

Legislative resistance to Mrs Gandhi's emergency never recovered. During the course of the emergency, approximately 111,000 people were detained. Although the Bangalore High Court voided detentions as invalid in July 1975, in April 1976 a bench of the Supreme Court reversed that judgement, concluding that no court had jurisdiction to review the factual or legal sufficiency of detention orders.

Alongside press censorship and rumours of torture, the threat of detention cast a pall over the legislative process. Mrs Gandhi's government was able comprehensively to block legal assaults on the state of emergency by pushing a series of amendments to the constitution through the subservient Parliament. These amendments also protected Mrs Gandhi's fragile electoral mandate. Hence, the Parliament proved incapable

of playing its constitutional role under chapter XVIII of the 1950 constitution of scrutinizing justifications for emergency powers. An overview of Mrs Gandhi's key constitutional amendments reveals the extent of legislature's collapse. First, the 38th amendment barred judicial review of emergency proclamations. Second, courts lost jurisdiction to hear election petitions, hence insulating Mrs Gandhi's fragile perch in Rae Bareilly. Third, the 41st amendment brought in absolute immunity from criminal liability for the president, the prime minister and provincial governors. In the light of the extensive detentions, house demolitions, forced sterilizations and torture, it is hardly surprising that the executive sought formal insulation against post hoc judgement. The final amendment passed during the emergency, the 42nd amendment, comprised 20 tightly packed pages that centralized political power and made judicial challenge well-nigh impossible.

Plans to end the emergency in August 1975, with the Congress Party coasting on popularity inspired by falling food prices, were shelved in part due to Mrs Gandhi's fear of political conspiracies—a concern stoked by the assassination of Bangladeshi Prime Minister Mujibur Rahman. Thus did the emergency become a vehicle for the entrenchment of a transient political majority beyond its natural life. Nevertheless, Mrs Gandhi called elections in March 1977, seemingly believing that the early popularity of the emergency had not waned over time. Her calculation proved flawed. The opposition Janata Party had organized swiftly, with opposition leaders finding common ground as early as November 1975. The Congress Party's failures to manage the economy or mobilize effectively, even with the strategic advantage of the emergency, proved significant handicaps. Perhaps pivotal in Mrs Gandhi's defeat was the deeply resented policy of forced sterilization. Indeed, it is not unreasonable to believe that, had it not been for the sterilization policy, the polls would have yielded a different outcome. Ending the emergency, Prime Minister Moraji Desai began the slow task of repealing Mrs Gandhi's legislative and constitutional changes, a task complicated by the Congress Party's continued dominance of one chamber of the Parliament.

To sum up, the Indian experience with emergency powers under Mrs Gandhi hardly augurs well for legislative perseverance in the face of executive overreaching. Yet the unexpected victory of the Janata Party counsels in favour of keeping open the channels of political change. Even if a legislator is unlikely to mount a constitutional attack against a mobilized executive branch at a time of national crisis, lulls between crises, and the inevitable currents of political fortune, provide openings for political opposition. To place one's faith in legislatures' ability to resist executive encroachment on democratic norms and human rights is no easy task in the light of the US and Indian experiences. Nevertheless, it is the legislature that remains the forum and the fulcrum for dissent and outrage against an emergency regime. Properly understood, legislatures give cause for hope, but no certainty that the rule of law will prevail.

Pakistan and the United Kingdom: The Role of the Courts

Judicial reactions to emergencies offer another bleak story studded with fleeting moments of hope. Pakistan's courts have shown little courage, but recent events in the United Kingdom do give cause for hope. At their nadir, Pakistan's courts were virtual co-conspirators in frontal assaults on democracy. Successive Pakistani generals have sought a shallow façade of democratic legitimacy (a precondition of external aid) and found legitimacy through the courts. By vindicating military coups, the judiciary has facilitated the establishment of a military 'state within a state' that will be a counter to democratization and the realization of human rights norms for decades to come. By contrast, a recent cultural shift prioritizing human rights has fostered some judicial resistance in the UK.

Unlike India, Pakistan arrived at independence from British colonial rule in August 1947 without a viable central government, without a leading political party that had any meaningful regional presence, and without a strategy to deal with the border crisis that was rapidly engulfing Kashmir. Military demands on central government during Pakistan's first decade, caused by intermittent hostilities with India, tilted the political centre of gravity towards the military, and created an ineradicable focus on security. Unlike the United States or India, Pakistan came to maturity in an emergency.

It is therefore unsurprising that military and bureaucratic leaders have intervened in civilian politics on four occasions. In each case, civilian rule under a more-or-less democratic regime has been suspended and martial law imposed with promises that democratic norms would be reinstituted when the crisis subsided. Such promises proved hollow. The first military coup occurred before the nation's first constitution was even complete. In 1954, Governor General Ghulam Muhammad assumed power after dissolving the Constituent Assembly, which was drafting the nation's first constitution. Although a constitution was approved in 1956, that organic document endured only two years. In October 1958, General Ayub Khan, aided by his civilian ally President Iskander Mirza, mounted another coup and named himself Chief Martial Law Coordinator. Ayub's rule was followed by further military control under General Yahya Khan. The 1971 secession of East Pakistan and another war with India brought Yahya's era to a close, and allowed Zulfikar Ali Bhutto to gain the prime minister's office. Yet Bhutto lasted only six years. In 1977, General Zia ul-Haq seized political control, later executing Bhutto. Pakistan's second democratic interlude, occasioned by Zia's sudden demise in an plane crash, ended in October 1999, when General Pervez Musharraf ousted Prime Minister Mian Nawaz Sharif and assumed power, rather than be removed over a botched assault at Kargil on the Indian border. Democracy in Pakistan, that is, has been rather Hobbesian—brutish and short, if not downright nasty.

The courts have occupied a pivotal place in maintaining military supremacy. They have ratified and legitimated the four coups and granted the military broad emergency powers. Moreover, they have fashioned this emergency regime themselves. Instead of sticking to the constitutional text, Pakistani courts created doctrines to justify military

rule. The constitutional provisions for emergencies contained in part X of the 1973 constitution are similar to those in the 1950 Indian constitution: the president has authority to determine whether war, internal disturbance or external aggression warrant an emergency declaration; however, an emergency proclamation must be laid before the Parliament within 30 days, and approved within two months to remain validly in force. These provisions have counted for little.

A template for judicial intervention in moments of crisis developed in the conflict between the Constituent Assembly and Governor General Ghulam Muhammad in the 1950s. Confronted by the Assembly's efforts to strip him of authority to dismiss ministers, the governor general in October 1954 dissolved the Assembly and declared an emergency. While the Sindh High Court upheld a challenge to the Assembly's closure, Pakistan's Supreme Court, led by the governor general's friend and ally, Chief Justice Muhammad Munir, rejected that challenge and dramatically curbed the Assembly's powers. Having created a situation in which neither the Assembly nor the governor had authority to issue new rules, the court then invented a 'state necessity' doctrine to break the constitutional deadlock it itself had created. 'State necessity' in times of emergency thus started as a judicial back-and-fill manoeuvre after the court had ratified a coup; its full import was not apparent until 1977. In the interim, the Supreme Court applied a more extreme principle of 'revolutionary legality' drawn from the legal theory of Hans Kelsen on behalf of General Ayub in 1958. Under that theory, the court endorsed a coup that 'satisfie[d] the test of efficacy' and became 'a basic law-creating fact'. On the basis of this theory, the court granted emergency powers to Ayub.

'Revolutionary legality' was repudiated following Yahya's fall in 1971. 'State necessity', however, was never rejected. On the contrary, upon General Zia's coup in 1977, the Supreme Court revived and applied that doctrine. It described allegations of vote-rigging on behalf of Bhutto and asserted that these had inspired a nationwide wave of protest, as well as economic and social disarray. The court concluded that Zia was justified by 'state necessity' in suspending the constitution, imposing martial law, and requiring judges to swear a new oath to his martial law proclamation. In so doing, the court relied on General Zia's promise that elections would be held as soon as possible. But no polls were held until February 1985, and the court declined to hold Zia to his word. Similarly, after General Musharraf's 1999 coup, the Supreme Court granted Musharraf three years before holding general elections. In April 2002, Musharraf announced a referendum on whether he could hold the office of president for five years—a measure that violated the spirit, if not the letter, of the court's judgement ratifying the October 1999 coup. Nevertheless, the court rejected a legal challenge to the referendum.

Courts did more than facilitate democracy's collapse. They actively undermined its supports by granting military leaders unsought authority to amend the constitutional fabric, contravening the elementary precaution embedded in emergency regimes since the ancient Roman republics of limiting a putatively temporary authority's ability to alter the fundamental structures of government. In ratifying both Zia's and Musharraf's coups, the Supreme Court gave these generals power to pass necessary laws (a measure

the Romans resisted) and to amend the constitution outside stipulated procedures. Thus, General Musharraf's August 2002 Legal Framework Order purported to change 29 articles of the 1973 constitution, abrogating political parties' rights and changing the legislature's structure. The August 2002 Legal Framework Order took the Supreme Court's waiver of constitutional procedures one further step, stating: 'If there is any necessity for any further amendment of the Constitution or any difficulty arises in giving effect to any of the provisions of this Order, the Chief Executive may make such provisions and pass or promulgate such orders for amending the Constitution or for removing any difficulty as he may deem fit'.

Despite the bleak history of Pakistan's judiciary, courts can also play a checking function in times of perceived crisis even if they lack power to vindicate rights. The United Kingdom lacks a constitution and does not have a history of aggressive judicial policing of executive overreach. Its highest court, the Law Lords, cannot invalidate laws. However, since the Human Rights Act of 1998 the Lords can issue a 'declaration of invalidity' noting a conflict between a piece of domestic legislation and the European Convention on Human Rights. Even this weak judicial review proved temporarily sufficient to parry indefinite preventive detention measures taken after the 11 September attacks. In the immediate aftermath of the 7 July 2005 attacks in London, the British Government has sought to restrict tightly the kind of judicial review that can be exercised in cases that involve counter-terrorism concerns. It remains to be seen whether even the weak British form of judicial review, which arguably makes judicial resistance easier by lowering the institutional cost of confrontation, will persist as a check on the executive.

Historically, British courts have declined to confront Parliament or prime ministers. Faced with extraordinary claims of executive power to search, seize and detain persons, and censor news under the 1914 Defence of the Realm Act, the 1920 Emergency Powers Act, the 1939 Emergency Powers (Defence) Act, and emergency measures enacted for the Northern Irish conflict, the courts have played a minimal role, striking down only a handful of emergency measures as *ultra vires*, or without lawful authority, long after the emergency or crisis had ended. Nevertheless, in a post-11 September 2001 decision, Britain's highest court, perhaps emboldened by the cultural shift signified by the Human Rights Act, demonstrated healthy scepticism about the scope of emergency powers. In December 2001, the British Parliament had sanctioned the indefinite detention of any person not a British citizen and certified as a 'suspected terrorist'. The government had derogated from both the European Convention and the International Covenant on Civil and Political Rights on the grounds that there was a 'public emergency'. In December 2004, the House of Lords rejected the government's assertion that the derogation was consistent with the European Convention. Although the tribunal declined to second-guess the government's conclusion that a public emergency existed, it concluded that the government's locking up only non-citizens was neither proportional, given the equal threat from citizens, nor necessary. Its decision hinged on the irrationality of singling out a minority (non-citizens) for special burdens, when members of the majority could present as much of a risk.

In summary, courts can either restrain or abet the abuse of emergency powers. The Lords' decision hints at a feasible judicial role for emergencies. The Lords acknowledged that determining whether a public emergency exists demands complex predictive inquiries that necessarily resist easy judicial assessment. The court found the rationality and proportionality of emergency measures more amenable to assessment. In so doing, the Lords followed a path blazed by the Israeli Supreme Court, which has found authority in articles 49 and 50 of the Basic Law to determine whether a measure is 'warranted by the state of emergency'. Chief Justice Aharon Barak of the Israeli Supreme Court has endorsed this proportionality doctrine as 'a powerful tool for a judge to realize his role in a democracy'.

Democratic Fragility and Emergency Regimes: Some Conclusions

The respected US jurist Learned Hand, speaking in New York's Central Park in August 1944, cautioned that: 'Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can even do much to help it'. Stirring words, but also a counsel of despair, for they suggest that institutions are scant protection against tyranny. Following Hand, distinguished legal academics such as Mark Tushnet and Oren Gross have argued for treating emergency measures as 'extra-legal'. Seeking to preserve the integrity of the constitution, they contend that emergency measures should be recognized as outside of, and contrary to, the constitutional order, and hence in need of ex post ratification.

The four case studies here suggest some reason to resist this analysis. A political culture in which sustained commitment to the rule of law remains paramount, and where legislatures and judiciaries play active roles in channelling invocation of emergency powers, is far less vulnerable to executive overreaching in an emergency. Even if neither the courts nor the parliament can resist the executive branch in perilous times, preserving their ability to provide oversight at other times shores up a political culture in which overreaching is resisted, and assists in eventual challenges to emergency powers.

The 1984 Paris Minimum Standards, as supplemented by recent constitutional developments, provide guidance for possible institutional reforms. They do more than merely entrench non-derogable rights, which is a necessary first step. They also mandate constitutional (rather than statutory) rules for emergencies, to prevent the creeping metastasis of power witnessed in the United States. The standards take the critical step of entrenching both the judiciary and the legislature, as institutions, even as emergencies continue. Hence, the Paris Standards demand legislative approval for extensions of an emergency—as does Israel's Basic Law, which mandates annual review of a state of emergency by the Knesset (the legislature). To date, the Knesset has never rejected a state of emergency. At a minimum, nevertheless, the Basic Law keeps emergencies within a framework of collaborative, majoritarian governance. Experiences with the Basic Law and the US War Powers Resolution suggest that ex post hoc legislative ratification may be ineffective if the political culture is not supportive of legislators.

The Israeli scheme, however, does not account for the way in which emergencies can impinge deeply on minorities' right. The South African constitution, by contrast, demands 'a supporting vote of at least 60 per cent of the members of the [National] Assembly' every three months of an emergency. Hungary's constitution demands a two-thirds legislative majority even to activate an emergency. Since super-majorities may be maintained almost indefinitely, especially in First Past The Post electoral systems, a measure first proposed by US scholar Bruce Ackerman is worth considering. Under Ackerman's scheme, 'an escalating cascade of [legislative] supermajorities', from 50 to 60 to 70 per cent, in monthly votes is required to keep an emergency alive. This scheme gives smaller and smaller parties an effective veto, protecting at least those minorities who have a legislative presence. Ackerman also suggests that minority parties have control of parliamentary committees for oversight of emergency measures (Ackerman 2004). These proposals do not address the significant concerns of non-citizens, who have been targeted in the United States and the UK following terrorist attacks, and whose rights require constitutional insulation.

As to the courts, the Paris Standards preserve judicial review of emergency measures for conformity with law and non-derogable rights. As the British and Israeli experiences suggest, courts can play an important role in examining the proportionality of specific measures. Furthermore, courts have a crucial role in reviewing the factual predicates for individual detention determinations and ensuring that detainees are treated humanely. There is simply no reason to vest the executive with the awesome power of absolute command over human liberty. Nor is there any reason for an executive to resist judicial review on the ground that classified evidence is at stake. Through mechanisms such as the US Classified Information Procedures Act, courts have ample resources to handle classified evidence without releasing government secrets. In the civil law tradition, in which hearsay evidence is more regularly used and evidentiary decisions are more centralized in the judiciary, adjudication of cases with classified evidence raises even fewer problems.

The standards also limit the circumstances under which an emergency can be declared to 'exceptional situation[s] . . . which affect the whole population . . . and constitute a threat to the organized life of the community of which a state is composed'. This high bar ensures that emergency rule does not become a matter of routine, easily abused, as in Weimar Germany. A further variation, embodied by Canada's 1988 Emergencies Act, is to distinguish various forms of emergency, including natural disasters, public disorder (such as riots), wars, and international crises. Multi-level constitutional arrangements are also found in Germany, Spain and Latin American countries. Strictly delimiting and confining different emergency regimes for different events reduces the tendency for powers used for one problem to drift into use for other, less serious concerns.

While the Paris Standards limit the length of emergencies and ensure the preservation of the judicial and legislative roles, they omit two checks which the Romans rightly saw as crucial. First, explicitly vesting a legislature with power to declare emergencies and giving powers wielded in emergencies to the executive preserves a separation of powers.

Second, a constitution should prohibit executive, legislative or judicial reconfiguration of the basic law during an emergency. This would foreclose moves, like those taken by Pakistan's courts or India's Parliament while under Mrs Gandhi's thumb, to amend the rules of the democratic game to favour the governing faction.

In sum, a limited range of measures exists to contain and channel emergency powers. But historical experience, embodied in case studies of the United Kingdom, Pakistan, India and the United States, gives substantial grounds for focusing on emergency regimes as a critical threat to democracies, and bolstering legislative and judicial resources to react before and after an emergency. Doubtless the new century will provide no shortage of opportunities to test these frameworks, to identify new ways executives find to circumvent limitations on their power, and to develop new restraints on emergency executive power.

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Democracy and Terrorism: The Impact of the Anti

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How can terrorism be dealt with without undermining the very foundations of a democracy? Recent focus on international terrorism has an unprecedented impact on national-level policy, with implications for both mature and emergent democracies.

Key Challenges

Democracies face acute dilemmas when confronting acts of violence which fall under the rubric of terrorism. Overreaction can alienate the population, damaging government legitimacy as much as (or more than) the actions of small terrorist groups. At the same time, if government, judiciary, police and military prove incapable of upholding the law and protecting life and property, then their credibility and authority will be undermined. Concerted acts of violence (or threats of such) are a challenge which demands steady, painstaking response, lest the state compromise its very legitimacy through the measures enacted and public confidence lost.

Given that events on and subsequent to 11 September 2001 signify a new level of prominence for global prevention of terrorism, it is vital that debate and open forums promote consideration of both the patterns of violence and the responses currently being played out on many levels in the international system. Democracies come in many shapes and sizes, and in varying degrees of maturity and performance. But national leaders currently face a critical juncture—reconciling the international legitimacy that is integral to democracy with the realities of military, economic and political power. In particular a re-militarized international security framework in the wake of the 11 September attacks threatens to marginalize democratic approaches to

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conflict management. Moreover, some measures meant as response may undermine or compromise democracies in fragile or key stages of development.

A reductionist approach to such complexity threatens an era dangerously equivalent to that of cold war politics, where ideological alignment can obscure local realities of development need and political aspirations for reform.

The current challenge is twofold. First, for governments and peoples to manage incidents, response, risk and prevention in a manner which upholds democratic principles of accountability, rights, checks and balances, and the rule of law. Second, for development assistance and democracy promotion to be de-linked from, and not a by-product of, security needs and fear. Democracy is neither a banner under which to fight designated targets, nor a commodity that can be exported or imposed. It is most viable when shaped and rooted in context, matching specific relevance and needs, with genuine local/national ownership. There is a need for critical review of the impact of the global 'war on terror' on development assistance and specific national democratization processes.

In the past national and international dimensions of terrorism were known issue areas, but recent focus on global/international concerns is having an unprecedented impact on national-level policy, with implications for both mature and emergent democracies.

The Problem of Definitions

Terrorism is increasingly understood as a political act meant to inflict dramatic and deadly injury on civilians and to create an atmosphere of acute fear and despair (generally for a political or ideological, whether secular or religious, purpose), but the term is notoriously difficult to define. The use of violence to create fear, often through the targeting of third parties and with the elements of surprise and the undermining of very personal security, is a tool used by a variety of historical and contemporary actors.

In application it spans the use of violence by states against subjects, isolated extremist acts of violence, the use of violence in liberation and nationalist movements, and emergent transnational configurations which target Western hegemony or values. Al-Qaeda is cited as an international movement which is terrorist in ideology and tactics.

Whether emanating from a movement, a loose network, or a mobilizing idea among varied affinity groupings, the new violence illustrates that terrorism and conventional military power are incommensurable. As demonstrated in Northern Ireland, in the Basque country, or by the US bombings of Sudan prior to 2001, conventional weapons alone cannot defeat terrorism. In the aftermath of pre-emptive wars on Afghanistan and Iraq, we know that allegiance, hatred, grievance and belief multiply in unpredicted ways, such that innocent lives are lost and futures shattered, from Nairobi to Bali to Madrid, and more.

Box 1. Typologies of Terrorism

Attacks on the state or 'domestic terrorism' may be:

- 'national-separatist' (the Provisional Irish Republican Army (PIRA) in Ireland and Northern Ireland, the Liberation Tigers of Tamil Eelam (LTTE) in Sri Lanka, ETA (Euzkadi Ta Azkatasuna, Basque Homeland and Liberty) in Spain, and the Popular Front for the Liberation of Palestine (PFLP) in Palestine);
- leftist 'social revolutionary' (the Red Army Faction in Germany, Sendero Luminoso and the Tupac Amaru Revolutionary Movement (MRTA) in Peru, and FARC (the Fuerzas Armadas Revolucionarias de Colombia, Revolutionary Armed Forces of Colombia) and the ELN (Ejército de Liberación Nacional, National Liberation Army) in Colombia); or
- 'right-wing extremism' (neo-Nazi actions). In contrast to the PIRA, the IRA, ETA or the LTTE, Timothy Mcveigh (USA) and members of the Baader Meinhof Group (Germany) were relatively isolated figures with no substantial broad popular base.

Also not always linked overtly to political motivation is 'religious fundamentalist terrorism' (Christian, Jewish, Islamic, Sikh or other) or 'new movements' like the Japanese-based Aum Shinrikyo in the 1990s.

State terrorism is another category, as per the torture and disappearances experienced in Guatemala or Argentina under military rule, foreign-backed repressive measures in El Salvador in the 1970s, or political violence in Cambodia and Rwanda which mutated into genocide. It can include targeted assassinations or attacks on non-combatants who are citizens or resident in another state. Thus the reality is that many Palestinians experience Israeli military action as state terrorism, whereas many Israelis will experience Palestinian actions as terrorism against the state of Israel.

International terrorism may be seen as the violent targeting of governments or civilians within one state by groups or individuals residing or based in another; with aims that are related to more than one country. It is estimated that there are over 100 different definitions in use through international and regional treaties and conventions. The state of Libya was accused of international terrorism over the downing of an aircraft over Scotland in late 1988.

Twelve UN conventions on the issue to date have not attempted a definition. UN Security Council Resolution 1373 of 20 September 2001, which set up the UN's Counter-Terrorism Committee, restricts itself to defining the methods used by terrorists. Currently the Report of the High Level Panel on Threats, Challenges and Change calls for a comprehensive convention on terrorism. The report suggests (section VI) recognition that state use of force against civilians is regulated by the Geneva Conventions, reference to acts under previous anti-terrorism conventions, and a suggested description of terrorism as 'any action . . . that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a government or an international organisation to do or to abstain from doing any act' (United Nations 2004: 164).

(There is a history of disagreement over how politically compromised questions of definition are, as evidenced by the recurrent requests from League of Arab States, Gulf Cooperation Council and Organization of Islamic States members for a comprehensive international agreement on 'the definition of terrorism and State terrorism . . . while emphasising the importance of distinguishing between terrorism and the legitimate struggle of nations against foreign occupation' (League of Arab States 2003).)

National-level Policies

How can a democracy fight terrorism without compromising democratic principles?

National counter-terrorism measures will typically fall into two distinct areas: the criminal justice model (in which terrorism is viewed as a crime, with responsibility for response falling within the bounds of the state's criminal legal system); and the military model, which takes terrorism as an act of revolutionary warfare with the remit for response placed on the military and entailing the use of retaliatory strikes and troop deployment. There is also a third key element—of eroding the support base for the parties advocating terrorism, tackling grievances when valid and/or collective.

All three approaches may be used, as in the United Kingdom's dealing with the war in Northern Ireland. In this case terrorist tactics were eventually isolated from political message, until a political agreement altered the conflict form. Increasingly it was the criminal justice system that dealt with isolated incidents of extremist violence.

But national attempts to defeat terrorist groups and measures may in fact lead to the erosion or even dismantling of democratic structures themselves. This would appear to be the case in both the former cold war superpowers, the USA and the USSR, or what is now the Commonwealth of Independent States (CIS). The Patriot Act in the USA has suspended rights and civil liberties in a manner unprecedented since the Civil War, with judicial rulings that components are unconstitutional, for example, the provision allowing the Federal Bureau of Investigation (FBI) to demand information

from Internet service providers without judicial oversight or public review. Critical voices in Moscow argue that fledgling democratic institutions have fallen victim to the war on terrorism, and that now both federalism and the constitution are under attack. Revision of Russia's territorial administration structure is the focal point of the 'response measures' produced by the Kremlin after the tragedy of the school hostage siege in Beslan.

National measures also have long-term, cumulative impacts on populations either involved by association or directly affected. Thus in Peru there is an ongoing process of recovery (in the aftermath of the war against the Sendero Luminoso) which has included a Truth and Justice Commission to examine both state and insurgent actions; attempts to change education and training for the military; scrutiny and reconsideration of how history itself is taught in the schools; and campaigns for justice and accountability and against impunity.

The UK, after relative success in dealing with terrorist bombings and killings during the 'Troubles' in Northern Ireland, passed new legislation in 2001 (the Anti-Terrorism Crime and Security Act) leading to indefinite detention without trial measures for non-nationals suspected of being capable of, or implicated with, terrorist acts. By late 2004 the British Law Lords ruled that, because only foreigners could be detained in this way, such anti-terrorist law was discriminatory, disproportionate, and unlawful under the European Convention on Human Rights. It was then proposed that the power of detention without trial should be extended to all Britons as well as foreigners, thus causing an outcry on behalf of rights and the principle of the burden of proof (an accused person is innocent until proven guilty), central to English constitutional tradition since the Magna Carta in 1215.

In cases of foreign or international terrorism, public feelings and consensus may veer towards xenophobia, racial or ethnic intolerance and division. The fact is that many minorities, in settings from the UK to the Philippines, now feel 'labelled' or victims of stereotyping, and there is an increasing danger that local conflicts involving Muslim populations will become immediately internationalized, as with media attention to Nigeria or Thailand.

Not a Level Playing Field

How does the global 'war on terror' impact on domestic policies or national configurations in less developed or transition settings?

International aid flows from the developed to the less developed world now come with 'anti-terrorist' conditionalities attached. There is a danger that development itself may become 'securitized', that is, linked and bound to security measures and military defence rather than need, rights, poverty, and the cultivation of democratic governance and reform. Across the world recipients of US Agency for International Development (USAID) assistance must now sign agreements conforming to anti-terrorist conditions

as contractually expressed. Aid expenditure for military and police budgets is potentially outpacing that dedicated to poverty reduction or health measures. Development aid may be used to increase 'security', but it can also be used as a tool for pacification. 'Stabilization' or 'peace and stability' are to be achieved not for people's development, but in the interests of the donor's security agenda.

Thus policies of governments such as those of Pakistan, Malaysia, Egypt and the Central Asian republics, previously denounced as repressive by Western governments, are now endorsed or tacitly supported in the name of security. The Indonesian military, criticized as recently as 2000 for human rights abuse in East Timor, West Papua and Aceh, is a new favourite for US aid. Previously little-noticed countries are receiving new funding via the war on terror, such as over 30 million US dollars (USD) to Djibouti in exchange for allowing the establishment of a new permanent military base. Over 100 million USD has gone to East Africa primarily to increase security at air- and seaports.

Mauritius enacted the Prevention of Terrorism Special Measures Regulations in 2003. The president and later his deputy (the vice president in acting presidential capacity) refused to give assent to the Prevention of Terrorism Act, and resigned. Kenya withdrew legislation after public street protests. A 2004 survey of Caribbean, African and Asian experience states that 'For many, the fight against terrorism in the Commonwealth has meant that justification has been found to further limit their existing freedoms' (Bascombe 2004).

Related measures, such as the US travel ban on Kenya, imposed in May 2003, severely strained relations between the two countries. Critics argued that the reduction of American tourism greatly affected Kenya's fight against poverty, and this reduction is a recognized contributing factor towards terrorism. The ban was finally lifted in May 2004. In South Africa, if the legislation meeting 'post-9/11' international norms had been in place earlier, the African National Congress would have been regarded as a terrorist threat, and the result has been a public outcry and debate on freedom of speech and the need for opposition.

Currently the Ugandan Government, like others in the region, has an international rationale for measures against internal threat. New anti-terrorist legislation has elicited concern from Ugandan judges, as the definition of terrorism used is so broad that it could be used to prosecute trade unionists involved in an illegal strike or those engaged in civil disobedience. (This definition does not specifically exclude legal strikes and protests that do not aim to seriously disrupt an essential service.)

Meanwhile, in Northern Uganda, the Lord's Resistance Army (LRA) has waged terror for over a decade on the (its own) Acholi population, who are caught between the LRA and the national military. Local people experience 'protected villages' as detention camps, and suffer from poor access to food, destroyed infrastructure and lack of protection. Here is a case where increased democracy is genuinely sought, as citizens lobby for human rights training and civil affairs outreach for the army presence,

struggle with development strategies and the rebuilding of schools and clinics, and call for a more effective police and justice system.

Indeed, experience in Northern Ireland, Nepal, Indonesia, the Philippines and the CIS countries indicates that the label 'terrorist' has policy implications that are detrimental to political solutions based on structural or negotiated outcomes in cases of nationalist or ethnic struggle. It has been argued that the fragile peace process in Mindanao was set back by anti-terrorist support to the Philippine military, which used US attack helicopters against Moro Islamic Liberation Front camps in 2003, renewing hostility, displacing thousands, and further alienating a civilian population in one of the poorest provinces of the country. Rebel demands have included calls for constitutional reform and federal agreement.

Governments are thus faced with juxtaposing need from the level of international realities to the very individual and societal level of public perception and cohesion.

The Regional/International Level

How is the international community working together to combat terrorism in its many forms, and what key issues are of concern?

Regional organizations such as the African Union, the Association of Southeast Asian Nations (ASEAN), the European Union and the Organization of American States (OAS) have developed intricate mechanisms for reporting and coordinating efforts to counter potential terrorism.

International response mechanisms are complex, multi-sectoral and multi-level, are carried out within different time frames, and must be suited to local conditions in different parts of the world. The agents range from global actors such as the UN and international financial institutions, through a multiplicity of regional, sub-regional and state actors, and other interstate, trans-state and non-state actors. This can mean cooperation in intelligence gathering or police operations, inspection and security measures at airports and borders, the monitoring of telecommunications and airspace, financial oversight of bank transfers and financial exchanges, or joint military exercises. International response has also on occasion meant war.

For new democracies there is also a 'modelling effect' through the behaviour of so-called mature democracies. If an established democratic power utilizes military tribunals in non-war settings, claims 'exception' from the Geneva conventions or international law, or advocates 'targeted assassination' or the use of torture, this sets a precedent and an example for others. Indeed, some current policies may be counterproductive to democracy promotion and cultivation worldwide. For example, the suspension of habeas corpus and the detention of individuals without trial at Guantanamo and in other parts of the world make it difficult to argue qualitative advantages for democratic governance.

Finally, less-than-democratic governments which were under scrutiny or arms export embargo prior to the 2001 watershed are now granted trade rights and licences for military equipment from small arms to rocket systems. Democratic reform ceases to be a prerequisite for entry to the ‘international community’, and autocrats receive de facto reinforcement.

Whereas democracy may be loudly lauded as part of the answer in media coverage of the war on terrorism, genuine proponents of democratic process will pause to reflect on the mixed impressions prevalent among many audiences in the developing world. There is a perception, for example, that some perpetrators of the 11 September attacks were against their own authoritarian governments, and that Western states were hypocritical in supporting repressive monarchy at the same time as attacking the Taliban. Other critics point to an equation between democracy and inequality, that is, market forces and neo-liberal reform.

In general terms there is the challenge of convincing non-Western societies that democracy is not identical with Western cultures and interests—for example, with Western forms of capitalism, secularism or individualism—but is truly international, if not cosmopolitan. And democracies themselves will do well to demonstrate and uphold essential principles in current debate and practice in response to terrorism.

Proactive international measures to eliminate poverty and assist appropriate human development must be renewed in ways that are determined by the merit and validity of rights and needs, not as reactive measures linked directly to a military security agenda. A disconnect between words and actions, rhetoric and reality, will undermine legitimate means and advocates of democracy promotion.

Democracies which are members of the global donor community should call for a review of the impact of current conditional assistance packages, re-examining the interaction between securitization and specific development and democratization processes.

Conclusion

To effectively undercut the basis of support for terrorist activity, any liberal democratic response must rest on one overriding principle: a commitment to uphold and maintain constitutional systems of legal authority. In instances where the state fails to abide by this fundamental dictum, counter-terrorist responses run the very grave risk of posing even more of a danger to underlying liberal and democratic norms and institutions than extremist political violence itself.

For states in transition from other forms of government, from war or collapse, the liberal model will seem a tall order. Support must be given to the long-term and difficult ‘bottom-up’ processes of change to enable and to reinforce moderate and proportional measures, rather than to bolster overly repressive ones.

Current problems for democracy worldwide include the confusing of democratization with economic liberalization, with its attendant flow of commercial goods, media influence and images, cultural extremes as part of foreign investment penetration, inequalities related to privatization and liberalization, and the notion of 'market democracy'.

Exporting markets does not democratize, nor does armed occupation. Democratization can be impeded by the conditions related to a claimed 'liberation', differing perceptions of the occupier on the part of the occupied, unresolved grievances and severe basic needs. It cannot be gifted or imposed, but depends on the aspirations and goals of a given people, many of whom historically have struggled (by resorting to arms) for their independence, the United States, Israel, El Salvador and Kenya being cases in point. Others have used mass movements, education and peaceful protest and political means for democratic change, as in Indonesia, East Germany, Hungary and the Philippines, to name but a few. In the USA and in Europe it has taken centuries to evolve democratic forms. It is more productive to nurture home-grown forms based on indigenous culture and institutions than to export attempts at a 'one size fits all' model. These processes must not be confused with an international security agenda motivated primarily by fear.

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SECTION 5

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Democracy in War-torn Societies

How can democratization succeed in war-torn situations where the imperatives of peace demand a new consensus in the context of political reform and competitive elections?

El Salvador and Haiti Revisited: The Role of the UN Peace Operations

Enrique ter Horst

Pursuing Security in the Post-conflict Phase: Reflections on Recent African Cases and Their Implications for Current and Future Peace Operations

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El Salvador and Haiti Revisited: The Role of the UN Peace Operations

*Enrique ter Horst, former head of UN peacekeeping operations
in El Salvador and Haiti*

El Salvador and Haiti, two of three countries in Latin America in which the United Nations (UN) has played a major role in helping restore peace and democracy (the third being Guatemala), have in common a lack of democratic traditions, weak institutions and widespread poverty, three conditions that are common to most of the developing world. The experience of the UN peace operations in these two countries mirrors their similarities and differences, and cannot be separated from the specific circumstances in which the organization has tried to help them regain their viability as sovereign states, mainly by establishing and facilitating the effective functioning of the institutions essential to democratic governance. This paper mainly attempts to draw lessons from the successes and failures of these institution-building efforts.

El Salvador and Haiti are both small, resource-poor and densely populated countries, with most of their convertible currency income generated by remittances from their diasporas. Both were burdened with armed forces that had taken control of the state and become mafia-type organizations, stifling any hope of development. However, while El Salvador, after a traumatic internal armed conflict, had a national will to rebuild and prosper, as well as a state that was able to serve as a basis for reform and development efforts, Haiti had lost confidence in itself. The country had been stolen blind and impoverished by the 40-year Duvalier dictatorships, losing most state structures and many of its best people: Haitians' hope in the future can probably only be restored with a long-term, well-funded commitment by the international community to re-establish its economic and political viability.

With the benefit of hindsight, most observers agree that in El Salvador the root cause of armed conflict was the systematic manipulation of elections by a succession of military governments which ensured that their candidate always came out victorious. In the case of Haiti the very real threat of a generalized armed conflict was the result of arbitrary

rule, blatant corruption and political polarization that resulted from the undermining of democratic values and institutions by an elected president.

The origins of the UN peace operations in the two countries are also very different. In the case of El Salvador the organization engaged in a forward-looking exercise as it had mediated, at the request of both sides, the 18-month-long negotiations that led to the El Salvador Peace Agreement (ESPA) of January 1992, which put an end to an 11-year-long conflict that caused over 100,000 deaths.

Implementation of the ESPA included in its first stage operational measures mainly of a military character, such as the ceasefire, the separation of forces, the demobilization of the Farabundo Marti National Liberation Front (Frente Farabundo Marti de Liberacion Nacional, FMLN) and the destruction of its arms, the reduction of the armed forces to a size compatible with their new constitutional mandate in times of peace, and the collection of military weaponry in civilian hands. More complex operational measures over a longer period of time included an important land-transfer programme, training and the provision of credit for income-generating activities, all designed to integrate former combatants in productive activities.

The ESPA further included constitutional, legal and institutional measures addressing the root causes of the conflict and strengthening the democratic governance of the country. These included the transformation of the FMLN into a political party, the reform of the judiciary to ensure its independence, and constitutionally limiting the functions of the armed forces to the defence of El Salvador's sovereignty and territorial integrity—which implied transferring its previous monopoly on public security to a new National Civilian Police and further entailed demobilizing three police forces that came under the Ministry of Defence. The ESPA further included the creation of the Office of the Ombudsman for the protection of human rights and the reform of the electoral system. The final chapter in the peace agreement contained the request of both sides to the UN to verify and facilitate its implementation. Most of this effort took almost four years, and the very last commitments were not implemented until 11 years later.

In the case of Haiti the UN acted in September 1993 on the prompting of the US Government to help restore to power a democratically elected president who had been overthrown by the military, with a Security Council-approved US military intervention and a UN peacekeeping mission that followed it with the mandate to help maintain a secure environment and to train the new Haitian National Police. Starting with UNMIH (the United Nations Mission in Haiti), the first peacekeeping presence of the UN in Haiti lasted for somewhat more than eight years, the last incarnation being the Mission Civile d'Appui en Haïti (MICAHA, Civilian Support Mission in Haiti), a small police and human rights operation which was closed down in March 2001.¹

Lastly, Salvadorians were prepared to listen and accept international advice given in good faith, while Haitians cling to their history and their pride, one of the few assets

they have left, and are both weary and resentful of foreign assistance. It has to be added that the peace process in El Salvador, given the part the conflict there played during the cold war, received much more political attention, including pressure and incentives for both sides to the conflict. This was not the case in Haiti. To put it in medical terms, in El Salvador the patient was strong enough to convince the doctors to perform open-heart surgery, while in the case of Haiti the patient had lost confidence in his ability to get well, and some of the doctors were not entirely unhappy to just administer some aspirin.

Mandates and Management

In El Salvador the UN was able to work effectively, first as a catalyser of the majority will to negotiate an end to a very traumatic conflict, and then verifying and facilitating a major political and institutional overhaul that addressed its root causes. In the case of Haiti, to a great degree, the first UN intervention was a stopgap measure to bring stability and halt the large flow of refugees created by economic sanctions that hit the poor more than they weakened the illegitimate military rulers. Furthermore, the El Salvador process was a structured, well-scripted exercise, for which the government and the FMLN assumed full ownership, while the first Haiti peace operation mainly attempted to ensure a minimum of security and stability until the new police force became operational. As a reflection of the above, the United Nations Observer Mission in El Salvador (ONUSAL), even if it had a sizeable military component in its beginning, was mainly a civilian and police operation, while UNMIH, the first United Nations Mission in Haiti, was a military and police mission with only a small civilian component in the office of the special representative of the UN secretary-general (SRSG), even if the overall effort of ensuring stability also benefited from the presence of the International Civilian Mission in Haiti (Mission Internationale Civile en Haïti, MICIVIH), the joint UN/Organization of American States (OAS) human rights mission which had preceded it and also outlasted it. UNMIH's only scripts were the Security Council resolution that established it and the constitution of Haiti. The richer institution-building experience in El Salvador explains why its case is analysed more extensively in this paper.

The time allotted to the completion of a Security Council mandate is usually short, often six months, even if in practice necessity will often dictate extensions, particularly in the case of third-generation or complex peace operations, as they are called. In the case of El Salvador, the UN secretary-general had informed the parties to expect the mission to last as long as there were outstanding commitments. This was essential in dealing with the parties, particularly with the government, responsible as it was to comply with 90 per cent of the commitments contained in the ESPA. It also clearly signalled that the UN would not allow partial compliance, and it gave both parties, and particularly the FMLN, a longer perspective that avoided unnecessarily irritating situations.

This did not guarantee that the Security Council would adopt the secretary-general's stance and approve all the necessary extensions. It did, however, do so because it

recognized ONUSAL's heavy institution-building load and because none of its members wished to carry the responsibility for scuttling an ongoing, successful peace process. The fact that continuing reductions in the number of staff and the increase in voluntary contributions reduced ONUSAL's cost to the overall peacekeeping budget also played a role.

It should also be borne in mind that peacekeeping operations are usually established at short notice, and that the start-up phase often does not follow a strategic plan. Mistakes are, however, corrected relatively quickly, and a second phase of growth and maturity sees the mission consolidate its credibility, retaining its most competent staff members, and pushing to achieve its objectives on the basis of precise work programmes. A third phase—before closing and after having attained most of its objectives—is devoted to residual work, strengthening the newly established or reformed institutions, and securing the transition from peacekeeping to long-term development.

A short description of the structure of the operations in El Salvador and Haiti is in order at this stage.

ONUSAL was established as a human rights observer mission five months before the ESPA was signed in Chapultepec Castle, Mexico, in January 1992, with a head office in San Salvador and six regional offices across the country. The full mission was established as soon as the ESPA was signed and the verification and good offices mandate came into force. The first order of business, as mentioned, was to oversee the ceasefire, the separation of the two warring parties, the reduction in the size of the armed forces, and the dismantling of the FMLN's military apparatus. This was performed by a military component of 422 men. To assist in the creation of a new civilian police force independent of the armed forces, as well as in the concomitant dismantling of the old security forces, ONUSAL had at its disposal a police component of 275 officers. Their main task was to 'accompany' (*acompañamiento*) the new civilian police, in what amounted to practical training, as well as, at the very beginning of ONUSAL's deployment, to carry out certain police functions in the countryside.

In addition to the human rights observers, who were present from the beginning, a short-lived Electoral Division was established to oversee parliamentary, presidential, and municipal elections. Land transfer and other reinsertion programmes were carried out by a small team of eight persons that was part of the office of the SRSG. Facilitating reform of the constitution and of the secondary legislation was carried out by the Human Rights Division, which at one point reached the number of 100 staff members. In addition, an administrative division was established.

At the height of its presence in El Salvador, for a fairly brief period ONUSAL had some 1,100 persons on the ground. The bulk of its work, however, was carried out with a staff of some 600. ONUSAL had a life of eight years, if one also counts the small residual office called ONUV (the (Office des Nations Unies de Vérification, UN Office of Verification) which was closed down in June 1998 after having been reduced to a

staff of two. As of June 1998 the United Nations Development Programme (UNDP) office in El Salvador was entrusted with facilitating implementation of the four officially outstanding questions (three relating to the transfer and legalization of land and other property, and one relating to the provision of benefits to handicapped combatants and the dependents of combatants killed during the conflict), which had been finally settled in 2002.

UNMIH was established in March 1995 as a successor mission to the multinational force led by the United States that ousted General Raoul Cedras and his group of *putschistes* and reinstated President Jean-Bertrand Aristide in power. The military component, always the largest, was reduced from 6,000 troops in the first year (the US-led Multinational Force (MNF) had had a strength of 20,000) to 1,900 from March to July 1996, and to 1,200 by 30 November 1997. The police component was reduced from an initial strength of 900 to 300 and the civilian component, both substantive and administrative staff, from 300 at the start of the mission to 160 towards its end in November 1999. As of March 2000 a new operation approved by the General Assembly, MICAHA, subsumed the political, justice, police and human rights work of the former UNMIH and successors and of MICIVIH, with a mandate until February 2001 and a total staff of 296, of which 101 were international staff. The UN Stabilization Mission in Haiti (Mission des Nations Unies pour la Stabilisation en Haïti, MINUSTAH), the peacekeeping operation established in April 2004, has a military force of 7,500 troops, a police component of 1,400 and some 400 civilian staff.

As mentioned above, a 'blueprint' or 'script' is essential in organizing the work of a peace operation quickly. Objectives can be broken down into activities and tasks assigned to individuals (not institutions, as responsibility is diluted) who are responsible for producing results within given time frames. Where there is no blueprint, it is necessary to create one, as was done in Haiti in organizing the institutional development of the new Haitian National Police. In the case of El Salvador, the *calendarizaciones*—precise timetables for execution agreed by the government and the FMLN, and brokered by the UN—provided a more detailed script than the peace agreement, and on this basis the peace operation was able to organize its work effectively.

ONUSAL's four-page weekly newsletter, the *Carta Semanal*, hand-delivered once a week to the 150 most influential Salvadorians, including parliamentarians, ministers, businessmen, academics and non-government organizations (NGOs), served to provide them with a common intellectual framework. It also became a valuable management tool. As the SRSG participated in putting together the newsletter, discussing one-to-one the work of the previous week with the head of each of the teams in charge of implementation, it turned into the occasion to check progress and devise ways of overcoming obstacles. The *Carta Semanal* also stimulated staff members in charge of specific tasks to produce results in order to record success, and to see their work highlighted every Wednesday in the context of the overall progress in implementation. The newsletter became more and more the face of the operation, and the successive reductions in the number of staff did not result in a significant reduction of its overall 'presence' in the country.

Institution Building

Institution building, including the reform of existing institutions, is the central aim of complex or third-generation peace operations mandated to help bring peace and democracy to countries emerging from an internal conflict by overcoming its root causes. Only when stability has returned and the new and reformed institutions are performing in a manner that strengthens democratic governance can a peace operation be withdrawn without risking a relapse into armed conflict. The UN has thus a vested interest in helping to build and reform, as rapidly as possible, strong democratic institutions.

The institutions that were central to the reform of the Salvadorian state, as identified in the ESPA, were the armed forces (Fuerza Armada de El Salvador, FAES); the judicial system, which in addition to the reform effort included the establishment of the new National Ombudsman for Human Rights (Procuraduría Nacional para la Defensa de los Derechos Humanos) and of the new National Council of the Judiciary (Consejo Nacional de la Judicatura); the new National Civilian Police (Policía Nacional Civil, PNC); and the new Electoral Tribunal (Tribunal Supremo Electoral, TSE) which replaced the old Consejo Nacional de Elecciones. What follows is an analytical description of the opportunities and difficulties encountered in trying to advance, in a practical manner, these processes of change and creation, many of which were common to most of the new institutions.

In spite of the fact that the philosophy underpinning the reform was included in the ESPA in very clear terms, at the beginning both parties approached the process of institutional change and construction with a good deal of reciprocal suspicion, almost as the second round to be fought and won, or at least as the litmus test of real intentions (Will you end up in control, or I?). However, the two sides had agreed that all new institutions and those to be reformed were to be provided with clear constitutional mandates, that their office holders were to be appointed or elected transparently and on the basis of merit, that their political and financial independence (or subordination, in the case of the FAES) must be ensured constitutionally and legally, and that all had to be provided with solid training and strong internal overview mechanisms.

Here the pace and timing of implementation were of crucial importance, as not everything could be done in one stroke and as confidence among the parties could only be built up progressively, that is, relatively slowly. The first three important exercises to help achieve this were (a) the demobilization of the FMLN's military structure, (b) initiation of the effort to reduce the size of the FAES, and (c) the constitutional reforms that would make it possible to set up the new democratic framework of governance. The timing of these, and, in fact, the timing of all other measures liable to be carried out by certain dates, were spelled out in a very precise timetable (the first of the *calendarizaciones* mentioned above) that was an integral part of the ESPA.

All three exercises mentioned were carried out fairly rapidly, although not without the difficulties inherent to the climate of distrust. Their completion did improve the climate

considerably, and cleared the way for the more time-consuming drafting of special laws, the appointment of the new authorities that would create, run, reform and/or reduce the institutions mentioned, and the very time-demanding tasks of designing and managing the new selection, training and supervision processes. The need for precise timetables was also important to underpin the principle that compliance by one party on certain issues could not be made conditional on compliance by the other party on other questions, an important factor to avoid the paralysis resulting from possible cross-vetoing and to ensure that a certain momentum of achievement was maintained.

It should be recalled that some 18 months before the signature of the ESPA, in July 1990, both sides had agreed in San José, Costa Rica, to a confidence-building proposal by the UN consisting in a formal agreement by both sides to respect human rights and humanitarian law, understanding as human rights all those recognized by Salvadorian legislation as well as in the declarations and principles on human rights and humanitarian law approved by the UN and by the OAS.

While thus affirming the principles of the universality and indivisibility of human rights, the agreement included a number of specific measures which in practice limited it to the immediately relevant rights in a situation of armed internal conflict—the rights to life, integrity, security and individual freedoms, including the freedom of association. The parties proved their good faith by entrusting verification of their compliance to a UN observer mission, endowing it with a very strong, intrusive mandate that allowed it to carry out its functions most effectively. The parties then also requested that ONUSAL, originally foreseen to be established only as of the ceasefire, be established earlier, and its first office opened with only the human rights mandate six months before the ESPA was signed.

The ESPA provided for a ‘steering committee’ to manage the transitional process until elections produced a new Parliament. Composed exclusively of Salvadorians, it included representatives of the government, the FMLN (which still did not have deputies in the National Assembly) and all the political parties represented in the Parliament. Called COPAZ, it played an extraordinarily constructive, indeed essential, role in drafting and agreeing on all legal texts that needed to be passed by the Assembly in order to comply with the ESPA, and was particularly useful in the institution-building effort. ONUSAL participated in the COPAZ meetings as an active observer.

Once the elections of March 1994 had been held and the FMLN became the second force in Parliament, COPAZ closed down, as it had served the transitional need for which it had been established. ONUSAL concentrated on resolving the tough outstanding issues, mainly the demobilization of the old Policía Nacional, land transfer and institution building, concentrating on the Policía Nacional Civil, the Human Rights Ombudsman, and to some extent also the judiciary, once the new, less conservative Supreme Court of Justice magistrates were elected by the new Parliament in July 1994. ONUSAL’s Human Rights and Civilian Police (CivPol) divisions were mainly responsible for these efforts.

In Haiti, UNMIH's only mandated institution-building effort consisted in helping to create the Haitian National Police (Police Nationale d'Haïti, PNH). In spite of the fact that the turf disputes that prevailed in El Salvador were avoided in Haiti, as the UN peace operation was recognized as the lead agency and the central coordinating body for building the new police force, international efforts suffered regular setbacks as a result of internal distrust and power struggles within the government, as well as from managerial weakness in ensuring prompt execution and follow-up of decisions taken at the trilateral meetings (of the government, the UN and donors) chaired by President René Préval.

The slow development of the new institution later suffered a severe blow when newly elected President Aristide proceeded in his second term in power to politicize the PNH, gravely undermining the work that had been done under Préval. The transitional government and MINUSTAH have now restarted the process of building a new, professional police force on the basis of some 4,000 active police officers at present, of which 800 graduated in 2005. UNMIH's institution-building mandate was limited to the PHN, but that of MICIVIH also covered the judiciary and the prison system. Today MINUSTAH combines the mandates that were formerly divided between UNMIH and MICIVIH.

It is important to the building and sustainability of institutions created or reformed with international assistance that efforts are based on agreements reached in good faith that reflect a meeting of the minds of the national actors, not on texts that paper over differences. National actors, as well as international donors, need to have complete clarity on the philosophy, content and scope of the tasks at hand. The agreements should also reflect the national legal tradition, something which appears obvious but is not necessarily always the case as donors sometimes send experts who are not familiar with the national legislation.

While some specific commitments, such as the cantonment of armed forces, demobilization, and the destruction of arms or transfers of land, can be concluded as one-off operations, there are naturally limits to the activism and pressure that can be exercised by a peace operation in building national institutions. ONUSAL and UNMIH played the role of bona fide technical secretariats, organizing meetings to get things moving and presenting ideas (most of the time in the form of choices), drafting texts, and producing the necessary sandwiches and coffee. More than pressure, gentle and persistent prodding is effective. Goodwill towards the peace operation must be built up at every possible opportunity, to be spent when the parties need to be talked to more bluntly.

Justice

The protection of human rights was the first mandate of ONUSAL, as described above. Initially intended as a confidence-building effort, it quickly became the backbone of the institution-building process and the basis of ONUSAL's credibility. If the ESPA was the peace process's road map, the protection of human rights was its compass.

As also mentioned above, ONUSAL's human rights mandate, contained in the San José Agreement on Human Rights, to verify the parties' compliance with the agreement and with international humanitarian law, gave it strong means to ensure that information was received and violations were promptly acted upon. This included, among other things, the prerogatives of carrying out unannounced visits, receiving any type of information from any person or institution, establishing itself freely in any part of the national territory, using the media whenever necessary, addressing the prosecutor general, and offering its support to the judiciary. In addition, both parties undertook detailed commitments to facilitate ONUSAL's work, including the provision of all means and facilities to enable it to discharge its mandate, as well as the protection of its staff. The San José mandate remained valid during the entire life of ONUSAL, concomitantly with the ESPA signed in January 1992.

Experience has shown that societies that have lived through a period of state-sponsored violence, civil war or other such turmoil must first establish the truth and seek justice before real reconciliation is possible. Bringing to justice violators of human rights who were or continue to be part of the power structure of the country is indeed very much part of the peace process. It is recognized that, while it is key to the transition, a peacekeeping mission is ill-suited to this task, and some would also argue that 'dealing with the past', as it is also known, should not be done at the negotiating table, as the peace negotiations are a forward-looking exercise.

In El Salvador the provision for the establishment of a Truth Commission was part of the peace agreement, but the commission carried out its task with complete independence from ONUSAL. The commission's mandate was to shed light on the gravest acts of violence that took place from 1980 up to the signing of the ESPA. It was further agreed that its report would be made public and that compliance with its recommendations was to be obligatory. The commission was made up of three non-Salvadorian personalities, all appointed by the UN secretary-general in consultation with the parties.

The Truth Commission established a secretariat in San Salvador which remained in the country for several months, during which time it received and processed over 22,000 reports of human rights violations. The confidence ONUSAL elicited made people feel free to come forward with information, allowing the commission to produce a report of over 200 pages that included the names of many that had participated in the acts of violence investigated. The report included recommendations for administrative, operational and institutional measures, and also incorporated as its own the recommendations that had been made previously by ONUSAL's Human Rights Division.

ONUSAL considered that, even if these recommendations were *sensu stricto* not part of the peace agreement, it was within its mandate to press for their implementation, particularly as recommendations to improve the justice sector and steps to avoid a repetition of the past were obviously part of the peace process. The government of El Salvador never questioned this and implemented some of the recommendations but refused to carry out others it found too ambitious, or too costly, either financially or

politically. Most of those mentioned by name in the report of the Truth Commission as gross violators of human rights benefited from an amnesty approved by the Salvadorian Parliament. Quite a large number of recommendations by the Truth Commission remain unimplemented. It must be said that a few were somewhat far-fetched, and some others clearly unimportant.

To say that the Salvadorian judiciary suffered from grave deficiencies is an understatement. El Salvador did not have a judicial academy and the process for the selection and appointment of Supreme Court magistrates reflected exclusively the patronage of the political parties represented in the National Assembly. As, in addition, the Supreme Court of Justice appointed all judges and managed the entire judicial system, El Salvador had a politicized, unprofessional and corrupt judiciary, with notorious delays in sentencing, particularly in the criminal courts. It was also extraordinarily vulnerable to pressure from the executive branch and the political parties, to put it politely.

Given the very considerable challenge at hand, work to reform the judiciary should have started almost as the ESPA was signed. However, as the old Supreme Court's mandate ran until July 1994 it was only then, with the election of the new Supreme Court by the new National Assembly, that the reform process was initiated. The new requirement for a two-thirds majority ensured the very high personal and professional quality of the new magistrates.

The new Supreme Court proceeded in a very cautious and prudent manner, however; 'timid', was the expression used by the SRSG in a press conference at which he complained that after some months the court had still not acted on the cases of 50 'corrupt and shameless' judges that ONUSAL had thoroughly documented for it. The ensuing outcry, which included not only the Court's vice-president, an excellent but very conservative jurist, but also the president of the republic himself, lasted for some time. Six months later, however, the 50 judges had been dismissed and the office of the Supreme Court's inspection unit had been considerably strengthened. The quality of judges had also been improving over the years as the new National Council of the Judiciary, in charge of the training and advancement of the judges, slowly developed into an instrument of change. Today, however, the judicial system has not only lost much momentum in its reform effort but has slid back in the central task of consolidating a professional judiciary.

For the UN, the new Office of the Ombudsman for Human Rights (Procuraduría) was the institution that would keep things on track once ONUSAL was withdrawn. It therefore received special attention, particularly as the old Supreme Court, which distributed all budgetary allocations of the justice sector, denied it its share. It was only possible to establish and develop the Procuraduría as of the beginning of the Chapultepec verification process because a group of like-minded countries funded its first three budgets.

The Procuraduría benefited as of its establishment from ONUSAL's technical support, and a number of human rights and police officers worked side by side with Procuraduría staff on its premises. ONUSAL transferred its human rights caseload to the Procuraduría only in mid-1995 (and in my view could have done so earlier in order to force the Procuraduría to assume full ownership of human rights protection while ONUSAL's presence still allowed it to identify and correct errors). A UNDP Technical Assistance project was of very limited use as internal UN turf disputes again raised their ugly heads.

Given that both the World Bank and some of the regional development banks have been engaging for some time now in the design and financing of judicial reform, these two institutions should also be closely associated with the follow-on effort. This effort should be based on the legal system in force and carried out within the framework of a strategic long-term vision developed by the country itself.

In Haiti the task of helping reform and train the judiciary was the responsibility of MICIVIH. MICIVIH undertook a number of projects and initiatives to help improve the distribution of justice through training and improved processes, and in working very closely with the Ministry of Justice in the process of in-country consultation and drafting that led to a judicial reform project. Other MICIVIH projects in the judicial area were devoted to training the *juges de paix* in the area of conflict resolution in order to reduce their judicial workload and to render the distribution of justice swifter, especially where the petty matters that clogged the judicial system were concerned. Working closely with the prosecutors, MICIVIH also undertook to reduce the backlog of cases which was leading to prolonged detention of those jailed while awaiting trial. This also included a number of judicial circulars to render judicial decisions more homogeneous.

On a more technical level, MICIVIH provided technical assistance in the form of forensic scientists, DNA experts, prosecutorial strategies and case management approaches in support of the preparation by the state prosecutor for the Raboteau massacre trial. This trial was seen as a watershed event in Haitian judicial history because of the detailed preparation and the recourse to scientific evidence, until then unheard of.

MICIVIH's efforts had an additional positive effect in that training and the need to revamp outdated judicial processes came to be perceived as important; mindsets were changing for the better and a budding independence started to assert itself. It was, however, a short-lived development, as with the return of Aristide to the presidency in 2001 the emphasis on institution building and improved quality fell by the wayside, replaced by the traditional and self-defeating emphasis on loyalty and on being subservient to the prevailing power structures. The judiciary reverted to being a hollow shell.

The Police

The Salvadorian *Policia Nacional Civil* (PNC) was created, as mentioned above, as an entirely new force, with new officers and a new, modern, civilian philosophy based on respect for human rights and the concept of service—in short, a police force for a developing democracy, with a careful selection and training process that would ensure that it would not reproduce the patterns of arbitrariness displayed by the previous police force, run by the armed forces. Both sides had agreed in the ESPA that 40 per cent of PNC officers would be former military and former FMLN guerrillas selected by the Police Academy in equal proportion and on the basis of merit. The apprehension this agreement produced was proved baseless as the commitment of most of these recruits to the new institution proved stronger than their allegiance to their former organizations. The FAES, however, had decided that it would make its last stand on the demobilization of the old National Police (*Policia Nacional*, PN) and the control of the PNC.

The demobilization of the PN, the last of the three militarized police forces under the control of the FAES (the other two had been disbanded fairly early and their members reintegrated into the armed forces) was made extremely difficult by the deliberate attempt to drag out the process and wait for the departure of the UN mission. False information on discharged personnel that did not match the requests for economic and social reinsertion programmes for former PN personnel and then, later, the effective discharge of only administrative staff and a couple of chaplains exemplified the bad faith with which the armed forces—still a power factor to be reckoned with—addressed the question. The demobilization of the PN was finally settled when a television station transmitted live the robbery at gunpoint of an armoured money transport by a PN officer in full uniform, which led to the president addressing the nation and fixing a three-month deadline for the completion of its demobilization process.

The FAES' attempt to gain control of the PNC started as of the appointment of its first director general, a former army captain who had been the chief of the PN's anti-narcotics unit, and who had succeeded, surprisingly with the agreement of the FMLN, in transferring in toto his former unit and the criminal investigation unit into the PNC (an event of which ONUSAL learned only after the fact). Prior to this, and as a result mainly of a conflict of views between the USA and Spain, a UNDP Technical Assistance Project centring on the Police Academy had considerably weakened ONUSAL's participation in the selection and training process.

The role of ONUSAL was re-established by President Cristiani in his last 'recalendarization' in May 1994, when a detailed programme of interconnected corrective measures was agreed upon with the FMLN. The government wished to integrate 1,000 former PN officers into the PNC, and to achieve this it was prepared to agree to the corrective measures proposed by ONUSAL, which included setting deadlines for the full deployment of the new PNC and for the demobilization of the old PN, the establishment of the post of deputy minister for public security, and a renewed screening and selection process for the members of the Special Anti-narcotics Unit and the Criminal Investigation Commission. On all these points President Cristiani overruled his advisers, arguing that all the corrective measures proposed by ONUSAL

‘were of benefit to El Salvador’. In the end, after very strict selection tests, fewer than 100 of the 1,000 candidates joined the PNC. President Armand Calderón Sol strongly supported the calendar and its commitments as negotiated by his predecessor, and appointed a new civilian director general with whom ONUSAL was able to establish a very close and productive working relationship.

In its last year ONUSAL concentrated its efforts on strengthening the crucially important office of the inspector general of the PNC, assisting in the design of effective disciplinary procedures, helping to ensure that the required resources were provided, and writing the first draft of the Police Career Law, which had been left in abeyance in the first stages of the PNC’s development to ‘facilitate’ flexible recruitment, a grave mistake. ONUSAL had suggested that a National Public Security Council with representation from both sides be established to advise the government and the PNC on policy issues and to function as an early warning and planning system, and this suggestion was quickly put into practice by President Calderón.

Problems always remain, and it is true that the PNC has not yet been able to create a climate of security, a difficult task considering the combination of a post-conflict situation and the expulsion from the USA of very violent Salvadorian gangs (*maras*) that have reconstituted themselves in El Salvador. The PNC has absorbed the community policing approach and probably could be qualified today as neither better nor worse than any other Latin American police force. The PNC has seen better times, and it is a matter of concern that there appears to be a tendency to militarize it, supposedly to handle more effectively the security challenge posed by the *mara* gangs.

In Haiti the new Police Nationale d’Haïti replaced the demobilized armed forces, a decision taken by President Aristide on his return from exile in retribution for the *coup d’état* they carried out against him. Following the same community-oriented approach as in El Salvador, the PNH was set up following the boundaries of the ten *départements* (the administrative divisions of the country), which resulted, in many respects, in the establishment of ten small police forces, each headed by a *commissaire* with very broad powers. This also had the objective of making conspiracies to topple the government more difficult, as the *commissaires* were in fact often directly appointed by the president of the republic, thus significantly weakening the authority of the PNH director general.

UNMIH’s mandate clearly included the professionalization of the PNH, and, as mentioned above, none of the turf battles that took place in El Salvador had to be fought in Haiti. UNMIH designed the overall strategy and coordinated donor efforts, which were adjusted according to operational audits carried out by its CivPol division every six months. The monthly tripartite (government, peace operation and donors) meetings used in El Salvador were also used in the PNH institution-building process.

Police officers were required to have a baccalaureat degree and were paid correspondingly good salaries, more than they would have received in the private sector. This attracted

a number of good candidates, but not all had the interest in or the commitment to do police work. Selection procedures were therefore relaxed as the force was not growing at the pace expected. Most of those in the first group who decided to pursue a police career later became the officer corps of the new institution.

All specialized divisions, from criminal investigation to customs and traffic, were set up almost simultaneously, and training was carried out by UNMIH (mainly the French Gendarmerie and the Royal Canadian Mounted Police) and the International Criminal Investigative Training Assistance Program (ICITAP) of the US Department of Justice, both at the Police Academy and in the field. UNMIH's effort was carried out mainly in the latter given its presence in all *départements*.

One division that was given UNMIH's special attention was crowd control, as safeguarding public order was the first of UNMIH's mandates and widespread discontent at the very difficult economic situation was taking a turn for the worse. In addition, the possibility of a premature withdrawal of UNMIH made the training and equipment of the central crowd control unit in Port-au-Prince and of its support groups in the remaining three large and more volatile towns (Cap Haïtien, Gonaïves and Les Cayes) an urgent priority.

The Armed Forces

The overwhelming role of the armed forces in Salvadorian society was, as mentioned above, limited by the ESPA to protecting the nation's sovereignty and territorial integrity, a change that was part of the reform of the constitution. The FAES, as already mentioned, had lost all functions regarding public security, which was now to be ensured by the PNC, its director general reporting directly to the newly established minister for public security, who must be a civilian.

The FAES complied, on the whole, with its part of the obligations undertaken in the ESPA, but grudgingly. It also flatly refused to implement certain aspects of the peace agreement and did not provide all information in a transparent manner, maintaining, for example, that the precise number of troops could not be revealed as it was a national security issue. The real reason probably lay in the fact that the FAES had, even before the conflict, systematically over-reported the number of its troops as commanding officers paid them personally in cash and some of them pocketed the difference. The FAES finally reported that it had 62,000 troops when in reality it appears it never had more than 38,000.

The FAES underwent a thorough weeding-out process by an ad hoc commission composed of three prominent Salvadorians who acted objectively and courageously. After working for less than four months, it identified 77 officers as unqualified to continue in the military, including the minister and deputy minister of defence, the entire Joint Chiefs of Staff and the commanding officers down to the brigade level. A number of lower-ranking officers directly involved in human rights violations were also dismissed, although they were not discharged immediately. Those close to retirement

were allowed to conclude their careers, others received attractive settlements and only a few were discharged dishonourably, thus avoiding a reaction that would have endangered implementation of the ESPA and, indeed, political stability.

ONUSAL, through its Human Rights Division, also provided the FAES with human rights courses that were intended to help transform mentalities and instil the new doctrine of the armed forces in the hearts and minds of the officers cleared by the ad hoc commission of any wrongdoing. Although they are necessary, such exercises have rather limited impact, and it takes time and new, carefully selected entrants into the Military Academy to change the culture of an institution with such a 'hard' function.

Short-sighted attitudes on the part of the Salvadorian and Haitian governments led to demobilized soldiers, in the case of Haiti, and paramilitaries, in the case of El Salvador, not being properly reintegrated into civilian life, thus becoming major threats to peace and stability in both countries. Even if formally they were not interlocutors of the two peace operations, there was no question that because of their capacity to derail the peace-building efforts both ONUSAL and UNMIH had the greatest interest in ensuring that their grievances were addressed effectively.

In the case of El Salvador the ESPA did not cover specific reinsertion programmes for paramilitary groups, since the Cristiani government considered this to be an internal question with which, it said, it would deal adequately on its own. It did not, however, and the point was proved clearly when in June 1995 some 2,000 former soldiers and paramilitaries occupied the Ministry of Finance, the building of the social services of the armed forces and that of Parliament, holding hostage over 600 persons, among them over 20 deputies. At the request of both sides, the SRSG acted as intermediary in the peaceful resolution of this situation, working out a compromise that addressed most of the grievances of the demobilized soldiers, and was implemented fairly rapidly. Their concerns having been addressed, this group of possible spoilers of the peace process was not heard from again. Needless to say, the peaceful solution of this problem significantly strengthened the mission's hand in general, and in relation to the government in particular. Implementation became much easier as ONUSAL came to be seen as a useful resolver of crisis.

Although it ensured its survival at the negotiating table, the FAES continued to smart from what it considered a military defeat, and it will probably take a new generation of officers to overcome this attitude. Feeling beaten and humiliated, the leadership of the FAES reacted well to the respectful treatment it received from ONUSAL, particularly from its military component, which was often instrumental in changing negative attitudes into compliance.

In Haiti, where the entire armed forces—7,000 men—had been demobilized by President Aristide in early 1995 after his return from exile, the government actively opposed measures of this type and adopted a short-sighted attitude of confrontation, initially even refusing to reimburse pension payments that rightfully belonged to the

troops and officers. It did later allow a six-month training programme organized by the International Organization for Migration (IOM), which benefited some 6,000 persons, but only allowed a small credit programme to be carried out through the embassies of some donor countries in an almost clandestine manner. It paid for its short-sightedness dearly nine years later, when Aristide, then in his second term, was driven from power by some of these same ex-soldiers.

The Electoral Tribunal

Salvadorian legislation regulating the political parties did not cover the essential needs of a modern, democratic state: a large part of the population was excluded from the electoral register, particularly in the regions formerly controlled by the FMLN; the armed forces influenced, directly and through their security apparatus, the preparation and outcome of elections; and access to the media was restricted. Intolerance was the norm among political adversaries, and politically motivated assassinations increased during electoral campaigns.

As a consequence of the ESPA and of the new electoral code drafted by COPAZ with ONUSAL participation, the old Salvadorian Central Council for Elections (Consejo Central de Elecciones) was replaced by the Supreme Electoral Tribunal (TSE). Made up of five magistrates endowed with jurisdictional functions, it was expected to act transparently and impartially. The five new magistrates were appointed, as stipulated, by a simple majority of votes by the National Assembly. Also as stipulated, the first three were directly chosen by each of the three largest political parties in Parliament, and the last two were elected from a list of six proposed to Parliament by the Supreme Court of Justice. In addition an Oversight Board (Junta de Vigilancia), composed of representatives of the political parties, was established. The establishment of this body, with considerable supervisory powers, was a concession to the unavoidable influence of the political parties, but also, rather naively as it turned out, as a measure intended to contain their influence.

As a consequence of these agreements, which were based on political expediency, the management of the new TSE quickly reverted to following the old rules of political control and patronage, and the newly elected magistrates filled their areas of competence with political appointments and friends. The purpose of eliminating or reducing as much as possible the influence of political parties in the decision making and management of the new tribunal was thus defeated. This and the less-than-transparent, often clearly biased, approach of the TSE in the organization of the all-important general elections of March 1994 led to a period of tension in its relations with ONUSAL.

The general elections of March 1994 were intended to mark the beginning of the end of the peace process and consequently also of the UN's verification functions, but ONUSAL's presence was extended again afterwards as too many issues remained outstanding. As the government and the FMLN had requested the UN to observe the elections, ONUSAL used the preparatory process, as of June 1993, to train TSE personnel and to suggest changes in the way some of the TSE's departments functioned.

The main effort however, until January 1994, when voter registration closed, was to ensure that the electoral register was brought up to date, particularly in those departments that had seen heavy fighting and which had been considered FMLN strongholds. This was also important in order to ensure that the FMLN had a full and fair chance of translating the popularity it claimed it had into parliamentary and local representation, thus confirming that its decision to abandon its armed insurgency was the right choice to make, and that there was benefit in playing by the rules of representative democracy.

As some 700,000 persons—around 27 per cent of those eligible to vote—were not registered, the task implied an all-out effort by ONUSAL that went much beyond the capabilities of the relatively small Electoral Division that had been established. Much was achieved, but by 19 January 1994 still some 80,000 voters had not been able to register, mainly in the territory formerly held by the FMLN, due in large measure to the destruction of the civil registries during the conflict and the consequent difficulty of establishing the nationality of the solicitor, but also, clearly, because of bad faith on the part of the responsible officials in the TSE. However, more than 80 per cent of the outstanding voters had now registered, and the elections were certified as free and fair by the UN, which had deployed 900 trained observers in a country the size of Switzerland. The FMLN became the second force in Parliament and won one-third of all municipalities. ONUSAL's technical assistance role and the massive UN observer presence proved to be crucial in ensuring free and fair elections, as the opaque, uncooperative and on occasions openly aggressive attitude of the majority of the TSE magistrates destroyed all confidence in the integrity of the TSE. ONUSAL's small but highly professional electoral team was worth its weight in gold. Its Quick Count in both rounds of the presidential election was wrong by less than 0.3 per cent.

Closing a Peace Operation

By its very nature a peace operation mandated by the Security Council never sees its institution-building effort fully concluded; its task can be considered successfully completed if a well thought-out strategy developed with all national actors is being carried through with the necessary resources and with the support of the relevant international organizations and programmes, particularly with those that have a permanent presence in the country. The UNDP is the logical UN programme to finalize and consolidate the work of a peace operation.

If establishing a peace operation is a complex process, deciding on when to close a mission is one of the most difficult decisions to take, given the number of actors with differing perceptions and interests who participate in it. The better the mission performs, the less the main actors want it to leave. If it performs badly, the more it probably needs to stay. There are limits, naturally, and in some instances there may be so great a change in the fundamentals that the only option is to cut one's losses and leave.

As mentioned above, a resolution establishing a mission only spells out in general terms the objectives to be achieved; seldom does it include precise yardsticks to establish when these objectives have been attained. This raises the issues of how one determines success or failure, and what methodology can be established to measure progress objectively.

There are, however, several signs to look for in determining when a mission should withdraw. If the actors have begun to depend too much on the peacekeeping operation to further their domestic process and only marginal commitments remain to be carried out, departure may strengthen the process by forcing the actors to assume complete responsibility for implementation. Usually the weaker partner, as was the case in El Salvador, fears that if the mission leaves too soon not only will outstanding commitments not be implemented, but achievements will also unravel. Unfortunately, this position is at least partly grounded in reality.

It is also true that a continued presence strengthens the hand of the parties in carrying out their commitments, as they can always point to the pressure exercised by the mission to persuade those opposed to compliance. In El Salvador the government publicly mentioned pressure exerted by ONUSAL as the reason for practically disbanding two departments of the Police (anti-narcotics and criminal investigation) which had been taken over by a large number of uniformed criminals.

Also to be taken into account is the fact that the weaker party to the peace agreement has a vested interest in extending the peacekeeping operation as long as possible, since it enjoys a larger political role while the mission exists. There is little doubt that the FMLN's position vis-à-vis the government was bolstered during the implementation process, particularly during the time when it still did not have its own deputies in Parliament.

Finally, it is not enough to tackle the past and build new democratic institutions to secure reconciliation. Important in this regard is also to help forge a shared vision of the future of the country over 15 or 20 years. Putting together former adversaries to try to map out a coherent strategy to develop their country within today's global constraints can provide a framework for governmental action, regardless of the political party in power. The discussion of such a strategy educates all sides on the common challenges they face and helps establish the practice of harmonizing positions for the good of the country.²

Conclusions

1. The UN-mediated El Salvador Peace Agreement and the verification of its implementation did result in a thorough re-engineering of the Salvadorian state, providing a solid basis for the future democratic governance of the country. The new and reformed institutions have largely been functioning as intended, even if 13 years after the signing of the ESPA expectations have not been entirely met. It must be added, however, that, even if Salvadorian democracy does not appear to be under threat, it has

been slow in delivering public goods and, in general, a better standard of living. This does not bode well for the sustainability of El Salvador's achievements. Finally, attempts to militarize the Policia Nacional Civil are a cause for deep concern.

2. Since the election of François Duvalier in 1957, Haiti has not been able to reverse its slide into poverty and lawlessness. UN peacekeeping efforts have provided a stable and secure environment on two occasions, and have been crucial in organizing the construction of the new Haitian National Police, an ongoing effort that has had many setbacks, but the international community has not been able to put in place a long-term economic and security framework to help restore the viability of the country. The involvement of the international community during Aristide's time led to the restoration to power of a popularly elected president, but not to the construction of democratic institutions. Worse still, the international community's incomplete efforts to consolidate democracy were often undermined by the very governments the international community came to assist.

3. The international support effort to put Haiti back together again needs to be organized on a much larger scale and with more time, probably over a period of 15–20 years, and to be carried out in a predictable and sustained manner, with long-term programmes directly managed by the multilateral financial institutions. In the absence of a functioning state, attempts to re-establish the viability of Haiti must also make fuller use of the wide network of charitable institutions and NGOs, and of the Haitian private sector.

4. The international community has taken a step of far-reaching conceptual and political consequence in using United Nations peacekeeping operations to resolve conflict within nations. In spite of the fact that this political re-engineering of nation states is still basically carried out within the conceptual framework and procedures established by the Security Council 60 years ago, UN peace operations that have proved successful have enjoyed the full support of all members of the Security Council, have benefited from a well thought-out blueprint to organize their work, have been able to adjust quickly to changing circumstances, and have relied on competent and motivated staff that function as a team. Also, successful operations have generally not been encumbered by micro-management from UN headquarters.

5. UN-sponsored institution building would benefit greatly from a more systematic approach that shares one common philosophy and identifies clear objectives and tasks for all national and international actors. Mechanisms to track progress or regression once a peace operation has been withdrawn should be made part of the verification mandate in order to ensure corrective action in a timely manner.

6. Efforts by the UN to consolidate democracy also require an effective international security system based on a strong, well-functioning Security Council that has the means to see its decisions promptly and fully carried out. The more active use by the secretary-general of his prerogative under article 99 of the UN Charter to bring to the attention

of the Security Council ‘any matter which in his opinion may threaten the maintenance of peace and security’ is of the utmost importance to this end.

7. When there is a will to leave conflict behind and pursue reconciliation on the basis of democratic governance, as was the case in El Salvador, the UN is capable of effectively assisting small countries to tackle the root causes of conflict. The question remains, however, if new and reformed institutions that mainly ensure political inclusion are enough to forestall internal conflict and secure peace and reconciliation, or if other questions such as increased development finance, preferential trade arrangements and special investment efforts need to be part of the package in order to facilitate the quick resumption of growth and development. Clearly, the latter is necessary.

8. Representative democracy needs to re-establish its credentials as a political system that is able to improve lives in the developing world. Countries benefiting from UN-sponsored peace and reconciliation processes need more time and more support if they are to carry out, following the rules of democracy, the fundamental changes what will help them grow and develop while integrating their economies into a fast-moving international setting. The international community should now be consistent with the bold step it has taken in tackling internal armed conflict and provide itself with the tools and resources to address more effectively the request of politically and institutionally handicapped countries which without outside help will have great difficulty improving the lot of their people in this ferociously competitive world.

Notes

1. Elected after the first presidential term of René Préval to a second presidential term in November 2000, Jean-Bertrand Aristide was forced to relinquish power and leave the country in February 2004 under pressure from the armed insurgent group of former military and bands of thugs which, descending from Cap Haïtien, had already reached the outskirts of Port-au-Prince. Internal armed conflict was only avoided by a US–French military intervention. A new UN peacekeeping operation, the UN Stabilization Mission in Haiti (Mission des Nations Unies pour la Stabilisation en Haïti, MINUSTAH), was established in April 2004 to continue to ensure stability after the withdrawal of the US–French military force. This study attempts to draw lessons only from the first UN peacekeeping presence in Haiti in the years 1995–7. Since then conditions in the country have deteriorated markedly, even if new hope has come with the free and fair election of René Préval to a second term.

2. In El Salvador, an NGO called FUNDAPAZ, which sees itself as a follow-on operation of the mission and is led by former President Cristiani, took on an initiative of ONUSAL and assumed the task of organizing a national dialogue on the El Salvador of the year 2010. Although this initiative did not bear fruit, President Calderón Sol re-launched and concluded it successfully under the name Plan de Nación. In Haiti, the mission fostered an initiative to build a vision of the long-term development of Haiti in association with the UNDP, which did not end successfully as the polarization between the pro- and anti-Aristide groups had already deepened to a point where dialogue was no longer possible.

Pursuing Security in the Post-conflict Phase: Reflections on Recent African Cases and Their Implications for Current and Future Peace Operations

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Security sector reconstruction (SSR) in the aftermath of conflict is often a product of the transition from war to peace; the extent to which the legacies of the conflict that was responsible for the war have been addressed in the post-war settlement; the commitment of the main actors and the peace guarantors; the scope of the reconstruction plan; and the regional security context. This case study argues that, for post-conflict security sector reconstruction to be effective and sustainable, it should be part of a multidimensional peace-building construct, stretching from humanitarian relief through transitional rehabilitation to long-term development, often requiring a lengthy process. In essence, post-conflict SSR must possess the ability for immediate disaster and relief operations as well as the capacity for addressing comprehensive nation-building tasks. For this to happen, though, this paper suggests that it will require a reorientation of the relationship between political authority and the citizenry, revisiting the relationships between contending forces, creating a political and civil society that is conscious of its role in security sector reform, promoting reconciliation, and reforming economic policies and institutions that foster long-term security and development.

To achieve the above, a number of factors appear central to securing peace in the aftermath of conflicts. These include:

- an effective and sustainable ceasefire-cum-peace agreement;
- the presence of multi-stakeholder, transitional, political and constitutional arrangements with capacity to reorder power relations and guarantee inclusion and access to the wider population (by providing mechanisms for addressing grievances that could reignite conflict);

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- functioning public-sector institutions that are capable of providing citizens with basic needs, especially safety and security;
- economic development aimed at addressing the grievances that produced or exacerbated conflict in the first place; and
- post-conflict justice mechanisms that address egregious violations of human rights.

The Nature of Security Sector Reconstruction in Post-conflict States in Africa: The Examples of Liberia and Sierra Leone

Given the context outlined above, the transitions from war to peace in Liberia and Sierra Leone presented two immediate challenges with respect to security sector reconstruction. One challenge was doing away with the old and establishing effective and accountable security agencies capable of providing the basis for broader socio-economic reconstruction and of protecting the security not only of the state but also of its citizens. The second challenge was establishing effective civilian oversight of the emergent armed forces and security agencies. Among the belligerents and the broader public in general, there is a clearer recognition that settling the question of the composition, disposition and oversight of the force structure in the security institutions is central to any political settlement and, ultimately, democratization itself.

Consequently, post-conflict negotiations in Liberia and Sierra Leone clearly focused on security sector reconstruction in an immediate sense, for a number of reasons. With the lack of functioning security institutions after a decade of war, as well as the lack of the most basic institutions capable of undertaking humanitarian tasks, peace negotiators had no choice but to use the opportunity of ceasefire agreements to reorder priorities in the direction of providing basic security and basic needs in the two countries. In terms of scope, the focus of this immediate restoration of order was understandably short-term. As of the end of 1998, 600,000 people were internally displaced in Sierra Leone, with 450,000 refugees in both Guinea and Liberia (KaiKai 1999). In Liberia at the end of 2003, there were at least 500,000 internally displaced persons, and there were 280,000 Liberian refugees in the neighbouring countries of Guinea, Côte d'Ivoire and Sierra Leone (International Crisis Group 2003a: 5). Without a measure of security established in the first place, it is nearly impossible to deliver humanitarian aid and restore some order in the countryside beyond the capitals, Freetown and Monrovia.

More than five years after the end of conflict in Sierra Leone, however, considerable progress had been made in terms of the short-term goals of demobilization of ex-combatants and reintegration work across the country. Between 1998 and 2002, some records show that '72,500 combatants were disarmed and demobilized and 42,300 weapons and 1.2 million pieces of ammunition were collected and destroyed' (Global Facilitation Network for Security Sector Reform 2003). By the end of 2002, nearly 57,000 ex-combatants had registered for reintegration with the intention of undergoing skills training and receiving assistance to find jobs (International Crisis Group 2003b). In Liberia, despite the initial false start, considerable progress was also made in the

disarmament, demobilization and reintegration (DDR) process. Initially, the UN Mission in Liberia (UNMIL) calculated that there were 38,000 fighters to be disarmed; but by the end of the disarmament and demobilization phase of the programme, 103,019 ex-combatants had been disarmed. This astronomical increase in the number of fighters disarmed has had an adverse impact on the cost of the overall implementation of the DDR programme. Furthermore, when the programme started on 15 December 2003, it was immediately halted because of poor logistics and planning.

In spite of the progress made, enormous challenges remain.¹ In broader security terms, the most pertinent problems are the challenges of unemployment facing the demobilized young men and women who have received skills training—in what is often a generally bleak employment market—and the skewed nature of the resettlement and reintegration programme, especially in the remote parts and the diamond regions of the country (Kamara 2003). This effectively links the immediate search for security with the need for development. There is a legitimate fear that the exit of the international peacekeeping forces, the UN Mission in Sierra Leone (UNAMSIL) and UNMIL, might reignite the passions of the frustrated and volatile youths in Sierra Leone and Liberia if some comprehensive plan is not developed to address the lingering problem of post-DDR activities.

All this clearly underscores why security sector reconstruction is a long-term and deeply political issue, not just a technical one, and why, to be deemed successful, *peace building* must aim to merge seamlessly with *nation building*. It also brings into clear relief why the reconstruction of the security sector can only work if pursued as part of a more comprehensive restructuring agenda aimed at improving governance and promoting democratization. Security sector reconstruction in a post-conflict setting is therefore also a discussion about the development of an effective and overarching governance framework. For this reason, one clear implication that must always be borne in mind is the extent to which peace agreements integrate security and development issues within a broader governance framework.

It must be conceded right away that any evaluation of peace agreements reached under precarious wartime conditions is often complicated by the facts that civil–military relations are in a state of flux rather than in a post-bellum phase—ceasefire agreements notwithstanding—and that changes are occurring in varied political contexts, with their own local dynamics and challenges, and incorporating different prospects of utilizing peace agreements as the basis for the development of democratic norms and controls. Indeed, the agreements in Sierra Leone and Liberia resulted in divergent interpretations and produced a wide assortment of post-transition security configurations that continue to worry discerning observers in the two countries. For example, the Lomé Peace Agreement of 7 July 1999, which provided the basis for current security sector reconstruction in Sierra Leone, was primarily limited to armed parties with the most direct culpability for the carnage (the government of Sierra Leone and the Revolutionary United Front, RUF). There was little or no provision for civil society forces advocating for peace; consequently, the agreements produced narrow concepts of rehabilitation and reconstruction with priority on addressing the problems of ex-combatants, thereby

rewarding violence, rather than taking a holistic approach focusing on the whole range of stakeholders affected by conflict. The fact that the Accra Peace Agreement embraced the notion of a multi-stakeholder peace agreement, with civil society and political parties being granted a place at the table (not only as observers, as in Lomé) and actively represented in the power-sharing arrangements, is a striking departure from the Lomé Peace Agreement. Although it could still be argued that the Accra agreement rewarded violence by awarding the bulk of the government positions to the three warring factions—the government of Liberia, Liberians United for Reconciliation and Democracy (LURD) and the Movement for Democracy in Liberia (MODEL)—thus undermining any prospects of altering power relations, it remains believable that these external forces can still act as equilibrating mechanisms in the quest for the realization of the agreement’s objectives, especially with the commitment of the guarantors, the Economic Community of West African States (ECOWAS), the International Contact Group on Liberia (ICGL) and the United Nations.

Table 1: The Lomé Peace Agreement and the Accra Peace Agreement

The Lomé Peace Agreement, Sierra Leone, 1999*	The Accra Peace Agreement, Liberia, 2003**
<ul style="list-style-type: none"> • Signed between the government of Sierra Leone and the Revolutionary United Front (RUF); witnessed by select civil society (Inter-Religion Council) • Power-sharing agreement between major parties to conflict: 4 cabinets positions and 4 non-cabinet positions to each; chairmanship of Strategic Mineral Commission to RUF • Elected president continues in office with vice-president to rebel leader, Foday Sankoh • Existing legislature remains in office • Amnesty provision • Vague agenda for security sector reform • Transitional justice provisions • No timetable for implementation 	<ul style="list-style-type: none"> • Signed between the government of Liberia, LURD, MODEL, political parties and civil society representatives • Power-sharing agreement: 5 cabinet positions each to the government of Liberia, LURD and MODEL; 6 cabinet positions to political parties and civil society • Elected president replaced with an independent chairman of transitional government and no key positions for rebel leaders • New Transitional Legislative Assembly with 76 members: 12 seats for each faction and 18 seats to political parties and civil society • No amnesty provision • Detailed provisions for security sector reform • Similar transitional justice provisions • Timetable for implementation

* There were previous peace agreements that aimed to resolve the conflict, namely the Conakry and Abidjan peace accords, but the accord that provided the basis of current settlement was the Lomé Peace Agreement signed between the government of Sierra Leone and the Revolutionary United Front in 1999, even though this quickly unravelled after the crisis of January 2000. (For details of the agreement see Olonisakin 1999.)

** The Accra Peace Agreement provided the basis for the current reconstruction of the security sector in Liberia. Equally, earlier agreements, including the Abuja Accord of 1996, which provided a framework for the reform of the armed forces, foundered on the altar of electoral politics in 1997.

LURD = Liberians United for Reconciliation and Democracy. MODEL = Movement for Democracy in Liberia

Table 1 highlights some key differences that show, despite the disparities in peace settlements that have been the subject of some academic attention recently, that some significant lessons have been borne in mind by negotiators even if gaps remain between the letter of the signed peace agreements and the implementation of such agreements. (For a useful critique of peace negotiations, see Stedman et al. 2002.) Negotiation skills will need to be enhanced, not just in the ranks of belligerent parties but also among other critical stakeholders.

Unlike Sierra Leone (1996) and Liberia (1997), where elections served as conflict triggers for those excluded from the process, the Accra agreement also took account of this and pursued a transitional government option.²

The above lessons may have been partly due to the fact that the Accra Peace Agreement was driven largely by Liberians and the regional body, ECOWAS. This is a pertinent lesson: wholly foreign-brokered peace processes, as an approach to building stable and democratic civil–security relations, remain inherently problematic.³ The assumption that every post-conflict situation must produce agreements that follow a set pattern of actions—humanitarian relief, elections, disinvestment of state-sector companies and reduction in security expenditures—or a shift from the military to policing is too generic.

There is thus the need for post-conflict security sector reconstruction to move from the current donor focus on short-term objectives—based on the interpretation of peace as the mere absence of war (securing an early end to hostilities, followed by demobilization)—to a recognition of the post-conflict rebuilding process in a *continuum*—the reintegration of ex-combatants, re-professionalization of the armed forces and policing, and the building of institutions of democratic oversight, all necessarily long-term, complex and resource-intensive processes. Experience has shown that where the ‘demand’ for security sector reconstruction is often not ‘owned’ by indigenous forces or grounded in local norms or culture, external influence has been much more limited in shaping the outcome of security sector reform and virtually irrelevant in determining the nature of the post-conflict regime, as the subsequent analysis of security sector reconstruction in Sierra Leone and Liberia demonstrates.

Beyond DDR: The Scope of Security Sector Reconstruction in Sierra Leone and Liberia

We have argued elsewhere that the most hospitable political environment for ‘full-scale’ security sector reconstruction in Africa has been post-conflict situations—also precisely the kind of context that (for better or ill) facilitates unfettered donor intervention (see Fayemi and Hutchful 2004). A key reason for this is the fact that conflict forces greater attention on issues of security sector reconstruction. This is manifested in four ways.

- There is a clearer recognition that settling the question of the composition, disposition and control of force structures is central to any political settlement and, ultimately, to democratization itself.

- There is support for more holistic approaches in dealing with force structures, formal as well as informal.
- There is the presence of leaders who tend to be much more savvy in negotiating both political and military issues.
- There is the fact that conflict has often given rise to new institutions, social and economic relations, and forms of consciousness that seek to enhance social capital.
- On the other hand, post-conflict situations are also the precise contexts that pose the most formidable challenges to SSR, owing to:
 - the lack of functioning security institutions, as well as the most basic civil institutions, capable of undertaking complex tasks of designing and implementing reform;
 - the proliferation of both formal and informal armed formations, requiring complex and demanding DDR processes;
 - the need to eliminate both the embedded legacies of violent conflict (such as militaristic values and a culture of impunity) and the material and economic supports for continued violence (such as arms proliferation, illicit resource extraction and so on);
 - the need to resettle displaced populations and marginalized youth; and
 - the need to restore some form of economic normality and long-term development (Fayemi and Hutchful 2004).

Mindful of these challenges, what lessons can be drawn from the processes involved in the reconstruction of the security sectors in Sierra Leone and Liberia? The next section examines in detail steps taken in the reform of the armed forces, police, justice sector, youth reintegration and the broader governance framework.

Restructuring of the Armed Forces

As security remains the big issue in the reconstruction of post-conflict states, considerable attention has been paid to the sector since 1998 in Sierra Leone and 2003 in Liberia. It is also true that it was the deliberate decomposition of the armed forces by the authoritarian rulers in the two countries that led to the deprofessionalization of the military. In the case of Sierra Leone, Britain has been at the forefront of the restructuring initiative. However, prior to Britain's involvement, the Sierra Leonean Government had toyed with the idea of doing away with the military altogether. This followed a proposed initiative under the auspices of former Costa Rican President Oscar Arias, but the government of Sierra Leone changed its mind (Fayemi and Hutchful 2004). Subsequently, the government approached the headquarters of the West African peacekeeping mission (the ECOWAS Monitoring Group, ECOMOG) to come up with a restructuring plan for the Sierra Leonean armed forces. In 1999, ECOMOG presented two options for consideration. The first was to establish a 5,000-strong armed force.⁴ The second option was a 10,000-strong armed force with a similar structure. The government was said

to have accepted the 5,000-strong option, comprising 4,000 new recruits, with some modification—upgrading of the Navy and the Air Force to fully-fledged services and the Rapid Deployment Service to operate as a light infantry battalion and with only the Presidential Guard and the Defence and Service Headquarters located in the capital, Freetown (Khobe 1999).

In addition to this broad plan, which ECOMOG started to implement in 1998, the team encountered critical challenges to the plan in terms of the integration of the Civil Defence Forces (CDF) into the mainstream armed forces because of the difficulty of reorienting the CDF leadership into the military command and control system. Also, the funding of the restructuring programme and the provision of at least 3,000 housing units were highlighted by ECOMOG as challenges that they needed overcome (Khobe 1999).

The plan that emerged after the 1999 Lomé Peace Agreement simply failed to take the above into account, partly because of the need to bring in some of the rebel troops who had turned themselves in for reintegration into the Sierra Leonean Armed Forces (RSLAF). Although article XVII of the Lomé Peace Agreement only vaguely states that ‘the restructuring, composition and training of the new Sierra Leone armed forces will be carried out by the Government with a view to creating a truly national armed forces, bearing loyalty solely to the State of Sierra Leone, and able and willing to perform their constitutional role’, by the time 2,300 ex-combatants had been brought into the new army, even with the decommissioning of some officers and men, the size had increased to 14,500 by 2002, with a plan to reduce this to 10,500 officers and men over the following four years—a far cry from the 5,000 troops originally agreed by ECOWAS and the government of Sierra Leone.

The general impression, in spite of worrying developments,⁵ is that the RSLAF had imbibed ‘a more democratic ethos, and, understanding their role in a democracy, many were no longer interested in being involved in the internal affairs of the country’ (International Crisis Group 2003b). Yet problems persisted about military professionalism and readiness in the wake of UNAMSIL’s planned departure. The British-sponsored International Military Advisory and Training Team (IMATT) has been at the forefront of this reform agenda, but there are still indications that questions of size, force structure, order of battle, legislative oversight, salary, housing, communications, heavy military and rapid-deployment equipment, and inadequate military vehicles continue to inhibit the performance of the military. Popular confidence remains low about the building of a professional military, but the government seems keen to do this given the likelihood of UNAMSIL’s departure from Sierra Leone.

Unlike the vague provisions contained in the Sierra Leone agreement, the Accra Peace Agreement devotes the whole of its Part Four to security sector reform. The section stipulates: (a) the disbandment of all irregular forces; and (b) the restructuring of the armed forces of Liberia with a new command structure and forces ‘which may be drawn from the ranks of the present GOL [government of Liberia] forces, the LURD and the

MODEL, as well as from civilians with appropriate background and experience' (Accra Peace Agreement, article VII (1)). The agreement also outlines the principles that shall be taken into account in the formation of the restructured Liberian armed forces:

- Incoming service personnel shall be screened with respect to educational, professional, medical and fitness qualifications, as well as prior history with regard to human rights abuses.
- The restructured force shall take into account the country's national balance. It shall be composed without any political bias to ensure that it represents the national character of Liberia.
- The mission of the armed forces of Liberia shall be to defend national sovereignty and, in extremis, to respond to natural disasters.
- All parties shall cooperate with ECOWAS, the UN, the African Union, the ICGL and the United States of America (article VII (2)).

While these elaborate provisions set the standards for what to expect, it is too early to reach any definite judgement about security sector reconstruction in Liberia. Although some success had been achieved in the DDR process, as highlighted above, questions have arisen as to who is really in charge—the transitional authority or UNMIL. There is a growing perception that the reintegration work ought to be more inclusive given the experience available in Liberia and the need for legitimacy and ownership.⁶ Equally, there is the need to acknowledge that reintegration is not simply a stopgap measure between conflict and development but a long-term process that must be linked to strengthening the economy and must offer concrete prospects to demobilized soldiers.

Reconstructing the Police and Demilitarizing Public Order

As noted earlier, the post-conflict environment offers an appropriate space for eliminating the embedded legacies of violent conflict. For example, in response to the psyche of militarism etched in the ethos, values and actions of ordinary people in society, it is believed that the best way to 'demilitarize the mind' and at the same time ensure safety is by strengthening civilian policing. Yet the Sierra Leonean and Liberian police were almost non-existent both in the government's order of priority and in the populace's hierarchy of organizations that retain public trust. It is not surprising, therefore, that the police forces continue to suffer tremendous shortfalls in personnel, training and resources, despite considerable efforts to improve their conditions (Gbla 2002).

In 2003, the Sierra Leonean police numbered 6,500–7,000 men, and the goal was to increase the force to its pre-war level of 9,500, with recruitment of at least another 3,500–4,000 men by 2005 (International Crisis Group 2003b: 8). Even if this pre-war status is achieved, it will remain a far cry from the UN-stipulated police : citizens ratio of 1 : 400. Added to the gross personnel shortage are inadequate accommodation and transportation, poor communication networks, poorly funded training institutions, and insufficient capacity for gathering intelligence on crime.⁷

Notwithstanding the above, the police has undergone a complete reorientation of its mission and objectives. It has also moved out from the capital to the provinces, and attempts are now being made to expand the training centre in Hastings, as well as to rebuild the regional centres in Bo, Kenema and Makeni, all of which were destroyed during the war. The reform process had been led by the Commonwealth and the UNAMSIL Civilian Police Unit, but questions have been raised about the competence of the reform team and the lack of ownership of the reform process on the part of the Sierra Leonean Police (International Crisis Group 2003b).

Continuing challenges in the police reform programme include:

- expansion of recruitment in the police;
- codification of procedures and new doctrine; improvement of training and standards, especially to prevent the recurrence of human rights abuses;
- an increase in the resources available to the police, reduction of redundant officers, an expansion of the police's role in intelligence and security information gathering, and injecting new blood into the force; and
- increasing the size of the police force and the pay of its operatives, thus improving its estimation in the eyes of the public (Bangura 2002).

Although there is no telling if this could be achieved in the short term, the question of engaging civil policing for democratic governance is central to the issue of exorcising militarism from the body politic, as it is relevant to returning security and safety to the local communities and ensuring accountability in Sierra Leone. The challenge is to achieve this before the departure of UNAMSIL from Sierra Leone.

Equally, in Liberia, the issue of how best to restructure police organization and operations has been particularly central in the post-conflict environment given the problems that attended the centralized control of the police force and its use under previous regimes—most recently, President Taylor's. To create a service culture, and not a regimented force arrangement, accountability to ordinary citizens is central to public order. The police force cannot be trusted within the community if it retains a structure that is only accountable to the president. To this end, article VIII of the Accra Peace Agreement focuses on the restructuring of the Liberian National Police, the Immigration Force, the Special Security Services, the Customs Security Guards and other such statutory security units. Article VIII (5) also disbands 'The Special Security Units including the AntiTerrorist Unit, the Special Operations Division (SOD) of the Liberian National Police Force and such paramilitary groups that operate within the organisations as the National Ports Authority (NPA), the Liberian Telecommunications Corporation (NTC), the Liberian Refining Corporation (LRPC) and the Airports'. In its place, an Interim Police Force should be created to be monitored by the United Nations Civil Police components (UNCIVPOL) within the International Stabilization Force (ISF).

Serious as the problems of policing are, they cannot be seen in isolation from the criminal justice system, since the police is only an implementing agent of the criminal justice system—especially the prisons and correctional facilities and the justice sector. Yet in both Liberia and Sierra Leone reforms in the prisons and the judicial system have been much slower than reforms in the military and the police, even though there is now recognition that the issues must be taken together. Until there is a comprehensive approach to access to justice and law enforcement, even the ad hoc approach adopted so far will not bring change. A comprehensive approach will necessarily involve addressing existing gaps in law reform, accountability, oversight, access, due process, effectiveness, efficiency and representation at the level of the judicial, prosecutorial, correctional and policing institutions and ensuring the necessary linkages in the justice and security sector community—the police, the correctional services, the judiciary and prosecution services, and so on.⁸ Equally important is the degree to which decentralization will aid access to justice and the building of trust in the justice sector.⁹ Although some progress has been made on superficial reforms and the restoration of infrastructure, the challenge is to have a comprehensive overhaul of the justice sector, aligning the common law with the customary court system and clearing the huge backlog of cases currently unattended.

Tackling Impunity and Egregious Violations of Human Rights

Addressing questions of impunity has proved to be a tough challenge of post-conflict SSR anywhere in the world. Yet ignoring the past and rushing to reconciliation will certainly be counterproductive since it is crucial for post-conflict societies to maintain an appropriate mix of remembering and forgetting in order to stop future occurrences of human rights abuses (see e.g. Bloomfield, Barnes and Huyse 2003). In the cases of Sierra Leone and Liberia, both countries agreed to clear provisions for addressing human rights violations. Article XXVI of the Lomé Peace Agreement stipulates that a Truth and Reconciliation Commission shall be established, and part 6, article XIII of the Accra Peace Agreement also established a Truth and Reconciliation Commission. In addition, a Special Court was established for Sierra Leone under UN auspices with the mandate to try ‘those who bear the greatest responsibility’ for the civil war.

The key challenge in the cases of Sierra Leone and Liberia is how to strike the right balance between achieving justice and not unravelling the fragile peace. This tricky balance has already been tested with the indictments of former Liberian leader Charles Taylor; the Kamajor leader Hinga Norman, a former deputy defence minister; and two other key leaders of the Kamajor, Allieu Kondewa and Moinina Fofana. Since reconciliation processes are often context-specific, many found it shocking that any indictment against Charles Taylor could be released on 4 June 2003, the same day that West African leaders were working on his voluntary resignation in Accra, Ghana. To this end, ECOWAS leaders immediately rejected the process of indictment, and this has somewhat put the work of the Special Court in the balance. Equally, the arrest of the Kamajor leaders had elicited similar responses among their allies and supporters, prompting fears that this might undermine the fragile peace process that had worked so

far, especially given the likelihood of UNAMSIL's departure. Although there is limited appetite for a return to war, the perception is now rife that the Special Court is a witch-hunting exercise rather than a vehicle for seeking justice. The fact that the chairperson of the court did not recuse himself, even after his well-publicized views on the RUF cadres, has further damaged the reputation of the court. In spite of this, there remains a groundswell of support for a truth-telling and reconciliation process linked to the reform of the judicial system and restoration of basic human rights in the conduct of government and other stakeholders in Sierra Leone and the region.

Liberia's situation with regard to truth and reconciliation clearly mirrors Sierra Leone's. In fact, there is often a connecting thread in many of the atrocities that were committed in Liberia in the 14 years of war, and there is a clear demand for a truth and justice exercise. It is too early to say whether Liberia will also have its own UN-backed special court, but various institutions, including the UN Office of the High Commissioner for Human Rights, have been exploring the possibilities of such a court in Liberia. Other institutions, such as the Open Society Justice Initiative and the International Centre for Transitional Justice, have conducted exploratory missions to Liberia. For such outside interest to make a difference, coherence must be achieved on timing, sequencing, resources and structure, and the commitment of the political leadership (many of whom are recycled and are themselves probably guilty of egregious violations) must be assured.¹⁰

Even when war criminals are brought to justice through externally-driven mechanisms like the Special Court, the challenge is how to marry them with informal and traditional justice systems, which emphasize restorative and compensatory justice over the adversarial nature of formal systems. In the immediate aftermath of conflict, the societal quest for regaining social capital underlines the place of traditional approaches in schemes such as community liaison groups, community safety forums and so on. Whether formal or informal, post-conflict justice systems must eschew historical biases against traditionally marginalized groups—women, youth and ethnic minorities; must dispense justice in local languages; must produce outcomes that emphasize community building, skills transfer, restoration and reparation; and must ensure that justice is neither delayed nor perceived to be delayed (Fayemi 2005: 1).

The Place of Irregular Forces and the Crisis of Youth Culture

Herein lies the greatest challenge to security sector reconstruction in most post-conflict settings, and neither Sierra Leone nor Liberia is an exception. Any attempt to design security sector reconstruction without an understanding of the sociological underpinnings of youth culture and a carefully constructed strategic response runs the risk of undermining all the other aspects of this institutional reform initiative that we have examined above.¹¹

In most post-conflict situations, the question of irregular forces or demobilized ex-combatants is often separated from the crisis in youth culture because of the continuing

tendency to focus, even after years of post-conflict reconstruction, almost exclusively on one without addressing the other. In Sierra Leone and Liberia, priority is still placed on narrow concepts of rehabilitating and reintegrating ex-combatants, making them 'economically viable' and independent, in the genuine, but naive, expectation that this will be enough to address the crisis of youth culture. There are many reasons for this. The first is that often the lack of interest in a transformational agenda on the Sierra Leonean and Liberian authorities' side; the second factor is development assistance's obsession with humanitarian assistance (which privileges project cycles); third is the proclivity for the short-term in post-conflict reconstruction; and finally, reluctance to embrace a regional response to an issue that has become largely cross-border and regional.

As Ibrahim Abdullah eloquently argues,

the major challenge in postwar Sierra Leone . . . is to channel youth energy and creativity towards a constructive agenda. The coalition of different youth experiences suggests the necessity for a coherent national strategy that will speak to their collective interest as a group. A project that addresses the needs of youths in general with builtin sensitivity to the different categories of youth is more likely to succeed than one that is designed for a particular group of ex-combatants (Abdullah 1999b: 101–7).

Whereas Sierra Leone did precisely this by developing a National Youth Policy in 2003 that focuses on six strategic areas ('job creation, skills training, information and sensitization, community development projects, presidential award for excellence and youth consultation/participation'), even that effort has been criticized for excluding young people in its formulation. Clearly, youth unemployment has not abated, and skills training remains an issue, with the younger population still largely illiterate. Unsurprisingly, the country's leadership continues to believe that consultation with young people should be limited to issues that concern them and should not cover broader issues of governance and economic reform, despite the estimation that 'youth' will constitute 55 per cent of the country's population by 2005 (see Sierra Leone Ministry of Youth and Sport 2003). The net result is an idle youth population ready to be mobilized by any opportunistic segment of the political elite and the likelihood of security sector reconstruction being susceptible to unravelling. The Liberian crisis is an exact replica of this.

Even if these issues are tackled within a strategic and broad national framework, these are not problems that can be resolved on a state-by-state basis—hence the need for regional responses in tackling cross-border issues that have developed with dangerous links to networks of small-arms proliferators, exploiters of natural resources and mercenaries from the Gambia to the Congo. Although ECOWAS established a Child Protection Unit in 2002 and has been trying to develop a coherent policy framework that its member nations can adopt, there is little evidence to suggest that the regional body recognizes the enormity of this problem.¹²

This is one issue that requires a far more radical response on the part of all the interveners and international development assistance. Regional actors and national players must see it as key to the future of security sector reconstruction and overall national governance stability if progress is to be made on the post-conflict agenda in the medium and long term.

Conclusion: The Future of Security Sector Reconstruction in Post-conflict States

Even though we have argued that security sector reconstruction in post-conflict states holds greater potential for altering relations of power, from the foregoing discussion, security sector reconstruction in Sierra Leone and Liberia suffers from the following fundamental inadequacies. It remains:

- donor-driven and lacking local ownership;
- underfunded;
- ill-adjusted to domestic institutional (and resource) capabilities;
- non-holistic and ad hoc, lacking coordination and the benefit of an overarching national security framework;
- lopsided in focus. In particular, it has focused on: (a) the formal rather than the informal or privatized security sector (local militias, vigilantes, community self-policing groups, private security companies, etc.); (b) the military rather than the police, and far more on both than on the variety of intelligence organizations, even if these are mentioned in peace agreements; (c) practitioner needs (anti-crime capacity building, professional training, peacekeeping training, etc.) rather than the needs of oversight institutions (the legislature); and (d) the short-term rather than the long-term (e.g. disarmament and demobilization rather than proper reintegration and professional development of the security forces); and
- characterized by lack of political will; weak government leadership and inter-agency collaboration; a lack of transparency and participation; and a weak (or non-existent) policy and strategic framework.

In spite of all the efforts under way in Sierra Leone and Liberia, sustainability and ownership issues will continue to persist unless security sector reconstruction is fully integrated into the wider institutional reform agenda. As currently conceived in these states, security sector reconstruction attempts to re-engineer and resuscitate often decrepit and discredited institutions and to re-centre the state in the security game, not to initiate fundamental rethinking of security/strategic concepts and frameworks, the institutions of governance or relations of power.

Some of the shortcomings highlighted spring inevitably from the dynamics of weak states and the often severely deteriorated character of their security establishments. Yet the thread running through this discussion is that security sector reconstruction is

not an apolitical project, nor is it a purely technical programme that can be carefully designed for expected outcomes if it is not undergirded by an overarching democratic governance framework, one that reconstitutes power relations in a process-oriented, participatory and accountable manner. This approach has at its core the need for rights-based development that promotes an organic link between peace agreements that are primarily concerned with simply guaranteeing compliance among belligerent parties and a broader constitutional framework that legitimizes power structures and relations based on a broad social consensus on the values of a diverse society. In discussing this approach to governance and security sector transformation, local ownership and the development of social capital rest with civil society; but even this requires the development of institutional mechanisms for the management of diversity and difference, while also incorporating relevant international frameworks into domestic law. It is worrying that the governments in both Sierra Leone and Liberia have continued to act in the 'business as usual' mode, and this is why the prospects for security sector reconstruction will continue to remain bleak.

What the experiences of Sierra Leone and Liberia also bring into clear relief is the place of the modern nation state in Africa and the importance of consistently generating regional responses. The responsibility to prevent, manage and transform conflict should not be hobbled by the Westphalian logic of state sovereignty. Regional institutions have emerged as critical actors in this chain, and now is the time to reflect much more coherently on the political and institutional requirements that will place such organizations at the forefront of security sector reconstruction in Africa.

Notes

1. In Liberia, for example, there was a significant discrepancy between the number of people disarmed and demobilized and the number of weapons turned in. Though 103,019 ex-combatants went through the 'DD' phase, only 28,000 weapons were turned in. There is a general consensus among many people that such a discrepancy verifies the assumption that the ex-fighters never turned in all their weapons. For a review of the DDR programme in Sierra Leone, see 'The DDR Programme: Status and Strategies for Completion', 2002.
2. Other options such as a hybrid ECOWAS–UN trusteeship or an outright UN trusteeship were also seriously considered, but the national transition government arrangement was the option chosen.
3. With regard to the Lomé Peace Agreement, Sierra Leonean Government officials have spoken of being pressured by the United States into signing an agreement to which they objected (see Lizza 2000; and the reflections of one of the key technical experts who worked on the Lomé Peace Agreements, Georges NzongolaNtalaja, in NzongolaNtalaja 2000).
4. To consist of one brigade headquarters, including a presidential guard, three infantry battalions, one light tank/reconnaissance battalion, one artillery regiment and one rapid deployment force, which was to be made up of a paratrooper battalion, a coastguard and an air wing.
5. Discussions with Mr Joe Blell, Deputy Defence Minister of Sierra Leone, 19 June 2003. The worrying developments relate to concerns that had been expressed about the loyalty of some in the military, especially in the aftermath of erstwhile military junta leaders' disappearance after the May 2002 election.

6. Interview with Professor Togba Na Tipoteh, director of Sisukku (a local demobilization and reintegration initiative posted on the Internet), <<http://www.allafrica.com>>, 7 May 2004. In February 2004, 48 generals from the rival factions were recruited to help with sensitization and provision of information on weapon sites. This helped to kick-start the process.
7. I owe this assessment to Mr Kandeh Bangura, Deputy Inspector General of police, Sierra Leonean police, Abuja, Nigeria, October 2002.
8. The World Bank and the UK Department for International Development (DFID) have started some work in this regard, but they are concerned about the government's practical commitment to the reform of the judicial sector and the Anti-Corruption Commission.
9. For the first time in 27 years, local government elections took place in Sierra Leone amid claims of election malpractice on the government side. The Accra Peace Agreement also acknowledges the need to rapidly extend governance to the countries as a way of arresting disillusionment.
10. It has been argued that the core of the leadership of the government of Liberia, LURD and MODEL should be held responsible for war crimes. Indeed, many in civil society had objected to the choice of Daniel Chea to continue as defence minister in the Transition Government and George Dweh as speaker of the Legislative Assembly on the strength of alleged atrocities committed under presidents Charles Taylor and Samuel Doe, respectively.
11. The literature on youth culture and child soldiers is large. Among the most impressive for the purpose of this paper are Abdullah 1999a; O'Brien 1996; Richards 1996; and Murphy 2003.
12. The Child Protection Unit office continues to perform suboptimally, and there is enormous scope for it to work with the United Nations Office of the Children Affected by Armed Conflict and UNICEF on this issue while integrating its activities with state policies on child soldiers, trafficking and youth culture (see 'Learning for Change' 2002).

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Electoral Processes and Post-settlement Peace Building: Perspectives from Southern Africa

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While the democratic transitions of the 1990s in Southern Africa are to be celebrated, there is no doubt that today the political mood in the region is sombre because progress on the democratization front, or democratic consolidation, has been slow. It is abundantly evident that making the transition was easier than building, maintaining and consolidating democracy; and, equally, the building and maintenance of peace in post-conflict societies in the region is still difficult. For these reasons, and in the light of the recent past, analysts and policy actors have tended to devote a great deal of attention to the quality of democracy, and specifically to elections and their import both for democratic governance (in and of itself) and for peace and security in post-conflict settings. The debate on elections and conflict is timely given that a political culture of regular elections is becoming entrenched in Africa as a whole (their contested quality notwithstanding). The violent conflict that befell Togo following its highly controversial presidential election of April 2005, leading to the killing of more than 20 people, reinforces the point: elections tend to ignite political tension and instability in situations where violent conflict has not been fully terminated through a durable and sustainable peace.

In 2004 general elections were held in Botswana, Malawi, Namibia, Mozambique and South Africa, while in 2005 elections were to be held in Zimbabwe, Mauritius and Tanzania. The generally accepted truism of the democratic transition in Southern Africa (and the whole African continent, in fact) is that, although elections do act as part of a comprehensive strategy for conflict management in most of the regional states in the post-conflict era, they also accentuate political tension and in some instances lead to an escalation of violent conflict, thus generating instability, with dire consequences for the democratization process, as some of the examples examined below illustrate. The key argument in this study, however, is that the Southern African Development Community (SADC) region has made commendable progress towards the institutionalization of democracy, although the challenge of dealing effectively with post-conflict political settlement and reconciliation still remains in some countries.

One of the multiple challenges that remain, of course, is precisely how elections can ‘add value’ to democracy and peace. Do elections tend to reopen old wounds, leading to the further escalation of conflict, or do they tend to heal the wounds, leading to national reconciliation, peace and harmony? We note, for instance, that, even though Angola and Mozambique share a fairly common colonial history, elections in the former have not contributed to constructive conflict management and peace and reconciliation since 1992, while in Mozambique they have contributed considerably to post-conflict peace, reconciliation and national harmony since the General Peace Agreement was signed in 1992 (see below). It must be appreciated, though, that the extent to which elections add value to the constructive management of conflicts depends critically on three things:

- the nature of the electoral system;
- an accommodative political culture; and
- the unequivocal commitment of the belligerent parties to peace, reconciliation and stability.

This study considers the relationship between electoral processes and peace building following a settlement. The following section examines the context of the democratic transitions in the Southern African region, the functions of elections, and the deficiencies of the democracies that are emerging. The second section considers the relationship between democratization and the management of conflict. This is followed by an examination of some examples from the region; a discussion of the SADC Principles and Guidelines Governing Democratic Elections; and some conclusions about the preconditions for sustainability democracy and peace after armed conflict, drawn from the Southern African experience.

The Context

The past two decades have witnessed far-reaching developments throughout the African continent that many have dubbed variously as profound democratic transitions, unprecedented political liberalization, and part of the global third wave of democratization (Huntington 1991; Hyden and Bratton 1992; Ake 1996; Bratton and van de Walle 1997; Sisk and Reynolds 1998; Ake 2000; Luckham et al. 2003; Southall 2003; Landsberg and Mackay 2004). These developments have been marked, in the main, by a deliberate transition from authoritarianism towards democratic governance. Equally significant has been the concomitant transformation from centralized economic planning models towards economic liberalization throughout the continent. To these seismic political and economic transitions on the African continent must be added a global shift away from the violent interstate conflict of the cold war era towards intra-state civil strife. Undoubtedly, then, the current democratic ‘moment’ in Africa as a whole, and Southern Africa in particular, combined with the ongoing economic liberalization, has profound implications for contemporary conflicts and the manner in which they are managed as well as the sustainability of peace in post-conflict societies.

How then is the current sea change triggered by both political and economic liberalization playing itself out with regard to elections and conflict in Southern Africa?

An election is a process whereby, among the people belonging to a particular territorial state and under the authority of a single institutional state, the electorate (those who are entitled to vote) or the voters (those who actually vote) choose their government periodically as a clear expression of representative democracy (Matlosa 2001). Elections, therefore, are an important ingredient of democracy. However, on their own they do not guarantee democracy, nor are they synonymous with it.

Elections serve various functions, including political education, the recruitment and selection of a political leadership, an orderly succession of government based on the ballot rather than the bullet, periodic review of the performance of the government, and an opportunity for renewal of a government's mandate or the replacement of the incumbent government by another. They ensure the domestic and international legitimacy and credibility of government and, in war-torn societies, they are a mechanism for assisting with conflict resolution.

Elections are currently perceived as the central, albeit not the only, condition for democratic transition and consolidation. Elections are also crucial for enhancing the quality and sustainability of democracy and political stability. In essence, elections are an important, but not the only, ingredient for the institutionalization of democratic culture and practice.

The democracy discourse, in both academic and policy circles, has undergone paradigm shifts since the 1970s. Between the 1970s and 1980s, the debate centred on processes of democratic transitions. During the 1990s, the focus shifted to concerns around the challenges for democratic consolidation (see Merkel 2004). The current democracy discourse revolves more and more around 'democracy typology'. While the 'transitionologists' were concerned with the factors favouring and the modes of democratic transition, the 'consolidologists' were more concerned about whether and how the transition was leading to the institutionalization of democracy, however defined. The mission of the 'typologists' is to acknowledge the democratic transition and elements of institutionalization, but then to pose the question of the type and quality of the democracy that is under way—hence the notions of embedded (liberal) democracy, defective (electoral) democracy and 'grey zone' regimes which lie somewhere in between embedded and defective democracies.

Part of the limitation of the democratization project in Southern Africa today has to do with its form and content. A majority of the countries in the region are following liberal democracy and in most cases it seems that, after the long years of mono-party systems, the preferred type of party system is that of one dominant party. Within this scheme of things, in practice, most countries operate electoral democracy which in essence is a limited form of liberal democracy. There is a sense in which politicians tend

to perceive elections as equal to democracy, and this perception suffers from the fallacy of electoralism: critical as they are, elections are not tantamount to democracy.

The democratic model in Southern Africa is predominantly electoral democracy marked by the dominant party syndrome. Under these circumstances, stability has not really taken root. Consequently, democratic governance and sustainable development remain elusive goals, and elections make little sense to ordinary voters. Citizens are increasingly becoming disenchanted with politics, including democracy itself, given that they get mobilized during elections to elect politicians on the basis of political promises which are hardly ever realized after elections. This trend reduces politics and democracy in the region to simple elite pacts and elite circulation at the state level, and in turn detaches the pursuit of democracy from the daily livelihoods of the citizenry—hence the high rates of voter apathy and declining public trust in political parties demonstrated graphically by the recent data from Afrobarometer Surveys, as depicted in table 1.

Table 1: Degree of Public Trust in Political Parties in Selected SADC Countries
The figures represent percentages of respondents

		Botswana	Lesotho	Malawi	Mozambique	Namibia	South Africa	Tanzania	Zambia
Trust in the ruling parties	A lot/A very great deal	43	55	45	64	59	32	66	31
	A little bit/Not at all	55	40	52	28	40	60	33	66
Trust in opposition parties	A lot/A very great deal	14	19	34	24	15	12	36	15
	A little/Not at all	81	73	61	64	83	76	62	81

Source: Afrobarometer, 2004, p. 35.

Significantly, often the debate on elections and conflict tends to focus mainly on general elections, thereby (more by default than by design) downplaying the importance of other levels of the electoral process. It is worth noting that primary elections within political parties are as divisive and likely to generate dissent as the general elections themselves, if not more so. They have led to or exacerbated intra-party power struggles, factional fighting and the splitting of parties into fragmented political fiefdoms. In essence, primary elections can either stabilize or destabilize the party machinery, depending on the degree of intra-party democracy. On the whole, internal party democracy in the SADC countries is weak—hence the fragmentation and relative ineffectiveness of opposition parties throughout the region.

Moreover, in Southern Africa local government elections are as important as general elections and, in much the same way, are as conflict-ridden. Whereas much of the conflict around general elections is primarily between political parties, the principal conflict in local government elections revolves around the power struggle between modern and traditional institutions of governance, although inter-party strife also features in local-level politics. It is interesting that, although many SADC countries have embraced the idea and practice of holding legislative and presidential elections on a fairly regular basis (bar three, namely Angola, the Democratic Republic of the Congo (DRC) and Swaziland), almost all of them exhibit a poor record in terms of regular local government elections. We are as yet not able to proffer a solid and convincing argument to explain this glaring discrepancy, or democratic deficit, beyond noting that this is testimony to the level of political centralization of the current systems—itself a relic of the one-party/one-person rule of yesteryear. Devolution of power to local areas in the form of democratic local government is yet to be institutionalized in the SADC region. This still remains one of the major challenges of democratic consolidation in the region and the entire African continent.

Other scholars have also observed recently that under the current process of political liberalization there is a great deal of focus on the democratization of high politics revolving around the state but less focus on democratization of the ‘deep politics of society’ (Luckham et al. 2003: 5). Even under the new democratic dispensation in Southern Africa today, which could be characterized as ‘choiceless and voiceless democracies’, evidence abounds that (a) both leaders and the electorate have little say in terms of choice of the democratic model in place, (b) people vote not so much for real national issues as for individuals or parties on the basis of ‘pork-barrel’ or patronage politics, and (c) the current democratization tends to amount to the regular circulation and self-reproduction of a small category of the political elite, thereby excluding the larger majority of the poor people who are remembered only at election time.

Democratization and Conflict

If well managed, elections are also crucial instruments for conflict management in war-torn societies. Conversely, elections can also accentuate existing conflicts among belligerent parties. This is not surprising, for elections by their very nature represent a contest over state power (Sisk and Reynolds 1998). For elections to add value to democratic governance, stability, peace and reconciliation, clear rules, procedures and systems that bind all the contesting parties are required.

At its very heart democracy is all about negotiating, mediating and managing conflicts (whether violent or non-violent) at various layers of society. Although conflicts are inherent in all societies, the concept of ‘conflict’ remains both nebulous and elusive in the social science discourse (Ohlson and Stedman 1994; Sisk and Reynolds 1998; see also the special issue of the *Journal of Democracy* on ‘Building Democracy after Conflict’, 2005). For the purposes of this study, the concept is used to denote incompatibility of interests, choices and goals over the distribution of resources, ideological orientation,

and the distribution of power among various political actors. Thus three factors are important in defining a conflict situation: (a) resource distribution; (b) ideological contestation; and (c) power struggles. Conflict arises from the interaction among two or more actors in the political system with incompatible interests, choices and goals where the ability of one actor to gain depends to an important degree on some loss on the part of others. Politics is therefore a conflict-ridden game.

When all is said and done, conflict, in and of itself, is not necessarily a negative phenomenon as much of the peace and security discourse would have us believe. Conflict could also be perceived as part of the social transformation of societies in a positive direction and as such cannot be wished away. It is not conflict that presents a big problem for our societies; what does is the failure of the conflicting parties to try to resolve it in a constructive manner. The constructive resolution of conflict means the political settlement of disputes rather than the resort to military means, for the latter naturally leads to the escalation of conflict rather than its resolution. It is worth noting that, after protracted wars of liberation, followed in some countries (such as Angola and Mozambique) by internal wars among parties with external support in the context of the cold war and apartheid, all the violent conflicts in the SADC region were resolved by way of political settlement involving multi-stakeholder dialogue and negotiation.

Problem Diagnosis: Some Examples from the Region

Of all the SADC countries, only Angola, Swaziland and the DRC have not embraced multiparty rule and regular party-based elections as a vital form of contestation over state power. Despite these three exceptions to the rule, a consensus is emerging within the region that multiparty systems are better political arrangements than single-party systems (Luckham et al. 2003; Southall 2003; Landsberg and Mackay 2004). Currently, the region is faced with the challenge of consolidating the new-found democratic practice and culture as well as institutionalizing the culture of peace and reconciliation after long years of both violent and non-violent conflict. As one writer observes:

Post conflict elections are supposed to transform a violent conflict into a non-violent one: *ballots take the place of bullets*. They are expected to enable the former warring parties to pursue their conflicting ideologies and programs in a peaceful fashion. Elections give all factions an opportunity to present their agendas to the citizens, debate with their opponents, and mobilise public opinion to capture political power. Like other elements of democratic system, *elections contribute to the institutionalisation of a conflict resolution mechanism* in the body politic (Kumar 1998: 7, emphasis added).

Botswana and Mauritius are the longest-enduring stable multiparty systems in the region, having been anchored on regular elections over the last three decades of independence, and have experienced few, if any, violent conflicts.

The region's recent electoral record and the degree to which elections resolve major conflicts show great variations.

On the basis of the 1991 Bicesse Agreement, Angola held presidential and parliamentary elections in September 1992 in the middle of a major violent conflict. The results were a victory for the Popular Movement for the Liberation of Angola (Movimento Popular de Liberação de Angola, MPLA). In the presidential race, Jose Eduardo dos Santos of the MPLA secured 49.67 per cent and Jonas Savimbi of the National Union for the Total Liberation of Angola (União Nacional para a Independência Total de Angola, UNITA) 40.07 per cent of the total votes cast. In the National Assembly elections, the MPLA won 53 per cent of the votes and UNITA a paltry 34.10 per cent. Instead of the electoral process acting as a catalyst in the transition to and consolidation of democratic rule, it accentuated and gave more vigour to the armed conflict (Ottaway 1998). The Angolan situation provides sufficient evidence that in some instances elections alone are not sufficient to bring about political stability, reconciliation and peace. As Kumar and Ottaway remind us, in many instances elections leave a bitter legacy, aggravating existing tensions and cleavages (Kumar and Ottaway 1998). The Angolan conflict is one of the most protracted and costly conflicts in Africa today and it is highly encouraging that since the death of the UNITA leader, Savimbi, in early 2002, considerable progress has been made towards resolving this conflict constructively. A new peace agreement is in place and has brought about relative political tranquility, harmony and reconciliation in most parts of the country. Consequently, the Angolan Government and opposition parties are currently busy hammering out some constitutional reforms in advance of a general election scheduled for 2006.

By contrast, Mozambique experienced a smooth political transition based on the 1992 General Peace Agreement signed in Rome by the belligerent parties (see Lundin 2005). This culminated in the holding of elections to the presidency and the legislature in October 1994, which resulted in a form of a coalition government incorporating the Front for the Liberation of Mozambique (Frente de Libertação de Moçambique, FRELIMO) and the Mozambican National Resistance (Resistência Nacional Moçambicana, RENAMO). This suggests that under certain conditions elections could be useful in transforming war-torn societies into stable political systems. Further more, the Mozambican experience suggests that power sharing is crucial for the credibility of the outcome of an election and for sustainable peace in war-torn societies.

Mozambique's fledgling democracy was given a further boost by the second and third democratic elections, of 1999 and 2004. These elections helped nurture the country's stability and coalition/power-sharing government. In the 1999 presidential contest, FRELIMO's Joachim Chissano won 52.3 per cent and RENAMO's Afonso Dhlakama 47.7 per cent of the votes cast, thereby ensuring the continuity of the government of national unity in a country slowly recovering from a severe war. In the parliamentary election, FRELIMO won, by capturing 48.5 per cent of the votes, to RENAMO's 38.8 per cent. About 11 minor parties secured far fewer votes in the elections and did not field candidates for the presidential election. As with the presidential election, the outcome of the National Assembly elections further consolidated the government of national unity, so crucial for both political and economic recovery in Mozambique. In the 2004 presidential election, Armando Guebuza of FRELIMO won with 63.74 per

cent of the vote while RENAMO's Afonso Dhlakama polled 31.74 per cent. In the parliamentary election FRELIMO won by securing 62.03 per cent of the votes and 133 of the total 250 parliamentary seats, while RENAMO came second with 29.73 per cent of the votes and 117 parliamentary seats.

Both Angola and Mozambique operate a proportional representation (PR) electoral system, which is generally highly regarded as enhancing broader participation and thereby contributing to political stability; yet the political effects of the elections on violent conflict in the two countries present sharp contrasts. Generally, PR lends itself to the constructive management of conflicts, especially violent conflict, as the experience of South Africa since 1994 clearly indicates. In comparison to the 1994 and 1999 elections, Mozambique's 2004 election was marked by less political violence and a relatively high degree of political tolerance and constructive engagement among the contestants.

In between the polar opposites of Angola and Mozambique lies a mixture of experiences with regard to the degree to which elections accentuate or contain conflicts. We now examine the very different cases of South Africa, Namibia and Zimbabwe.

Quite clearly, elections have helped in the process of political settlement of the South African conflict. The South African example is instructive in relation to how to institutionalize mechanisms for the constructive management of election-related disputes in post-conflict societies. In South Africa the following instruments exist and have been helpful in managing conflict, especially around elections: (a) the Independent Electoral Commission, which manages all aspects of elections, including disputes. The IEC has powers to investigate and resolve disputes of an administrative nature or disputes which do not necessarily fall within the jurisdiction of the courts; (b) party liaison committees which bring parties together in handling election disputes; (c) conflict management panels which address conflicts at their early stages in the provinces and at the national level; (d) the electoral court, which adjudicates election disputes; and (d) a code of conduct for political parties which commits parties to agreed norms and ethical conduct during the election campaign. Partly as a result of the effectiveness of the established conflict management mechanisms/institutions and the enduring peace, political stability has been achieved in South Africa and the country's PR system allows broader inclusion of and gives voice to different key political actors in the legislature. In South Africa, therefore, elections have contributed to the wider peace and reconciliation process to bring about stability since 1994.

Namibia's political settlement of its long-drawn-out war of liberation also involved elections, which turned the South-West Africa People's Organization (SWAPO) into a ruling party. The international community, and especially the United Nations, was heavily involved in the process. In war-torn societies, international assistance is essential as there is usually a lack of institutional, financial and technical capability to hold and run elections (Kumar 1998). As in South Africa and Mozambique, elections have also helped Namibia deepen and nurture its new-found democracy since the transitional

election of 1989. Subsequent elections held in 1994, 1999 and 2004 have returned SWAPO as the ruling party, attracting large numbers of votes, and the effect, as in South Africa, is the entrenchment of the dominant party system. Of the 72 elected seats, SWAPO won 55, the Congress of Democrats (CoD) won five, the Democratic Turnhalle Alliance (DTA) four, the National Unity Democratic Organization (NUDO) and the United Democratic Front three each, and the Monitor Action Group (MAG) and Republican Party one each. Since the 1989 transition, Namibia has enjoyed relative political stability and freedom from the overt violent conflict of the apartheid era.

Zimbabwe has been experiencing a deep-seated political crisis since the late 1990s, and this crisis manifests itself in the form of political tension and conflict among key political actors, especially the ruling Zimbabwe African National Union–Patriotic Front (ZANU–PF) and the main opposition, the Movement for Democratic Change (MDC). As the political crisis in Zimbabwe deepened and the external position of the country looked more and more precarious, a civil society process towards electoral reforms was undertaken between 2003 and mid-2004. The Zimbabwe Election Support Network (ZESN) and the Electoral Institute of Southern Africa (EISA) collaborated with a variety of other stakeholders in the country in undertaking this electoral reform exercise. The exercise was meant to address election-related conflict in the country and focused mainly on three areas: the institutional framework for elections (especially election management); the legal and regulatory framework for elections; and the electoral system.

On the basis of research and stakeholder consultations, appropriate recommendations were made regarding possible ways of levelling the political playing field in advance of the country's 2005 general election with a view specifically to addressing political tension and managing conflicts constructively. These recommendations included the following: the establishment of an independent electoral commission; reform of the legal arrangements for elections, including the establishment of the Electoral Tribunal; and reform of the First Past The Post (FPTP) electoral model and the adoption of the Mixed Member Proportional (MMP) system.

The ruling ZANU-PF announced during the last week of June 2004 that it would introduce electoral reforms. The government argued that its electoral reform process would be in conformity with the SADC Principles and Guidelines Governing Democratic Elections, due to be adopted at the annual summit of the heads of state and government scheduled for August. The proposed reforms included the following:

- the establishment of a five-person Zimbabwe Electoral Commission (ZEC);
- the establishment of an ad hoc Electoral Court/tribunal within six months of elections;
- a reduction of polling days from two days to one day;
- an increase in the number of polling stations as well as doing away with mobile polling stations;

- the use of visible indelible ink; and
- the replacement of wooden ballot boxes with translucent boxes.

It was against this backdrop that the 2005 parliamentary election was held. While less violent than the 2000 and 2002 general elections, it was still marked by political tension, due in part to the deep-seated polarization combined with an embedded culture of political intolerance. Of the total 120 parliamentary seats, the ruling ZANU-PF won 78, while the opposition MDC won 41 and another seat was won by an independent candidate.

Another interesting case of elections being dogged by violence over the years is the small mountain kingdom of Lesotho. Although the 1965 pre-independence election did not really trigger a violent conflict as such, the 1970 election nearly plunged the landlocked nation into civil war. This was followed by a military coup in 1986, which dislodged authoritarianism of a civilian type and replaced it with one of a military variety. Following some eight years of military rule, in 1993 Lesotho adopted a multiparty political system on the liberal democratic model, again through a general election that was resoundingly won—by the Basutoland Congress Party (BCP), which had been denied its legitimate victory by the then ruling Basotho National Party (BNP) in the aborted 1970 election. Various types of violent and non-violent conflicts marked Lesotho's young democracy between 1993 and the general election of 1998, which was immediately followed by a much more profound violent conflict in which the ruling Lesotho Congress for Democracy (LCD) locked horns in a fierce and bitter war with elements of opposition parties. These not only caused enormous damage to the economy of the country, but also witnessed military intervention by South Africa and Botswana. Following the 1998 election, a consensus emerged that much of Lesotho's problems stemmed from the nature of the electoral model, and the country took a deliberate decision to reform its electoral system away from a pure FPTP system towards the MMP system, which combines elements of both FPTP and PR. This system was first put into effect during the May 2002 election, and the outcome has been quite impressive, as for the first time Lesotho boasts a highly inclusive multiparty Parliament conducive to the general political stability that is so desirable for economic progress. The case of Lesotho is also discussed in another study in this volume.

Healing or Opening Old Wounds?

As has been observed above, elections serve an important function in the process of democratization and conflict management—the more so in a country that has just emerged from armed conflict.

Unlike other situations, elections after armed conflict serve particular objectives. First, they compel the belligerent parties to bury their hatchets and seek a political settlement of their ideological differences. They remind the warring parties that ballots rather than bullets are the preferred method of contestation for and the efficient transfer of state power. Second, they aim to bestow legitimacy and credibility on new democratic

governance after a protracted conflict. The worst-case scenario is when one party wins outright, thereby marginalizing the others (as happened in Lesotho in 1993 and 1998). The best-case scenario is one whereby the election outcome leads to broadly-based representation in the legislature, as in South Africa after the 1994 elections. This then compels all parties to commit themselves to building a democracy by transforming the culture of a politics of coercion and embracing a politics of consensus (Jackson and Jackson 1997). Virulent opposition in parliament is far better than violent opposition in the streets. Third, they serve to give practical meaning and essence to the peace accords and reconciliation programme, as was the case in Mozambique (1992), Namibia (1994) and South Africa (1994).

The Angolan elections of 1992 failed to deliver stability precisely because the belligerent parties, particularly the opposition, did not abide by the Bicesse Accord and various other peace agreements made since the 1985 Lusaka Accord. Even the 1994 Lusaka Protocol failed to deliver peace and stability to Angola until the death of Jonas Savimbi in 2002. Although the elections are generally regarded as having been a technical success in the prevailing climate, they are considered to have been an utter political fiasco, as the losing party did not accept the outcome, but rather resorted to the bullet to resolve political differences and settle scores in the contest for state power (Turner, Nelson and Mahling-Clark 1998).

Fire-Fighting in the Neighbourhood: The SADC Principles and Guidelines Governing Democratic Elections

Various continental and regional interstate and supranational institutions have endeavoured to arrive at some common principles and ways of measuring performance by their members in regard to democracy and, in particular, elections. The Democracy and Governance declaration of the New Partnership for Africa's Development (NEPAD) and its twin initiative, the African Peer Review Mechanism (APRM), are vivid examples of such endeavours. The idea behind these initiatives is to strive towards the nurturing and consolidation of the continent's nascent democratic governance and towards political stability. It was precisely in pursuit of democratic consolidation and political stability that, during its 38th Ordinary Session of the Assembly of Heads of State and Government, held in Durban, South Africa, in July 2002, the Organization of African Unity (OAU)/African Union (AU) adopted the Declaration on the Principles Governing Democratic Elections in Africa. This initiative clearly set the stage for continent-wide and regional efforts towards acceptable, credible and legitimate elections conducted on the basis of a level playing field and with minimum incidence of (especially violent) conflict.

Besides setting out best election practices, the AU declaration provides guidelines on (a) the responsibilities of the member states; (b) elections: rights and obligations; (c) election observation and monitoring by the OAU/AU; and (d) the role and mandate of the AU General Secretariat. With specific reference to the AU's involvement in elections, a different set of guidelines for AU election observation and monitoring has

been developed and was also adopted during the Durban Summit of 2002 (OAU/AU 2002). The AU embraces the idea that at all times elections have to add enormous value to a vibrant democracy. This idea then challenges our countries to constantly review their electoral processes with a view to ensuring that elections do exactly that—building firm foundations for a working democracy that is free of violent conflict.

It is within this broader global and continental context that we can trace the origins of the 2004 SADC Principles and Guidelines Governing Democratic Elections. With hindsight, we can assume that the SADC principles are indirectly linked to the UN Human Rights and Elections Guidelines, while they are also a deliberate attempt by the regional states to translate the AU commitments into regional initiatives. However, there is yet another possible explanation of the rationale behind the development and adoption of the SADC principles: as much as it was a proactive response to the UN and AU commitments, it can also be seen as a reactive response to other, similar initiatives which are not even acknowledged in the SADC document. These are the SADC Parliamentary Forum Norms and Standards (2001), an initiative of parliamentarians, and the EISA/Electoral Commissions' Forum (ECF) Principles (2003), an initiative of civil society organizations and electoral management bodies (EMBs).

The SADC election guidelines commit member states to the following principles:

- full participation of citizens in the political process;
- freedom of association;
- political tolerance;
- regular intervals for elections as provided for by the respective national constitutions;
- equal access for all political parties to the state media;
- equal opportunity to exercise the right to vote and stand for election;
- the independence of the judiciary and impartiality of the electoral institutions;
- voter education;
- acceptance and respect of the election results by political parties where the competent national authorities proclaim elections to have been free and fair in accordance with the law of the individual country; and
- mechanisms for challenge to election results as provided for in the law of the individual country (Southern African Development Community 2004).

The guidelines also define the responsibilities of SADC member states holding elections, as follows:

- taking measures to ensure the scrupulous implementation of the Principles and Guidelines;

- establishing impartial, all-inclusive, competent and accountable national EMBs staffed by qualified personnel;
- safeguarding the human rights and civil liberties of all citizens, including the freedoms of movement, assembly, association and expression, and the right of all stakeholders to campaign and have access to the media during electoral processes;
- providing adequate logistics and resources for democratic elections;
- ensuring that adequate security is provided to all parties participating in the election;
- encouraging the participation of women, the disabled and youth in all aspects of the electoral process; and
- ensuring the transparency and integrity of the entire electoral process by facilitating the deployment of representatives of political parties and individual candidates at polling and counting stations and by accrediting national and other observers/monitors (Southern African Development Community 2004).

The point that should not be lost sight of is that, for the first time, the regional states have made a public declaration that they will adhere to certain best practices. This said, however, let us hasten to add that the SADC has proved itself over the years to be extremely good at progressive declarations, but these declarations are hardly ever turned into the political commitment that is necessary to translate them ultimately into implementable policies and political reforms. Thus, the challenge that faces the SADC today is the extent to which the supranational regional body will set out to implement the declaration adopted in August 2004 and adhere to its letter and spirit assessing whether or not a country holding an election has complied with the Principles and Guidelines. This became clear as the principles begun to be put into effect during the three elections in Botswana, Namibia and Mozambique during the latter part of 2004 and in Zimbabwe during the first half of 2005. The SADC election principles were also to be used in the general elections scheduled to take place in the second half of 2005 in Mauritius (July), Tanzania (October) and the DRC in 2006.

Prognosis and Healing: Pathways to Post-conflict Stability, Peace and Security

There are numerous different preconditions if elections are to anchor and sustain democracy and peace after armed conflict. We can draw out ten.

1. First and foremost, all belligerent parties must commit themselves to peace, harmony and reconciliation. To this end a peace accord and a clearly defined reconciliation and political healing programme is required, as both the Mozambican and the South African situations vividly illustrate. The 1992 General Peace Agreement has sustained peace and reconciliation in Mozambique to date. The negotiated settlement in South Africa has healed old wounds, and reconciliation and harmony have been further consolidated through the Truth and Reconciliation Commission (TRC) which was instituted under

the stewardship of Rev. Desmond Tutu. What, then, will be the likely repercussions of the 2006 general elections in Angola and the DRC given that both countries have peace agreements but have not made deliberate efforts towards a political healing political programme?

2. Post-conflict elections must be held only if the parties have signed a peace agreement and have devised an achievable peace, harmony and reconciliation programme. This peace and reconciliation programme must also be accompanied by the signing of a justiciable code of conduct for all the key actors, especially the political parties. It is a gamble to hold elections under conditions of violent conflict when the parties have not agreed to the peaceful conduct of politics and a process of reconciliation, and have not signed some form of a code of conduct (Matlosa 2001), as the Angolan situation so amply demonstrates. It is also very important to provide adequate time for preparations for elections after armed conflict. In fact, all elections require a long time for preparation, but this is even more so for elections after violent conflict. Various important tasks for such elections require a great deal of time, such as the signing of peace accords, the demobilization and reintegration of troops, the settlement of returning refugees and displaced persons, agreement on the electoral model, voter education, voter registration, consultation of all stakeholders about the establishment of an independent electoral commission, and so on.

The issue of the appropriate timing of elections in countries emerging from violent conflict is not yet settled in policy and academic circles. In separate articles, Larry Diamond and Andrew Reynolds have dealt with this problematic aspect of post-conflict democracy building. Diamond opines that:

No issue is tougher than the timing of elections. Ill-timed and ill-prepared elections do not produce democracy, or even political stability, after conflict. Instead, they may only enhance the power of actors who mobilize coercion, fear, and prejudice, thereby reviving autocracy and even precipitating large-scale violent strife. . . . There are compelling reasons, based on logic and recent historical experience, for deferring national elections until militias have demobilized, new moderate parties trained and assisted, electoral infrastructure created, and democratic media and ideas generated. If one takes these cautions too literally and inflexibly, however, it can mean deferring national elections for a decade or more, and the dilemma then becomes how to constitute authority that will have any degree of legitimacy in the interim (Diamond 2005: 19).

Reynolds corroborates Diamond, as follows:

Another timing mistake can take the shape of a rush to 'surgery' (that is, elections) before the patient has been adequately stabilized. Without infrastructure and security, elections can be traumatic experiences that harm peace-building processes. Nevertheless, donor countries often feel that they must press for speedy national elections regardless. The Bosnia elections that went forward on schedule exactly nine

months after the Dayton Accords, were not a sifting of policy choices, but only an ethnic head count. The rush to elections amid fragile conditions often compels observers to fudge on the 'freedom and fairness' standards and make inconsistent pronouncements on legitimacy from case to case (Reynolds 2005: 63)

Surely an election can only be held once peace has taken root and reconciliation has become part of the new political culture. Some commentators have even proposed that it may be prudent to begin with local government elections before organizing general elections (see Diamond 2005: 20).

3. As Kumar and Ottaway (1998) point out, there must exist a capable and functional state system before elections are conducted under conditions of armed conflict. As these authors rightly observe, if the very existence of the state is in doubt, as is the case with many failed states such as Somalia, international assistance probably cannot fill the gap, and elections cannot bring political stability or resolve conflicts. In a recent article appropriately subtitled 'stateness first', Francis Fukuyama argues that 'a new problem has emerged in the form of failed or weak states—from Somalia and Haiti to Afghanistan and Iraq—that have become sources of poverty, human rights abuses, refugees and terrorism. . . . Before you can have democracy or economic development, you have to have a state' (Fukuyama 2005: 84).

Given the problem of either failed or failing states, some scholars have called for the international community to promote democracy—even for so-called liberal empire in which the USA as the world's sole superpower would use its power to impose democratic institutions, norms and procedures upon these states, 'even if in some cases this requires direct and extended colonial administration' (Niall Ferguson, cited in Diamond 2005: 16). Others have been a little more modest and nuanced in calling for international interventionism in the name of democracy promotion in failed or failing post-conflict states, and suggested that perhaps there is a strong case for a shared sovereignty which essentially denotes co-management of a country's national affairs with interested powerful external actors (e.g. the UN, the USA etc.).

Neither the so-called liberal empire proposition nor the shared sovereignty idea is likely to be applicable in the Southern African region simply because they are most likely to lack internal legitimacy and credibility among the peoples of the countries concerned: moreover, irrespective of their structural and political weaknesses, the countries in the region still cling tenaciously to their sovereignty, whether it is real or imagined. Thus, we must heed Fukuyama's apt warning that: 'Outsiders are driven to supply sovereign-state functions because of the internal weaknesses of the countries in question. But stateness that is provided by outsiders often undermines the ability of domestic actors to create their own robust institutions. Too much state-building on the part of outsiders builds long-term dependence, and may ultimately come to seem illegitimate to the locals' (Fukuyama 2005: 85).

4. On the other hand, international assistance and external democracy promotion are very valuable in post-conflict elections following armed warfare. War-torn countries such as Angola and the DRC have severely ravaged economies and a constrained resource and production base from which to finance electoral processes. The involvement of international observers contributes immensely to the credibility of the elections and the acceptance of their outcomes by the political parties concerned and the electorate at large. Moreover, it reduces the probability of large-scale fraud and cheating. Kumar and Ottaway (1998) identify three critical forms of international assistance to war-torn countries holding elections:

- financial assistance for the planning and holding of elections;
- technical assistance and expertise in election administration, rules and procedures; and
- political assistance in the form of support to political parties, civil organizations, voter education, monitoring and observation.

5. Demobilization of troops or warring factions and the integration of militias into a national army and/or police force, as well as peacekeeping operations, are vital before elections can be held. This process of demilitarization of politics is crucial in transforming the culture of a politics of violence and coercion and embracing the politics of dialogue and consensus. Although the demilitarization and reintegration of armed formations has been relatively successful in Namibia, South Africa, Zimbabwe and Mozambique, it has not been successful in Angola and the DRC. This in part explains why elections have not really deepened and consolidated political stability and democratic governance in Angola, and this pattern is likely to be repeated in the DRC after its election of 2006.

6. Prior to elections which follow violent conflict, returning refugees and displaced persons must be settled and allowed sufficient time to register as voters. Refugees and displaced persons are 'often the worst victims of civil wars, and therefore their active participation in elections tends to strengthen the peace process' (Kumar and Ottaway 1998: 230). This could prove a very difficult and costly task, but it is crucial for democracy emerging from a protracted war (Matlosa 2001).

7. The clearing of landmines and the banning of military supplies from external sources are also important preconditions for elections after armed conflict. This was very important in the cases of Angola and Mozambique, two countries whose belligerent factions have received massive amounts of external military supplies, and which are also heavily mined. It is easier to ban the external supply of weapons under conditions of peace than it is to clear landmines, which is difficult and costly to clear landmines. Such mines continue to harm innocent civilian populations years after hostilities have ceased and make life miserable for ordinary people in the villages. The intense fear of landmines among rural people triggers migration to the urban areas, with its

well-known social ills. The population pressures in Luanda in Angola and Maputo in Mozambique have been caused more by war than by the normal rural–urban migration that has marked urbanization in Lesotho and Botswana, for instance.

8. Elections after violent conflicts must be run and administered by credible, autonomous and competent institutions that are not in any way linked to any of the belligerent parties in a partisan fashion. To this end, the establishment of independent electoral commissions is essential. These institutions require sufficient financial, technical and political support, not only from the international donor agencies but also from such institutions as the Electoral Commissions Forum of the SADC countries. It is also crucial that the rules of state administration and electoral administration are agreed upon as a basis for all parties to accept the outcome of the elections. In this manner, the view of politics as a zero-sum game is likely to be replaced by one that conceives of it as a positive-sum process. This is important for the toleration of opposing and divergent views in multi-ethnic and multiracial societies. Tekle reminds us that ‘mutual appreciation of opposition views must be accepted and the conviction that losers lose everything while winners take it all can no longer be the norm. It must be recognised that in a democracy winners and losers are partners and not enemies who must destroy each other’ (Tekle 1998: 175).

9. The institutionalization of intra-party democracy is also crucial, so that democratic practices and cultures within parties will help them to see the value of dialogue and politics of consensus when dealing with their adversaries. It has been found that in the majority of African states the political parties lack internal democracy, and this in part accounts for the current disintegration and fragmentation of opposition parties. Although the incumbent rulers work hard to undermine and weaken the opposition and the electoral system, weak opposition parties are also hindered by the FPTP system and by internal leadership squabbles that are not necessarily based on ideological or policy differences. All these factors have wreaked havoc upon the opposition parties in Southern Africa.

10. There is a need for constitutional reform in countries that have experienced a violent conflict before elections are held so that belligerent parties engage in dialogue and negotiation around a new social contract regarding the form of state, the form of political system and the form of electoral model they would prefer. This is important for building a minimum programme that binds the belligerent parties together and is different from a peace agreement. Negotiations by CODESA (the Convention for a Democratic South Africa) achieved this objective for South Africa. Zimbabwe attempted this strategy with its 2000 constitutional review, which culminated in a referendum which, to the chagrin of the ruling party, received a ‘No’ vote (Sachikonye 2003). Currently, the DRC and Angola are undergoing constitutional review processes. Whether these constitutional reform measures will indeed facilitate a smooth transition from war to peace and from authoritarianism to democracy is still a moot point at this stage.

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Democratization of the Peace Process: Sri Lanka

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This study will look at the question of public participation in the peace process in Sri Lanka. It will make the assumption that the legitimacy and support required for a durable and successful process and outcome are crucially contingent upon the degree of public participation. Underlying this perspective is the belief that ‘democratization’ of the peace process is desirable and necessary, and that the political system and context in which a successful process and outcome can be achieved are democratic ones. A further element of this is the notion that peace settlements are for the peoples and communities hitherto in conflict, and therefore their ownership/stakeholdership in a process and outcome is vital for success.

A further clarification is also in order. The nature of internal conflict in particular is such that a distinction has to be made between peace ‘negotiations’ and a peace ‘process’. The latter incorporates the former as the overarching context and enabling environment that makes the negotiations possible and initiates and sustains the prospects for their success. The latter, therefore, is very much a public exercise, generating trust and confidence in the prospects for a peace settlement through laying foundations for it, via community-to-community confidence-building exercises and public initiatives for reconciliation. In the sustenance of a peace process, civil society has a major responsibility in making the case for peace, assuaging fears and removing doubts as to what it will entail and what its consequences will be.

In contrast to the public nature of the process, confidentiality is intrinsic to negotiations; publicity is at times potentially fatal. Consequently, negotiations are an elite activity, in contrast to the public activities that make up the peace process. Strategies and tactics that are employed in peace talks will invariably involve positions from which the parties fully intend to negotiate ‘up’ or ‘down’. Compromise is therefore integral to the process of negotiations. Accordingly, the sensitive nature of negotiations militates against full transparency, and by the same token requires trust in negotiators not deviating from

a framework and principles for negotiations that they have been mandated to carry through. The identification of the latter is essentially a political and public exercise which is crucially dependent upon stakeholder ‘buy-in’ and consent.

The history of the ethnic conflict in Sri Lanka and the efforts to transform it through political agreement have not been successful. In all cases, agreements have been made between political leaders in confidence or—as in the case of the Indo-Sri Lanka Accord of 1987—between states. The Cease Fire Agreement (CFA) of 2002 was made between the government of Sri Lanka and the Liberation Tigers of Tamil Eelam (LTTE), a non-state actor. There was no public involvement in the design and negotiation of the agreements. Accordingly, agreements have had to be jettisoned once they were publicly announced, and those that were implemented have been criticized and even provoked violent demonstrations. Consequently, although the agreements were implemented, public support and legitimacy have been contested.

Public Participation and the Fates of Agreements Signed

The 1950s and 1960s. The fates of the Bandaranaike–Chelvanayagam Pact of 1957 and the Dudley–Chelvanayagam Pact of 1966 fall into the category of agreements between political leaders. These were early attempts to meet the grievances of the Tamil polity as represented by the Federal Party and its leader, S. J. V. Chelvanayagam. They focused on Tamil apprehensions and concerns arising out of the official language legislation of 1956, which made Sinhala, the language of the majority community, the official language of the country. Both pacts were signed by Chelvanayagam with the prime minister of the day—S. W. R. D. Bandaranaike in 1957 and Dudley Senanayake in 1966. Both had to be abandoned in the face of opposition once they were made public. The 1957 agreement was reached against the backdrop of official-language legislation and communal riots and was rendered inoperable by a combination of forces from the Buddhist clergy and Sinhala nationalist elements in the two main political parties—the governing Sri Lanka Freedom Party (SLFP) and the opposition United National Party (UNP). The BC Pact, as it is popularly known, is seen in hindsight as a key lost opportunity to resolve ethnic conflict through political settlement. It foreshadowed a number of the issues that have continued to be the subject of contention right through the period of armed conflict (1983–2002) and into the post-ceasefire peace process (since 2002).

The Indo-Sri Lanka Accord (1987) was signed against the backdrop of a flourishing insurgency in the south led by the Janatha Vimukthi Peramuna (JVP). The JVP charged that the government was undemocratic and authoritarian, having postponed elections through a referendum and thereby frozen a five-sixths majority in the legislature won at an election held a decade before. The signing of the accord exacerbated existing tensions and the crisis of the state. Once an Indian peacekeeping force was dispatched to the north-east of the island following the signing of the accord, the JVP were able to champion the nationalist cause of the majority community there (i.e. the Tamils). The main opposition party, the SLFP, supported them in opposing the accord and the constitutional change it facilitated.

The accord paved the way for a system of limited devolution through provincial councils, introduced by the 13th amendment to the constitution. Despite the government of the day enjoying a five-sixths majority in the legislature, the necessary legislation had to be passed with legislators and Parliament under armed guard and demonstrations in the streets. These circumstances under which devolution was ushered in in Sri Lanka as a mechanism for resolving conflict highlight the challenges that beset any attempt to resolve conflict through a settlement imposed from above and without the preparation and participation of the public in its support. This is particularly the case when the change entailed in the settlement is, or is perceived to be, of a fundamental nature, as is inevitably required in the case of internal conflict. It is also pertinent that the Indian Government took it upon itself to negotiate the accord on behalf of the Tamil community and as a custodian of its interests. The LTTE—the principal armed protagonists working on behalf of the Tamil community—were not signatories to the agreement and in the space of three months had reverted to hostilities against the Indian forces.

The Cease Fire Agreement of 2002 and the Post Tsunami Operational Management Structure (PTOMS) (2005). A decade and a half later, in 2002, the government of Sri Lanka and the LTTE signed a ceasefire agreement which lasts to this day—the only agreement to do so in the context of the Sri Lankan peace process. There were special features of the political context in which the ceasefire was signed which are important in a discussion of participation and peace processes.

The current Sri Lankan constitution enshrines the office of the executive president as the highest in the land with a vast array of powers. The December 2001 parliamentary election resulted in the defeat of the president's party, the People's Alliance (PA), and ushered in a period of cohabitation between a president, Chandrika Kumaratunga, and a prime minister, Ranil Wickremesinghe, from two different parties. Although the president is the commander-in-chief of the armed forces and chief executive, the CFA was signed by the prime minister and the LTTE leader, Vellupillai Prabhakaran, without her explicit approval. Nor was she privy to the negotiations that led up to it. The explanation given by the prime minister and his party, the UNP, was that they had received the mandate of the people to make peace and that, since their mandate was the more recent, it superseded that of the president. They also argued that the verdict of the electorate was a repudiation of her policies and that making her privy to the negotiations would have been a certain recipe for paralysis and failure.

While she was extremely critical of the CFA, and questioned its legality, the president did not turn her back on it. On a number of subsequent occasions, and after her party captured power in Parliament in April 2004, she pledged to uphold it and has hailed it as a significant achievement. She did, however, take over three key ministries—Defence, Media and Internal Security—in November 2003, citing the threat to national security as grounds as well as charging that the prime minister was capitulating to LTTE demands. This coincided with the LTTE's publication of its Internal Self Governing Authority proposals. The takeover of the ministries was a prelude to the president's

dissolution of Parliament and the subsequent victory of her party, in coalition with the vociferously anti-LTTE JVP, in April 2004.

The persistence of a zero-sum culture of political competition should also be noted here. Given the differences between the president and the JVP on the peace process, the coalition with the JVP was forged on the basis not of a policy consensus but rather of a shared desire to defeat the UNP. The desire for a parliamentary majority and the electoral arithmetic needed to achieve this determined the alliance; it collapsed when the president went ahead and signed an agreement with the LTTE over tsunami relief, the Post Tsunami Operational Management Structure (PTOMS) Agreement, in 2005.

The foregoing raises the question of the inclusion of stakeholders at the 'track one' level and the danger of 'spoilers'. In a democratic context, the impact of spoilers extends beyond the political office they may hold to their whole political constituency. The exclusion of a key political actor is also the exclusion of that actor's constituency, and in a context of political competition this exclusion robs the process of the widespread acceptance and legitimacy it requires for momentum and progress to a final settlement.

The question of inclusiveness in the CFA and the process thereafter has also been a concern for the Muslim community, whose agreement is crucial for a durable settlement. The role of the Muslim community is underscored by the demographic composition of the Eastern Province of Sri Lanka, which is ethnically mixed, being made up of Tamils, Muslims and Sinhalese. Tamil political representation claims the Eastern Province together with the Northern Province as the traditional homeland of the Tamils of Sri Lanka. However, excesses of Tamil militancy and nationalism have forged separate Muslim political representation and aroused fears that the concerns of the community will be sacrificed in a peace agreement between a predominantly Sinhalese state and the LTTE. Muslim political representation has therefore insisted on being a party to peace negotiations and on separate arrangements to deal with their concerns in a peace settlement. In the face of LTTE opposition, in particular its opposition to a redefinition of the negotiations as tripartite in composition, this issue remains unresolved.

More recently, in July 2005, following the signing of the PTOMS Agreement, the Muslim political representation vowed to boycott the operationalization of the agreement on the grounds that, although it was the ethnic community most affected, it had not been involved in the negotiation of the agreement and found clauses within it to be discriminatory towards Muslims. The support of the Muslim community is a *sine qua non* for any settlement. Failure to obtain it runs the risk of greater militancy within the community and the likelihood of it following the same trajectory of political evolution as the Tamil community did in the late 1970s and 1980s.

Another dimension to the question of public support for and the legitimacy of peace agreements in a democracy is the treatment of human rights both in the process and in negotiations. The CFA has been marred by continued violations, predominantly by the LTTE, including child conscription, abductions, intimidation, extortion and

political killings. This in turn has been compounded by the internecine low-intensity conflict with the LTTE's erstwhile eastern wing under Colonel Karuna following the latter's split with the LTTE in March 2004. Continued human rights violations have an adverse impact on the credibility of the CFA and in political terms provide space for spoilers to denigrate the process on legitimate grounds. Accordingly, the full support that would be required to advance the peace process is inhibited.

In a democratic context in which, at least officially and ostensibly, a country subscribes to fundamental rights, violations are a serious impediment to proactive public support and legitimacy in maintaining momentum towards a final settlement. Deliberate neglect of human rights, or inadequate attention to them for strategic or tactical reasons related to keeping the talks going, has been a flaw in the design of Sri Lankan peace building. Two main reasons for this can be identified. The first is the inability of the two sides in the negotiating process, despite the identification of a human rights adviser, to agree upon a holistic notion of rights encompassing civil, political, economic and social rights. The second is the over-solicitousness of the government of Sri Lanka and the international community to LTTE sensitivities in this respect, arising from the view that the LTTE would abandon the peace process if human rights were accorded priority within it.

The Challenge of Public Participation and Democratization of the Peace Process

Government and Civil Society Efforts

It is clear from the above that the historical record of attempts to resolve the ethnic conflict have been hampered by the dynamics of zero-sum party political competition which continues to this day. More recently, even though there has been a growing convergence of opinion between the two main parties as to their respective approaches to a resolution of the conflict, the full benefit from this for peacemaking has not been realized. Narrow partisan interests, especially the logic of electoral arithmetic, have intervened to prevent this. This places a considerable responsibility on civil society organizations (CSOs) devoted to peace building to raise public awareness and support for peace that transcends political party affiliation and can be developed into a critical support base underpinning peacemaking efforts. While there are CSOs engaged in this in Sri Lanka, they have had varying degrees of success.

Key factors which militate against their succeeding are (a) the public perception of partisan political bias on the part of civil society organizations and (b) the tradition of political parties as the effective agents of political mobilization for societal change. In a society in which partisan politicization of institutions has permeated CSOs as well as politics, issue-based civil society advocacy is invariably tarnished by allegations of partisan bias. Moreover, a number of the peace-building CSOs fall short in terms of reaching out to community-based organizations and to the grass roots, thereby inadvertently perpetuating a perception of peacemaking as an elite activity. This in turn feeds doubts and fears relating to the consequences of a peace settlement, providing ample space for 'spoiler' conspiracy theories.

Efforts to democratize the process, raise public awareness of the change entailed and broaden public participation in peacemaking were at their height in the period of the first People's Alliance government of President Kumaratunga in the mid-1990s and following the ceasefire signed by UNP Prime Minister Wickremesinghe in 2002. The difference between these attempts is that in the former efforts were primarily undertaken by the government and the ruling coalition with the support and participation of CSOs engaged in peace-building work, while in the latter the responsibility lay almost exclusively with civil society, with the government of the day effectively abdicating its responsibility for the communication and advocacy of its policy on a resolution of the conflict. Its decision to do this may well have been partly based on the perception of the previous government's attempts. However, this effective abdication contributed to the UNP's defeat in the April 2004 election.

The flagship attempt of the People's Alliance government of the 1990s was the Sudu Nelum or White Lotus Movement. The PA government elected into office under Kumaratunga ended 17 years of UNP rule and was ushered into power with tremendous goodwill and active support from peace, democracy and human rights CSOs. The government pledged itself to a negotiated settlement of the ethnic conflict, for the first time recognizing the conflict as such and acknowledging the need for a political settlement of it which would take the devolutionary and federal route. Negotiations with the LTTE foundered in 1995, resulting in the LTTE's resorting to hostilities in April of that year. Following this, the government embarked on what it called a War For Peace in which it identified the LTTE as the principal obstacle to a settlement, coupled with efforts to draft a constitution which sought to address the grievances of the Tamil community. The latter was presented to Parliament in 2000 but was aborted in the face of opposition led by the UNP.

The Sudu Nelum Movement was launched in July 1995 against this backdrop of political developments and renewed hostilities. Its main objective was the promotion of peace through raising public awareness of, and galvanizing popular support for, the government's proposals to resolve the conflict. The activities undertaken were:

- a series of district- and rural-level discussions on the nature of the conflict in Sri Lanka and on the possibility and necessity of political measures to ensure the rights of all communities in the country, by way of seminars, workshops and youth camps;
- a 'Devolution Week' held in each district to enlighten the masses about the benefits of devolving power to the regions;
- the rebuilding of the Jaffna Public Library. The 'A Brick and a Book' campaign was launched in April 1997 order to give citizens from all strata of society, including schoolchildren, the opportunity of becoming partners in this task;
- in August 1997, the launch of an island-wide publicity campaign named the Sama Thawalama (or Peace Caravan) as part of the programme to raise awareness among

all communities about the government's peace proposals and the constitutional reform proposals. This campaign used street drama, songs, poems, posters, photographic and book exhibitions, and video and film shows on the theme One Country—One People to drive its message home;

- ceremonies of congratulation for parents of 'war heroes'; and
- extending support to numerous other institutions active in and committed to promoting national unity in Sri Lanka.

An editorial in the local *Daily Mirror* of 15 October 2002 is worth quoting at some length. It captures both the strengths and the weaknesses of the Sudu Nelum Movement as it laments the failure of the then UNP government with regard to civil society involvement in the peace process.

The failure on the part of the authorities to get the civil society involved in the peace process seems to be one of the palpable weaknesses in the present effort. The PA government in its attempt to promote peace did much to make the people aware of the need for finding a negotiated settlement of the ethnic question and ending the war. 'Sudu Nelum' and 'Thawalama' programmes launched by the PA government, of course, came in for much ridicule and condemnation mainly because of its partisan overtones. These programmes, nevertheless, served to increase the awareness of people about the futility of pursuing a policy of armed confrontation, at least to some extent.

Apart from these programmes aimed at activating the grass-roots level of society for peace, the PA government also enlisted the support and cooperation of the university community and other intellectual groups in the country. Although these groups were dominated by those associated with PA parties, the contribution they made to raise the thinking of people in relation to the ethnic question was immense. In fact it is this background, prepared under the previous regime, that has to some extent facilitated the forward movement of the present peace effort.

The PA government also set up the National Integration Policy Unit within the National Integration Division of the Ministry of Justice and Constitutional Affairs with a complementary mandate.

Among the civil society institutions and networks that engaged in galvanizing the political support of the public for the peace process, and accordingly public participation in it in the period after the 2002 ceasefire, are the National Peace Council (in existence since the early 1990s), the Movement for the Defence of Democratic Rights, the Centre for Policy Alternatives, the People's Peace Front and the National Anti-War Front. The work of these organizations focuses primarily on awareness raising through seminars and workshops, public-interest media campaigns and public meetings, as well as the dissemination of material on peace building and federalism. Their work involves linking up with community-based organizations, many of whom, especially women's groups,

have availed themselves of access to the north and east of the country and engaged in reciprocal people-to-people contacts and programmes with communities there. A focus of the latter is reconciliation—an issue that has yet to enter the track one agenda of peace building.

The efforts of these organizations notwithstanding, there are shortcomings, as noted above. A 2003 National Peace Audit Sectoral Report on NGOs by the Consortium of Humanitarian Agencies noted these weaknesses, in addition to patriarchal attitudes to the work of women's organizations; challenges in respect of capacity and resources; donor dependency; and hierarchical attitudes towards regional and provincial-based organizations. The audit noted that these were issues associated with peace building in general and that working towards a set of guiding principles and greater coordination could augment the efforts of CSOs.

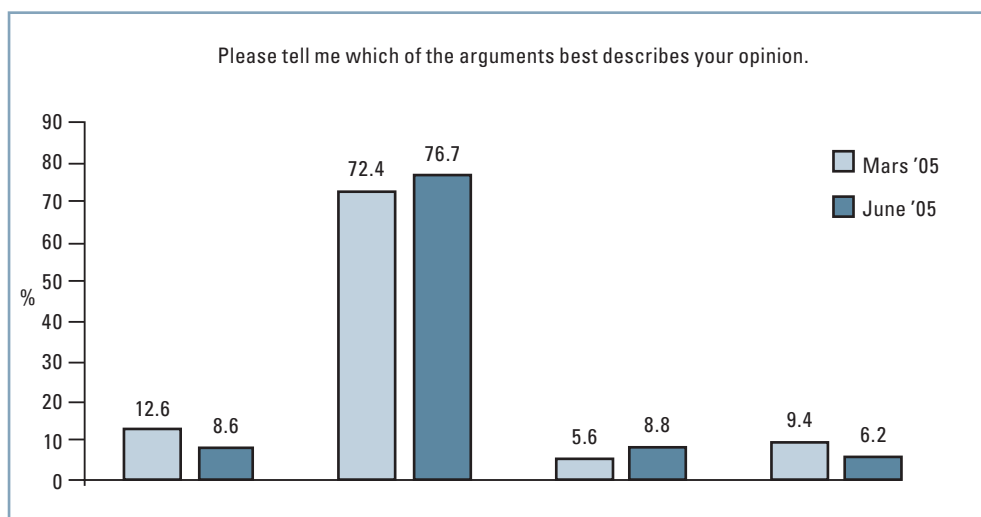
In retrospect, what is clear is that, given the tradition of political mobilization by political parties, a civil society effort alone is insufficient. At the same time, while a partnership between the two would be best, it is important to ensure that the credibility and integrity of the exercise are not obscured or vitiated by perceptions of partisanship.

The challenge in the Sri Lankan context remains that of harnessing the 'peace potential' of the public into a critical mass that underpins and provides both momentum and legitimacy for the process and eventual agreement. This potential is quite considerable, as figures 1 and 2 show.

The figures are taken from two public opinion surveys conducted by Social Indicator, the social and political opinion polling unit of the Centre for Policy Alternatives. The first survey, the Peace Confidence Index (PCI), from which figures 1 and 2 are taken, has been conducted every other month for the last four years and monitors public perceptions of peace and war, the likelihood of an agreement being reached, the commitment of the government and the LTTE to peace, and the impact of unfolding political developments on public attitudes towards peace and war. The second, the Knowledge, Attitude and Practices Survey (KAPS), is an annual survey which provides a deeper insight into public attitudes including the extent to which people can be characterized as supporters or opponents of a peace agreement and the extent to which they are willing to compromise on long-held positions on the ethnic conflict in order to achieve one.

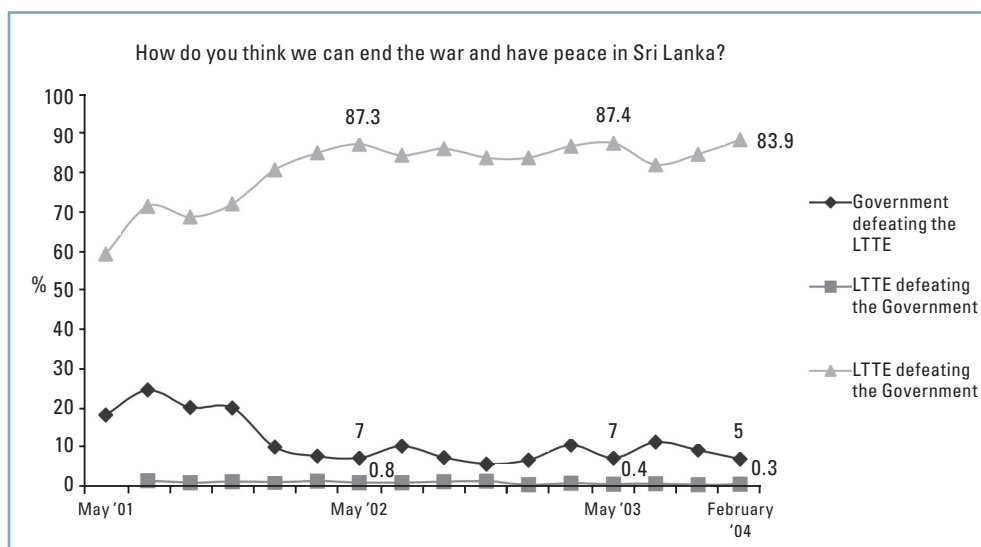
Figures 1 and 2 demonstrate the widespread belief in and support for a resolution of the ethnic conflict through negotiations. Figure 1, the most recent, clearly shows that, despite the hiatus over the PTOMS agreement and the JVP's threats to leave the ruling coalition, as well as the backdrop of continued political killings and violations of the ceasefire, public opinion in 2005 remained strongly in favour of a negotiated settlement. Figure 3 shows the distribution of Sri Lankan public opinion in terms of active and passive support for or opposition to a peace settlement, and this is further correlated with ethnicity in figure 4.

Figure 1: Sri Lankan Public Opinion on How to End the Conflict in Sri Lanka, 2005



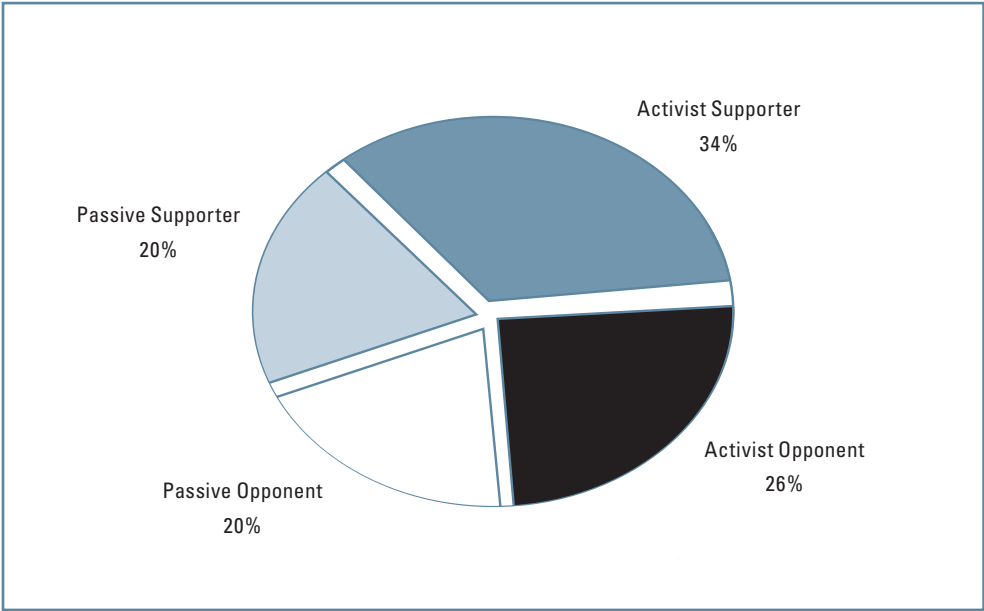
Source: Centre for Policy Alternatives, Social Indicator, 'Peace Confidence Index', June 2005, p. 13, <<http://www.cpalanka.org/polling.html>> (Wave 19 Top-Line Result).

Figure 2: Sri Lankan Public Opinion on How to End the Conflict in Sri Lanka, 2003



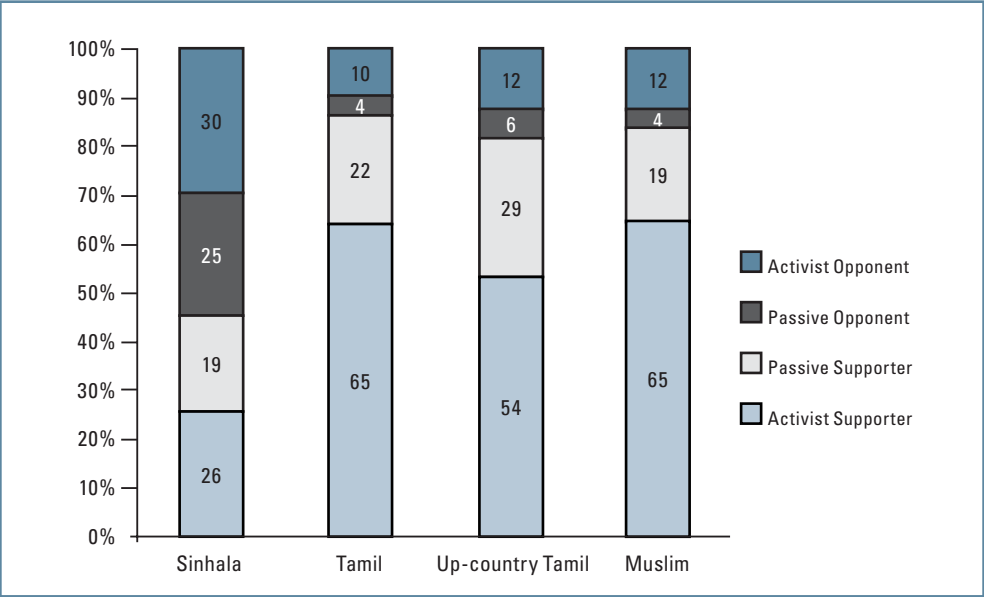
Source: Centre for Policy Alternatives, Social Indicator, 'Peace Confidence Index', November 2003, p. 16, <<http://www.cpalanka.org/polling.html>> (Wave 16 Top-Line Result).

Figure 3: Support for Peace in Sri Lanka, 2004



Source: Centre for Policy Alternatives, Social Indicator, Knowledge, Attitudes, Practices Survey on the Sri Lankan Peace Process, 'Potential for Peace', 2004, p. 18, <<http://www.cpalanka.org>>.

Figure 4: Support for Peace in Sri Lanka, by Ethnic Group, 2004



Source: Centre for Policy Alternatives, Social Indicator, Knowledge, Attitudes, Practices Survey on the Sri Lankan Peace Process, 'Potential for Peace', 2004, p. 23, <<http://www.cpalanka.org>>.

To ascertain their attitudes towards a peace settlement, respondents were asked to agree or disagree to eight propositions reflecting core demands and concerns expressed by political representatives of the three main ethnic communities and as to whether they were willing to engage in protest against an agreement they considered unfair or the failure to reach an agreement. The eight propositions were:

1. Displaced Muslims should be allowed to return to their homes and the lands they owned should be returned.
2. There should be a separate Muslim self-governing region in the north-east.
3. The Northern and Eastern provinces should be permanently merged.
4. An interim self-governing authority should be established in the Northern and Eastern provinces until a final settlement is reached.
5. The LTTE should place all their heavy weapons under the control of a neutral international force.
6. High-security zones should be dismantled in the Northern and Eastern provinces.
7. An impartial commission should be established to monitor and enforce human rights.
8. Any peace agreement should be part of a comprehensive reform of the Sri Lankan constitution.

Respondents who supported five or more of these propositions and who indicated a strong willingness to protest against an unfair agreement or failure to reach an agreement were classified as *activist supporters*. *Passive supporters* are drawn from the same pool but are unwilling to engage in protest activities. *Activist opponents* are those who find a majority of the proposals absolutely undesirable and are unwilling to accept them even if they were necessary for a peace agreement. *Passive opponents* are drawn from the same pool but are unwilling to engage in protest.

Conclusion: Lessons Learned

These examples from the situation in Sri Lanka draw our attention to a number of factors associated with the democratization of, and public participation in, peacemaking and peace settlements.

1. *Elite-level peacemaking without the groundwork of public awareness and acceptance will suffer as a consequence in the implementation phase.* This in turn will reinforce suspicion, mistrust and frustration between the negotiating partners.
2. *Following from this, peace settlements invariably (in Sri Lanka) entail fundamental change of the constitution, of the polity, and of political attitudes and culture. Public education and information are therefore of primary importance with regard to the nature*

and consequences of the change required. However, if they are seen to be partisan, public education and awareness raising will significantly detract from the overall success of the exercise.

3. *In a democratic context of political party competition, it is crucially important that there be a minimum consensus among the political parties, or at least the two main parties, regarding the overarching importance of peace through a negotiated settlement.* Political parties are the principal vehicles of political mobilization and are critical to public participation. Ultimately, peace settlements need all-party or at least bipartisan support, especially those that require constitutional change. This does not entail ‘taking the question of peace out of the political fray’ but it does entail minimum consensus on its overarching importance.

Political competition can continue to be possible on the basis of differing approaches, emphases and tactics, rather than on the strategic objective of a peace settlement through talks. In the case of the agreements signed by the Federal Party in 1957 and 1966, it was the mobilization of opposition against the agreements by the principal opposition party which made them inoperable, thus institutionalizing the bad practice of subjecting ethnic harmony and peace to the dynamics of zero-sum political party competition. Consequently peace was delayed and denied, and conflict intensified. Likewise with the 1987 Indo-Sri Lanka Accord and the provincial councils. The latter and the CFA have lasted but have been subject to severe criticism in partisan terms. Most recently, the PTOMS Agreement led to the collapse of the ruling United People’s Front Alliance (UPFA) government in 2005, with the JVP walking out of government over it. The JVP continues to mobilize popular opposition against federalism and any agreement with the LTTE. Given the electoral arithmetic, its support is crucial to any anti-UNP coalition in a presidential or general election. Before the UPFA coalition was formed in 2004, the two main parties were in broad agreement on negotiations with the LTTE and on federalism. They polled some 75 per cent of the popular vote, yet the culture of adversarial and zero-sum political competition between them has obstructed the use of this minimum consensus as an opportunity to advance towards a peace settlement.

4. *Failure to integrate human rights concerns into the peace process and the settlements it results in will adversely impact on the credibility of the process and agreements.* This is a primary concern in respect of the CFA. Continued violations of human rights or of the ceasefire agreement—the bulk of them identified by the Scandinavian Sri Lanka Monitoring Mission as being committed by the LTTE—cast doubt on the commitment of the parties to a political settlement and on the viability of a negotiating process.

5. *Peace agreements imposed from above, even if they last, invariably encounter obstacles to implementation which in turn reinforce suspicion and frustration.* Furthermore, such agreements have to be re-worked, and it is likely that, as in the case of the Indo-Sri Lanka Accord, the grievances and demands that have to be addressed at a later date will exceed those at the time of the original agreement. This has been the history of attempts at a negotiated political settlement in Sri Lanka: with each failed and frustrated attempt

or agreement, demands have escalated. In the case of the 1987 Accord, the flawed process through which it was agreed and the failure to operationalize it in the north and east of Sri Lanka have rendered the provincial council system obsolete insofar as a resolution of the ethnic conflict is concerned. The organizing concepts for an agreement at present are exemplified in a commitment to explore a federal solution, as stated in the communiqué issued after a round of talks between the government of Sri Lanka and the LTTE in Oslo, on 5 December 2002. At that time, and especially after the LTTE issued its proposals for an Internal Self-Governing Authority in October 2003, the conventional wisdom is that the LTTE interprets the Oslo Communiqué in more confederal than federal terms. The Provincial Council system set up after the Indo-Sri Lanka Accord was deemed to be acceptable by the Supreme Court on the grounds that it did not violate the unitary state clause of the constitution of Sri Lanka.

6. Public support for and the legitimacy of the peace process are conditioned by the nature of the democracy and the health of its democratic institutions and processes. As noted above, at the time of the signing of the 1987 accord, the government of Sri Lanka faced an insurgency in the south on the grounds that it was autocratic and had postponed elections through a dubious referendum. The JVP, which mounted the armed challenge against the state in the south of the country, by referring to the Indian Peacekeeping Force and the decision to devolve power, was able to add on to charges of bankruptcy and authoritarianism the charge of a sellout to a foreign power.

7. The fundamental change of attitude and political culture required to effect and animate a new and federal constitutional architecture of the state necessary for a democratic peace in Sri Lanka hinges crucially upon public participation in peacemaking and peace building. Ideas of inclusiveness, stakeholdership, partnership, respect and protection for human rights are vital building blocks in this respect. If they were to be ignored the prospects for peace would be diminished, with every likelihood of national unity being threatened and of fear and insecurity ruling the day and the days to come.

SECTION 6

SECTION 6

Strengthening International Assistance for Promoting Peace through Democracy Building

How can international assistance for promoting peace through democracy building be strengthened?

The Role of the International Community in Supporting Democratization Processes and Why It Matters for Human Security: The Case of Sierra Leone

Olayinka Creighton-Randall

Constitution-building Processes and Democratization: Lessons Learned

Yash Ghai and Guido Galli

The Role of the International Community in Supporting Democratization Processes and Why It Matters for Human Security: The Case of Sierra Leone

Olayinka Creighton-Randall, Sierra Leone Campaign for Good Governance

Looking back on the origins of the bitter war in Sierra Leone, there is now general agreement that the origins of the violence can be traced to issues of bad governance and gross abuses of human rights, mainly by the state against individuals. Citizens had no means or methods of redress and no access to the basic necessities that are often taken for granted by people in the developed world.

From independence in 1961 up until the start of the armed conflict in 1991, Sierra Leone never experienced truly democratic, participatory, transparent and accountable government. Before independence, the governance structures were traditional ones, centred on the traditional rulers, whose roles were upheld even during the colonial era. During this period of one-party and military dictatorship, a deliberate policy of systematic dismantling and destruction of all democratic institutions was undertaken first by President Siaka Stevens (1968–85), and then by President Joseph Saidu Momoh and subsequent military leaders, to ensure that the institutions that could act as a check to the powers of the executive branch were destroyed. Parliament became a rubber stamp. The ruling party dominated and its power penetrated every part of Sierra Leonean society. The press was stifled; the student union leadership was banned; labour leaders were arrested and detained; local government was abolished. The university became a revolving door to recruit corrupt ministers. The army became politicized, with the head of the army being given a seat in Parliament, while the chiefs of police saw the highest turnover, none of them lasting for even two years. Institutions such as the judiciary were deprived of funding, lost their independence and became inefficient. The civil service lost its neutrality and its professionalism was destroyed. All the institutions that should have acted as a check on the government were destroyed and there were no avenues left for critical thinking—one of the main tenets of democracy.

By the end of the 1970s power was highly centralized in the hands of the president and in the capital, Freetown. All resources were distributed within Freetown and all

decisions were taken in Freetown. In the end, Sierra Leone became two countries, with Freetown as one part, and the rest of the country as another. With no resources being provided to the rest of the country, their education system, the health system, infrastructure and so on collapsed.

The over-centralization of political authority had the consequence of stifling local initiatives and alienating society from the state. It left the majority of the citizens marginalized and it also had the further consequence of making the presidency the target of all struggles for power. By the time the civil war broke out in 1991, therefore, the Sierra Leonean state had collapsed as a functioning entity; it was no longer capable of making the decisions that can guarantee such elements as security and operational institutions (Jalloh 1999; Zartman 1996: III). This to a great extent provided the incentive for the Revolutionary United Front (RUF) of Foday Sankoh to launch an armed struggle with the aim of unseating the All People's Congress (APC) government (Richards 1996). It was therefore no surprise that initially there was tremendous support for the armed rebellion, or 'revolution' as some termed it, as many young Sierra Leoneans, who had nothing to lose and no stake in their communities, joined the so-called struggle. This rebellion made history by becoming one of the most brutal in living memory, its main trademark being the hacking off of human limbs, including those of babies less than five months old, and the gang rape of girls as young as eight years old. Originally intended to remove the repressive APC government, the RUF degenerated into one of the most barbaric and brutal insurgent movements worldwide, responsible for unimaginable atrocities, including brutal slayings, rapes and abductions.

The situation continued until 1992, when junior military officers overthrew the APC regime. The coup, by the National Provincial Ruling Council (NPRC), was warmly welcomed by the citizenry; but within two years its regime had also come to be characterized by corruption and repression, rather than addressing the ills it had earlier catalogued—unemployment, disregard for human rights, insecurity and bad governance. Finally, amid overwhelming terror and intimidation the people of Sierra Leone held their first multiparty elections in 1996 and the ruling Sierra Leone People's Party (SLPP) led by President Alhaji Ahmad Tejan Kabbah was elected to power.

The RUF had consistently opposed the elections. It therefore stepped up its attacks until the Abidjan Peace Accord was signed on 30 November 1996. Hope for national reconciliation was rekindled but was rudely snuffed out when on 25 May 1997 the democratically elected government was overthrown by the Armed Forces Revolutionary Council (AFRC).

For almost nine months Sierra Leone was engulfed by the most repressive and destructive regime in its history. Repression under the AFRC took on a new meaning. Murder, torture and unlawful detention became the predominant instruments of governance. It was not enough to kill political opponents; they had to be tortured and dismembered. The civil disobedience called for by civil groups was successful, and in February 1998 the junta was forcefully removed from power by forces of the Economic Community

of West African States (ECOWAS) Monitoring Group (ECOMOG), led by the armed forces of Nigeria.

The legitimate government of Tejan Kabbah was restored to power in March 1998, but fighting between government forces and RUF/AFRC rebels continued. Finally, on 6 January 1999, Freetown was invaded by combined rebel forces. The battle for Freetown and the ensuing five-weeks' rebel occupation of the capital was marked by barbaric atrocities of every kind against the civil population and underscored the rebels' blatant disregard for human life. Officially, an estimated 5,000–6,000 people lost their lives in and near the capital before the rebels were finally driven out by government and ECOMOG forces.

Sierra Leone has now finally emerged from this very brutal 11-year mainly civil conflict. I say mainly, but not totally, civil because it has been well documented that a number of external actors were involved in the conflict, either by helping to prolong it or by trying to end it. There is proof that a number of governments, including those of neighbouring Liberia and Burkina Faso, shipped and delivered arms to the RUF rebels (see United Nations 1999) while the government of Libya provided revolutionary training for some of the original members of the RUF, as well as financial support through its People's Revolutionary Council (Sierra Leone, Truth and Reconciliation Commission 2004: 56, 375–6).

On the other hand, and against the backdrop of the body legally constituted to protect the citizens of the country—the military—turning its weapons on those they were mandated to protect, it was inevitable and unquestioned that help was needed from external actors to save the citizens of Sierra Leone. Actors like ECOWAS and ECOMOG, private security firms such as Executive Outcomes and Sandline International, and the United Kingdom (UK) and the UN were instrumental in bringing the conflict to an end.

It must be realized that Sierra Leone was a failed state even before the onset of the war, and the war just plunged the nation further down that path. In rebuilding the state, therefore, huge and sustained international intervention was needed, and will continue to be needed for a long time. As the International Crisis Group (ICG) stated with regard to both Sierra Leone and Liberia, 'The international community needs to make genuinely long-term commitments . . . not two to five years . . . but on the order of fifteen to twenty-five years . . . to enable new political forces to develop' (International Crisis Group 2004).

As our world becomes ever more globalized, the case for intervention by the international community is undeniable, the question being how it should intervene and on whose terms—their own or on the terms set by the recipients of their help, that is, the people who are living and dying in failed states? Should interventions be done 'democratically' or to ensure 'human security' at all costs—in a democratic and ethical manner, or not?

We therefore have to explore these two informing principles—‘human security’ and ‘democratic processes and practice’.

Reflecting on Human Security: A Sierra Leonean View

In her opening remarks at the Fifth Ministerial Meeting of the Human Security Network on 8 May 2003, Sadako Ogata, Co-Chair of the United Nations Commission on Human Security, stated that ‘For the Commission, human security is concerned with safeguarding and expanding people’s vial freedoms. It requires both protecting people from critical and pervasive threats and empowering people to take charge of their lives’ (Ogata 2003).

Putting it more simply, the United Nations Institute for Disarmament Research (UNIDIR) sees *freedom from fear* and *freedom from want* as being the catchphrases for human security. Emphasis is laid on human beings and not states as being at the centre of security considerations. It stands to reason therefore that the voice of ordinary citizens, as represented by civil society organizations, also now plays a hitherto unprecedented role in setting the security agendas and policies. In Sierra Leone, as people move to the centre of the security debate, a Security Sector Working Group consisting of members from across government and non-governmental agencies was set up by the Office of National Security in order to carry out a security sector review. One of the main conclusions of this review was that the internal threats to people’s security in Sierra Leone were perceived as being greater than the external threats. External threats were very low on the list while internal threats ranked highly and were mainly structural in nature. Examples of these were:

- corruption;
- lack of political will;
- an over-centralized political and administrative system; and
- lack of monitoring and effective implementation of government policies.

All these are threats to democratic principles and to effective practice as well.

Democratic Principles and Practice

In his introductory remarks at an International IDEA Democracy Assessment seminar held in Oslo in October 2002, the then director of the United Nations Development Programme (UNDP) Oslo Governance Centre, Georges NzongolaNtalaja, explored the idea of democracy as a moral imperative and concluded by emphasizing that ‘Democracy as a social practice that implies meeting people’s aspirations for a better life politically and economically is a moral imperative’ (NzongolaNtalaja 2002). He also mentioned that democracy is a social process. He believes that democracy cannot be complete if it does not take account of fundamental human rights: democracy does not have much meaning if it does not also promise the fulfilment of basic social and economic rights.

These would include the right to education, health care, clean drinking water and so on. One could also say that in other words democracy as a social process means the fulfilment of the Millennium Development Goals.

Straight away, differences between countries that call themselves ‘democracies’ begin to emerge. In looking at democracy as political practice, NzongolaNtalaja believes that this refers to ‘a specific manner of organizing and exercising power in accordance with certain universal norms and principles of good governance’. He highlights five of these principles of good governance:

- the idea that legitimate power or authority emanates from the people, who exercise it either directly or through some other mode of representation;
- the concept of the rule of law, together with the idea of limited government;
- the principle that rulers are chosen by and accountable to the people;
- the right of citizens to participate in the management of public affairs; and
- the right of people to change a government that no longer serves their interests.

He also stated that this implies ‘the existence of government institutions and processes that are compatible with [these] universal principles of good governance’. Apart from working effectively, the government needs to be politically stable with no systemic corruption.

As mentioned above, in the run-up to the war Sierra Leone did not match up to any of these principles of good governance. Even now, nine years after the reintroduction of multiparty elections, with a duly elected government and three years after the official declaration of the end of the 11-year war, there may be some semblance of the five concepts above, but the lives of the average citizens have in no way been improved. Their human security continues to be in danger. The government is not working effectively and systemic, endemic corruption still exists. In principle and on paper, the government has committed itself to attaining the ideals of a ‘good democratic state’. It has formed an Anti-Corruption Commission to curb the corruption that still permeates every facet of society. A Poverty Reduction Strategy Paper has recently been written (under strong encouragement from the international community—the development partners), although funds still need to be sourced in order to implement it, and reforms are being made within the public service and the military. But how many of these moves were initiated by Sierra Leoneans because they saw them as necessary to rebuild the state, and how many were initiated under pressure from the development partners and in order to qualify for various forms of debt relief?

Intervention by the International Community

In a bid to correct a number of these ills, there has been a concerted effort by the international community to rebuild the failed state that is Sierra Leone. These processes

have ranged from security sector reform to the provision of budgetary support to the Ministry of Finance. This budgetary support has mainly taken two forms—finance and expertise. Intervention has also taken two different forms—what could be termed macro- and micro-level intervention. Macro-level interventions include all support by bilateral and multilateral donor governments or organizations to the government of Sierra Leone. Examples are the support of the World Bank to the Poverty Reduction Strategy Process and the support of the British Government given through various departments, such as the Ministry of Defence and the Department for International Development (DFID), to the security sector and the civil service. The UN agencies also fall into this category, with the UNDP giving huge support to the Decentralisation and Devolution Process. Micro-level intervention is support by individual international organizations setting up field offices in Sierra Leone and support by these international organizations to local organizations. Examples include Oxfam, World Vision and the Norwegian Refugee Council, which have set up country offices, and the National Endowment for Democracy (NED) based in the United States and the Westminster Foundation for Democracy (WFD) based in the UK, both of which have given financial support to local organizations for work on human rights and governance issues. Of course some of this support crosses these simplistic boundaries: for example, the Campaign for Good Governance receives funding from the DFID, and individual international organizations such as the United Nations Children's Fund (UNICEF) do work directly with government ministries such as the Ministry of Social Welfare, Gender and Children's Affairs.

Rebuilding a failed state takes a great deal of intervention both from within the country, internally by its own government and people, and externally, by support from development partners. It takes generations and needs committed long-term support, as the ICG highlighted. The biggest mistake in terms of securing human security and entrenching democratic practice, however, is implementing short-term, quick-fix solutions to problems that have built up over decades.

Looking at Sierra Leone as a prime example, how effective have the interventions of the international community actually been?

Challenges

Generally, it is imperative that international support enhance local ownership. In Sierra Leone, however, in the early days of reconstituting the state, there was not only overwhelming international support; there was also overwhelming international control in terms of finances, personnel and issues. This weak local ownership was due to two main internal factors.

The first is that since the war started and up until now the Sierra Leonean state has been marked by weak democratic institutions coupled with a lack of political will and a similar lack of strong state commitment. After the events of May 1997 (the military coup by the AFRC, when the president fled to Guinea), January 1999 (when the AFRC/RUF re-entered Freetown by force) and May 2000 (when Freetown was again under

attack by rebel forces but they were repelled, and the RUF leader, Foday Sankoh, was captured), the state was so weak, with no blueprint for how to move the country forward, that the international community had no option but to steer the direction in which the country was moving. Having practically no guidance from the (failed) state, international supporters were at liberty to choose the areas their support would be channelled into, and in doing this to choose the issues that would be addressed. This happened at both the macro and the micro level and resulted in a certain amount of duplication of effort and neglect of certain areas. Donor governments and agencies have only very recently started consulting each other and collaborating with each other in an attempt to provide holistic support with little duplication. There are still serious challenges in this area, and one instance of support for the decentralization process can be taken as an example.

A number of the major development partners involved in Sierra Leone, such as the World Bank, the UNDP and the British DFID, are all providing support to decentralization, yet it is still not entirely clear just how much support is being given and in which precise areas. The government institution which should be best placed to provide direction to interventions in this area is the Ministry of Local Government and Community Development. As the ministry seriously lacks capacity, a secretariat has been formed with funding from the World Bank to provide support to it. As regards local ownership, though, the secretariat is housed in a completely different building quite a few miles away, together with other institution-strengthening projects. Staff employed there earn much better salaries than the civil servants working in the ministry, so that it is very difficult to imagine any sort of capacity transfer in such a situation. This has the effect of undermining local ownership.

The second internal factor is that, coupled with a weak state, there is also relatively weak civil society engagement. This is due to a number of factors, which include a general lack of capacity and a lack of the requisite knowledge base. Again, examples can be drawn from the decentralization process. The Local Government and Decentralisation Act devotes a whole chapter (chapter 16) to issues of accountability and transparency. This chapter marks a watershed in the history of Sierra Leone as it legally and specifically mandates councils to be as transparent as possible with the publishing of minutes of meetings and council budgets on notice boards for all to see. It also mandates all councillors to declare their assets. However, if civil society and the local communities do not have the capacity or know-how to monitor and hold the councils to account, then the spirit of the act will remain unfulfilled. In addition, if at the central level these moves to incorporate accountability and transparency are not required or enforced, problems will ensue. The majority of councillors have not declared their assets, and when asked why not they respond that if members of Parliament are not required to then why should they?

At the national level, over the past few years the central government has invited civil society and other non-governmental organizations to attend open forums where government ministries and departments are asked to defend their previous expenditure

and forecasted budgets. Again, if these organizations do not know how to scrutinize a budget and are intimidated by technical language that they may not understand, the government's budget will continue to go unchallenged. A civil society like this has therefore had little choice but to respond to the overwhelming international support and the related direction in which the international community wants the country to move.

Before concluding, it is worth looking again at the whole issue of the universality of democratic principles and practice. As mentioned above, Georges NzongolaNtalaja has stated that democracy generally refers to 'a specific manner of organizing and exercising power in accordance with certain universal norms and principles of good governance'. It is generally accepted that the very basic democratic principles are universal and, as the world becomes more of a global village, one would expect that it should become easier to apply 'universal' norms and principles to issues that affect the human security of peoples of the world.

Time and time again, however, this has not been the case, and there are numerous examples of different countries being treated differently in the face of a threat to human security, and in some instances even of people in the same country being treated differently because of ethnic, racial, religious or gender differences. Examples can be drawn by contrasting the robust reaction of the USA and others in launching the so-called 'war on terror' with the international indifference to Rwanda during the genocide, and the failure of the UN, because of its own weaknesses, to address the issue. It is also now a well-known and documented fact that if the international community had reacted to reports emanating from Rwanda earlier the horrific genocide that was perpetrated there might have been averted. Returning to Sierra Leone, it is also firmly believed that the international community was extremely slow to react to what was happening there from the start of the war in 1992, and Sierra Leone was only taken seriously as a nation in turmoil after the events of May 1997 and January 1999. As the Truth and Reconciliation Commission's report found, 'The Commission finds that the United Nations and the International Community abandoned Sierra Leone in its greatest hour of need during the early 1990's' (Sierra Leone, Truth and Reconciliation Commission 2004: 140, 372)

Morality and ethics come to the fore and the issues become even more complex when decisions are needed on what practical measures need to be taken to ensure democratic principles and practice, in order to safeguard human security. Two examples below, drawn from the experiences of Sierra Leone, will clearly illustrate these complexities.

As mentioned above, it was ECOMOG, led by the armed forces of Nigeria, that successfully ousted the AFRC in February 1998. While a precedent was set by the fact that a regional body was allowed to take the lead in restoring democracy to Sierra Leone, ironically, the Nigerian head of state at the time, General Sani Abacha, was a military ruler who had been put in place in an undemocratic manner. Many people, especially Nigerians themselves, were in the midst of serious campaigns to lobby for

multiparty elections to be held in Nigeria and there were allegations of very serious human rights abuses and massive corruption being perpetrated by Abacha's regime. However, in Sierra Leone, where all hope had been lost, Abacha and the Nigerian contingent that made up the majority of troops within ECOMOG were regarded as saviours—indeed, after democracy was restored to Sierra Leone in February/March 1998, one of the main streets in the heart of the business district in Freetown was renamed Sani Abacha Street.

The second example is what is now referred to as the Sandline Affair. Again, during the interregnum when the AFRC was in power in 1997/8, the elected government of Sierra Leone lived in exile in neighbouring Conakry, Guinea. A number of international diplomats who were accredited to Sierra Leone also either relocated to Guinea or shuttled between Guinea and their home countries. Allegedly, at the suggestion of the then British High Commissioner to Sierra Leone, Peter Penfold, Tejan Kabbah, the president in exile, requested military assistance in terms of both equipment and personnel from a British company called Sandline International. This was provided, and with the help received from this firm ECOMOG, with support from local militia groups within Sierra Leone, was able to restore the elected government to power. At the time, however, the UN had imposed an embargo on the import of arms into Sierra Leone. Lawyers acting on behalf of Sandline International insist that the highest levels of government in the UK were aware of and in fact endorsed the activities of the firm; yet in 1998 the firm was investigated by the British Customs and Excise for allegedly breaching the UN sanctions that were in place. There were further allegations as to the method of payment from the government of Sierra Leone to Sandline (the mortgaging of Sierra Leone's diamonds), and deeper issues of an ethical nature emerged as to the use of 'mercenaries' and the promotion of 'British imperialist strategic interests'.

If you talk to the average Sierra Leonean, whose limbs were hacked off by a blunt axe, or whose eight-year-old daughter was gang-raped by up to ten men repeatedly, or whose house and all worldly possessions had been razed to the ground while they stood outside watching and were asked to sing and dance, what do they say? 'Speaking as a citizen of Sierra Leone, ECOMOG and the British saved our lives when no one else was prepared to.' Democracies have police forces to protect citizens and uphold the rule of law.

Protection is an essential dimension of international intervention, and this is what the population of Sierra Leone desperately needed. The first initiative for this intervention was regional (as was the case in East Timor, where Australia stepped in amid violent crisis).

Ultimately the imperative of intervention is surely the last resort and will be weighed carefully in the light of international law—indeed one measure of the legitimacy of an intervention is whether it is in the interest of the affected population or of the intervener.

The Way Forward

Sierra Leone is now at a turning point, with the conclusion of a Poverty Reduction Strategy Paper (PRSP) and hopes pinned on the big Consultative Group (CG) meeting in the UK in November 2005 in order to plead with the country's development partners for yet more funding; the mandate of the UN Mission in Sierra Leone (UNAMSIL) expired in December 2005. It is time to consider what lessons have been learned and what is the way forward for international intervention in Sierra Leone; and we must also take into account the changing emphasis globally in terms of newer conflicts such as those in Afghanistan and Iraq, and, somewhat nearer to home, the events unfolding in Sudan and Niger. Two main conclusions can be drawn from the case of Sierra Leone.

1. In addressing its own shortcomings, the Sierra Leonean state needs to be strengthened both from within and with external help in order to have the capacity to supply its people's needs, especially in terms of service delivery under a new decentralized system. Similarly, and more importantly in my own view, civil society's capacity also needs to be strengthened in order for it to be able to exert pressure on the state and other parties so as to ensure that the correct steps are taken for and on behalf of the people of Sierra Leone. As the Truth and Reconciliation Commission and the government's reaction to it in the form of a white paper are being hotly debated, our most immediate challenge will be to lobby the government and ensure that it implements the most crucial recommendations put forward. It is also imperative that sustainable reconciliation mechanisms be put in place at the local level so as to ensure that there is local ownership of the reconciliation process and these mechanisms are seen to be working in the everyday lives of the people.

2. In addressing the shortcomings of the international community, first a more holistic and collaborative approach must be taken in deciding what to support, when and where. As mentioned earlier, this has started to happen in Sierra Leone, but it needs to be strengthened. The term 'intellectual arrogance' is very appropriate in this arena. This basically means that expatriate staff often feel that the term 'least developed country' also refers to the intellectual capacity of the country. This has been manifested many a time by the international community sending young, often inexperienced, white people to train Sierra Leonean human rights activists and professionals. What would work much better would be a system by which experienced experts go to work in-country, ready to share experiences and learn themselves as the case may be in order to leave with the capacity of locals having been significantly built and a lasting legacy left behind.

In concluding, therefore, we need to realize that, although there may be basic principles that guide democratic practice universally across the world, when it comes to the protection of human security, within reason, these principles may need to be tailored to suit the situation that is presented. As Melvin Urofsky mentions, 'Other Nations as they experiment with democracy—and it is always an experiment . . . [find it] is a multitude, often contradicting itself. But if we keep our eye on the basic, immutable principles, that ultimate authority resides with the people . . . then there can be many ways in which to achieve those goals' (Urofsky 2001: 6).

It is also very important for the international community to allow states, especially recovering states like Sierra Leone, to discover what variation of democracy works best for them and then commit itself to long-term support, always bearing in mind the need to endorse and support locally-owned and locally-driven initiatives in the country. This is of ultimate importance where human security could be at risk from delays in decisive action. It provides a foundation for the long-term development future for the people, and ultimately for the peace.

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Constitution-building Processes and Democratization: Lessons Learned

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Introduction

In recent decades there has been considerable activity in the making or revision of constitutions.¹ This activity reflects a changed perception of the importance and purposes of constitutions. Various contemporary constitutions have marked the end of an epoch and the start of another, under the hegemony of new social forces: Eastern Europe provides a good example. Some reflect the commitment to or the pressure for democratization resulting from disillusionment with or the unsustainability of a one-party regime or military rule (as in Thailand, Brazil, Argentina and Mozambique). Others are the consequence of the settlement of long-standing internal conflicts, centred on the reconfiguration of the state, by a process of negotiation, often with external mediation, when neither side can win military victory or the cost of conflict becomes unacceptably high (as in South Africa, Northern Ireland, Afghanistan, Iraq, Bosnia and Herzegovina, and Sudan).² In almost all these cases, constitutions emphasize the principles of democracy and constitutionalism, and contain detailed bills of rights. Changes start with constitution making, whether as a form of negotiation or as the consolidation of social victory or reform. However, the record of the effectiveness of these constitutions is uneven.

These developments have stimulated a growing interest in the politics and techniques of constitution making, particularly in the context of conflict resolution. This study examines the connection between constitutions and democratization, especially as the aim of these constitutions is to establish democracy in the belief that democracy is better suited to solve the problems faced by these countries than the former system. It then examines the importance of the process of constitution making for the legitimacy of constitutions and progress towards democratization. The primary focus is the role of public participation, which is deemed to be critical to the acceptance and durability of

the constitution. However, in order to understand this role, it is necessary to identify other participants who have an impact on the process and its outcome, the principal ones being political parties and external agencies. It is likely that public participation will pull in a different direction from the other two, and that is partly its significance.

The Connection between Constitutions and Democracy

There are two critical tasks that constitutions are expected to play in many states as they resolve to move towards democracy and stability. The first is to establish or reinforce the political community.

Democracy implies the existence of a political community. The political community need not be a 'nation' in the sense of a culturally or linguistically homogeneous community (as expressed in the 'nation state' theory), but the term implies that the diverse groups that constitute the population of the country have agreed to live together. Colonialism brought these diverse groups together forcibly. One of the reasons for the lack of legitimacy of the colonial state was precisely the way in which it was constituted and constructed—its non-consensual basis. The absence of any consensual, acceptable basis for the formation of a political community continues to plague many previous colonies. The formation of the political community on consensual terms is prior to agreement on a regime of governance. The basis on which the political community is formed will have a decisive influence on the terms of the constitution. Historically, some degree of force has been used in the consolidation and integration of all states (even though there was also an organic process of communities coming together and developing a sense of common belonging under various forms of national ideology). Since today, especially in multi-ethnic states, the ability of coercion to create or maintain a political community is extremely limited (and trying to use coercion to do so may actually be counterproductive), this task has to be performed through negotiation. However, the basis on which groups come together may not in all respects be compatible with democracy as it is traditionally understood, in terms of both underlying values and rules for decision making.

The second task is to establish or reform the rules for the allocation and exercise of state power. Contestation over these rules has been the cause of conflict and instability. The new constitutional system has to be responsive to the concerns of the previously warring factions, while at the same time being mindful of the anxieties and aspirations of the ordinary people or communities who may have had little direct influence on the negotiations on the constitution.

Historically, the process of formation of the political community preceded the establishment of democracy. Today, in many countries, constitutions have to perform these two tasks, now enormously complicated, simultaneously. As there can be serious tensions between these two tasks, the role of the constitution in establishing democracy is exceedingly complex and difficult. The centrality of the constitution is enhanced by the fact that many contemporary conflicts are about the design of the state and thus

involve, fundamentally, its constitution. So how does a constitution secure democratic ideals and practices?

The constitution, as fundamental law, provides the framework within which laws have to be passed and policies have to be applied. The role of constitutions is to ensure the smooth operation of the political system by channelling the expression of politics through prescribed institutions in accordance with clearly understood and valued procedures, as well as facilitating the resolution of the differences and disputes that inevitably arise. The legality of state as well as of private action is determined by reference to its norms and standards. A constitution also plays an ideological role by inculcating the values that it enshrines. More specifically, it contributes to democracy by:

- affirming common values and identities, without which there cannot be a political community;
- prescribing rules to determine membership of that community;
- promising physical and emotional security by means of state monopolization, for legitimate purposes, of the use of force;
- agreeing on the ways in which and the institutions through which state power is to be exercised;
- providing for the participation of citizens in the affairs of the state, particularly through elections, and other forms of social action;
- protecting rights (empowering citizens as well as limiting state action);
- establishing rules for peaceful changes of government;
- ensuring the predictability of state action and the security of private transactions through the legal system;
- establishing procedures for the settlement of disputes; and
- providing clear and consensual procedures for change of these fundamental arrangements.

Human rights have become particularly important in contemporary constitutions, especially for mobilizing and developing the constitution: they give the people space to organize and aggregate interests, and the authority to challenge state institutions. The 'mobilization' of rights does not depend on the state, but on the people. Rights give people tools to protect themselves and to compel the state to take specified action (many contemporary rights regimes being highly programmatic). Rights are no longer devices for maintaining the status quo, as was the case in the US constitution, but are means critical for dynamic change, and they assume an active citizenry (Ghai 2001).

However, the above analysis does not indicate the historical connections between constitutions and democracy. Constitutions have not always functioned to promote or consolidate democracy. Indeed, historically, they have more frequently been

instruments of domination or oppression. Such constitutions, in that they reflect power structures, can be effective (e.g. colonial constitutions or modern dictatorships), and it may not matter if they are breached, for the ultimate sanction is coercion. But, lacking normative justification, they are also vulnerable to moral challenge. Contemporary democratizing constitutions, on the other hand, embody normative values but have less of a 'fit' with power structures: they depend for their efficacy substantially on respect for the document, particularly by the holders of power. (On these themes, see Ghai 2005.)

Historically, in democratic societies, constitutions followed social forces that promoted democracy; they did not create these social forces. There is a strong body of opinion (going back to distant history) which regards the primary function of constitutions as setting up the framework of government and leaving social goals and policies to the political process. The framework itself is rather skeletal, and even electoral systems (although regarded as central to democracy) only play a small part in them. The exception to this is the bill of rights which found its way into constitutions after the US and French bourgeois revolutions. These early bills of rights provide some indication of the conception of political order in those times. The critical element of 'democracy' was the restriction of political rights (particularly the franchise) to wealthy men. That kind of democracy depended on the values and interests of this class and, when the two clashed (as it is clear from class rhetoric that they did clash), interests prevailed over values. The interests of the wealthy class were squared with values by the subterfuge that those outside its charmed circle were not quite human, a lower species not deserving of the full dignity of human beings. Within the charmed circle, there was to be equality, personal autonomy, protection of property, and the right to vote and to stand for election to public office. Gradually, however, often as a result of violent or peaceful struggles, this 'democracy' became more inclusive as slaves were emancipated, women were given the vote, and racial barriers were dismantled. However, the institutional values of democracy remained unchanged—the emphasis on the electoral competition and process, the importance of citizenship, the protection of individualism through civil and political rights, and the restriction of the role of the state (although the latter was difficult to maintain in the face of the increasing complexity of social and economic life).

Constitution Building

The concept of constitution building is more complex than the process of constitution making alone, although the latter is an inseparable part of it. As we use the term in this study, constitution building refers to the process whereby a political entity commits itself to the establishment and observance of a system of values and government. It is necessary to make a distinction between the written text that is the constitution and the practices that grow out of and sustain the constitution. Constitution building stretches over time and involves state as well as non-state organizations. In this sense it is almost an evolutionary process of nurturing the text and facilitating the unfolding of its logic and dynamics. So, for example, a text whose birth is in some respects inauspicious, even contested, can in time stamp its imprint on society and weave its way into public

favour, while a constitution proclaimed with great enthusiasm can run into difficulties, be ignored or even be expressly discarded.

Constitution building may, and usually does, require various forms of consensus building before the formal process of constitution making can commence. In 'new' or troubled polities, a constitution as a system of government may have to coalesce with a pact to form or redefine a political community. In these circumstances, best typified by a constitution for independence on decolonization, the document has a foundational character, giving birth to a new sovereignty. Sometimes these constitutions have devoted more attention to the artefacts of sovereignty than to the negotiations for forming a political community. There is a price to be paid for this neglect—as the troubled political experiences of many Asian and African states show. In more recent experience, constitution making has been preceded by a prior pact, sometimes called constitutional principles, long or brief, abstract or specific. In some instances, the formulation of the constitution (or its main provisions) is an inseparable part of the resolution of a conflict that necessitated a new political and social order. As we shall see, there are some fundamental problems of constitution making when the pact and the constitution are so integrated.

The *process* of drafting and adopting a constitution is the centrepiece of constitution building. This is so, of course, because of the nature and orientation of the document that the process produces. But the process is important in other respects as well, which have an impact on how the constitution is actually rooted. The design of the process, that is, the *institutions* for the making of decisions and the *method* of making decisions, has a bearing on a number of factors such as which interests are articulated and which are excluded, how the views of participants are aggregated, and the congruence of the text with social realities. The process is also relevant to the degree of public participation and consequently the benefits and costs of such participation. It is now increasingly thought that participation is essential to the legitimacy of the constitution and the ability of the people to understand and mobilize its provisions. The process may also promote a sense of common belonging and destiny critical for national unity. A well-designed process can in itself be an education in and preparation for the deliberative and participatory politics that the constitution may call for. On the other hand, there is the risk that a participatory process may lead to dissonance between those who influence the outcome of the drafting process and those who will be called upon to operate the constitution, potentially causing such conflict that the very enactment of the constitution may be put in jeopardy. Democratization is a difficult and delicate process, and the broadening of the constitutional agenda that comes from participation may precipitate a crisis as the holders of power resist the new system (this is, of course, less of a problem if the making of the constitution is preceded by major changes in the power structure, owing either to external factors or to local revolution).

Elections or Constitution Making First?

In a country emerging from conflict when there are no institutions that enjoy general support, a special problem is the question who has the right or legitimacy to make

a constitution. Often this problem is solved by requiring elections to a legislative or constituent assembly and giving it the mandate to draft and adopt the constitution (this procedure is common when the international community becomes engaged in the process, giving possibly exaggerated significance to elections). In Iraq, for example, elections polarized the people and the Sunnis boycotted the elections, thus upsetting the communal balance and greatly complicating the task of constitution making. In East Timor the elections to the Constituent Assembly provided one party with a clear majority so that it had no incentive to compromise on its own proposals and others had no power to negotiate. Constitution making became a majoritarian exercise, whereas it should be based as much as possible on a consensus or a large majority. Before elections, no group has a reliable idea of its support in the country and therefore all groups have an incentive to reach an agreement. On the other hand, if the process goes on without elections, the interim executive can exercise a powerful influence on, or even control, the direction of the constitution-making process (as happened in Afghanistan).³ Sometimes this dilemma is resolved, as in South Africa, where the parties agreed on a number of constitutional principles which would govern the contents of the new constitution before elections to the constituent assembly were held. South Africans also had an interim constitution and an interim government of national unity, which helped to create an environment conducive to constructive process.

Foreign Involvement and Local Ownership

Another dilemma that faces the constitution-building processes in many countries is the degree of foreign involvement. In some situations, where there is a total breakdown of local institutions, or a breakdown in the relations between different communities, there may be no alternative to a very active role on the part of the UN, regional associations, or a group of countries. There is often severe criticism of foreign involvement by particular sections of the people, and there is undoubtedly a danger that external forces will determine the pace of the process as well as the content of the document (as undoubtedly happened in Iraq and Afghanistan). The assessment of the usefulness or modalities of foreign engagement must disaggregate various components of such engagement: engagement *of what kind* (providing finance, technical assistance, documentation etc.); engagement *by whom* (the UN, regional powers or one superpower); engagement *for what purpose* (giving voice to local people, privileging particular groups or leaders, or serving the interests of the interveners); and engagement *by what means* (laying down the procedures for the process or enabling local leaders to design it).

From this partial list of the kinds of interventions by external parties, it is obvious that there can be no overall assessment of the value of foreign involvement. However, the general principle should be that the foreign parties' role should be facilitative at all times, enabling, and sometimes even empowering, local people to make their own decisions, assisting them with logistics, and making them familiar with the experience of other countries which have faced similar problems. As far as possible, intervention should be on a multilateral basis (with a key role for the UN). But it has to be acknowledged that the UN and regional organizations are not particularly well qualified to provide constitutional assistance, although there is now some attempt to draw lessons from

past experiences. Equally important, of course, is drawing guidance from the general principles mentioned above.

The Post-enactment Stage

The post-enactment period is the most critical of all for the consolidation and stabilization of the constitution. Those who may have lost in the earlier stages will resist implementation, and even those who may have favoured change may now find themselves in a position (e.g. thanks to electoral victory) where their new interests are better served by the old dispensation.⁴ Sometimes through deliberate or benign inactivity, the progressive and democratic provisions of the new constitution are disregarded. The pressures that may have sustained the constitution-making process may disappear (as when the international community leaves, after it has played a crucial role) or a sense of complacency may overtake local activists after 'victory' in the struggle for reform.

Even in the absence of these political dimensions, the task of consolidation and implementation is seldom easy. Even in a revolutionary situation, there remains much legal 'sediment', antagonistic to the new values, from before. Previous habits and styles of dominance persist, especially among bureaucracies. Old vested interests, armed with money and other resources, may capture new institutions and neutralize the progressive agenda of the constitution. Powerful foreign actors who may have pushed for a democracy are likely to find that their own economic and geopolitical interests are incompatible with genuine local democracy and seek to limit public participation.

What, in concrete terms, is required for the protection and stabilization of a democratic constitution, making it a living reality, the authoritative source of values, as well as the 'forum' for dealing with (and resolving) fundamental controversies? And what is required for developing respect for the constitution and its values, inculcating certain attitudes towards the form and exercise of power and the respect for rights and freedoms?

The answer is a great many things. Foremost is engaging the people in political and constitutional affairs. Even a participatory constitution-making process may leave the people bereft of mechanisms and opportunities to continue involvement in public affairs. To some extent this engagement can continue through civic education—but, this, however necessary, is not sufficient. The constitution should itself create space for constant public participation, in the legislative process, in monitoring of government, in easy access to the courts and other complaints authorities for the protection of constitutional values, and so on. The legacy of inherited law, entrenching the values or practices of the old regime, has to be dealt with, by thorough-going reform of the legal system, at the same time as legislation to implement the principles of the constitution is promulgated. All too often, old laws and regulations negate (and are used to negate) the values and procedures of the democratic constitution. The courts also need to play their part in the renewal of law, in 'constitutionalizing' other areas of the law, suffusing it with values of human rights and, where applicable, of democracy. Increasingly, constitutions themselves have provisions for the implementation and protection of their values and institutions in the form of extensive chapters and deadlines for transitional

matters, independent authorities, and strong constitutional courts and generous rules of standing. The Kenya draft constitution of 2002, prepared by the Kenya Constitution Review Commission, provides guidelines to state institutions for the exercise of power, setting ethical standards and reminding elected as well as appointed officials of their duties and responsibilities, rather in the nature of a primer.

But a constitution cannot guarantee its own protection. Its fate depends on forces outside itself. The constitution tries to regulate these forces, and presupposes or even specifies these forces, giving them a role in the public sphere (in particular the regulation of the armed forces). A few constitutions have taken hesitant steps towards recognizing civil society as an entity with responsibility for the constitution. Some recent constitutions have had to contend with the force of ethnicity, trying to channel and moderate unruly passions by recognizing the specificities of group rights (par excellence in Bosnia and Herzegovina). But even ethnicity manifests itself in and through political parties, and it is with political parties that constitutions have their principal conversation (even if through their silences). The primary agencies which are specified as instruments of rule are political parties, for example, by limiting candidacy for presidential and some other legislative and executive posts to those nominated by parties; by the role of political parties in electoral systems, especially in proportional representation (PR) systems; by virtue of the rules for the formation of government, especially in parliamentary, as opposed to presidential, systems; and by placing restrictions on the 'crossing of the floor', that is, an elected member of a legislature abandoning the party with whose support he or she was elected. Some constitutions have gone even further, elaborating codes for the registration and operation of parties, and emphasizing internal democracy and external accountability (taking their inspiration from the German Basic Law). Yet the principal challenge to the authenticity and integrity of the constitution has come from politicians (at least in many newly democratizing countries), who seem singularly immune to the values and imperatives of democracy. It is as if the principal beneficiaries of democracy are also its worst enemies. Many a coup has been justified on the basis of the irresponsibility of political parties, their feuding and their extravagances (as the monarchy did in Nepal more than once). No way has yet been found to make constitutions politician-proof!

Perhaps even more critical, in the long run, is that the constitution should have resonances with society's concerns and incorporate appropriate norms, institutions and procedure to respond to these concerns. This depends fundamentally on the local context, and generalizations are therefore difficult. But it is clear that the constitution has to allow the representation and articulation of different interests. Its legitimacy comes in considerable part from the perception of sectors and groups in society as to how fairly it has dealt with issues of particular concern to them. In this regard, questions of social justice are critical in countries still burdened with poverty. If the constitution can provide values and goals that the public is able to accept as the framework of public (and private) discourse, as well as the framework for the resolution of troubling moral and political issues, the safeguarding of its status becomes an overriding concern of the people. Of all the modern constitutions, India's perhaps comes closest to this ideal.

Participation

The Promises and Dangers of Participation

Constitutional processes are marked by original and ongoing negotiations. There is often no closure to the constitution-making process (Hart 2001; Chambers 1998). The art of negotiation is critical to the definition of the political community and the development and operation of the constitution, requiring habits of dialogue and compromise. It is in this context—of the importance of dialogue and tolerance—that we address the processes of constitution building, a concept which, as mentioned above, goes beyond the making of the constitution and includes the many forms of activity which mobilize, use, and root it in social action. In this dialogue, the participation of the people is central.

It is only in recent times that popular participation in constitution making has been accommodated. Traditionally, as typified by the Philadelphia Convention that drafted the US constitution, or the German constituent assembly (called the Parliamentary Council) after World War II, there have been considerable distrust of the direct engagement of the people and doubts about their ability to understand the complex issues of the purposes, forms and structure of state power. The response was ‘representative democracy’. Now, however, more regard is paid to the sovereignty of the people: if sovereignty is indeed vested in and flows from the people (an implication also of the principle of self-determination), it is natural that they should determine how it should be delegated and exercised. The emphasis on popular sovereignty is no doubt a response to the claim to (and abuse of) sovereign power by numerous governments in recent decades,⁵ but there are also more pragmatic reasons for popular participation.

Unlike older, classical constitutions, perhaps, constitutions today do not necessarily reflect existing national polities or power relationships, consolidating the victory and dominance of a particular class or ethnic group. Instead, they are instruments to enhance national unity and territorial integrity, defining or sharpening a national ideology, and developing a collective agenda for social and political change. They are negotiated rather than imposed. Many constitutions in recent years have been made in the aftermath of civil conflict, and an important task of the process is to promote reconciliation among the communities previously in conflict (which cannot easily be mediated by elites). If these are the contemporary functions of constitutions, then the process for making them is crucial to developing a national consensus.

A grave lack in many newly democratizing countries is a populace that is able and willing to engage in the political process and to insist on its rights. People may be accustomed to older forms of rule, based on tradition, often hierarchical, sometimes arbitrary, with little possibility of challenging authority. They may not understand the concept of constitutional government or may be unable to mobilize the protective provisions of the constitution. A constitutional review process with a careful scheme for public participation can, to a considerable extent, familiarize the people with the concept and procedures of political authority, and win support for the idea of a limited

government that is bound by rules and accountable to the people. For this to happen, it is necessary to conduct a programme of education and discussion on the basis and forms of political authority, the working of governments, and the need for controls and accountability, based on the theory of popular sovereignty. People should be enabled to understand their constitutional history, and encouraged to assess the past and do an audit of past governments. The educational programme must enable the people to understand the nature of public power and imagine alternative forms of government, rejecting the notion of the inevitability of older systems. The process must also aim to educate the people in the values, institutions and procedures of the new constitution, and how they can participate in the affairs of the state and protect their constitutional rights. It can be an essential component of political development, inculcating elements of a democratic political culture, tolerance and pluralism. It can increase society's capacity to handle differences and conflicts, by encouraging habits of listening to others and searching together for common ground. For, unless people take responsibility for the respect for and the development of the constitution, the democratic process will remain precarious.⁶ In Kenya the participatory nature of the process gave visibility to and empowered communities hitherto marginalized by politics and the economy, such as the forest people, pastoralists, the disabled and ethnic minorities.⁷

People's participation is important in order to develop the agenda of constitutional (and social) reform. Generally the agenda is defined by elites, largely urban-based. When invited to give their views, rural communities, workers and so on are likely to present new perspectives on issues such as participation, decentralization, land, basic needs, and the accountability of members of parliament and local officials, firmly rooted in local realities. Popular engagement can bring to the dialogue different social forces, interrogating the assumptions of the elites and officials, and to some extent setting up a counterbalance to politicians. Until recently, almost everywhere, politicians have played the decisive, sometimes the exclusive, role in constitution making. Now, however, there appears to be worldwide cynicism and suspicion about the motivation of politicians and political parties serving their narrow partisan interests. The broadening of the reform agenda that comes from popular participation is an important corrective. In some countries in Asia and Africa, parties are not mass-based and do not represent segments of the people, nor are there many intermediate bodies that can speak for them. Often, if engagement of the people is desired, the only alternative is their direct participation, in slums, villages and small towns.

An important justification for popular participation is said to be the legitimacy that it confers on the constitution. If people have participated, they are more likely to have a commitment to it, even if they have not fully understood the process or the constitution, or indeed even if their participation was largely ceremonial.⁸ South Africans justifiably feel proud of their constitution. Indeed, as a distinguished judge of the Constitutional Court told one of the authors, people used to travel with a pocket-sized version of the constitution that they would bring out when confronted by overbearing officials!

This is undoubtedly an over-romantic picture of a participatory process, perhaps an exaggeration of the benefits it can confer. We know that some of the most successful constitutions, enjoying considerable legitimacy, since the mid-20th century—those of Germany, Japan, India and Spain⁹—were not made with any degree of public participation, and in each case (with the partial exception of India) the process was deliberately designed not to be very transparent. In more recent times, transitions to democracy (and market economies) in Eastern Europe have been made relatively peacefully and successfully without any active engagement of the people through a series of round tables among elites (Elster, Offe and Preuss 1998), and significant progress towards reform has been made in Chile and Indonesia in similar forms of elite accommodation. On the other hand, there are examples of participatory processes that produced constitutions which were never implemented (Eritrea) or were quickly modified (Uganda) or were frustrated in key respects (Ethiopia). Thailand's excellent constitution (of 1997), made after perhaps the most participatory process in Asia, has had little impact on the political system; many provisions are ignored, and a politician who regularly criticizes the constitution (and violates its spirit) has been elected prime minister on two successive occasions with impressive majorities. To some extent, therefore, these experiences raise important questions about the relative merits of elite bargaining and popular participation.

The critical factor may not be the legitimacy of the constitution, but the qualities of enquiry, scepticism, knowledge, confidence and organization that participation produces. The constitution-making process in Uganda was highly participatory¹⁰ and the constitution enjoyed a high degree of legitimacy among Ugandans (Moehler 2006). Devra Moehler finds that there was little correlation between participation and legitimacy, as the constitution enjoyed about an equal degree of legitimacy among those who participated in the process and those who did not. It is possible, of course, that those who did not participate nevertheless noticed that many did, and this could contribute to their own sense of the legitimacy of the process. Moehler, however, states that views on legitimacy were influenced fundamentally by the representations of political leaders in their areas, so that in pro-National Resistance Movement (NRM) areas there was general approval and in other areas general disapproval.

Some processes that were widely recognized as participatory have been seriously manipulated.¹¹

A key component of participation—civic education—is not neutral in terms of values or a country's political history.¹² In many processes there is no guarantee (and certainly no verification procedure) that the views of the people will be taken seriously or impartially or will not be distorted in the process of analysis.¹³ In an open participatory process, some groups will have an advantage over others because, for example, they have more funding or are better organized (women, for example, have generally done better than, and often at the expense of, other groups such as the disabled or ethnic minorities). A proper assessment of the impact of popular participation cannot be made if the concept of 'the people' is not disaggregated, nor without some moderation of

romanticism about ‘the people’. There is no such thing as ‘the people’: there are religious groups, ethnic groups, the disabled, women, young people, forest people, pastoralists, sometimes ‘indigenous peoples’, farmers, peasants, capitalists, workers, lawyers, doctors, auctioneers, and practising, failed or aspiring politicians, all pursuing their own agendas. They bring different levels of understanding and skills to the process. Sometimes the composition or procedure of constituent bodies privileges one or another of these groups. A participatory process can also be manipulated by warlords, ethnic entrepreneurs or religious bigots, and, led by them, the process can become a source of fundamentalism and intolerance—and deep societal divisions based on ethnicity, linguistic and religious differences. Populism can create a wedge between the people and the political ruling group that renders the prospects of a successful conclusion of the process problematic. Unless one believes in the invisible hand of the political marketplace, not all these groups can be counted on to produce a ‘good’ constitution—certainly not the politicians, who have clear personal interests and are often in a position to dominate the process.

Public participation tends to lead to numerous demands and can greatly expand the scope of the constitution (which also suggests that serious consideration must be paid to what the population in general is good at, and what experts are good at, as well as to the rules for decision making). A high degree of participation may raise expectations that cannot be, or are not, satisfied; the emphasis on culture, which often results from participation, may lead to constitutions that look to an era long gone, with little connection to national or international social or economic realities, thus widening the gap between the constitution and society. The pressures to accept the views of the people lead to complex and ambitious constitutions which the government may not (or often does not) have any intention of respecting; this not only discredits the constitution but also leads to disillusionment with the political process.

One fundamental reservation about a highly participatory process is the difficulty of building sufficient consensus, which is always necessary to make a constitution. Both because of the range of issues that emerge out of public consultation and because of the number of groups that seek recognition, decision making is complex, confidentiality is difficult to maintain, and mechanisms to develop a consensus are limited.¹⁴ Perhaps when a consensus does emerge it is more legitimate and lasting than bargains among elites. On the other hand, a product emerging from a process that politicians cannot control is likely to be greatly resisted and in due course emasculated, and only selectively enforced.

Participation has to be seen as one of the set of factors that contribute to legitimacy and democratization. These include a clear and accessible text, opportunities for people to participate in the affairs of the state, access to the institutions of justice, the opening of the political space through a bill of rights, and the effectiveness and accountability of the government. People in general are not always best qualified to make decisions on these matters, which require technical and comparative knowledge. How public participation is balanced with the contribution of experts and specialized groups is an issue that has seldom been addressed in highly participatory processes.

This study (and much of the writing on popular participation) assumes the direct participation of the people. Often there is no alternative to direct participation.¹⁵ This may explain the paradox that countries with the least developed cultures of democracy (Uganda, Ethiopia, Thailand) have had the most participatory processes with the direct engagement of people, men, women, the elderly and communities. This becomes necessary in the absence of effective intermediary institutions—parties, trade unions, non-governmental organizations (NGOs) and social groups. This also necessitates a more directive role for a body such as a constitutional commission, which has to engage in an active programme of consciousness raising. Unfortunately such a process does not usually lead to institutionalization, and participation may therefore fail to produce long-term change or create new social forces. Once the formal structures and procedures of the process are dismantled, the situation can easily revert to ‘politics as usual’, and the people become marginalized once again. Other, more enduring, forms of participation must therefore also be considered. In South Africa, for example, political parties played a key and constructive role. In contrast to their counterparts in many Asian and African countries, the parties in South Africa were genuine and effective vehicles for the representation of most societal interests, consulted with the different stakeholders, and had the authority to speak on their behalf; inter-party negotiations could substitute for direct engagement.

The Challenge of Participation

These reservations notwithstanding, the case for public participation is strong. However, the discussion above also points to the difficulties of organizing public participation in ways that minimize the risks. The challenge for participation is to avoid the perils of spontaneity and populism. It must address questions of the preparedness of the people, both psychologically and intellectually. It must include in the process methods for soliciting the views of the public and special and organized groups, and the analysis, assessment, balancing and incorporation of these views. The engagement cannot be ‘one-off’ but must be continuous, including fresh opportunities to comment on the draft, and meaningful forms of participation afterwards. Transparency and integrity are essential to win and sustain people’s trust and confidence, and to guard against the dangers of manipulation; otherwise constitution making can easily become just another form of politics, driven by narrow and short-term interests, and generating bitterness instead of goodwill. In other words, the participation must be deliberative, not the mere aggregation of interests and demands.

We use the word ‘deliberative’ to refer to a process of negotiations which is based on clear goals (the national interest and social justice) and sufficient information and knowledge, aimed at exchanges of ideas, clarification of differences, persuasion and agreement. This requires a degree of facilitation, and a critical question is who does this and under what procedures. An independent commission is perhaps the best agency for the task. Insofar as popular participation is our concern, the focus should be on the people as ‘decision makers’. Mere consultation is not adequate. The framers of the constitution must be obliged to take public views seriously into account and analyse and incorporate them into the constitution. Public views are best given not in the form of technical

recommendations but in narratives—but this privileges those who have to interpret the narratives. Some form of verification is therefore essential. The views expressed should be available for others to scrutinize. They should be analysed by a professional person or group of people who have no axes to grind, and if there are enough of them they should be presented to the drafting body and to the public in statistical as well as qualitative format.

Conclusion

When we design a process to review a constitution or start building a new one, even if the process includes popular participation, it is necessary to remind ourselves that a constitution-building process, though necessary and central, may not be sufficient to cover all aspects of the road map to peace and democracy. In many cases, constitution making is part of a wider and more complex process which involves the restoration of peace and stability, bringing armed groups and militias under control, rebuilding infrastructure, and dealing with the oppression of the past. These matters have to be handled correctly if the constitution is to have a chance to take root. These matters often raise similar dilemmas to those raised in designing a constitution process—trade-offs between the imperatives (and pressures) of the moment, on the one hand, and long-term concerns and interests on the other.

The present age has seen the adoption of many constitutions as instruments of political and social engineering, but we lack the knowledge as to their long-term impact. Are they mere stopgaps? Are they palliatives which fail to deal with the root causes of instability or authoritarianism? Do they minimize increase or ethnic tensions? And if they bring peace, at what price do they do so? We know, for example, that inclusiveness and participation can make a major contribution to democratization. However, it is desirable to problematize these concepts and to analyse their real meaning and impact in different contexts, particularly with regard to the dynamics of conflict. Under what conditions is participation valuable? What are the most effective ways to promote participation? How can we increase the effectiveness and reduce the intrusiveness of foreign assistance? In the present complex and conflict-ridden societies, a new constitution is like a delicate plant which needs careful nurturing. What does this nurturing consist of? Have we paid enough attention to the role of the courts, which are given the task of safeguarding and developing the constitution after the political process that gave birth to it has concluded? And, if it is true that there is no closure to the constitutional process, do we have adequate mechanisms to continue the conversation? It is time to research these issues if we are to both understand the consequences of constitutions and make them more effective as vehicles for democracy and social justice.

Notes

1. Between 1990 and 2000, 17 African countries, 14 Latin American countries, and nearly all the post-communist states in Eastern Europe and the former Soviet Union drastically altered or replaced their constitutions (van Cott 2000). Currently constitutional reviews are under way or the subject of negotiations in several countries, including Bolivia, Kenya, Bhutan, Nepal, Sri Lanka, the Maldives, the Solomon Islands, Bosnia and Herzegovina, Kosovo, Iraq, and the Democratic Republic of the Congo.
2. For a succinct discussion of some relevant issues, see Zartman 2003. For a somewhat different approach, see Lederach 2003.
3. On a more general note, the international community sets great store by elections as the insignia of democracy (and often the authority for exit). On the difficulties that 'premature' elections can cause, see Reilly 2003.
4. An almost classic instance of this occurred in Kenya in 2002 when Mwai Kibaki, the self-proclaimed champion of constitutionalism, won the presidential election and rapidly dropped his support for a draft constitution which had formed the principal part of his campaign. He has since fought to maintain the autocratic parts of the old constitution. See Ghai and Cottrell, forthcoming 2007.
5. This is in contrast to the attitude of constitution makers in Germany (and other European states) after World War II when confidence in the ability and judgement of the people had been shattered. As Bogdanor writes, 'There was, in the constitutions of the immediate post-war period—the Fourth Republic in France, the Italian and the German (as well as the Japanese)—an understandable revulsion against any philosophy which exalted the political abilities of the average citizen . . . Nowhere on the Continent is there to be found any genuine "belief in the common man"' (Bogdanor 1988: 8). He then goes on to make a judgement: 'Perhaps it is for this reason that the Italian, German and Japanese Constitutions have proved so much more durable than their predecessors in Central and Eastern Europe between the wars, marked by a massive positive enthusiasm for national-determination and for the fulfillment of social and economic rights. Optimism, no doubt, is rarely a good guide to constitution-making' (Bogdanor 1988: 8–9).
6. These ambitions are not utopian, as is shown by the awareness of constitutional issues and the commitment to democracy shown by Kenyans in the recent review of the constitution (Ghai 2006). Devra Moehler's research on the impact of participation in Uganda shows that people who participated became more aware of expected and actual institutional performance, obtained standards by which to assess the record of the government (and found the government wanting), and became less trusting of state institutions. There was some increase in the commitment to democratic values. Despite this, her conclusion is that, contrary to 'current optimism about participatory constitution-making, . . . citizen participation in the Ugandan process did not directly raise those citizens' support for the constitution. Quantitative analysis of survey data demonstrates that participants were no more or less supportive of the constitution than were the citizens who did not get involved' (Moehler 2006 [no page number available]).
7. One of the present authors has written, about the Kenya process, that 'The nature and degree of public participation had undoubtedly a profound impact on the process. It enlarged the agenda of reform and turned an elite affair into a national enterprise. It facilitated efforts to redefine politics and political process (and indeed substituted for ordinary politics). It was almost the first time since independence that the people engaged in "rational" and discursive politics, and focused on issues other than ethnicity. It promoted not only conversations between the people and the commission, but also among the people themselves. It produced firm articulation of the interests of groups based on non-ethnic affiliations (trade unions v. employers, rural

versus urban, tradition versus modernity, agriculture versus industry, the unemployed versus the employed, elderly versus the young, disabled versus the rest, women versus men, pastoral versus settled communities). The discourse among the people made them aware of the histories, contributions, anxieties, aspirations of others, deepening understandings that are so critical to developing national identity and unity, and a sense of justice. This approach facilitated the CKRC [Constitution of Kenya Review Commission] task of balancing different interests. In turn it gave very considerable legitimacy to the process (which has frustrated the efforts of the faction around President Kibaki to dilute the draft)' (Ghai 2006).

8. Yash Ghai was a consultant to the Constitutional Planning Committee in Papua New Guinea which prepared a draft of the independence constitution. The committee travelled throughout the country meeting people and discussing proposals for the constitution. Some years later when he returned to a village which he had visited with the committee, an old, wizened man came up to him and said with pride, 'I know you. You and I sat under that tree and we wrote the constitution'!

9. On Germany, see Merkel 1963; on Japan, see McNelly 2000 and Koseki Shoichi 1998; on India, see Austin 1966; and on Spain, see Llorente 1988.

10. The Uganda Constitutional Commission says that between 1988 and 1992 it held 86 district seminars; attended educational forms in all 813 sub-counties; returned to each sub-county to collect oral and written memoranda; analysed 25,547 memoranda; officiated over a student essay contest; and organized regular media discussions (Waliggo 2001).

11. Aili Mari Tripp (2003) argues that in Uganda President Yoweri Museveni took various steps before the Uganda process started to soften opposition to his proposals and to win over potential opponents by enacting legislation favouring their interests. A ban was imposed on activities of political parties, except for Museveni's National Resistance Movement (NRM), and serious restrictions were placed on civic groups considered favourable to opposition groups conducting civic education. Tripp also argues that the Constitutional Commission itself, appointed by Museveni, was far from independent and tried to influence the views of the public in favour of his agenda. There is a widespread perception among many scholars and commentators that the NRM used the process to consolidate and legitimize its own hold on political power. The largest number of submissions came from local councils, which were regarded as 'memoranda of the NRM' (Mugwanya 2001).

12. In Kenya President Daniel Arap Moi was extremely resistant to civic education provided under the auspices of the foreign community in conjunction with local NGOs, and used some members of the constitutional commission to try to ban their activities by setting up rules governing civic education. Ghai disallowed this as violating the text and spirit of the law for the process. In Uganda Tripp asserts that NGOs seen to be favourable to the opposition faced serious restrictions (Tripp 2003).

13. In both Afghanistan and Iraq, under pressure from local organizations and to some extent external pressures, the constitutional commissions were compelled to consult the people, but there is little evidence that any attention was paid to their views (even though in both instances a secretariat was set up to analyse the views). In Afghanistan, the commission actually rewrote the report on the views of the public prepared by the secretariat to remove references to the predominance of views that did not fit its draft constitution (authors' personal knowledge). In Uganda the Constitutional Commission was accused of screening out views of people who advocated proposals opposed to those of the NRM (although the evidence is not conclusive: see Mugwanya 2001: 169).

14. The Philadelphia Convention, as is well known, operated on the principle of strictest confidentiality, to the extent that no minutes of its proceedings were kept officially. Madison,

who in fact kept detailed personal notes, justified secrecy as essential to consensus building and rational debate as it would be easier for delegates to be persuaded and to change their views if this process were not conducted in public. Jon Elster has noted two consequences of secrecy: 'On the one hand, it will tend to shift the center of gravity from impartial discussion to interest-based bargaining. In private there is less need to present one's proposal as aimed at promoting public good. On the other hand, secrecy tends to improve the quality of whatever discussion does take place because it allows framers to change their mind when persuaded of an opponent's view. Conversely, while public debate drives out any appearance of bargaining, it also encourages stubbornness, overbidding, and grandstanding in ways that are incompatible with genuine discussion. Rather than fostering transformation of preferences, the public setting encourages their misrepresentation' (Elster 1995: 388).

15. The possibilities of direct engagement are, of course, very limited in situations of conflict, as in Afghanistan and Iraq, and in parts of Sri Lanka (for example). These are often situations where truly representative organizations are few and far between. This study is concerned with situations where there are possibilities of direct engagement.

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