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Democratic Governance and Post-Conflict Transitions

William Maley*

“Post-conflict transition” is something of a misnomer. Conflicts rarely end neatly, and “transition” is a deceptively simple label for a complex set of interconnected processes of change in political, social and economic relations both within and beyond the borders of a given territorial unit. Such change is often neither smooth nor linear, but ragged, and with achievements in some areas being offset by reverses in others. Nonetheless, transition matters, not least because if brought to successful fruition it can make an enormous difference to generations of ordinary people. For this reason, it is important to identify the circumstances that militate in favor of success, and to respect the lessons of recent episodes in which the intellectual, material and human resources of the wider world have been deployed to assist transition in states which have experienced the scourge of conflict.

Contrary to popular belief, international organizations and their key members have long been involved in addressing aspects of political transition.¹ The notion of “self determination” which President Woodrow Wilson thrust into global political discourse² demanded not only some approach to defining the “self,” but also some institutional devices by which “determination” of the “self” could be accomplished. These issues were not at all straightforward, but at a practical level they resulted in events such as the 1935 Saarland plebiscite, and a range of votes held under United Nations auspices during the wave of decolonization that followed the Second World War. However, it is only in the last two decades that political devices of this sort have been depicted as

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¹ See Seth G. Jones and James Dobbins, *The UN's Record in Nation Building*, 6 Chi J Intl L 703 (2006); Simon Chesterman, *You, The People: The United Nations, Transitional Administration, and State-Building* 11–47 (Oxford 2004); James Dobbins, et al, *The UN's Role in Nation-Building: From the Congo to Iraq* (RAND 2004).

² See Alfred Cobban, *National Self-Determination* 19–22 (Oxford 1945).

instruments through which to give effect to a right to “democratic governance.”³ With a distinct international organization—the International Institute for Democracy and Electoral Assistance, or “International IDEA”—now charged with facilitating such processes at the technical level, the UN finds itself faced with a curious dilemma: in political transitions, it is almost unthinkable to put forward a roadmap for political change that does not involve at least some form of popular election, no matter how unpropitious the circumstances may appear to be.

Yet there are strong grounds for arguing that effective post-conflict transition involves far more, and that unless a range of other measures are taken, the holding of elections will be a waste of time, effort, and money. The objective of this essay is to identify some of these deeper requirements of transition that must be addressed if a right to democratic governance is to be vindicated. It is divided into six sections. The first identifies some of the challenges of governance which prolonged and debilitating conflict tends to produce. The succeeding four sections discuss in turn the circumstances surrounding the attempts to foster democratic processes in Namibia, Cambodia, Afghanistan, and Iraq. In conclusion, the final section explores some implications for multilateral action, of which the most important is that the circumstances required for democratic governance to take root are exacting, and that direct international intervention is rarely an effective instrument for bringing this about. Rather than easing the way for more applications of force,⁴ we would do better to reflect on how blunt is the instrument that intervention offers.

I. DIMENSIONS OF DEMOCRATIZATION

Defining “democracy” has been a central preoccupation of political theorists for many years. Issues relating to the nature of choice and participation, to the role of representation in “democratic” systems, and to the institutional architecture of a democratic order have all generated extensive literatures.⁵ Yet, from the point of view of officials concerned with practical matters, one of the simplest definitions is also one of the most useful, namely that democracy is a political system marked by institutional arrangements that permit citizens to

³ See Gregory H. Fox and Brad R. Roth, eds, *Democratic Governance and International Law* 1–22 (Cambridge 2000).

⁴ This is suggested, for example, by John Yoo in his contribution to this issue. See John C. Yoo, *Force Rules: UN Reform and Intervention*, 6 Chi J Int L 641 (2006).

⁵ See, for example, Gerry Mackie, *Democracy Defended* (Cambridge 2003); Andrew Reynolds, ed, *The Architecture of Democracy: Constitutional Design, Conflict Management, and Democracy* (Oxford 2002); Carole Pateman, *Participation and Democratic Theory* (Cambridge 1970); Hanna Fenichel Pitkin, *The Concept of Representation* (California 1967).

change their government without violence.⁶ This captures the important relationship between democracy and accountability, and is undoubtedly meaningful for peoples trapped in totalitarian, authoritarian, or sultanistic systems where the ruled have no say in choosing their rulers. Of course, a definition such as this leaves many important questions unresolved. Robert Dahl, for example, has highlighted two significant dimensions of democratization, namely “contestation” (between aspirants to political office) and “participation” (of the population in choosing rulers).⁷ Is one more important than the other? Should “contestation” be open to all comers, even those hostile to a democratic order? Is infrequent “participation” any more than a recipe for (at best) “delegative” democracy, or (at worst) an elected dictatorship?⁸ These are valid concerns even in well-entrenched liberal democratic systems. In states emerging from severe conflict, a more basic set of concerns may need to be addressed, concerns that fundamentally define the environment in which the attempt to build a democratic system is being made.

In some territories, a fundamental problem is that of state disruption, breakdown, or collapse. Political transition is more likely to be straightforward when it involves simply a change in the identity of those who control the instrumentalities of the state. It is far more demanding when those instrumentalities no longer function, so that new rulers inherit only the symbols of state power (even though the public may expect them to discharge all the responsibilities associated with control of a fully-functioning state). The erosion of state capacity is itself a complex phenomenon, in which many different factors can play some part: fiscal crises through excessive dependence on unstable revenue sources; internal political conflict over ideology, identity, or resources; counter-systemic mobilization by groups at the mass level; even meddling by neighboring states.⁹ Rebuilding a collapsed state is a difficult task, because in the meantime new groups can take shape with no particular interest in seeing the state recover. The problem of state disruption tends to be aggravated by an erosion of interpersonal trust,¹⁰ making it exceedingly difficult to reconstitute a consensually-unified elite with some sense of civic duty. Yet

⁶ See Karl R. Popper, 2 *The Open Society and Its Enemies* 151 (Princeton 5th ed 1966). A similar definition is advanced by Joseph A. Schumpeter, *Capitalism, Socialism and Democracy* 269 (George Allen & Unwin 5th ed 1976).

⁷ Robert A. Dahl, *Polyarchy: Participation and Opposition* 4 (Yale 1971).

⁸ See Guillermo O'Donnell, *Delegative Democracy*, 5 J Democracy 55 (Jan 1994).

⁹ For a general discussion, see Simon Chesterman, Michael Ignatieff, and Ramesh Thakur, eds, *Making States Work: State Failure and the Crisis of Governance* (United Nations University 2005).

¹⁰ See William Maley, *Institutional Design and the Rebuilding of Trust*, in William Maley, Charles Sampford, and Ramesh Thakur, eds, *From Civil Strife to Civil Society: Civil and Military Responsibilities in Disrupted States* 163–79 (United Nations University 2003).

one clear lesson is that without such an elite, and without a culture based on some threshold degree of cooperation, democratic political arrangements will be very difficult to sustain. As Larry Diamond has put it, "The development of a pattern, and ultimately a culture, of *moderation, accommodation, cooperation, and bargaining* among political elites has emerged as a major theme of the dynamic, process-oriented theories of democratic transition and consolidation."¹¹ A mistake sometimes made by those who design transitions is to underestimate the scale of the problem that state disruption creates: in the early phases of transition when the state has largely collapsed, struggles necessarily center on symbolic issues, since the state has little or no distributive capacity; yet struggle over symbols can easily heighten, rather than mitigate, the more corrosive forms of distrust.

Another concern is that of finding mechanisms to legitimate new political authorities. The importance of legitimation—that is, grounding political power in generalized normative support—can hardly be overstated: it has always been a major concern of political thinkers. Legitimacy, however, can be produced by means other than democratic sanctification. Max Weber in his writings highlighted the roles that could be played by tradition and charisma in generating legitimate authority. In conflict-ridden societies, established mechanisms of political legitimation may have broken down; indeed, there may be no single mechanism that is salient for all politically-significant elements of the population. Where this is the case, it may be necessary to attempt to weave a number of strategies of legitimation together, the risk being that to some degree they may also generate conflicting symbolic messages. Legitimation is central to the process of *consolidation* of democracy, which Diamond defines as "the process of achieving broad and deep legitimation, such that all significant political actors, at both the elite and mass levels, believe that the democratic regime is the most right and appropriate for their society, better than any other realistic alternative they can imagine."¹² Yet since it is grounded in changing attitudes and beliefs, consolidation comes only with time. New institutions go through phases of infancy and adolescence before they reach an institutionalized state of maturity, and during these phases they are extremely vulnerable to attack from the very forces which they may have been designed to constrain.

This is one aspect of the wider "spoiler problem" that haunts many post-conflict transitions.¹³ Tragically, it is cheaper and easier to be a spoiler than a builder, and as a result, many "peace processes" have had to cope with parties that are entirely opposed to a settlement other than on their own exclusive

¹¹ Larry Diamond, *Developing Democracy: Toward Consolidation* 165–66 (Johns Hopkins 1999).

¹² Id at 65.

¹³ See Stephen John Stedman, *Spoiler Problems in Peace Processes*, 22 Intl Security 5 (Autumn 1997).

terms, or are ready to resort to destructive behavior as a device for securing benefits which they would otherwise be denied. Finding mechanisms to deal with spoilers can be exceedingly difficult. "Total" spoilers may be impossible to accommodate, and even "partial" spoilers may voice demands that other, more constructively-minded parties nonetheless find difficult to accept. A robust, neutral security force¹⁴ can send a useful signal to "partial" spoilers not to press their claims too far, but can also offer a tempting target for "total spoilers" to strike as a way of signaling their own ongoing political significance.

This brings us to a final concern of real significance: the strength of commitment of the wider world to processes of transition which global actors may have played some role in initiating. Great powers are fickle: their staying-power can be sapped by developments in their own internal politics. Governments in democratic countries can be displaced, sometimes as a result of failure at the polls, sometimes through the functioning of constitutional limitations on the number of terms that an executive leader may serve. Moreover, even when a government retains office, it may not legally be in a position to honor its past commitments, since the resources it needs to do so may not be under its exclusive control. For example, the Vietnam War ended in 1975 in part because the US Congress, unable to identify a credible strategy for success, was no longer prepared to appropriate the sums required to sustain a US commitment to the government of South Vietnam.¹⁵ Transitions are not only time-consuming, but are also extremely expensive.

There is no doubt that many senior UN officials are alert to these complexities.¹⁶ That said, the pressures from member states to produce swift solutions to complex problems have locked UN staff into a rather simple model of transition, based on the notion of "free and fair elections," either for a constituent assembly or for specific constitutional offices such as a presidency or a parliament. The UN Secretary-General in 1991 made a first attempt to elaborate such a notion,¹⁷ but the most detailed account of what is required has been offered by the political scientists Jørgen Elklit and Palle Svensson. "Freedom," they argue, "entails the right and the opportunity to choose one

¹⁴ On the virtues of such forces, see Barbara F. Walter, *Committing to Peace: The Successful Settlement of Civil Wars* 26–27 (Princeton 2002).

¹⁵ See Melvin Laird, *Iraq: Learning the Lessons of Vietnam*, 84 Foreign Aff 22 (Nov/Dec 2005); Guenter Lewy, *America in Vietnam* 211–12 (Oxford 1978).

¹⁶ See James D. Fearon and David D. Laitin, *Neotrusteeship and the Problem of Weak States*, 28 Intl Security 5 (Spring 2004).

¹⁷ United Nations, *Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections*, Report of the Secretary-General, UN Doc A/46/609 (1991).

thing over another.”¹⁸ This implies a coercion-free environment for voters. Key freedoms (for both voters and candidates) include freedom of movement, assembly, association, and speech, as well as freedom from intimidation, and universal adult franchise. “Fairness,” they argue, means impartiality, and “involves both *regularity* (the unbiased application of rules) and *reasonableness* (the not-too-unequal distribution of relevant resources among competitors).”¹⁹ Criteria for fairness include independent electoral authorities, impartial voter education, fair media access, secure polling stations and ballot boxes, and appropriate, transparent, and reviewable scrutiny procedures.²⁰ This has opened the door for an entire industry of international electoral administration, assistance, and observation, much of it carried out by professionals of exemplary skill.²¹

What this model of transition does *not* do is even contemplate, let alone address, the political consequences of electoral laws, an issue that political scientists have long recognized as a central issue in crafting democratic transitions.²² At one level this is not surprising. As Reilly and Reynolds have argued, there is “no perfect election system, and no ‘right’ way to approach the subject of electoral system design.”²³ Nonetheless, it is by now widely recognized that some electoral systems seek to give effect to a “majoritarian” vision intended to produce a strong and effective government, while others seek to give effect to a “proportional” vision, in which a wide range of societal interests can be institutionally represented.²⁴ In the aftermath of a major conflict, it is likely that there will be strong demands for both an effective *and* an inclusive, finely-representative government, something that highlights the extreme difficulty of satisfying the different voices that intense conflict can generate. As a consequence both of striking a balance between different democratic visions and

¹⁸ See Jørgen Elklit and Palle Svensson, *What Makes Elections Free and Fair?*, 8 J Democracy 32, 35 (July 1997).

¹⁹ Id.

²⁰ Id at 35–39.

²¹ See Eric C. Bjornlund, *Beyond Free and Fair: Monitoring Elections and Building Democracy* (Johns Hopkins 2004).

²² See Kirsti Samuels, *Post-Conflict Peace-Building and Constitution-Making*, 6 Chi J Intl L 663 (2006); Benjamin Reilly, *Elections in Post-Conflict Societies*, in Edward Newman and Roland Rich, eds, *The UN Role in Promoting Democracy: Between Ideals and Reality* 113–34 (United Nations University 2004); Pippa Norris, *Electoral Engineering: Voting Rules and Political Behavior* (Cambridge 2004); Benjamin Reilly, *Democracy in Divided Societies: Electoral Engineering for Conflict Management* (Cambridge 2001).

²³ Benjamin Reilly and Andrew Reynolds, *Electoral Systems and Conflict in Divided Societies* 54 (National Academy 1999).

²⁴ G. Bingham Powell, Jr., *Elections as Instruments of Democracy: Majoritarian and Proportional Visions* (Yale 2000).

of the wider concerns defining the environment in which democratization is attempted, solutions to a divided society's problems may be difficult to devise and to implement. That is certainly a lesson of some recent episodes of attempted transition.

II. NAMIBIA

A useful starting point in analyzing recent cases of attempted transition is the process that led to the independence of Namibia in 1990, after years of struggle between the South African occupiers and pro-independence forces. The transition of Namibia to independence was accomplished in a remarkably smooth manner and prompted a high degree of optimism about what multilateral involvement could add to such processes. In hindsight, however, the Namibian case was not so much a precedent for future operations as an indicator of how fortunate a concatenation of circumstances was required to bring such transitions to a happy conclusion.

The question of Namibia was one that had long been a preoccupation of the UN. Previously a German colony, it had become subject to a League of Nations mandate (under the name of "Southwest Africa") in 1920, with South Africa as the mandatory power. When the mandate system was replaced with the UN Trusteeship system, South Africa maintained that the situation of its control of the territory remained unchanged, and continued to hold to this position even after the International Court of Justice concluded in an Advisory Opinion²⁵ that General Assembly Resolution 2145 (XXI) of October 27, 1966, recognized by the Security Council in Resolution 276 of January 30, 1970, had been effective in terminating the mandate. This created a stalemate; progress on independence for what most countries (and the UN) had come to call "Namibia," therefore, depended upon a political breakthrough, and for a long while this seemed unlikely. South Africa viewed its control of Namibia as an asset to be traded in exchange for political change elsewhere in Southern Africa, where the presence of Cuban troops, and the persistence of Soviet influence, linked the region to wider Cold War tensions. Change came about in the late 1980s, not least because of leadership and ideological change in the USSR, where Mikhail Gorbachev's doctrine of "New Thinking" emphasized the need to find solutions to regional conflicts. Security Council Resolution 435 of September 29, 1978, had laid a foundation for transition in Namibia, and on December 22, 1988, South Africa became party to an agreement with Angola and Cuba which provided a more

²⁵ Advisory Opinion, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970)*, 1971 ICJ 16 (June 21, 1971).

specific framework.²⁶ This agreement led directly to the deployment from April 1989 to March 1990 of the “United Nations Transition Assistance Group” (“UNTAG”) and to Namibian independence on March 21, 1990.

The UN’s role in the Namibian transition was substantial, but formally indirect. A South African administration remained in place, headed by an Administrator-General, and it was responsible for the physical conduct and supervision, under UN control, of an election for a Constituent Assembly to draft a new constitution. With a view to fostering a spirit of compromise, the parties to the 1988 Accords had agreed that a two-thirds majority would be required to adopt a new constitution. As expected, when the election was held, a majority of the vote, 57.3 percent, was cast for the South West African People’s Organization (“SWAPO”), which had been involved in a lengthy guerrilla campaign against the South African presence. However, its main opponent, the Democratic Turnhalle Alliance, and a range of smaller parties, won sufficient votes to deny SWAPO a two-thirds majority, and prompted an intra-elite compromise on the constitution. While UNTAG experienced nineteen fatalities during the deployment, and the whole mission briefly teetered on the edge of failure in late March 1989 when some SWAPO radicals mounted an armed incursion from Angola, the mission on the whole was a remarkable success.²⁷

What was perhaps overlooked was how easily the mission could have gone awry if circumstances had been even slightly different. First, Namibia had an excellent infrastructure and a functioning state administration over which the new Namibian authorities would be positioned to assume control. Namibia was not a “failed state” in any meaningful sense of the term. Second, the mission benefited from long and careful planning. It had been a significant preoccupation of the UN General Assembly for much of its life, and a range of competent officials had been involved in discussions over its fate. One of the most important was Marti Ahtisaari, who served as Special Representative of the Secretary-General (“SRSG”) during UNTAG’s deployment. Third, the 1988 Accords were a direct product of a convergence of interests among the key external and internal actors, which gave them a robustness that not all such agreements have enjoyed. Indeed, when rogue SWAPO elements mounted the

²⁶ Agreement Among the People’s Republic of Angola, The Republic of Cuba, and the Republic of South Africa (1988), 28 ILM 957 (1989).

²⁷ For a general discussion, see Henning Melber, *Decolonization and Democratization: The United Nations and Namibia’s Transition to Democracy*, in Newman and Rich, *The UN Role in Promoting Democracy* at 233–57 (cited in note 22); Virginia Page Fortna, *Success and Failure in Southern Africa: Peacekeeping in Namibia and Angola*, in Donald C.F. Daniel and Bradd C. Hayes, eds, *Beyond Traditional Peacekeeping* 282–99 (St Martin’s 1995); Lionel Cliffe, et al, *The Transition to Independence in Namibia* (Lynne Rienner 1994); Robert S. Jaster, *The 1988 Peace Accords and the Future of South-western Africa* 33–46 (Intl Inst for Strategic Studies 1990).

March 1989 incursion, they met with fury from some of SWAPO's key backers in the Organization of African Unity. Fourth, the support for the process from the Security Council, with clear backing from the United States and the Soviet Union, meant that the approach to conflict resolution that the UNTAG mission embodied could claim a high degree of international legitimacy. Fifth, in spite of the flurry caused by the March 1989 incursion, the process did not come under serious attack from spoilers (although Ahtisaari had to endure a certain amount of abuse over his courageous decision to approve the release of the South African force to deal with the immediate threat of the rogue incursion). Sixth, Namibia had a small population—less than a million Namibians enrolled to vote—and the degree of ongoing international interest after independence was sufficient to sustain some economic progress and a high degree of political institutionalization. Finally, Namibia's new political leadership displayed notable maturity and laid the basis for civil politics. Namibians were exceedingly lucky to find these factors at play. There is no particular reason to believe that all peoples emerging from an era of prolonged and debilitating conflict will be so fortunate.

III. CAMBODIA

A sense of pride in what had been achieved with the UNTAG model was one of the factors that contributed to the larger mission in Cambodia in 1992–1993. However, the Cambodian situation was markedly more complex than that in Namibia, and the mission of the United Nations Transitional Authority in Cambodia (“UNTAC”) much more ambitious.

Cambodia's tragic history in the last decades of the twentieth century accounted for these complexities.²⁸ In 1970, a coup led by General Lon Nol and Prince Sisowath Sirik Matak overthrew Cambodia's longtime ruler, Prince Norodom Sihanouk. Corrupt and inefficient, the Lon Nol regime was in turn overthrown in April 1975 by the radical Khmer Rouge (“Red Khmer”) militia. Driven by a murderous and paranoid ideology, these fanatics embarked on wholesale social reorganization and mass murder of their perceived enemies.²⁹ They also clashed with their larger Vietnamese neighbor, and this proved their downfall. In December 1978, Vietnam invaded Cambodia and overthrew the Khmer Rouge regime, replacing it with a pro-Vietnamese regime headed first by Heng Samrin and then by Hun Sen. The consequence was to create a multi-layered Cambodian problem, both internal and regional. The internal problem

²⁸ For a general discussion, see William Maley, *Regional Conflicts: Afghanistan and Cambodia*, in Ramesh Thakur and Carlyle A. Thayer, eds, *Reshaping Regional Relations: Asia-Pacific and the Former Soviet Union* 183–200 (Westview 1993).

²⁹ See Ben Kiernan, *The Pol Pot Regime: Race, Power, and Genocide in Cambodia under the Khmer Rouge, 1975–79* (Yale 2d ed 2002).

related to the acceptability to Cambodians of what, at least in its early phases, was a classic puppet government: the new regime encountered ongoing resistance not just from surviving elements of the Khmer Rouge, but also from non-communist factions such as the Khmer People's National Liberation Front ("KPNLF"). The larger problem, however, was regional. Notwithstanding the Khmer Rouge's abominable record of atrocities, the member states of the Association of South-East Asian Nations ("ASEAN") stood firmly in opposition to the use of force by one state to overthrow the government of another. They therefore refused to deal with Heng Samrin, whose regime depended upon Soviet subventions, as well as backing from Vietnamese troops, which were finally withdrawn only in 1989.

The withdrawal of Soviet troops opened the door for progress on the Cambodian issue. China, a long-term backer of the Khmer Rouge, moved to normalize its relations with the Soviet Union, and this created opportunities to seek Chinese backing to push the Khmer Rouge into a settlement. The terms of any settlement were always going to be awkward, since Hun Sen's regime enjoyed firm control over coercive state instrumentalities, which other parties feared would be used to their detriment during any transition culminating in an election. This impasse was finally broken in the Paris Accords of October 23, 1991, based on ideas developed by US Congressman Stephen Solarz and Australian Foreign Minister Gareth Evans. The Accords provided for a "Supreme National Council," chaired by Prince Norodom Sihanouk, to act as a repository of Cambodia's sovereignty, and for a UN transitional authority that would actually take control of key state instrumentalities (to ensure a level playing field), in anticipation of elections for a Constituent Assembly, which the UN authority would itself organize and conduct.³⁰ At a superficial level, the project was a considerable success. Despite delays in the deployment of UNTAC following its establishment by Security Council Resolution 745 of February 28, 1992, the elections were held on time in May 1993, a new constitution was drafted by the elected Constituent Assembly, and the Assembly itself became the legislative body under the new system of constitutional monarchy. The process was hailed as a success by regional states, and Cambodia was rapidly reintegrated into regional political processes.

However, as an exercise in instituting democratic governance, its results were far patchier. UNTAC proved unequal to the task of bringing the coercive instrumentalities of the state under effective international control. While obstreperous behavior by the Khmer Rouge received a great deal of attention, the more serious problem in the run-up to the election was the campaign of

³⁰ For the full text of the Accords, see *The United Nations and Cambodia 1991–1995* 132–48 (United Nations 1995).

intimidation mounted by cadres of Hun Sen's Cambodian People's Party ("CPP"). The CPP went into the election confident that it would secure an easy victory. In fact, when votes were tallied, it secured only 38.2 percent of the vote, compared with 45.5 percent won by the royalist FUNCINPEC party, and 16.3 percent by a mixture of other parties and candidates. At this point, the CPP flexed its muscles. It managed to force FUNCINPEC—and, more disturbingly, the Special Representative of the UN Secretary-General—to accept a post-election bargain in which the FUNCINPEC leader, Prince Norodom Ranariddh, would become "First Prime Minister" and Hun Sen would (paradoxically) be named "Second Prime Minister." The consequence was that CPP loyalists retained control of the state's coercive capacity. For the 61.8 percent of voters who in the face of considerable danger had done all they could to eject the CPP from office, the outcome could only have been a bitter disappointment. The upshot was grimly predictable. Hun Sen made methodical use of "salami tactics" to slice away at his opponents and finally overthrew Ranariddh in a coup in July 1997. While the suggestion has been advanced that this was "validated" by Cambodia's election of July 26, 1998,³¹ the sad reality is that the party that lost the 1993 election ran the 1998 election, in a fashion which made a mockery of freedom and fairness.³²

The UNTAC mission was successful in resolving a "regional problem," but as an exercise in democratization, it was largely a failure. A new "democracy" that is compromised from the outset and breaks down in less than five years clearly is not what effective democratization is about. There were a number of reasons why the fortunate experience of Namibia was not replicated. First, the interests of the Cambodian parties had not converged to favor a democratic settlement. The Khmer Rouge accepted the Paris Accords only under Chinese pressure, and the CPP did not accept them in good faith. Each of these forces moved (in its own way) to subvert the process to which it was nominally committed, and once the results of the 1993 election were declared, the CPP acted as a serious spoiler. Second, the UN was not organizationally equal to exercising the control over the Cambodian state that the Accords envisaged; the components of the mission that worked most smoothly were those that did not depend on cooperation from officials loyal to the CPP and drew on professional staff contributed by member states.³³ Third, the Secretary-General's Special

³¹ Alex J. Bellamy, Paul Williams, and Stuart Griffin, *Understanding Peacekeeping* 126 (Polity 2004).

³² See John M. Sanderson and Michael Maley, *Elections and Liberal Democracy in Cambodia*, 52 *Austl J Intl Aff* 241 (1998).

³³ For varying perspectives on UNTAC, see MacAlister Brown and Joseph J. Zasloff, *Cambodia Confounds the Peacemakers 1979–1998* (Cornell 1998); Sorpong Peou, *Conflict Neutralization in the Cambodia War: From Battlefield to Ballot-Box* (Oxford 1997); Michael W. Doyle, *UN Peacekeeping in*

Representative, Yasushi Akashi, proved weak at the very points in the process when strength was most needed—a willingness to compromise is an important component of democratic culture, but this does not mean that compromise is always desirable. Fourth, as soon as the “regional” problem of Cambodia was solved, the wider world began to lose interest, and by 1998, there was little interest any more in demanding that Cambodian elections meet acceptable international standards. Democratization, unfortunately, can be betrayed by its ostensible friends as well as its obvious enemies.

IV. AFGHANISTAN

The case of Afghanistan differs from those of Namibia and Cambodia in a number of instructive ways. Substantial involvement on the part of the wider world came only in 2001 in the aftermath of the September 11 attacks and was far more complex, given that the Afghan state had substantially collapsed. In contrast to the cases of Namibia and Cambodia, “democratization” in Afghanistan came in the aftermath of a major international intervention, albeit one well justified by both legal and political considerations.³⁴ Afghanistan also dwelt in a much more threatening environment than either Namibia or Cambodia, and the Taliban movement, which had imposed a pathogenic form of religious extremism on ordinary Afghans, was substantially a creation of the Inter-Services Intelligence Directorate (“ISI”) of the Pakistan armed forces.³⁵ In addition, the UN’s operational role through the United Nations Assistance Mission in Afghanistan (“UNAMA”), established by Security Council Resolution 1401 of March 28, 2002, was much less forceful than in Namibia or Cambodia, with a “light footprint” being its objective.³⁶ It is too early to make a final judgment on the process of political transition that Afghanistan has experienced, but there are a number of lessons that can already be derived from events since the collapse of Taliban power.

Few states have endured turmoil of the kind that afflicted Afghanistan in the last quarter of the twentieth century.³⁷ A Marxist coup in April 1978 brought to power an immature and fragmented gaggle of revolutionaries who launched

Cambodia: UNTAC's Civil Mandate (Lynne Rienner 1995); Trevor Findlay, *Cambodia: The Legacy and Lessons of UNTAC* (Oxford 1995).

³⁴ Over a decade earlier, the UN Secretary-General had canvassed the possibility of holding “free and fair elections” in Afghanistan, but events in Afghanistan had rendered this impossible. For details, see William Maley and Fazel Haq Saikal, *Political Order in Post-Communist Afghanistan* 23–24 (Lynne Rienner 1992).

³⁵ See Rizwan Hussain, *Pakistan and the Emergence of Islamic Militancy in Afghanistan* 200–38 (Ashgate 2005).

³⁶ Security Council Res No 1401, UN Doc S/RES/1401 (2002).

³⁷ See William Maley, *The Afghanistan Wars* (Palgrave Macmillan 2002).

an attack on key symbols and leadership in Afghan society before turning with near-equal ferocity on each other. A consequence was the loss of state revenues as swathes of the country slipped from government control into the hands of groups in the Afghan resistance (Mujahideen). In December 1979, in the hope of salvaging pro-Soviet rule, the USSR invaded Afghanistan and installed a dependent regime. Soviet troops were finally withdrawn under the influence of the doctrine of “New Thinking” by 1989, but Soviet aid to the regime continued. Nonetheless, when that aid was cut off at the end of 1991, the regime collapsed shortly afterwards. The Mujahideen, however, did not inherit a functioning state, and a struggle for control of the symbols of the state broke out between moderate elements with support in Afghanistan, and extremist groups backed by Pakistan, of which the Taliban movement, which first emerged in 1994 and seized Kabul in September 1996, was the most eccentric.

With the overthrow of the Taliban in 2001, the UN was immediately drawn in to promote an elite settlement bringing together the Taliban’s key Afghan opponents, and the result was the Bonn Agreement of December 5, 2001.³⁸ Carried out under the guidance of UN envoy Lakhdar Brahimi, the negotiations provided for the popular Hamed Karzai to become Chairman of an Interim Administration; an “Emergency Loya Jirga” (Great Assembly) to be held to turn this into a more broadly-based “Transitional Administration”; a “Constitutional Loya Jirga” to craft a new constitution; and elections to choose occupants of the main elected offices of state. All of these milestones were achieved, with Karzai being elected President on October 9, 2004 with 55.4 percent of the vote. Yet Afghanistan is by no means out of the woods, and there are reasons to be seriously concerned about its prospects.

First, Afghanistan is not in a “post-conflict” transition. Violence continues to mar the daily lives of ordinary Afghans, and coalition forces as well as Afghan officials have been targeted for terrorist attack.³⁹ The inability of the Karzai government to provide security could significantly affect its standing. This failing reflects the sad reality that a collapsed security sector cannot be re-created overnight, since effective militaries depend on a strong ethos of institutional loyalty that cannot be constructed by decree. Second, there is a wealth of potential spoilers in Afghanistan. Some are obvious. These include remnants of al Qaeda and the Taliban, and the radical Hezb-e Islami of Gulbuddin Hekmatyar. Others are outside Afghanistan’s boundaries; here one should note the malign effects of Pakistan’s accommodation of prominent Taliban who operate openly from the city of Quetta. Others are latent, and it is important to

³⁸ United Nations, *Agreement on Provisional Arrangements in Afghanistan Pending the Re-establishment of Permanent Government Institutions*, UN Doc S/2001/1154 (2001).

³⁹ Carlotta Gall, *Mood of Anxiety Engulfs Afghans as Violence Rises*, NY Times A1 (June 30, 2005).

be alert to the possibility that in certain circumstances, actors who are apparent supporters of the transition process might turn against it—if, for example, the voting system for parliamentary elections denied them the representation to which they believed they were entitled.⁴⁰ Third, Afghanistan has become a major venue for opium cultivation,⁴¹ and while it would be a considerable exaggeration to describe Afghanistan as a “narco state,” the ubiquity of this illicit industry undermines efforts to build a civil economy. Fourth, the strategic environment of Afghanistan remains dangerous, not just as a result of Pakistani meddling, but also because Iran, if exposed to unpalatable external pressure, might respond by stirring up trouble in Afghanistan. Fifth, Afghanistan has suffered from the shift of attention to Iraq as a theater of military operations.

The irony here is that there was initially every reason to be optimistic about Afghanistan. The use of force to overthrow the Taliban was widely accepted in the aftermath of the September 11 attacks, both in statements of key states and in the higher organs of the UN.⁴² Most ordinary Afghans were happy to welcome an international intervention as a rescue mission rather than as a threat to their interests. Two developments, however, caused a serious loss of momentum. One was the public blocking by the Bush administration of the expansion of the International Security Assistance Force beyond Kabul.⁴³ The other was the slow flow of resources to support the transition.⁴⁴ The message of these developments for Afghan political actors was stark: the wider world, despite its rhetoric, was not committed to Afghanistan for the long haul. This is exactly the kind of signal that undermines efforts to replace zero-sum politics with a culture of give-and-take, and weakens the prospects for the consolidation of democratic governance.

V. IRAQ

In Iraq, as in Afghanistan, “democratization” was preceded by a major intervention that overthrew the regime of Saddam Hussein. Yet despite the holding of an election for a Transitional National Assembly on January 30, 2005, the Iraq case offers a textbook example of how severe the difficulties following

⁴⁰ William Maley, *Democracy in Afghanistan: Elections Are Not Enough*, 61 *The World Today* 19 (Apr 2005).

⁴¹ Barnett R. Rubin, *Road to Ruin: Afghanistan's Booming Opium Industry* (Center for American Progress 2004).

⁴² Gerry Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* 334 (Cambridge 2004).

⁴³ See Alan Sipress, *Peacekeepers Won't Go Beyond Kabul, Cheney Says*, *Wash Post* A26 (Mar 20, 2002).

⁴⁴ See *Afghanistan Reconstruction: Deteriorating Security and Limited Resources Have Impeded Progress; Improvements in U.S. Strategy Needed* (United States General Accounting Office 2004).

an intervention can prove to be.⁴⁵ Only the bravest of observers would confidently predict that the outcome of the Iraq intervention will be the establishment of a consolidated democracy. The Iraq case plainly shows that the overthrow of an autocracy does not automatically lead to democracy. On the contrary, in the absence of careful planning it can easily lead to chaos and mayhem.

Regime change in Iraq was the result neither of a carefully-planned process of negotiated change, nor of a widely accepted act of self-defense against an aggressor. Operation Iraqi Freedom was mounted as a result of a policy decision taken by the United States, backed by the United Kingdom, Australia, and Spain. The policy justification, namely the threat allegedly posed by Iraqi weapons of mass destruction, proved spurious when it emerged after the invasion that there were no such weapons to be found.⁴⁶ Furthermore, attempts at legal justification provided by the Bush administration after the invasion, harking back to Security Council Resolution 678 of November 29, 1990, in response to Iraq's invasion of Kuwait, were at odds with much competent legal opinion.⁴⁷

In Iraq, virtually all the prerequisites for smooth transition were absent. First, planning for the post-intervention phase of Iraqi life was inadequate. The outputs of a serious study program undertaken by the US Department of State were largely ignored by the civilian leadership of the Department of Defense, which became the lead agency in administration of the occupation. Furthermore, the Department of Defense's approach was marked by a great deal of baseless optimism and self-delusion.⁴⁸ Second, the intervention did not put an end to conflict. The United States, its allies in the intervening coalition, and its Iraqi partners were all targeted in a campaign of assassinations, suicide bombings, and brutal kidnappings that ruined the image of a smooth and popular transition that

⁴⁵ William Maley, *Twelve Theses on the Impact of Humanitarian Intervention*, 33 *Security Dialogue* 265 (2002).

⁴⁶ See Joseph Cirincione, et al, *WMD in Iraq: Evidence and Implications* (Carnegie Endowment for International Peace 2004).

⁴⁷ For defense of the Administration's position, see William H. Taft IV and Todd F. Buchwald, *Preemption, Iraq and International Law*, 97 *Am J Intl L* 557 (2003). For differing views on the use of force in Iraq, see John F. Murphy, *The United States and the Rule of Law in International Affairs* 169–77 (Cambridge 2004); Christine Gray, *International Law and the Use of Force* 270–79 (Oxford 2d ed 2004); Simon Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* 201–03 (Oxford 2001); Danesh Sarooshi, *The United Nations and the Development of Collective Security: The Delegation by the UN Security Council of Its Chapter VII Powers* 178–85 (Oxford 1999).

⁴⁸ See David L. Phillips, *Losing Iraq: Inside the Postwar Reconstruction Fiasco* (Westview 2005). See also Larry Diamond, *Squandered Victory: The American Occupation and the Bungled Effort to Bring Democracy to Iraq* (Times 2005); George Packer, *The Assassin's Gate: America in Iraq* (Farrar, Straus and Giroux 2005); Robin Wright and Ellen Knickmeyer, *U.S. Lowers Sights On What Can Be Achieved in Iraq*, *Wash Post* A01 (Aug 14, 2005).

the Bush Administration had hoped to project. Third, the overthrow of Saddam Hussein triggered a breakdown in some key instrumentalities of the state, and this was greatly aggravated by the subsequent decision of the occupation authorities to break up the Iraqi Army as a functioning institution.⁴⁹ This not only created opportunities for spoilers to function in a dramatically effective way, but arguably, it also added to the number of spoilers with which the Coalition Provisional Authority and its Iraqi associates were required to cope. Fourth, the Iraqi population, while for the most part welcoming the removal of Saddam Hussein, remained deeply divided on ethnic and sectarian lines, creating major difficulties in procuring any consensually unified elite. The difficulty in constituting a government after the January 2005 election highlighted this ongoing problem. Fifth, the United Nations was initially marginalized as a contributor to the transition, and after the suicide bombing of UN offices in Baghdad on August 19, 2003, which killed SRSR Sergio Vieira de Mello and many other UN staff, there was little mood in UN agencies to take grave risks in order to help rescue the United States and its allies from a deteriorating situation. Sixth, the Bush administration, having ignored the concerns of many states over the legitimacy, legality, and wisdom of the attack on Iraq, found itself poorly positioned to seek the assistance of those states to make a floundering transition process work.⁵⁰ There is a salutary lesson here: while great powers may persuade themselves that what they are doing is legal, if they cannot persuade others, they may face unpleasant political consequences. This reality was captured in a prescient observation made centuries ago by Jean-Jacques Rousseau: "The strongest is never strong enough to be always master, unless he transforms strength into right, and obedience into duty."⁵¹

The Iraqi case illustrates yet again that there is far more to "democratization" than the holding of an election. That polling took place at all at the end of January 2005 was a tribute to the courage of many ordinary Iraqis and the determination of polling staff, both local and international, to give those Iraqis the chance to have their voices heard. That said, there are some haunting similarities between the situation in Iraq, and the situation in Vietnam on the eve of the Tet offensive. Elections in South Vietnam in 1967 had been met with a great deal of optimism, and officials such as Secretary of State Dean Rusk and President Lyndon Johnson were forthright in declaring that failure was not an option. This did not prevent three decades of one-party rule in Vietnam beginning in April 1975. The American historian Gertrude Himmelfarb has written ominously of the "dark and bloody crossroads" where nationalism and

⁴⁹ See Jeffrey Record, *Dark Victory: America's Second War against Iraq* 139 (Naval Institute Press 2004).

⁵⁰ See Christian Reus-Smit, *American Power and World Order* 149 (Polity 2004).

⁵¹ Jean-Jacques Rousseau, *The Social Contract and Discourses* 168 (J.M. Dent 1973).

religion meet.⁵² This seems an almost perfect description of the environment in which democratization is being attempted in Iraq.

VI. SOME IMPLICATIONS FOR MULTILATERAL ACTION

As these cases show, the United Nations has been directly involved in transitions in a range of different circumstances, and with varying results. But just as it is useful to be alert to the complexities of the idea of “post-conflict transition,” so also should it be conceded that the “United Nations” is not a united organization. Rather, it is a family of institutions and agencies with different roles and resources. In a conflict situation, the Security Council typically lays down a broad mandate for UN action; member states (including those that have been involved in Security Council decision-making) make decisions about whether and to what extent they will directly support the activities that the Council has mandated; and the Secretariat will make do with what resources come its way. This is in many ways a most unsatisfactory situation, as the Brahimi Report on UN peace operations made clear.⁵³ The inability of the UN to respond to the emerging Rwandan genocide in April 1994 was a product in large measure of the reluctance of major powers to become involved. However, it also resulted in part from the shortage of personnel and resources in the United Nations Assistance Mission in Rwanda (“UNAMIR”) even from the point of view of its *original* mandate.⁵⁴ Reform of the UN to permit the matching of resources to mandates is very important, but also quite unlikely; a more robust UN is not necessarily what the UN’s most strenuous critics want to see.⁵⁵ For example, while President George W. Bush spoke publicly in early 2004 of the important role of UN envoy Brahimi in facilitating internal political change in Iraq, in practice US officials interfered with Brahimi’s efforts to put in place an interim administration of politically-neutral technocrats.

Confronted with the difficulties surrounding “democratization,” and the intrinsic fragility of the UN as a multilateral instrument for promoting it, one might be tempted to abandon as overly ambitious the hope of using democratic devices in post-conflict situations. Caution has been preached, and with careful

⁵² Gertrude Himmelfarb, *On Looking into the Abyss: Untimely Thoughts on Culture and Society* 107–21 (Knopf 1994).

⁵³ United Nations, *Report of the Panel on United Nations Peace Operations*, UN Doc A/55/305-S/2000/809 (2000).

⁵⁴ See Roméo Dallaire, *Shake Hands with the Devil: The Failure of Humanity in Rwanda* (Random House 2003); Michael Barnett, *Eyewitness to a Genocide: The United Nations and Rwanda* (Cornell 2002).

⁵⁵ For a general discussion, see Thomas G. Weiss and Karen E. Young, *Compromise and Credibility: Security Council Reform?*, 36 *Security Dialogue* 131 (2005).

supportive reasoning, by a number of scholars.⁵⁶ Democratic choice mechanisms are divisive, they are expensive, and they can create grossly unrealistic popular expectations of what a political system can reasonably be expected to deliver. The temptation to abandon them in favor of strong rulers who can deliver security and some other basic goods is considerable. But such an approach can be just as perilous as a “one-shot” approach to democratization based on the holding of a single election as an exit strategy. A “strong ruler” certainly need not enjoy automatic legitimacy, may actually provoke fresh internal conflict, and provides a tempting target for assassination. To sustain stable government, there is no substitute for institutions that allow ordinary people to rule well.

It is from this point that one can derive an effective response to the repudiation of democratization. If democracy is a political system marked by institutional arrangements that permit the change of government without violence, then the focus of international organizations should be on institution-building, rather than simply the holding of elections. In consolidated democracies, electoral processes are nested in a wider frame of norms and institutions that ensure the outcomes of exercises in popular choice are accepted. Without such a frame, there is a risk that the results of popular choice will either be repudiated by the losers (as happened in Angola in September 1992) or result in carnage (as occurred in East Timor in September 1999). Elections should be preceded by concerted steps to restore a functioning judiciary and a culture of legality, and a functioning police and a culture of law-enforcement. A “democratic” society without justice may be much less appealing to ordinary people than a just society in which elections have been delayed until it is safe for them to be held. The rule of law as a political principle has arguably taken root in Namibia, but only the starry-eyed would suggest that it has much hold in Cambodia, Afghanistan, or Iraq. The rule of law is central to democratic civility, and without it there can be little in the way of meaningful democratic choice. Meaningful choice is free choice, and without a framework that protects citizens’ freedoms, the “choices” citizens make should be seen as a form of theater rather than as an exercise in popular decision-making. The difficulty, of course, is that the holding of an election is a discrete “event” which the organizers can paint as a “success,” whereas the establishment of institutions of justice is a slow process that does not lend itself to instant celebrations.

The lessons of recent experience are sobering. Transitions go smoothly when a range of exacting conditions are satisfied: when the state remains largely intact; when there has been an opportunity for careful planning of the transition; when local actors have sincerely agreed to work together; when key international

⁵⁶ Kimberly Zisk Marten, *Enforcing the Peace: Learning from the Imperial Past* (Columbia 2004); Jack Snyder, *From Voting to Violence: Democratization and Nationalist Conflict* (Norton 2000).

actors support the process; and when the process is legitimated through international institutions. The absence of even one of these conditions gives rise to serious difficulties, not least that of maintaining international engagement. In the face of these constraints, one would need to be a considerable optimist to conclude that post-conflict transitions are likely to be better handled in the future than they have been in the past. The Iraq case virtually guarantees that for a while at least, even the most powerful states will mount interventions only with considerable caution, and this may reduce the number of states in which the UN is invited to run some kind of repair operation. However, the problems of post-conflict transition fundamentally reflect a mismatch between the scale and difficulty of the tasks involved, and the commitment of actors in the international system to perform those tasks. Until there is adequate appreciation at the policy level of just what vindicating a "right to democratic governance" actually entails, exercises of this sort will run a real risk of ending in recriminations and despair.