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War and Democratization: Legality, Legitimacy and Effectiveness

SONJA GRIMM and WOLFGANG MERKEL

Promotion of democracy in post-war and post-conflict societies became a hot topic during the 1990s. External actors linked their peace-building efforts to the promotion of democracy. Four modes of promotion of democracy by external actors can be distinguished: first, enforcing democratization by enduring post-war occupation (mode 1); second, restoring an elected government by military intervention (mode 2); third, intervening in on-going massacres and civil war with military forces ('humanitarian intervention') and thereby curbing the national sovereignty of those countries (mode 3); and fourth, forcing democracy on rogue states by 'democratic intervention', in other words, democracy through war (mode 4). In this special issue we consider the legality, legitimacy, and effectiveness of the four modes where the international community of states not only felt impelled to engage in military humanitarian or peace-building missions but also in long-term state- and democracy-building. All cases analysed here suggest that embedding democratization in post-war and post-conflict societies entails a comprehensive agenda of political, social, and economic methods of peace-building. If external actors withdraw before the roots of democracy are deep enough and before democratic institutions are strong enough to stand alone, then the entire endeavour may fail.

Key words: democratization; external actors; post-war societies; promotion of democracy

Introduction

Promotion of democracy has been high on the agenda of the international community since well before the 1990s, either as part of national or multinational security policies, international development cooperation, or independent projects for the promotion of democratic institutions, the rule of law and a plural civil society.¹ Promotion of democracy programmes are externally generated efforts, 'seeking to empower key domestic agents in order to foster democratic changes in the recipient countries'.² Structurally, democracy promotion contains 'all overt and voluntary activities adopted, supported and (directly or indirectly) implemented by (public or private) foreign actors explicitly designed to contribute to the political liberalization of autocratic regimes, or consolidation of democracy in specific recipient countries'.³ Building local capacity in rule of law and public administration, offering development aid and even preparing, and conducting and monitoring democratic elections are relatively uncontroversial means of state-building when they proceed in a framework of

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cooperation and partnership. Most of the third-wave democratizations ranging from southern Europe in the 1970s, through to Latin America in the 1980s, East Asia and eastern Europe in the 1990s, received democracy assistance. Many of the democratizations turned out to be successful. External support typically increased after domestic actors – such as reformist factions of the old regime, regime opposition, and protest movements – had already triggered the transition to democracy. External unilateral or multilateral actors supported democratic actors materially or ideologically.⁴ The national sovereignty of the recipient countries was challenged. The reason so many third-wave democratizations were successful can be attributed to the fact that strong pro-democratic domestic forces had been the principals and agents of the democratic transformation.⁵ External support was important, particularly during democratic consolidation, but the role of internal actors was paramount.

Four Modes of External Democratization

Promotion of democracy in post-war and post-conflict societies became a high profile topic during the 1990s. External actors linked their peace-building efforts to the promotion of democracy. Four modes of democracy-promotion by external actors can be distinguished: first, enforcing democratization by enduring post-war occupation (mode 1); second, restoring an elected government by military intervention (mode 2); third, intervening in ongoing massacres and civil war with military forces ('humanitarian intervention') and thereby curbing the national sovereignty of those countries (mode 3); fourth, forcing democracy on rogue states by 'democratic intervention', in other words, democracy through war (mode 4).

Mode 1: Directly after the unconditional surrender of the aggressor states of the Second World War, Allied forces occupied the defeated countries. Primarily interested in containing the remnants of the fascist regimes, they controlled the territory by military means, and also administered Germany, Japan and Austria politically for the initial post-war years. In the course of the occupation, the Allies tried to enhance social and political change by 'denazification' and 're-education' policies and forced local actors to accept rule of law and democracy. The USA in particular determined the process of democratization. In West Germany and Austria, it encouraged the formation of political parties, supported regional elections, and largely supervised the drafting of the 'Basic Law'; in Japan, it drafted the constitution largely on its own and pressed the Japanese parliament to adopt it. In an astonishingly short period of time, the domestic elites and populations adapted to democracy and played according to democratic rules.⁶

Mode 2: During the 1980s and 1990s, the USA became involved in another round of democratizations. In Grenada, Panama, the Dominican Republic and Haiti it intervened militarily to restore democracy. Elected governments had been either overthrown by a military coup d'état (Dominican Republic) or had been forcibly challenged by opposition movements (Grenada). In Panama, US troops intervened primarily to secure the lives of Americans living in the country and to support the opposition, whose candidate won the presidential election of 1989.⁷ In none of

these cases did the US stay longer than a few days. In contrast to the occupations of mode 1, it shied away from offering an extended aid programme for restructuring state institutions and promoting a sustainable democracy. Democracy promotion fell victim to the higher-ranking US priorities of economic prosperity and national security, in many cases until the mid-1990s.⁸ The Haitian case is different. The US intervened militarily to support an elected president, Jean Bertrand Aristide, and to restore democracy. But in contrast to the other cases in mode 2, the UN Security Council (UNSC) supported the intervention by several long-term peace-keeping and peace-building missions, combining democratization and state-building in order to secure peace.⁹

Mode 3: From Cambodia to East Timor, from Mozambique to Georgia, post-conflict societies have struggled through deep-rooted ethnic, religious or socio-economic conflicts. Post-conflict societies typically do not possess state structures adequate to manage and contain the potential for further conflict, not to mention functioning democratic procedures that could guarantee the equal and full participation of citizens in a political community. Therefore, the struggle for political and economic power often escalates to protracted civil war. However, external democratization as part of a peace process has to build on the consent of relevant elites who welcome external engagement in the country's reconstruction after violent conflict.

These favourable conditions exist only rarely in post-conflict societies. On the contrary, weak pro-democratic domestic actors, weak stateness, but strong external involvement in establishing peace and also rule of law and democracy, characterize these cases. The promotion of democracy is not the primary task of external (mostly humanitarian) intervention, but should crown and secure the successful creation of internal peace and stability. In contrast to mode 1, the particular difficulty is in compensating for the weakness of the pro-democratic domestic forces and sometimes even substituting them with 'benevolent protectorates'. The external promoters of democracy become the principals and sometimes also the agents of democratization.

Mode 4: In mode 4, the primary task is to topple the dictator and to install rule of law and democracy. The main protagonists of this militarily enforced regime-change are external unilateral or multilateral actors – from the US 'coalition of the willing' to NATO. Strong domestic democratizers are largely absent and have to be imported, created, or invented. Anti-democratic domestic forces remain powerful. Afghanistan and Iraq exemplify this mode.¹⁰ In Afghanistan in 2001 and Iraq in 2003, external actors used force to overthrow the old authoritarian regimes and to substitute them with democratic ones, or at least they tried to do so.¹¹ If external forces trigger transformation to democracy by force ('regime change') and if they assume tasks that encroach on the sovereignty rights of the occupied country, we follow terminological convention by naming it a 'democratic intervention'. A 'democratic intervention' is a military action by external forces with the intention to democratize the target political regime. However, cases such as Afghanistan and Iraq have to be distinguished from the post-war success stories of Germany, Japan, Italy and Austria, where the establishment of democracy was not the original war aim of the allied forces but rather, became a goal only *post bellum*.

Analytically, it is necessary to distinguish between humanitarian and democratic interventions. A humanitarian intervention is intended to end massacres, civil war and

gross human-rights violations.¹² Democratization is not the cause and initial aim of the intervention, but it often becomes the ultimate goal after a militarily successful operation, as was the case in Germany and Japan after 1945, and Bosnia and Herzegovina after 1995. Democratic intervention means that the *a priori* declared aim of the intervention is to democratize a formerly autocratic regime.¹³

Democratization *through* war, then, can be the result either of an intentional action to democratize the country or an unintended *ex post* outcome. Only the former should be called democratic intervention. The intended strategy of democratic intervention is to enforce democracy on harsh dictatorships. In this understanding of democratic intervention, the principals and agents are necessarily, at least in the beginning, external actors with no explicit mandate for democratization from legitimate representatives of the target country. Peace-, nation-, state- and democracy-building thus became the tasks of external actors, 'with a little help from their internal friends'.

Nevertheless, external actors seldom engage solely from altruistic motives, neither in humanitarian nor in democratic interventions. The intention to democratize a country after war and military intervention is often linked to other goals such as self-defence (according to Art. 51 of the UN Charter, as in the case of Afghanistan), to secure international peace (according to Chapter VII of the UN Charter, as in the cases of Iraq, Kosovo, or East Timor), to stop human-rights violations (Bosnia and Herzegovina, Kosovo, Afghanistan and Iraq), or to secure the supply of essential resources like oil (arguably Iraq). Mostly it is a mix of several motives that lead to external engagement in conflict resolution, whatever the officially declared reasons and motives may be. Therefore, it is also necessary to distinguish between official declarations of intent and hidden political agendas when analysing success or failure of mode 3 or mode 4 cases of democratization.¹⁴

Focus of the Analysis

This collection examines the legality, legitimacy, and effectiveness of the four modes where the international community of states not only felt impelled to engage in military humanitarian or peace-building missions but also in long-term state- and democracy-building.¹⁵ However, the focus will be on modes 3 and 4, which encompass the most recent and the most problematic cases. Following international military operations in war-torn countries, state-building missions try to build up security, a central monopoly of force, and a functioning bureaucratic administration. The ultimate goal is to democratize political institutions and the behaviour of political elites and civil society.¹⁶ The missions often focus on monitoring democratic elections,¹⁷ but increasingly they also focus on democratic constitution and institution-building.¹⁸ External intervention to enforce and accelerate internal democratic transition is intended to foster institution-building, to stabilize a sustainable democratic political system, and to support the transformation from a warring to a peaceful society through changing fundamental norms and elite behaviour. Political tensions, radical ethnic mobilization, and violent conflicts are to be replaced by peace, respect for human rights, and democracy.

In the grey area of blurred internal and external responsibilities during democratic transformation, external actors fulfil tasks perceived as essential to stabilizing, reconstructing, and developing political systems. They support or 'create' relevant actors in democratizing institutions through technical assistance and personal advice; they provide financial aid in reward for rule of law reform or market liberalization. If external interveners become occupiers, they often use their presence on the ground in international interim administrations or in temporary unilateral occupation to introduce democratic ideas and institutions to the evolving political system.¹⁹

However, it is open to debate whether in these cases of post-intervention democratization external commitment is *legal* according to international law, *legitimate* according to moral principles, or *effective* as measured by progress in peace- and democracy-building. Legality, legitimacy, and effectiveness are the normative and empirical criteria by which to evaluate external democratization efforts at stabilizing war-torn countries.

This collection is dedicated to the inherent challenges of war, democratization and democracy. Three different theoretical perspectives – law, ethics, and theories of democratization – inform and guide our normative and empirical analyses of war, conflict, and democratization. With these perspectives in mind, scholars of international law, international relations theory, and comparative politics with experience in intervention research address the issue of externally forced democratization through the following four sets of questions:

- (1) What does the recent debate in international law have to say about the link between humanitarian and democratic intervention? How far is democratic intervention legitimized by international law?
- (2) Aside from permanently recalculating whether democracies wage war against one another, what can the democratic peace debate contribute to the puzzle of whether war can lead to more democracy?
- (3) What does the 'just war' debate say about the legitimacy of democratic interventions? What is the legitimizing link between *jus ad bellum* and *jus post bellum*?
- (4) What can empirical case studies tell us about the paths of democratization after war triggered and supported by external intervention?

The stabilization of war-torn countries contains nation- and state-building as necessary, but not sufficient, conditions for democratic transformation. Moreover, questions of sovereignty that arise as a result of humanitarian and democratic intervention, the creation of protectorates, and the rights and duties of external actors after war must also be taken into consideration.

Main Arguments and Results

To begin with the assessment of international law, one must state that it is still strict in prohibiting external intervention in internal political affairs. But, as Reinhard Merkel shows in his contribution, we can observe a loosening of this prohibition against humanitarian intervention. He opens the debate in the theory section with a closer

look into the legality of humanitarian intervention. Challenging the positivist mainstream in German *Völkerrecht*, he approaches the question from the basis of legal principles such as self-defence and emergency assistance already common in criminal and international law. The mainstream of international lawyers argue that the use of military force among states has to be subjected to a legal procedure for control and authorization, effectuated in the contemporary international system by UN Security Council decisions. Reinhard Merkel challenges this traditional position. He argues that armed humanitarian interventions are per definition different. They are 'wars of assistance' in favour of illegally threatened third parties that may include not only states but also ethnic and other minorities or even individuals. Therefore, external parties safeguard individuals' emergency rights when these threatened in their own state by rulers who misuse power and grossly violate fundamental human rights. Rights to assistance in an emergency are, Reinhard Merkel argues, 'natural rights' such as the right of self-defence. The UN Security Council does not grant these natural rights to people; therefore, the Security Council is normatively not legitimized to deny them or to prevent any state from assisting others in an emergency. However, humanitarian intervention can only be justified if the state under scrutiny endangers basic negative human rights, e.g., the right to live or the right not to be tortured, on a large scale. It would not be proportional, argues Reinhard Merkel, to intervene militarily if a state denied a significant part of the population or even the whole population the right, for example, to vote, even though the right to vote, as a right to participate in the political life of the state, is a general human right. The violation of positive human rights can never justify humanitarian intervention.

Wolfgang Merkel would not deny the proportionality argument, but in his contribution he goes further. In reflecting on the consequences of regime collapse or regime change in the course of humanitarian intervention, he highlights the long-term duties that external interveners have when waging a humanitarian intervention. As the empirical findings of the 'democratic peace debate' and comparative research of democratization show, most societies coming out of civil war or externally enforced regime change end up in hybrid regimes. These regimes are less stable than democracies or autocracies, and they are significantly more prone to use violence, to trigger inter-state war, and to escalate internal conflicts in protracted civil war. He draws three conclusions about the ability of democratic interventions to meet the criteria of legitimacy and effectiveness. First, interventions that only try to change regime type and to remove authoritarian elites from office are less likely to succeed in the long run. Even worse, the instability of the new, probably hybrid, regime heightens the risk of war. Therefore there is, secondly, a *post bellum* obligation for democratic interventionists to support the new regime until it becomes a consolidated democracy. This commitment will reduce the new democracy's risk of stagnation or regression to an instable, war-prone hybrid regime. Going beyond John Rawls, Wolfgang Merkel argues that occupation forces should not only leave behind a 'well-ordered people', but the rule of law and working democratic institutions.²⁰ Thirdly, without a democratic neighbourhood, young democracies are less likely to survive. The democratization 'domino effect' purported by American neo-conservatives is not based on empirical evidence and is not likely to occur in an environment that is unfriendly to democracy.

These empirical findings and normative arguments lead to two options. Either humanitarian interventionists must be prepared for a prolonged engagement in the country of intervention in order to establish the rule of law and democracy, or external actors should refrain from intervention altogether. In cases of severe human-rights abuse, the latter is a morally unacceptable option. Consequently, humanitarian intervention requires a long-term commitment by the international community to bequeath a stable political system that avoids the renewed outbreak of human-rights abuse and violence. In Wolfgang Merkel's view, that could only be achieved through a benevolent and transitional democratization protectorate. To leave a country in chaos would be a violation of fundamental post-war obligations and would *ex post* delegitimize their moral *jus ad bellum*, since *jus ad bellum* ought to be linked to obligations *post bellum*. If interventionists are not prepared to meet the latter, they should refrain from claiming the former.

In focusing on international relations theory, Lars-Erik Cederman, Simon Hug, and Andreas Wenger warn us of the potentially negative consequences of the democratization process. They are not interested in whether war can promote democracy, but rather they pursue the reverse causal link – namely, whether democratization increases the risk of civil war. They reflect on ongoing debates in the study of international relations and conclude that societies in transition to democracy with less stable state institutions are more prone to war than are stable democracies or stable autocracies. As they see it, comparativists may be well aware that internal mass mobilization during democratization raises the risk of civil war, but these scholars are less aware of the level of external violent conflict that can be triggered by internal democratization, a topic addressed within international relations research. The authors recommend that we combine international relations (IR) and the comparative approaches to better evaluate how conflicts may transcend state borders and simultaneously increase the risk of civil war. Incomplete democratization can trigger violence, which spreads into the regional neighbourhood. Therefore, a long-term engagement by the international community is necessary in war-torn countries to foster stability, peace, and democracy. Vice versa, the neighbourhood of a war-torn country can heavily influence the chances for successful democratization after civil war, a fact that has not been well-researched in transformation studies up to now. Therefore, a closer look at the nature of the 'neighbourhoods' of democratizing countries is needed. This focus avoids the bias of only analysing either macro processes on the inter-state or micro processes at the intra-state level. Cederman, Hug, and Wenger plead for a comprehensive research agenda to study the causal links of democratization, intra-state, and regional conflict.

The authors of the case comparison section deliver insights into specific empirical cases and the main challenges concerning effectiveness and legitimacy that face external actors when they continue their engagement in state-building and democratization. In order to compare the strategies of external democratization, Sonja Grimm notes that external actors promote democracy in post-war societies in a wider framework of state- and nation-building, rule-of-law building and economic development. But they do not succeed equally everywhere. Success very much depends not only on appropriate strategies, but also on contextual conditions. Introducing a historical

perspective, she contrasts the (re-)democratization successes in the aftermath of World War II (mode 1) and US efforts to promote democracy by military intervention in South America during the Cold War (mode 2) with the external democratization efforts in the civil war cases of the 1990s (mode 3) and post-2001 (mode 4). She argues that, although these post-war cases are sometimes grouped together as equivalent cases, they differ, especially according to the level of socio-economic development, the level of social trust, inner-societal violence, the conditions of the peace agreement, the level of 'stateness', and the shape of the nation. To explain the democratization successes of the post-World War II period and the delays of democratic success or outright failures after intra-state wars since the 1990s, she argues that we should not only look at these different structural conditions, but also at the way external actors, unilateral actors as well as multi-lateral coalitions and international organizations, adapt their strategies to the contexts and engage in post-war transformation. Sometimes they deviate significantly from the proposed ideal of successful external democratization. Considering both structural differences and differences in actors' behaviour, politicians are analytically wrong to use some of the early democratization cases as blueprints for strategic choices to promote democracy in a post-9/11 world.

Jochen Hippler focuses on the democratization procedures after civil wars. He evaluates why the results of promoting democracy after civil war (in our terms, modes 3 and 4) are often so disappointing. Although there seems to exist a broad consensus among western donors that democracy should be promoted after civil war, stability, peace, and democratic success are not likely outcomes. He draws the reader's attention to the key actors relevant during civil war. Whether the insurgency is directed against a government or the civil war just emerges among sub-state groups, whether the existing government is effective and stable or not, whether the armed opposition is well organized or not, may have important implications for the success of democratization after war. The mode of conflict matters, too. Conflicts over identity, territory, resources, autonomy, access to political power, forms of governance, but also over the wish to achieve or maintain independence from external control, may become heavy burdens for post-civil war democratization and state-building. Finally, the way civil war comes to an end is relevant. A clear victory of one party may be favourable for creating future stability. But a more likely outcome is negotiation and compromise under external supervision. If the conflict can be resolved, the chances for democratization seem to be good. If peace negotiations end without a widely accepted agreement, successful democratization becomes less likely. If peace accords are enforced by external forces, peace- and democracy- building might become more complex because the number of actors involved rises exponentially. In general, Hippler doubts whether external promotion of democracy can be successful if it is enforced upon a reluctant population and without the necessary support of internal elites.

Marc Arenhövel draws our attention to the critical question of how to deal with past abuses and human rights violations that cause political, judicial, and ethical problems during democratization. Intra-state reconciliation, he argues, can both become a matter of conflict and a matter of unification by building trust while debating

solutions to transitional justice problems. Different strategies can be used, among them truth commissions, criminal trials, administrative purges, and international criminal tribunals. In cases of post-war reconciliation with a need to address war crimes, crimes against humanity, genocide, sexual offences and torture, international actors can, for example, use mixed tribunals, namely courts composed of international and local judges. These trials are framed by the global diffusion of transitional justice norms, and a proliferation of donors financing transitional justice initiatives and reconciliation projects. Arenhövel argues that transitional justice needs not only special legitimacy, but also the willingness of the society to come to terms with the past. A general best-case scenario blueprint for a post-conflict society cannot be identified, considering the uniqueness of each conflict and the particularity of each post-conflict society. However, it can be generalized that transitional justice has to be carried out primarily by the conflict parties themselves. External actors can only help to bring them together and to establish forums where the conflict parties can negotiate their own way to transitional justice. Only by following legal procedures can the transitional justice process gain legitimacy and become an effective asset for creating peace, stability, and democracy.

Arenhövel's scepticism about imposing transitional justice procedures is shared by the authors in the third section, who analyse external democratization efforts in two country comparisons or single-case studies. It is often assumed that without external intervention and assistance, a country in crisis struggles even harder to establish stable, working, and representative democratic political institutions. If the principle aim of humanitarian intervention – the termination of the violent conflict – is achieved, but internal actors are not able or are not disposed to shoulder the burden of reconciliation and transition to democracy, then political, social, and economic reconstruction require international support. If external actors foster a radical regime change by military means, the same actors have a responsibility to rebuild the political system. In the case studies, the authors draw a differentiated picture on the effectiveness of such an approach and the necessary conditions of success. These analyses contribute to singling out more and less effective practices. Thus, they enable more general insights into why some strategies succeed or fail to establish peace, rule of law, and democracy in post-conflict societies.

Nenad Zakošek highlights the interconnectedness of civil war, nation-, state- and democracy-building in a comparison of Serbia and Croatia. The nationalist authoritarian regime of President Slobodan Milošević in Serbia was not successful in creating a Serb-dominated Yugoslav central state. Even before the civil war broke out, Milošević consolidated his political power by ethno-populist mobilization and by relying on semi-legal or even criminal networks for his goals and policies. By contrast, the populist nationalist regime of Franjo Tuđman in Croatia failed to integrate parts of Bosnian territory under Croatian dominion, but consolidated the territory of Croatia, albeit without producing significant socio-economic and democratic development. As a consequence of these respective failures, both regimes suffered losses of legitimacy during the second half of the 1990s. In 2000, the governmental parties, more ruling than governing, lost the elections and opposition parties gained office. This development can be seen as the real beginning of the transition to

democratic rule in both Serbia and Croatia. Two decades after the break-up of Yugoslavia, Croatia has become a liberal democracy while Serbia's democracy still remains defective. Zakošek argues that it was in particular the earlier consolidation of 'stateness'²¹ which allowed the Croatian government to transform the formal democratic institutions into a working democracy. Conversely, it was the lack of stateness, the unresolved question of the territory and *demos*, which has prevented further progress in establishing democracy and rule of law in Serbia. The divergent democratic developments in Serbia and Croatia verify Juan Linz' dictum, 'without state no democracy'.²² Today, the further development of democracy in Croatia can rely on a state where neither the *demos* nor the territory is seriously challenged. The army is now under the supervision and control of legitimate civil authorities. Both facts mark a decisive difference between Serbia and Croatia and explain their different progress towards a democratic regime based on the rule of law.

In assessing the international record of promoting democracy in a post-civil-war country like Georgia, Pamela Jawad analyses the role of the Organization for Security and Co-operation in Europe (OSCE). As an organization that links democracy and security in its founding statute, the OSCE is determined to contribute to democratization and conflict resolution in a war-torn country. Against the background of violent internal conflicts, government crisis, and secession conflicts in Georgia, the OSCE stimulated negotiations between the conflict parties with the intent to promote respect for human rights, rule of law, and democracy. Assistance to fair parliamentary and presidential elections is supposed to be the trigger for sustainable democratization, but such high-flying hopes have been dashed on several occasions. Despite a long-term mission and extensive grants from external donors, the main secession conflicts are still not resolved, but rather, remain 'frozen'. Democratic development shows a rather negative trend since the 1990s. Pamela Jawad explains this by referring to both internal and external factors. On the internal side, the commitment to implement democratic norms is often missing. On the external side, the limited six-month mandate enjoyed by the OSCE mission has turned out to be counter-productive, since its renewal depends on the consent of all OSCE member states. The risk of a Russian veto has prevented the extension of the mandate from becoming a more comprehensive democratization agenda. Regardless of its experience in conflict resolution and crisis prevention, the OSCE does not have a lever to exert pressure on the conflict parties or to give incentives for negotiating a resolution on the secession conflicts. Despite the successful contribution to Georgia's 'Rose revolution' by OSCE's election monitoring, sustainable progress towards democratization remains moderate at best in Georgia.

Astri Suhrke, in her contribution, evokes the core of democratic institution-building, namely, the establishment of a functioning, well-organized parliament, not only representing all relevant societal groups but also providing clear majorities for effective law-making. According to Suhrke, Afghanistan after the breakdown of the Taliban regime in the wake of the 'war on terror' could have become an example of successful installation of a democratic parliament, accepted by the population. It could have drawn on past experiences of two more or less democratic periods of constitutional reform, proposing a parliament solely responsible for law-making.

However, the heavy dependency of the Afghan state on foreign support and intrusion in the post-Taliban period since 2001, both in financial and military terms, made this outcome unlikely. The project of democratizing Afghanistan under US and UN auspices did not end in a legitimate democratic political system, but instead has created a dependent state with limited legitimacy.

Suhrke specifies three reasons for the failure of the post-Taliban regime created by external actors to gain legitimacy. First, the Afghans were only collectively invited to the international '6+2 negotiations' in Bonn. Confronted with a finished draft agreement, they scarcely had the chance to influence the plan on future transitional steps. Secondly, the deliberations in the constitutional *loya jirga* were trumped by external interference. Following historical traditions and paths, the delegates would have preferred a constitutional monarchy with an elected prime minister. But as a result of massive US interference, a presidential system was installed and Hamid Karzai elected as its first president. Thirdly, the parliament did not succeed in becoming the centre of legitimate power. The new parliament was deeply fragmented as a result of the tribal structure of the society and the institutionalization of the Single Non-Transferable Voting System (SNTV). It remained weak, without substantial power over the budget or control over the executive. Furthermore, with the primary lines of accountability stretching to donors rather than the parliament, the executive branch had few incentives to develop the efficiency and effectiveness of the legislative branch. Afghanistan ended up in a paradoxical situation, with the executive dominating the legislature, but being too weak to govern the whole Afghan territory; and a legislature too weak to become the accepted institution to represent and integrate an extremely heterogeneous society. Because of their dependence on external support, the parliament and government, which are both crucial to democracy, failed to develop sustainable legitimacy.

However, when we take into account the extreme tribal, ideological and ethnic fragmentation of Afghan society, it remains doubtful whether a strong parliament and a weak president could solve the fundamental problem of governability, i.e., to build a state based on a political nation that shares a minimal sense of common belonging beyond and above all tribal segmentation and ethno-religious conflicts. The writers' scepticism about the possibilities of institutional engineering in a fragile state and fragmented political community marks the difference between this view and Suhrke's 'parliamentary optimism'.

With reference to Cambodia and East Timor, Aurel Croissant emphasizes that beyond monitoring the first post-conflict elections, UN missions failed in both cases to establish democratic institutions leading to a self-enforcing dynamic of sustainable democratization. Facing weak political parties, conflicts among party factions, sluggish economic development, and deep societal cleavages, the UN missions were ill-equipped to support efficient institution- and capacity-building. But that does not mean that democratization through international interim administrations is completely unlikely. Interim administrators can provide solutions to civil strife and insecurity in disrupted states if they are able to provide a balance of power, and if they guarantee the parties' compliance with democratic procedures. The examples of Cambodia and East Timor prove that democratization must be embedded in a comprehensive agenda of political, social, and economic methods

of peace-building. Without such a comprehensive strategy, international interim administrations, whether of a supervisory, executive or administrative type, run the risk of becoming expensive, resource-intensive, and never-ending. Subsequently, these ill-designed projects of external control of domestic affairs can end in a spiral of long-term loss of legitimacy for international actors and their domestic counterparts in democratizing post-conflict countries.

Conclusions

Our empirical analyses show that war can open a window of opportunity for regime change. This has especially been the case of the post-World War II regime changes in Austria, Germany, Italy, and Japan (mode 1) and some of the successor states of Yugoslavia (mode 3). The window of opportunity was used by domestic and international actors cooperating to successfully democratize these countries.

Democratization activities need to be tailored according to our four modes. Elected governments of mode 2 cases ('restoring democracy') can be re-installed by military means. However, the intervention should be prolonged in a longer-term engagement focusing on state-building and the rule of law. In modes 3 ('benevolent protectorate') and 4 ('enforced regime change'), interventions can provide a solution to the problems of civil strife, insecurity, and political instability in disrupted states. However, interventions can only be successful if the peace-building mission or the external interim authority is able to maintain a stable balance of power and to guarantee the parties' compliance with democratic procedures. If they fail to contribute to reconciliation among the domestic parties, the very foundation of the peace process is challenged and it will be almost impossible to successfully adjust those institutional structures proposed by external actors.

All the cases analysed here suggest that embedding democratization in post-war and post-conflict societies entails a comprehensive agenda of political, social, and economic methods of peace-building. If external actors withdraw before the roots of democracy are deep and before democratic institutions are strong enough to stand alone, then the entire endeavour may fail. The best strategy may fail as well if local actors cannot effectively be included in such comprehensive cooperation and if they prefer to engage in ongoing civil strife and institutional deadlock.

Bosnia and Herzegovina, Afghanistan, and certainly Iraq have to be judged critically, although the regime outcomes of these post-intervention countries are not yet decided. The fundamental difference between these countries and the more successful cases is that the latter did not face the simultaneous problem of nation- and state-building (Austria, Italy, Japan) or they solved it rapidly (Germany, Slovenia, Croatia). It is much easier to democratize a political regime regardless of whether it was authoritarian or totalitarian if the integrity of the demos, territory, or state monopoly of force is not challenged. Moreover, if the external democratizers and supporters of democratization are perceived as legitimate by large sections of the domestic elites and population, trustful cooperation between domestic and external actors strengthens and accelerates the transition to and consolidation of democracy. Especially in Afghanistan and Iraq, the short-term military strategy without a long-term *post bellum* reconstruction concept entails the risk of failure.

In all three countries – Bosnia and Herzegovina, Afghanistan, and Iraq – neither a political community nor a functioning state exists. The Hobbesian problem of how to overcome the ‘war of all against all’ (*bellum omnium contra omnes*) is not yet solved. The occupying forces were perceived by relevant parts of the population as illegitimate if not inimical. Deep cultural differences between the occupiers and the occupied prevent a trustful cooperation. The withdrawal of foreign troops would certainly worsen the situation, but their remaining apparently does not lead to sustainable democracy either. Nation-building by external forces is extremely difficult under democratic conditions. If the external forces are perceived as neither politically legitimate nor culturally acceptable by powerful domestic groups, then the package of nation-, state- and democracy-building appears to be a dangerous illusion.

The empirical cases teach us how difficult it is to establish stable, rule of law democracies in war-torn societies through democratic intervention using force or occupation. There is a great risk of leaving behind failing states or hybrid regimes after war and violent conflict. Most of the ‘humanitarian’ and ‘democratic interventions’ lack the necessary link between a short-term (*ad bellum; in bello*) and a long-term strategy (*post bellum*). Military interventions are often not embedded in political and economic reconstruction projects and commitments. Long-term commitments by intervening democratic countries are not easily feasible; the very democratic institutions of those countries set considerable constraints on this. With increasing costs in terms of killed soldiers, financial resources, and a loss of credibility because of slow progress, support for democratic intervention and reconstruction diminishes. The pressure from electoral constituencies and opposition parties in the US and UK reluctant to extend their support for the missions in Afghanistan and Iraq exemplifies these genuine democratic limits. Only stable international and multilateral alliances backed by the UN can soften these rigid constraints on long-term ‘democratic interventions’ and offer an alternative to unilateral engagement.

Critics of humanitarian and democratic interventions have a broad range of arguments against humanitarian and democratic interventions. They draw their arguments from heterogeneous and often diverse sources of *Weltanschauungen* (world views): from pacifism, legal positivism, realism, and even fatalistic cynicism. Apart from the cynics, their arguments are legitimate and have to be taken seriously. However, they have no certain answers for how to deal with gross human-rights violations, civil wars, and failing states. It is easy to sum up all the critical objections against ‘humanitarian plus democratic interventions’ as long as best-case scenarios, such as multilateral UN-backed and legalist interventions, are not feasible. However, second-best solutions are still better than isolationist inactivity. We hope that the analyses in this volume can contribute to a better understanding of the conditions necessary to successfully strengthen peace, the rule of law, and democracy in a second-best world.

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NOTES

1. See, for example, the following special issues of *Democratization: Democracy and Security: Process versus Outcome in Assistance Policy?* Vol. 14, No. 2 (2007), *Securing Democracy in Complex Environments*, Vol. 13, No. 5 (2006), and *Promoting Democracy Abroad*, Vol. 12, No. 4 (2005).
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10. In the wake of the terrorist attacks of 9/11, the United States Security Council officially recognized the right of self-defence in its Resolution S/RES/1368, 12 September 2001. Accordingly, the US intervention in Afghanistan was officially interpreted as an act of self-defence according to Chapter VII of the UN Charter. Officially, the UN Security Council supported it as an effort of 'rooting out terrorism' (S/RES/1386, 20 Dec. 2001). The US also declared the intervention in Iraq in 2003 necessary for combating terrorism and for searching for weapons of mass destruction, but it did not receive similar international support. The UN Security Council refused to pass a resolution in support of US action.
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13. See contribution by Wolfgang Merkel in this collection.
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