Building Democracy and Justice after Conflict
Hilary Charlesworth

It is a great honour to be asked to deliver this lecture, named for the educationist, Dr Kenneth Cunningham, the first President of the Social Science Research Council, which became this Academy. After retiring, he worked with UNESCO on teacher education, so I hope he would have some interest in my topic.

It has been said that democracy or state-building has 'become one of the critical all-consuming strategic and moral imperatives of our terrorised time'.[1] But open any newspaper, listen to the radio or watch the TV news: all around us is evidence of the problems flowing from attempts to build democracy and justice after conflict. Let us consider three examples in which Australia has a direct stake:

Photo (Bob Finlayson, 2005) first appeared in The Australian

Timor Leste

Timor Leste became independent in 2002, after 25 years of Indonesian rule, and two and a half years of international administration by the United Nations. It is regularly presented as one of the great success stories of UN democracy-building. Timor Leste remains, however, one of the poorest nations in the world. In May 2006 violence broke out between various factions in the army and the police and Australia sent troops to Timor Leste to quell the unrest. The Prime Minister was forced to resign. The situation remains unstable and 150,000 people have been displaced from their homes.

Iraq

The 2003 invasion by a coalition of willing countries led to the overthrow of Saddam Hussein and, after a period of American rule, a new constitution and an elected government. The violence in Iraq, three and a half years after its invasion, has, however, intensified. A moderate estimate of civilians who have died since the March 2003 invasion is 150,000 and the *Lancet* recently published research arguing that the figure was over 600,000; an average of 97 people now die each day.[2] In October 2006, 100 US troops were killed in Iraq. The situation is so sensitive politically that the Iraqi Prime Minister, Nuri Kamal al-Maliki, has recently forbidden medical authorities from providing the United Nations with the numbers of dead and wounded civilians.[3] Daily life is insecure and violent. In mid November 2006 all universities in Baghdad were closed indefinitely after 100 academics were abducted.

Over the latter part of 2006, there has been intense debate about the progress of the Coalition of the Willing's mission to create a democratic government in Iraq; the White House has announced that President Bush has abandoned the language of 'staying the course' so that there is more flexibility in devising an exit strategy.[4]

Solomon Islands

The Regional Assistance Mission to the Solomon Islands (RAMSI), devised by Australia in 2003 to respond to the breakdown of law and order in the Solomons, has been analysed as a successful state-building mission. Indeed, the OECD has used RAMSI as a case study of good practice in engagement in fragile states.[5] In April 2006, rioting broke out in the Solomons in the wake of national elections. Australia has been very publicly critical of various actions by the new government, including its attempts to protect political allies of the Prime Minister from prosecution over their role in the riots. Tensions between Australia and the Solomons have been exacerbated by Australia's attempts to extradite Julian Moti, the government's candidate for the office of Attorney-General, on criminal charges and Prime Minister Sogovare has made remarks casting doubt over the future of RAMSI.

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These three examples of democracy-building can be analysed in many different ways. Regional specialists, political scientists, anthropologists and economists offer a great variety of perspectives on these events. I will examine the democracy and justice-building industries from the perspective of an international lawyer, and ask: Is it possible to develop any general principles to guide these enterprises? Or is this an area where lawyers should be especially modest about their potential contribution?

International democracy-building

International enthusiasm for democracy-building has waxed and waned. In the nineteenth century there were a few cases of international administrations of territories after conflict. In 1919, the League of Nations took on direct administration of some territories now located in Germany, for example in the Saar; it also devised the Mandate system under which the victorious powers after the First World War administered the fifteen colonies of the vanquished states, under League supervision. Article 22 of the Covenant declared:

> *To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation and that securities for the performance of this trust should be embodied in this Covenant.*

> *The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations who by reason of their resources, their experience or their geographical position can best undertake this responsibility, and who are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.*

Article 22 develops a theme that re-emerges in modern democracy-building: an hierarchical idea of groups that cannot manage on their own and of superior managers who can deliver civilisation. Although the Mandate system contemplated eventual statehood for the mandated territories, only one of the fifteen territories, Iraq, was able, in 1932, to achieve independence. The League's Mandate system was transformed by United Nations into a Trusteeship system in 1945.[6] Again, states were given a 'sacred trust' to promote political and economic development and the institutions of self-government in trust territories,

although the evidence suggests that trustee nations tended to administer these territories from the top down, without building indigenous governance structures.[7]

Outside the UN, there were other experiments in state and democracy-building, for example in postwar Japan and Germany. During the Cold War, there was little political support for international democracy-building, although the UN engaged in a variety of peacekeeping missions that sometimes had a governance component.[8] The first fully-fledged excursion by the UN into state-building was in 1989, in Namibia, where the UN successfully shepherded Namibia into independence.[9] Over the next decade, the Security Council approved more ambitious state-building projects, for example in Cambodia and Kosovo. Modest success in these contexts was countered by the UN's disastrous mission in Somalia. Despite this setback, by the early years of this century, all major UN missions have included significant democracy-building components.[10]

While international institutions have embraced the project of democracy-building, it has been treated more warily by individual countries. In the United States, for example, international state-building efforts supported by President Clinton were initially derided as 'social work' by members of the Bush administration.[11] The trauma of the events of 11 September 2001 prompted a change in this approach, with state-building becoming a key line of defence in the US-led war against terror. President Bush's second inaugural address in January 2005 is a classic statement of this view of democracy-building:

> America's vital interests and our deepest beliefs are now one. From the day of our Founding, we have proclaimed that every man and woman on this earth has rights, and dignity, and matchless value, because they bear the image of the Maker of Heaven and earth. Across the generations we have proclaimed the imperative of self-government, because no one is fit to be a master, and no one deserves to be a slave. Advancing these ideals is the mission that created our Nation. … Now it is the urgent requirement of our nation's security, and the calling of our time. So it is the policy of the United States to seek and support the growth of democratic movements and institutions in every nation and culture, with the ultimate goal of ending tyranny in our world.[12]

This shift from scepticism about democracy-building to its embrace has been echoed also in Australia. The 2004 Foreign Affairs White Paper explicitly disavowed any interest in state-building in its region, stating 'Australia cannot presume to fix the problems of the South Pacific …. Australia is not a neo-colonial power …. [O]nly local communities can find workable solutions'.[13] By 2006, however, Foreign Minister Downer has committed Australia to more democracy-building projects and placed democracy at the heart of Australia's foreign policy in the region.

He has said:

> Australia continues to be a significant force for the spread of freedom and democracy. We have fought wars for those values in the past, we continue to fight for them now. … We are squeamish about the more jingoistic style of American pronouncements on the spread of freedom and democracy. Yet we are committed to the same goals.[14]

On this analysis, Australia is positioned as a civilised standard bearer, willing to use force to bring freedom and democracy to a confused and chaotic region. We are just more discreet about it than the Americans.

The cases of democracy-building in Timor Leste, Iraq and the Solomon Islands are of course all quite different – one clear contrast is in the identity of the democracy-builders (the UN, the US and a regional coalition respectively) - but they have all followed a similar trajectory: initial confidence and delight at the progress democracy-building was making and then a quick or slow unravelling of the democratic chimera. Does international law have any impact on these events?

International lawyers have only recently begun to pay attention to state-building and democratisation. There is lively discussion of the legality of the enterprise when it is conducted in the aftermath of an invasion, such as in the case of Iraq. But, as a discipline, international law has tended to assume that there are few legal issues in democratisation if the affected state has agreed to an international presence.[15] The international legal framework is thin, relying on the right to vote set out in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

I want to focus specifically on two related aspects of the state-building project: how has democracy been conceived? And, what relationship does justice have to democracy?

How has democracy been conceived?

UN debates over defining a right to democracy focus on whether elections are essential to democracy.[16] Rival definitions of democracy have been produced by the global North and the global South – the North emphasising elections as a sign of democracy and the South defining democracy as economic and social in nature, requiring the transfer of resources. They are a nice illustration of George Orwell's observation:

> In the case of a word like democracy, not only is there no agreed definition, but the attempt to make one is resisted by all sides. It is almost universally felt that when we call a country democratic we are praising it; consequently the defenders of every kind of regime claim that it is a democracy, and fear that they might have to stop using a word if it were tied down to any one meaning.[17]

What accounts of democracy animated the interventions in Timor Leste, Iraq and the Solomons?

Timor Leste

The focus of the UN's Transitional Administration in East Timor's (UNTAET) work was to establish Western political institutions. There was little attention given to existing local structures, or how they might interact with the new constitutional edifice. The UN did not grapple sufficiently with specific Timorese social networks that refused to map readily onto the Western model of citizen /state relations, where the idea of branches of government, such as the judiciary, the legislature and the executive, structure political life.[18] The result has been what Tanja Hohe has termed 'feudal democracy'.[19] For example, the goal of multi-party elections quickly became a signifier of democracy for UNTAET, but in Timor Leste this was an alien concept because of the local unitary and hierarchical idea of political power.[20] As Hohe has pointed out, in traditional Timorese culture 'peaceful political opposition is logically impossible'.[21]

Another impediment to the imposition of Western political structures was the role of kinship relations in Timorese society. Traditionally, political authority and ritual authority were separate; political authority depends not on political ideology but on ancestral will.[22] Timorese

political leaders have both invoked and manipulated this indigenous political culture to try to achieve exclusive authority, while nevertheless using the international vocabulary of democracy. Factions in Timor Leste politics are not so much based on philosophical differences, but on 'a struggle for personal power and cultural denominators'.[23]

The UN did not seem aware of the local paradigms and made no serious attempts to accommodate them. UNTAET had little grass roots contact, apart from a civic education project and a constitution-drafting exercise. It did not appear to have much interest in local government structures and concentrated on the national level. It also had limited contact with locals, and dealt with a small elite.

At the same time that it was championing the virtues of democracy, the UNTAET mission exemplified an authoritarian structure. In standard UN practice, UNTAET had a steep hierarchy, with decisions being made by the Special Representative of the Secretary-General (SRSG) and passed down the ranks. This style of organisation may be understandable in a practical sense for a UN Mission, but the SRSG was also the transitional administrator of Timor Leste, with almost unfettered political power. The UN Security Council thus effectively created the Transitional Administrator as a despot. Hohe has observed that this conflation of roles meant that 'authoritarian-style decision-making was not only conducted internally within the mission, but also in the administration of the country'.[24] In this sense, the form of governance modelled by UNTAET was completely at odds with the form of governance it was preaching.

The same point can be made about UNTAET's attitude to human rights. While UNTAET saw itself as having a role in promoting human rights in Timor Leste, it did not seem to consider that the international standards applied to its own work. The way UNTAET handled allegations of human rights violations against its own employees had little transparency, with investigations conducted 'in house' and in secret.[25] The major sanction was being sent home rather than being prosecuted and victims were not informed of the result of investigations.[26] The two track salary structure and different working conditions between international and local staff also caused considerable tension and did not seem consistent with democratic ideals.[27]

Iraq

The idea of democracy has played a significant role in the Iraq conflict. The public rationale for the 2003 invasion was Iraq's failure to comply with Security Council resolutions relating to possible caches of Weapons of Mass Destruction (WMD). Although it made references to the oppression of the Iraqi people by Saddam Hussein, the Australian government expressly ruled out regime-change as a justification for the invasion throughout 2002. Shortly after the invasion, however, there was a shift in rationale and participants in the Coalition of the Willing began to give the goal of Iraqi democracy new prominence. It was not just democracy in Iraq that was at stake; members of the Coalition of the Willing began to argue that the invasion could in fact achieve democracy in the whole of the Middle East. This has been described as a 'tsunami' theory of Iraqi democracy. The idea is that a reconstructed Iraq could become a model democracy for the region, which would then be unable to resist the great wave of democracy. Indeed in June 2003 Prime Minister Howard described the invasion of Iraq as 'the best opportunity in a long time to achieve a lasting settlement in the ongoing and painful dispute between the state of Israel and the Palestinians.'[28]

As has been well-documented, the United States had little strategy to deal with post-invasion Iraq and invoked a broad-brush approach to democracy. Initially, democracy was simply equated with liberation from the Saddam regime, and the violence after the invasion was seen to be evidence of freedom after the invasion – 'stuff happens and it's untidy, and freedom's untidy, and free people are free to make mistakes and commit crimes and do bad things'.[29] As George Packer has noted, Rumsfeld 'looked upon anarchy and saw the early stages of democracy'.[30]

Later versions of democracy devised by the US in Iraq made elections, separation of powers and a free market defining elements.[31] These conceptions of democracy are of course hallmarks of the American political system and were imported into Iraq with almost no consultation: in other words, the Coalition Provisional Authority imposed democracy in a completely undemocratic way. There seems to have been great confidence of the power of this account of democracy to overcome any local reticence. A standard White House response to concerns about the effect of the violence in Iraq on the development of democracy indeed has been that the early American republic also experienced considerable unrest and violence. Richard Armitage, Deputy Secretary of State during the first Bush administration, recently revealed that, before the invasion, President Bush was advised that Iraq was in a similar position to post World War II Germany and Japan and that it would find the American democracy package irresistible, just as those countries had done.[32]

The translation of Western notions of democracy into Iraq has however made a considerable allowance for local culture in one particular area – the rights of women. Under the new Constitution, women in Iraq have less secure protection of their rights than under Saddam Hussein.

The chaos in Iraq has now generated a retreat from the initial vision of an American-style democracy. Prime Minister Howard, for example, has recently revised his language from the goal of a full democracy in Iraq to one simply of stability.[33] There is a deep irony in the Coalition's search for another strong and decisive man to lead Iraq, just like the one they deposed.

Solomon Islands

What of the Solomon Islands? The Solomons are a former British colony, independent since 1978. The causes of the violence that preceded RAMSI's arrival are complex. Malaitan Islanders who had settled in Honiara flooded the local labour market, causing resentment. Some of the Malaitans also squatted on traditional Guadalcanal lands. The situation was made more complicated by tensions between the centre and the regions and Taiwanese funding to politicians in return for recognition of the Taiwanese state.

RAMSI was established in response to a formal appeal from the Solomons Parliament, enacted at Australia's request.[34] Australia may have been prompted to take on this role as a result of a report from the Australian Strategic Policy Institute in 2003 which argued that the chaotic political situation in the Solomons threatened Australian security by providing a potential home for terrorists.[35] Australia insisted that RAMSI be established outside the UN structure: Foreign Minister Downer contended that the UN would be ineffective in such a context and that a regional coalition of the willing had more legitimacy, although the UN Security Council later endorsed the mission. Australia created a coalition of Pacific countries endorsed by the Pacific Islands Forum. Australia has contributed most of the resources and personnel[36] and has dominated RAMSI's political and operational direction.

What idea of democracy has RAMSI worked towards? It has presented its role as strengthening existing centralised political structures and making them more accountable. The operation it manages has been given a pidgin name: 'Helpem Fren'. RAMSI's major achievements are presented as disarming the militants, reorganising the Royal Solomon Islands Police, and building up monitoring institutions such as an ombudsman and Auditor-General. Australians have been placed in line positions in crucial government departments. In many respects, Australia operates as a shadow government in the Solomons.

While RAMSI has succeeded in restoring daily security, as in Timor Leste, there have been complaints that the democracy-builders do not themselves observe democratic practices. For example, RAMSI personnel have immunity from legal proceedings in the Solomon Islands for actions in the course of their duties.[37] RAMSI personnel have also been seen as distant from the local population through their lack of local linguistic ability.[38] And differential salaries and conditions have caused much resentment – for example Prime Minister Sogavare recently demanded that Police Commissioner Shane Castles accept local wages to prove his loyalty.[39]

Some critics of RAMSI have seen it as overstepping its role and intervening in Solomon Islands affairs; others have argued that RAMSI's focus on institution-building has not dealt with the real causes of the tensions in the Solomons. Australia's response to criticism of RAMSI has been unsubtle, with Mr Downer taking an 'all or nothing' approach: either RAMSI is left alone to get on with its work, as defined by Australia, or it will leave completely.[40]

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Some general observations can be made about democracy-building projects.

- First, there is typically a soaring unemployment rate of local populations in the democracy-building era, which, Outi Korhonen has noted, relate directly to an increase in criminality.[41]

- Second, democracy-building tends to advantage existing elites, and can reinforce, for example, the marginalisation of women in public life.

- Third, democracy-building is often viewed as a project of nurturing internationally-oriented groups who can administer locally but who also are sympathetic to integrating the country into the global economic system.[42] The Bretton Woods institutions in particular have treated democracy promotion as, in Hibou's words, 'simply a technical and supplementary element, only mobilised to reinforce the prevailing economic catechism of export-oriented free markets with little state intervention'.[43]

- Fourth, the linkage of democracy-building to the war against terror has limited the horizons of democracy-builders: much greater emphasis is given to increasing military and police forces than to ensuring public participation in government.

We need a much broader debate on what democracy means. As Susan Marks has pointed out, 'low intensity' forms of democracy, such as those contemplated in the cases of Iraq, Timor Leste and the Solomons, 'concentrate attention on forms and events, and … shift the emphasis away from relationships and processes.'[44] The effect is to consolidate existing social orders and to reduce the prospect of political and social change through redistributive claims.

Justice

What is the relationship between democracy-building and what is often called transitional justice? The term 'transitional justice' is used to mean accountability for human rights abuses or atrocities in societies emerging from periods of conflict or repression, as well as in societies where systemic injustices have gone unresolved. Is it necessary to have a process to determine responsibility for serious abuses in order to achieve some form of lasting democracy?

Timor Leste illustrates the tensions between justice and stability created by transitional justice institutions. The Reception, Truth and Reconciliation Commission has dealt with minor crimes committed during the Indonesian occupation without prosecution. Some victims have criticised the process because it gave priority to the reintegration of militia members over the search for justice by individuals and it has been said to have been too lenient. However, perhaps the most significant work of the Commission has been its devastating 2500 page report on human rights abuses during Indonesia's occupation of Timor Leste. Allegations of major crimes committed in 1999 have been referred to the UN's Serious Crimes Unit, but this too has been criticised for not being able to bring to justice many members of the Indonesian military and the militias they supported. Indonesia established an *ad hoc* Human Rights Court to deal with responsibility for the 1999 violence, but this has only successfully convicted two Timor Leste civilians, with all sentences against Indonesian military officers being overturned on appeal.

The Timor Leste example raises the value of transitional justice in a newly democratic country. A UN Commission of Experts recommended in 2005 that Indonesia be given six months to prosecute its citizens involved in the 1999 violence or that they face a UN war crimes tribunal. Timor Leste rejected this recommendation. President Xanana Gusmao has emphasised the importance of maintaining good relations with Indonesia and rebuilding the country rather than on war crimes trials. The Timor Leste and Indonesian governments have now created a Commission for Truth and Friendship which will be charged with establishing the truth about the 1999 violence and will be able to grant amnesties from prosecution.

Iraq

Little attention has been paid to transitional justice in Iraq. Justice has become associated with retribution and the killing of US opponents is described as 'bringing justice' to them.[45] The only institution yet established is the Iraqi Special Tribunal for Crimes against Humanity to try Saddam Hussein and some of his close lieutenants. The judgment in the first case tried against Saddam, the Dujail massacre in 1982, which delivered the death penalty against Saddam, has been hailed as a sign of Iraq's democracy by President Bush and Mr Howard. But I think this linkage is quite wrong. The trial reflects less Iraq's independence than its great dependence on its invaders.[46]

The tribunal is widely perceived as an American institution and a form of victors' justice: it was funded by the US and mainly staffed by US personnel; and the Iraqi judges were all US appointees. The removal of the presiding judge and another court member by the Iraqi government late in 2005 is a sign of considerable governmental intrusion in the Court's processes. The terms of the Tribunal's mandate are also inconsistent with international human rights guarantees. For example, the Tribunal's statute does not require guilt to be proved beyond reasonable doubt and it allows interrogation without defence counsel being present. This form of justice can be characterised as retributive rather than restorative.

The perception of victor's justice has been exacerbated by the limited legal attention to abuses of human rights and atrocities during the invasion by members of the Coalition of the Willing. Since the photos of torture at Abu Ghraib prison became public in 2004, there have been at least ten official military investigations into the activities in the prison but none have investigated whether there was any explicit or implicit official involvement, despite the clear evidence that the perpetrators believed that they had official sanction.[47]

Solomon Islands

No formal transitional justice mechanisms have been developed in the Solomon Islands. The focus has instead been on bringing some of the militants involved in the unrest, such as Harold Keke, to trial on criminal charges. No new mechanisms have been developed to deal with the deep bitterness over the land disputes that prompted the unrest.

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The lessons of transitional justice practice show that there is no 'one size fits all' mechanism. There has to be an extensive process of consultation about the appropriate form of transitional justice institutions, especially with the victims of abuses. Such institutions must be seen as impartial and able to deal with human rights abuses on all sides. The imposition of models from outside is not likely to be successful. We also have to recognise that transitional justice may well be in conflict with short-term democracy-building because it can threaten stability.[48] Insisting on accountability for crimes and achieving peace can appear to be at odds, and the challenge is to devise processes that do not require a choice between these goals.[49]

Conclusions

International efforts in democracy- and justice-building have been haphazard and largely unsuccessful. Do any principles emerge from the cases I have sketched here?

I have four general propositions:

1. Democracy and legitimacy are closely entwined

Our political leaders argue that focus on the legality of an intervention is irrelevant, once it has occurred. The idea seems to be that if democratic states are involved in state-building, the legality of their presence is not an issue. But the evidence suggests that in fact the chances of establishing democracy are closely linked to the legitimacy of the intervention as perceived by the object of the intervention.[50] This is more likely to be achieved through international institutions. Australia's position that it will participate in future coalitions of the willing outside international institutions is thus a step backwards for democracy-building.

2. Stability must not be confused with democracy

The terrible violence in Iraq has led our politicians to reduce their hopes of democracy and to settle for stability. International lawyers also have debated whether there should be a 'two track' conception of democratic governance: a minimalist one, perhaps simply requiring periodic elections, for unstable states and a more demanding institutional one for more secure societies. But this dichotomy can only ever be a short-term solution. It perpetuates inequalities within the society and sows the seeds for future conflict. In my view, we should develop a substantive definition of democracy that is less tied to institutions than to values such as the creation of conditions of equality between citizens.[51] The focus must be the

encouragement of indigenous governance structures[52] and the challenge is to build these inclusively and within a human rights framework.

3. Local voices must be engaged

We rarely consider democracy and justice building projects from the perspective of those most affected by them; the people being saved have no 'subjectivity or autonomy'.[53] It is striking that almost all international attempts to build democracy and justice have been in non-Western countries.[54] The major players in the democracy-building business are almost invariably from developed countries and they do their work literally and figuratively in a language foreign to those they aspire to assist.[55] This quickly leads to a sense that democracy-building is a substitute for empire.

The language used by the democracy-builders regularly has colonial, paternal overtones that deeply irritate the apparent beneficiaries: thus President Bush told Iraqis in October that he could not be 'patient forever' and that he expected them to take more responsibility to ensure security in their own country.[56] This image of a patient, benevolent invader, sorely tried by the failure of Iraqis to get their act together, is sharply at odds with perceptions of Iraqis from all sides. Even in the Pacific, where legitimacy is less acutely in issue, language from Australian politicians, such as the need for Pacific islands governments to 'lift their game', rankles.

International law currently positions people in the developing world as having a limited ability to articulate their aspirations and concerns and to be involved in politics. The engagement of local populations in the democracy-building process requires a basis of knowledge about indigenous political concepts and power structures on the part of those claiming to build democracy.[57]

4. The democracy-builders must be made accountable

There is no international system that makes democracy-builders accountable for their activities; indeed it has been pointed out that modern democracy-builders are less accountable than those working under the old Mandate or Trusteeship systems.[58] Democracy-builders typically view themselves as good Samaritans, making sacrifices to rescue chaotic societies and failures of state-building are attributed to the failures of the population being democratised. But democracy-building can also bring great financial and other rewards. For example, a coterie of large American corporations has reaped huge profits from the rebuilding of Iraq, and allegations of corruption and mismanagement are rife. Large amounts of money from Iraqi oil are unaccounted for.

A significant part of the costs of democracy-building missions go to the salaries of expatriates. These missions have created a new elite cadre of state-building experts who move on to new conflict situations, while the unemployment rate in the recently democratised countries remains at extremely low levels (for instance in Timor Leste unemployment is at 80 per cent). The constituency of many democracy-builders is other governments, not the people.[59] There are many other spin offs for the democracy-builders: as Korhonen has noted 'The media opportunities and the opportunities for the media itself, the career opportunities, the double to triple salaries, and the "experience on the ground" give a boost [to] everyone's business'.[60]

I think that we should give much more scrutiny to the cultures of the democracy-builders themselves. For example, in the case of the UN, few women hold senior positions in agencies concerned with state-building, an absence that sends a strong message in post-conflict societies. Evidence from the last decade of democracy-building also shows an

institutional insouciance or forgetfulness about the position of women, who generally fare badly from the process.[61]

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The four propositions I have outlined do not translate easily into the language of international law; the democracy-building industry may indeed show up the limitations of the discipline. But they point to major challenges.

In the West, we have a tendency to believe that democracy and justice are inherently virtuous concepts; that they have a fixed content and that they will inevitably be accepted. If only people truly understood what democracy meant, they would welcome it with open arms. Democracy-builders tend to assume that intervention in post-conflict societies can act as a decisive break between a problematic traditional order and the clean and shiny new world of modern democracy. No evidence supports this assumption however; indeed the best cases of democracy-building have achieved only ambivalent success.

Democracy-building appears on the agenda when a 'fragile', 'failing', 'failed', 'rogue', 'weak' or 'post-conflict' state - or indeed a whole 'arc of instability' - is on the horizon. These terms echo the language of the League of Nations' Covenant – those peoples who are unable to cope with 'the strenuous conditions of the modern world.' They not only justify intervention but demarcate outsiders and 'others', who are quite distinct from 'our' successful, strong democracies. But it is clear that these terms are political; for example the idea of a 'post-conflict' state is inaccurate. This suggests a neat transition from a state of conflict to peace; it also implies that these are discrete and separate types of societies – we would not, for example, usually understand Australia in such terms. Post-conflict societies carry the sense of being unruly, teetering on the edge of chaos; of a tentative redemption by the international community; and they are measured in contrast to the mature, secure, democracies of the West. In this sense, the term 'post-conflict' obscures the identity of the actors involved and represents them either as the nurturers – the agents of change – or the nurtured. These categories obscure the way that we, the democracy-builders, can be complicit in the dysfunctions that make 'building democracy' necessary.[62]

In the end, the project of democracy-building tells us more about the democracy-builders than the country to which democracy is being brought; it allows us to construct the 'other' as chaotic and ourselves as ordered, benevolent and magnanimous. We can thus deflect scrutiny of the failures of democracy and justice in our own societies.

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1   Rotberg, Robert (2004). 'The Failure and Collapse of Nation-States: Breakdown, Prevention and Repair' in Rotberg, Robert (ed), *When States Fail: Causes and Consequences*. Princeton: Princeton University Press: 42.

2   United Nations Report on Human Rights in Iraq September 2006. UNAMI Human Rights Report 1 September – 31 October 2006, available at http://www.uniraq.org/documents/HR%20Report%20Sep%20Oct%202006%20EN.pdf

3   Hoge, Warren (2006). 'UN Says Iraq Seals data on the Civilian Toll' *New York Times* 21 October.

4   Rutenberg, Jim and David S Cloud (2006). 'Bush, Facing Dissent on Iraq, Jettisons "Stay the Course"'. *New York Times* 24 October.

5   OECD (2005). *Security System Reform and Governance*. Paris: OECD Publishing: 47.

6   Chapter XII UN Charter. Article 76 was crafted in less overtly colonial language than the Covenant of the League of Nations.

7   The UN Charter also created a regime for 'non-self-governing' territories.

8   For instance, the work of ONUC (Operation des Nations Unies au Congo) in the Congo.

9   Maley, William (2006). 'Democratic Governance and Post-Conflict Transitions'. *Chicago J International Law*, 6: 683.

10 See Chesterman's summary in Chesterman, Simon (2003). *You, the People. The United Nations, Transitional Administration, and Statebuilding*. Oxford University Press: Oxford and New York: 4.

11 See, eg, Condoleezza Rice (2000). 'Promoting the National Interest', *Foreign Affairs,* 79, 1 (Jan/Feb): 45.

12 20 January 2005.

13 Department of Foreign Affairs (2003). *White Paper on Foreign Affairs and Trade: Advancing the National Interest*. Department of Foreign Affairs and Trade: Barton: 203

14 Downer, Alexander (2006). 'Australia for Freedom' *Looking Forward, 3* (Winter): 2.

15 For example, Tom Farer (2004).'The Promotion of Democracy: International law and norms' in Edward Newman and Roland Rich (eds), *The UN Role in Promoting Democracy: Between Ideals and Reality*. UNU Press: Tokyo: 34.

16 *Ibid*: 38 -39

17 Orwell, George (1945). *Politics and the English Language*. Reprinted in George Orwell, *Orwell and Politics*. Penguin Books: London: 397, 403.

18 Hohe, Tanja (2004). 'Delivering feudal democracy in East Timor' in Newman & Rich *op cit*: 302, 303.

19 *Ibid*: 302.

20 *Ibid*: 306.

21 *Ibid.*

22 *Ibid*: 304.

23 *Ibid*: 310.

24 *Ibid*: 315.

25 Devereux, Annemarie (2005). 'Searching for Clarity: A Case Study of UNTAET's Application of International Human Rights Norms' in Nigel D White and Dirk Klaasen (eds), *The UN, Human Rights and Post-Conflict Situations*. Oxford University Press: Oxford: 293, 318.

26 *Ibid*: 319. The UN also invoked the 1946 Convention on the Privileges and Immunities of the UN to protect civilian personnel.

27 *Ibid*: 319-320.

28 Quoted in Patrick Walters (2003). 'Farewell to arms', *The Weekend Australian* 7-8 June: 24.

29 Packer, George (2005). *The Assassins' Gate.* Farrar Strauss and Giroux: New York: 136.

30 *Ibid.*

31 See the US State Department's note on 'Defining Democracy' at http://usinfo.state.gov/products/pubs/whatsdem/whatdm2.htm

32 Walters, Patrick (2006). 'Armitage warns against quick exit from Iraq', *The Australian* 7 November.

33 ABC Radio 20 October 2006.

34 Agreement of 24 July 2003, [2003] ATS: 17.

35 Australian Strategic Policy Institute (ASPI) (2003). *The Solomon Islands: Our Failing Neighbour: an ASPI policy report.* Barton: ASPI.

36 Of 2200 original troops, 1500 were from Australia.

37 This law was challenged, unsuccessfully, by Solomon Islands lawyer, Andrew Nori.

38 Hutcheson, John (2005). 'Helping a Friend: An Australian Military Commander's Perspective on the Regional Assistance Mission to the Solomon Islands', *Australian Army Journal*, 11, 2: 47, 52.

39 Jones, Lloyd (2006). 'Solomons demands "loyalty" pay cut', *Canberra Times* 23 October: 2.

40 Radio Address by Alexander Downer on 'Talking Truth' Solomon Islands Radio 20 May 2006.

41 Korhonen, Outi (2003). 'Post as Justification: International law and democracy-building after Iraq', *German Law Journal*, 4: 719.

42 Chimni, BS (2005). Book review, *European Journal of International Law* 5: 1001, 1003.

43 Hibou, Béatrice (2002). 'The World Bank: Missionary Deeds (and Misdeeds)' in Schraeder, Peter (ed) *Exporting Democracy: Rhetoric vs. Reality.* Lynne Rienner: Boulder: 173, 174.

44 Marks, Susan (2003). *The Riddle of all Constitutions: International Law, Democracy and the Critique of Ideology.* Oxford University Press: Oxford: 52.

45 For example, President Bush farewelled Donald Rumsfeld by noting that 'he brought justice to the terrorist Al Zarqawi'.

46 Chandler, David (2006). *Empire in Denial: The politics of state-building.* Pluto Press: London: 172.

47 Hersh, Seymour (2005). 'Abu Ghraib lesson unlearned', *Guardian Weekly* May 27-June 2: 15.

48 Knaus, Gerald and Felix Martin (2003). 'Lessons from Bosnia and Herzegovina: Travails of the European Raj', *Journal of Democracy* 14, 2: 60.

49 In the context of the Congo, see Nick Grono (2006). 'What comes First, Peace or Justice?' *International Herald Tribune* 26 October.

50 Legitimacy is to some extent related to legality, although the categories do not overlap completely – it is possible for an illegal action to be legitimate, as some argued in the case of NATO's bombing of Kosovo in 1999.

51 This is a definition proposed by Susan Marks (2003) *op cit.*

52 Morgan, Michael and Abby McLeod (2006). 'Have we failed our neighbour?' *Australian Journal of International Affairs*, 60: 412, 414.

53 Anghie, Antony (2004). *Imperialism, Sovereignty and the Making of International Law.* Cambridge University Press: Cambridge: 113.

54 When the international community becomes involved in countries not usually considered part of the global South (for example the former Yugoslavia), they become relocated to the South in the sense of being depicted as immature societies which cannot be left to run themselves.

55 Making this more complex are the roles assigned to different countries in peacekeeping and democracy-building missions. The Brahimi Report noted in 2000 that 77 per cent of peacekeeping forces, which are involved in the most dangerous missions, came from the developing world; but the developed world has two-thirds of the more comfortable policy positions in the UN's Department of Peacekeeping Operations. See Pugh, Michael, (2004). 'Peacekeeping and Critical Theory', *International Peacekeeping* 11, 39: 45.

56 Rutenberg and Cloud *op cit.*

57 Hohe *op cit*: 316.

58 Chesterman *op cit*: 45.

59 Chopra, Jarat (2002). 'Building State Failure in East Timor', *Development and Change,* 33: 979, 998.

60 Korhonen *op cit*: 715.

61 See eg Hilary Charlesworth and Christine Chinkin (2004). 'Regulatory Frameworks in International Law', in C Parker, C Scott, N Lacey and J Braithwaite (eds), *Regulating Law* Oxford University Press: Oxford: 246; Tammy Smith (2005). 'Post-War Bosnia and Herzegovina: The Erosion of Women's Rights under International Governance', *Critical Half* 3, 2 (Fall): 38.

62 Pugh *op cit*: 54.