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## FROM WAR TO PEACE: WHEN DEMOCRACY PREVAILS?

IZABELA PEREIRA WATTS\*

### ABSTRACT

Why are some war-torn countries able to make the transition to democracy? This paper intends to bring to light central dilemmas originating from the efforts of building peace and democracy in fragile states after war. We will focus on understanding the tensions and contradictions in post-conflict democratization, the challenges facing interim governments and the role of the international community. We will first analyze the set of structural and common dilemmas of peace-building and democratization in the aftermath of civil war, such as temporal, systemic, horizontal, and vertical dilemmas. The paper highly contributes theoretically to the body of knowledge by proposing a spiral of interrelated additional 8 dilemmas: security, safety, moral, sequencing, design, transparency, financial, and resources. Secondly, the different dilemmas will be addressed in relation to elections. Thirdly, constitutionalism is a sine qua non mechanism for establishing the new “social contract” based on the principles of democracy and the rule of law. Finally, the processes of democratization and peace-building are promoted by international actors who also face their own range of varying and even mutually contradictory dilemmas. In conclusion, from war to peace, democracy might prevail initially with a minimalist approach. But only if certain choices of

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elections procedures and constitutionalism design with specific separation of power and power sharing arrangements are foreseen towards sustainable peace. The paper has a multi-layered perspective that tries to fill the gaps between theory and practice on fragile states, civil wars, democratic governance and state institution building. By advancing theory and practice with policy-relevant results, the research hopes to facilitate more effective interventions and sustainable transitions from war to peace through democratic means.

## I. INTRODUCTION: SOMETHING IS WRONG WITH DEMOCRATIZATION AND PEACE-BUILDING

On the transition from war to peace: when can democracy be a tool for sustainable Peace? Why are some war-torn countries able to make the transition to democracy? In post-conflict situations, how can the international community assist the birth or consolidation of liberal and democratic states? In a globalized world, the popular terminology of “fight for democracy” can also be lethal, violent, and a tool to legitimize the abuse of power. The peace crusade from war to democracy is an uncertain path. “Peace” and “Democracy” are two often-desired goals promoted in societies devastated by war. Constructing democracy and building peace have come to be viewed as inherently inseparable: “democratic peace building” sums up this compound agenda and is a key element of international assistance. Curiously, the historical facts show a paradox. With the “the third wave” of democratization, the number of democracies in the world more than doubled and democracy came to be seen as the only legitimate form of government. However, the number and complexity of armed conflicts or crises has also increased. Consequently, the number of UN peace operations currently in existence is unprecedented.<sup>1</sup> Furthermore, interventions involving the maintenance of peace, which is the UN’s main mandate, require multidimensional approaches to also deal with complex threats as regional spill over, internationalized civil wars and terrorism. Conversely, the design of complex operations is often mismatched with existing institutional operational capabilities as well with the principles of international law.

When the civil war ends, democracy is yet to begin. As the mantra goes, it is a never-ending process that usually experiences progress and regression. There are not yet any pillars of an ideal western form of democracy with solid institutions or mechanisms of constitutionalism, power-sharing, checks and balances, rule of law, human rights, accountability, public policy formulation and implementation, free and capable media or independent and non-discriminatory judiciary nor decentralized political system with multiparty political landscapes. On the contrary, civil wars leave a legacy of absence of political culture of tolerance, failed or even collapsed state institutions, weak or non-existent civil societies, and profound distrust among political actors. It is peculiarly challenging for countries that have experienced civil war to make the transition to democracy.

In the aftermath of conflict, the State is on standby: *in limbo* struggling for security within a hectic labyrinth of divergent interests and multiple actors. Establishing democracy in the aftermath of a civil war has proved to be a

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1. U.N. Peacekeeping Operations Fact Sheet (Jan. 31, 2016), <http://www.un.org/en/peacekeeping/documents/bnote0116.pdf>.

challenging proposition, but not an impossible one. “Democratization should not be presumed to be a panacea,” says Sebastian von Einsiedel.<sup>2</sup> Recently, the interventions occur more frequently within internal conflict scenarios, including civil wars (intrastate) or conflicts with regional spill over.<sup>3</sup> Some studies suggest that “more than two-thirds of all armed conflicts in the world since 1945 have taken the form of civil wars,”<sup>4</sup> and that fragile states are “fifteen times more prone to civil war than developed countries, and they are the source of most of the world’s refugees.”<sup>5</sup> According to United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), at the end of 2015, 125 million people from 37 fragile states have been displaced by conflict.<sup>6</sup> Several political theorists have denied that there is the possibility of popular government arising immediately out of the chaos of civil war. From Machiavelli to Huntington, the transition very often leads first to a one-man rule such as a Prince, Leviathan, or a military dictator before the actual democratic regime takes place. According to Hartzell and Hoddie, “thirty-five of the sixty-three countries that experienced civil war from 1945 through the end of 2006 made the transition to a minimalist, Schumpeterian form of democracy during the first decade following the end of their respective armed conflicts.”<sup>7</sup> Leonard Wantchekon finds that nearly 40% of all civil wars that took place from 1945 to 1993 resulted in an improvement in the level of democracy.<sup>8</sup> For example, civil wars gave birth to relatively stable democracies in Mozambique, El Salvador, Guatemala, and Nicaragua among

2. Sebastian von Einsiedel, *Policy Responses to State Failure*, in MAKING STATES WORK: STATE FAILURE AND THE CRISIS OF GOVERNANCE 13, 27 (Simon Chesterman et al. eds., 2005).

3. LOTHAR BROCK ET AL., FRAGILE STATES: VIOLENCE AND THE FAILURE OF INTERVENTION 1 (2012); See Michael E. Brown, *Ethnic and Internal Conflicts: Causes and Implications*, in TURBULENT PEACE: THE CHALLENGES OF MANAGING INTERNATIONAL CONFLICT 209, 209–14 (Chester Crocker et al. eds 2001); VIRGINIA P. FORTNA, DOES PEACEKEEPING WORK: SHAPING BELLIGERENTS’ CHOICES AFTER CIVIL WAR 1 (2008); See U.N. Development Programme Guidance Note, Governance in Conflict Prevention and Recovery 3 (2009), <http://apps.americanbar.org/intlaw/ilrc/Governance%20in%20Conflict%20Prevention%20&%20Recovery%20Guidance%20Note.pdf>.

4. Duk H. Kim, *Nurturing Peace: United Nations Peace-building Operations in the Aftermath of Intrastate Conflicts, 1945-2002* 1 (May 2007) (unpublished Ph.D. dissertation, University of Missouri – St. Louis) (on file with ProQuest Information and Learning Company).

5. SETH D. KAPLAN, FIXING FRAGILE STATES: A NEW PARADIGM FOR DEVELOPMENT 4 (Praeger Sec. Int’l 2008); Stewart Patrick, *Weak States and Global Threats: Fact or Fiction?*, 29 THE WASH. Q., Spring 2006, at 27, 31.

6. See U.N. Office for the Coordination of Humanitarian Affairs, *Global Humanitarian Overview 2016* (2016), <https://docs.unocha.org/sites/dms/Documents/GHO-2016.pdf>.

7. Caroline A. Hartzell & Matthew Hoddie, *The Art of the Possible: Power Sharing and Post-Civil War Democracy*, 67 WORLD POL. 37, 37 (Jan. 2015).

8. Leonard Wantchekon, *The Paradox of “Warlord” Democracy: A Theoretical Investigation*, 98 AM. POL. SCI. REV. 17, 17 (Feb. 2004).

others.<sup>9</sup> Curiously, civil wars that end in a military victory, in particular those that end in a rebel victory are associated with higher levels of democracy in the longer perspective than are wars that end in a cease-fire or peace agreement.<sup>10</sup>

After the Cold War, and particularly from the 90's, democratization has been formally enshrined in the post-war settlement of nearly all intrastate wars. The use of democratic processes and the creation or transformation of institutions have been promoted as a transitional recipe to evolve from armed conflict towards peaceful political competition.<sup>11</sup> Towards an "elusive peace," a "turbulent democracy" seems to be an inevitable way.<sup>12</sup> The inherent risk of partial democratization is the danger of hostilities amplifying and channeling back to an endless cycle of conflict, in lieu of converting towards the cycle of peace.<sup>13</sup> Extensive empirical studies suggest that *mature* democracies are indeed the most stable and peaceful of all regimes.<sup>14</sup> Conversely, the process of "how to get there" from transitional, unstable, or failed democracies remains not so much picture-perfect. On a large conceptual gray zone, most war-torn societies discover themselves sandwiched by war-and-peace or by war-and-democracy.<sup>15</sup> Therefore, as it remains an enigmatic fact, I aim to further explore why countries so rarely emerge from civil war as robust democracies.

Something is wrong with democratization and peace-building. This paper intends to bring to light central dilemmas originating from the efforts of building peace and democracy in fragile states after war. The focus is on the war-to-peace transitions through democracy and the objective is to anticipate how to avoid failed states or anocracies that can fuel the cycle of more conflict. We will concentrate on understanding the tensions and contradictions in post-conflict functions, the challenges facing interim governments and the role of the international community. Needless to say: democratization is not all about the ballot vote. Nevertheless, elections remain a crucial pillar of democracy and particularly violent prone after-war. With that aim in mind, we will first

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9. Nancy Bermeo, *What the Democratization Literature Says—or Doesn't Say—About Postwar Democratization*, 9 GLOBAL GOVERNANCE 159, 160 (2003).

10. Monica Duffy Toft, *Peace Through Security: Making Negotiated Settlements Stick*, 4 (2003), <http://www3.carleton.ca/csds/docs/Toft%20PTS.pdf>.

11. See generally Bermeo, *supra* note 9.

12. TURBULENT PEACE: THE CHALLENGES OF MANAGING INTERNATIONAL CONFLICT, (Chester A. Crocker et al. eds., 2001); WILLIAM ZARTMAN, *ELUSIVE PEACE: NEGOTIATING AN END TO CIVIL WARS* (The Brookings Inst. 1995).

13. See generally Institute for Economics & Peace, *Global Peace Index 2014* (2014), [http://economicsandpeace.org/wp-content/uploads/2015/06/2014-Global-Peace-Index-REPORT\\_0-1.pdf](http://economicsandpeace.org/wp-content/uploads/2015/06/2014-Global-Peace-Index-REPORT_0-1.pdf).

14. See Håvard Hegre et al., *Toward a Democratic Civil Peace? Democracy, Political Change, and Civil War, 1816-1992*, 95 AM. POL. SCI. REV. 33, 44 (Mar. 2001).

15. Timothy D. Sisk, *Peace-building as Democratization Findings and Recommendations*, in FROM WAR TO DEMOCRACY: DILEMMAS OF PEACE-BUILDING 239, 243 (Anna K. Jarstad & Timothy D. Sisk eds., 2008).

analyze the set of structural and common dilemmas of peace-building and democratization in the aftermath of civil war, as temporal, systemic, horizontal, and vertical dilemmas. The paper contributes theoretically to the body of knowledge by advancing the paradoxes faced by democratization and peace-building with additional 8 dilemmas: security, safety, mortal, sequencing, design, transparency, financial, and resources. Secondly, the different dilemmas will be addressed in relation to elections. Thirdly, constitutionalism is a *sine qua non* mechanism for establishing the “social contract” based on the principles of democracy and the rule of law. Finally, the processes of democratization and peace-building are promoted by international actors who also face their own range of varying and even mutually contradictory dilemmas. Due to size restriction for publication, this paper has focused on must-have pillars of democratization. A subsequent paper could analyze the set of post-civil war dilemmas regarding transformation of political parties, power sharing, transitional justice, human rights, civil society as well the process of disarmament, demobilization, and reintegration of warring groups.

## II. DILEMMAS AND TRADE-OFFS BETWEEN EFFORTS TO PROMOTE PEACE AND DEMOCRACY

Nowadays, war cessation is predominantly about building anew or about rebuilding functioning, secure, stable, and democratic (or “republican”) states.<sup>16</sup> Beyond fixing fragile states, how does one make a state work after state failure and governance crisis?<sup>17</sup> In this vein, power-sharing comes as an alternative to partition. The popular formula of democracy building for the transition from war-to-peace is: elections, new constitution, parliamentary politics by political parties, creation of independent judicial institutions, and revival of civil society to plague for reconstruction, reconciliation, and human rights.

Studies on democratization lead to the impression that democracy itself is part of the problem and, therefore, that it plays against itself.<sup>18</sup> Post-war societies are too fragile to be exposed to the competitive pressures of the electoral process. Democratization intrinsically subverts established political orders, allows new entrants to access the political system, highlights social cleavages, challenges existing power relations, and threatens incumbent

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16. See Michael Barnett, *Rebuilding a Republican Peace: Stabilizing States After War*, 30 INT’L SEC. 87, 87–88 (Spring 2006).

17. See generally Simon Chesterman, *Peace and Security: The Use of Force to Maintain Law and Order*, in YOU, THE PEOPLE: THE UNITED NATIONS, TRANSITIONAL ADMINISTRATION, AND STATE-BUILDING (Simon Chesterman et al. eds., 2005); See generally KAPLAN, *supra* note 5.

18. See MARCEL GAUCHET, *LA DEMOCRACIA CONTRA SÍ MISMA* (Homo Sapiens 2004).

authority. Consequently, transition to democracy is tumultuous, uncertain, and often a dangerous business.<sup>19</sup> The primary problem is the creation of a legitimate public order. As well explored by the literature, men may have order without liberty, but they cannot have liberty without order.<sup>20</sup>

Anocracies shows that if democracy is half-way, it can be more perilous than the regime that originally stood prior to intervention.<sup>21</sup> In quasi-democracies there is a high level of probability of intra or interstate conflict that consequently makes fragile states a source of security preoccupation. Authoritative or democratic systems can be less-war prone. It is the level of inclusiveness of the political system that results on stability or instability.<sup>22</sup> Highly inclusive systems, such as the proportional representation system, are more stable than low inclusive systems that favor political exclusion, such as the majoritarian system. Empirically, it seems that democracy *per se* is not enough to deter social conflicts.

On the one hand, there is the urgency of war termination. On the other hand, there is the languid process of democracy building. Therefore, a key dilemma common to nearly all post-war contexts is the trade-off between short and longer-term goals of peace-building and democratization. On the delicate choice between peace and democracy, peace is the ultimate goal of war. Democracy crowns the success of state building missions. But, an absence of, or too little democracy may put peace in a challenging position and war might recur. At this stage, the examination of processes of pre-international intervention and post-intervention continues to be unsatisfactory. The greatest paradox between democracy and peace is: in one prism democracy as a political system is associated with peaceful conflict management, both *within* and *between* states. In another prism, the path to democracy is ironically often conflict-ridden.<sup>23</sup> Peace-building and democratization are dynamic processes.

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19. ROLAND PARIS, *AT WAR'S END: BUILDING PEACE AFTER CIVIL CONFLICT* 45 (2004); Benjamin Reilly, *Post-War Elections: Uncertain Turning Points of Transition*, in *FROM WAR TO DEMOCRACY: DILEMMAS OF PEACE-BUILDING* 157, 157 (Anna K. Jarstad & Timothy D. Sisk eds., 2008).

20. See HEDLEY BULL, *THE ANARCHICAL SOCIETY: A STUDY OF ORDER IN NEW WORLD POLITICS* 253–54 (1977); Lester Edwin J. Ruiz, *Constitutionalism and Foundational Values: Philippine Constitutional Authoritarianism Revisited*, in *THE CONSTITUTIONAL FOUNDATIONS OF WORLD PEACE: LOGIC AND TINKERING* 289, 300 (Richard A. Falk et al. eds., 1993); See generally DAVID HELD, *DEMOCRACY AND THE GLOBAL ORDER: FROM THE MODERN STATE TO COSMOPOLITAN GOVERNANCE* 241–42 (1995); SAMUEL P. HUNTINGTON, *POLITICAL ORDER IN CHANGING SOCIETIES* 7–8 (1968).

21. BROCK, *supra* note 3, at 136.

22. Marta Reynal-Querol, *Does Democracy Preempt Civil Wars?*, 21 *EUR. J. OF POL. ECON.* 445, 446 (2005).

23. Anna K. Jarstad & Timothy D. Sisk, *Introduction*, in *FROM WAR TO DEMOCRACY: DILEMMAS OF PEACE-BUILDING* 1, 1 (Anna K. Jarstad & Timothy D. Sisk eds., 2008); See generally Edward D. Mansfield & Jack Snyder, *Democratization and the Dangers of War*, 20

The challenges confronting international and local actors when establishing or re-establishing good governance must also be further elucidated.

When the pen fails, the sword rules. For Mukherjee, introducing democracy in conflict-ridden societies may decrease the possibility of failure of peace.<sup>24</sup> As per the security dilemma, warring factions need to persuade each other and the citizens that they are ready to take turns in ruling the country: that means alternation of power. They also need to persuade citizens that political lawlessness and violence will be eliminated if they are elected. Simultaneously law enforcement institutions, such as an effective police force and a criminal justice system, as well as political institutions, for instance depoliticized judiciary and electoral commission, must be developed. Without those institutions, democracy will fail as the promise of security for citizens or political rights for the warring factions will be only words and no deeds.<sup>25</sup>

As per definition, a dilemma is a situation in which a choice must be made between alternatives that are equally undesirable. The literature on democratization or international intervention that approaches efficacy and efficiency is not fully adequate to the specific conjecture of post-war situations where decisions are made between what is possible or less unscrupulous. According to Jarstad and Sisk, it is possible to subcategorize into 4 groups the dilemmas that may arise when the processes of democratization and peace-building oppose each other.<sup>26</sup> Peace-building may involve restrictions on democratic freedoms such as freedom of the press and mass demonstrations. In the long run, such constraints may cause turbulence and not only have an adverse influence on democratization, but also turn into an obstacle for implementation of the peace agreement. As civil war negotiations succeed, obstacles of democratization arise as state representatives or rebel forces faces uncertainty on how to protect their vital interests in the future through democratic processes – particularly but not exclusively elections.

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INT'L SEC. 5, 5–38 (Summer 1995); See JACK SNYDER, FROM VOTING TO VIOLENCE: DEMOCRATIZATION AND NATIONALIST CONFLICT 27–31 (W. W. Norton & Co., Inc. 2000).

24. See generally Bumba Mukherjee, *Why Political Power-Sharing Agreements Lead to Enduring Peaceful Resolution of Some Civil Wars, But Not Others?*, 50 INT'L Q. 479, 479–504 (Jun. 2006).

25. Wantchekon, *supra* note 8.

26. Jarstad & Sisk, *Introduction*, *supra* note 23, at 10–11.

Table 1: Central dilemmas of democratization and peace-building suggested by Jarstad and Sisk

Dilemma	Trade-off	Description
<b>Horizontal</b>	Inclusion vs. exclusion	Relation between the elites of warring parties and democratic political parties. Difficult choice on who is participant in the processes.
<b>Vertical</b>	Efficacy vs. legitimacy	Relation between the elite and mass politics. Difficult choice on the legitimacy of actors and the efficacy of achieving peace and democracy.
<b>Systemic</b>	Local vs. international ownership	Relation between the national and international expertise and resources. Democratization as well as peace-building needs to be driven by local motives and actors and not imposed or led by outsiders.
<b>Temporal</b>	Short-term vs. long-term	Relation between short-term and long-term initiatives. Efforts to support democratization may in the short-term increase the risk of violence, and thereby in the long-term undermine the chances for democracy to take root.

No examples were found where only one dilemma is in place at a time. Therefore, the analysis and understanding entail an interacting helical cogwheel perspective: one dilemma leads to one or more additional dilemmas even more critical of a complex conundrum. As an example, institutions building simultaneously involve temporal, vertical, and systemic dilemmas. The transition war-to democratic peace requires hard choices. Some are related to “when, where, who, and why” (moral dilemma of intervention), others to “what, how, whose, which, how many, and how much” (dilemmas arising from intervention). For example, too little military intervention or intervention that comes too late, as the cases of Bosnia-Herzegovina and Rwanda has demonstrated, is problematic. A promise of intervention not acted upon is even worse, as in the African Great Lakes. Yet there is also such a thing as over-intervention; the heavy-handedness of the UN intervention in Somalia

hampered efforts to gain acceptance from the population and may have been ineffectual.<sup>27</sup>

In this paper, my objective is to postulate that it is possible to further contribute to the body of knowledge by advancing the analysis on the trade-offs and paradoxes faced by democratization and peace-building by proposing additional dilemmas to those proposed by Jarstad and Sisk.<sup>28</sup>

Table 2: Additional dilemmas of democratization and peace-building proposed by the author (I. Pereira Watts)

Dilemma	Trade-off	Description
Security	Lost certainty vs. Win uncertainty	<i>To struggle for power or negotiate for freedom?</i> Perhaps this is the most central dilemma: war certainty vs. peace uncertainties. As per popular proverbs, “a bird in the hand is worth two in the bush” or “a living dog is better than a deal lion” or “better one bird in the hand than ten in the wood.” Contrariwise, in war situations, it might not be better to have a lesser but certain advantage than the possibility of a greater one that may come to nothing. It is related to the perceived or feared losses such as of existence, property, prestige, position, and security. I argue that success in civil war termination concerned with ending the violence and establishing the political space for enduring peace requires a balance of <i>carrots and sticks</i> . To be part of the democratic game and maybe win versus to stay in war and maybe lose. By nature,

27. See Christina G. Badescu, *Authorizing Humanitarian Intervention: Hard Choices in Saving Strangers*, 40 CANADIAN J. OF POL. SCI. 51, 67 (2007); Mohamed Sahnoun, *Mixed Intervention in Somalia and the Great Lakes: Culture, Neutrality, and the Military*, in HARD CHOICES: MORAL DILEMMAS IN HUMANITARIAN INTERVENTION 87, 95–98 (Jonathan Moore ed., 1998).

28. Jarstad & Sisk, *Introduction*, *supra* note 23, at 10–11.

		<p>enemies cannot trust that the other side will uphold an agreement in democratic governance after a winner-take-all election, and would make the loser-side vulnerable and therefore not willing to compromise to the peace agreement. There is an existential connotation. There is a fear that a rival will become stronger after an election and will monopolize the state power and weaken or target those who lose elections. Linked with the “certainty dilemma”, if the results were certain, elections would be <i>unnecessary</i>. The element of uncertainty makes adversaries willing to play by the rules of the democratic game even if they might lose, as they also might win. But it is precisely the uncertainty that might lead to violence. Power-sharing increases the likelihood that adversaries will remain committed to the peace on a win-win situation instead of a winner-takes-all system.</p>
<p><b>Moral</b></p>	<p>Cause and Effect</p>	<p>Anything that is ethically related to “right and wrong”. <i>Is it right to do it?</i> A decision can be right and end up having devastating consequences.</p> <p>Hazards of legalism and moralism have often inflamed discussion of governance, and their analyses are rooted directly within contemporary human struggles for peace and justice. These include predicaments of <i>jus in bellum</i>, <i>jus ad bellum</i>, and most of all it is concerned with <i>jus post bellum</i>. It concerns dichotomies as to follow the rules versus to maximize</p>

		<p>the good or minimize the bad. Nature of duty and obligation (deontology) vs. prioritizing on the outcomes of the decision (consequentialist). Ethical dilemmas relating to humanitarian intervention are hard choices because they are both unavoidable and complex. They are unavoidable inasmuch as there are no ready-made recipes to test the morality of any given aspect of international relations. Some examples: 1) Intervention and aggravate war vs. non-intervention and allow genocide, 2) sovereignty vs. responsibility to protect, 3) consistency vs. coherence (selective intervention vs. non-intervention) 4) Be impartial vs. taking sides. 5) Approve sanctions to enforce international law vs. minimizing peoples suffer in conflict. 6) Personal interests vs. humanitarian assistance, 7) institutional image vs. investigation and consequences 8) Strategic logistical humanitarian alliance with military perpetrators vs. loss of credibility with victims, 9) effective personal humanitarian work vs. keep the salary contract for a longer term.</p>
<p>Safety</p>	<p>To get involved vs. not involved</p>	<p>To go versus not to go to the polls. There is a connotation related to the protection of the citizen against violence when exercising its civil rights. Elections (pre-election, during, and post-elections phases) can be very violent and the population may be threatened or intimidated to go or to boycott the polls or even pressured to</p>

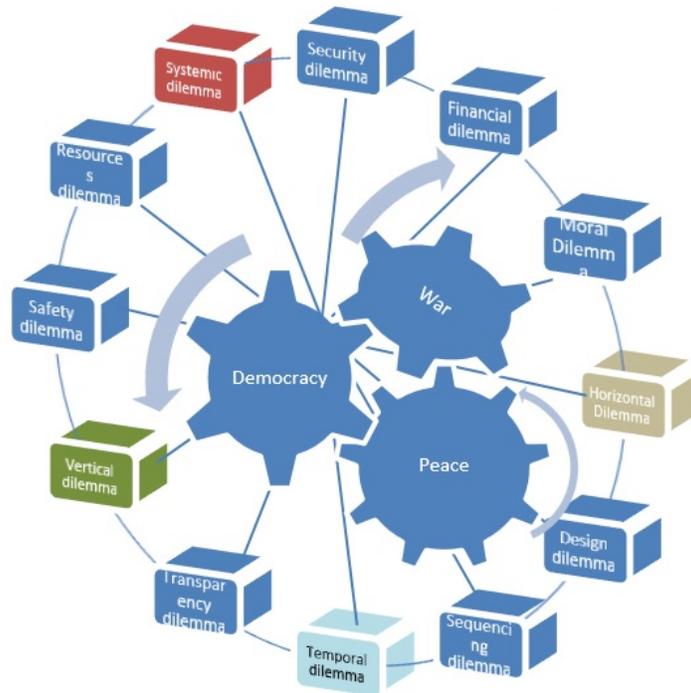
		<p>overthrow the election results. Voters face a mix of feelings such as fears, uncertainty, and expectations in the future. Very often the available literature does not distinguish between security and safety and overstates them as one single dilemma.</p>
<b>Sequencing</b>	<p>Bottom-up vs. up-down</p>	<p>What comes first? For example: To start the democratization process from the national level (with national elections) versus from the local/district level (local elections). Another alternative believes that democratization is a hybrid process where bottom-up and up-down dynamics should be simultaneous.</p>
<b>Design</b>	<p>Technical vs. political choices</p>	<p>Technical expertise can be undermined by political choices of a predominant warlord. The choice of electoral system is one of the most important political decisions of a new country. Decision on the democratic rules of the game must be made between majoritarian or proportional systems and on the responsible authority to run it through independent or political Commission. Favoring a system may result on favoring a political axis, and therefore jeopardizing the credibility and legitimacy of the elections. Encouraging ethnic/religious/political polarization is undemocratic and can endanger the peace process with a return to violence.</p>
<b>Transparency</b>		<p><i>Truth for illegitimacy for a lie for stability?</i> A choice must be made between truth and conflict versus untruth and stability. Transparency is also</p>

	<p>Impartiality vs. Liability</p>	<p>related to peace agreement negotiation, which are usually made inside closed doors and by a “petit comité”. Too much transparency can ruin the peace process. But too little can undermine democracy. Example: The media can play two roles. It can be democratic or a toll of warlords (media coup d’état) when brain-washing voters through information and clarification or through intimidation and fear or even through money by paying for their support. As part of the transition, “media reform” is usually part of the agenda on democratization but is against the interests of the warlords as includes law on freedom of expression, human rights advocacy, formation of independent media, and training. “Peace media” promotes a more effective and “democratic” media after war with the interruption of dissemination of “hate media”.</p>
<p><b>Financial</b></p>	<p>Present vs. Future</p>	<p>Democracy and money have different timeframes: the first is a long-term process. The later ideally looks for short-term results. In the aftermath of war, the country is devastated and no state financial or fiscal institution is in place to manage the remaining natural resources or to collect tax from the survivors. International funds to implement peacekeeping mission are size restricted and time-limited. The dilemma is how to implement state structure without money. Different from the systemic dilemma related to ownership, financial-fiscal dilemma is</p>

		operational and related to the actual production or management of state revenue: either borrow and create a public debt and dependency or to do only what is manageable with the available resources until the creation of a proper tax collection system.
<b>Resources</b>	Efficiency vs. Viability	The preambles toward democracy usually revert to autocracy or to anocracy in countries that have very low incomes and literacy and/or are oil-based economies. Should they use the natural resources left now to reconstruct infrastructure and a nation or should it be kept for the future and have nothing now? Resources also include capable human resources, who normally are taken over by international “experts”. Very often, the use of national resources is filled by corruption schemes due to the lack of transparency on the mechanisms of decision-making and execution. Additionally, the lack of basic infra-structure, leads to a logistical dilemma that impedes the democratization processes of elections and justice.

Issues like corruption and gender permeate all of the dilemmas. By advancing the body of knowledge and to better visualize as well as to make room for deeper analysis, Graph 1 summarizes a new proposal of an interrelated set of dilemmas that are faced when trying to build peace and democracy in the aftermath of war in fragile states. I believe that awareness of the existence of those challenges is already a step towards a better approach on conflict resolution and more effective and durable transition to democratic peace.

Graph 1: New advanced set of dilemmas of democratization and peacebuilding



### III. ELECTIONS: FROM THE BATTLEFIELD OF WAR TO BATTLEFIELD OF THE BALLOT BOX

In war-to-democracy transitions, elections are a pivotal issue and are widely seen as an integral part of the process of war termination, international (dis)engagement, and nation building. The electoral process is a mechanism for generating internal legitimacy for peace agreements. The establishment or reinstatement of political order by some form of legitimate authority is utmost in any transition from conflict to peace.<sup>29</sup>

After war, elections are not just a lottery or a coin flipping operation towards peace. The electoral processes require critical choices over the sequencing of elections, the electoral system formula, the nature of elections (e.g., to a legislature, constituent assembly, or both), and other critical election-related issues such as application of citizenship laws and even the redesign of electoral zones within the devastated territory. By searching for ideal conditions under which to contribute to both goals, wrong choices on the electoral processes may promote democratization but undermine peace, or prioritize peace-building but fail in democratization. Contemporary peace

29. Reilly, *supra* note 19.

agreements include post-war elections as means of conflict management. Nonetheless, it often becomes a source of increasing tension and renewed violence due to a combination of factors such as: lack of coordination problems, information asymmetries, reinforcing of societal divisions, as well as a mix of voters' feelings of fears, uncertainty, and expectations for the future. Moreover, a profound "safety dilemma" affects both voters and candidates, whereby competing ethnic, religious, and political actors cements a polarization of society. For instance, spoilers may use violence to disrupt the transition process or to overthrow the election result as their power is threatened by democratic elections. Other actors may use violence as a tool, by preventing some actors from participating in the election campaign or by intimidating people from going to the polls, as coercive methods to interfere on the polls and the election outcome.

Naively, elections, as well as peacekeeping missions, are expected to be a cure for all: "terminating civil wars; the transformation of warring armies into peaceful political parties; stimulation of the development of "normal" politics; choosing members of a legislature or other kind of representative assembly; forming a government; and conferring legitimacy upon the new political order," consolidation of democracy, abolition of corruption and creation of opportunities for economic reconstruction.<sup>30</sup> Elections represent the crowning event of the post-war peace-building phase, enabling the reestablishment of legitimate domestic authority, and allowing international forces to disengage and, in most cases, depart. On the contrary, post-war elections have often fomented these tensions, particularly if it threatens elites when the expansion of popular participation precedes the formation of and consolidation of political parties. So, polls can represent a danger to peaceful state building. The preambles toward democracy usually revert to autocracy or to anocracy in countries that have very low income and literacy levels, weak state institutions, deep ethnic divisions, or oil-based economies with no strong institutional antidotes in place.<sup>31</sup>

When and how can elections advance stability in peace processes or exacerbate conflicts? As mentioned by Kumar, "most war-torn societies lack the political climate, social and economic stability, institutional infrastructure,

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30. Reilly, *supra* note 19, at 157–58.

31. Edward D. Mansfield & Jack Snyder, *When ballots bring on bullets; Democratic deceptions II*, INT'L HERALD TRIB. (Oct. 29, 2005); See Virginia Page Fortna, *Peacekeeping and democratization*, in FROM WAR TO DEMOCRACY: DILEMMAS OF PEACE-BUILDING, 39, 63 (Anna K. Jarstad & Timothy D. Sisk eds. 2008); *The Role of Elections in Peace Processes: When and How they Advance Stability or Exacerbate Conflicts*, UNSSC (2011), available at [www.unssc.org](http://www.unssc.org).

and even political will to mount successful elections.”<sup>32</sup> Under what circumstances can elections help in building a new, peaceful, democratic order and under what circumstances can they undermine prospects for stable democracy and pave the way for a return to conflict? In post-conflict situations, several questions arise: When to hold elections? How the electoral system should be? Who can vote and be voted? What are the procedures? Who designs and decides the process? Those questions can be translated through the following trade-offs: competitive elections versus conflict management; short-versus long-term electoral objectives; efficiency versus inclusion in terms of government structure; sequenced versus simultaneous local, regional, and national-level elections; party-based versus independent forms of electoral administration; and the need to build local accountability versus development of national party politics, together with finance, moral, and transparency dilemmas.

Success in relation to war termination does not necessarily mark “success” relative to democratization. Liberia embodies this impasse: the 1997 flawed elections created more problems than they solved. But in 2005, following the country’s second civil war, elections marked the end of the transition and Ellen Johnson-Sirleaf came to power as Africa’s first democratically elected female head of state. In October 2015, Ivoirians went peacefully to the polls, after the bloodiest elections in 2010 that left 3000 dead. Post-war elections in Namibia in 1989, El Salvador in 1994, or Mozambique in 1994 played a vital role in making a decisive path towards peace. Delaying elections can also prove fundamental in order to develop political structures and enable the legitimization of the results as on the cases of East Timor and Kosovo.

By contrast, elections in Afghanistan and Iraq have not led to an end to hostilities and, inversely, have intensified the continuing conflict. Furthermore, technical success may not be sufficient. In 1993, United Nations administered polls in Cambodia and despite the technical success, the “losing” party returned to power as a “winner” via coercive maneuvers.<sup>33</sup> Angola (1992) and Sierra Leone (1996 with the first multi-party election held in the country since 1977), led to a resumption of warfare as a result, in part, of the threats these elections represented to incumbent elites. Similarly, attempts to foster peace and stability in Rwanda by promoting political liberalization, prospection of elections and ethnic power sharing ultimately backfired, in the worst possible way, leading to the 1993 genocide. In Bosnia, post-war elections cemented in

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32. Krishna Kumar, *Postconflict Elections and International Assistance*, in *POSTCONFLICT ELECTIONS, DEMOCRATIZATION & INTERNATIONAL ASSISTANCE* 5, 7 (Krishna Kumar ed., 1998).

33. MICHAEL W. DOYLE & NICHOLAS SAMBANIS, *MAKING WAR AND BUILDING PEACE: UNITED NATIONS PEACE OPERATIONS* 222–23 (2006); Reilly, *supra* note 19, at 158.

power essentially nondemocratic elites and who had been leaders in the prior conflict. In Ethiopia (1994 and 2000) and Uganda (2006 and 2011; note Yoweri Museveni has been in power since 1986), elections were subverted to a toll to legitimize the victory of the winning parties to the conflict.

Elections can also be a façade for a so called “warlord democracy.”<sup>34</sup> Sudan is a quintessential case. Following the Second Sudanese Civil War (1983–2005) and the war in Darfur, Sudan is widely recognized as an authoritarian state where all effective political power is obtained by President Omar al-Bashir and the ruling National Congress Party (NCP). In 1989, Colonel Omar al-Bashir led a bloodless military coup. In 1993, al-Bashir appointed himself “President” and took both executive and legislative powers of the Revolutionary Command Council. Sudan became a single-party state with a new parliament and government obtained solely by members of the NCP. In the 1996 general election, by law, al-Bashir was the only candidate. Despite his international arrest warrant, al-Bashir was a candidate in the 2010 Sudanese presidential election, with multiple political parties participating for the first time in twenty-four years. Al-Bashir was declared the winner of the election with 68% of the vote. International Crisis Group reported that the ruling party had gerrymandered electoral districts.<sup>35</sup> That means it used political electoral tactics in the process of setting electoral districts to establish a political advantage by manipulating district boundaries to create partisan advantaged districts. Intimidation was reported from voters and the main opposition candidate, Yasir Arman (SPLM), withdrew from the race days before the poll. Additionally, the electoral vote tabulation process was reported by the Carter Center as “highly chaotic, non-transparent, and vulnerable to electoral manipulation.”<sup>36</sup>

Although elections are not synonym of democracy, it is a *condicio sine qua non* of the political system and therefore faces specific dilemmas on the transition from war-to-peace. In this same vein of analysis, elections in Uganda represent the dilemma between peace and democracy: the system puts an end to political violence and unites and stabilizes the country but does not promote a so-called “liberal democracy.”<sup>37</sup>

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34. See generally Wantchekon, *supra* note 8, at 24, 31.

35. *Rigged Elections in Darfur and the Consequences of a Probable NCP Victory in Sudan*, INT’L CRISIS GRP. (Mar. 30, 2010), <http://www.crisisgroup.org/en/regions/africa/horn-of-africa/sudan/b072-rigged-elections-in-darfur-and-the-consequences-of-a-probable-ncp-victory-in-sudan.aspx>.

36. *Carter Center Reports Widespread Irregularities in Sudan’s Vote Tabulation and Strongly Urges Steps to Increase Transparency*, THE CARTER CTR. (May 10, 2010), <http://www.cartercenter.org/news/pr/sudan-051010.html>.

37. Reilly, *supra* note 19.

- a) Temporal, financial, resources, and safety dilemmas as exit strategy:  
When and how to hold elections?

Should elections be held early even with the risk that extremists may legitimately win power or should they be postponed until the society is less polarized?<sup>38</sup> Elections are held often within a year or two of the start of a UN mission or of a cease-fire, as it requires a minimum level of security and a basic level of infrastructure in place. This is followed by a rapid hand-over to the newly elected local authorities, and an even exit-strategy for a more rapid departure of international troops and personnel. “Premature elections” can be counter-productive: in general, the early application of elections immediately following a conflict increases the likelihood that the contest will become *a de facto* contest between the former warring armies masquerading as political parties. A classic case of “instant elections” is that of the November 1996 election in Bosnia. Besides the pressure to start the development of a national political process, the stress was largely provoked by the Clinton administration in order to show progress in the Balkans in time for mid-term elections in the United States. By contrast, an extended process of consultations and local-level peace-building may offer better prospects for a peaceful transition in post-war societies. The real interests and concerns that provoked the conflict should be addressed in a step-by-step fashion before national elections are held. East Timor and Kosovo had delayed elections and started from municipal pools, allowing a gradual step towards democratization.

Authors like Roland Paris defend the postponement of elections, often for a two-year period.<sup>39</sup> They claim that before holding elections, priority should be given to the development of moderate political parties and of a judicial mechanism to regulate disputes on electoral-related issues in order to establish conditions for holding free and fair elections. However, by postponing, opportunities to support the closure of war may be left behind irreversibly.<sup>40</sup> Without solid institutional ground, the process of democratization is halted or overturned by threats and intimidation from actors seeking to disrupt the transition, overthrow the election results, or prevent election campaigns or voters from going to the polls. If so, that also alerts the “safety dilemma”.

Besides deciding when – how early or how late – to put in place the ballot box, another temporal-sequential dilemma arises: should the start of authority legitimization be bottom-up or up-down? If national elections are held before

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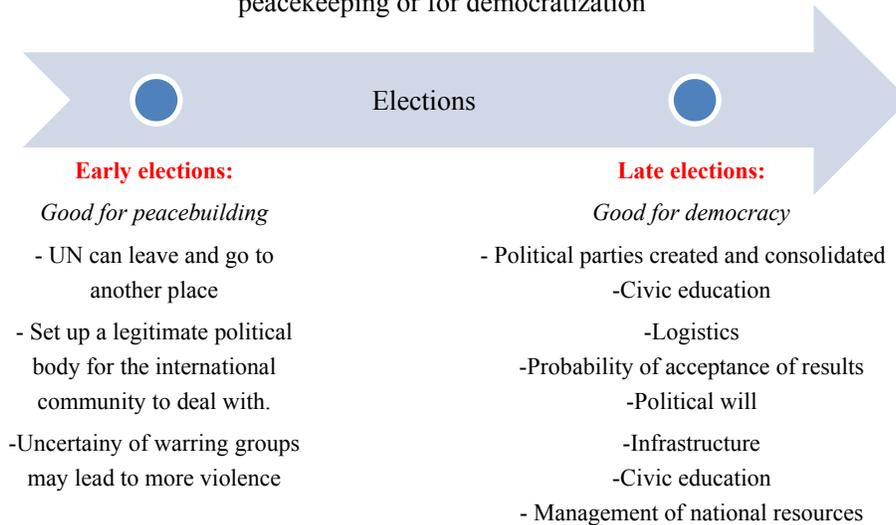
38. Kristine Hoglund, *Violence in war-to-democracy transitions*, in FROM WAR TO DEMOCRACY: DILEMMAS OF PEACE-BUILDING, 80, 91 (Anna K. Jarstad & Timothy D. Sisk eds., 2008).

39. PARIS, *supra* note 19, at 190.

40. See Mimmi Soderberg Kovacs, *When Rebels Change Their Stripes: Armed Insurgents in Post-War Politics*, in FROM WAR TO DEMOCRACY: DILEMMAS OF PEACE-BUILDING 134, 138 (Anna K. Jarstad & Timothy D. Sisk eds., 2008).

local ones it facilitates the introduction of civic education routine of electoral politics and party politics in new democracies. Furthermore, national elections generate incentives for the formation of central, rather than regional, political parties as well as a formal national authority to deal with the international actor.<sup>41</sup> However, to first-test through municipal or local elections before national seems more suitable for the transitional elections towards a bottom-up democracy building perspective. Nevertheless, for the development of a strong and integrated political party system, national, regional, and local elections should be run simultaneously.<sup>42</sup> Additionally, it is more financially viable as it uses the same logistical efforts. That also leads to a “financial dilemma”: if democracy is a long-term process, international funds to implement peacekeeping mission are limited and work against the clock. That explains why elections are usually held as early as possible in peace keeping operations. Due to financial pressures, many missions have an incentive to withdraw their presence as soon as there are some home-grown institutions, such as representative legislatures and multiethnic peace and security forces that create both the shell of a state and a legitimate political body for the international community to deal with. Here, financial, resources, safety, and temporal dilemmas go hand-in-hand.

Graph 2: Electoral temporal dilemma: hard choices between doing good for peacekeeping or for democratization



41. JUAN J. LINZ & ALFRED STEPAN, PROBLEMS OF DEMOCRATIC TRANSITION AND CONSOLIDATION: SOUTHERN EUROPE, SOUTH AMERICA, AND POST-COMMUNIST EUROPE 100,100, 101 (1996).

42. Larry Jay Diamond, *Toward Democratic Consolidation*, 5 J. OF DEMOCRACY 4, 8–9 (1994).

b) Systemic and design dilemmas: Defining the results before the elections

In the aftermath of conflict, domestic political institutions are weak or non-existent, voters are suspicious, and elites' hold on power is feeble. Under this environment, how should the electoral system be in post-conflict? First, elections can be strategically and calculatingly designed to encourage not zero-sum, winner-take-all outcomes, but rather the sharing of power between groups. In most of the cases, election results are decided before the election by defining the rules of the game; that represents a peril of making a façade for the return to old patriarchal system or warlords.

Secondly, the objectives of the referenda are different when related to independence or self-determination from a phased or gradual series of consultations. Therefore, the goal will determine the rules of the game that refer to the "design dilemma": usually choices are among plurality-majority, semi-proportional, and proportional representation (PR) systems. Amid plurality systems are first-past-the-post, runoff, block, and alternative vote systems. By contrast, proportional representation systems characteristically use larger, multi-member districts and deliver more proportional outcomes and include "open" and "closed" versions of party list PR, as well as "mixed-member" and "single transferable vote" systems. Over the past decade, many new democracies opt for the semi-proportional systems such as the single non-transferable vote as it offers "hybrid" approaches: mixtures of plurality and proportional models by which part of the parliament is elected via PR and part from local districts. In this vein, UN-administered elections seem to largely prefer the Party-list PR as it has been frequently used as in the cases of Mozambique (1994), Liberia (1997), Bosnia (1996, 1998, 2000, 2002), Kosovo (2001), Sierra Leone (2002), Rwanda (2003), and Iraq (2005). The main reason for national PR systems is logistical, taking into consideration that a) a uniform national ballot can be used, b) same electoral districts can be used, and c) most of all, the different phases of the process (voter registration, vote counting, and the calculation of results) are simplified compared to other methods.

Obviously, the choice of electoral system is one of the most important political decisions for any country and will also influence others aspects of the political system such as the development of the party system, linkages between citizens and their leaders, political accountability, representation, and responsiveness by electoral choices in a context where there is probably no new constitution or electoral law set yet. Favoring such a system may result in favoring a political party/candidate, and therefore jeopardizing the credibility of the elections. Some systems can also have the effect of fragmenting the legislature and marginalizing minority groups. Encouraging ethnic polarization amongst the electorate is undemocratic and can lead to animosities and, therefore, endanger the peace process. Illustrating this, the 2005 Afghan

parliamentary elections featured over 5,800 candidates – in Kabul alone the ballot paper displayed over 400 names – resulting in a fractionalized and incoherent parliament that is likely to remain highly divided and unable to coordinate around pressing policy challenges. The choice for Single non-transferable vote (SNTV) advantaged smaller parties. Competition within the party brings to the surface personal characteristics that make the development of a party system in the short term improbable.

Thirdly, according to Adam Przeworski, democracy is a political arrangement that processes but never definitely resolves social conflicts.<sup>43</sup> Under this premise, “a functioning democracy serves as a system of *conflict management*, with potential conflicts channeled into constitutional arenas, such as non-violent competition between political parties, rather than armed conflict on the streets.”<sup>44</sup> These arguments are reinforced by empirical studies that emphasize the success of consolidated democracies in accommodating social cleavages and tensions through peaceful means.<sup>45</sup> Reilly explains that democracy pleads for this “certainty of uncertainty” to provoke trustworthiness from all players and to be sustainable on the long term.<sup>46</sup> The “certainty dilemma” is what makes adversaries willing to play by the rules of the democratic game even if they might lose. Through mechanisms that distribute state power among former armed adversaries in a manner that prevents any group from becoming dominant, as no single entity will use the power of the state in a way that promotes its interests while threatening the security of others on a “winner takes all” election model. In this perspective, power-sharing increases the likelihood that adversaries will remain committed to the peace. But then again, in post-war societies, the uncertainty of election results is in itself a source of violence, and a major threat to incumbent elites that can make them wary of committing to the game at all. It is related to the fear that, “(1) a rival is likely to become stronger following an election that places its hands on the levers of state power; and (2) the rival may then use that authority to weaken or otherwise target those who lose elections.”<sup>47</sup> There are several models of election administration that can mainly be grouped as independent or party-based.

Who has the role and responsibilities to organize the elections? Another impasse is related to the role and responsibilities in charge of the bodies running the elections. This intensifies two dilemmas: structural and systemic.

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43. ADAM PRZEWSKI, *DEMOCRACY AND THE MARKET: POLITICAL AND ECONOMIC REFORMS IN EASTERN EUROPE AND LATIN AMERICA* 10–11 (Jon Elster & Michael S. McPherson eds., 1991).

44. Reilly, *supra* note 19, at 165.

45. Hegre et al., *supra* note 14, at 34.

46. Reilly, *supra* note 19, at 165.

47. Hartzell & Hoodie, *supra* note 7, at 47.

Besides the large literature on democracy and electoral reforms, electoral administration in post-war remains understudied. There are different choices to allocate responsibility of administration of elections that are usually: 1) creation of independent, non-partisan and specific body; 2) within a government portfolio, like the ministry of interior affairs; 3) within government agencies, such as the public records office, the tax department, or even the postal service; 4) creation of a new body before each electoral event (ad hoc); and, 5) under the United Nations (as in Cambodia in 1993 or East Timor in 2001). The first three alternatives are under the umbrella of the structure along with the electoral system choice. However, very often, there is no infrastructure, technical expertise or even legitimacy to be run by national actors. If internationally run the elections take place, there might be technical success and credibility, but also a lack of local ownership and a creation of a dependency relationship with outsiders, which is non-desirable at the embryonic phase of the democratic era.

c) Vertical and horizontal dilemmas: Democracy to whom?

Who can play the democratic game? The democratic system implies inclusion and equality. However, in post-conflict scenarios, including “everyone” might be unfair as well as a path towards the return to war. The inclusion of internally displaced peoples, refugees, and ex-combatants in the electoral process is a recurring dilemma in post-war elections.<sup>48</sup> Can the victims or perpetrators vote and be voted? Consider the refugees, people who left the territory to be safe overseas. With a massive out-flow of refugees as in Syria, the Congo, and Rwanda, if they cannot vote due to being abroad, it might result in an exclusion of a great proportion of the population. The “Syria migration crisis” is a contemporary example. The exclusion of part of the main victims, an estimated in four million refugees in December 2015, can be unfair and also undemocratic.<sup>49</sup> Those who have stayed might support the perpetrators to power that is out of benefit of only a few.

Predictably, the situation immediately after the elections is particularly sensitive. It is of particular security concern if contenders will resort to violence unless they emerge as winners. Changing uniforms from a repressive regime or from a rebel group to political party suits does not automatically result in an increase in legitimacy. There is a potential concern in relation to security sector reform. If the same people that have committed atrocities become part of the new police force and government, legitimacy of the new

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48. See Brett Lacy, *Building Accountability, Legitimacy, and Peace: Refugees, Internally Displaced Persons, and the Right to Political Participation*, INT’L FOUND. FOR ELECTORAL SYS. (2004).

49. See U.N. Office for the Coordination of Humanitarian Affairs, *Global Humanitarian Overview 2016* (2016), <https://docs.unocha.org/sites/dms/Documents/GHO-2016.pdf>.

institutions may be demoralized. However, the recruitment of former rebels is needed to fill a security vacuum as well as to occupy former soldiers who are potential threats to peace if left unemployed.

- d) Transparency, moral, and vertical dilemmas: (un) peaceful, (un)free, & (un)fair media

Once again, the dynamic in post conflict is very different from “normal” political conjectures. For competitive free and fair elections, fundamental political rights are required such as freedoms of movement and of speech. However, militant political organizations might misuse these rights. In particular, the competitive nature of elections may aggravate existing conflicts and societal cleavages. Political mobilization is likely to be along the conflict lines where differences rather than similarities are brought to the surface through revenge speeches. The electoral process is filled with military metaphors and fighting rhetoric such as: ‘campaigns’, employing ‘strategies and tactics’ approach to “win” votes, “cadre” as faithful Party, and ‘strongholds’ or ‘citadels’ referred to areas with many supporters.<sup>50</sup> Threat, intimidation, and violence are used to influence the electoral process. As explained from the safety dilemma, voters usually fear of being killed if the warlord does not win the elections. There is hope as well as disillusion on what the so-called “democracy” could result in.

The vertical dilemma is very explicit in relation to free and transparent media. For the sake of legitimacy, involvement of the people in all phases of the peace and democratization processes is desirable. But for the sake of efficacy, certain negotiations need to be held behind literal closed-doors, and often secretly. Freedom of expression and press freedom are generally considered cornerstones of a democratic society and are also formulated as a fundamental human right in Article 19 of the Universal Declaration of Human Rights.<sup>51</sup> Nonetheless, in the course of armed conflict, media commonly becomes polarized and serves as a tool for propaganda to the conflict parties to foster hatred – often times with ethnic overtures –and to rapidly mobilize people for violence. The media can be a powerful tool and in the most extreme cases has played a crucial part in genocidal violence, as in Rwanda, Bosnia, and Kosovo. During conflict, the media becomes an extra party and in democratic times, it becomes a hidden fourth power after the executive, legislative, and judiciary as it directly influences the masses. In countries emerging from war, not only is there a lack of human resources trained on

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50. David C. Rapoport & Leonard Weinberg, *Elections and Violence*, in THE DEMOCRATIC EXPERIENCE AND POLITICAL VIOLENCE 15, 31 (David C. Rapoport & Leonard Weinberg eds., 2012).

51. Universal Declaration of Human Rights, G.A. Res. 217 (III) A., U.N. Doc. A/RES/217(III), Art. 19 (Dec. 10, 1948).

journalism and capable on media resources, but also the system apparatus is owned by elites or warlords and the editors-in-chief are appointed by a single party.

Additionally, to the legal parameters, ownership, transparency, capacity, infrastructure, and funding, accessibility is another struggle. With an average of 80% of the territory infrastructure destroyed and in poverty,<sup>52</sup> the radio might be more suitable than television and newspaper where more technology and investment are needed. The genocide in Rwanda was mostly disseminated through the radio. Furthermore, apparently simple questions such as “which language should be used in the elections?” can be another example of battle. As a result of minorities having their voice excluded, lack of transparency, domination of one ethnic group over another, as well as favoritism, they become vulnerable and responsive to emotive tactics used in elections campaigns such as hatred speech and other measures employed to inflame constituents with the aim of producing a non-result. Timor-Leste is an example of a “tower of Babel”: with two official languages in the constitution, two other “working languages” during the transitional time, together with other 31 local languages, the dissemination of new laws or even the establishment of an educational curriculum adds complexity to the already chaotic post-war transition. Similarities are found in places like Afghanistan, Georgia, and Guinea-Bissau.

Moreover, the democratic values of the media are to be independent, non-partisan, and laicist and its principles are to be impartial, accurate, and active. Therefore, in order to defend freedom of speech (without defamation), individual rights, free initiative, human rights, republican values, science innovation, and environmental protection it cannot be in favor of or against governments, religion, clubs, economic groups, or political parties. Crucial to democratic accountability, a functioning and diverse media should provide information to the citizens and critical scrutiny of political issues.

New media like Internet and social media have created new waves of impact on democratization as the role of Facebook during the Arab spring and the organization of many political movements in Ukraine, Thailand, Hong Kong, and around the world demonstrate. The so-called “netocracy”, a symbiosis of Internet and democracy, shows its colossal power to influence millions of people in seconds. Some governments, like China and Russia, recognize this power and control the access to the Internet and social media within its territory. “Voter-generated-content”, such as videos on YouTube have been identified as a drift towards “videocracy”. As examples, the election of Silvio Berlusconi as Italy’s Prime Minister in 1994 was seen by

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52. See Paul Collier, *On the Economic Consequences of Civil War*, 51 OXFORD ECON. PAPERS 168 (1999).

many as a “media coup d’état” as well as overthrow of Nicolae Ceaușescu in 1989 in the “first revolution on live television” in Romania.

Therefore, as part of the transition, “media reform” is usually part of the agenda on democratization with a “media advisor officer” under the political or civil affairs department of the UN mission. It usually consists of efforts to create new laws guaranteeing freedom of expression as well as to restructure the media infrastructure including the formation of independent media and widening the range of media outlets and ownership.<sup>53</sup> Training in what has been termed “peace media” has been gaining ground in peace-building efforts. Among so many “priorities” to build peace, democracy, and socio-economic development, the “media reform” seems secondary and slow. The promotion of “codes of conduct” and licensing systems,<sup>54</sup> and the interruption of the transmission or dissemination of hate media appears to be techniques to promote a more effective and “democratic” media after war. Therefore, besides the vertical and temporal trade-offs, costs and ownership of the media reform also alerts the systemic and financial dilemmas. Of course, it is easy to identify that the moral dilemma permeates all those previous dilemmas of transparency and anti-corruption measures as well as fairness and freedom of the process and of the actors are prerequisites.

Democratization goes beyond the dilemmas surrounding elections. Human development is unlikely to progress in “anarchy” as they work best within well-functioning states. Contrariwise, failing and failed states are personalized by rulers that did not distinguish public from private realms and have become “kleptocracies,” (governments of thieves). The “rulers” are indeed predators and neither make nor enforce law. A new constitution must mirror the new reality to be able to enforce peace and the rule of law. Constitutionalism can be decisive to power-sharing but also faces several dilemmas concerning the choice of peace or democracy.

#### IV. CONSTITUTIONALISM: DEMOCRACY & RULE OF LAW FOR WHOM?

On one hand, according to Aristotle, man without law is the lowest of animals. On the other hand, as a Haitian saying goes, “Constitution is paper, a bayonet is iron.”<sup>55</sup> Lawlessness is what characterizes the state of belligerence in war-torn countries. Either on a Hobbesian or Lockean approach, the main priority is to establish a political order, as democracy cannot burgeon in the

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53. Hoglund, *supra* note 38, at 87.

54. PARIS, *supra* note 19, at 198.

55. ARISTOTLE, *POLITICS* 29 (John Berseth ed., 3rd ed. 2000) (Benjamin Jowett trans., 1885); Julia Leininger, *Democracy and UN Peace-Keeping – Conflict Resolution through State-Building and Democracy Promotion in Haiti*, in 10 Mack Plank Yearbook of United Nations Law 465 (Armin Von Bogdandy & Rudiger Wolfrum eds., 2006).

absence of natural rights or in a state of anarchy.<sup>56</sup> After war, a new country must be built. It requires new rules that reflect the new reality. It is a new social contract between the political-warring groups themselves and between the political-warring groups and the populaces.

After war, a new constitution is usually written “for the People” and set in place to be obeyed “by the People”. One problem is “from which People” the constitution will be written and how the Constitutional Assembly will be established and legitimate. These problems have already been mentioned in the electoral section of this paper. As pondered by Falk et al., the constitutional foundations of “world peace” require logic and tinkering.<sup>57</sup> Worldwide constitutional framework can be highly significant, both analytically and politically, in efforts to achieve a just and lasting peace. Pitfalls of legalism and moralism have often afflicted discussion of governance, and their analyses are rooted directly within contemporary human struggles for peace, justice, prosperity, and environmentally sustainable societies. To make constitutionalism work, it must be well-designed to block tyrannies and protecting core rights of citizens from potential violations. Additionally, it must foresee public accountability mechanisms for officeholders by calling for rule-governed and transparent procedures during a time-limited mandate as well as dividing public authority among multiple offices and institutions. Power’s monopolization opposes power-sharing. Although it is common to delegate some power to maintain the monopoly, to delegate is not synonymous with sharing. Monopolies of power are found in tyrannies, despotisms, military autocracies, monarchies, theocracies, or one-party dictatorships. Democracy may also cohabit with monopolistic domination if power of a ruling class or elite lies behind the façade of electoral competition for power.

Is power sharing through constitutionalism the key for peace and democracy in the aftermath of conflict? To begin with, albeit potentially intersecting notions, it is important to differentiate four different concepts: power-sharing from power division as well as separation of power and competition for power.<sup>58</sup> Although it is important to highlight those distinctions, it is fundamental to keep in mind that: when emphasizing the distribution of authority among former rivals, it is generally very difficult to establish certain attributes in states emerging from civil war that would be “normal” in “peaceful scenarios”. The first concept relates to structures of divided societies to govern jointly within specific organs or institutions.

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56. Wantchekon, *supra* note 8, at 23.

57. *See generally*, THE CONSTITUTIONAL FOUNDATIONS OF WORLD PEACE (Richard A. Falk et al. eds.,1993).

58. *See generally*, PHILIP G. ROEDER & DONALD ROTHCHILD, SUSTAINABLE PEACE: POWER AND DEMOCRACY AFTER CIVIL WARS 6 (2005); Stefan Wolff, *Conflict Resolution Between Power Sharing and Power Dividing, or Beyond?* 5 POL. STUD. REV. 377, 381 (2007).

Power-sharing suggests both coordinated and jointly shares of decision making and autonomy in group or territory. Power-sharers search for sharing power across national, ethnic, religious, and linguistic groups through their representatives making joint decisions in executives, legislatures, and judiciaries branches. Power-sharing is more than acknowledging that “what cannot be won on the battlefield is best allocated through a shared forum and a shared executive.”<sup>59</sup> Power-sharers do not seek a social contract among a unified people as Rousseau’s proposal. It suggests a minimal civility among divided communities on “consociational form” or among territorial governments on a “federalism form”.

Secondly, power division suggests a separation of power among the governmental organs of the common-state that can create more conflict, polarized society, and state within state structure. Power division implies that through division the parties receive shares that are individualized as communal politics. Civil liberties and multiple majorities are said to be central to power dividing. In practice, it results in an allocation of power between government and civil society such that the “most important issues that divide ethnic groups, but must be decided by a government common to all ethnic groups.”<sup>60</sup> Thirdly, separation of power refers to the Montesquieu’s idea to avoid centralization of power and to forestall tyranny by a monarch or oligarchy. It is highly accepted to divide the state into at least three main branches with specific mandate that cannot be overlapped by another branch: legislative, executive, and judiciary. Separation does not advocate a coordinated policymaking system and is not organized to facilitate group organization. Separation of powers between the branches of government and a range of specialized agencies dealing with specific, and clearly delimited policy areas are to create multiple and changing majorities. Thus members of ethnic minorities can be parts of political majorities on some issues and members of any ethnic majority will be members of political minorities on other issues. As a mechanism of checks and balances, policy and order are expected to emerge from the clash of ambitious power-holders scattered across multiple institutions.

Fourthly, elections are the democratic regulated tactic in the competition for power. The competition for power is a *sine qua non* of democratic government: a political system enshrined in a constitution in which officials compete for authoritative positions for limited terms in free and fair elections for citizens’ votes; hold office within constitutional norms that ensure accountability both through the ballot box and recourse to the courts. Elections for executive and legislative posts continue to be an alternative of preventing

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59. Brendan O’Leary, *Power Sharing in Deeply Divided Places: An Advocate’s Introduction*, in *POWER SHARING IN DEEPLY DIVIDED PLACES* 1, 14 (Joanne McEvoy & Brendan O’Leary eds., 2013).

60. Wolff, *supra* note 58, at 380.

nefarious monopoly. Conversely, judicial and administrative positions are often meritocratic promotion with transparent and reviewable procedures.

O'Flynn and Russell affirm that among the new challenges for divided societies is to recognize that power share incorporated in "constitutional designs adopted at times of crisis are means to survival."<sup>61</sup> Constitutionalism can be the key to peaceful power-sharing as it is normally established in such foundational documents. Nonetheless, it does not mean that all constitutions are power-sharing systems. The abuse of political power is constitutionally possible. For example, the constitution may assign the authority to the plenitude of the executive power to a person, faction, or party, for a limited time. Emergency powers to a domination executive representation (faction, party, or national, religious, or ethnic group) might include provision of "war powers" for the suspension of basic rights and fundamental freedoms. Or it can be undemocratic in divided societies if the constitution excludes the plurality of beliefs, traditions and social relations by establishing the basis of eligibility for citizenship based on just one religion, one language, one ethnicity, or even gender. In the case of Myanmar, the 2010 Constitutional Reform towards a "discipline-flourishing democracy" was strategically planned by the military junta to prohibit Aung San Suu Kyi to run as president of the country. Or it may powerfully entrench some identities at the expense of others. A president or prime minister with such power may promote legislation that reflects only the preferences of the dominant nationality, race, religion, or linguistic group, and control the judiciary and administration with strategic appointees. Courts staffed and controlled by the same party of the executive may not act as guardians of individuals' rights or of collective minorities. If so, the so-called "rule of law", an important characteristic of the democratic system and of sustainable peace, it rapidly becomes repeatedly the rule of the dominant majority or faction in power, and, therefore, a return to the "rule of the gun". By neglecting the separation of power, the balance of power loses its equilibrium. Worst, and very debatable, is the change in constitution that eliminates the principle of alternation of power. By allowing the head of State and/or Government to be re-elected *ad aeternum*, the basic democratic principle of alternation of power is undermined, and consequently undercuts the power sharing arrangements leading to authoritarianism and warlords in power. Uganda, as well as cases of non-civil wars but pseudo-democracies of the "Bolivarian Axis" (Cuba-Venezuela-Bolivia-Ecuador) are examples of the latter. Thus, the principle of periodic elections may become redundant if there is no political space for opposition and free and fair elections.

In the aftermath of conflict, constitutionalism simultaneously faces four dilemmas: temporal (when), systemic (national ownership), horizontal (mass

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61. Donald L. Horowitz, *Foreword*, in *POWER SHARING: NEW CHALLENGES FOR DIVIDED SOCIETIES* vii, ix (Ian O'Flynn & David Russell eds., 2005).

representation), and vertical (political plurality). For McEvoy and O’Leary, “Constitutionalism *per se* does not prevent cultural homogeneity from becoming the hallmarks of policy and the state.”<sup>62</sup> During war times, the constitution has been put on fire as a chunk of “useless” paper that no longer serve to the people. After war, the struggle is how to implement and enforce the new set of rules of the social contract. Formally or informally, constitutionalism is necessary to build democracy and long-term sustainable peace. However, in divided societies and in the aftermath of conflict, constitutionalism can be an illusion for successful power-sharing, rule of law, and protection of individual’s human rights.

Last but not least, modern power-sharing is conceived by some of its enthusiasts as a necessary supplement to constitutionalism. Moreover, some scholars would suggest that that is the only option for democratic governance in the shadows of war.<sup>63</sup> Power-sharing helps to establish what is crucial in the aftermath of civil war: a political order and collaboration between warring factions and elites. By inference, power-sharing would contribute to peace as well as democracy. However, as there is no fantasy way out of the legacy of war, power-sharing can be, in the long-term, a source of instability, ineffective governance by incompetent government, and violent conflict, and therefore, jeopardizes both processes of democratization and peace-building. On one side, inclusion of warring groups in government can facilitate peace as everyone can mutually rule through its share. On the other side, reserved seats for warring parties may undermine democratic legitimacy of silencing mass votes. Thus, if the peace agreement it is not well designed, power-sharing can stimulate violence. While an extensive amount of literature on democratization and checks and balances exists, power-sharing specific to post-conflict situation remains limited by Political Sciences and related disciplines of Conflict Resolution and Peace Studies.<sup>64</sup> According to Pippa Norris, power-sharing institutions work.<sup>65</sup> States with institutions that are consistent with power-sharing tend to perform better in terms of democracy. Power-sharing is an “anti-democratic mechanism” as it removes the influence of the masses as it previously distributes power among selected actors and rewards violence by granting warring parties positions.<sup>66</sup> As mentioned by Hartzell and Hoddie,

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62. O’Leary, *supra* note 59, at 10.

63. See Paulina Pospieszna & Gerald Schneider, *The Illusion of ‘Peace Through Power-Sharing’: Constitutional Choice in the Shadow of Civil War*, 15 CIVIL WARS 44, 47 (2013).

64. See Hartzell & Hoddie, *supra* note 7, at 37; see also Anna K. Jarstad, *Power Sharing: Former Enemies in Joint Government*, in FROM WAR TO DEMOCRACY: DILEMMAS OF PEACE-BUILDING 105, 108 (Anna K. Jarstad & Timothy D. Sisk eds., 2008).

65. See PIPPA NORRIS, DRIVING DEMOCRACY: DO POWER-SHARING INSTITUTIONS WORK? 223 (2008).

66. Hartzell & Hoddie, *supra* note 7, at 52 (citing Terry L. Karl, *Dilemmas of Democratization in Latin America*, 23 COMPARATIVE POLITICS 1, 11–12 (1990)).

“power-sharing itself is not inherently democratic.”<sup>67</sup> But in a minimalist form of democracy, it represents the art of the possible. Due to the paper’s size restriction for publication, power sharing systems in the aftermath of conflict will be analyzed in another article.

The democratic crusade promotes war and death.<sup>68</sup> The difficulties that post-civil war conditions pose for a transition to democracy are usually underestimated. Therefore, (re)installation of democracy via war is a great contradiction. “Should the UN be in the business of ensuring democracy at the barrel of a gun?”<sup>69</sup> In the transition from war to peace, how are the United Nations peace-building missions involved democracy building? The UN’s role in promoting democracy often struggles between balancing ideals and reality.<sup>70</sup>

#### V. INTERNATIONAL INTERVENTION: OWNERSHIP OF THE PEACE-BUILDING AND DEMOCRACY BUILDING PROCESSES

A variety of studies have demonstrated that United Nations peace operations significantly facilitate, and might even be a prerequisite for, lasting peace after civil wars.<sup>71</sup> Nonetheless, the UN faces the problem of building democracy in war-torn societies in ways that are fundamentally *undemocratic*.<sup>72</sup> Therefore, the dynamic and the dilemmas between peace interventions and democratization in post-conflict countries require further exploration to avoid the recurrence of the conflict and the vulnerability of fragile states. One of the main literature lacunas is that many studies limit their analysis to quantitative data in the short period of two or five years from the peace agreement signature to the conclusion of the peace operations.<sup>73</sup> Peace-building, democracy-building, state-building, and most of all, nation-building, suggest an extensive and complex process that is analogous as to a roller coaster. Therefore, with a coarse process filled with ups and downs, the efficiency or efficacy of the procedure and the different agents cannot be assessed as “snapshots.”<sup>74</sup>

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67. Hartzell & Hoddie, *supra* note 7, at 49.

68. ERROL A. HENDERSON, *DEMOCRACY AND WAR: THE END OF AN ILLUSION?* 94–95 (2002).

69. See Jarstad & Sisk, *Introduction*, *supra* note 23, at 6.

70. See UNITED NATIONS, *THE UN ROLE IN PROMOTING DEMOCRACY: BETWEEN IDEALS AND REALITY* (Edward Newman & Roland Rich, eds., 2004).

71. See Fortna, *supra* note 31.

72. SIMON CHESTERMAN, *YOU, THE PEOPLE: THE UNITED NATIONS, TRANSITIONAL ADMINISTRATION, AND STATE-BUILDING*, 205–06 (2004).

73. See generally *DOES PEACEKEEPING WORK?* *supra* note 3; Kim, *supra* note 4, at 114.

74. See DOYLE & SAMBANIS, *supra* note 33, at 336; Barbara F. Walter, *Does Conflict Beget Conflict? Explaining Recurring Civil War*, 41 *J. OF PEACE RES.* 371, 372.

United Nations understands that democratization includes: 1) support for constitutional and legal reforms, 2) the establishment of election administration, 3) training of election staff and media professionals, 4) political party assistance, 5) human rights monitoring and 6) civil society aid. All interventions and decisions related to ownership, empowerment as well as transparency are predominantly challenged by the principles of sovereignty and responsibility to protect (R2P). Regarding the dilemmas explained in section 1, international intervention experiments trade-offs are mainly related to moral, systemic, financial and temporal dilemmas. The triangular relation between war, democracy, and UN is surrounded by impasses, like sovereignty, ownership, and empowerment, as well as transparency.

First, is the moral dilemma of intervention that points out the trade-off between sovereignty and responsibility to protect? From a broad theoretic viewpoint, interventions are international policies that from time to time violate international norms, occasionally support the incessant oppression of people, and sometimes bring armed violence to an end and perhaps they may pave the way towards peace and stability. Where the literature falls short is in explaining satisfactorily whether “sometimes” is “often”, or when facilitating peaceful settlements is more probable.<sup>75</sup> Civil wars have turned out more and more frequently to be international events, as the case of Syria patently presents. Legality and legitimacy are the main oxymoron of international intervention in civil wars by the United Nations. In the perspective that war intervention is a continuation of politics by order, means that peacekeeping continues to be a complex element resulting in selective and collective humanitarian international intervention in intrastate wars. “Fixing” fragile states and solving civil war through peacekeeping permeates above and beyond the sovereignty quandaries.

What makes a state a state is called sovereignty. So, what happens in the cases of failed states? On the one hand, Westphalians argue that failed states are “failed” precisely because they cannot enforce the sovereignty in their territory. If no sovereignty exists, therefore, international intervention is justified, as there is no empty space in politics as an extension of physics axioms. It is not an “intervention” *per se*, but an “occupation of misused or (un)used space,” and therefore, is legal and legitimate. Sovereignty, territory and borders cannot be dissociated in international law, specifically when referring to wars, whether internal or external.<sup>76</sup> The perception of borders, as passive lines on a map, reveals integral forces in the economic, social, political, and environmental processes. Borders undoubtedly remain hot topics

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75. Patrick M. Regan, *Interventions into Civil Wars: A Retrospective Survey with Prospective Ideas*, 12 CIVIL WARS 456, 456 (2010).

76. See generally THE STATE OF SOVEREIGNTY: TERRITORIES, LAWS, POPULATIONS (Douglas Howland & Luise White eds., 2008).

across the social sciences and in the global headlines as underscoring the impact they have on a range of issues, such as economic development, inter- and intra-state conflict, global terrorism, migration, nationalism, international law, environmental sustainability, and natural resource management. The customary rule of the use, ownership and control of the territory has historically been the motive of wars or interventions. Territoriality also serves to the constructivist means of national identity by defying who “we” are and who “they” are. Determining who the actors are is crucial to conflict resolution.

On the other hand, Post-Westphalians argue that failed states are “failed” because international assistance did not help with operations of state-building or nation-building as a responsibility and duty to protect. Ungoverned spaces open alternatives to state authority in an era of softened sovereignty.<sup>77</sup> According to Francis Deng, a vulnerable or failing state should invite international assistance precisely as a way to protect its state sovereignty and show its will towards good governance.<sup>78</sup> Failed democracy in failed states opens controversial debates regarding fairness, selectiveness, and preventive collective intervention.

According to non-interventionists any interference in the affairs of the sovereign state in the name of humanitarianism directly breaches the UN Charter restrictionist article 2(7): “nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state.”<sup>79</sup> As questioned by Franck: who killed this article?<sup>80</sup> In fact, realists argue that this could lead to abuse, because since interveners only pursue their national interests, they may use issues regarding human rights as a pretext for intervention in order to achieve their political objectives. Ian Brownlie, a leading restrictionist argues that humanitarian intervention, on the basis of all available definitions, would be an instrument wide open to abuse, “a rule allowing humanitarian intervention ... is a general license to vigilantes and opportunists to resort to hegemonial intervention.”<sup>81</sup> There is no doubt that the problem of abuse could damage the already fragile issue of legality and legitimacy, however, this does not mean

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77. See UNGOVERNED SPACES: ALTERNATIVES TO STATE AUTHORITY IN AN ERA OF SOFTENED SOVEREIGNTY (Anne L. Clunan & Harold A. Trikonas eds. 2010).

78. Francis M. Deng, *From ‘Sovereignty as Responsibility’ to the ‘Responsibility to Protect’*, 2 GLOBAL RESPONSIBILITY TO PROTECT 353, 354 (2010).

79. Rudi Guraziu, *Is humanitarian military intervention in the affairs of another state ever justified?* 4 (January 2008) (unpublished thesis, Middlesex University) (on file with the author).

80. See Thomas M. Franck, *Who Killed Article 2(4)? Or: Changing Norms Governing the Use of Force by States*, 64 AM. J. INT’L L. 809 (1970).

81. Ian Brownlie, *Thoughts on Kind-Hearted Gunmen*, in HUMANITARIAN INTERVENTION AND THE UNITED NATIONS 139, 147–48 (Richard B. Lillich ed., 1973).

that force should not be used when governments massacre their own citizens. "Sovereignty cannot be used as a pretext of governments as a license to kill."<sup>82</sup>

Besides legality, humanitarian crisis responses are driven by international politics of selectivity. What is of interest concerns the extent and the nature of selective interventionism. The problem of selectivity with respect to humanitarian standards and human rights principles arises from the fact that these rights, as embodied in various documents including the United Nations (UN) Charter, the Universal Declaration of Human Rights, the Genocide Convention, the Geneva Conventions, and the two International Covenants on Human Rights, are universally valid and, in some respects, even compelling (the principle of *jus cogens*) are often not applied in a consistent or ethical way. Consequently, double standards still predominate when the international community faces the dilemma whether or not to intervene. The arrangements of selectivity are not only empirically puzzling, but they also imply conflicting theoretical expectations with regard to the international response to humanitarian crises and the extent of the so-called "selectivity gap." In essence, constructivist and cosmopolitan accounts emphasize the strengthening of "humanitarian" norms and identities. Therefore, there is a growing frequency of humanitarian action even in situations where no economic or geostrategic interests are in jeopardy. With the increasing significance of human rights norms on the international agenda, this would lead one to expect an increase in humanitarian activity as well as a high degree of consistency in addressing those crises. Contrariwise, "since many humanitarian crises do not affect vital interests, realist accounts would expect highly selective responses in such situations."<sup>83</sup>

The UN also faces predicaments regarding legitimacy, effectiveness, transparency, and corruption, as well as partiality and non-neutrality. The effectiveness of peacekeeping on democratization remains open to debate. A neutral UN peacekeeping mission can assist in the transition to democracy. Yet, a powerful external enforcer can end up being a substitute and part of the conflict for that embryonic democracy in fragile states.

Second, international involvement may be necessary to end violence and to facilitate negotiations. But, democratization as well as peace-building needs to be driven by local motives and actions. The issue of ownership of local versus international control of the processes of democratization and peace-building is related to the systemic dilemma. The citizens of the countries that receive support for democratization and peace-building must feel that they own the processes, and that democracy is not imposed from the outside. The United Nations has to assume a more authoritative role or even transitional

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82. Guraziu, *supra* note 79, at 4.

83. Martin Binder, *Humanitarian Crises and the International Politics of Selectivity*, 10 HUM. RTS. REV. 327, 328 (2009).

administration in cases where either the local authorities fail to prevent crimes against humanity and mass violence (e.g., Sierra Leone, Timor Leste), or when the state itself was the perpetrator of atrocities (e.g., in Cambodia and Kosovo). Therefore, a difficult challenge must be faced by the international actors: to perform firm control to manage conflict, provide security, and organize elections, or to engage with “good offices” in order to empower local actors for them to conduct the necessary procedures towards a functioning state? For Simon Chesterman, the United Nations, faces the problem of building democracy in war-torn societies in ways that are fundamentally undemocratic to start with – the undermining of the state sovereignty over the responsibility to protect.<sup>84</sup>

Third, the United Nations is often under financial pressure to manage a transition quickly in order to move resources on to the next crisis, as from Liberia to Sudan.<sup>85</sup> The new multidimensional missions have included the democratic reconstruction model of peace-building and place a robust emphasis on the use of elections in post-conflict operations. By analyzing the commitment of parties to elections, their timing and their mechanics, UN peace operations present elections as a possible democratizing tool. That means a way of legitimizing international intervention, the formation of new governments as well as that of war termination. When the United Nations peace operations are involved in elections, are they building peace and democracy or organizing an exit?<sup>86</sup> As previously elucidated, premature elections have become common for several reasons: the need to “do something” quickly, to start the process of political development and, of course, to have an identifiable “exit strategy” for international involvement. Peacekeeping missions do not last forever. Financial pressures force many missions to downsize as soon as it is minimally feasible to do so. But, according to Shaw, elections are no longer used as an exit strategy and the shift has facilitated the implementation of the democratic reconstruction model. However, even in the most conducive post-conflict situations, it remains extremely difficult to successfully facilitate democratic transitions in war-torn territories. As in the cases of the UN Transitional Authority in Cambodia (UNTAC) and the UN Transitional Administration in East Timor (UNTAET), elections have shifted from being the central component of UN mission to being used as one aspect of a wider democratizing project. Cases such as these lend some weight to the World Bank’s suggestion that elections in war-torn

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84. See CHESTERMAN, *supra* note 72, at 257.

85. Jarstad & Sisk, *Introduction*, *supra* note 23, at 10.

86. See generally STUART SHAW, *BUILDING PEACE AND DEMOCRACY OR ORGANIZING EXIT: ELECTIONS AND UNITED NATIONS PEACE OPERATIONS* (AV Akademikerverlag ed., 2012).

societies should be deferred by up to a decade to allow state building to occur.<sup>87</sup>

Action can do harm. But inaction can also do worse. If the international community does something, either as humanitarian intervention to protect sovereignty or to protect the individual, the *a priori* conclusion is frequently: “It is too late!” Although, when it comes to saving lives, it is never too late for humanitarians. There is always a window of opportunity. Thus, a temporal dilemma is central to UN intervention queries.

As consistently stated by Virginia Page Fortna: “Peacekeeping missions are habitually under-funded, under-equipped, and understaffed... peacekeeping can help establish peace, which is good for democracy, but it also undermines the establishment of that democracy.”<sup>88</sup> Very often, they are decided at the last minute, with unrealistically short mandates and excessively ambitious timelines and benchmarks. The task of turning countries into stable, functioning, democratic states where political institutions, economic infrastructure, and the very fabric of society have all been devastated by civil war, is hectic and undermines sovereignty.

## VI. CONCLUSION

As introduced, at the end of a civil war, there is indeed no democracy just yet. There is a mist of hope and disillusionment about how democracy can bring peace and stability. There are not yet any pillars of an ideal western form of democracy as Robert Dahl’s concept of polyarchy suggests, with political and civil liberties such as freedom of expression, freedom of the press, the freedom to form groups, citizen participation, and the responsiveness of government. Democracy requires peace and stability, but war and its pressures on the state can provide incentives for democratization.

Civil wars are one of the critical issues of our time: they represent contemporary challenges not only to state stability and legitimacy, but also to regional and global order. From war to peace, how can democracy prevail over anarchy? Without naivety, post-civil war democracy is essentially procedural and minimalist. In this paper, I argue that on a *status quo* of belligerence, lawlessness, and distrust, the goal is to create political order first, and democratic liberties later. It is Hobbesian in its origin due to the nature of anarchy. At least in the period immediately following negotiations, the most probable version of democracy in post-war is the one the elites believe best minimizes threats to their existence, which includes the threat of the restoration of armed engagement. In the transition from war-to-peace, democracy might

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87. See PAUL COLLIER ET AL., *BREAKING THE CONFLICT TRAP: CIVIL WAR AND DEVELOPMENT POLICY*, 185–86 (2003).

88. Fortna, *supra* note 31, at 39.

prevail on a minimalist or Schumpeterian plane: it would be able to fit nascent democratic institutions to the specific conditions of a traumatized society on a collapsed state to contain such political-ethical-ideological tension within peaceful bounds. In the aftermath of civil war, democracy emphasizes leadership, and the elections, rather than appointment, of former warlords as political office holders. It simultaneously arbitrates conflicts between former warring factions and protects citizens' properties against illegal expropriation and violence. Post-civil war democracy is also Popperian in its form because it is aimed at avoiding the return to civil war and anarchy by preventing tyrannical rule through elections. A political system is not democratic because the majority rules, but because the institutions are designed to prevent the rise of a totalitarian government that can *a priori* be dismissed through popular accountability instead of violent revolution. Even if democracy does not appropriately aggregate citizens' preferences or adequately control politicians or help reduce economic inequalities, the very fact that it might help change governments without bloodshed can help generate a peaceful resolution of conflicts. This form of democracy is defensible because, better a minimalist form of democracy than maintenance of the belligerent and lawlessness *status quo*.

The end of war is the start of a long process of multi-phased procedures towards democracy and peace. In order to make the transition to democracy, post-war conflict represents a struggle of dilemmas and trade-offs. This paper shines the spotlight on central dilemmas originated from the efforts of building peace and democracy in fragile states after war. In line with the finding of Jarstad and Sisk, and other authors and contributors, the horizontal, vertical, systemic, and temporal dilemma were analyzed.<sup>89</sup> In this paper, I contribute theoretically to the body of knowledge by advancing the paradoxes faced by democratization and peace-building with additional 8 dilemmas: security, safety, moral, sequencing, design, transparency, financial, and resources. In the second and third part, elections and constitutionalism were analyzed according to this set of dilemmas as *sine qua non* principles of democracy and the rule of law. A more realistic and less ideological appraisal of elections is still required. Success is dependent on a careful consideration of timing, sequencing, design, and resource issues. As part of a post-war peace deal, elections cannot be postponed for more than a few years. However, instant elections can be a dangerous toll to legitimize extremist parties without a proper development of a political party system. Independent electoral commissions are preferable as well as the sequence's bottom-up approach, from local to national elections. Finally, as a responsibility to protect, democratization and peace-building are

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89. See Sisk, *Peace-building as Democratization Findings and Recommendations*, *supra* note 15.

promoted by international actors who also face impasses, like sovereignty, ownership, and empowerment, as well as transparency.

The existing literature fails, as it tends to analyze democracy and peace principles as if they were the same in a post-civil war environment. The difficulties of post-civil war conditions should not be underestimated. New democratic regimes usually lack the resources or institutional means to make and guarantee the kind of accommodations that typify the consolidated democracies. There is no readily available formula, but the purpose is to avoid or mitigate some of the dilemmas that may arise on the transition from war to peace. Which model of democracy should be adopted, must be established on a case-by-case basis. Delegative, representative, or participatory democracies are ideal options, but not yet possible in these post-war societies. Due to size restrictions for this paper's publication, and for a robust understanding, it is recommended that further analysis of the same set of dilemmas regarding justice, human rights, civil society, and the process of disarmament, demobilization, and reintegration of warring groups be conducted. In this paper, I argue that in war-torn societies' transition, the model of democracy that might prevail in the aftermath of conflict is a minimalist form if political will, some infrastructural level, and an appropriate political climate are in place. Social and economic stability, institutional infrastructure, counter-corruption measures, and impartial judiciary will come as a consequence after the reduction of ethnic divisions and an organized civil society has emerged.

