



Mission

The United States has implemented a foreign policy of “nation-building” in different parts of the world since the end of World War II.¹ Though the U.S. government has left this task largely to the U.S. military to do *ad hoc*, the recent establishment of the Office of the Coordinator of Reconstruction and Stabilization (S/CRS)² at the U.S. Department of State suggests strongly that the U.S. government is adapting its nation-building foreign policy to a globalized world in which weak and failed states systematically threaten international peace and security.³ It suggests also that the question of whether nation-building *should* be an objective of U.S. foreign policy is no longer the subject of serious debate, as it was during the 2000 U.S. Presidential Election.⁴ Many U.S. legislators and bureaucrats believe now that they should support nation-building not only with American rhetoric, but also with American dollars.⁵ Thus, as Charles Tucker, Executive Director of the International Human Rights Law Institute (IHRLI) often says, the U.S. is “in this business.”

If the U.S. is in the nation-building business, the question, of course, is what kind of nations does the U.S. seek to build. The answer is “democracies.”⁶ And the reasons offered in support of this answer are both idealistic and pragmatic. As President Barack Obama told the Muslim world this year in an address from Cairo:

I know there has been controversy about the promotion of democracy in recent years.... But I do have an unyielding belief that all people yearn for certain things: the ability to speak your mind and have a say in how you are governed; confidence in the rule of law and the equal

¹ JAMES DOBBINS ET AL., AMERICA’S ROLE IN NATION BUILDING FROM GERMANY TO IRAQ 1 (2003), available at http://www.rand.org/pubs/monograph_reports/MR1753/ (hereinafter Dobbins).

² See Office of the Coordinator for Stabilization and Reconstruction Home Page, <http://www.state.gov/s/crs/> (last visited Aug. 10, 2009).

³ A state is weak or has failed completely if its mechanisms of government are weak or non-existent. In such states, international terrorists, narco-traffickers, and human traffickers can operate with relative impunity, and weapons of mass destruction could fall into hands of non-government actors who seek to attack large civilian populations. See Cybèle Cochran, *Fletcher Ambassador John Herbst Introduces the Civilian Response Corps*, FLETCHER FEATURES, <http://fletcher.tufts.edu/news/2008/10/herbst.shtml> (last visited Aug. 11, 2009).

⁴ In his second presidential debate with Vice President Al Gore, Texas Governor George W. Bush said, “I think what we need to do is convince people who live in the lands they live in to build the nations. Maybe I’m missing something here. I mean, we’re going to have kind of a nation-building core from America? Absolutely not. Our military is meant to fight and win war. That’s what it’s meant to do.” See Commission on Presidential Debates, Debate Transcript: October 11, 2000, <http://www.debates.org/pages/trans2000b.html> (last visited Aug. 10, 2009).

⁵ Broad support of U.S. nation-building missions can be inferred from the following: (1) the issuance of Department of Defense Directive 3000.05, which put stabilization operations on par with war fighting, and (2) the passing by Congress and signing by President George W. Bush of S. 3001, the Reconstruction and Stabilization Civilian Management Act of 2008, which authorized the creation of and funding for S/CRS. See generally Beth Cole & Christina Parajon, *Nation Building: We CAN Do Better*, U.S. INST. OF PEACE, available at <http://www.usip.org/resources/nation-building-we-can-do-better>.

⁶ As the RAND points out, everywhere the U.S. has implemented a policy of nation-building over the past fifty-seven years, including Germany, Japan, Somalia, Haiti, Bosnia, Iraq, and Afghanistan, “the intent was to use military force to underpin a process of democratization.” Dobbins, *supra* note 1.

administration of justice; government that is transparent and doesn't steal from the people; the freedom to live as you choose. These are not just American ideas; they are human rights. And that is why we will support them everywhere. ... Governments that protect these rights are ultimately more stable, successful and secure.”⁷

The President's sentiments about the value of democracy abroad are widely shared.⁸ But even if successive U.S. governments have clearly regarded “nation-building” and “democracy-building” as inextricably linked for the purpose of U.S. foreign policy, it is unclear *what* “democracy” means from one nation to the next and *how* “democracy” should be built.

The U.S., its allies, international organizations (IOs), and non-governmental organizations (NGOs) want to build “liberal democracies,” in which elections are free and fair, basic liberties of speech, assembly, religion, and property are protected, and branches of government check and balance each other. But despite the great wealth of knowledge and experience now available to policy makers throughout the world, there is no definitive recipe for creating liberal democracies where none now exist. Those who have studied international development over the past century have identified many ingredients: Education, electoral process, property reform, infrastructure, growth, and minority political rights are only a few examples. Another ingredient is the rule of law, a term which the Editors have purposely left undefined, but which evokes images of just and reliable courts, well-trained and ethical police, and political leaders who restrain their actions when the law so requires. Like all the other ingredients, no one knows with certainty how much rule of law the recipe for liberal democracy requires and when the recipe requires it. Like all the other ingredients, the rule of law is necessary, but not sufficient: Without the rule of law, liberal democracy stands little chance of developing where it does not exist and enduring where it does.⁹

This might explain what democracy expert Thomas Carothers identifies as the rise in international policy circles a decade ago “of attention to and concern over strengthening the rule of law in countries around the world.”¹⁰ It was then that rule of law became widely

⁷ President Barack Obama, Remarks by the President on a New Beginning (June 4, 2009), *available at* http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-Cairo-University-6-04-09/.

⁸ *See, e.g.*, Larry Diamond, *How to Save Democracy*, NEWSWEEK (Dec. 31, 2008), *available at* <http://www.newsweek.com/id/177384> (arguing “The Bush administration was right that spreading democracy would advance the U.S. national interest—that truly democratic states would be more responsible, peaceful and law-abiding and so become better contributors to international security”). *See also* LORNE W. CRANER & KENNETH WOLLACK, *NEW DIRECTIONS FOR DEMOCRACY DEVELOPMENT 2* (2008), *available at* <http://www.iri.org/newsreleases/pdfs/New%20Directions%20for%20Democracy%20Promotion,%20By%20Lorne%20Craner%20and%20Ken%20Wollack.pdf> (representing the International Republican Institute and National Democratic Institute respectively and arguing that “Democracies ... provide the best alternatives for fostering peace across borders by maintaining internal stability and achieving economic and social development”).

⁹ As the United States Agency for International Development points out, “The rule of law is the cornerstone for all other elements of democracy. A free and fair political system, protection of human rights, a vibrant civil society, public confidence in the police and the courts and economic development all depend upon accountable governments, fair and accessible application of the law and respect for international human rights standards. In post-conflict settings, reestablishing the rule of law is the first step in the rebuilding process. Establishing peace and security and rebuilding justice institutions can help to develop the necessary climate for reconciliation, public confidence and subsequent economic growth.” USAID, *Rule of Law: Our Strategic Focus*, http://www.usaid.gov/our_work/democracy_and_governance/technical_areas/rule_of_law/ (last visited Aug. 10, 2009).

¹⁰ Thomas Carothers, *Rule of Law Temptations*, 33 THE FLETCHER FORUM OF WORLD AFFAIRS 41 (Winter / Spring 2009), *available at* http://fletcher.tufts.edu/forum/archives/winter_spring09.shtml (*hereinafter* Carothers).

perceived as the solution to “a multitude of diverse policy challenges, whether it was how Russia could consolidate its shaky transition away from communism, how China could solidify its meteoric economic growth, or how Mexico could resist the capture of its state institutions by narco-traffickers.”¹¹ That attention and concern over strengthening the rule of law has persisted to the present day—both in policy circles and among political leaders worldwide—because rule of law is perceived as what Carothers calls “an elixir of transitions”—a panacea that (1) could help “achieve legal and institutional predictability and efficiency in a variety of areas crucial to the operation of a market economy,” (2) could fortify “new constitutions, electoral systems, and political and civil rights, and (3) could help combat corruption and ordinary crime that has frequently developed in nations on the road to market economy and liberal democracy.¹² The creative potential of the rule of law is great indeed.

But just like democracy, it is unclear *what* “rule of law” means in any particular context and *how*, from one nation to the next, “rule of law” should be built. This is true despite the fact that international enthusiasm for building the rule of law is high and the number of organizations and initiatives dedicated to building the rule of law is growing exponentially.¹³ The International Human Rights Law Institute at the DePaul University College of Law in Chicago seeks, therefore, to facilitate a conversation in which participants will define “rule of law,” propose new rule-of-law initiatives and critique existing ones, and discuss how rule of law can be established or strengthened in different nations and at different times. For this reason, IHRLI is publishing the DEPAUL RULE OF LAW JOURNAL, a student-run, dynamic online forum for governmental and non-governmental actors throughout the world who promote the rule of law.

The JOURNAL is a freely-accessible resource for rule-of-law data and policy discussion amongst armed forces, businesses, concerned citizens, IOs, judges, lawyers, NGOs, scholars, and

¹¹ *Id.*

¹² *Id.* As President Obama declared at the 2009 Summit of the Americas, “Today, too many people in the Americas live in fear. We must not tolerate violence and insecurity, no matter where it comes from. Children must be safe to play in the street, and families should never face the pain of a kidnapping. Policemen must be more powerful than kingpins, and judges must advance the rule of law. Illegal guns must not flow freely into criminal hands, and illegal drugs must not destroy lives and distort our economy.” President Barack Obama, Remarks by the President at the Summit of the Americas Opening Ceremony (Apr. 17, 2009), *available at* http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-at-the-Summit-of-the-Americas-Opening-Ceremony/.

¹³ Carothers, *supra* note 11, at 50. For example, in Iraq, the International Human Rights Law Institute implements programs that assist Iraqi law schools with educational reform, gather and analyze victims’ narratives of human rights violations committed during Hussein regime, assist the Iraqi government with the preparation of a comprehensive plan for judicial and legal reform, provide human rights training to key government sectors, support the drafting and implementation of the new constitution, provide special training for the Iraqi Special Tribunal and the Iraq High Criminal Court, and improve the protection of women’s rights. See Global Justice Project: Iraq, *International Human Rights Law Institute* (March 23, 2009), <http://www.gjpi.org/2009/03/23/international-human-rights-law-institute/>. The American Bar Association Rule of Law Initiative implements programs designed to improve access to justice and protect human rights, fight government corruption, train criminal justice professionals, combat crime, promote judicial independence, and create better legal education and codes of ethics.¹³ See American Bar Association, *About the ABA Rule of Law Initiative*, <http://www.abanet.org/rol/about.shtml> (last visited Aug. 11, 2009). Similarly, United States Agency for International Development (USAID) implements programs in constitutional and legal drafting, civilian and community policing, gang prevention, criminal justice and security sector reform, human rights, judicial independence, access to justice, legal empowerment of the poor and the disadvantaged, civil-society oversight of the justice system, and effective and efficient justice services, such as enforcing contracts and appealing administrative decisions. See USAID, *Rule of Law: Strategic Goals*, http://www.usaid.gov/our_work/democracy_and_governance/technical_areas/rule_of_law/rol_strategy.html (last visited Aug. 11, 2009).

students. Like many law journals, it is meant to inform and to persuade, but it is also meant to foster cooperation across great distance amongst rule-of-law actors, in order to help advance the rule of law across the globe. It is our hope above all that the JOURNAL will be useful to those who are trying to make a difference in a world so often inhospitable to change—those who love the world, in the words of Saint Vincent DePaul, but at the price of their hands and sweat of their brow.

We thank you for your interest and look forward to your participation.

The Editors

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