

DEMOCRACY'S GLOBAL QUEST: A NOBLE CRUSADE WRAPPED IN DIRTY REALITY?

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Abstract:-

The end of the Cold War and the apparent “victory” of democracy witnessed a dramatic increase in the number, diversity and proportion of states formally committed to democratic principles. Prominent international law scholars argued vigorously that representative government was now an international legal entitlement.

It is debatable that a right to pro-democratic action, that is intervention to promote democracy exist. The determined reaction of the United Nations and the Organization of American States to the September 1991 overthrow of popularly-elected Haitian President Jean-Bertrand Aristide, and the attendant discussion within the Organization of American States about the possible use of force to restore the “legitimate” government, certainly created the impression that such action –was becoming politically palatable. An impression seemingly reinforced by the recent democratic crusade in Iraq under the banner of “regime change” in Iraq.

However, the developing world is especially wary of the new world order democratic discourse which is seen as promoting a conservative and protective form of liberal democracy hostile to the evolution of other popular and participatory democratic processes and thus part of a subtle Western expansionist agenda. The paper argues for a recognition that liberal democracy should adopt a composite and heterogeneous, dimension that acknowledges democratic diversity. Further, for democracy to “work” it must be the preference of a given citizenry and be anchored in the socio-political landscape of of the specific community rather than be imposed from above by a third party. This crucial point has been overlooked by many proponents of the right to democracy. It is argued that the direct replication of the Western liberal democratic model should be alive to the reality that good governance is a complex relationship between the government and governed not guaranteed simply by “importing” successful and neutral “universalized” democratic norms .

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[...virtually all initiatives--whether they be "development" "good governance" "democracy" or the "rule of law"--or indeed, the earlier initiatives of 'sovereignty' and the very foundation of international law, the nation-state--represent a basic movement from West to East. The initiatives involve the transference of a set of institutions and practices which have ostensibly been perfected in the European world and which must now be adopted in the non-European world if it is to make any progress ... the liberatory potential of such initiatives must be viewed with skepticism, given that they are inevitably mired in a complex and ongoing set of power relations between the European and non-European worlds. At the very least, these initiatives suggest, often with an insidious and patronizing benevolence, that peoples in the non-European worlds are lacking in their own ideas as to how their societies should be structured, and what values they should prescribe and adopt.]¹

I. Introduction

The end of the Cold War, which paralyzed the United Nations from its inception, was a cause for celebration and hope. Western leaders congratulated themselves over the end of communism and the fall of the Soviet empire. New challenges arising from the strengthening of international human rights norms and the seemingly unprecedented spirit of international cooperation accompanied the end of bipolar geostrategic and ideological confrontation. Liberal-democratic political values increased immensely in prestige in the wake of the collapse of the Communist Party states of Eastern Europe.² Authoritarian regimes that for geopolitical reasons were once able to gain automatic endorsement and recognition by either side of the Cold War bipolar divide found themselves unable to do so as easily.

'Whereas coups d'etat and rigged elections in the Cold War era were considered business-as-usual,... they [were] now candidates for concerted international response, not implausibly extending as far as internationally sanctioned armed intervention.'³ The first shots fired in the name of democracy occurred as the Cold War was crumbling. In the aftermath of the 1989 Panamanian elections, there was widespread agreement among observers, not only as to the fraudulent character of the elections but also as to the landslide victory of the opposition Presidential candidate. This cast the legitimacy of the Noriega regime into immediate crisis. Given the verified popular mandate for a specific alternative government, the Bush Administration was not bashful about making the restoration of democracy through armed force one of the articulated objectives of its December 1989 invasion.⁴ The U.S. excited by the seeming triumph of Western liberal democracy asserted before the Organization of American States (O.A.S.) in 1989, in rhetorical justification of the U.S. invasion of Panama the new wave of democracy:

(A) great principle is spreading across the world like wildfire. That principle, as we all know, is the revolutionary idea that the people, not governments, are sovereign. This principle has, in (the last) decade, . . . acquired the force of historical necessity. . . . Democracy today is synonymous with legitimacy the world over; it is, in short, the universal value of our time.⁵

In the words of Brad Roth: “Whereas the Reagan Doctrine had purportedly emphasized counter intervention and support for indigenous insurgencies, the Bush Administration, although proffering at least three alternative justifications, appeared to adopt the illegitimacy thesis in its purest form.”⁶ At the time, the international community was not impressed. Both the U.N. General Assembly and the O.A.S. voted overwhelmingly to condemn the invasion,⁷ even though it was common knowledge that the advent of democracy in Panama had been frustrated by General Manuel Noriega’s authoritarian regime. Most states, (Latin American countries in particular) rejected the notion that foreign nations could legitimately employ armed force or other measures of coercion to seat a democratically elected government against the will of an indigenous political elite in effective control of the state.⁸ Indeed, many states questioned the propriety of any attempt by foreign states to influence domestic political processes.⁹ In an eloquent articulation, Brad Roth observes that:

Although U.S. invocation of the illegitimacy thesis to support unilateral uses of force did not by itself signify a change in international law, customary or otherwise, the development of international sensibilities should not be overlooked. While the international community formally repudiated invocation of the illegitimacy thesis, it not only failed to impose sanctions against the United States, but continued to look to the United States for international leadership (especially in the Persian Gulf crisis) notwithstanding what might have been characterized as America’s irresponsible attitude toward the use of force and its outright contempt for U.N. and World Court censure of its policies. Moreover, the ... Panama action resulted in the formation of a government that the international community promptly recognized.¹⁰

It was the unilateralism of the Panama action that guaranteed its broad rejection by the international community. With the sanctity of State sovereignty breached, the possible consequences of intervention for traditional concepts of international law was too profound for States to accept notwithstanding the fact that the concept of governmental legitimacy was being fundamentally altered in the post-Cold War era.¹¹ Once States got over their initial jitteriness, states appeared increasingly inclined to condone military interventions to restore democracy even though, under traditional legal analysis, such interventions fell on rather uncertain legal ground.¹² The post-Cold War era witnessed frequent condemnations of coups particularly in Latin America. The O.A.S. condemned attempted coups in Surinam and Venezuela, and opposed the now famous “autogolpes” in Peru and Guatemala.¹³ The O.A.S. also sent election monitors and human rights observers to join U.N. personnel in overseeing the electoral processes in Nicaragua, Haiti, and other member states. Most significantly, the O.A.S., along with virtually the entire international community, condemned the Haitian military’s unconstitutional overthrow of President Jean-Bertrand Aristide with the O.A.S. acquiescing in the Security Council’s decision to authorize U.S. military intervention to restore the deposed President to power.¹⁴

While the mantra “democracy is an idea whose time has come” was loudly trumpeted, the content of democracy--its criteria and benchmarks--remained bogged down in a quagmire of political and human rights discourse. Prominent international law scholars argued vigorously that representative government was an emerging international legal entitlement.¹⁵ Some commentators such as Detter went as far as

adding democracy and viability to the first three criteria of the Montevideo Convention, describing democracy as the lynchpin of the definition of new nation-states.¹⁶ Historians and political scientists put forth studies that suggested democracies almost never make war on other democracies¹⁷ while politicians asserted important security interests in the spread of democratic governance. As David Wippman notes, “[i]nternational civil servants proclaim[ed] a new shared consensus that democracy, human rights, and peace are inextricably linked. Heads of state routinely announce[d] their fealty to democratic norms, and insist[ed] that leaders of other states do so as well.”¹⁸ International organizations passed resolutions announcing that governmental legitimacy rests on the consent of the governed, and conditioned membership in their organizations on acceptance of democratic principles.¹⁹ Even developing countries, once near monolithic in their opposition to any external involvement in domestic politics, began to commonly seek international legitimacy through external monitoring and even supervision of their electoral processes.²⁰

The early post-Cold War years witnessed a dramatic increase in the number, diversity and proportion of states formally committed to democratic principles.²¹ Many states displayed a greater willingness to countenance foreign intervention in the name of democracy and human rights than at any time in the 20th century.²² But in many respects, the rhetoric in this area outpaced reality. Although it is debatable that a right to pro-democratic action,²³ that is intervention to promote democracy, does not exist, such action has certainly become more politically palatable.²⁴ Change in this area is neither as extensive nor as legitimacy-oriented as many have suggested.²⁵

The determined reaction of the United Nations and the Organization of American States (O.A.S.) to the September 1991 overthrow of popularly-elected Haitian President Jean-Bertrand Aristide, and the attendant discussion within the O.A.S. about the possible use of force to restore the “legitimate” government, attested to a shift in attitude.²⁶ However, past interventions into domestic affairs and the attendant murkiness surrounding these interventions curtailed any development of a broad right of pro-democratic intervention despite the broad regional and international support for action in Haiti. After all the international community did not need to dig deep into the annals of history to refresh their memories of past actions that involved military intervention to unseat democratic government or to prevent democracy all carried out in the name of democracy.²⁷

Controversy continues to shadow the question of governmental legitimacy. Democracy is replete with complexity and ambiguity. Popular will, even if said to be the sole criterion, operates at more than one level. Consensus judgment of usurpation of people’s will is the exception rather than the norm. Notions of self-determination and national equality often prevent broad international consensus. Democratic entitlement as a universal human right is a complex and multifaceted issue. The Article commences with an overview of the development of democracy as a universal entitlement within the U.N. system. It then casts an eye on the enshrinement of this concept has evidenced by the spate of regional efforts in this direction in the post-Cold War era. Having laid down the evolution of the concept, the Article turns to a critique of the thorny issues attendant surrounding this universal entitlement.

The central theme of the critique is the fact that in the face of reality, the democratic ideal finds itself caught between two opposing forces, the idea not to impose alien

values and processes on sovereign nations (as this amounts to deprivation of political independence and self-determination), but at the same time not to accept assertions of sovereignty simply because a ruler has the brute strength to assert it. The end of the Cold War saw the ascendance of liberal democracy as the basis of a new world order but this ascendance is seen as strengthening a restrictive practice of democracy and threatening to the recognition of democratic heterogeneity. The developing world is especially wary of the new world order democratic discourse which is seen as promoting a conservative and protective form of liberal democracy hostile to the evolution of other popular and participatory democratic processes and thus part of a subtle Western expansionist agenda. The section argues for a recognition that liberal democracy in its advance to other countries should adopt a composite and heterogeneous, dimension that acknowledges democratic diversity thus freeing it from its narrow and restrictive liberal roots. To succeed as an unchallenged universal concept, democracy should value diversity and communality.

II. Sowing the Seeds: Universalizing Democracy

Traditional international law has generally regarded the peoples of the world as being represented in the international arena by the governments in de facto or de jure control of their respective states. The method by which a government of domestic origin achieves or retains power was not ordinarily thought of as a basis for withholding such recognition. As US Chief Justice Taft ruled in the *Tinoco Arbitration*, the domestic constitutionality of the seizure of power is considered beyond the scope of international concern:

The issue is not whether the new government assumes power or conducts its administration under constitutional limitations established by the people during the incumbency of the government it has overthrown. The question is, has it really established itself in such a way that all within its influence recognize its control, and that there is no opposing force assuming to be a government in its place? Is it discharging its functions as a government within its own jurisdiction?²⁸

Four decades later, amidst the creation of the United Nations (U.N.) and its provisions trumpeting the right of citizenry to participation and the protection of this right by international law, the principle still held sway and was to hold sway way into the future. In 1961, Professor Hans Kelsen restated the principle as follows:

[U]nder what circumstances does a national legal order begin to be valid? The answer given by international law is that a national legal order begins to be valid as soon as it has become--on the whole--efficacious, and it ceases to be valid as soon as it loses this efficacy ... The Government brought into power by a revolution or coup d'etat is, according to international law, the legitimate government of the state, whose identity is not affected by these events.²⁹

In the 1970s and early 1980s many nation-states and in particular the United Kingdom signaled a move away from the constitutive theory championed by Hans Kelsen by stating that they would no longer grant or withhold recognition of governments, since a policy of recognizing governments gave the impression that their policy of

recognizing governments was based on political acceptability. Instead they would only recognize *nation-states* in accordance with international law.³⁰ The persistently vexing question in recognition practice was and continues to be the criteria for recognition since issues of fact-finding come into play.³¹ The authors identify popular support based on governmental legitimacy as the most controversial and contested of the general criteria. This was readily apparent in the Cold War. Determining which faction in a civil war enjoyed “popular support,” for example, was largely decided by ideological preferences during the Cold War.³² Though states agreed upon standards which were objective in theory, they readily injected politics into the actual operation of the standard. As Thomas D Grant notes, “[t]he principle [of legitimism] has not been stable in its content over time, but in one form or another, legitimism has played a role in numerous decisions about recognition.”³³

During the Cold War, it was nearly impossible for the international community as a whole to agree both that a particular state was undemocratic and that international action should be taken against that state-- the United States (and the Western Bloc) referred to democracy and anti-communist policy as legitimating criteria; the Soviet Union (and the Eastern Bloc) to socialism. The single exception concerned the process of decolonization. A consensus gradually developed within the UN that the denial of majority self-rule in the colonial territories of Africa and Asia should be treated as an international delict.³⁴ The nature of the Cold War facilitated the entrenchment of self-determination as a *jus cogens* norm and the development of the comparatively firmly rooted criteria that a government be denied recognition if its origins violated this *jus cogens* norm. When white minority regimes in South Africa and elsewhere resisted the transition to majority rule, states could agree, within the context of the UN system, to apply economic and diplomatic sanctions.³⁵ By defining apartheid regimes as *per se* violative of international law,³⁶ states could treat the character of the white minority governments as a legitimate subject for international action, without exposing all undemocratic regimes to similar scrutiny and pressure.

It is significant that in the case of South African diplomatic credentials were denied on the basis of the internal character of the regime.³⁷ Through its *de jure* violations of one of the U.N. Charter’s few unambiguous and broadly supported norms--racial equality--the South African Government subjected itself to ever-increasing scrutiny and disapproval from the General Assembly, embodied in innumerable resolutions, including refusals to take action on credentials. These measures culminated in the passage by the General Assembly of a resolution declaring that the South African regime had no right to represent the people of South Africa and that the liberation movements recognized by the Organization of African Unity were the authentic representatives of the overwhelming majority of the South African people.³⁸ The general consensus regarding the illegality of the South African regime was an exception as the history of U.N. credentials controversies in the Cold War era attests. It is instructive that the international community’s views in this era regarding regime legitimacy were generally permissive and often international recognition of governments favored the government (whether legitimate or illegitimate) in effective power rather than some seemingly legitimate putative authority.³⁹ This was notwithstanding General Assembly passed Resolution 396, passed shortly after the U.N. was created. This Resolution states clearly that:

whenever more than one authority claims to be the government entitled to represent a Member State in the United Nations and this question becomes the subject of controversy in the United Nations, the question should be considered in the light of *the Purposes and Principles of the Charter and the circumstances of each case....*⁴⁰ [Emphasis added]

Though the idea that the international community can protect human rights was one of the great practical achievements manifested in the U.N. Charter with international law at the vanguard of giving tangible expression to the rights, the Cold War tied the issue to ideological and revolutionary agendas. ‘Common interest’ and ‘common good’ were seen as nothing more than a diplomatic screen hiding the avaricious and predatory aims of the imperialist Powers.⁴¹ The effect of this position was to strengthen sovereignty considerations as the UN became a ground for cultivating the agenda of nationalism brought to the fore with the appearance of the ‘Third World’ as a force in the years after World War II. Realpolitik not law was the governing force in the Cold War era with the purposes and principles of the U.N. Charter frozen on paper and rarely seen in practice.

Amidst the volatile Cold War era politics, the UN was making steady progress in support of democratic governance. The first step was taken three short years after its formation when the U.N. adopted the groundbreaking Universal Declaration on Human Rights by consensus.⁴² A number of articles in the Universal Declaration substantiate provisions of the U.N. Charter relating to the rights of the citizenry in member states. Articles 55 and 56 of the U.N. Charter contain specific provisions in this respect. Article 55(c) of the U.N. Charter commits the Organization to the promotion of “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.” Under Article 56, “All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.” Although falling far short of authorizing intervention--unilateral or multilateral--to compel compliance with human rights standards, these provisions do make clear that the pursuit of human rights does not, as such, constitute intervention “in matters which are essentially within the domestic jurisdiction” under Article 2(7).

The United Nations promulgated instruments that are collectively equivalent to an International Bill of Rights⁴³ and helped gather international consensus for the idea that the populations of States have rights under international law. This extends to the protection of the rights, even against the government. Beginning with the Charter and the Universal Declaration, the U.N. has constructed a normative framework for the realization of rights for the people.⁴⁴ The framework has been sustained over time by the actions of States in signing and ratifying various international human rights and related instruments, some of which are now part of customary international law. The international collaborative efforts involving United Nations organs, human rights workers and others have helped publicize the plight of the oppressed millions who yearn for more personal liberties and freedom from arbitrary detention, execution and political purges.

Among the human rights deemed fit objects of international concern is the right of political participation. This right was embodied in Article 21 of the Universal Declaration of Human Rights as follows:

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
2. Everyone has the right to equal access to public service in his country.
3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.⁴⁵

Article 21 of the Declaration states that “[t]he will of the people shall be the basis of the authority of government,” and that “this will shall be expressed in periodic and genuine elections.”⁴⁶ Implicitly, then, Article 21 links governmental legitimacy to respect for the popular will. But this linkage does not appear in the subsequent, and legally binding, International Covenant on Civil and Political Rights (ICCPR).⁴⁷ Article 25 of the Covenant speaks of the right to participate in public affairs--including the right to genuine and periodic elections--but it does not purport to condition governmental authority on respect for the will of the people.⁴⁸ The language of Article 25 was intentionally drafted broadly enough to accommodate the wide range of governmental systems in place among the initial parties to the Covenant.⁴⁹ As a result, even Soviet-bloc states felt free to ratify the Covenant.⁵⁰ From their perspective, communist states satisfied the requirements of Article 25 by affording voters access to various participatory mechanisms as well as an opportunity to ratify their leadership in periodic, albeit single-party, elections.⁵¹ Thus, the cost of consensus was language broad enough to obscure sharp differences among states on the nature of their commitment to democratic rule. The differences between the two articulations in the Universal Declaration and ICCPR are interesting. Brad Roth explains that:

Article 21 of the Declaration can be read syllogistically to mean that the basis of governmental authority is such popular will as has been expressed in the elections, whereas non-liberal regimes would prefer it to mean that the popular will is (in some abstract sense) the basis of--and therefore expressed by--governmental authority, and is also expressed in elections. The Covenant version simplifies the matter by leaving undefined the relationship, if any, not only between authority and elections, but also between authority and participation.⁵²

Tragically, outside of the decolonization context, during the Cold War era, there was little international consensus on the requirements of democratic governance beyond the general but limited insistence on periodic and genuine elections found in the ICCPR and a number of other international legal instruments. As a result, states lacked generally accepted criteria by which to judge other states' compliance with substantive democratic principles.⁵³ With the end of the bi-polar ideological competition that characterized the Cold War,⁵⁴ there has been a widely publicized shift in the character of public pronouncements about democracy. More states have made, through treaty or by means of non-binding but still influential declarations,

formal commitments to democratic governance.⁵⁵ In addition, states, international organizations, human rights tribunals, and legal scholars have sought increasingly to imbue that commitment with some real content--to move beyond the simple but vague commitment to free elections contained in the ICCPR.⁵⁶

The democracy discourse however remains “straitjacketed” by Article 2(7) of the U.N. Charter which prohibits intervention in the “domestic affairs” of other states. This Article remains a pillar of the U.N. Charter system and continues to cast a shadow over all debates relating to government legitimacy or illegitimacy. Accordingly, although many states have joined the promulgation of resolutions and declarations proclaiming support for democracy and the right of political participation,⁵⁷ they also stress that each state has the “sovereign right freely to choose and develop its political, social, economic and cultural systems, whether or not they conform to the preferences of other states.”⁵⁸ Though the international community may, under Articles 55 and 56, promote state observance of the right of citizens to participate in their governance, there is no clear authority to mandate a particular allocation of decision-making power within a sovereign state. In any event, an election’s “genuineness,” as referred to by both participation provisions, has no obvious criteria.

In a bid to give the participation provisions content and contour, in December 1988, the General Assembly called on the U.N. Human Rights Commission “to consider appropriate ways and means of enhancing the effectiveness of the principle of periodic and genuine elections,” albeit “in the context of full respect for the sovereignty of Member States...” The result adopted by the Economic and Social Council in May 1989 was a “framework for future efforts,” the first heading of which was “The will of the people expressed through periodic and genuine elections as the basis for the authority of government,” a phrase that clears up the above--mentioned ambiguity in Article 21 of the Declaration. The document included mention of, inter alia, “the right of citizens of a State to change their governmental system through appropriate constitutional means,” “the right of candidates to put forward their political views, individually and in cooperation with others,” and the need for “independent supervision” of elections. Two years later, the General Assembly, with only eight dissenting votes, declared “that determining the will of the people requires an electoral process that provides an equal opportunity for all citizens to become candidates and put forward their political views, individually and in co-operation with others...” It nonetheless immediately added the words, “as provided in national constitutions and laws,” and further recognized:

that the efforts of the international community to enhance the effectiveness of the principle of periodic and genuine elections shall not call into question each State’s sovereign right freely to choose and develop its political, social, economic and cultural systems, whether or not they conform to the preferences of other states.⁵⁹

In yet another significant move in the early days of the post-Cold War era, support for democracy became increasingly identified with the maintenance of peace and security. The reaction to the 29 September 1991 Haitian coup seemed to evidence that the norm of popular participation was coming into its own as an international index of governmental legitimacy, at least where the international community has already

become enmeshed (through the “observer” function) in domestic processes. Resolution 917 declared that the obstruction of the restoration of democracy in Haiti constituted a threat to peace. By imposing sanctions and authorizing military intervention in order to restore democratic rule in Haiti, the Security Council further recognized democracy as an entitlement. The Security Council corroborated the claim of a population’s right to be governed by those whom they had elected freely, fairly and openly. On the adoption of Resolution 940, U.S. Representative to the United Nations Madeleine K. Albright stated that the resolution’s objective was “not to impinge upon the sovereignty of Haiti, but to restore the power to exercise that sovereignty to those who rightfully possessed it and to enable Haiti, in the words of the United Nations Charter, to pursue “social progress and better standards of life in larger freedom.”⁶⁰ This echoed the sentiments that had been aired earlier by Boutros Boutros-Ghali, the then Secretary-General of the U.N. at the historic Security Council Summit Meeting of January 1992.⁶¹

The Aristide Government had won an overwhelming victory in internationally monitored elections just nine months prior to a coup by an incompetent military notorious for human rights abuses and disrespect for democratic processes. In the words of Brad Roth: “As the elected leadership remained physically intact, there was no contest over the mandate to articulate the will of the ‘legitimate’ government. Although the coup leadership had support in the elected legislature and cited human rights abuses allegedly encouraged by Aristide, its violent conduct and unsavory history belied any claim to be acting on behalf of democracy and human rights.”⁶² Considering that the concept of popular sovereignty is at the heart of the emerging right to restore democracy, Michael Reisman notes that “sovereignty can be violated as effectively and ruthlessly by an indigenous as by an outside force, in much the same way that the wealth and natural resources of a country can be spoliated as thoroughly and efficiently by a native as by a foreigner.”⁶³ Seen in this manner, the sovereignty of Haiti was violated when the will of the people, ascertained in open, free and fair elections, was thwarted by violent means. In the words of Lois Fielding, ‘... the right of self-determination signal [ed] “a radical decision that henceforth the internal authority of governments would be appraised internationally.” Further, the appearance of “criteria for appraising the conformity of internal governance with international standards of democracy” was evidence of the rise of popular sovereignty.’⁶⁴

III. Reaping the Fruit: Entrenching Democracy

The idea of democracy is supported by fundamental instruments of multilateralism. The U.N. Charter under Chapter I, Article 1(2), provides that “[t]he Purposes of the United Nations are . . . [t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples . . .” Other important instruments articulating this right are the Universal Declaration of Human Rights, the International Covenant on Economic, Social, and Cultural Rights, and the International Covenant on Civil and Political Rights. The Universal Declaration states: “The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.”⁶⁵ The International Covenant on Economic, Social, and Cultural Rights

and the International Covenant on Civil and Political Rights provide that: “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social, and cultural development.”⁶⁶ Professor Thomas Franck argues that these documents together with regional instruments constitute “a net of participatory entitlements.”⁶⁷ Commentators note that the right to democracy has developed within international agreements. Professor Thomas Franck finds that democracy, “while not yet fully word made law, is rapidly becoming in our time, a normative rule of the international system.”⁶⁸ On his part, Gregory Fox asserts that “parties to the major human rights conventions have created an international law of participatory rights.”⁶⁹

The assertion that the principle of democracy and the rights which together constitute the democratic prerogative are “guaranteed in all comprehensive human rights instruments”,⁷⁰ is not empty rhetoric. Infact the greatest progress in specifying the elements of democratic governance has been made in regional systems and, in particular, within the O.S.C.E.⁷¹ At a 1990 meeting in Copenhagen, for example, members of the O.S.C.E. (then referred to as the C.S.C.E.) spelled out some of the characteristics of democratic systems and the rule of law.⁷² This list included: 1) free elections; 2) the need for representative government; 3) accountability of the executive to an elected legislature or the electorate as a whole; 4) a clear separation between the State and political parties; 5) an independent judiciary; 6) military and police forces under civilian control; and 7) a panoply of related human rights.⁷³

Importantly, in addition to guaranteeing democratic freedoms to the individual, recent instruments view democracy as both a keystone of human rights and a necessary condition for international peace and security. Reflecting the proliferation of democracies throughout the 1980s and 1990s, the Document of Copenhagen commits participating states to the individual freedoms of democracy, including free elections, representative government, government compliance with law, and separation between the State and political parties. The C.S.C.E.’s Charter of Paris pledges to “undertake to build, consolidate, and strengthen democracy as the only system of government of our nations.”⁷⁴ In addition to guaranteeing democratic freedoms to every individual, the thirty-four participating states proclaimed: “Democracy is the best safeguard of freedom of expression, tolerance of all groups of society, and equality of opportunity for each person.”⁷⁵ In the Moscow meeting of the C.S.C.E., participating states asserted that “full respect for human rights and fundamental freedoms and the development of societies based on pluralistic democracy and the rule of law are prerequisites for a lasting order of peace, security, justice and co-operation in Europe.”⁷⁶ Participating states found that “issues relating to human rights, fundamental freedoms, democracy and the rule of law are of international concern, as respect for these rights and freedoms constitutes one of the foundations of the international order.”⁷⁷

International conferences in the 1990s mirrored the C.S.C.E.’s concerns. The Vienna Declaration of the UN World Conference on Human Rights “considers the denial of the right of self-determination as a violation of human rights and underlines the importance of the effective realization of this right.”⁷⁸ The participating states expressly defined self-determination to include a democratic entitlement, noting that it is through self-determination that peoples “freely determine their political status, and freely pursue their economic, social and cultural development.”⁷⁹ The Vienna

Declaration further affirmed that the “World Conference on Human Rights considers the denial of the right of self-determination as a violation of human rights and underlines the importance of the effective realization of this right.”⁸⁰ The participating states asserted that “[d]emocracy, development and respect for human rights, and fundamental freedoms are interdependent and mutually reinforcing.” Finally, the participating states agreed that “[d]emocracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives.”⁸¹

Regional initiatives together with the U.N. monitoring of elections have clarified the substantive meaning of the emerging right to democracy.⁸² Gregory Fox lists criteria gathered from human rights instruments and UN practice in monitoring elections that define a free and fair election. These include:

1. periodic elections at reasonable intervals;
2. a secret ballot;
3. honesty in vote tabulation;
4. universal suffrage, with minor exceptions permitted for minors, prisoners, the mentally ill, and the like;
5. an absence of discrimination against voters and candidates;
6. freedom to organize and join political parties, which must be given equal access to the ballot, and an equal opportunity to campaign;
7. to the extent the government controls the media, the right of all parties to present their views through the major media outlets;
8. supervision of the election by an independent council or commission not tied to any party, faction, or individual, whose impartiality is insured in both law and practice.”⁸³

Policy trends of actors in the world community have further encouraged democracy as a right.⁸⁴ The United Nations has monitored over thirty elections, including those in Namibia, Nicaragua, and Haiti.⁸⁵ Several Western European nations have attempted to withhold aid from those nations that are not democracies. On a regional level, the European Community and the United States have imposed on countries, such as the former Yugoslavia and the Balkan States, “conditions on recognition” that include a commitment to democratic governance.⁸⁶ Additionally, restoration of democracy and the right of self-determination has figured prominently in the lawfulness of military action in the southern hemisphere. Today, many countries notably in the Third World consider a clean bill of health from foreign electoral observers as an important aspect of demonstrating their commitment and adherence to democratic ideals.⁸⁷

The biggest stumbling block though in the move towards democracy as an entitlement is that both within the U.N. and regional organizations there is no special set of institutional procedures for handling interruptions in democratic governance, much less for addressing undemocratic regimes generally. As a result, any effort to promote democracy through the political organs of the U.N. is subject to all the vagaries of U.N. politics. The procedures within regional organizations are little better. The Moscow and Copenhagen documents commit the member states, morally if not legally, to “defend and protect” the “democratic order” in any participating state against a violent overthrow.⁸⁸ But the steps to be taken are not specified, not even to the extent of outlining the institutional procedures to be followed to determine what

those steps should be. Although one author has argued that the Copenhagen Document implicitly authorizes military intervention to protect democracy,⁸⁹ it seems unlikely that the signatories would interpret it this way.

Despite acknowledgment of democracy as an entitlement there exist minimal international and regional procedures for responding to unconstitutional seizures of power and flawed elections. Steps to be taken are not specified with regional and international efforts constrained by the non-intervention provisions of the U.N. Charter⁹⁰ and continued opposition of states to anything that might open the door too widely to intervention in internal affairs. There is simply no consensus, within regional and other international organizations, particularly the UN, on strengthening significantly their institutional capacity to promote democracy. Any substantial departure from present practice must survive the critical scrutiny of veto-wielding states such as China and Russia⁹¹ as well as potentially hostile regional blocs in the Middle East, Asia and Africa. As a result of differences among states, departures from democratic principles are likely to prompt a significant collective international response by the U.N., only in exceptional circumstances. On rare occasions, as in Haiti, it may prove possible for states to agree on collective measures to restore the ousted government to power,⁹² but in general, easy cases of the sort represented by Haiti continue to be very few and far between.

However, as the US intervention in Panama shows, the U.S. is not so reluctant, and in fact is prepared to act unilaterally, often outside the U.N. dispute resolution mechanism, (and in the case of the recent intervention in Iraq, will completely ignore the U.N.). The action taken in Haiti was to *restore* democracy⁹³, and that is something far different from what the U.S. sought to achieve in Panama and Iraq, namely to *create a democracy* where none previously existed and what is even more significant is the US was prepared to *use force to do so*. This form of “pro-democratic action” or as the current Bush administration has labeled it, “regime change” is a far cry from *protecting a right to democracy*, which is what occurred in Haiti, the action taken in Panama and Iraq, is in fact a denial of choice and freedom.⁹⁴ It is also nothing new.

IV. Pro-Democratic Action: Protecting the Crop?

The right to political participation which provides a platform for intervention in matters that have been traditionally regarded as within the domestic jurisdiction of a state represents a fundamental departure from classic international law. However, the project of democratic governance and pro-democratic action, heralded as a new advance in the development of international law (especially in the post-Cold War era), has a much older lineage.

Often forgotten is the intervention in post-World War I Russia in 1919 by the Allies, mainly the US and Great Britain. The Allies sought to overthrow the Bolsheviks who had risen to power through the Russian Revolution in 1917. The intervention was through moral and military support to the “White Russians” opposing the “Red Russians” (Bolsheviks). The intervention was justified on the grounds of self-defense which afforded a legitimate ground in international law albeit a dubious one in the circumstances. The real motive was the fact that the emerging Soviet government based on communism “threatened” the capitalist world and sought to negate Western liberal-democracy principles as the basis of government. The intervention also

presented an opportunity to satisfy Woodrow Wilson's desire to see self-determination applied in Russia however this meant only one thing to the West--a right to democratic government. In other words though intervention was premised on the right of the Russian citizenry to choose a mode of governance, the right of choice was negated by the fact that the U.S. and Western European Powers clearly discounted Communism as being among the choices.⁹⁵ Wilson's idealism and the Western European pro-democratic agenda soon fell casualty to isolationism and nationalism.

As the U.S. withdrew from the international arena, European States increasingly gravitated towards aggressive nationalism. Domestic political institutions (of whatever form and character) were seen as essential components of a unique national culture which needed to be jealously protected from external pressures. States retreated to the fortress--like conception of Westphalian sovereignty which Wilsonian idealism had sought to dilute. This retreat effectively reaffirmed the classic international law position that governments had an *absolute* monopoly over fundamental *internal* political decisions, as well as over legislative, executive and judicial structures.⁹⁶ Idealism was shoved to the background and nationalism gained ascendance leading to the outbreak of the Second World War. It was against the background of sovereign excesses pursued by fascist governments that the international community sought to craft a new world order to move the citizenry from the periphery to the center of international discourse. Naturally the agenda was firmly in the hands of the victorious Allies dominated by states with liberal-democratic structures. But the Cold War that set in shortly thereafter was to negate the practice of the lofty ideals relating to political participation by the citizenry that were laid down in various important UN treaties and resolutions and reaffirmed in various international and national declarations and proclamations.

The Cold War shepherded pragmatic pro-democracy discourse away from international and regional agendas. A re-invigorated respect for sovereignty, re-ignited by the nationalistic sentiments of the emerging Third World once again prevented international law from scrutinizing or legally assessing the character of the government of a state.⁹⁷ In practice, how the government of a state was conducted, particularly in terms of the relationship between government and its citizens continued to be largely a matter outside the proper scope of international law⁹⁸ despite the lofty ideals expressed in the U.N. Charter, the UDHR, ICCPR and related proclamations. Ironically, democracy was an ideal shared by both the Communist and Capitalist blocs. But the substantive and ideological divide was great. Western liberal democracy emphasized individualism, self-interest and liberty, and Eastern Socialist democracy stressed collectivism and equality. In the shadow of the East/West divide, democratic principles provided the framework for diverse popular movements producing many different accounts of democracy. The volatile geopolitics of the Cold War created fertile ground for covert activity by the two superpowers seeking to "spread" their ideologies. At the socio-political level it was essentially a seesaw battle of socialism versus Western liberalism.

The covert involvement of the US, the world's leading and most powerful democracy, in the internal affairs of Nicaragua, is a "recent" and noteworthy example⁹⁹ that bears general parallels to the intervention in Russia, albeit against a different geopolitical landscape. U.S. involvement in Nicaragua essentially involved support to the Contras-

-a counter-revolutionary movement.¹⁰⁰ The US's involvement was extensive and eventually led to Nicaragua seeking to resolve the matter through the International Court of Justice (I.C.J.).¹⁰¹ Although the sole justification offered before the World Court by the U.S. was collective self-defense, it is possible that this argument was taken even less seriously by the policy's supporters than by its opponents. Even before the matter appeared before the I.C.J., the governmental illegitimacy thesis had already been betrayed by the US itself in a report presented by President Reagan to Congress on 10 April 1985. The report stated in no uncertain terms that one of the changes which the United States was seeking from the Nicaraguan Government was: "implementation of Sandinista commitment to the Organization of American States to *political pluralism, human rights, free elections, non-alignment, and a mixed economy*".¹⁰² A fuller statement of those views was contained in a formal finding by Congress issued by the U.S. Congress three months later on 29 July 1985.¹⁰³

The political justifications for U.S. policy and action consistently emphasized the internal character of the Nicaragua regime, to such an extent that the Court felt compelled to address arguments beyond the pleadings. As the Court pointed out, the July 29, 1985, finding of the U.S. Congress based support for the Contras on alleged Sandinista breaches of "solemn commitments to the Nicaraguan people, the United States, and the Organization of American States" regarding democracy and human rights.¹⁰⁴ Although "advanced solely in a political context" and "not advanced as legal arguments," these contentions prompted the Court to make specific admonitions against any principle of "ideological intervention" and any unilateral right of states to use force to compel compliance even with legally binding "commitments" regarding internal policy.¹⁰⁵ The World Court emphatically noted that:

...it strains belief to suppose that a body formed in armed opposition to the Government of Nicaragua, and calling itself the 'Nicaraguan Democratic Force', [*the group supported by the US*] intended only to check Nicaraguan interference in El Salvador and did not intend to *achieve violent change of government in Nicaragua*.¹⁰⁶ [Emphasis added]

The core of the US's decision to intervene was because the Nicaraguan government had decided not to hold elections, in effect reneging on "promises" made earlier: and the US had appointed itself as the "guardian" responsible to ensure that these "promises" be kept.¹⁰⁷ The I.C.J. quite rightly determined that the U.S. action was unlawful intervention in the domestic affairs of a sovereign nation-state and more importantly reaffirmed the right of Nicaragua and indeed, any nation-state to choose its political and economic system. In the Court's candid observation:

The questions as to which the Nicaraguan Government is said to have entered into a commitment are questions of domestic policy. The Court would not therefore normally consider it appropriate to engage in a verification of the truth of assertions of this kind, even assuming that it was in a position to do so. A State's domestic policy falls within its exclusive jurisdiction, provided of course that it does not violate any obligation of international law. *Every State possesses a fundamental right to choose and implement its own political, economic and social systems...*¹⁰⁸ [Emphasis added]

And further:

The finding of the United States Congress also expressed the view that the Nicaraguan Government had taken “significant steps towards establishing a totalitarian Communist dictatorship”. However the regime in Nicaragua be defined, adherence by a State to any particular doctrine does not constitute a violation of customary international law; to hold otherwise would make nonsense of the fundamental principle of State sovereignty, on which the whole of international law rests, and the *freedom of choice of the political, social, economic and cultural system* of a State. Consequently, Nicaragua’s domestic policy options, even assuming that they correspond to the description given of them by the Congress finding, cannot justify on the legal plane the various actions of the Respondent complained of. *The Court cannot contemplate the creation of a new rule opening up a right of intervention by one State against another on the ground that the latter has opted for some particular ideology or political system.*¹⁰⁹ [Emphasis added]

The World Court thus expressed its discomfort with the U.S. endeavors to force a political, economic and social system on Nicaragua by restating the fundamental right of every State to choose and implement its own socio-political structure. Though obiter, the Court’s statement was significant and raises a critical distinction between the *preference for a democratic government*, and proceeding to simply *impose one*, without the consent of the relevant citizenry identified as its beneficiaries.

While it may be argued that the I.C.J.’s pronouncements in the *Nicaragua Case* were made against the backdrop of the volatile power-politics of the Cold War and thus do not reflect the position of the new spirit that accompanied the end of the Cold war, the pronouncements were broadly reaffirmed in two post-Cold War U.N. Resolutions relating to the matter. Notwithstanding the protective democratic proclamations and action plans emerging in the post-Cold War new world order context, the General Assembly displayed the great caution mirrored by the I.C.J. Two post-Cold War resolutions, which refer to the monitoring of democratic elections, bear this out.¹¹⁰ The first resolution supports international monitoring of elections and stresses the indispensability of “periodic and genuine elections” to ensure protection of the governed, and identifies “the right of everyone to take part in the government of his or her country.”¹¹¹ The second resolution does not support the international monitoring of elections but states:

that it is the concern solely of peoples [of each state] to determine methods and to establish institutions regarding the electoral process, as well as to determine the ways for its implementation according to their constitutional and national legislation ... [urging all states] to respect the principle of non-interference in the internal affairs of States.¹¹²

In a comment on the implications of these two resolutions, Professor Dianne Otto observes that:

The incongruity of these resolutions reconfirms the presence of two versions of democratic entitlement at international law: one that is restrictive and controlling, and another that tentatively takes a stance of openness to different democratic forms. Thus, despite the claims by proponents of the new world order, it is possible to conclude that the international legal system is not yet fully committed to conservative

liberal democracy as the universal democratic form upon which a state's legitimacy is founded. However, the grounds for defending such a conclusion are diminishing rapidly. The growing emphasis on democratic standardization and enforcement is shifting the balance strongly towards the primacy of protective liberal democracy and away from any possibility of the legal recognition of democratic diversity.¹¹³

Having clarified that the I.C.J.'s Cold War pronouncements were not extinguished nor diminished by the spirit of the so-called post-Cold War new world order, the Article continues with its discussion of the decision. The I.C.J.'s pronouncements besides reaffirming the right of every state to organize its socio-political affairs and structures as it deems fit also raised a very fundamental question at the core of the pro-democratic action argument and the right to democracy. What is the situation if a people *choose* a non-democratic government? Is the international community entitled to then intervene and impose one?¹¹⁴

Whilst it may appear completely unimaginable to a citizen living in the West that anyone if given a choice between democratic institutions and non-democratic institutions would choose the latter, it is still feasible, and one shouldn't let cultural relativism cloud any conclusions. Martin Wright when commenting on the French Revolution wrote that the attempt by revolutionary France to "reorganize world society" may have worked if the French had not been so "...sublimely incapable of distinguishing between the universal rights of Man and French culture...".¹¹⁵

Although initially the revolutionaries in France maintained the revolutionary values of liberty and equality,¹¹⁶ such altruistic intentions did not last long and soon the French used force to impose their ideals upon others, Belgium for example, and then the rest of Europe, and so the road to the Napoleonic Empire began.¹¹⁷ Could this also be what the U.S. (as the leading democracy proponent and "beacon on the hill") is aiming to achieve with unilateral pro-democratic action? The U.S. has not just intervened in Nicaragua and Panama, its extensive history of intervention has included military intervention, in Guatemala in 1954; the Dominican Republic in 1965, Grenada in 1983 and more recently Afghanistan and Iraq.¹¹⁸

The flurry of pro-democratic activity by the West (exemplified in US action owing to its capacity and capability for the same) juxtaposed against the French experience raises important questions in pro-democracy discourse. This is especially so in light of the fact that universalist claims to democracy as an entitlement are characteristic of Enlightenment perspectives and just like this perspectives, the push for the democratic ideal sweeps aside contention and ignores radical dissent as if it did not exist. As a result, the diversity of the democratic tradition is erased by these totalizing assertions of unanimity and final truth.¹¹⁹ It is to be recalled that both George Bush and Mikhail Gorbachev greeted the end of the Cold War as the dawning of a new world order. From Bush's expansive North American viewpoint, this was the birth of an international consensus embracing the great U.S. ideal of freedom for all.¹²⁰ Australia's Foreign Minister, Gareth Evans, approvingly identified the components of this global metamorphosis as "*the promotion of democratic practices; the consolidation of free market economies; collective resistance to aggression; and the upholding of 'universal values.'*"¹²¹ The new world order, according to then U.S. President, George Bush Sr and other commentators, is the triumph of liberal democracy over communism¹²² or, in more extreme views, the arrival of the end of

history.¹²³ With the ending of the Cold War and the opportunity for the globalization of patriarchal and liberal forms of democracy under the banner of a new world order, the West seeks to co-opt the international legal system to assist the agenda of Western expansionism in the guise of promoting democracy and human rights. The pressure is on the international legal system to legitimate these developments, specifically by taking a role in standardizing and enforcing world-wide protective liberal democratic forms.¹²⁴ With the U.S. (owing to its immense power and influence) as lead proponent, its overt and covert pro-democratic activity raises an important question not too far removed from the issues that this article is grappling with: Is the US acting like an empire or more bluntly is it indeed an empire? A positive response to that question would appear ironic, since the US was formed through an act of rebellion against British Imperialism, but irony is a poor substitute for denial, and whilst the U.S. citizen, and indeed the U.S. government may vehemently refuse to accept it, the U.S. Empire has existed since Theodore Roosevelt.¹²⁵ In Ignatieff's eloquent assertion:

True, there are no American colonies and American corporations do not need their governments to acquire territory by force in order to acquire new markets. So the new empire is not like those of times past, built on colonies and conquest. It is an empire lite, hegemony without colonies, a global sphere of influence without the burden of direct administration and the risks of daily policing...It is an empire, in other words, without consciousness of itself as such. But that does not make it any less of an empire, that is, an attempt to permanently order the world of states and markets according to its national interests.¹²⁶

Other commentators like Noam Chomsky share Ignatieff's view, arguing that the US's emergence as the only true super power, after the Second World War (a development capped with the crumbling of the Soviet Empire) is evidenced by the fact that it "...undertook careful and sophisticated planning to organize the world system in its interests."¹²⁷ Actions were taken; decisions made, dictators supported, human rights abuses ignored, regimes "changed":¹²⁸ all so that the US corporations and industry had access to new markets, to ensure its manufacturers had access to resources particularly petroleum products in the Middle East, to protect its consumer-based economy. Certainly one of the reasons for the extent of the US intervention in Latin America has been to protect US private investment.¹²⁹ All else, such as the championing the right to democracy, to "freedom" from the encroaching Communist hordes, was empty rhetoric.¹³⁰ So extensive was the US interest defined, that any nationalist group, any leader, any development of so-called "independent" thought, (namely something or someone that would not follow US policy), became demonized as an "enemy to freedom" and action was swift to follow.¹³¹ One of the motivating factors behind the Cold War was to use military spending and the development of the industrial--military complex to keep alive a struggling US economy.¹³² Since the end of the Cold War, US military doctrine has shifted to focus on "low intensity conflict", in order to "...project power into other regions and maintain access to distant markets and resources."¹³³ Does this sound like an attempt to organize the international community for the sake and benefit of the US and *not for the benefit of the world's peoples*? Given the nature of the U.S. economy, and the desire expressed above to ensure protection of U.S. access to "distant markets", wouldn't it make sense to ensure that other nations too retained a similar economy? Thus another explanation

for the push by Western liberal democracies for their style of governance to become the *only style of government* is economics. The structure of the U.S. is not so much based on liberal democracy but *liberal economics*. Brad Roth in his article examining and evaluating the progress of democracy makes the link between liberalism [freedom from interference by the State or the government] and a “market-society” abundantly clear.¹³⁴ As one commentator, *a defender of U.S. policy* has said:

For 200 years the United States has preserved almost unsullied the original ideals of the Enlightenment: the belief in the God-given rights of the individual, the inherent rights of free assembly and free speech, *the blessings of free enterprise*, the perfectability of man, and above all, the *universality of these values*.¹³⁵ [Emphasis added.]

So is it *a right to free enterprise* rather than human rights that the Western nation-states are seeking to impose on others, when they support a right to democracy? Or perhaps more accurately is it a *right of the U.S. to free enterprise* and the rest of the international community to become modern-day slaves of the US economy and corporations?¹³⁶ Certainly one of the goals argued to be crucial for a successful post-war reconstruction of Iraq is the introduction of a capitalist economy.¹³⁷ Further there is much support for what is labeled as “neo-colonialism” that is the creation of economic dependency upon more advanced, industrial nations, usually in the West.¹³⁸

According to the theory of neo-colonialism, most Third World nations have become dependent on the international economic system dominated by the Western... powers and Japan for markets, technology, financing and even basic foodstuffs to such a point that these less-developed countries may be called “hooked”: they cannot do with their dependence, but, just as well, they cannot do without it. They cannot do with dependence because their form of incorporation into the international system has tended to preclude their industrialization, relegating them instead to the less dynamic forms of growth associated with agriculture or the extractive industries.¹³⁹

Whether economics is the motivating factor behind pro-democratic action would require an extensive examination beyond the scope of this present paper. However one point can be made with confidence, Western liberal democracies do not impose democracy, *simply out of altruism*, because they believe it is a legal norm or the best way to protect human rights,¹⁴⁰ but simply because it was and continues to be in pursuit of their national self-interests.¹⁴¹ Whenever the right to democracy is argued we should remember the famed U.S. State Department official George Kennan, who stated in 1948:

.... We [the American people] need not deceive ourselves that we can afford the luxury of altruism and world benefaction. We should *cease to talk about such vague and unreal objectives as human rights, the raising of living standards and democratization*. The day is not far off when we are going to have to deal in straight power concepts. *The less we are then hampered by idealistic slogans, the better*.¹⁴² [Emphasis added]

The statement by George Kennan though relating to the U.S. nonetheless captures the essence of actions that are mounted by other states (especially Western) in most

spheres, and in the context of this Article, in pro-democratic action. Few see the international community's ambivalent approach to pro-democratic intervention as optimal. More immediate geostrategic interests often demand that potential intervenors tolerate or even support governments that are either undemocratic, or only marginally democratic. Of necessity, then, attitudes toward pro-democratic intervention are "awkwardly selective."¹⁴³ Selectivity may be morally indefensible, but politically inescapable. Various suggestions have been made for circumventing problems of selectivity, but no hard and fast ideas have yet emerged.¹⁴⁴ Though governments are generally unwilling to intervene themselves, they are reluctant to let others do so for them. The result is that in the rare cases in which intervention is authorized, it is effectively delegated to the most interested available actor.¹⁴⁵ For instance in the Haitian situation, it was the United States and the same pattern has been played out in numerous instances. This pattern remains predictable. These actors often press for outcomes which are noted as much for their compatibility with the actors' own interests as for their compatibility with universal norms or the specific interests of the affected state.¹⁴⁶

The question of the role of the U.N. naturally arises from the observation above which may be considered cynical. The authors note that despite many facets of the U.N. Charter being associated with democratic ideas, recognition of the sovereign equality of member states and a commitment to the self-determination of peoples, closer examination reveals that these two ideals are considerably qualified by the practice of the United Nations. The undemocratic structures of the United Nations rely on the assumption that peace is more likely to result from the consolidation of world power arrangements than from deepening democracy which would involve challenging global inequalities. Other international organizations and processes such as the hierarchical and Western-dominated structure of the international economic system reflect this assumption. These examples show that, in practice, the goal of democracy in international relations is compromised by the United Nations' deference to the current distribution of world power among states.

The U.N.'s and for that matter the international community's reluctance to intervene forcefully in states still subject to dictatorial rule may represent a failure of political will: a refusal to shoulder the burden of bringing the benefits of democratic governance to populations ruled by military thugs and parasitic elites. For others, the U.N.'s recent willingness to authorize intervention in Haiti, Rwanda, Somalia, and elsewhere represents a revival of western imperialism: a cynical pursuit of western economic and strategic interests in the name of universal values. Either way difficult choices are presented. Failure to act is condemned but a willingness to act is viewed with suspicion. Not surprising this is the result of a lack of definite content and contour regarding democracy, and accepted criteria for intervention of any sort.

How is the international community or indeed any national government to interpret U.S.-led intervention in Iraq, as a necessary means of achieving a democratic end, or as simply another example of the US "restructuring" the world in a manner to protect its access to markets and to protect its own national interests?¹⁴⁷ How can the international community *objectively* answer such a question? The answer lies in the I.C.J.'s judgment in the *Nicaragua Case* in view of the fact that the ICJ is the pre-eminent judicial organ of the UN created to prevent conflict, assist the peaceful resolution of international disputes and further the ideals of the U.N. system. If the

experts of the I.C.J. recognize that there exists a right of nation-states to determine their own political system free from outside interference then what right has the US or indeed any nation-state to impose by force a democratic government? After all isn't the forcible imposition of democracy "undemocratic"? Essentially if a peoples' ability to exercise their right to self-determination is so restricted that there is only one form of economic political system that they can choose; isn't that a denial of their rights as a people? *Doesn't this make a mockery of the whole right to self-determination; isn't this in effect a form of oppression from a foreign and alien power, namely the West?*¹⁴⁸ *Isn't this a form of imperialism?*

Like a chameleon changing colors, imperialism may be expected to appear in different form but with similar consequences. We would be naïve indeed not to anticipate that among its chief practitioners may well be some of its former victims and most outspoken critics.¹⁴⁹

Some may bridle at the suggestion that pro-democratic action is a form of neo-colonialism, but the similarities with colonialism cannot be denied. In his examination of a global history of colonization Marc Ferro noted that whilst there were many varied reasons behind the colonial movement: economic imperatives to find markets to cater to the new industries as a result of the industrial revolution; because it was an inevitable step in the evolution of a Marxist utopia; a chance to cure social ills by the forceful expulsion of convicts; as a cheap source of colonial labor; strategic concerns; religious crusades; he noted that whatever may have been the original motivation it soon became lost as Western societies became convinced of their superiority, and when combined with their technical ability, they had the means and the desire to bring "civilization", to colonize.¹⁵⁰

That is how it came about that a cultural concept, civilization, and a value system came to have specific economic and political function. Not only did these countries have to safeguard the right of Europeans to define the meaning of civilization – which actually guaranteed their pre-eminence--but the protection of this right became, in addition, the moral *raison d'être* of the conquerors.¹⁵¹

Combined with the theories of "Social Darwinism", the Western powers did not believe their actions to be oppression, but rather a kindness; of performing a noble deed: the imperative need to civilize so-called lesser races for the glory of monarch and God: a sort of noble crusade or as it has been described, the "White man's burden".

In his great goodness the white man does not destroy the inferior species. He educates them, unless they are deemed to be not "human", like the Bushmen or the aborigines of Australia who were not even given a name--in which case, he exterminates them.¹⁵²

The implications of imposing protective Western democratic forms as a condition of the recognition of a state at international law are far-reaching and it is not an idle argument that it creates new opportunities for Western imperialism, despite the bold claim made by Professor Thomas Franck that people almost everywhere now demand that government be validated by a western-style parliamentary, multiparty, democratic

process ... Very few argue that parliamentary democracy is a western illusion and a neo-colonialist trap for unwary Third World peoples.¹⁵³ Criticizing this sweeping claim, Professor Dianne notes that “Franck assumes a world consensus about the liberal democratic form. Further, he asserts that the foundation for this global development lies in the U.S. Declaration of Independence.”¹⁵⁴ Professor Otto further notes that Professor Franck’s sweeping assertion is shared by other international commentators as well.¹⁵⁵ Reacting to this holistic position, Professor Otto points out that “[s]uch assertions generalize democratic experience and silence the knowledge produced by the many democratic movements which would decry such origins and associations.”¹⁵⁶ While admitting that Professor Franck and similarly minded commentators represent a strong and well-reasoned viewpoint, nonetheless, the authors share Professor Otto’s cautionary sentiment which counters the self-righteous tenor of Professor Franck and other commentators. It is this self-righteous tenor in the democratic discourse that contributes greatly to stifling any debate regarding democratic diversity and communality.

Another contentious ground is the issue of pro-democratic action as a form of neo-colonialism. One argument against classifying pro-democratic action as a form of neo-colonialism as espoused by some proponents of the right to democracy is the universal nature of the right. Professor Dianne Otto in a critique of this position observes that though international legal discourse has developed democratic conceptions in human rights law and some support for expansive versions of democracy may be found in human rights instruments, this support is confined in practice, however, by an overriding emphasis on policing formal electoral and voting processes rather than on promoting more flexible and participatory forms of democracy.¹⁵⁷ She further avers that the dominance by liberalism, conceives of human rights in universal and essentialist terms resulting in a Western-centric domination of democracy discourse.¹⁵⁸ Rounding up her observation, she tersely asserts that

From a critical legal studies perspective, the emphasis in liberal rights discourse on individualized and formalistic rights results in indeterminate and malleable constructions of human rights that create impediments to progressive social change by abstracting and atomizing human experience.¹⁵⁹

The next section of this Article ventures into the murkiness of the democratic ideal as a universal right questioning this position through a discussion of political armies and the issue of economic factors. Proposals by democracy’s proponents to standardize and centrally monitor the procedures of global democratic change constitute an attempt to control and homogenize democratic developments. This need to control is consistent with protective forms of liberal democracy. It is a defensive response to developments that have the potential to alter the inequitable global distribution of power and to involve people, as collectives and individuals, in processes of self-determination within and beyond the boundaries of states. The authors are well aware that this matter is intricate and complex, but their modest aim is to put the question mark to what might be termed as an accepted position or the only desirable position.

VI: The Nature of the Democratic Ideal: Is it a Universal Crop?

Many of the features of Western democracy are so familiar through endorsement at the international and regional levels that it is tempting to see them as universal. However this whilst true, nevertheless does not discount certain bases unique to individual states that create room for suspicion. If Western democratic principles are becoming universal, then it is largely due to the pervasive influence of Western values and ideas throughout the world, and the influence of the global economy. The sticking point is the apparent inflexibility by the West to allow these values to be affected (in a positive) manner by the values of other socio-political orders. Fearing to kindle (negatively) the idea of relativism, Western democracy sets up barriers of righteousness, binds nations by an appeal to universality and points to the good faith and benevolence of liberal-democracy. The threat and fear of international ostracization is not the best way to go about advancing the democratic agenda.

Regimes that are oppressive may need to be replaced:

... but as the history of France after the French Revolution demonstrated, the danger of despising all that had gone before, and starting afresh, is that for generations afterwards a society may stagger from one constitutional experiment to another, with much violence and bloodshed in its path.¹⁶⁰

The wholesome abandonment of traditions cuts a society loose from its moorings. Democracy stands to gain from being located within the general socio-political landscape of a nation rather than being seen as a wholesale export of the West, which prescribes a Western specific template. The sense of ownership by a citizenry in a new political architecture contributes immensely to its support: "A monocultural tradition may successfully adapt itself to cultural pluralism only if it avoids lapsing into moral relativism."¹⁶¹

When discussing the plans to create a democracy within Iraq, Adeer and Karen Dawisha argued that the "...success or failure of democracy in Iraq will depend on whether the country's new political institutions take into consideration its unique social and communal makeup."¹⁶² And later: "Restructuring Iraq's political system will be laden with difficulties, but it will certainly be feasible. At the same time, the blueprint for Iraq's democracy must reflect the unique features of Iraqi society."¹⁶³ As the authors recognize "one size doesn't fit all, but the same design can fit all with necessary adjustments"! Thus their recommendations include the need to recognize Iraq's diversity of religions, cultures and ethnic groups. As such "...the trick is to work out a constitutional arrangement that makes sense of Iraq's social and cultural mosaic, transforming diversity into an agent for positive change."¹⁶⁴ Their recommendations include a return to constitutional monarchy, retaining the current 18 administrative units rather than adopt a religious or ethnic based federal model (in other words denying the Kurds and Shiites a right to autonomy), a role for the clergy and former middle level members of the Baath party, and a reduced state bureaucracy.¹⁶⁵ Most importantly the authors recommend that: "For the sake of all parties involved, the American endeavor in Iraq must not end in a more agreeable form of dictatorship or a successor regime that promises nothing beyond greater cooperation with Washington."¹⁶⁶ There must be a genuine commitment by governments. Where democracy is seen mainly as a fad, and an avenue to cordial relations with donors, it loses its spirit.

Who is to say that Western democracy is the only form of democracy? The ideological competitors of liberal democracy do not after all, deny the role of popular will as the basis of governmental authority; the often-used terms “people’s democracy” and “socialist democracy” are affirmations of fidelity to this notion, the revolutionary struggle (in some way or another) being the ultimate embodiment of the popular will. As Jorge Domínguez summarized the Cuban Government’s view: “[r]evolutionary rule is not legitimated by voting; rather, an election is legitimated by revolutionary rule.”¹⁶⁷ This is not a barren argument. Article 21 of the Universal Declaration after all can be read syllogistically to mean that the basis of governmental authority is such popular will as has been expressed in the elections. Whereas non-liberal regimes would prefer it to mean that the popular will is (in some abstract sense) the basis of--and therefore expressed by--governmental authority, and is also expressed in elections. The Covenant version simplifies the matter by leaving undefined the relationship, if any, not only between authority and elections, but also between authority and participation.¹⁶⁸

It is of importance that democracy even in Western Europe and the US was by no means a constant and consistent development.¹⁶⁹ In Europe it experienced upheavals generated by socio-political and economic factors--interrupted as it was by the Roman Republic which became the Roman Empire, then the Dark Ages, and the odd war such as the Peloponnesian War, the English Civil War, the French Revolution, the American Revolution, the American Civil War and the Napoleonic Wars, and the odd totalitarian regime too, such as Oliver Cromwell’s reign in England,¹⁷⁰ and the odd abuse of human rights such as the repression of the Scottish Highlands after the battle of Culloden,¹⁷¹ and the more recent excesses of the former European colonial overlords.¹⁷²

On May 8, 1945, the very day Paris was celebrating the defeat of Germany, Muslim riots around the town of Setif in Western Algeria claimed over a hundred European lives. Reaction was swift. French planes strafed forty-four Muslim hamlets, a cruiser offshore bombarded more, and groups of settler vigilantes summarily executed hundreds of natives. As testimony to the ferocity of the repression, how many Muslims died in these events has never been determined, though estimates range from 6,000 to 45,000.¹⁷³

As one commentator notes Western liberal democracy may not appeal to every citizen in the global community, simply because they do not cherish the West’s idealized version of private life, the protection of individualism and consumerism. Instead they may desire to become part of something “bigger than themselves”; to “mould the world anew”: to become part of destiny or history.¹⁷⁴ In other words Western liberalism is insufficient to satisfy the urge, which he argues is so common and prevalent in the human psychic, of belonging to something grand, some historical moment, some dynamic and apparently benevolent movement.

Nothing that humans experience can compare with the intoxication which comes from feeling oneself to be part of some great heave of history, from an awareness that the whole community is on the move. It was what the French felt during the Napoleonic period, the Germans before the First World War and still more so under the Nazis, many Russians even under the tyranny of Joseph Stalin, the Iranians in the initial phase of their Islamic republic.¹⁷⁵

This desire is clearly evident in religious crusades or *jihad*, and in revolutions, and will prevent the adoption of democracy, particularly by a group that has become alienated by a lack of political or economic power. And as the example of the success that the Nazi party and fascism had in post-war Germany, such movements can infect an entire people and sweep away all thoughts of Western liberalism. This is perhaps one of the most important and overlooked reasons why democracies fail. Many societies and peoples do not share the belief that with democracy comes freedom, or that it will simply improve their lot in life. But there are certainly many examples, such as in the former U.S.S.R., where a change to democracy *has had the opposite effect a worsening of the economy and living standards of a vast proportion of a people.*¹⁷⁶

The breakdown of an economy, or worse of society as a whole has in the past led to the creation of political armies, where the general population is panicked into a frantic search for any entity that will create stability, national cohesion, and security. Political armies have been defined as those military forces that "...consider involvement in- or control over- domestic politics and the business of government to be part of their legitimate function."¹⁷⁷ As such political armies are the nemesis of democratic governance, since it is accepted that the central indicator of democratic government is civil political institutions and processes based on the consent of the people secured through their participation in free and fair elections managed by civil institutions rather than the stereotypic tinderbox socio-political landscape that military dominance is built on that seems to ensure elections of flee and flare. A nation under military rule has always been presented as the classic *prima facie* case of undemocratic rule. Thus the premise that flows from this assumption negates any form of military involvement in governance. The army should be a neutral institution of the State falling within the discipline of those whom the ballot has ordained, but armies often venture into the political arena, frequently justifying their actions to be necessary to counter such dangers as collapse, or social disintegration and the proliferation of violent conflict. How does a "vice" give rise to a "virtue"?¹⁷⁸

While generally political armies meddle in governance whether directly or indirectly to the chagrin of the citizenry, this is half the story. In some countries their interference in governance is actually condoned. The armed forces with its inherent nationalism and organization will always appear to be the entity to restore a breakdown in law and order and guarantee it when a nation falls into anarchy and chaos (whether this be reflected in armed conflict or serious civil unrest). Maintenance of law and order is seen as a prerequisite to providing the necessary conducive environment for society to further socio-political and economic agendas. But then, often once the army leaves the barracks for the streets, it frequently heads to the presidential palace. One such series of examples can be found in the 1930's in Latin America where the middle class was not 'strong enough to fill the gap left by the breakdown of oligarchic hegemony "... and this led to a 'middle class military coup.'¹⁷⁹ There are many other examples, such as the coups by the Turkish military,¹⁸⁰ Pakistan and the bloody takeover in Algeria¹⁸¹. In his televised address to the nation on 13 October 1999, justifying the military coup in Pakistan, General Pervez Musharraf mentioned the turmoil and uncertainty in the country and a crumbling economy due to the self-serving policies of individuals wielding influence in government, factors that were rocking the foundations of the nation.¹⁸²

...My singular concern has been the well being of our country alone. This has been the sole reason that the army has willingly offered its services for nation-building tasks, the results of which have already been judged by you. All my efforts and counsel to the government it seems were to no avail. Instead they now turned their attention on the army itself. Despite all my advice they tried to interfere with the armed forces, the last remaining viable institution in which all of you take so much pride and look up to, at all times, for the stability, unity and integrity of our beloved country.¹⁸³

Similar language was used by one of Turkey's most revered figures Kemal Ataturk, eight decades earlier when describing the situation of the Ottoman Empire in September 1917. The military hero emerged as a charismatic leader of the Turkish national liberation struggle in 1919, creating the modern state of Turkey where even today the armed forces are a good example of a political army.¹⁸⁴

When there is an incredibly strong identification of the army with the domestic fate of the nation,¹⁸⁵ the dynamics change. The armed forces become involved in "nation-building".¹⁸⁶ The danger is that the conservative nature of military forces world-wide, the very factor that people hope will bring about stability, is also the very factor that can prevent the army from relinquishing control, as eventually the armed forces see any development or any political devolution of power that is not subject to their control as being a potential threat to stability: thus preventing the return to civil society and more importantly to savage human rights abuse.

These features [systematic abuse of human rights abuse, corrupt or unaccountable governments] seem to prevail under political armies. Close control of politics and the state by an institution built on hierarchy, the chain of command, monothetic ideology and deployment of the means of coercion is liable to fall short of the requirements of good governance. Political armies may quickly see political party competition as instability, public policy deliberations as inefficiency, and opposition to the established power hierarchy as dissent or even treason towards the state and the nation. The application of an uncontested military logic to politics in dealing with such perceived flaws and problems has in many cases produced the abject kind of dictatorship that excels in internal warfare, state terrorism, and murky politics.¹⁸⁷

Even when the military return power back to a civil administration, there is no guarantee that they will not seize it again, particularly if their interests or position is threatened or again if they believe that the civil administration is adopting a course of action, which in the army's opinion will to catastrophic consequences for the nation.

... even in countries in which the military have now returned to the barracks as part of the reassertion of civilian politics, current societal problems still make the consolidation of democratic governance an uncertain endeavor. Is it not possible that, if real or perceived threats to the social or political integrity of the nation are sufficiently strong, a reversal may take place that would bring the military back into politics, even to the point of again assuming direct control of government?¹⁸⁸

Economic stability and prosperity does play a role in keeping the army at bay by preventing social chaos and political anarchy by incensed masses. After all a fair share of revolutions have been spawned by this very factor where the wealth and benefits of the community are restricted to elites as a nation progresses. But tied up to the issue economic factor is the assertion of the authors that imposition of democracy will not succeed if it does not create an economic system that encourages and allows for class transition from poverty to wealth, something which a healthy middle class represents. Thus to impose a democratic government upon a community that is economically unprepared for it, poses the risk that the community will slide into anarchy or despotism: and that is the true danger of pro-democratic action.¹⁸⁹ A good starting point would be the following observation:

Britain's progress towards democracy was spurred by an entrepreneurial middle class largely independent of the state. In Germany, the economy was much more closely connected to the government, and the industrialization of the country occurred as a result of the alliance between the state and the traditional elites. There was no robust middle class to agitate for greater freedoms and representation.¹⁹⁰

Kaplan contends that democracy will not succeed unless a "middle class" develops:¹⁹¹ "As almost all political theorists agree, a fully developed middle class is essential to an effective and sustainable democracy."¹⁹² Discussing the evolution of a nation-state and nationalism, Porter like Kaplan, places a great deal of emphasis on the importance of "rising urban class" or a middle class and its role in establishing a stable political community.

The expansion of trade and industry, the development of communications, the drift from the countryside to the towns, all made for the growth of a middle class which increasingly chafed at the multiplicity of customs barriers and other feudal restrictions, and which aspired to political influence commensurate with its economic strength and educational attainments.¹⁹³

In fact it could be argued that even the *form* in which the middle class takes shape is important for the adoption of a democracy. The middle class's development and success must not be linked to or even be a result of state-orchestrated client-patron processes that artificially create class stratifications. It must be independent otherwise a totalitarian style state is likely to evolve, Iraq is one such example.¹⁹⁴ Since financial success is linked to the state then the state must survive at all costs, thus individuals and the class of persons within a community that retain the most economic and political power, rather than seek political pluralism and true democracy through open and fair elections, seek to create a system whereby there is only the state, and that means one party: thus establishing the potential for human rights abuses.

Kaplan's comparison of the unemployment and civil unrest in the imposed democratic regimes in Germany and Italy during the inter-war years with the Sudan,¹⁹⁵ strengthens the assertion that the economic environment plays a role in shaping governance. Explaining further, Kaplan contends that that the violent consequences of the failed democracies in Sudan and other communities was due to many citizens of these communities do not get the opportunity to see or share in the benefits of a

Western-style parliamentary system, since they are locked in a cycle of poverty and crime:¹⁹⁶ a phenomenon, which is at the core of the rise of terrorist organizations, and is also present in many conflicts such as between Palestine and Israel.¹⁹⁷ Whilst it is too simplistic to argue that history repeats itself, there is certainly a lot to be said for ignoring its lessons.

History is littered with examples of failed democracies, the current crisis in the Solomon Islands is the most recent¹⁹⁸, but it is the collapse of the Weimar Republic in 1932 that proponents of pro-democratic action would do well to remember and take heed, since history is littered with the bitter consequences of that failure: Auschwitz, Dachau, the use of nuclear weapons, millions dead; a world left in ruins. Kaplan notes that when democracies fail, they do so in a horrific fashion, often being replaced by authoritarian regimes far worse than any that may have preceded them, and resulting in massive human rights abuses. Totalitarian regimes like those of Adolf Hitler and Mussolini came to power *through* democracy.¹⁹⁹ Cambodia's experiment with democracy ended in Hun Sen's coup.²⁰⁰ Democracy in Sudan led to anarchy that led to a terrifying and brutal military regime and civil war. The US sponsored democracy in the 1990's in Afghanistan led to the rise of the Taliban. The failure of the US to create a multi-party system in Kurdistan created a power vacuum filled by Saddam Hussein, who later used chemical weapons against Iraqi Kurds: and who can forget the failure of democracy and a multi-party system in Rwanda?²⁰¹

It is also true that there have been "successes" such as the creation of West Germany in the aftermath of the Second World War, but we must ask ourselves is it worth taking the risk? Does the "end justify the means"? Or will the fruit of the West's endeavors taste bittersweet?

VII. Democracy: Is the Fruit of our Labors as Sweet as We Believe?

Many commentators believe that one explanation for the *preference* for a democratic government is that the very nature of democracy with its inherent system of checks and balances,²⁰² ensures protection of human rights,²⁰³ and thus democratic governments are considered less likely to lead to excesses of authority in their dealings with their citizens.²⁰⁴ Franck also argues that there are mutual benefits to both those that govern and the governed, in a system where there is *habitual voluntary obedience*.²⁰⁵ The government by obtaining the consent of the governed is crucial in obtaining "validation" of their governance and political system within the international community.²⁰⁶ However for others the answer is more obvious. Democratic governments enable some input from those that are governed.²⁰⁷ According to Dasgupta and Maskin, democracy provides "political competition."

Competition in the political sphere not only enables citizens to shop among contenders to govern, it also enables them to shop for ideas on governance. Pluralism in the political domain is akin to competition in the market place. Competition is desirable even in an unchanging environment: it discourages inefficacy. Competition is necessary to keep incumbents from slacking.²⁰⁸

So if a government is oppressive, autocratic, or simply disliked, its mandate to govern is revoked by an election, not by guns and violence: something that cannot be

achieved in a dictatorship, regardless of how benevolent it happens to be.²⁰⁹ In summary a democratic government by involving, enfranchising and more importantly, seemingly to protect the very people that it rules, guarantees its own viability and existence, thus assisting it to outlast competing political systems such as communism, dictatorships and totalitarianism. Democracy's ascendancy over other competing political systems appears to many to be so comprehensive as to be irreversible: or in the words of one commentator a sign of "the end of history".²¹⁰

As powerful and persuasive as such arguments may be, they require further examination. Looking at the history of democracy's traditional strongholds--the West--few of the countries can claim no skeletons in the closet. Many in the past have had shameful practices that were given the imprimatur of the law and supported by government institutions. One need only take a cursory look at say the US which has espoused democratic ideals from day one of its creation to see that in yesteryears universal suffrage or freedom from discrimination was very much present, unless of course you were "disabled" by gender or color then the dynamics changed.²¹¹ Discrimination and human rights breaches continue in the US today and has not been restricted to the US alone.²¹² In 1902 the newly created Federal Parliament of Australia denied all indigenous Australians the right to vote, and it was not until 1962 that *all* indigenous Australians received the right to vote in Federal Elections.²¹³ Other examples of human rights breaches include massacres of indigenous peoples such as Australian Aborigines,²¹⁴ or US Indians,²¹⁵ and also the actions of Western governments during conflicts such as the British government's policy during the Boer War of interning Boer civilians in camps that a later conflict would have described as "concentration camps". There are modern examples too, Columbian drug traffickers have been trained by Western and Israeli personnel,²¹⁶ and Cuba has suffered terribly at the hands of US trade embargoes.²¹⁷

Democracy while a tested and proven concept is still not the ultimate solution to all oppressive government and all repressive internal practices.

Democracy is hardly a panacea, and it will not by itself either resolve profound domestic problems (such as wide inequalities in income, severe ethnic conflicts, and insufficient resources to meet rising demands) or necessarily generate an international order that is more peaceful or prosperous.²¹⁸

Certainly democracy has not brought economic prosperity to many Latin American nations like Brazil, Argentina, Venezuela and more recently Peru, where the holding of fair and free elections, have not halted corruption, inflation or economic decline. Even after democracy was restored to Haiti, it did not restore stability or prevent famine.²¹⁹ This phenomenon is not restricted to Latin America alone, democratic Russia remains impoverished, so to Albania, and so to do parts of India, the world's largest democracy India, where states like Bihar remain in virtual semi-anarchy and economic chaos.²²⁰ In fact there are numerous examples where non-democratic authoritarian regimes have been more successful in promoting successful economic reform than their democratic counterparts.²²¹

Contrary to what some have argued above,²²² democracy and the electoral process do not guarantee protection of human rights as the internees in Guantamao Bay have

discovered.²²³ Kaplan notes that in Bosnia ‘...democracy legitimized the worst war crimes in Europe since the Nazi era.’²²⁴ In Mali, as Kaplan notes, a so-called “democratic success story”, elections were marred by riots and murder.²²⁵ Chomsky estimates that the US is either directly or indirectly responsible for the deaths of approximately 200,000 people in Central America during the 1980’s.²²⁶ As the author notes in a subsequent work, this figure places Libya’s human rights breaches into perspective.²²⁷ Who can forget the images of ranks of South Korean Riot Police, looking like the evil “storm-troopers” from the science fiction film Star Wars, clashing with student protestors, almost a signature image of South Korea during the 1980’s: who can forget Bloody Sunday in Northern Ireland?²²⁸

Another issue that confronts democracy is the need to ensure that it does not turn a multiethnic nation into a majoritarian dictatorship. Where the minority are effectively sidelined from *actively* participating in government despite their ability to vote by a majority whose dominance in government, and thus affairs of the State is guaranteed by the ballot. Not an idle argument in multi-ethnic states. One need only look to Africa to see the effect of the straight application of one person, one vote in heterogeneous states dominated by one or two communities. Generally speaking, the threat of human rights abuses is particularly high in territories where there is an ethnic minority. An ethnic minority can remain under threat from a majority, despite the existence of an electoral process since it is likely that “...the will of the majority will simply reflect the position of the most numerous ethnic group within the territory.”²²⁹ So an ethnic minority can be repressed or subject to discriminatory processes in a democratic system, or rather in spite of the appearance of political empowerment created by the electoral process, and this can lead to an escalation of ethnic violence. Commentators conveniently forget that the Former Republic of Yugoslavia was a democracy before and during its descent into darkness.²³⁰

The inability of a particular ethnic group to control political events which affect it is unlikely to result in dissatisfaction amongst the members of that group; that dissatisfaction may in some cases be so extreme as to induce the group to secede and form a nation-state of its own, in which it can control political events. This is what happened in the Soviet Union and Yugoslavia when a democratic system was introduced. The exercise of popular sovereignty within those multi-ethnic states led to political fragmentation.²³¹

It could be argued that such examples, involved governments that are/were not “true democracies” or were merely “isolated” examples.²³² Such an argument is too simplistic and often fails to make a thorough historical examination, since it avoids many inconvenient questions such as which nation-states have been constantly involved both directly and indirectly in military conflict since the end of the Second World War-why the US and Israel: two democracies.²³³ How many civilians, Lebanese as well as Palestinians have been killed by Israel?²³⁴ In India, the world’s largest democracy, “communal” violence between Hindu and Muslim factions in Godhra, Gujarat in 2002, has resulted in at least 2,000 civilians being killed.²³⁵ Human Rights Watch in a report revealed that there is evidence of complicity in the killings of Muslims by the Hindu-dominated State government.²³⁶ The Gujarat State government has been criticized by India’s own National human Rights Commission, for failing to stop the communal violence, and subsequent investigations by Indian human Rights’ Activists have revealed that senior ministers form Gujarat’s Chief

Minister Modi's cabinet have been involved in planning attacks against Muslims. There were at least 40 such attacks during 2002. And it appears that State authorities are not prosecuting those responsible in what could be one of the worse 'cover-ups' in Indian history.²³⁷

Finally, what sort of democracy is to be imposed? This is not begging the question. In Algeria during the electoral campaign of April 1999, the army's intelligence department known as Military Security organized the elections. Any candidates who opposed the role of the army or would in the army's opinion be unable to win an election were denied the right to run for the elections, thus creating a very noticeable lack of opposition candidates. This was resolved by the 'selection' of candidates who would not jeopardize the military's grasp on power. In return loyal individuals were given selected ministerial positions.²³⁸ Clearly this is not a true democracy, would a Western model be more appropriate?

The trends in the West--the cradle of democracy--are alarming. A pattern of electoral success in elections being dependent upon wealth and a generous expenditure of the same is emerging. Leading the way is democracy's most vigorous proponent and defender--the US. In 1996 a grand total of US \$2.2 billion was spent on federal elections in the US.²³⁹ A total of US \$499 million was spent by the candidates on the elections for the US Congress, and US \$341 million was spent on the Senate elections. The average Senate seat "cost" the bargain price of US\$4.7 million. In 1998 eighteen non-incumbent candidates were millionaires, four worth more than US \$50 million. In 1996, 92% of the seats in the US House of Representatives and 88% in the Senate were won by those who spent the most money; in 1998 the figures rose to 96% of the House and 91 % of the Senate.²⁴⁰ Whilst there are reassuring examples of candidates of "modest means" winning elections over wealthy candidates, the sad reality is that in the US democratic system, *money does make a difference; money buys elections*, being a millionaire provides considerable assistance.²⁴¹

Perhaps the US is an example of a democracy gone mad, but the nasty contagion that links money almost directly to electoral office is evident in lesser but nevertheless worrying proportions throughout Western Europe and naturally is spreading to the eager "pupils" in the developing world where ministerial cabinets frequently reflect the moneyed list. Naturally, the citizenry in the developing world will come off second best. Most are desperately poor, largely illiterate and ignorant of the fact that the dollar given the day before by a campaign agent does not bind them morally or legally to vote for the particular candidate. Before the masses in the developing world have even been able to grapple with democratic tenets, poor civic education has seen to it that their votes are already mortgaged to "machine politics".

Money is distorting democracy now. Money not only determines who wins, but often who runs. If you've got a good idea and \$10,000 and I've got a terrible idea and \$1 million, I can convince people that the terrible idea is a good one.²⁴²

Is this the type of democracy the West seeks to impose on other communities? A process that is a corruption of the very nature of democracy; representative government, since the representatives are from one specific socio-economic class (the others can simply not afford it) or are sponsored by members of one socio-economic

class, with all the obligations such sponsorship creates, then how can such a government claim to be a “government by the people for the people”? To impose such a system on already impoverished nation-states such as say Iraq does not bode well for the longevity of a democratic government, since nothing much will change for the impoverished class, they remain sunk in poverty, powerless and alienated. In other words there is no development of a middle class, merely a change in ruling elites. Segments of the community remain disenfranchised from the benefits of Western liberalism, but can see how others maintain their position and therefore ensure they will not be denied these benefits. Such alienation must be all the bitter, when one of the reasons given to impose democracy is to deliver a people from evil. At least under a totalitarian regime, there are no illusions of freedom or justice.

VIII. Conclusion

At the international level support for democracy is still expressed in general terms. Most important, there has been relatively broad (though by no means uniform) acceptance of the principle that elections should entail competition among multiple political parties--something Soviet-bloc states rejected for years.²⁴³ Additionally, substantial international agreement now exists on many of the procedural and substantive prerequisites for free and fair elections.²⁴⁴ Elections, however, are only part of any democratic system.²⁴⁵ They may assist in the formation of a government responsive to the popular will, but they do not guarantee such a government.²⁴⁶ More importantly they do not guarantee “good governance” and freedom from human rights abuses.

As yet, no international consensus exists on clear-cut criteria that should be used to judge whether or not a particular government is substantively “democratic.”²⁴⁷ In part, this is because many states still do not share the West’s enthusiasm for liberal, parliamentary democracy. Some states, in particular Islamic and Asian states, view much of the recent rhetoric about democratic governance as a misplaced attempt to transplant Western institutions and structures of governance to countries with radically different cultural and political traditions.²⁴⁸ In their view, any attempt to impose a Western blueprint for democracy constitutes nothing short of cultural imperialism.²⁴⁹ Accordingly, although many such states have joined halfheartedly in the promulgation of resolutions and declarations proclaiming support for democracy and the right of political participation,²⁵⁰ they also stress that each state has the “sovereign right freely to choose and develop its political, social, economic and cultural systems, whether or not they conform to the preferences of other states.”²⁵¹

The civilizing mission that marked the age of imperialism became entrenched as a fundamental aspect of international law and still continues to lurk in the shadows of the contemporary international system in a number of different ways, despite radical changes. What is remarkable is that despite changes which, in the conventional history of international law mark important turning points, the basic structure of the civilizing mission is reproduced: government in non-European states is wanting; the essential characteristic of good government is government that reflects Eurocentric features and thus both the need for detailed “international” standards developed to ensure that “good government” is achieved but under laid with less than altruistic motives.

It is unquestionable that the citizenry in the developing world suffer enormous hardships and difficulties, as a result, very often, of the corrupt and oppressive Third World state.²⁵² But what must be questioned in the narratives that support international initiatives such as democracy is the world view that suggests, for example, that the causes of oppression are entirely indigenous and that they may be alleviated by the redeeming and neutral mechanism of universalized norms.²⁵³ ‘Real democracy’ involves a complex relationship between the government and the governed. Direct replication of successful Western models does not necessarily result in successful transplants. For democracy to “work” it must *evolve* at pace of the specific community rather than be imposed from above by a third party. This crucial point has been overlooked by many proponents of the right to democracy, but has been recognized by the UN Secretary-General Kofi Annan. In his recent report to the UN Security Council regarding the democratization crusade in Iraq, drawing on various sentiments from different quarters and especially from the general sentiment of the Iraqi citizenry, the UN Secretary-General candidly observes:

A common theme was that democracy should not be imposed from the outside; it had to come from within. Iraqi political, religious and civic leaders are currently reflecting on an Iraqi-led transition agenda.²⁵⁴

An imposition of democracy creates the perception of Western, in particular US imperialism, rather than promote the concept of good governance. Good governance, respect for civil liberty and separation of powers is at the heart of the right to democracy, not necessarily a particular model of government be it a bicameral legislature or an executive Prime Minister. The danger of not allowing democracy to evolve creates the risk that the democracy will collapse into anarchy as in many of the previously cited examples, or into a totalitarian regime with massive human rights abuses, or simply a society dominated by political armies. Political armies happen to represent a central problem to the democracy crusade, and as the situation in Turkey, and Algeria show, political armies once they have become associated with the future of the nation, can be very difficult to remove.

The question is then: how to find a middle path between prevalent authoritarian political systems on the one hand, and potentially harmful international initiatives narrowly focused on appearances rather than substance? It is not overly simplistic to say that to transfer Western-Liberal democracy lock, stock and barrel to the developing world or other “infant” democracies for that matter is problematic. The fact is that this now “universalized” system grew in content and configuration in Western societies shaped by occasions during a long course of centuries and reflected certain distinct values that are a product of its history of class compromises over centuries reflecting peculiar society-centric values. To impose this without limitation or restraint on “infant” democracies is to displace positive established socio-cultural structures with the result that in some cases the prevailing landscape becomes confused or contradictory. Often in blindly following new constitutional orders, “infant” democracies lose initiative to other equally needed political and administrative reforms that are just as essential to the success of democracy. Democracy’s history is clear-it is the most successful of the many political systems of government but it must not be forgotten that among the rank and file of European countries, democracy is not a monolithic concept. Different countries have modified,

refined and institutionalized various forms of the basic concept in concert with local realities and requirements. Even where in some Western European constitutions there appears to be an enshrinement of one form or another of constitutional dictatorship-democracy prevails simply because the necessary mechanisms exist to curb extensive state power inherent in all forms of government be they democratic or autocratic. It is not State power that is the issue, it is the use of that power by government that is the issue. We should bear in mind the admonition of Winston Churchill famed British political and statesman:

... No one pretends that democracy is perfect or all wise. Indeed, it has been said that democracy is the worst form of government except that all those other forms that have been tried from time to time have failed.²⁵⁵

With the benefit of hindsight and international law, democracy is the way to go but it must never be doubted that democracy should be homegrown. The grafts from the West are an important starting point, but they should not be an end in themselves. No graft thrives if it is not properly embedded in the scion, and the scion in this case is the particular society. Incompatibility between the graft and scion can only be addressed successfully through a recognition that freedom of the citizenry is the key goal, and the real foundation of democracy should be subject to a much wider discourse rather than a simple technical checklist. Despite the allusion in this Article to the need to position democratic ideals within the particular socio-political context of a country, it is obvious that to look at every nation individually could be to study different socio-political structures for their own sake. Rather, with the invaluable aid of liberal democracy, its rich historical lessons, its defined detail and sophistication, it is an ideal from where we can glean what is “best.” After all liberal democracy has developed over a long time and has been a subject to great discourse and exposition. Nonetheless, leeway to refine and adapt its secondary features as opposed to basic tenets should be given and this is important in embedding it firmly as a daily, practical concept rather than as a period requirement. Representation should be manifest in active as opposed to nominal participation such that “representation and participation [are] experienced as part of a continuum.”²⁵⁶

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¹ Antony Anghie, *Civilization and Commerce: The Concept of Governance In Historical Perspective*, 45 VILL. L. REV 887, 909-910 (2000).

² In the words of Carl Gershman:

It has to be remembered that until recently there was a strong feeling that there was an alternative out there to Western liberal democracy. There was a belief in a higher form of democracy, one that emphasized results, equality, that could really achieve things.

Quoted in Richard Bernstein, *New Issues Born from Communism's Death Knell*, N.Y. TIMES, 31 Aug. 1991 at 11.

³ Brad R. Roth, *Governmental Illegitimacy Revisited: 'Pro-Democratic' Armed Intervention in the Post-Bipolar World*, 3 TRANSNAT'L L. & CONTEMP. PROBS. 481, 483 (1993).

⁴ See DAVID J. SCHEFFER, *Use of Force After the Cold War: Panama, Iraq, and the New World Order*, RIGHT V MIGHT: INTERNATIONAL LAW AND THE USE OF FORCE, 19, 20 (Council on Foreign Relations ed., 2d ed. 1991) at 118-19. [Hereinafter RIGHT V. MIGHT]

⁵ BUREAU OF PUB. AFF., U.S. DEP'T OF STATE CURRENT POL'Y NO. 1240, PANAMA: A JUST CAUSE 2 (1990) (statement of Luigi R. Einaudi, U.S. Permanent Representative to the O.A.S.).

⁶ Roth, *supra* note, at 490. See also, Scheffer, *supra* note 4, at 118-23.

⁷ See G.A. Res. 240, U.N. GAOR, 44th Sess., at 1, U.N. Doc. A/RES/44/240 (1989); CP/RES. 534, O.A.S. Permanent Council, OEA/ser. G /P/RES.534 (800/89) corr. 1 (1989).

⁸ See Scheffer, *supra* note 4, at 123.

⁹ *Id.*

¹⁰ Roth, *supra* note 3 at 491-492.

¹¹ See FERNANDO R. TESÓN, HUMANITARIAN INTERVENTION, 225 (1997) (observing that awareness of the link between human rights and peace has produced a change of opinion concerning humanitarian intervention and governmental legitimacy).

¹² *Id.* at 227-58 (providing examples of interventions in Haiti, Rwanda, and Somalia).

¹³ See Domingo E. Acevedo, *The Haitian Crisis and the O.A.S. Response: A Test of Effectiveness in Protecting Democracy*, in ENFORCING RESTRAINT: COLLECTIVE INTERVENTION IN INTERNAL CONFLICTS 119, 141 (Lori Fisler Damrosch ed. 1993).

¹⁴ See CP/RES. 534, O.A.S. Permanent Council, OEA/ser. G /P/RES.534 (800/89) corr. 1 (1989).

¹⁵ Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT'L. 46, 47 (1992), where the author argues that representative democracy is gradually evolving from moral prescription to an international legal obligation in part based on custom and in part on the collective interpretation of treaties); cf. Gregory H. Fox, *The Right to Political Participation to Political Participation in International Law*, 17 YALE J. INT'L. 539, 540-41 (1992), where he notes that democratic governments have increased from nine to over sixty-five since the turn of the century. (hereinafter Fox, Political Participation). See also the collection of work in DEMOCRATIC GOVERNANCE AND INTERNATIONAL LAW, (Gregory Fox & Brad Roth, eds., Cambridge University Press, 2000)

¹⁶ INGRID DETTER, THE INTERNATIONAL LEGAL ORDER 42, (1994)

¹⁷ See, e.g., Fernando Tesón, *The Kantian Theory of International Law*, 92 COLUM. L. REV. 53, 74-81 (1992) (hereinafter Tesón, Kantian Theory); Michael W. Doyle, *Kant, Liberal Legacies, and Foreign Affairs*, Part I, 12 PHIL. & PUB. AFF. 205, 213 (1983) (hereinafter Doyle, Part 1); Michael W. Doyle, *Kant, Liberal Legacies, and Foreign Affairs*, Part 2, 12 PHIL. & PUB. AFF. 323, 323 (1983) & John Owen 'International Law and the "Liberal Peace"', in Fox & Roth (ed.'s) *supra* note 15, pp. 343-385 & Fox & Nolte, 'Intolerant Democracies' in Fox & Roth, (ed.'s) *supra* note 15, pp. 389-435, p. 397.

¹⁸ David Wippman, *Defending Democracy Through Foreign Intervention*, 19 HOUS. J. INT'L L. 659, 661-662 (1997).

¹⁹ The Council of Europe, for example, makes democracy a pre-condition for membership. See Statute of the Council of Europe, May 5, 1949, art. 3, 87 U.N.T.S. 103, 106. Similarly, the O.A.S. Charter now

provides for the suspension from the General Assembly of any member state whose “democratically constituted government has been overthrown by force.” See Protocol of Amendment to the Charter of the Organization of American States, Dec.14, 1992, art. 9, 33 I.L.M. 1005 (hereinafter Protocol of Washington) (while not ratified by all O.A.S. member states yet, this protocol amends the O.A.S. Charter); Christina M. Cerna, *Universal Democracy: An International Legal Right or the Pipe Dream of the West?*, 27 N.Y.U. J. INT’L L. & POL. 289, 293 (1995).

²⁰ See Fox, Political Participation, *supra* note 15, at 541; see, e.g., Acevedo, *supra* note 13, at 119-20 (noting that the presence of monitors from the O.A.S. and the United Nations legitimized Aristide’s government when he won the election in Haiti). This trend began in 1989, when the Nicaraguan Government invited both the United Nations and the Organization of American States to help supervise its electoral process in order to verify the validity of the 1990 elections. *Id.*, at 579-80.

²¹ *Id.*, at 540.

²² See Acevedo, *supra* note 13, at 141 (recognizing that “the notion that the illegal replacement of a democratically elected government is still a matter essentially within the domestic jurisdiction of its member states, and thus immune from international scrutiny, is no longer the axiomatic precept it once was”).

²³ Modern intervention to protect a ‘democracy entitlement’ has its origins in the Reagan Doctrine, see *supra* note 6 and the accompanying text. This was a reflection of the East/West split concerning the development of self-determination. Prior to the Cold War both Lenin and Wilson believed that self-determination was a right to self-government. However, Lenin believed that it was a right to a socialist government, whilst Wilson believed that it was a right to a democratic government. The Soviet equivalent of the Reagan Doctrine, was referred to as the Brezhnev Doctrine. See Reisman *Allocating Competences to Use Coercion in the Post-Cold War World: Practices, Conditions, and Prospects*, in LAW AND FORCE IN THE NEW INTERNATIONAL ORDER, 34 (LF Damrosch & DS Scheffer, ed.’s, Westview Press, 1991) & ANTONIO CASSESE, SELF-DETERMINATION OF PEOPLES, 14-18 (1995).

²⁴ Acevedo, *supra* note 13, at 141 (recognizing that “the notion that the illegal replacement of a democratically elected government is still a matter essentially within the domestic jurisdiction of its member states, and thus immune from international scrutiny, is no longer the axiomatic precept it once was”). However, as noted by some commentators with regard to the intervention into Iraq that “... international opposition to regime change [will] be assuaged if a democracy results;...” thus implying that there exists acceptance that intervention is justified if it results in the installation of a democratic regime. See Adeed Dawisha and Karen Dawisha, *How to Build a Democratic Iraq*, FOREIGN AFF’S, Vol. 82, No.3, May/June 2003, 49, 36-50.

²⁵ Bureau of Pub. Aff., U.S. Dep’t of State, CURRENT POL’Y No. 1240, Panama: A Just Cause 2 (1990) (statement of Luigi R. Einaudi, U.S. Permanent Representative to the O.A.S.), quoted in Roth, *supra* note 3, 490.

²⁶ Roth, *supra* note 3, at 483.

²⁷ For example the US’s extensive history of intervention has included military intervention to overthrow the democratic government of Guatemala in 1954 resulting in approximately 200,000 civilian deaths; the Dominican Republic in 1965, where 23,000 US troops prevented democracy and instead installed a regime accused of massive human rights abuses; Grenada in 1983; and the invasion of Panama in 1989 to remove the very despot the US had supported and protected. See NOAM CHOMSKY, DETERRING DEMOCRACY, 14, 72, 144-149, 152-154 (1992). See also *The Panama Deception*, A GIL SCRINE FILMS RELEASE, 1993.

²⁸ *Tinoco Concession Case, (Great Britain v Costa Rica)* 1 RIAA (1923) 369, 381-82 reprinted in 18 AM. J. INT’L L. 147 (1924).

²⁹ HANS KELSEN, GENERAL THEORY OF LAW AND STATE 220- 21 (Anders Wedberg, trans., 1961)

³⁰ Britain in particular attracted scholarly interest when it stopped recognizing new foreign governments. The British case may have been notable for the unambiguous manner in which the British government articulated its decision to end the practice of recognizing new foreign governments. See Stefan Talmon, *Recognition of Governments: An Analysis of the New British Policy and Practice*, 63 BRIT. Y.B. INT’L L. 1992, 231 (1993); see also, *United Kingdom Materials on International Law 1981*, 52 BRIT. Y.B. INT’L L. 361, 376-78 (Geoffrey Marston, ed. 1982). See also Warbrick, *Recognition of Governments*, 56 MOD. L. REV. 92, 92 (1993); J. G. STARKE QC, INTRODUCTION TO INTERNATIONAL LAW 133 (1984). Essentially the United Kingdom government’s policy was that it would consider relations with new governments based on that government’s present and future effective control of its territory. This policy was also adopted by the United States of America and Australia in 1988. See IVAN A. SHEARER, STARKE’S INTERNATIONAL LAW 127 (11th ed. 1994). Now with many US commentators supporting the right to democracy, this policy may change.

³¹ For a detailed analysis of this problem see M.J. PETERSON, *RECOGNITION OF GOVERNMENTS: LEGAL DOCTRINE AND STATE PRACTICE, 1815-1995* (1997). For a brief but succinct enunciation, see Thomas D Grant's review of Peterson's book in 39 VA. J. INT'L L. 191 (1998).

³² M.J. Peterson, *supra* note 31 p. 55.

³³ *Id.* Several prominent cases of state recognition in the 1990s, and admission into the UN of several European micro-states rekindled the volatility of the issue of legitimacy even though then, democracy had crept into international legal usage and human rights were no longer a subject off limits to international law. For a detailed analysis of this problem see M.J. Peterson, *supra* note 31.

³⁴ See, e.g., Ibrahim J Gassama, *Reaffirming Faith in the Dignity of Each Human Being: The United Nations, NGOs, and Apartheid*, 19 FORDHAM INT'L L. J. 1464, 1472-88 (1996) (discussing the comprehensive global campaign launched against apartheid in South Africa).

³⁵ *Id.* at 1480-88.

³⁶ *Id.* at 1478-80.

³⁷ One interesting example is when South Africa attempted to declare Transkei an 'independent and sovereign state', through the enactment of the Transkei Act (1976). Transkei's independence was 'given' by South Africa as part of Bantustan policy, itself part of South Africa's Apartheid policy. The UN did not consider that this was a genuine attempt by South Africa to grant independence. Instead the UN concluded that it was an attempt to eject certain racial groups from South Africa, and to deny them South African citizenship. See JAMES CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW*, 222-228 (1979) Another interesting example is when Rhodesia declared independence in 1965. Both the Security Council and the General Assembly passed resolutions requesting nation-states not to recognize Rhodesia. See Starke, *supra* note 30 at 93. Both the General Assembly and the Security Council passed resolutions. See G.A. Res/2012/XX 12 October 1965 and S/Res/216 12 November 1965

³⁸ G.A. Res 3151(G), UN GAOR, 28th Sess, Supp No 30, para 11, U.N. Doc. A/9030 (1973).

³⁹ The United Nations has known eight significant credentials contests involving China, Hungary, Congo (Leopoldville), Yemen, Cambodia (1973-74 and post-1978), South Africa, and Israel. The de facto regime was denied credentials in the cases of China (1950-71), Hungary (1957-63), Cambodia (post- 1978) and South Africa (1974), and narrowly prevailed in the case of Cambodia in 1973-74. For a concise discussion of this see Roth, *supra* note 3, at 495-499.

⁴⁰ G.A. Res 396, UN GAOR, 5th Sess, Supp No 20, para 1, U.N. Doc. A/1775 (1950).

⁴¹ See e.g., I E Korovin, *Respect for Sovereignty: An Unchanging Principle of Soviet Foreign Policy* 11 INT. AFF. (MOSCOW) 32, 37-9 (1956).

⁴² See Universal Declaration of Human Rights, G.A. Res 217A (III), U.N. Doc. A/810 (1948) (hereinafter referred to as UDHR).

⁴³ The International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols.

⁴⁴ See United Nations Centre for Human Rights, *United Nations, Human Rights and Elections: Handbook on the Legal, Technical and Human Rights Aspects of Elections*, United Nations Doc HR/p/ot/2 (1994).

⁴⁵ UDHR, *supra* note 46 at 71.

⁴⁶ *Id.* at art 21.

⁴⁷ International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, 999 U.N.T.S. 171, 6 I.L.M. 368.

⁴⁸ *Id.* at art 25.

⁴⁹ See Henry J Steiner, *Political Participation as a Human Right* 1 HARV. HUM. RTS. YR B. 77, 87-88, 90, 93 (1988).

⁵⁰ *Id.* at 91 (noting that an amendment requiring a pluralist political party system was withdrawn as a concession to the Soviet Union).

⁵¹ *Id.* at 93.

⁵² *Id.* It should be recalled that the Covenant embodies a "legal" commitment, whereas the Declaration was understood as embodying merely a "political" commitment. If the legal commitment that states have made since 1966 falls short of the political commitment made in 1948, it is difficult to argue that states should now be held legally accountable to the greater commitment.

⁵³ See Franck, *The Emerging Right to Democratic Governance*, above note 15 at 47 (discussing the problems associated with examining and monitoring elections for compliance with the existing ambiguous standards).

⁵⁴ Gregory H Fox & George Nolte, *Intolerant Democracies*, HARV. INT'L L. J.1, 5 (1995).

⁵⁵ See, e.g., Joint Communiqué of United States-Mexico Bi-national Commission, 7 August 1989 in 29 I.L.M. 18 (1990); Conference on Security and Cooperation in Europe: Document of the Moscow Meeting on the Human Dimension, Emphasizing Respect For Human Rights, Pluralistic Democracy, The Rule of Law, and Procedures for Fact-Finding (Done at Moscow, 3 October 1991) 30 I.L.M. 1670 (1991) (Moscow Document).

⁵⁶ See Fox & Nolte, *supra* note 549 at 3-5 (describing efforts of “the international community to address the perennial question of what makes a state ‘democratic’”).

⁵⁷ See, e.g., Daniel A Bell, ‘The East Asian Challenge to Human Rights: Reflections on an East West Dialogue’ 18 HUM RTS Q. 641, 656 (1996) (noting that most East Asian states endorsed the Universal Declaration on Human Rights “for pragmatic, political reasons and not because of a deeply held commitment to the human rights norms it contains”).

⁵⁸ G.A. Res 45/150, UN GAOR 3d Comm, 45th Sess, Supp No 49A, U.N. Doc. A/45/766 (1990) at 255.

⁵⁹ *Id.* at para 4. A second resolution, passed over the dissenting votes of twenty-nine nations (mostly Western democracies), reiterated in even stronger terms the norm of non-interference in national electoral processes. G.A. Res 45/151, UN GAOR, 45th Sess, Supp No 49A at 255 U.N. Doc. A/45/49 (1990).

⁶⁰ Statement of Madeleine K Albright, U.S. Ambassador to the UN, Addressing the UN Security Council (July 30, 1994), in Security Council Authorizes Multinational Force ‘To Use All Necessary Means’ To Facilitate Departure of Military From Haiti, Return of President Aristide, Federal News Service (1 August 1994), available in LEXIS, NEWS Library, FEDNEW File.

⁶¹ *Report of the Secretary General*, above note 14 at para 3.

⁶² Roth, *supra* note 3 at 511-512.

⁶³ W. Michael Reisman, *Sovereignty and Human Rights in Contemporary International Law*, 84 AM. J. INT’L L 886, 872 (1990).

⁶⁴ Fielding, 338.

⁶⁵ UDHR, *supra* note 46.

⁶⁶ International Covenant on Economic, Social, and Cultural Rights, 16 December 1966, art 1, 993 U.N.T.S. 3; ICCPR, above note 30 at art 1.

⁶⁷ Franck, *supra* note 15 at 79.

⁶⁸ *Id.* at 46.

⁶⁹ Fox, *supra* note 15 at 607.

⁷⁰ Gregory H Fox, *The Right to Political Participation in International Law*, 86 AM. SOC’Y OF INT’L L. 249 (1992). See also Franck, *supra* note 15 at 46; Fox, *The Right to Political Participation*, *supra* note 15 at 539.

⁷¹ Conference on Security and Co-operation in Europe: Final Act, 1 August 1975, 14 I.L.M. 1292 (Helsinki Accords).

⁷² Conference on Security and Cooperation in Europe: Document of the Copenhagen Meeting of the Conference on the Human Dimension, 29 I.L.M. 1305 (1990) (Copenhagen Document).

⁷³ See *Id.* at paras 5.1-5.21 at 1308-09.

⁷⁴ Conference on Security and Co-operation in Europe: Charter of Paris for a New Europe and Supplementary Document to Give Effect to Certain Provisions of the Charter (Done at Paris, 21 November 1990), 30 I.L.M. 190, 193 (1991) (Charter of Paris). Leaders of thirty-four participating states of the C.S.C.E. convened in Paris and adopted the Charter of Paris on 21 November 1990 to initiate “a new era of democracy, peace and unity.”

⁷⁵ *Id.* at 194.

⁷⁶ Conference on Security and Cooperation in Europe: Document of the Moscow Meeting on the Human Dimension, Emphasizing Respect For Human Rights, Pluralistic Democracy, The Rule of Law, and Procedures for Fact-Finding (Done at Moscow, 3 October 1991), 30 I.L.M. 1670, 1672 (1991) (Moscow Document). The Moscow Meeting convened in Moscow from September 10 to October 4, 1991 and was attended by representatives of the following participating states of the C.S.C.E.: Albania, Austria, Belgium, Bulgaria, Canada, Cyprus, the Czech and Slovak Federal Republic, Denmark, Estonia, Finland, France, Germany, Greece, the Holy See, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, Norway, Poland, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Turkey, the USSR, the United Kingdom, the United States of America and Yugoslavia. *Id.* at 1671.

⁷⁷ *Id.* at 1672.

⁷⁸ United Nations World Conference on Human Rights: Vienna Declaration and Program of Action, 32 I.L.M. 1661, 1665 (1993) (Vienna Declaration). The World Conference on Human Rights was

assembled in Vienna by the United Nations on June 14-25, 1993. Representatives of 171 States attended. The Vienna Declaration was adopted by acclamation on 25 June 1993. *Id.* at 1661. The Vienna Declaration states that the focus of “[c]ooperation, development and strengthening of human rights” should be on “strengthening and building of institutions relating to human rights, strengthening of a pluralistic civil society and the protection of groups which have been rendered vulnerable.” To this end, assistance is necessary for “the conduct of free and fair elections, ... the strengthening of the rule of law, the promotion of freedom of expression and the administration of justice, and ... the real and effective participation of the people in the decision-making processes.” *Id.* at 1683.

⁷⁹ *Id.* at 1665.

⁸⁰ *Id.*

⁸¹ *Id.* at 1666.

⁸² Fox, *supra* note 70 at 250-253. See generally Franck, *supra* note 15. UN monitoring of the elections can involve, as in the case of the UN Observer Group for the Verification of the Elections in Haiti (ONUVEH), verification of the use of secret ballots, public polling places, and voter registration. See ‘Haiti Holds Free, Democratic Elections with UN Help’ *UN Chronicle*, March 1991 at 62. ONUVEH claimed that “[i]n a country that had been traumatized by the experience of the election on 29 November 1987, the first task of ONUVEH was to help create a psychological climate conducive to the holding of democratic elections.” *Id.* at 64.

⁸³ Fox, *supra* note 15, at 251.

⁸⁴ *Id.* at 250-52; Bartram Brown, *The Protection of Human Rights In Disintegrating States: A New Challenge*, 68 CHI.-KENT L. REV. 203, 206 (1992); Marc Weller, *The International Response to the Dissolution of the Socialist Federal Republic of Yugoslavia* 86 AM. J. INT’L L. 569, 574-577 (1992); Thomas Franck, *Intervention Against Illegitimate Regimes* in LORI FISLER DAMROSH LAW AND FORCE IN THE NEW INTERNATIONAL WORLD ORDER 177 (Lori Fisler Damrosh *et al* ed.’s 1992) .

⁸⁵ Fox, *The Right to Political Participation*, YALE, *supra* note 15, at 541.

⁸⁶ Fox, *supra* note 70 at 250.

⁸⁷ Cerna, *supra* note 19, at 290. However given that desperately needed economic aid is subject to democratic reforms it is no surprise that third world governments adopt such an attitude: it also raises the question whether such action is a “free choice” and an accurate expression of the people’s will.

⁸⁸ See Copenhagen Document, *supra* note 76 at para 6, 1309 (mandating that the participating states defend democracy); cf. Document of the Moscow Meeting, *supra* note 80, at 677-78, para. 18 (affirming their dedication to democratic principles).

⁸⁹ See Malvina Halberstam, *The Copenhagen Document: Intervention in Support of Democracy* 34 HARV. INT’L L. J. 163, 166-67 (1993).

⁹⁰ See Charter of the Organisation of American States, 30 April 1948, 2 U.S.T. 2394, 119 U.N.T.S. 3 as amended by the Protocol of Buenos Aires in 1967 and the Protocol of Cartagena in 1985, art 3(e), 33 I.L.M. 987, 990 (in force as of 16 November 1988). For a more recent integrated text of the *O.A.S. Charter*, including the 1993 amendments from the Protocol of Managua, see Charter of the Organisation of American States, O.A.S. Permanent Council, OEA/ser. G CP/INF.3964/96 (prov. ed. 1996) (entered into force 29 January 1996).

⁹¹ See U.N. CHARTER, art 23, para. 1 (listing the permanent Security Council Members, which include China and the former Union of Soviet Socialist Republics). However as Russia is now a “fledgling” democracy and China is experimenting with micro free-market economic systems, their traditional opposition to the West may not be as comprehensive as it has been in the past.

⁹² See *Report of the Secretary-General on the United Nations Mission in Haiti*, UN SCOR, 49th Sess., at 3, U.N. Doc. S/1994/828 (1994).

⁹³ Interestingly Kaplan is scathing of US attempts to restore democracy in Haiti. He notes that it took 22,000 US troops to do so, and in a subsequent election only 5% of Haiti’s population took part. ROBERT D KAPLAN, *THE COMING ANARCHY, SHATTERING THE DREAMS OF THE POST COLD WAR* 65 (2000).

⁹⁴ The motivations for the US-led intervention in Iraq are at the time writing muddied at best. The original official motivation as stated by the Bush-administration, of securing the world from threat of weapons of mass destruction has been recently questioned due to allegations that US intelligence services had deliberately misled the international community with false or at best exaggerated claims regarding Iraq’s possession of these weapons. Such allegations have support from the UN appointed Chief Inspector Hans Blix, and are strengthened by the lack of discovery of such weapons after the conflict has ended, and by the fact that the US –led forces have deliberately denied UN inspectors to assist in finding these weapons. When combined with statements doubting the existence of such weapons made prior to the conflict by former UN inspectors, Scott Rivers, (see SCOTT RIVER &

WILLIAM RIVERS PITT, WAR ON IRAQ, WHAT TEAM BUSH DOESN'T WANT YOU TO KNOW, (2002)) it appears that there were other reasons for the intervention. During the conflict the rhetoric from the Bush administration changed from emphasizing the discovery of weapons of mass destruction to 'regime change', that is freeing the people of Iraq from the dictatorship of Saddam Hussein and replacing it with a democracy. Thus prompting the argument made here that there is now evidence of pro-democratic action, to *create a democracy where none existed before*.

⁹⁵ Noam Chomsky *supra* note 27, at 14.

⁹⁶ Fox, *Political Participation*, YALE, *supra* note 15, at 545.

⁹⁷ See Antony Anghie, *Finding the Peripheries: Sovereignty and Colonialism in Nineteenth-Century International Law*, 40 HARV. INT'L L.J. 66-67 (1998) (noting the formalist model of sovereignty articulated by nineteenth century jurists).

⁹⁸ However, international law did, on certain limited occasions, concern itself with the character of the government of a state when examining, for example, whether a particular entity was the proper government of a country for the purpose of conducting international relations.

⁹⁹ The dispute between Nicaragua and the US ultimately was heard by the International Court of Justice in one of its more famous and important decisions. See *Military and Paramilitary Activities (Nicar v. U.S.)* 1986 I.C.J. 14 (Merits June 27) [hereinafter *Nicaragua v. United States*].

¹⁰⁰ Interestingly the US as part of their support to Contras supplied them with 2,000 copies of two training manuals: The first of these, in Spanish, is entitled 'Operaciones sicologicas en guerra de guerrillas' (Psychological Operations in Guerrilla Warfare), by 'Tayacan'; and the second, "Freedom Fighter's Manual, with the subtitle 'Practical guide to liberating Nicaragua from oppression and misery by paralyzing the military-industrial complex of the traitorous Marxist state without having to use special tools and with minimal risk for the combatant'". The manuals were prepared by staff of the CIA, and were supposedly introduced to moderate the behavior and alleged human rights abuses of the Contras. This was subject to some debate, the ICJ noted however that the manual '...while expressly discouraging indiscriminate violence against civilians, considered the possible necessity of shooting civilians who were attempting to leave a town; and advised the 'neutralization' for propaganda purposes of local judges, officials or notables after the semblance of trial in the presence of the population. The text supplied to the contras also advised the use of professional criminals to perform unspecified 'jobs', and the use of provocation at mass demonstrations to produce violence on the part of the authorities so as to create 'martyrs'.' See para 122 of *Nicaragua v. United States*.

¹⁰¹ In the subsequent dispute heard by the ICJ, Nicaragua claimed that: (1) The US had acted in violation of art 2(4) of the U.N. CHARTER and customary international law by the use of force against it; (2) The actions of the US — through supporting the armed opposition to the Nicaraguan government, known as the Contras, mining of Nicaraguan harbors, and other attacks — amounted to intervention in the internal affairs of Nicaragua, in breach of the Charter of the Organization of American States and of rules of customary international law; (3) The US had violated the national sovereignty of Nicaragua; and (4) The actions of the US also defeated the object and purpose of a Treaty of Friendship, Commerce and Navigation concluded between the parties in 1956, and put it in breach of provisions of that Treaty.

¹⁰² At para . 169 of the *Nicaragua v. United States*].

¹⁰³ *Id.*

¹⁰⁴ *Id.* at paras. 130 & 257.

¹⁰⁵ *Id.* at paras 134-35, 266-68. Judge Schwebel's dissent adopted the Congressional finding's most legally significant assertion, charging that the Nicaraguan Government, prior to its installation in 1979, "gave undertakings to the O.A.S. and its Members to govern in accordance with specified democratic standards and policies[,] ... has failed so to govern, and has so failed deliberately and willfully, as a matter of State policy." *Id.* at paras 382 & 243. Although Judge Schwebel thus disagreed with the Court's determination that the pledge to the O.A.S. did not rise to the level of a legal undertaking, *id.* at 132, 261, he strongly endorsed the Court's holdings that neither the United States nor the O.A.S. was privileged to use force to compel compliance with such undertakings. *Id.* at paras 132-33, 262, 385, & 249.

¹⁰⁶ *Id.* at para. 243.

¹⁰⁷ In the same statement issued by Congress on 10 July 1985, the US claimed that the Nicaraguan Government had: accepted the June 23, 1979, resolution submitted to the Organization of American States on July 12, 1979, which essentially state that the government would seek to introduce free elections and a democratic system of governance. The Statement of Congress went on to state that '...the United States, given its role in the installation of the current Government of Nicaragua, has a special responsibility regarding the implementation of the commitments made by that Government in

1979, especially to those who fought against Somoza to bring democracy to Nicaragua with United States support”, and thus supported the “...Nicaraguan democratic resistance in its efforts to peacefully resolve the Nicaraguan conflict and to achieve the fulfillment of the Government of Nicaragua’s solemn commitments to the Nicaraguan people, the United States, and the Organization of American States”. See paras 169-170 Nicaragua Case.

¹⁰⁸ *Id.* at para. 258 of the *Nicaragua Case* [emphasis added.]

¹⁰⁹ *Id.* at para. 263 of the *Nicaragua Case*.

¹¹⁰ Franck, *supra* note 15 at 82.

¹¹¹ G.A. Res. 45/150, U.N. GAOR, 45th Sess., at 255 (1990).

¹¹² G.A. Res. 45/151, U.N. GAOR, 45th Sess., at 256 (1990).

¹¹³ Dianne Otto, *Challenging the “New World Order”*: International Law, Global Democracy and the Possibilities for Women, 3 TRANSNATIONAL LAW AND CONTEMPORARY PROBLEMS 371, 384 (1993).

¹¹⁴ This very situation has occurred in Algeria, when a fundamentalist religious party whose policies indicated a possible end of the multi-party system, to democracy, and the creation of a theocracy. The Army intervened and in the bloody Civil War that followed, whole villages, men, women and children were butchered. The reason for the Army’s intervention has been attributed not as an attempt to “protect” democracy by removing a fundamentalist party, but to protect the Army’s “hegemony” and political ascendancy. See Lahouari Addi, *Army, State and Nation in Algeria*, in POLITICAL ARMIES, THE MILITARY AND NATION BUILDING IN THE AGE OF DEMOCRACY, 179, 189 (Kees Koonings & Dirk Kruijt ed.s 2002). Presently in Iraq there have been murmurings of a Shi’a dominated theocracy. Given the history between Iran and the US, it would be unlikely that the US would support the establishment of Shi’a theocracy in Iraq. Is this a denial of self-determination and a “people’s choice”? The answer according to the US Secretary of Defense, Donald Rumsfeld is an equivocal “That isn’t going to happen.” See the article by Iffat Idris Malik, *Democracy Without Islam*, in WORLD PRESS REVIEW, July 2003, p.11. If the Shi’a are denied, will there be a bloodbath to rival Algeria?

¹¹⁵ Brian E. Porter *Concepts of Nationalism in History*, in GLOBAL CONVULSIONS: RACE, ETHNICITY, AND NATIONALISM AT THE END OF THE TWENTIETH CENTURY, 93, 99 (Winston A. Van Horne, ed 1997).

¹¹⁶ For example they agreed that France would no longer annex provinces and territories by force; instead new territory would only be annexed if its inhabitants chose to become part of France: thus in this manner, Savoie, Nice and Mayence all become part of France.

¹¹⁷ A. RIGO SUREDA, THE EVOLUTION OF THE RIGHT OF SELF-DETERMINATION, A STUDY OF UNITED NATIONS PRACTICE, 18 (1973).

¹¹⁸ Then there was the protracted conflict in Vietnam and the massacre of Vietnamese civilians by US military forces at Mai Lai.

¹¹⁹ Otto, *supra* note 113 ‘Challenging the “New World Order”: International Law, Global Democracy and the Possibilities for Women’, (1993) 3 Transnational Law and Contemporary Problems 371, 372.

¹²⁰ See George Bush, *The Possibility of a New World Order: Unlocking the Promise of Freedom*, 57 VITAL SPEECHES OF THE DAY 450, 452 (1991).

¹²¹ Gareth Evans, *The New World Order and The United Nations*, in WHOSE NEW WORLD ORDER: WHAT ROLE FOR THE UNITED NATIONS? 1 (Mara Bustelo & Philip Alston eds., 1991).

¹²² See James Kurth, *Things to Come: The Shape of the New World Order*, NAT’L INTEREST, Summer 1991, at 3, 4 (emphasis added).

¹²³ Francis Fukuyama, *The End of History?*, NAT’L INTEREST, Summer 1989, at 4.

¹²⁴ Otto, *supra* note 117, at 414.

¹²⁵ MICHAEL IGNATIEFF EMPIRE LITE, NATION-BUILDING IN BOSNIA, KOSOVO AND AFGHANISTAN, 1 (2003)

¹²⁶ *Id.* at 1-2.

¹²⁷ NOAM CHOMSKY, PIRATES AND EMPERORS, OLD AND NEW, INTERNATIONAL TERRORISM IN THE REAL WORLD, 163 (2002) (Hereinafter referred to as Chomsky PIRATES)

¹²⁸ NOAM CHOMSKY, *supra* note 27, at p 199.

¹²⁹ Estimated at US \$9 Billion in 1992, *Id.* 49.

¹³⁰ Refer to the quote from George Kennan *infra* at note 142.

¹³¹ Chomsky, *supra* note 27, 53. In fact this is the reoccurring theme in Noam Chomsky’s first Chapter “Cold War: Fact or Fancy?”.

¹³² *Id.* p. 21. Chomsky argues that the Great Depression convinced political leaders that the measures introduced by the New Deal had failed, and all that saved the US economy was the massive State intervention in the US economy demanded by World War I. Thus convincing the political leadership that capitalism was not a viable system, *without* state intervention. Such theories were confirmed by the

1948 recession. Arguably one of the reasons for the intervention into Iraq could be to prompt recovery in the current flagging US economy.

¹³³ Senator William Cohen, of the Armed Services Committee, as cited in *Id.* 30.

¹³⁴ Brad Roth *Evaluating Democratic Progress* in Fox & Roth eds., *supra* note 15, 493-516, at 499-500.

¹³⁵ Michael Howard, Regius Professor of Modern History at Oxford, as cited in Chomsky, *supra* note 27, at 18.

¹³⁶ See Martti Koskenniemi, *Whose Intolerance, Which Democracy?* in Fox & Roth eds. *supra* note 15, 436-440, at 439.

¹³⁷ 'In order to stimulate entrepreneurship and strengthen the free market, post-war Iraq must begin the process of transferring resources from the public to the private sector'. See Adeed Dawisha and Karen Dawisha *supra* note 24, at p.48.

¹³⁸ 'In some cases the economies of the less-developed countries have become so dependent on exports to the international system that the requirements of their single-crop economies dictate continued participation in the very process that is victimizing them.' THE END OF THE EUROPEAN EMPIRE: DECOLONISATION AFTER WWII (Tony Smith ed. 1975), as part of the introduction at xiii.

¹³⁹ *Id.*

¹⁴⁰ As argued by Cerna *supra* note 19 at 289 & 294.

¹⁴¹ In reality 'From an early stage in the Cold War, and for deep-seated reasons, the United States was set on a course against self-determination and democracy, rhetorical comments aside.' Chomsky, *supra* note 27, 48.

¹⁴² Scott River & William Rivers Pitt, *supra* note 94, at 10-11.

¹⁴³ See Richard Falk *The Haiti Intervention: A Dangerous World Order Precedent for the United Nations* 36 HARV. INT'L L. J. 341, 345, 352-353 (1995) (noting that an influential magazine rejected "the allegation that interventionary diplomacy was really imperialism carried forward under the banner of humanitarian intervention.).

¹⁴⁴ For a critical discussion of the prospects for and desirability of creating a standing U.N. force, see Lamin J. Sise, *Illusions of a Standing United Nations Force* 28 CORNELL INT'L J. 644 (1995); David J. Scheffer, *United Nations Peace Operations and Prospects for a Standing Force*, 28 CORNELL INT'L J. 649 (1995); Alex Morrison, *The Theoretical and Practical Feasibility of a United Nations Force* 28 CORNELL INT'L J. 661(1995).

¹⁴⁵ Wippman, *supra* note 18, at 686-687.

¹⁴⁶ See, e.g., Falk, *supra* note 143, at 356 (noting that U.S. intervention may be due as much to a desire to preserve a market economy in Haiti as to promote democracy).

¹⁴⁷ See *infra*.

¹⁴⁸ The whole concept of self-determination is dependent upon the definition of a "people", and in an effort to provide such a definition, the concept of those who are suffering from alien and or foreign oppression or domination, was used and has become accepted as a rough working definition for the term "peoples". For example in Paragraph 1 of the Declaration on Colonial Peoples states: 'The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of world peace and co-operation.' The Declaration on Friendly Relations states: '...and bearing in mind that subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as denial of fundamental human rights, and is contrary to the Charter.' Originally the expression of foreign and alien was chosen as a means of identifying and distinguishing a "traditional" Western colonial power such as Great Britain from a nation-state such as India which contained an ethnically diverse population. Please refer to Antonio Cassese, *supra* note 23 at p.37 and, JORRI DUURSMA, FRAGMENTATION AND THE INTERNATIONAL RELATIONS OF MICRO-STATES, SELF-DETERMINATION AND STATEHOOD, 17-35 (1996)

¹⁴⁹ Tony Smith, ed. *supra* note 138, at xvi of the introduction.

¹⁵⁰ MARC FERRO COLONIZATION: A GLOBAL HISTORY, 20-23, (1997)

¹⁵¹ *Id.* at 21

¹⁵² *Id.*

¹⁵³ Franck, *supra* note 15, at 49.

¹⁵⁴ Otto, *supra* note 113, at 384

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ Otto, *supra* note 113, at 379.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*, at 380

¹⁶⁰ Patrick Parkinson, TRADITION AND CHANGE IN AUSTRALIAN LAW 15 (2001)

¹⁶¹ *Id.* at 16

¹⁶² Dawisha and Dawisha, *supra* note 24, at 37.

¹⁶³ *Id.*, at 49. A similar view has been expressed by the current U.N. Secretary-General Kofi Annan:

After decades of repressive rule, there is a democratic deficit in Iraq, which needs legitimate institutions. Indeed, political life based on pluralism is having to be reinvented in Iraq. There is an urgent need for ethnic, sectarian, provincial and other components in society to unite into a single political community that is both respectful of the large cultural diversity of the Iraqi people and also open to ideas that help individuals challenge traditional structures.

See *Report of the Secretary-General Pursuant to Paragraph 24 of Security Council Resolution 1483 (2003) S/2003/715*, 17 July 2003, para.16.

¹⁶⁴ *Id.*, at 37-39

¹⁶⁵ *Id.*, at 39-49.

¹⁶⁶ *Id.*, at 49.

¹⁶⁷ JORGE DOMINGUEZ, CUBA: ORDER AND REVOLUTION, 298 (1978)

¹⁶⁸ It should be recalled that the Covenant embodies a “legal” commitment, whereas the Declaration was understood as embodying merely a “political” commitment. If the legal commitment that states have made since 1966 falls short of the political commitment made in 1948, it is difficult to argue that states should now be held legally accountable to the greater commitment.

¹⁶⁹ Athens the most important Greek city-state had developed a form of democracy, as early as 500 BC, which lasted two centuries, before Athens was consumed by Macedonia. ROBERT A. DAHL ON DEMOCRACY, 7-12, (1998).

¹⁷⁰ As Kaplan notes, Cromwell’s regime was far more intolerant and repressive than any previous Monarchy in English history. See Kaplan *supra* note 93, at 68. Cromwell was also responsible for crushing a revolt in Ireland during the 17th century.

¹⁷¹ For a discussion of the battle of Culloden from the point of view of the average combatant and its debilitating effect on the general population of the Highlands, please refer to JOHN PREBBLE, CULLODEN, (1961).

¹⁷² ‘One is struck by a sacrilegious analogy when looking at images of the British presence in India, especially the pictures of the Great Durbar of 1911, preserved in the National Film Archive of London: the march past, the helmets, the discipline, the theatrical space skillfully and aesthetically organized along a plunging perspective towards the Emperor George V, the public held at a distance by cordons of soldiers. One cannot resist the feeling that this coronation foreshadows Hitler’s rallies of twenty year later. Is this a fortuitous analogy?’ Ferro *supra* note 150, at ix in the preface.

¹⁷³ Tony Smith (ed.) *supra* note 138, at xii in the introduction.

¹⁷⁴ Porter, *supra* note 115, at 105-6.

¹⁷⁵ *Id.*, at 106.

¹⁷⁶ This is obvious even in the reconstruction of the Iraqi economy. Aaded and Karen Dawisha when making suggestions for a successful democratization of Iraq noted that: - “Not unlike the rest of the Arab world, Iraq’s bureaucracy today is simply a vehicle for ensuring full employment.’ and they recommend reducing the size of the bureaucracy to improve efficiency and to encourage the growth of the private sector. Given the huge social disruption caused to those former Soviet bureaucrats, and the massive unemployment rate, it must be wondered if this is such a good idea. Secondly they note with a degree of optimism that the democratization of Iraq will succeed because it has the world’s second largest oil reserves, thus raising the obvious question: what would happen if it did not have such reserve? What would another “poorer” fledgling democracy do? Do you need wealth to successful create a democracy? See Dawisha and Dawisha *supra* note 24, at 48.

¹⁷⁷ Koonings & Kruijt, (ed.’s) *supra* note 114, at 1.

¹⁷⁸ *Id.*, at 2.

¹⁷⁹ *Id.*, at 18.

¹⁸⁰ For further detail please refer to Aylin Guney ‘The Military, Politics and Post-Cold War Dilemmas in Turkey’, in Koonings & Kruijt (ed.’s) *supra* note 114, at 162 – 178.

¹⁸¹ Although the exact figure is unknown it has been reported that the conflict that erupted in Algeria as a result of the Army canceling the December 1991 elections won by Islamists has claimed at least 150,000 lives. For further reference see Lahouari Addi ‘Army, State and Nation in Algeria’ in Koonings & Kruijt (ed.’s) *supra* note 114, at 179-202.

¹⁸² There were other reasons such as the government had interfered with the army and thus tried to interfere with the command structure. Another important aspect was the tensions with India, forcing a desire for national strength, thus providing the incentive for the army to play the role of state or national unification. Koonings & Kruijt (ed.'s) *supra* note 114 at 10.

¹⁸³ *Id.*

¹⁸⁴ 'There are no bonds between the present Turkish government and the people. ...The administrative machine is devoid of authority. ...All officials accept bribes and are capable of all sorts of corruption and abuse.' *Id.*, at 15.

¹⁸⁵ The 'incorporation of these issues into a military doctrine for political intervention ... links the destiny of the nation and the interests of its people to the historic mission of the military.' *Id.*, 10.

¹⁸⁶ *Id.*, at 30.

¹⁸⁷ *Id.*, at 1.

¹⁸⁸ *Id.*, at 30.

¹⁸⁹ Kaplan *supra* note 93, at 64-66 & 73, where he states 'Where a political system leads too far in either direction, realignment or disaster awaits.'

¹⁹⁰ Dawisha and Dawisha, *supra* note 24, at 47

¹⁹¹ Kaplan *supra* note 93, at 64-66.

¹⁹² See Dawisha and Dawisha *supra* note 24, at 47.

¹⁹³ Porter, *supra* note 119, at 99.

¹⁹⁴ Dawisha and Dawisha *supra* note 24, 48

¹⁹⁵ Kaplan, *supra* note 93, at 62.

¹⁹⁶ Kaplan cites the example of Brazil, but the rise of organized crime in the newly created democracy in Russia is another example. Many African democracies have collapsed into virtual anarchy and "warlordism". An interesting question is whether these situations differ much from the conditions found in Western liberal democracies such as Great Britain or France or Germany during the industrial revolution and the age of imperialism during the 18th and 19th centuries, where there was great poverty amongst large portions of the community, the "so-called working class". *Id.*, at 64.

¹⁹⁷ Ignatieff, *supra* note 125, at 9.

¹⁹⁸ At the time of writing Australian military and police forces have been sent to assist the Solomon Islands national government to restore order and security. One of the factors identified as an underlying cause of the crisis was the "rush" for independence by the Islands on July 7 1978, from their colonial overlords Great Britain. Also the Asian economic crisis of the 1990's and perceived threats to their land, caused many islanders from Guadalcanal to resort to armed violence as a means to settle disputes over their land. See the report by Mary-Louise O'Callaghan 'A Nation Unravels' in the Worldwide Section of the *Australian*, Monday July 7 2003, p. 14.

¹⁹⁹ The democratic government of the Weimar Republic had been imposed by the victorious powers of the First World War. Interestingly the US administration, noticeably the then Secretary of State Henry Stimson, and even Roosevelt who described Mussolini in 1933 as that "...admirable Italian gentleman...". The US initially supported both Hitler's and Mussolini's regimes, even after Italy invaded Ethiopia, why: because they offered a bulwark against Soviet Bolshevism. Chomsky, *Deterring Democracy*, *supra* note 132, at 40. Support for dictators by the US administration is part of a consistent trend, throughout US foreign policy. The US even after assisting in the destruction of both Hitler's and Mussolini's regime, and establishing the Nuremberg Trials, in other words even after realizing their mistake and taking action to remedy it, after the war went on to sponsor, support and even assist dictators such Noreiga and Hussein, and even terrorists like Osama Bin Laden. Thus prompting the question; "Will the US ever learn?" The answer to that question is neither "no" or "yes" since the US will support anyone, dictator or humanitarian, for one reason and one reason alone: is it in the US interest?

²⁰⁰ Kaplan, *supra* note 93, at 79.

²⁰¹ *Id.*, at 61.

²⁰² Such as the theory of the separation of powers developed by French political theorist Montesquieu.

²⁰³ The former UN Secretary-General Boutros Boutros-Ghali stated in his speech opening the World Conference on Human Rights in 1993: 'The process of democratization cannot be separated, in my view, from the protection of the human rights.' As cited in Cerna, *supra* note 19, at 289.

²⁰⁴ B. OJO, HUMAN RIGHTS AND THE NEW WORLD ORDER: UNIVERSALITY, ACCEPTABILITY AND HUMAN DIVERSITY 89 (1997)

²⁰⁵ Franck, *supra* note 15, at 48. Franck argues that this essentially affirms the "legitimacy" of the government. Other authors have defined legitimacy more broadly as follows: 'Legitimacy-in other words- the internalized belief of the governed, whether subjects or citizens, which leads them to

voluntarily obey without being physically forced to do so- is an essential basis of state power, and for that matter any form of power relationship.’ And further ‘Legitimacy, in this sense, is the mechanism by which a majority of the population supports a political regime, and recognizes it as operating in the people’s general interest.’ See Addi *supra* note 181, at 185.

²⁰⁶ ‘We have observed that the engine pulling the democratic entitlement is the craving of governments for validation. Without validation, the task of governance becomes fraught with difficulty.’ Franck, *supra* note 15, at 48.

²⁰⁷ B. Ojo, *supra* note 204, at 87.

²⁰⁸ Partha Dasgupta & Eric Maskin *Democracy and Other Goods*, in Ian Shapiro & Casiano Hacker-Gordon *DEMOCRACY’S VALUE* 69 –91, 81 (Ian Shapiro & Casiano Hacker-Gordon eds., 1999). So what does this mean, that political parties represent divergent political philosophies, the traditional left and right-wing divide? Or does it enable a choice between different types of political governance, albeit within the democratic system of cyclic elections. Thus, authoritarian-style one electoral period, then a communist/socialist after that? Or simply a choice of leaders that have differing views on what is required for the particular community?

²⁰⁹ ‘Citizens cannot will wise authoritarianism into existence, nor can they remove an authoritarian regime readily if the political leadership proves to be unsound.’ *Id.* at 81.

²¹⁰ This is the work of Francis Fukuyama, *THE END OF HISTORY AND THE LAST MAN* (1992). For an opposing view, see Kaplan, *supra* note 93, in particular Chapter II, ‘Was Democracy Just a Moment?’ at 59-98, particularly at p. 60 where he states “The collapse of communism from internal stresses says nothing about the long-term viability of Western democracy.”

²¹¹ There has been the odd massacre of those Americans expressing their dissent with Us governments, and indulging in civil disobedience, such as the riots by African-Americans against slavery in 1712-1741 in New York, and perhaps the greatest riot in New York in 1863 against the imposition of conscription where for four days rioters and police fought a bloody battle in the streets of New York. For more information see the famous account written by the journalist Joel Tyler Headley, *JOEL TYLER HEADLEY, THE GREAT RIOTS OF NEW YORK 1712-1873* (1970). Although as the author himself admits, one must remain fair and consider the riots in their historical perspective, and not with modern values, however the point remains valid: democracies can and do commit human rights abuses.

²¹² Chomsky, *supra* note 27, at 16. On June 26 2003, the US Supreme Court finally struck down the Texas law and a previous Supreme Court decision in 1986 of *Bowers v Hardwick*, criminalizing consensual homosexual intercourse. The decision would appear to invalidate other existing legislation that prohibits consensual intercourse amongst same-sex couples. A news report at the time described this as a “major victory for the gay rights movement”. See *Toobin: Regulating Sex Acts and Marriage, ‘On the Scene’*, CNN Law center, CNN.com/law center, <http://www.cnn.com/2003/>. What is more important that it took until 2003 for such a decision to be made, thus exposing that in the US today *not all* human rights are protected.

²¹³ John Chesterman, “*An Unheard of Piece of Savagery*”: *Indigenous Australians and the Federal Vote* in *S ELECTIVE DEMOCRACY, RACE, GENDER AND THE AUSTRALIAN VOTE* 29 (John Chesterman & David Philips, ed.s 2003)

²¹⁴ At the time of writing a great controversy was being waged regarding the accepted dogma that there had been massacres of Australian Aboriginals by individual colonists and Colonial police and military forces.

²¹⁵ Such as the Seminole Campaign, waged by General Andrew Jackson. Sadly there are many examples in the history of Native Americans. The campaign was justified by John Quincy Adams on the grounds of self-defense and furthermore blame was laid at the feet of the English who according to Thomas Jefferson, had incited the indigenous American peoples to fight and so were responsible for the subsequent “brutalization” and possible extermination of US native peoples. See Chomsky, *supra* note 27, at 16 & 34. Similar justifications can be seen being made for the war in Afghanistan, it was in self-defense, and responsibility for the deaths of all Afghans was laid at the feet of the Taliban and their support of terrorist Al-Qaeda. Interestingly, one of the world’s most notorious dictators Adolf Hitler later commended the US for “solving” the “problem” with its native peoples. See Chomsky *PIRATES supra* note 127, at p. 80

²¹⁶ Namely; US, British, German and Israeli “operatives”. The Columbian nationals who had been trained were later involved in the slaughter of innocent Columbian peasants. This was reported in Columbian Intelligence Reports, the Washington Post as well as a film clip produced by NBC. Naturally Israel claimed the Israeli personnel shown in the film clip, led by a Colonel Yair Klien, were acting on their own: like some sort of spy spoof, a “rogue element”. See Chomsky, *supra* note 27, 133.

²¹⁷ Such as the destruction of an industrial complex by the CIA, which killed 400 workers, during the Cuban Missile Crisis. *Id.*, 113.

²¹⁸ Rothstein, Robert, 'Weak Democracy and the Prospect for Peace and Prosperity in the Third World', in S. Brown and K. Schraub, RESOLVING THIRD WORLD CONFLICT, CHALLENGES FOR A NEW ERA, 16-50, 17 (S. Brown and K. Schraub eds. 1992).

²¹⁹ Kaplan, *supra* note 93, at 63.

²²⁰ *Id.* at 62-67.

²²¹ Kaplan cites the example of The Peoples' Republic of China, whose autocracy he claims better prepared its citizens for the "economic rigors of the post-industrial age" than India's democratic government. Examining Latin America he attributes Chile's stable, prosperous middle class and economic growth to its military dominated government of the 1970's -1980's and he compares Peru's favourable economic growth to other "democratic" Latin American nations such as Venezuela, which he argues is filled with crime and poverty, with a "credit risk ... behind only Russia and Mexico": both democratic nations. Kaplan attributes Azerbaijan's economic growth and peace to a coup. And notes also that the Ghanaian autocrat Jerry Rawlings who lead his people to stability. Kaplan, *supra* note 93, at 63- 70.

²²² See *supra* note 203 and the accompanying text.

²²³ The authors wish to thank Professor Peter Rowe, the inaugural Sir Ninian Stephen Visiting Scholar to the Asia-Pacific Center for Military Law, for his insightful lecture entitled 'Soldiers, Human Rights and International Armed Conflict', presented at the Law Faculty of the University of Melbourne, Tuesday 17th June 2003, as part of the Australian Red Cross Solferino Lecture Series (this was the 17th lecture in the series.). The authors wish to make it clear however, that what follows is the authors' opinion not Professor Rowe's. Given the problems and uncertainty surrounding the status of the internees as combatants, it is unclear what are their legal rights under the laws of armed conflict, and secondly because they are imprisoned outside the domestic jurisdiction of the US, they are not entitled to due process and other rights available under US domestic law. Thus the result of this is that the internees are denied the most basic of human rights: the right to a fair and impartial hearing. Whether these factors played a role in the US's choice of location, in other words whether the US deliberately imprisoned them in Cuba, is unknown, but in the authors' opinion highly likely. The authors do not share the confidence expressed by notably US commentators who have advised the US Department of Defense, that the military tribunals will ensure adequate protection and a just and fair trial. See for example the statement prepared by Professor Ruth Wedgewood *Justice will be Done at Guantanamo*, and distributed by the BUREAU OF INTERNATIONAL INFORMATION PROGRAMS, U.S. DEPARTMENT OF STATE, at <http://usinfo.state.gov>.

²²⁴ Kaplan, *supra* note 93, at 63.

²²⁵ *Id.*

²²⁶ Chomsky, *supra* note 27, at 16.

²²⁷ The author notes that there is no doubt that Libya has committed breaches of human rights, but not on the same scale as say the US with its involvement through client states such as El; Salvador or directly in Nicaragua for example has been indirectly or directly responsible for the deaths of hundreds of thousands of people. *Id.*, at 16 & Chomsky PIRATES, *supra* note 127, at 81.

²²⁸ On 30 Jan 1972 the 1st Battalion of the Parachute Regiment shot 27 unarmed civilians participating in a Civil Rights march in Derry, killing 13 and wounding 14. The subsequent inquiry held by Lord Widgery accepted the claims made by the British Army that the soldiers had come under fire, and were thus responding to an armed threat. Accordingly none of the British soldiers involved were charged or tried. Indeed the officers who had planned the operation were decorated by their Queen. Interestingly proponents of the right to democracy argue that civil rights is one aspect, indeed a defining characteristic of democracy, and the shooting of unarmed civilians involved in peaceful protest a hallmark of a dictatorship, but how can a democracy be a dictatorship? How can a democracy commit human rights abuses, and yet none can deny Bloody Sunday, and if you conduct a further examination of British history, you'll find other examples, such as religious pogroms by Mary Tudor, or the Bloody Assizes and the boasts of Lord Jeffrey that he had hung more traitors than any before him even as far back as the Norman Conquest. For further information see I Thomas Babington Maraulay *The History of England From the Accession of James II*, 489 (1985)

²²⁹ MUSGRAVE, SELF-DETERMINATION AND NATIONAL MINORITIES, 153 (1997)

²³⁰ There are additional examples, such as Indonesia and the violence in East Timor. East Timor finally achieved its independence some twenty-five years after the Indonesian occupation, by a referendum held on August 30 1999. The occupation has caused some 100,000 estimated deaths due to fighting, famine and disease, with most of the deaths occurring immediately after the intervention: this from a

population estimated at 600,000 at the time of East Timor's "willing acceptance" of integration. The damage to the economy of the region during the occupation was catastrophic. See Aditjondro, *Prospects for the Development in East Timor after the Capture of Xanana Gusmao* in (CIIR) & (IPJET) INTERNATIONAL LAW AND THE QUESTION OF EAST TIMOR, 51-62 (Catholic Institute for International Relations & International Platform of Jurists for East Timor, London, 1995); & Clark, *The "Decolonisation" of East Timor and the United Nations' Norms of Self-Determination and Aggression* (CIIR) & (IPJET), *International Law and the Question of East Timor*, 66-68, at 65.

²³¹ Musgrave, *supra* note 230, at 155. As mentioned above, the fragmentation in the former Republic of Yugoslavia resulted in some of the worst human rights abuses seen in Europe for 50 years. Kaplan notes that if China were to become truly democratic, then this would certainly result in the secession or attempted secession of areas in Western China where the Turkic Uighurs are the dominant ethnic group. Kaplan, *supra* note 93, at 64-65.

²³² Certainly Franck raises this argument.

²³³ The constant involvement by the US could be justified again *for reasons of self-defense, in this instance* against the evil Soviet Empire, but with the end of the Cold War such justifications obviously cannot be maintained and yet the US remains involved in conflict, the most recent of which is the war in Afghanistan and Iraq. With the possible exception of Israel, the US remains perhaps the only nation-state to have been involved in conflict from 1945 until the present day. As noted by Noam Chomsky, the US has not reduced its overwhelming industrial-military complex, but merely altered its direction towards "low intensity" and urban conflict, rather than the great tank battles expected and planned for against the former USSR, as evidenced in the emphasis in training and courses taught at military academies. Chomsky, *supra* note 27, at 30-31.

²³⁴ Israel's human rights abuses can be traced to its origins in 1948, with the slaughter of hundreds of civilians in Lydda and Ramle in July 1948, and Doueimah near Hebron in October 1948. Often labeled as surgical strikes against "terrorist targets"; "preventative and pre-emptive" strikes to prevent planned terrorist actions; or simply as retribution, Israel's actions have resulted in the countless deaths of civilians, including children, rather than members of Hamas or any other armed group actively involved in fighting Israel. Then there have been the numerous attacks on Palestinian refugee camps and allegations made against the current leader Ariel Sharon for the massacre of innocent civilians. Just how many innocent civilians have been killed by Israeli forces whether by accident (such as when Israel shot down a Libyan airliner killing 110 civilians) or by design will never be known, but in a single attack near Baalbek, near the Bekaa Valley, in January 1994, 100 people, civilians, were killed, and 400 wounded, of which 150 were children. Chomsky PIRATES, *supra* note 127, at 76-80.

²³⁵ There are also allegations of rape, looting and burning of Muslim homes and worse, the ripping open of the bellies of pregnant women, all in front of relatives, children included.

²³⁶ The report, 'We Have No Orders to Save You': State Complicity and Participation in Communal Violence in Gujarat' was released in April 2002, and alleges that the Bharatiya Janata Party, which leads the national coalition government, were "directly "involved in the attacks against Muslims. Leading the attacks were extremist Hindu organizations such as Vishwa Hin...Parishad (World Hindu Council) and its militant youth wing, the Bajrang Dal, the Rashtriya Swayamsevak Sangh, (the National Volunteer Corps). Together these groups form the *sanhgh parivar*, which Human Rights Watch claim exerts much influence over the national government, and is steering India away from a secular democracy towards a nation-state, that marginalizes, discriminates and worse assaults, its lower castes and religious minorities. The report can be accessed at hrw.org/reports/2003/india0703/Gujarat.

²³⁷ For further information please refer to the Human Rights Watch website, which contains the report mentioned in note 237 as well as other information concerning the failure to prosecute by Indian authorities.

²³⁸ Addi *supra* note 114, at 190

²³⁹ DENNIS W JOHNSON, NO PLACE FOR AMATEURS, HOW POLITICAL CONSULTANTS ARE RESHAPING AMERICAN DEMOCRACY, 170, (2001)

²⁴⁰ *Id.*, at 175.

²⁴¹ Such as William Natcher of Kentucky (Congress) who spent a total of US \$6, 766 in 1990. However, as noted by Johnson Natcher was in a "safe" seat. *Id.*, at 174.

²⁴² Bill Bradley as cited in *Id.*, at 169.

²⁴³ Roth, *supra* note 3, 490 & 506-507.

²⁴⁴ Such prerequisites include near-universal adult suffrage, the right to vote in secret and to have one's vote counted equally with that of others, the right to campaign, to form political parties, to express political opinions without interference, to seek and receive information, to have reasonable access to mass media, and to have an effective remedy for violation of political and electoral rights.

²⁴⁵ See Franck, *supra* note 15, at 57 (arguing that the right of self-determination is at the core of democracy and that freedom of expression and electoral rights are the other two components); see also Acevedo, *supra* note 13, at 143 (discussing Professor Franck's argument); Cerna, *supra* note 19, at 295 (stating that "(t)he existence of a democratic form of government (is) evidenced by fair and free periodic elections, three branches of government, an independent judiciary, freedom of political expression, equality before the law, and due process").

²⁴⁶ In many countries, systemic problems override the positive effects of free elections. In a number of Latin American states, for example, entrenched militaries, powerful business elites, lopsided patterns of resource distribution, and a history of human rights abuses all sharply constrain the ability of elected governments to alter existing political relations. In some countries, in Europe and elsewhere, the problem is just the opposite: elections result in governments that are too responsive to the popular will of an ethnic majority, and insufficiently attentive, or openly hostile to, minority group interests. In still other countries, elected governments abandon democratic principles after attaining office. See e.g. Stephen J. Schnably, *The Santiago Commitment as a Call to Democracy in the United States: Evaluating the O.A.S. Role in Haiti, Peru, and Guatemala*, 25 U. MIAMI INTER-AM. L. REV. 393, 518-23 (1994); Robert I. Rotberg, *Democracy in Africa: The Ballot Doesn't Tell All*, CHRISTIAN SCI. MONITOR, May 1, 1996, at 19; Edward D. Mansfield & Jack Snyder, *Democratization and War*, 74 FOREIGN AFF. 70, 87 (1995).

²⁴⁷ See Brad R. Roth, *Evaluating Democratic Progress: A Normative Theoretical Approach*, 9 ETHICS & INT'L AFF. 55 (1995).

²⁴⁸ Cf. Ann Elizabeth Mayer *Universal Rights Versus Islamic Rights: A Clash of Cultures or a Clash with a Construct?* 15 MICH. J. INT'L L. 307, 318 (1994) (where the author cites statements by representatives of Islamic governments to the 1993 Human Rights Conference in Vienna).

²⁴⁹ *Id.*; Jim Mann, *Policy-Makers Race to Keep Up with New Asia*, L.A. TIMES, July 12, 1993, at A1 (quoting President Clinton's denial that "democracy and human rights are somehow unsuited to parts of Asia or that they mask some cultural imperialism on the part of the West").

²⁵⁰ See, e.g., Daniel A. Bell, *The East Asian Challenge to Human Rights: Reflections on an East West Dialogue*, 18 HUM. RTS. Q. 641, 656 (1996) (noting that most East Asian states endorsed the Universal Declaration on Human Rights "for pragmatic, political reasons and not because of a deeply held commitment to the human rights norms it contains").

²⁵¹ G.A. Res. 150, U.N. GAOR 3d Comm., 45th Sess., Supp. No. 49A, at 255, U.N. Doc. A/45/766 (1990).

²⁵² However, the cause of the Third World problems cannot be laid entirely at the feet of corrupt leaders. Many commentators, particularly those from those communities that are suffering blame the economic policies of the West for what they define as "neo-colonialism". 'According to the theory of neo-colonialism, most Third World nations have become dependent on the international economic system dominated by the Western ... powers and Japan for markets, technology, financing and even basic foodstuffs to such a point that these less-developed countries may be called "hooked": they cannot do with their dependence, but, just as well, they cannot do without it. They cannot do with dependence because their form of incorporation into the international system has tended to preclude their industrialization, relegating them instead to the less dynamic forms of growth associated with agriculture or the extractive industries.' Tony Smith (ed.) *supra* note 138 at xiii in the introduction.

²⁵³ 'Thus the direct political control through colonization is replaced by the indirect economic control of decolonization. The result is the same: imperial domination. From this point of view, the national anthems and flag ceremonies of decolonization were nothing more than ideological smokescreens covering a more rationalized economic exploitation of the world. See *Id.*, at xiv.

²⁵⁴ *Report of the Secretary-General*, *supra* note 163, at para. 19.

²⁵⁵ Sir Winston Churchill in an address to the British Parliament. British Parliamentary Hansard, Nov. 11, 1947.

²⁵⁶ See Patrick Thornberry, *The Democratic or Internal Aspect of Self-Determination with Some Remarks on Federalism*, in CHRISTIAN TOMUSCHAT MODERN LAW OF SELF- DETERMINATION: TOWARDS A DEMOCRATIC LEGITIMACY PRINCIPLE (Christian Tomuschat ed., 1993) 101, at 116.