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Safeguarding the Democratic Entitlement: A Proposal for United Nations Involvement in National Politics

Ibrahim J. Gassama*

Introduction

Thousands of university students marched today through a western Nigerian city to protest the fatal shooting of a wife of Moshood K. Abiola, the jailed opposition leader .... The protesters sang anti-military songs and carried placards calling on the United Nations to intervene and secure democracy for the west African nation.¹

Recognizing that the principles of national sovereignty and non-interference in the internal affairs of any State should be respected in the holding of elections ....²

United Nations participation in the conduct of national elections has become one of the most visible and concrete aspects of U.N. involvement in the domestic affairs of independent countries today.³ The conduct of free and fair elections has been among the first orders of business in Third World and former Socialist countries jettisoning unpopular governments.⁴

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Usually this means a request for campaign and poll monitoring, and in some cases, technical, financial and security assistance from the U.N. In a few cases, the U.N. has been asked to supervise the entire process. Since 1990, the U.N. has been involved in the conduct of elections in several independent countries undergoing political transformations, including Albania, Angola, Cambodia, Haiti, Lesotho, Malawi, Mozambique, Nicaragua, Romania, and South Africa. For these nascent democracies, the U.N. imprimatur on elections serves now as a kind of international "Good Housekeeping Seal of Approval." Since 1990, the U.N. has been involved in the conduct of elections in several independent countries undergoing political transformations, including Albania, Angola, Cambodia, Haiti, Lesotho, Malawi, Mozambique, Nicaragua, Romania, and South Africa.

U.N. involvement in elections in independent countries follows a longer history of participation in elections in countries making transitions from colonial rule to independence. In contrast to its clear embrace of its role in the decolonization context, U.N. acceptance of its responsibilities to participate in the political processes of independent countries has been grudging. When initially confronted with requests for participation in the political processes of these countries, the organization was unwilling and unprepared to respond. Slowly, however, the U.N. has begun to develop a tenuous sort of institutional consensus on its new role in legitimizing governance. Reflecting deep philosophical and operational reluctance among U.N. members and within the U.N. bureaucracy to expand the organization's role in promoting democratic governance, U.N. electoral interventions have been limited to supposedly "well-defined circumstances... primarily in situations with a clear international dimension." Mean-
while, the U.N. has begun to institutionalize its circumscribed role by creating an office within the U.N. Secretariat responsible for dealing with requests for electoral assistance and coordinating U.N. responses.\footnote{11} It is important, however, for the U.N. to both expand and deepen its commitment to human rights values by abandoning the international-dimension requirement and moving the substance of its involvements beyond what can be termed "electoralism."\footnote{12} This Article argues that the U.N. must transform its policy of limited involvement in the political affairs of independent nations into a broader one of "democratic guardianship."\footnote{13} This new role is what the South African people under apartheid, the Haitians who voted overwhelmingly for President Aristide, the demonstrating Nigerian students cited above, and millions of other people around the world who feel oppressed by their governments, have been expecting and demanding of the United Nations.

On some occasions, the U.N. has indeed linked its limited electoral engagements to efforts promoting human rights.\footnote{14} A glimmer of this linkage can be discerned in a 1991 U.N. General Assembly resolution which asserted that "periodic and genuine elections are a necessary and indispensable element of sustained efforts to protect the rights and interests of the governed."\footnote{15} However, any link between U.N. involvement in elections in independent countries and U.N. human rights obligations has been secondary to other rationales and goals.\footnote{16} Specifically, the U.N. has highlighted its responsibilities to maintain international peace and security and to develop friendly relations among nations as the primary motiva-

\footnote{11. G.A. Res. 46/137, \textit{supra} note 10, at 2. This resolution was passed with only four dissents and shows a remarkable international consensus for an expansion of U.N. responsibility to the direction of perhaps the most intrusive of human rights. As Professor Franck puts it, "Democracy, thus, is on the way to becoming a global entitlement, one that increasingly will be promoted and protected by collective international processes." Thomas M. Franck, \textit{The Emerging Right to Democratic Governance}, 86 Am. J. Int'l L. 46, 46 (1992). On the coordinating role of the new U.N. Electoral Assistance Unit, see U.N. CENTRE FOR HUMAN RIGHTS, \textit{supra} note 3, at 2-3.}

\footnote{12. I use this term to describe the narrow U.N. focus on the ritualized aspects of democracy: monitoring and providing technical support for political campaigns, balloting and vote counting.}

\footnote{13. \textit{See infra} Part III.}

\footnote{14. Notwithstanding the criticisms I make later about an underlying attitude of reluctance to becoming involved in the domestic political processes of its members and about the generally limited nature of its involvements, the U.N.'s performance, on those occasions when it has participated in national elections, has been on the whole positive. U.N. involvement generally has been consistent with, and in fact has enhanced the value of, human rights commitments made by its members in the U.N. Charter and the principal human rights instruments derived from it. See, e.g., U.N. Charter arts. 1(3), 55, 56; \textit{see also} INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS; INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS.}

\footnote{15. G.A. Res. 46/137, \textit{supra} note 10, ¶ 3. \textit{See also} U.N. CENTRE FOR HUMAN RIGHTS, \textit{supra} note 3, at 1.}

tions or ends of its missions. These justifications subordinate human rights considerations and minimize the U.N.'s critical human rights responsibility.

One consequence of minimizing the importance of human rights in U.N. electoral intervention missions is that elections become disconnected from the goal of promoting substantive changes in affected societies and in the global community—most importantly, changes that will preserve opportunities for future changes. U.N. electoral missions have been ad hoc, reactive, and narrowly focused on solving the specific international emergency of the moment—a fundamentally flawed approach that ignores the dynamic interrelatedness of local, national, and global conditions. As such, U.N. electoral missions have tended to emphasize the formal acceptability of, and/or rituals associated with, political campaigning, balloting and validation of political control. This approach promotes an impoverished conception of democratic change to people who may have placed very high hopes on the benefits of such a change.

This Article examines U.N. involvement in national elections in independent nations. It primarily focuses on the justifications and conduct of such U.N. electoral interventions and the implications thereof. The U.N.'s high-profile involvement in the conduct of "democratic" elections in independent nations raises important questions about the appropriate role of the U.N. in the post-Cold War era. Specifically, this involvement raises questions about U.N. priorities and its capacity to both restrain govern-

17. See U.N. Centre For Human Rights, supra note 3, at 17-26. See also U.N. Charter preamble and ch. I (Purposes and Principles) (the source of these U.N. responsibilities).
18. See Human Rights Watch, supra note 16. On the U.N. human rights responsibilities, see, in particular, U.N. Charter art. 1(3), listing one of the purposes of the United Nations: "To achieve international co-operation ... in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion"; see also U.N. Charter art. 1(2), and arts. 55, 56, 62, 64, and 68. For a brief discussion of how the U.N. Charter provides a foundation for the promotion of human rights generally, see Ian Brownlie, Principles of Public International Law 569-71 (4th ed. 1990).
19. The term intervention, when used in this Article, applies to any level of involvement or interference by the U.N. in the relationship between a government and citizens of a particular country with or without the approval of the government of that country. This usage is broader than traditional international law usage of coercive interference in the affairs of another state against either the wishes of the government of that state or those of a large segment of the population. See Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of their Independence and Sovereignty, G.A. Res. 2131 (xx), U.N. GAOR, 20th Sess., Supp. No. 14, at 11, U.N. Doc. A/6014 (1966) (passed on Dec. 21, 1965); Richard Falk, Intervention Revisited: Hard Choices and Tragic Dilemmas, The Nation, Dec. 20, 1993, at 755 (offering an even more restrictive definition of intervention, focusing on military power and political restructuring as the goal of the intervenor). See also Burns H. Weston et al., Basic Documents in International Law and World Order 868 (2d ed. 1990).
mental abuses of human rights and ameliorate the suffering of those living in abject poverty in a world of vast economic inequality.\textsuperscript{21}

In Part One, I discuss the developing international consensus on political participation and democratic governance that Thomas Franck identified in his seminal article, \textit{The Emerging Right to Democratic Governance}.'\textsuperscript{22} This emerging consensus is consistent with the beliefs that propelled the original idea\textsuperscript{23} of a United Nations before these beliefs succumbed to the tensions and divisions of the post-war East-West struggle. I then critique the narrow approach to the "right to political participation" promoted by U.N. electoral missions. The "international dimension" predicate for U.N. electoral missions is the bedrock of this spare and somewhat cynical approach. I argue that although the underlying rationales for the international dimension predicate—maintenance of international peace and security, and the promotion of equal rights and self-determination of peoples—are important U.N. values, the promotion of a comprehensive body of fundamental human rights provides a more compelling justification for U.N. involvement in the political affairs of all nations and a worthier rationale for the organization's continued existence. A human rights promotion rationale should justify U.N. involvement in the political affairs of independent nations even when the U.N.'s obligation to maintain international peace and security or to advance national self-determination is not

\textsuperscript{21} See generally United Nations Development Programme, \textit{Human Development Report}, 1995 (1995). One commentator comes at the same set of issues from a different angle. He asserts that there has been a conscious reluctance by many advocates to link human rights norms to a Western liberal democratic outcome. He describes this "abstraction and apoliticization" of human rights as "obscuring] the political character of the norms that it seeks to universalize." Makau wa Mutua, \textit{The Ideology of Human Rights}, 36 VA. J. Int'l L 589 (DATE). Furthermore, he argues that the failure to make the link "delays the reformation, reconstruction, and multiculturalization of human rights." \textit{Id.} My concern in this Article has been the failure of the U.N. to make the link between its slimmed-down version of democracy or "electoralism" and human rights values. Like Professor Mutua, I am concerned that a failure to make explicit linkages avoids an honest dialogue and retards the development of a truly global vision of democracy or human rights. Such a truly global vision would entail an expansion and a deepening of our current understanding of democracy.

\textsuperscript{22} Franck, \textit{supra} note 11. "Both textually and in practice, the international system is moving toward a clearly designated democratic entitlement, with national governance validated by international standards and systematic monitoring of compliance. The task is to perfect what has been so wondrously begun." \textit{Id.} at 91. Many scholars are, of course, skeptical of such claims. Makau wa Mutua, for example, is critical of the tone of "triumphalism," and the Western or liberal democratic biases in such claims. See Mutua, \textit{supra} note 21, at 592, n.9.

\textsuperscript{23} While maintenance of international peace and security was the core objective behind the founding of the U.N., the drafters of the U.N. Charter recognized that attainment of this objective was intimately connected to cooperation among members to solve economic, social, and human rights concerns. Thus, these elements were explicitly included in Charter's preamble and as part of its purposes and principles. See U.N. Charter preamble & ch. I; Leland M. Goodrich, \textit{The United Nations in a Changing World} 11-14 (1974); Leland M. Goodrich et al., \textit{Charter of the United Nations: Commentary and Documents} 34-35 (3d ed. 1969).
In Part Two, I review legal foundations of U.N. actions in support of free and fair elections and argue that the U.N. Charter and other major sources of the right to political participation clearly support a human rights promotion rationale for U.N. actions. I then propose the development of a new U.N. policy—"democratic guardianship"—to generate, safeguard and deepen the democratic entitlement now being won by people throughout the world. Founded upon the human rights obligations of the U.N., a democratic guardianship policy represents a significantly expanded U.N. role in promoting not just the right to political participation but also the broader right to democratic governance.

Part Three outlines the core elements of this proposed U.N. policy of democratic guardianship and discusses how the policy would help expand and deepen global understanding and reception of human rights in general, and democracy in particular. I argue that U.N. electoral missions have already clarified important elements of the right to political participation, thereby weakening barriers to the advancement of international human rights. A policy of democratic guardianship would go beyond the current emphasis on ensuring the technical validity of elections and would take advantage of current opportunities to secure gains in human rights that have followed the end of the East-West struggle. Perhaps more impor-

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24. A clear example of this would be a situation where a government represses its own citizens but the level or quality of the repression in no way threatens international peace and security. Under current U.N. theory and practice, the U.N. is unlikely to get involved in such a case—unless a threat to international peace and security, or a violation of self-determination rationale could be manufactured to support U.N. intervention. Such charades must be done away with at this point in the evolution of the U.N.; the U.N. ought to be able to intervene in support of popular demands for democratic governance in all instances of gross human rights abuses by national governments. See infra Parts II and IV.

25. This phrase needs some explaining. In the first place, the notion of democracy needing a guardian seems odd. Guardianship in this context does not imply a Platonic or Confucian conception of governance. I do not propose any regime of rule by a class of guardians or meritorious elites outside of the democratic process. On the contrary, "guardianship" is used in this Article to signify an additional line of defense of the democratic process. It is closely tied to my profound objection to the traditional U.N. orientation where the sovereign state is substituted in international relations, in all significant respects, for civil society or the individual. Guardianship is a deployment of the multiple interests represented by the U.N., in essence, to hold the state to the pledges it has undertaken in terms of democratic governance and rejects an a priori denial of collective authority to examine the relationship between the state and its various constituents. For a distinction between democracy and classical notions of guardianship, see Robert A. Dahl, Democracy and its Critics 52-64 (1989). Since the U.N. is a voluntary association, any effort to guarantee or guard democracy could face objections either at the point of initiation of the policy or in its implementation. However, this would be welcome; this is the essence of democracy as dialogue. At the very least, the conversations over such a development at this time should force governments to deal with the meanings of diverse popular demands for U.N. involvements in national political affairs. 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 (1996); Nigerians Protest, supra note 1 (illustrating one example of these demands).

26. For an argument that the dominant human rights perspective being promoted at present represents a political project to universalize Western liberal democracy, see
tantly, in responding to global dissatisfaction with its current ad hoc, reactive, and constricted approach to human rights violations, a new U.N. policy of democratic guardianship should also bring greater international attention to often-neglected human rights issues such as the critical role of "private" international actors and forces play in perpetuating human rights abuses and inequality in many parts of the world.

I. Limits of Current United Nations Policy and Practice

A. Political Participation and Democratic Governance: The International Consensus

The 1991 Paris peace accords set up a U.N. mission of unprecedented size and authority in Cambodia, with a mandate to create a neutral political environment in which to hold elections. Yet while human rights concerns figured prominently in the accords, the U.N. subordinated most of the human rights agenda in a misguided rush to the ballot box.

Since its founding in 1945, the U.N. has helped build an international consensus for the idea that citizens of an independent country have a right under international law to participate in the political processes of their country through "democratic" elections. When there have been open dis-

Mutua, supra note 21, at 601-07. This Article does not reject such a perspective or confront the conclusion that the Western, monocultural origins of human rights discourse would undermine its legitimacy in the non-Western context. This Article sees the discourse—whatever its origins or the instrumental goals of some of its advocates—as essentially dynamic with varying opportunities for transforming our understanding of the human rights corpus and, indeed, as "talking back" to those who may have once attempted to exercise hegemonic power. This perspective is heavily influenced by my association with human rights movements in South Africa and Haiti—societies where the language of human rights was adopted by ordinary people in their struggles for social change. See, e.g., Gassama, supra note 25. See also generally Karl E. Klare, Legal Theory and Democratic Reconstruction, 25 U. Brit. Colum. L. Rev. 69 (1995).


28. "Globalization is the central political phenomenon of our day, generating new and fundamental inequities as regions and nations compete for corporate investment, lowering wage, environmental and human rights standards." Incorporating the World, The Nation, July 15/22, 1996, at 3 (this issue of The Nation was devoted to what the editors termed, "The Corporatization of the World," and contains several provocative articles).

For example, a multinational "private" actor, Shell Oil Company, has been criticized generally for its activities in Nigeria, and specifically for not doing enough to stop the executions of human rights activist Ken Saro-Wiwa and others, and for helping to finance the military junta. See John Darnton, Shell Makes a Big Oil Discovery Off Nigeria, N.Y. Times, Mar. 11, 1996, at A8. Other multinational "private" actors have also periodically faced criticisms. See, e.g., Bob Herbert, In America: Terror in Toyland, N.Y. Times, Dec. 21, 1994, at A27; Abuse in Nike Factories in Vietnam Group, Reuters, Mar. 27, 1997, available in LEXIS, Nexis Library, Reuters File. Herbert contends that, "The toy companies have embraced the Far East sweatshops for the same reason as other industries: There is an enormous supply of semi-slave laborers, including legions of poor and ignorant women and young girls, who will work for grotesquely low wages in disgusting and extremely dangerous conditions." Herbert, supra.


30. See U.N. Centre for Human Rights, supra note 3, at 1-3. Democracy was not a prerequisite for U.N. membership. Delegates to the San Francisco conference rejected
agreements among U.N. members on this topic, they have generally not occurred because the value or efficacy of this political participation right has been rejected. Rather, disagreements have arisen over definitions and implementation of the right. The dispute between the United States and Cuba over the legitimacy of the Castro regime is one case in point. Both countries affirm the existence and importance of the right to political participation, including the critical free and fair elections component. However, they disagree sharply over whether Cuba has provided for an internationally acceptable implementation of the right, especially its free and fair elections component, and the level of outside involvement that should be allowed by the Castro government.

"Free and fair elections" is the formulation generally used to describe the core element of an internationally acceptable scheme of political participation in national governance. Despite occasional interpretive differences or disputes over its implementation, a growing convergence of global
democracy as a criterion for membership and instead focused on the "peace-loving" nature of nations desiring membership. See Goodrich et al., supra note 23, at 88. The International Bill of Rights also does not clearly endorse a particular form of democracy. Nonetheless, U.N. membership was conditional on the applicant's acceptance, ability and willingness to carry out the Charter's obligations which clearly include human rights. U.N. Charter art. 41. In the political participation context, the U.N. has supported human rights guidelines and standards reflective of the aspirations of liberal democracy without significant or concrete opposition from member states. See generally U.N. Centre for Human Rights, supra note 3. The U.N. posture on democracy could be described as one where the organization, a product of liberal democratic impulses and ideals, has tolerated practices among its membership that have not lived up to those ideals and strategically justified its tolerance by references to sovereignty-based doctrines or the maintenance of international peace and security rationale. See Henry J. Steiner, Political Participation as a Human Right, 1 Harv. Hum. Rts. Y.B. 77, 85-89 (1988). U.N. electoral missions have demonstrated a clear preference for political participation standards derived from liberal democratic beliefs. See generally U.N. Centre for Human Rights, supra note 3. See also Oscar M. Garibaldi, On the Ideological Content of Human Rights Instruments: The Clause 'In a Democratic Society,' in Contemporary Issues in International Law: Essays in Honor of Louis B. Sohn 23, 68 (T. Buergenthal ed., 1984).


32. Id.

33. The dispute centers around whether Cuba has provided for free and fair democratic elections, or whether it even can with its single-party system. Id. "People want us to have elections where they spend millions of dollars, like in the United States,' Castro said. 'You have to have a lot of money in the democracy of the rich. Who here does it for money, when they do not even receive a salary for their work?'" Id. The Cuban Communist Party Congress has made changes in order to open up political participation, including implementation of "direct secret ballot elections in the selection of members and appointments to committees at all levels." Carollee Bengelsdorf, The Problem of Democracy in Cuba 170 (1994). The U.S. Perspective on free and fair elections in Cuba is reflected in the Cuban Democracy Act of 1992, Pub. L. No. 102-484, 106 Stat. 2575 (1992). Under the Act, Congress stated in § 1702(1) that, "(1) the government of Fidel Castro has demonstrated consistent disregard for internationally accepted standards of human rights and for democratic values." 106 Stat. at 2575. Congress stated in § 1703(8) that, "It should be the policy of the United States . . . to encourage free and fair elections to determine Cuba's political future . . ." 106 Stat. at 2576.

34. See, e.g., U.N. Centre for Human Rights, supra note 3, at 6-11.
interests support the right to political participation centered around free and fair elections. Undeniably, and perhaps understandably, there is a parting of ways among proponents as to how far the concept extends. Certainly, for some advocates, it does not extend much beyond a narrow, formalistic understanding of political participation built around the ritualized marking of an "X" in a box beside the name or symbol of a candidate of choice without the voter being subjected to direct recriminations. While others may desire more, many human rights activists appear to have accepted this minimalist and rather impoverished conception of democracy and have chosen to devote energy to making it real for those denied even that much.

Proponents of the right to political participation have used the U.N. as a central forum from which to advocate and promote the spread of this modern entitlement. Beginning with the 1945 U.N. Charter and the 1948 Universal Declaration of Human Rights (UDHR), the U.N. has constructed a normative framework for the realization of this right. This framework has been sustained over time by the actions of various units in the U.N. system and the contributions of non-governmental organizations (NGOs) that focus on it. The international collaborative effort, involving U.N. organs, human rights workers and others, has helped satisfy, even if only temporarily, the yearnings of millions of the world's oppressed people for self-empowerment, liberation or even just marginally greater control.

35. See Stoelting, supra note 3, at 372-73. While this convergence may represent the consequence of Western hegemony, its motivating power among the dispossessed of the world today cannot be exaggerated. See The Promise of Democracy, AFRICA DEMOS, Mar. 1995, at 1.

36. One scholar has observed that:

[It is somewhat remarkable that voting, which involves little more than sticking a pin through a piece of cardboard in secret once a year, should be regarded as the very essence of democratic participation. Yet if we try to understand this annual phenomenon as an expression of the group pretending to constitute itself in the service of maintaining alienation, we can begin to make sense of it. Peter Gabel, The Phenomenology of Rights-Consciousness and the Pact of the Withdrawn Selves, 62 Tex. L. Rev. 1563, 1575 n.20 (1984).

37. See, e.g., Focus on Namibia, Africa's Last Colony, AFRICA DEMOS, Mar. 1995, at 9-11. For a brief, but focused, discussion of the competing liberal perspectives on the requirements for establishing democracy, see Michael Bratton, Are Competitive Elections Enough?, AFRICA DEMOS, Mar. 1995, at 7-8. These perspectives are characterized by their emphasis on process and institutionalization of machineries for the conduct of regular "free and fair elections." I refer to these liberal perspectives as "electoralism."


over their lives.41

Unfortunately, in interpreting its responsibilities to promote political participation, the U.N. fails to give human rights necessary priority. Instead, the U.N. limits the scope of its responsibilities, adopting a shallow conception of political participation that does not fully respond to the sources of the denial of political participation and other human rights.42 This aspect of the U.N. role in national affairs might be overlooked by many who may assume that highly publicized U.N. electoral involvements are driven primarily by human rights concerns.43 The fact, however, is that the U.N. intervenes electorally only in a few cases44 even though demand has grown45 and the need for such involvement is considerable.46 When it does intervene, the scope of its involvement is tragically limited.47

In the next two sections of the Article, I identify and criticize the current predicates for U.N. involvement in national elections of independent countries. I also critique the values underlying these U.N. predicates, namely self-determination and the maintenance of international peace and security. I then go beyond this "external" critique and examine the limited nature of electoral interventions, questioning why substantive issues of economic and social justice, for example, have been kept to the margins in the conduct of the U.N. missions.


The U.N. generally limits its mandate to promote political participation in independent nations only to those instances with (1) a "clear international dimension"48 and (2) where "[a] formal request has been received from the state concerned."49 The U.N. has received a significant number of requests from governments for electoral involvement, especially since the end of the Cold War.50 Moreover, the U.N. has been laudably flexible in finding a "clear international dimension," intervening in the elections of countries such as South Africa51 and Haiti.52 Nonetheless, it would be more in keep-
ing with what Louis Henkin has called the "Age of Rights" to champion the broader human rights responsibility of the organization in justifying U.N. electoral interventions.

The current U.N. policy of predicking electoral interventions on a formal governmental invitation and the finding of an international dimension suffers from two significant weaknesses. First, the U.N. intervenes in only a small number of countries compared to the number that seek or would benefit from such involvement. Secondly, the U.N. promotes a false image of what the development of a democratic society requires. Thus, the U.N.'s governmental invitation and international dimension requirements limit the scope of the organization's human rights contributions. These requirements maintain U.N. focus on the interests of governments, reflecting the traditional perspective that the overriding purpose of the U.N. is to regulate the conduct of states vis-à-vis each other rather than promote the interests or concerns of people or communities within a state.56

Two principles—the sovereignty and equality of states and the equal


54. See U.N. Centre for Human Rights, supra note 3, at 2 (listing only eight countries receiving such assistance between 1990 and 1993). The number has increased sharply since electoral missions were sent to Haiti (1995), Mozambique, the former Yugoslavia, and Guatemala (1995-1996). However, this number pales in comparison to the widespread human rights abuses recorded in U.N. member states. See generally, e.g., Human Rights Watch, supra note 47.

55. For explorations of what a "truer" image of democracy would be like, see Radical Democracy (David Trend, ed., 1996). See, in particular, Chantal Mouffe, Radical Democracy or Liberal Democracy?, in Radical Democracy, supra, at 19; Gayatri C. Spivak & David Plotke, A Dialogue on Democracy, in Radical Democracy, supra, at 209.

56. See U.N. Charter art. 1, para. 1. The full text of Article 1, however, illustrates the complex interrelationship among the various U.N. purposes. Article 1 states:

The Purposes of the United Nations are:

1. To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which lead to a breach of the peace;

2. To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

3. To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

4. To be a centre for harmonizing the actions of nations in the attainment of these common ends.

U.N. Charter art. 1.

57. U.N. Charter art. 2, paras. 1, 7. According to Brownlie, "[t]he sovereignty and equality of states represent the basic constitutional doctrine of the law of nations . . .," Brownlie, supra note 18, at 287.
rights and self-determination of peoples—are recognized as intrinsic to the maintenance-of-peace-and-security purpose of the U.N. However, these principles present the U.N. with a dilemma. On the one hand, the U.N. must limit the instances in which it challenges governmental authority because governments have a nasty record of disrupting international peace and security when their authority is challenged. The U.N., therefore, seeks permission from governments before sending electoral missions to verify whether governments have legitimate support. The U.N., therefore, seeks permission from governments before sending electoral missions to verify whether governments have legitimate support. On the other hand, because international peace has long been disrupted by people agitating for equality and self-determination, the U.N. also cannot ignore such claims. Thus, the U.N.'s earliest involvement in elections raised the conflict between its human rights functions, represented by support for self-determination, and its peace and security mission, represented by its respect for sovereign equality of states.

Neither the U.N.'s responsibility to maintain international peace and security nor the principles of sovereignty and equality of states and the equal rights and self-determination of peoples underlying that responsibility provide a progressive basis to justify U.N. electoral missions. On the contrary, these values only indirectly, if at all, help oppressed people while providing a legitimating gloss to their governments. They severely limit

58. See U.N. Charter art. 1, para. 2. See also Brownlie, supra note 18, at 593-96.
59. See Thomas Friedman, U.N. Human Rights Resolution, N.Y. Times, Dec. 27, 1995, at A15. Friedman describes the difficulties encountered by the U.S. as it tried to gain support at the U.N. for punitive actions against Nigeria in the aftermath of Ken Saro-Wiwa's execution. Id. Two of the primary opponents were China and Indonesia, both powerful countries whose treatment of minority and dissident groups has been challenged at the U.N. Id. Governments like Iraq and Libya have responded even more forcefully to such challenges. See, e.g., R.W. Apple, Invading Iraqis Seize Kuwait and Its Oil: U.S. Condemns Attack, Urges United Action, N.Y. Times, Aug. 3, 1990, at A1; William MacLean, Kuwaitis Insecure Despite Border Demarcation, Reuters, May 23, 1993, available in LEXIS, Nexis Library, Reuters File.
60. See U.N. Centre for Human Rights, supra note 3, at 2.
61. The American Revolution may be seen as an early example of a paradigmatic self-determination claim. See Bernard Donoughue, British Politics and the American Revolution 1-21 (1964). The Irish Republican Army has long used violent means to pursue its self-determination claim. For a criticism of these tactics, see Negotiation or Other Peaceful Means Must Be Used to Settle Disputes, Irish Times, Jan. 21, 1994, at 8 (edited version of address given by the Taoiseach, Mr. Reynolds, in Barberstown Castle, Jan. 20, 1994). Self-determination claims by minority populations in various countries have become even more prevalent and increasingly violent since the end of the Cold War. See George D. Moffett III, Struggles Grow for "Self-Determination", Christian Sci. Monitor, Oct. 21, 1992, at 1; Michael Reisman, My Self-Determination, Your Extinction, L.A. Times, Aug. 12, 1992, at B7.
62. By "progressive" in this context, I mean primarily doing something that helps to open up choices and lift burdens on the oppressed who solicit U.N. or other outside assistance.
63. International law scholars generally are not very critical of the international peace and security and self-determination rationales underlying U.N. electoral involvement. Some of these scholars, perhaps sensitive to the criticism that the U.N. has stretched the international peace and security aspect beyond reasonable credibility, have emphasized the self-determination prong to justify this intrusive international role in domestic political processes. Thomas M. Franck, for example, considers self-determination to be "the oldest aspect of the democratic entitlement." See Franck, supra note 11, at
U.N. electoral missions to a small number of cases, ignoring many other serious situations that cry out for U.N. involvement. The search or wait for an "international dimension" or a formal request from a government is, after fifty years of the U.N., unseemly, sometimes disingenuous and ultimately damaging to the U.N.'s efforts to promote human rights. Furthermore, as I argue below, reliance on the self-determination principle is unwise in light of the increasingly discredited nature of this principle.

The other significant weakness of the U.N. electoral intervention is that they have encouraged a superficial conception of democracy by their emphasis on the ritualistic aspects of elections. To promote lasting democracies would require, among other things, confronting the gross economic disparities within and among members. This is not to suggest that the U.N. can substitute for domestic politics. However, there are some

52. When contrasted with the plain international peace and security rationale, an emphasis on "self-determination of peoples" seems to provide the better intellectual rationale for U.N. intervention in the domestic political processes of independent nations. Neither the maintenance of international peace and security nor the self-determination rationale, however, satisfactorily explain the need, indeed the global imperative, that must now propel U.N. and other international efforts to advance political participation and other human rights in all national settings.

64. See generally Human Rights Watch, supra note 47.


66. See infra Part I.B.2. I argue that the principle carries too much baggage to serve as a progressive vehicle for human rights. I make this claim even though international law scholars consider the general principle of self-determination to be "a peremptory norm of international law (jus cogens) within the meaning of Article 53 of the Vienna Convention on the Law of Treaties." Antonio Cassese, The Self-Determination of Peoples, in The International Bill of Rights 92, 111 (Louis Henkin ed., 1981). A U.N. role for elections monitoring or other intervention in support of political participation in independent countries can hardly be built on an interpretation of the self-determination guarantees expressed in the U.N. Charter. See Stoelting, supra note 3, at 411. However, when the U.N. Charter guarantee is read together with the more expanded guarantees in the Political Covenant, such a role can be supported. See Cassese, supra, at 92-113. See also Daniel Thérrer, Self-Determination, in 8 Encyclopedia of Public International Law 470 (1985); Weston et al., supra note 19, at 177, 201-09.


68. See World Bank, Poverty Reduction and the World Bank: Progress and Challenges in the 1990s (1996). "In 1993, an estimated 1.3 billion people in the developing world still lived on less than one dollar a day. Over the past 30 years, incomes in the countries with the richest 20 percent of the world's population grew nearly three times faster than in those countries with the poorest 20 percent." Id. at 2. According to the report, the number of people living on less than one dollar a day rose from 1.23
roles that the U.N. is well positioned to play in promoting human rights. For example, the U.N., acting as part of a broader democratic involvement, could address the role that multinational agencies and corporations play in fostering human rights abuses. Free and fair elections promoted by U.N. electoral missions, by themselves, will not sustain democracy in economically desperate societies. On the contrary, they create false hope among people about the likelihood of a change in their circumstances, and ultimately may produce disillusionment and cynicism as bright promises of fundamental change remain unfulfilled.

Before proceeding to make the case for an expanded and more textured U.N. policy of "democratic guardianship," I will elaborate on some of the problems associated with the maintenance of international peace and security, and the equal rights and self-determination rationales underpinning current U.N. policy.

1. Maintaining International Peace and Security

Maintaining international peace and security is of paramount importance to the United Nations. The U.N. Charter gives the Security Council broad powers to determine when peace is threatened or breached. Yet, the focus on international peace and security limits the ambit of Security Council concern, providing an excuse for non-action in the face of human rights violations. This limited ambit of concern is not necessarily co-extensive with that implied in the U.N.'s simultaneous responsibility to promote human rights. And, attempting to bind U.N. human rights responsibilities to the maintenance of international peace and security, rather than consider the human rights concern as an autonomous responsibility, eventually leads to the dead-end of unpersuasive rationalizations and illegitimacy for action. This is particularly true in the post-Cold War world. Many conflicts implicating serious human rights concerns are reasonably contained within national borders and their direct impact on international peace and security are often difficult to articulate. The U.N. is caught on the horns of an awful dilemma. On the one hand, the concept of a threat to, or a breach of, international peace and security would lose all intellec-

billion in 1987 to in 1993. Id. at 4-5. See also Twenty Percent of World’s People Live on Dollar a Day, Reuters, June 24, 1996, available in LEXIS, Nexis Library, Reuters File.
69. See Darnton, supra note 28; Incorporating the World, supra note 28.
70. U.N. CHaRTEr art. 39.
71. For example, even after Haiti’s provisional president Trouillot requested U.N. monitoring of the country’s first democratic election in 1990, the U.N. Security Council had considerable difficulty reaching a consensus because many members were afraid to set a “precedent for [U.N.] involvement in domestic situations.” See U.N. Postpones Consideration of Assistance to Haiti’s Election, XINHUA News Agency, July 20, 1990, available in LEXIS, News Library.
tual or operational power if it is relied upon to justify every instance where the U.N. acts in support of oppressed people.\(^7\) If, on the other hand, the U.N. adopts an intellectually and operationally justifiable (but too narrow) interpretation of the concept, it risks losing legitimacy in the eyes of people whose requests for help would be rejected as a result. It is time to recognize that the U.N. must, on some occasions, act in support of human rights where no reasonable threat to, or breach of, international peace and security can be invented. The U.N. Charter obviously anticipates such situations by specifically constraining the use of coercive measures by the organization while allowing for a more gradual development of human rights promotion norms.\(^7\)

The principal effect of associating political participation rights with the maintenance of international peace and security has been to constrain, rather than enhance, the U.N. role in developing progressive human rights norms.

2. Equal Rights and Self-Determination of Peoples

The principle of equal rights and self-determination of peoples is increasingly discredited in a post-Cold War world confronted with seemingly endless and unresolvable claims for self-determination. Bitter conflicts in the former Yugoslavia, many parts of Africa, and the former Soviet Union have clouded once benign receptions of such claims.\(^7\) Self-determination claims also are increasingly incongruous in a world where technology and, in many instances, economic interests are bringing many people closer together in a manner that devalues or transforms the coherence of national boundaries.\(^7\)

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73. This concern arose when the U.N. Security Council considered a U.N. mission to Haiti's 1990 election. See U.N. Postpones Consideration, supra note 71 (reporting the concern of member States that acting in Haiti would set a precedent for a more expansive U.N. role). See also Stoelting, supra note 3, at 381-83.

74. This contrast is readily noted when the language of Chapter VII of the U.N. Charter dealing with the use of coercion to deal with international security matters is contrasted with that of Chapters IX and X dealing with human rights and humanitarian matters. See U.N. CHARTER arts. VII, IX, X.


76. Some examples of this convergence include: (1) As trade increases between Russia and the United States, many Alaskan stores are stocking 220-volt appliances for visiting Russian tourists. James Brooke, As Trade Booms, Little Fear of a Communist, N.Y. TIMES, June 10, 1996, at A1; and (2) A Zambian doctor can now have access to the latest medical diagnostic and treatment information via the internet. Drusilla Menaker, Africa Yarns to Go On-Line, S.F. EXAMINER, Dec. 31, 1995, at A12. However, as Menaker also notes, only twelve African countries offer direct access to the internet. Id. See also Rosemary J. Coombe, Left Out on the Information Highway, 75 OR. L. REV. 237 (1996). "The global is hardly planetary; some areas are simply spanned, others escape the net entirely. Major parts of Africa, for example, face increasing marginalization and impoverishment." Id. at 244. See generally Keith Aoki, (Intellectual) Property and Sovereignty: Notes Toward a Cultural Geography of Authorship, 48 STAN. L. REV. 1293 (1996). "The world is increasingly connected, but it is also increasingly full of difference. We need representational vehicles that enable us to remain sensitive to diversities of meaning
Historically, the equal rights and self-determination of peoples principle focused on the struggles of colonized or minority groups to liberate themselves from imperial or other external threats to their collective rights. However, most human rights advocates promoting political participation rights are more concerned today with the immediate intra-national threats posed by ruthless national governments—without distinctions of race, ethnicity, gender, or national origin—to their citizens, than by relatively less direct threats from external sources. The fact that the self-determination principle in its fullest sense encompasses both “internal self-determination” as well as “external self-determination” does not address the inadequacy of the principle as a core rationale for U.N. electoral missions. While the “internal” aspect of the self-determination principle in theory supports international actions promoting domestic political participation rights, the popular history and general understanding of the self-determination principle limit its utility in the intra-national or domestic context. Self-determination as a basis for action against domestic or even as we acknowledge the shaping power of processes that at first seem monolithic, homogenizing, and all-encompassing.”


78. See, e.g., HUMAN RIGHTS WATCH, HUMAN RIGHTS WATCH WORLD REPORT, 1994 (1993); AMNESTY INTERNATIONAL, THE 1994 REPORT ON HUMAN RIGHTS AROUND THE WORLD (1994). This point is made not to deny the indirect and sometimes dominant role of external or multinational forces in human rights violations. Many Third World dictators need foreign investment and trade to provide the means of obtaining instruments of repression and to maintain their corrupt lifestyles. Zaire, for example, has long been governed by a series of bribe-taking military commanders and governors. See Howard W. French, Zaire Struggles to Keep Neglected Region in Fold, N.Y. TIMES, Sept. 18, 1996, at A12. In fact, the dependence of corrupt Third World elites on access to the products and services of the developed world has been too long ignored in discussions of human rights violations in these societies. The United States, for example, is the fourth largest investor in Myanmar, formerly known as Burma, and has only recently enacted legislation to deal economically with gross and persistent human rights violations by the Burmese military. Other nations, including Japan and Great Britain, are considering similar sanctions. See Steven Erlanger, U.S. Weighs Tougher Reaction to Burmese Crackdown, N.Y. TIMES, Oct. 5, 1996, at A4; Editorial, Responding to Burmese Repression, N.Y. TIMES, Oct. 5, 1996, at A22.

79. Internal self-determination may be defined as “the right [of the people of a country] to choose their form of government and to determine the social, economic, and cultural policies of the state.” Cassese, supra note 66, at 97.

80. External self-determination includes the right of a people “freely [to] decide on their international status, whether to form a new state or to associate themselves with an existing state” and “the right of the people of a sovereign state to be free from foreign interference which affects the international status of that state, as well as from any form of encroachment upon its independence.” Id. at 98, 100.

81. Id. at 96-102.

82. Cassese argues that Article 1 of the International Covenant on Civil and Political Rights (ICCPR) confirms the internal aspects of self-determination by affirming the right of people to “freely determine their political status . . . .” See id. at 96-97 (quoting art. 1 of the ICCPR). Cassese, however, concedes that subsequent U.N. practice had shown a tendency toward a constricted interpretation of the principle as Third World and Social-
intra-group threats to individual rights has not achieved the same level of international consensus as self-determination for protection from external domination.\textsuperscript{303}

Undeniably, inclusion of the self-determination principle in the U.N. Charter was aimed specifically at addressing the status of people in colonial territories on the verge of independence.\textsuperscript{84} This is evident from the pre-Charter aims of self-determination proponents like President Woodrow Wilson, who championed the freedom and independence demands of many of Europe's minorities after the First World War.\textsuperscript{85} Wilson's primary motivation for promoting such demands was his conviction that a Europe of free and democratic nations would be more stable and peaceful than one with many oppressed minorities agitating for freedom.\textsuperscript{86} This motivation, however, does not obscure the secondary place of the internal aspects of self-determination in the calculation of Wilson and other historical advocates of the principle.

The essence of the self-determination principle, as originally understood, was "the extension of the principles of nineteenth-century European nationalism to the rest of the world."\textsuperscript{87} Freeing one set of distinctive people from any sort of forced association with another was a central goal.\textsuperscript{88} Every recognized "people" had the right to statehood, barring other more important policy complications such as the imperial state possessing nuclear weapons or being in alliance with major world powers.\textsuperscript{89} Clearly, ист nations attempted to limit internal self-determination "to the people of a sovereign country whose government pursues a policy of systematic discrimination based on race, creed, or color." \textit{Id.} at 109. Cassese concludes, however, that while subsequent developments should inform, they could not detract from obligations under the Covenant. \textit{Id.} at 110. Nevertheless, the reluctance of many U.N. members to support a general policy of election monitoring in independent nations reflects strong adherence to the narrow view of self-determination. \textit{See generally} G.A. Res. 48/124, \textit{supra} note 2. \textit{See also} Melinda N. Hodgson, \textit{When to Accept, When to Abstain: A Framework for U.N. Election Monitoring}, 25 N.Y.U. J. INT'L L. \\& POL 137, 151 (1992).

\textsuperscript{83} \textit{See} Cassese, \textit{supra} note 66, at 109 (distinguishing Third World and socialist perspectives from Western ones).

\textsuperscript{84} Fox, \textit{supra} note 8, at 573.

\textsuperscript{85} Seven of Wilson's famous fourteen points stated in his January 8, 1918 speech to Congress dealt with the self-determination of European peoples. The other seven points also certainly support the concept of self-determination, including the establishment of a League of Nations "to protect great and small states alike." \textit{Arthur S. Link, Woodrow Wilson: Revolution, War, and Peace} 82-83 (1979).


\textsuperscript{87} \textit{Id.} at 103.

\textsuperscript{88} \textit{See} Nathaniel Berman, 'But the Alternative is Despair': \textit{European Nationalism and the Modernist Renewal of International Law}, 106 Harv. L. Rev. 1792, 1802 (1993). "Wilson's program for the postwar world depended on the assumption that the principle of nationalities could replace decadent, violent power-politics with simple, pacific, and rational first principles." \textit{Id.}

\textsuperscript{89} Such was the case with the Soviet Union before its dissolution for reasons that were only tangentially related to self-determination. \textit{See generally} Fred Coleman, \textit{The Decline and Fall of the Soviet} (1996); Michael Dobbs, \textit{Down with Big Brother—The Fall of the Soviet Empire} (1997). China has successfully avoided any U.N. focus on the self-determination of Tibetans. \textit{See} Amnesty International, \textit{supra} note 78, at 98-99, 143-44. NATO member Turkey has also successfully frustrated the self-determination
self-determination's external aspects were given primacy over its internal aspects.\textsuperscript{90}

In short, self-determination's external aspects quickly swallowed up the whole principle. Today, one finds references to internal aspects of self-determination mainly in the writings of international law scholars.\textsuperscript{91} Even these scholars concede that the results of post-U.N. charter self-determination efforts have been rarely consistent with the notion of internal self-determination. As one observer lamented in 1990, "Independence has not always meant democracy. Of the ninety-eight nations that have come into being since the Second World War, only some twenty-six are reckoned to be 'free' in the Freedom House annual survey for 1988-89."\textsuperscript{92}

The sad reality is that many independent nation states arising out of the self-determination efforts of the post-WWII era came under the control of oppressive national regimes.\textsuperscript{93} These regimes used the concept of self-determination mainly as a mantra intoned to defend against outside interference seeking to address their misconduct of national affairs and abuse of their people.\textsuperscript{94}

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\textsuperscript{90} Cassese argues that "external self-determination is a necessary precondition for the enjoyment of individual rights. Individuals can enjoy civil and political rights only if the community of which they are members is not oppressed by a foreign power." Cassese, supra note 66, at 101. Unfortunately, the international community, including the U.N., until recently ignored the evisceration of the internal dimensions of self-determination in countries that have been "freed" from external oppression. See generally Human Rights Watch, supra note 16. Moreover, the problematic nature of separating "external" from "internal" oppression has been apparent for some time now. For example, Shell's role in Nigeria, where it provides critical foreign exchange for the brutal military dictatorship, exemplifies the blurring of the internal-external as well as the public-private dichotomies. See Paul Lewis, After Nigeria Reprises, Shell Defends Its Record, N.Y. Times, Feb. 13, 1996, at A1.

\textsuperscript{91} In addition to Cassese and Franck, see, e.g., Paul H. Brietzke, Self-Determination, or Jurisprudential Confusion: Exacerbating Political Conflict, 14 Wis. Int'l L.J. 69 (1995); Ruth L. Gana, Which 'Self?' Race and Gender in the Right to Self-Determination as a Prerequisite to the Right to Development, 14 Wis. Int'l L.J. 133 (1995); Feisal Hussain Naqvi, People's Rights or Victim's Rights: Reexamining the Conceptualization of Indigenous Rights in International Law, 71 Ind. L.J. 673 (1996).

\textsuperscript{92} MOYNIHAN, supra note 86, at 105.

\textsuperscript{93} See, e.g., Daniel Chirot, Modern Tyrants: The Power and Prevalence of Evil in Our Age (1994); Basil Davidson, The Black Man's Burden: Africa and the Curse of the Nation-State (1992); Paul Lewis, U.N. Cites 22 Nations For Rights Abuses, N.Y. Times, Mar. 6, 1992, at A3 (among those singled out for criticism or increased scrutiny by the U.N. Human Rights Commission were Equatorial Guinea, Indonesia, Burma, Cuba, Haiti, and the Sudan). It cannot be over-emphasized that many of these so-called independent nations were locked in a corrupt, vicious, inequality-enhancing international culture from birth. See generally Davidson, supra; Graham Hancock, Lords of Poverty (1989). The domestic elites who have managed these "independent" states have been facilitated in their enterprises by a willing international system—whether as part of an East-West struggle or by the growth of an international trading system.

\textsuperscript{94} As Donnelly puts it, "while recognizing the legitimate claims of self-determination and cultural relativism, we must be alert to cynical manipulations of a dying, lost,
In fact, consistent with this perspective, a Third World and socialist-dominated U.N. General Assembly narrowly construed the self-determination principle in several key international legal documents of the 1960s and 1970s to exclude international scrutiny of cases where political rights were denied to citizens of these societies.\textsuperscript{95} The worst governmental human rights offenders were often the most vocal advocates of the principle of self-determination: the USSR, the Peoples Republic of China, Iraq, Syria, Mexico, and virtually all the newly independent African countries.\textsuperscript{96} By and large, the international community acquiesced as the principle was perverted.\textsuperscript{97} Given the principle's discredited past, chaotic present, and uninspiring future, it would be more rewarding to develop and advance other justifications for U.N. promotion of political participation.

The U.N. should free itself from the international dimension of constraints when it considers engaging in electoral or other pro-democratic efforts in national affairs. An unadorned human rights justification should forthrightly and unapologetically be advanced by the U.N. to support these missions.\textsuperscript{98} For constitutional and political support, the U.N. could draw on its human rights responsibilities, rooted in its Charter and the International Bill of Rights, as well as the incessant demands of ordinary people for U.N. involvement.\textsuperscript{99} U.N. members have voluntarily signed on to these or even mythical cultural past. We must not be misled by complaints . . . made by repressive regimes.” \textit{Jack Donnelly, Universal Human Rights in Theory and Practice} 119 (1989). See also, e.g., Donald G. McNeil Jr., \textit{Zimbabwe’s Leader Scoffs at Critics of Iron Rule}, \textit{N.Y. Times}, Apr. 27, 1996, at A3 (President Mugabe admitted the country had a multi-party democracy only because of pressure from Western nations, claiming that national unity was a higher priority for a developing society); \textit{Nigeria Ruler Accuses West Of Smears}, \textit{N.Y. Times}, Nov. 18, 1995, at A4 (On the second anniversary of his seizure of power, and a week after executing nine human rights activists, General Abacha called on his people to interpret a “smear campaign” waged by the West as a national challenge.).


98. Henkin argues that “the [U.N.’s] obligation not to intervene applies only to matters within a state’s domestic jurisdiction. By virtue of the U.N. Charter and its aftermath . . . human rights are not a matter of domestic jurisdiction and concern with them cannot be intervention or other impermissible interference.” Henkin, supra note 53, at 62-65.

human rights documents and no credible authority has ever questioned the authenticity of popular demands for U.N. involvement in national political affairs up to this point. Whether a broader or deeper involvement would generate popular opposition remains to be seen. However, my objection to the current U.N. predicates for involvement does not translate necessarily into support for greater U.N. involvement in national politics absent popular demand.

I also advance these arguments with full recognition that the governments that control the U.N. generally have little interest in making significant changes to a present system which prioritizes governmental interests over those of their people. A recent U.N. General Assembly resolution confirms this point by asserting that:

"There is no universal need for the United Nations to provide electoral assistance to Member States, except in special circumstances such as cases of decolonization, in the context of regional or international peace processes or at the request of specific sovereign States, by virtue of resolutions adopted by the Security Council or the General Assembly in each case, in strict conformity with the principles of sovereignty and non-interference in the internal affairs of States..."

This position hardly promotes human rights interests. Rather, it perniciously reifies the principles of sovereignty and non-interference in internal affairs, valorizing the interests of the state at the expense of the people, and thereby tragically ignoring the predominate role of governments in the denial of fundamental human rights to their own citizens. In truth, the resolution was an effort to preserve human rights promotion as an ad hoc U.N. enterprise and to limit collective responsibility for the protection of fundamental human rights for the whole of humanity.

An express U.N. responsibility, unmediated by notions of state sovereignty or self-determination, to intervene in support of human rights through involvement in national elections, should not be automatically filtered through concerns about violations of national sovereignty or conflicts with the primary responsibilities of national governments to protect human rights. While national governments ought to retain primary

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process or maintenance of international peace and security rationale—even as they reaffirm abstract guarantees of international political participation. G.A. Res. 137, supra; G.A. Res. 131, supra. See also G.A. Res. 124, supra. While these resolutions do not per se have binding force under international law, they are strong evidence of the perspectives of many U.N. members.


101. G.A. Res. 124, supra note 99 (respecting the principles of national sovereignty and non-interference in the internal affairs of States in their electoral processes). This resolution was passed with overwhelming support from Third World States while most developed countries voted against it. U.N. DEPT. OF PUBIC ANS, 47 YEARBOOK OF THE UNITED NATIONS, 1993, at 919, para. 4.

102. A major and undoubtedly valid concern of the supporters of the resolution was foreign financing or covert support of some political groups. However, the resolution was tragically insensitive to the history of internal threats to human rights, including democratic governance.
responsibility for ensuring their citizens' human rights, the human rights responsibilities of the global collective cannot depend on requests from national governments or other discredited predicates. The U.N. charter, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights signify a global consensus that a collective responsibility for human rights exists, and democracy clearly has become one of the fundamental rights demanded by people.\textsuperscript{103} Of course, this point does not address the paradoxical question of how an organization composed of governments can act effectively against human rights violations if governments are a major source or party to such violations. In part three, I will develop the arguments on how the U.N. could do more than the sum of its parts.

C. Form Over Substance: Promoting an Impoverished Version of Democracy

[W]e cannot be unmindful of the fact that, while democracy is a necessary condition for the recognition of basic human rights, it is not in itself sufficient to ensure the actual enjoyment of those rights. Indeed, genuine political democracy has little chance to survive, and stability is bound to prove elusive, without social justice. Such justice to be consolidated needs the help of those who can rightly encourage it, though too often, they abandon it just after it has been brought about.\textsuperscript{104}

Not only has an inadequate conceptual foundation for the U.N. electoral missions limited the instances where the U.N. can intervene in support of political participation rights, the U.N. has also generally promoted an impoverished understanding of democracy through its electoral missions. Generally, U.N. electoral missions have been narrowly oriented towards "electoralism" or monitoring and providing technical support for the political campaigns, balloting and vote counting.\textsuperscript{105} Traditionally, the U.N. arrives late in the evolution of an already extant political crisis.\textsuperscript{106} U.N. intervention focuses on the mechanics of legitimizing political power, and

\textsuperscript{103} As Henkin notes, "International human rights agreements ... creat[e] international responsibility for their violation." Henkin, supra note 53, at 59. See also Lois E. Fielding, Taking the Next Step in the Development of New Human Rights: The Emerging Right of Humanitarian Assistance to Restore Democracy, 5 Duke J. Comp. & Int'l L. 329 (1995); Fox, supra note 8; Franck, supra note 11. The consent theory of international obligation offered here could, of course, be undermined where it can be shown that there were very different understandings of the commitments embodied in these instruments or where it can be argued that the consent was obtained improperly. See, e.g., Mutua, supra note 21, at 638-40.

\textsuperscript{104} Statement of the Secretary-General at the Paris meeting of the Conference on Security and Cooperation in Europe (CSCE), Press Release SG/SM/1155 (Nov. 19, 1990), quoted in U.N. Centre for Human Rights, supra note 3, at 1.


\textsuperscript{106} In Burundi, where 150,000 have died in conflicts since 1993, for example, the United Nations has yet to take concrete action. See Burundi at the Edge, N.Y. Times, July 25, 1996, at A22. Nor has the organization formulated a clear position on Nigeria as the largest African nation slides toward disaster. See Friedman, supra note 59.
departs hurriedly, sometimes shortly after television cameras have duly recorded people lined up at the polls, and often before the establishment of even a rudimentary governmental framework.\textsuperscript{107} Surely, promoting democratic governance must mean more than an \textit{ad hoc}, brief incursion into the political life of a country, or seeing a country through its first taste of the ritual of free and fair elections.

If human rights, including the right to political participation, are to be secured from widespread disparagement and denial, the U.N. must promote a conception of democracy that nurtures and protects human rights in all societies. To do so, the U.N. must develop and advance a comprehensive program complementing and enriching the guarantees in the International Bill of Rights.\textsuperscript{108} This program should self-consciously embrace and proceed from a liberal democratic framework.\textsuperscript{109} While there are many voices raising important questions about liberal democracy and diverse attempts to deepen or radicalize it,\textsuperscript{110} the international consensus on its


\textsuperscript{108} My concept of a deepened form of democracy borrows considerably from the radical democratic project advocated by Chantal Mouffe, Ernesto Laclau and others. \textit{See generally} Ernesto Laclau \& Chantal Mouffe, Hegemony and Socialist Strategy: Towards a Radical Democratic Politics (1985); Mouffe, \textit{supra} note 55.

\textsuperscript{109} As Trend points out, the "very idea of a single democracy is a fallacy. Instead democracy serves as a marker for a wide variety of interests, philosophies, [and] political programs . . . ." David Trend, Democracy's Crisis of Meaning, in Radical Democracy, \textit{supra} note 55, at 7, 8. Steiner made a similar observation regarding the reception of democracy at the time the International Convention on Civil and Political Rights (ICCPR) was adopted. Steiner, \textit{supra} note 30, at 89. Nonetheless, liberal democracy forms the standard from which various perspectives of democracy have found their identities. Mouffe, \textit{supra} note 55, at 19-25. Clearly, the idea of democracy that pressed the U.N. into electoral support services is founded upon liberal democracy, emphasizing the "autonomous individual, capable of free choice and motivated by self-interest." Trend, \textit{supra}, at 11; Mutua, \textit{supra} note 21, at 629-33. Both this emphasis and the corresponding belief that mutual cooperation enhances the individual interest are critical to the proposed U.N. human rights project as a means of helping to reduce state domination over individuals. However, certain aspects of liberal democracy should be challenged as part of a program of deepening democracy. For example, the separation of an individualist private sphere from a communitarian public sphere, with the state as a neutral party, has been central to liberal democracy's failure to deal with economic inequality and the exclusion of "others" in society. Trend, \textit{supra}, at 11. The U.N. program must deal with the need to fully democratize the "domestic" as well as "international" private spheres. As Mouffe points out, the embrace of liberal democracy—political liberalism—does not mean endorsement of economic liberalism. Mouffe, \textit{supra} note 55, at 20.

\textsuperscript{110} As an example of a post-colonial critique of liberal democracy and its variants, including radical democracy, see Amarpal K. Dhaliwal, Can the Subaltern Vote?: Radical Democracy, Discourses of Representation and Rights, and Questions of Race, in Radical Democracy, \textit{supra} note 55, at 42-61. Dhaliwal argues that democracy is a construct of modernity that possesses, among other flaws, "complicity[ with] colonial discourses in that its idealized representations are used to argue the superiority of the West." \textit{Id.} at 43.
basic outlines is undeniable. As one scholar puts it, "the ubiquity of democracy can become a way of envisioning global political relations—not merely within nations, but among them as well. This concept of a global democracy becomes especially important in light of the growing concentration of economic relations across sovereign borders." In the long run, a comprehensive U.N. program may obviate or reduce the need for episodic, often controversial electoral involvements, or more drastic actions "to restore democracy," such as the Security Council-authorized United States military intervention in Haiti.

The problem actually, as the quote from the U.N. Secretary-General makes clear, is not a failure to recognize the need for such efforts. Rather, the problem facing the U.N. arises from the clash between the requirements of a serious program for democratic change and the interests of governments and other powerful international actors that profit from a status quo premised on deep and structural political and economic inequities within and between nations. U.N. attempts to reconcile these conflicts between members leave it lacking the leadership to move forward. Concepts such as the sovereignty and equality of states largely sustain these inequities in national and international relations. They allow wealthy nations (and institutions reflecting the priorities of these nations) to displace responsibility for the conditions in poor nations to their sovereign governments.

Even skeptical leftist observers like Trend concede that "the proliferation of democratic societies around the globe is abundantly evident." Trend, supra note 109, at 16. As I argue, the liberal democratic impulse has dominated the United Nations from its inception. Both the Universal Declaration of Human Rights and the ICCPR arguably reflect liberal democratic priorities. See Steiner, supra note 30, at 85-89 (distinguishing between the Declaration, drafted when Western nations dominated the U.N., and the Political Covenant, which came into force when the U.N. diversified). The global trend is clearly in the direction of societies grounded in the liberal democratic tradition. However, unless some of the deficiencies of liberal democracy are confronted, this trend will not last. A deepened conception of democracy will remedy some of these deficiencies. See generally Mouffe, supra note 55.

Trend makes this point while acknowledging, as I do, that democracy is sometimes "deployed to mask foreign intervention and neocolonial expansionism." Id.


Anthony Anghie, for example, has traced the origin of the concept of sovereignty to the colonial encounter between the Spanish and the Indians of the western hemisphere. Anthony Anghie, Francisco de Vitoria and the Colonial Origins of International Law, 5 Soc. & LEGAL STUDIES 321 (1996). In doing so, he demonstrated the malleability of the concept and its role in justifying the subjugation of native communities. His work points to the difficulty of employing "universal" concepts such as sovereignty in the pursuit of the interests and aspirations of the developing countries. Id.

For example, the U.S. hastily retreated from its initial insistence on sanctions against the Nigerian government stemming from the the execution of Ken Saro-Wiwa; instead, the U.S. sent an envoy to "explore the possibility of diplomatic discussions on
substantial freedom from meaningful international sanctions, which enables them to mismanage and exploit national resources and repress their people.\textsuperscript{117} All this can be accomplished without a shadow of external intervention as long as the interests of wealthy nations are not endangered. However, concepts like sovereignty and equality of states have historically offered little protection to less developed nations when important interests of wealthy nations are at stake.\textsuperscript{118}

Other prime beneficiaries of the present international political and economic structure include powerful "private" multinational interests, which hold no particular allegiance to any particular country or specific geographical locale.\textsuperscript{119} In many nations, they are left free to corrupt national leaders, exploit national resources, and essentially evade national controls.\textsuperscript{120} Despite their obvious role in the human rights area, the U.N. has been unable to help restrain these entities.\textsuperscript{121}

Unless these fundamental problems are addressed, the joy marked on the faces of the tired and hopeful masses, casting their ballots for the first time, will soon be replaced by frustration, anger or despair. Some recent actions by the U.N. General Assembly could be read as evidence that the U.N. has begun considering policies and processes that would both expand its ambit of electoral involvement and promote a deepened conception of democracy, thus reducing the need for periodic narrowly structured human rights and democracy." Steven Lee Meyers, \textit{U.S. Opens Quiet Talks with Rulers of Nigeria}, \textit{N.Y. Times}, Aug. 28, 1996, at A9.


\textsuperscript{119} Current conceptions of liberal democracy take these interest groups out of the public or political sphere. As such, civil society, and indeed, most governments, have little or no control over them even when they influence or corrupt the political sphere. A deepened democratic program's major task would be to expand the political sphere to reach these entities, especially through multinational regulation. The activities of multinational oil companies in Nigeria stand as a fascinating example of the need for such regulation. These companies, led by Shell Oil, provide the bulk of money that funds one of the world's most corrupt and brutal regimes. While they claim to have no power to influence a "sovereign country's policies," the regime continues to execute some of their most persistent Nigerian critics. Meanwhile, these companies continue to exploit Nigeria's oil and pollute the country's environment with the protection of the Nigerian "government" and the acquiescence of the international system. See Rob Nixon, \textit{The Oil Weapon}, \textit{N.Y. Times}, Nov. 17, 1995, at A31; see generally Richard J. Barnet & John Cavanagh, \textit{Global Dreams} (1995); William Greider, \textit{One World Ready or Not—The MANIC LOGIC of Global Capitalism} (1997).

\textsuperscript{120} For example, Shell Oil has been accused of complicity, if not outright support, of the violent government crackdowns that led to the eventual execution of Ken Saro-Wiwa. See Lewis, supra note 90.

\textsuperscript{121} The United Nations Conference on Trade and Development (UNCTAD), the one U.N. body which sought to inform the regulation of the global market place with the perspectives of developing countries was threatened with extinction by the world's leading industrialized countries until it discovered the free market ideology. See Mark Tran, \textit{UNCTAD Learns to Love Multinationals}, \textit{Mail & Guardian}, May 24-30 1996, at B4. See generally Incorporating the World, supra note 28.
electoral interventions. One day after the U.N. reaffirmed "that there is no universal need for the United Nations to provide electoral assistance to Member States,"\textsuperscript{122} the General Assembly passed a resolution recommending "that the United Nations . . . provide assistance before and after elections have taken place, including needs assessment missions aimed at recommending programmes which might contribute to the consolidation of the democratization process . . ."\textsuperscript{123} However, these actions could also be more realistically interpreted as further evidence of the confused state of the U.N.'s attitude towards human rights. Even the latter more expansive recommendation retains the limitation on U.N. democratic assistance to requests by governments in power.\textsuperscript{124} That the principle that people deserve only as much democracy as their governments are willing to request—essentially, the international dimension requirement—remains the foundation of current U.N. policy.

In section three, I offer some ideas about how the U.N. can widely promote a deepened conception of democracy, consistent with its human rights responsibilities. I argue that in order for the U.N. to be successful in this mission, it should be transformed to reflect better the interests of the world's inhabitants, unmediated by governments and traditional notions of sovereignty.

The first step in this process, however, should be to locate better justifications for a U.N. policy of involvement in national political affairs, which would generate alternatives to the current requirements of clear international dimension or governmental request. In the next part, I propose that the U.N.'s human rights obligations provide a broad and sufficient rationale for such involvement.

II. The Human Rights Rationale for U.N. Involvement in National Political Affairs

In this section, I argue that: (1) the U.N. Charter, the Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights, provide a firm human rights foundation for U.N. involvement in national political affairs; and (2) these documents support a human rights rationale for broader U.N. involvement, embodying a more progressive vision of democratic governance. Such involvements would be independent of specific requests for electoral assistance by governments or a finding of an international dimension.\textsuperscript{125} In Part III, I maintain that the time is ripe for developing just such a policy which I label "democratic guardianship," consisting of routine, comprehensive and collective democratic involvements, designed to nurture and advance fundamental human rights in all nations.

\textsuperscript{122} G.A. Res. 124, supra note 99.
\textsuperscript{123} G.A. Res. 131, supra note 99 (emphasis added).
\textsuperscript{124} Id.
\textsuperscript{125} Of course, the policy would only apply after the members of the U.N. have considered and adopted it as a body.
A. The U.N. Charter

The constitution of the United Nations, the U.N. Charter, begins with a strong commitment to human rights promotion, prominently featured alongside the post-war goal of preventing future international conflicts and conditions fostering such conflicts.\footnote{126} The Charter's origins lay in the pre-occupation of Allied war time leaders, with "sav[ing] succeeding generations from the scourge of war . . . ."\footnote{127} An overriding concern of the Charter's drafters was to eliminate or reduce the causes and consequences of international conflicts. However, immediately following this eminent post-war goal in the Charter's architecture was an explicit commitment "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women . . . ."\footnote{128}

Human rights scholars trace the origins of modern international human rights law to the horrors of the Holocaust and other Nazi atrocities during the Second World War.\footnote{129} The U.N. Charter was the first step in the "codification of international standards to protect human rights."\footnote{130} The Charter provided the foundation for what was later dubbed the "International Bill of Rights,"\footnote{131} consisting of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, and the Optional Protocol to the Civil and Political Covenant.\footnote{132} The Universal Declaration of Human Rights\footnote{133} can be understood as elaborating the human rights commitments of U.N. members that were only briefly articulated in the U.N. Charter. The two covenants and the Optional Protocol are in many respects more concrete elaborations of the commitments

\footnote{126. U.N. CHARTER pmbl. However, traditional interpretations of U.N. purposes, for example, have adopted a distinct hierarchy with sovereignty and maintenance of international peace goals ranked above human rights. See, e.g., Tom J. Farer, \textit{Human Rights In Law's Empire: The Jurisprudence War}, 85 Am. J. Int'l L. 117, 118 (1991).}
\footnote{128. U.N. CHARTER pmbl. Ironically, the initial draft of the preamble was proposed by Field Marshal Smuts of South Africa. The human rights language of the preamble essentially reflects his proposal. Russell, supra note 127, at 911-18. In addition to its prominence as part of the preamble of the Charter, support for human rights is also featured as one of the general purposes of the United Nations, identified in Chapter I of the Charter. Article 1(3) commits the U.N. "[t]o achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion." U.N. CHARTER art. 1, para. 3. Further expressions of U.N. human rights obligations appear in several other places in the Charter. See U.N. CHARTER, arts. 55, 56. See also Goodrich, supra note 23, at 26-27, 34-35, 370-82.}
\footnote{129. See Frank Newman \& David Weissbrodt, \textit{International Human Rights} 1-3 (1990); Brownlie, supra note 18, at 564.}
\footnote{130. Newman \& Weissbrodt, supra note 129, at 1.}
\footnote{131. See generally \textit{International Bill of Rights}, supra note 66.}
\footnote{132. See id. at 361-403.}
expressed in the U.N. Charter and the Universal Declaration.\(^{134}\)

The U.N. Charter does not contain an explicit right to democratic governance or any form of political participation. However, the Charter's human rights clauses provide the foundation for this important aspect of these fundamental rights.\(^{135}\) While maintenance of international peace and security and self-determination responsibilities have motivated past and current U.N. electoral involvements, recognition of a global responsibility for human rights, rooted in the U.N. Charter, should provide better legal and political justifications for U.N. promotion of political participation through various means, including deepened electoral involvements in independent nations.\(^{136}\) This reading of the U.N. Charter places human rights at center, with the maintenance of international peace and security, and support for self-determination being understood as necessary but not a *sine qua non* for promoting the political participation aspects of human rights.

Getting the U.N. to act forthrightly on its human rights responsibilities has been neither easy nor popular. There has been a strong tendency within the U.N. to treat the organization as essentially an elite club for nation-states, mainly concerned with international conflict management. The interests of "We The Peoples of the United Nations" was long ago subsumed by the needs of member governments.\(^{137}\) These governments, acting in the name of their citizens, have vigorously resisted a meaningful role for the U.N. or the global community in holding states accountable for abusing the rights of these citizens. At the same time, these governments willingly bind themselves to international documents guaranteeing their citizens fundamental rights.\(^{138}\)

The South African Apartheid-era government was one of the earliest examples. For several decades, it objected to U.N. jurisdiction concerning its treatment of non-white citizens.\(^{139}\) Other nations, including many who rejected South Africa's stance and supported U.N. intervention in South

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135. See Beigbeder, *supra* note 5, at 91-110. As Beigbeder points out, if the U.N. had been a league of (liberal) democracies at its inception, many of its members, including the Soviet Union, would not have been eligible for membership. *Id.* at 93. The U.N. Charter promotes the protection of fundamental freedoms without specifically defining them to exclude non-liberal democratic formulations. See U.N. CHARTER arts. 1(3), 13, 55, 56, and 76.


137. U.N. CHARTER pmbl. The United States delegation proposed the "We The Peoples of the United Nations" language to "emphasize that the Charter was an expression of the wills of the peoples of the world." Goodrich et al., *supra* note 23, at 21. The final language of the preamble was modified to reflect that the agreement was between governments while purporting to represent the desires of the peoples of the world. *Id.*

138. The International Covenant on Civil and Political Rights, for example, had 135 states parties as of November 1996. G.A. Res. 2200, *supra* note 134.

Africa, similarly rejected U.N. scrutiny of their own human rights practices. Like South Africa, they did so in the name of national sovereignty. While these countries were adamant about collective Charter-based responsibility to inquire beyond the South African government's assertion of legitimacy and to require confirmation from the South African people through internationally-monitored elections, they objected to similar scrutiny of their own national policies. The core human rights imperative since the founding of the U.N. has been to overcome this pessimistic and pinched vision of the global community and create a world resolutely bound together by shared concerns for human dignity and clear communal responsibility for the defense of fundamental human rights.

An unvarnished recognition of a Charter-derived global responsibility to promote human rights will be an important step toward anchoring the idea of human rights in a substantive conception of the good society. A major task of human rights advocates is to read and apply the U.N. Charter's promises in a manner that rejects a reified understanding of human rights and a valorizing of concepts like sovereignty. Instead, human rights advocates should promote a mature understanding of the intimate connections between the behavior of governments toward their people and their international behavior. Of course, it will be substantially a matter of expediency. What worked against South Africa may take a little more time against the People's Republic of China, for example. Anchoring U.N. electoral involvements in independent countries to the human rights

140. See Friedman, supra note 59 (discussing one instance in which China and Nigeria, two formerly staunch apartheid foes, objected to U.N. intervention in internal affairs).
141. Id.
143. See Morton J. Horwitz, Rights, 23 Harv. C.R.-C.L. L. Rev. 393, 404-06 (1988). A substantive conception of a good society necessarily incorporates a vision of human rights that is much deeper than the present view, requiring collective responsibility to act against socio-economic inequality within and across borders. Under this vision of a deepened or radical democracy, the international community, unlike the classical liberal democratic state, will not be neutral concerning the issue of inequality. However, current U.N. attitudes, by emphasizing the territorial nature of democracy and ignoring the international sources of oppressive governance as well as the role of global and domestic inequality in such conditions, do essentially just that.
144. This remark paraphrases the perspective of a noted American jurist, although offered in a somewhat different context: "It is all a question of expediency. There are no fixed rules to govern our judgment." Palsgraf v. Long Island R.R. Co., 162 N.E. 99, 104 (N.Y. 1928) (Andrews, J., dissenting).
145. The critical move involves addressing the problem in its totality and beginning a comprehensive dialogue. The Cold War era, in a sense, froze the dialogue about the nature of democracy. During that period, the various participants locked themselves into their respective visions and hurled insults and threats against relatively impregnable borders. Now we have the opportunity to push the dialogue forward, starting from the liberal democratic foundation which has proven more resilient and inspirational than its critics had anticipated but yet remains so fundamentally unsatisfying that we could by no means conclude with it. See, e.g., William P. Alford, To Steal a Book is an Elegant Offense (1995); Coombe, supra note 76.
imperative would be a critical step along the path toward a deepened understanding of democracy.

B. The Universal Declaration of Human Rights

The U.N. General Assembly took a major step in constructing a programmatic international scheme for the protection of human rights by approving the Universal Declaration of Human Rights (Declaration) on December 10, 1948. The Declaration contained the first clear expression of United Nations' support for the right to political participation as a key aspect of this comprehensive human rights scheme:

(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 of 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.

The primary reason why this right and the other enumerated rights, were spelled out in the Declaration and not in the Charter itself is well known. Traditionally, the Declaration is understood not to have the same legal effect on states as does the Charter or subsequent human rights covenants. In fact, the United Nations Commission on Human Rights, the arm of the Economic and Social Council which drafted the Declaration, conceded that the Declaration was only a first step in the elaboration of a

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146. G.A. Res. 217(III), U.N. Doc. A/810, at 71 (1948) [hereinafter UDHR]. Some authorities describe this document in almost lyrical terms that:
To this day, it [the Declaration] retains its symbolism, rhetorical force and significance in the human rights movement. It is the parent document, the initial burst of idealism and enthusiasm, terser, more general and grander than the treaties, in some sense the constitution of the entire movement. It remains the single most invoked human rights instrument.

HENRY J. STEINER & PHILIP ALSTON, INTERNATIONAL HUMAN RIGHTS IN CONTEXT 120 (1996).

147. UDHR art. 21. The right of equal access to public service is essentially ignored by traditional U.N. practice except in the context of elections.

148. See STEINER & ALSTON, supra note 146, at 123-24. For example, the human rights provisions of the U.N. Charter have been interpreted by the International Court of Justice to create legal obligations on members of the organization, at least with regard to “a territory having international status.” See Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), 1971 I.C.J. 16, 57 (June 21). See also Egon Schwelb, The International Court of Justice and the Human Rights Clauses of the Charter, 66 AM. J. INT'L L. 337 (1972) (in which the author took a more expansive view of these obligations).

human rights program, that it was not a treaty, and that it did not impose legal obligations.\textsuperscript{150} Clearly, many nations were not ready to make specific internationally binding human rights commitments in 1948. However, this reticence was only temporary for the Declaration quickly became the "spiritual parent of and inspiration for many human rights treaties."\textsuperscript{151} With regard to the right to political participation, the clarity of the Declaration's language, coupled with reaffirmation of the right of political participation nearly twenty years later in the more legally binding International Covenant on Civil and Political Rights (Covenant),\textsuperscript{152} leaves little doubt as to the importance attached to this right by the international community.\textsuperscript{153}

However, U.N. practice has minimized the importance of the Declaration in approving electoral missions to independent countries. Whether there is an international dimension and an invitation from the national government have become the key considerations in determining U.N. involvement.\textsuperscript{154} The commitments U.N. members made in the Declaration and other human rights documents play largely secondary roles, providing standards for evaluating the electoral process after the decision to intervene has been made. Given its special place in the development of an international human rights legal culture and its clear enunciation of the right to political participation, the Declaration should play a more prominent role not only in deciding when to approve electoral missions, but also in shaping a broader program of U.N. involvement in the political affairs of independent nations.

C. The International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights would be the cynosure of an international scheme for expanded and deepened U.N. involve-

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\item[151] Steiner, supra note 30, at 79. Buergental compares the Declaration with the Magna Carta, the French Declaration of the Rights of Man, and the American Declaration of Independence, describing it as a "normative instrument that creates at least some legal obligations for Member States of the U.N." Thomas Buergental, International Human Rights in a Nutshell 30-33 (2d ed. 1995).


\item[153] "Many governments have taken the position that the Declaration defines human rights and fundamental freedoms which members of the United Nations are legally obligated to respect . . . ." Goodrich et al., supra note 23, at 378. The authors argue that some U.N. General Assembly resolutions such as G.A. Res. 1663 (XVI), Nov. 28, 1961, on the racial policies of the South African government, demonstrate support for the position of these governments. Id. at 378, n.42.

\item[154] See supra notes 48-61 and accompanying text.
\end{footnotes}
ment in national political affairs. The U.N. Commission on Human Rights developed a draft of the Covenant at about the same time it completed the Universal Declaration of Human Rights. However, it took the U.N. eighteen years after it approved the Declaration before it adopted the Covenant in 1966. It took another ten years for the Covenant—the world's most comprehensive human rights treaty—to enter into force. One indication of the Covenant's controversial history is that the United States refused to ratify it until 1992. Despite this difficult beginning, the development and adoption of the Covenant, even given the inevitable contingent and contested interpretations of its component guarantees, should be seen as a positive step for those desiring greater substantive protection for oppressed people and an elevated place for human rights in international affairs.

The Covenant moved the broad, often vague aspirational declarations on human rights contained in the U.N. Charter and the Declaration into the realm of more contoured, less reified and less nebulous commitments. It offered something to at least a few lucky individuals who may be allowed a visit from international delegations of human rights bureaucrats or activists as a consequence. Even the state parties that did not subscribe to

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155. See Goodrich et al., supra note 23, at 378-79 (noting G.A. Res. 421 (V), Dec. 4, 1950; 543 (VI), Feb 5, 1952). The U.N. Human Rights Commission had prepared a draft Covenant which it submitted to the U.N. General Assembly at the same time as it submitted the Universal Declaration on Human Rights in 1948. The Assembly had greater problems with the more legally binding Covenant than it did with the more aspirational Declaration, and the latter was more readily approved while the former was sent back for revisions. See Pechota, supra note 152, at 32-40. See also Louis Henkin, Introduction, in THE INTERNATIONAL BILL OF RIGHTS, supra note 66, at 8-11. Among the principal concerns raised about the draft Covenant was the absence of economic, social and cultural rights. Pechota, supra note 152, at 41-43. The U.N. General Assembly later requested that two covenants be prepared: one for civil and political rights and one for economic, social and cultural rights. G.A. Res. 543 (VI), U.N. GAOR, 6th Sess., Supp. No. 20, at 36, U.N. Doc. A/2119 (1952). See also THE COMMISSION TO STUDY THE ORGANIZATION OF PEACE, THE UNITED NATIONS AND HUMAN RIGHTS 59-169 (1968).


157. U.S. ratification was subject to several Reservations, Understandings, Declarations and Proviso. The ratifying resolution focused the concerns on Covenant articles guaranteeing equal protection of the law and "cruel, inhuman, or degrading treatment or punishment." See 138 Cong. Rec. S4781, S4783 (daily ed. Apr. 2, 1992) (printing the U.S Senate's resolution of codification of the International Covenant on Civil and Political Rights and the reservations the Senate's advice and consent was subject thereto).

158. For a less traditional account of one such visit, see David Kennedy, Spring Break, 63 Tex. L. Rev. 1377 (1985).
the Optional Protocol\textsuperscript{159}—created under the Covenant to grant nationals of signatory states the right to bring violations of human rights complaints against their nations before the United Nations—did commit themselves nonetheless to respecting relatively well-enunciated global civil and political rights.\textsuperscript{160} These commitments have been crucial to developing a global human rights culture despite the lack of will to enforce human rights on any consistent basis and other weaknesses in the present global scheme.\textsuperscript{161}

Recent developments in South Africa, Cambodia, and Haiti for example, support this mixed perspective on the state of a global human rights culture.\textsuperscript{162}

The U.N. played a key role in bringing about the positive changes that have taken place in these countries.\textsuperscript{163} Yet, U.N. involvement in all of these countries was predicated on finding an "international dimension" to the problems afflicting them. Thus violations of the guarantees in the Covenant, including the right to political participation, by themselves, were not deemed sufficient to justify U.N. involvement.\textsuperscript{164} Given widespread human rights abuses, including denial of the right to political participation, in many independent countries, it is unacceptable for the U.N. to continue to constrain itself from supporting the fundamental right to political participation in situations lacking an "international dimension." Widespread optimism and acceptance of the global movement for democracy in the post-Cold War era should not obscure the fact that U.N. involvement in this popular revolution has been largely limited by sovereignty-based concerns such as the international dimension predicate and by generally constricted visions of both human rights and democracy.

I argue for an expanded U.N. role in promoting a deepened vision of human rights and political participation with full recognition that reception of such a role for the U.N. depends on whether the organization could truly represent the interests of the "peoples of the United Nations."\textsuperscript{165}


\textsuperscript{160} International Covenant on Civil and Political Rights art. 2.

\textsuperscript{161} See Steiner, supra note 53.

\textsuperscript{162} All three countries have experienced major political changes mediated by a process in which free and fair elections monitored and legitimated by the international community was a central feature. U.N. electoral observer missions played critical roles in these countries. For more on the U.N. electoral role, see the following volumes published by the United Nations in its Blue Books series: The United Nations, The United Nations and Cambodia, 1991-1995 (1995); The United Nations, The United Nations and Apartheid, 1948-1994, supra note 40; see also Lucia Mouat, U.N. Role Grows in Central America, Christian Sci. Monitor, Jan. 7, 1991, at 3; Lucia Mouat, Observers Laud Haiti's Achievement: Election Monitors Say Haitian People Overcame Poverty, Illiteracy, to 'Get It Right' this Time, CHRISTIAN SC. MONITOR, Dec. 21, 1990, at 6.

\textsuperscript{163} See United Nations, The United Nations and Cambodia, supra note 162; United Nations, The United Nations and Apartheid, supra note 40; Mouat, Observers Laud Haiti's Achievement, supra note 162.

\textsuperscript{164} See U.N. Centre for Human Rights, supra note 3.

\textsuperscript{165} U.N. CHARTER pmbl. This is not to suggest that the category of peoples is unproblematical. On the contrary, figuring out which communities constitute various "peoples" would be anything but easy. However, this is a welcome and necessary part of
not just those of the governments of the United Nations or even worse, of just some of those governments. In Part III, I will elaborate on the qualities of a deepened vision of human rights and democracy and on how the political participation guarantees of the Covenant would constitute the heart of this vision.

III. Expanding and Deepening Human Rights: “Democratic Guardianship” as U.N. Policy

But the aspirations of the human rights movement reach beyond the goal of preventing disasters. The movement also has a ‘utopian’ dimension that envisions a vibrant and broadly based political community.

Henry Steiner

With the Cold War's end, the U.N. is in a position, consistent with progressive global sentiments, to reinterpret and broaden its mandate to support human rights across sovereign borders. Arguably, there is a decreasing chance for significant conflicts between major powers over U.N. human rights interventions. Human rights scholars, for example, are writing more optimistically about the U.N.'s potential role in promoting democracy. There is wide agreement that democratic governance, at least as defined by the right to political participation, including free and fair elections, is a key component of the International Bill of Rights.

The U.N. should orient its policies and practices to more actively support the human rights aspirations and prescriptions contained in the U.N. Charter and the International Bill of Rights. Its reticence about breaching national jurisdictional lines and becoming enmeshed in the politics of

a deepened vision of democracy: a recognition of the possibilities of multiple identities and complex interactions. Moving from a state-centered system to a “peoples”-centered one does not signify the end of politics.

166. Steiner, supra note 53, at 931.

167. For example, even though the U.N. failed to act effectively to prevent gross violations of human rights in the former Yugoslavia and in Rwanda, there is widespread support within the U.N. for the War Crimes tribunal established to prosecute leaders and others who encouraged or carried out violations of international law. See M. CHERIF BASSIOUNI, THE COMMISSION OF EXPERTS ESTABLISHED PURSUANT TO SECURITY COUNCIL RESOLUTION 780: INVESTIGATING VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW IN THE FORMER YUGOSLAVIA (1996). See also Nigerians Protest, supra note 1 (illustrating the sentiment that the U.N. should broaden its role).

168. China appears to be the only major power at present with a seriously diverging perspective on U.N. involvement in national political affairs. See Friedman, supra note 59; HUMAN RIGHTS WATCH, supra note 47, at 140-52. Of course, the depth of Russia's support for such involvement is difficult to gauge as it deals with its own “domestic” political situation. On Russia's unstable situation, see id. at 277-34. China's generally hostile attitude toward such U.N. involvements could raise significant obstacles for the program advocated in this Article. A major aspect of the program, however, is an appreciation for ongoing engagement with all perspectives. It seems that much of China's concerns have to do with how ideas like democracy could mask imperial ambition. The dialogue and reciprocity advocated by the project of democracy guardianship should help deal with the concerns of countries like China.

169. See Fielding, supra note 103; Hodgson, supra note 82; Stoelting, supra note 3.

170. See Franck, supra note 11.
independent nations should be abandoned. The considerable experience obtained by the U.N. from its decolonization and post-independence elections-monitoring missions should be utilized to develop and nurture democratic governance in independent nations. It is important, however, that this U.N. policy apply to all nations and not just to those whose governments have been pressured by particular circumstances to extend invitations to the U.N. for limited electoral missions. Such a policy, outlined in the remainder of this Article, can be described as democratic guardianship.

A. "Democratic Guardianship" Outlined

Democratic guardianship, as envisioned in this Article, would be a comprehensive, coordinated, routine, and non-forcible U.N. program to develop, sustain and promote democratic governance in the fullest sense. Democratic guardianship opens space for an expanded and deepened practice of democracy unconstrained by rigid distinctions between the domestic and foreign, or politics and economics. Instead of rejecting liberal democracy, democratic guardianship would build upon liberal democratic ideals or myths to argue for more communal, proactive, and sustained national and international responses to the fundamental collective interests of humanity.

U.N. democratic guardianship complements the doctrine of collective humanitarian intervention, and it is just as defensible. Humanitarian intervention, particularly when authorized by the U.N., is the primary exception to the principle of non-interference in domestic affairs of sover-

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171. See Stoelting, supra note 3, at 372-73.
173. Nelson Mandela in his autobiography captured the power of these ideals when he cited the Atlantic Charter of 1941 as a source of inspiration for anti-apartheid struggle. For Mandela, the Charter "reaffirmed faith in the dignity of each human being and propagated a host of democratic principles." See NELSON MANDELA, LONG WALK TO FREE DOM 83 (1994). See also, DAHL, supra note 25; Franck, supra note 11.
174. Liberal democracy has already won the hearts and minds of the masses in the Third World because of its clear articulation of people's concern vis-à-vis the nation-state. By acknowledging this triumph, it might be possible to rectify some of liberal democracy's failures, especially concerning "private" economic power and its veneration of the sovereign state. See, e.g., LACLAU & MOUFFE, supra note 108, at 176. Dahl touches on the issues raised by "the myth of the autonomous democratic state," and how changes in scale affect "the capacity of the citizens" to control matters at a national, as opposed to a transnational, level. See DAHL, supra note 25, at 3-5, 319-21.
As such, the idea of democratic guardianship might conjure up negative connotations, bringing up memories of the Reagan Doctrine and George Bush's "New World Order." However, unlike such previous efforts at American or Western hegemony, democratic guardianship should reject unilateral interventions by powerful nations to remove governments they deem unfit. Nor would democratic guardianship embrace even U.N.-approved interventions of a similar sort, such as the removal of the Cedras government in Haiti. Indeed, while it shares the human rights pedigree of humanitarian intervention, democratic guardianship is distinct, being narrower in its means but broader in its scope than humanitarian intervention. It would be narrower in the sense that it would not in itself justify armed interventions to remove a government. It would be broader in the sense that it would actively and routinely apply the same type of scrutiny to all countries, promote the widespread dissemination of information, and provide material support to civil society in every country.

The present trend within the U.N. is to institutionalize support for selective electoral involvements while programs enhancing a broader vision of human rights remain undeveloped and scattered. A U.N. policy of democratic guardianship would benefit from institutional resources, limited though they are, that already support ad hoc involvement in free and

176. Other established exceptions include interventions to protect the lives or property of nationals abroad, and counter-interventions. See Derek W. Bowett, *The Use of Force for the Protection of Nationals Abroad*, in *The Current Legal Regulation of the Use of Force* 39 (Antonio Cassesse ed., 1986). Counter-intervention is often cited in conjunction with the right of collective self-defense by states who claim their intervention is in response to prior intervention, or to enforce the principle of non-intervention. See Oscar Schacter, *The Right of States to Use Armed Force*, 82 Mich. L. Rev. 1620 (1984). A few scholars have suggested various other justifications for uninvited interventions—to support wars of national liberation, to control the spread of nuclear weapons, to control dwindling resources, to assist one faction in a civil conflict, etc.

177. The Reagan administration's destabilization campaigns against Angola and Nicaragua, and the U.S. invasions of Grenada and Panama to replace unfriendly governments all serve as examples of this type of unilateral intervention.

178. See Fielding, supra note 103.

179. Some commentators have advocated a form of democratic intervention, generally described as "pro-democratic" intervention, or intervention to "restore democracy." See Fielding, supra note 103, at 343; David J. Scheffer, *Toward A Modern Doctrine of Humanitarian Intervention*, 23 U. Tol. L. Rev. 253, 292 (1992). This type of intervention is generally justified as a form of humanitarian intervention. Though it shares similar aims as the policy of U.N. democratic guardianship discussed in this Article, it is too narrowly focused on the exceptional cases. Democratic guardianship as advocated here allows for ongoing, collective, in fact routine, actions to build, sustain and promote human rights, including democratic governance in all communities.

fair elections.\textsuperscript{181} In particular, the U.N. Centre for Human Rights and the newly created position of High Commissioner for Human Rights could respond to the need for better coordination of U.N. human rights programs.\textsuperscript{182} However, democratic guardianship will require the U.N. to seek broader support and develop constituencies within and outside the U.N. system. The International Labour Organization (ILO), for example, already uses well-developed mechanisms for bringing together representatives of government, labor, and industry to change working conditions within countries.\textsuperscript{183} The United Nations Conference on Trade and Development (UNCTAD) has functioned as a forum for examining the role of multinational enterprises in developing countries.\textsuperscript{184} Numerous human rights non-governmental organizations have engaged in elections monitoring and other democratic governance projects. Democratic guardianship would promote close collaboration among these institutions—a hybrid mix of the public and private, the local, the national and the multinational—to deepen the democratic imperative.

Democratic guardianship should be routine in the sense that it will be ongoing in every country, not just a few generally Third World countries deemed as problem cases. The point would be to make the process ordinary instead of exceptional. Democratic guardianship would not be predicated on crises that meet some vague, indeterminate international dimension or threat to international peace and security criterion. Even countries with established systems of governance and free of starving populations or persistent violent rebellions could benefit from U.N. democratic guardianship.\textsuperscript{185}

\textsuperscript{181} See U.N. CENTRE FOR HUMAN RIGHTS, supra note 3.
\textsuperscript{182} As yet, the High Commissioner has little more than moral authority. See Moral Voice, supra note 180, at 46-47. See also Vienna Declaration and Programme of Action, supra note 38.
\textsuperscript{183} The considerable experience of the International Labour Organization (ILO) in working across the public/private and the national/international divides to obtain concrete, albeit modest, results should be valuable in constructing a system of democratic guardianship. See Francis Wolf, Human Rights and the International Labour Organization, in HUMAN RIGHTS IN INTERNATIONAL LAW 273 (Theodor Meron ed., 1984); David M. Trubek, Economic, Social, and Cultural Rights in the Third World: Human Rights Law and Human Needs Programs, in HUMAN RIGHTS IN INTERNATIONAL LAW, supra, at 205, 231-42.
\textsuperscript{185} Undoubtedly, both the U.S. and countries with less stable political systems would benefit from a more openly reciprocal practice. It should not be presumed that less stable societies have nothing to teach the U.S. about democracy and human rights generally. At present, the U.S. is frequently charged with promoting a double-standard and using the rhetoric of human rights and democracy to humiliate or undermine disfavored governments. See, e.g., Barbara Crossette, Snubbing Human Rights, N.Y. TIMES, Apr. 28, 1996, sec. 4, at 3. Coupled with historic U.S. reluctance to bind itself to international human rights documents, this charge has seriously impeded the advancement of human rights. See STEINER & ALSTON, supra note 146, at 750-65 (surveying various perspectives on U.S. responses to international human rights treaties). A more openly reciprocal system, promoted under democratic governance, in which those who claim to be democratic are subjected to the same standards as those who are not considered sufficiently democratic should help to spur a more productive global dialogue about the
B. Article 25 of the ICCPR as the Heart of Democratic Guardianship

To develop and implement a program of democratic guardianship, the U.N. should build upon the work it has done in its electoral missions. In this regard, the U.N. faces two major challenges: (1) developing international consensus on the interpretation and implementation of elements of the political participation right that are still controversial; and (2) expanding the application of these political standards to those societies that so far are deemed outside the scope of its electoral interventions.

Article 25 of the Covenant, which has provided the foundation for U.N. election monitoring standards, would similarly be central to implementing a U.N. program of democratic guardianship. Most of its elements and principles have almost universal support.\textsuperscript{186} I will briefly review the settled as well as the controversial aspects, noting their implications for a program of democratic guardianship. Reaffirming the Declaration's right to political participation, Article 25 of the Covenant states:

\begin{quote}
Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:
\begin{enumerate}
\item To take part in the conduct of public affairs, directly or through freely chosen representatives;
\item To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
\item To have access, on general terms of equality, to public service in his country.\textsuperscript{187}
\end{enumerate}
\end{quote}


\textsuperscript{187} International Covenant on Civil and Political Rights (ICCPR) art. 25, Dec. 16, 1966, 999 U.N.T.S. 171. The article 2 distinctions referred to by article 25 include "... race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." See id. art. 2 (1). Article 25 is only one of several articles in the Covenant designed to broadly advance political participation rights. See also Articles 19 (freedom to hold opinions and freedom of expression), 21 (right of peaceful assembly), and 22 (freedom of association). Id. arts. 19, 22. See also Article 1 ("All peoples have the right to self determination"). Id. art. 1. Thomas Franck, for example, has argued that "Self-determination is the historic root from which the democratic entitlement grew." See Franck, supra note 11, at 52. This Article cautions against this view and suggests that the central focus of the Wilsonian concept of self-determination on the rights of peoples or groups is fundamentally antithetical to the interests of individuals as global citizens, the underlying theme of present day international efforts to define human rights as universal, indivisible and interdependent. See, e.g., Amnesty International, Amnesty International Report 1994, at 31-33 (1994).
One commentator has interpreted Article 25 as containing essentially "three principal guarantees: non-discrimination, the right to participate in public affairs, and the right to free elections." An alternative, but not altogether inconsistent interpretation of Article 25, would consider the qualified non-discrimination requirement in the umbrella clause of the article as a general yardstick by which the attainment of the following three substantive guarantees of the Article are to be measured: (a) the right to take part in the conduct of public affairs, (b) the right to vote and to be elected, and (c) the right to have access to public service.

The non-discrimination requirement of Article 25 is not absolute. First, the rights guaranteed in Article 25 are expressly reserved to citizens. Second, Article 25 recognizes two classes of distinctions even among citizens. The first class consists of distinctions already prohibited in general under Article 2 of the Covenant: "... race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." The distinctions of the second class are those which may be taken into account in implementing the elements of the right to political participation. These distinctions are not specified, but they may

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188. See Fox, supra note 8, at 553. Fox does not deal with Article 25(c) which guarantees the right "To have access, on general terms of equality, to public service in his country." ICCPR, supra note 186, art. 25(c). He considers this provision to be "in effect, a specialized non-discrimination clause." Id. at 553 n.59.

189. The issue of who is or could be a citizen should benefit from reconsideration under a democratic governance program. Traditional U.N. practice hardly deals with the complexities regarding citizenship raised in a world of multiple citizenships and residences, increasingly connected and disconnected by technology or the lack thereof, and without much regard for geographical boundaries. Democratic guardianship would expose some of the false assumptions behind such an essentialist category, and open up space for deeper participation in world affairs by all people. Africa, for example could benefit tremendously from such a reconsideration. Predominantly Western-trained elites came to power in former colonies after the formal departure of European colonial authorities. These elites held on to the rhetoric of an "African people," even as they entrenched the most fundamental of foreign import, the nation-state, with its long and ignoble record of ruthlessly separating and tearing apart pre-colonial African communities. See generally Basil Davidson, The Black Man’s Burden: Africa and the Curse of the Nation-State (1992); see also Wole Soyinka, The Open Sore of a Continent 109-43 (1996). The net result today is that there is no "African people," outside of the fantasies of entrenched elites and the dwindling number of pan-Africanists in the diaspora. See, e.g., Makau Wa Mutua, Putting Humpty Dumpty Back Together Again: The Dilemmas of the Post-Colonial African State, 21 BROOK. J. INT’L L. 505 (1995). On the contrary, few states could even maintain unity without the monopoly of force represented by governments. African leaders have been woefully uncreative in responding to the multiple identities of Africans, holding on to a rigid and, so far, unappetizing Western conception of citizenship. One lesson of liberal democracy has been the intensely manipulable nature of the citizenship category, used primarily to exclude others while building solidarity embracing the concept, "we." There is no magic to it.

190. ICCPR, art. 2 (1) states:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
be made as long as they are not unreasonable. It is generally accepted, for example, that restrictions on the franchise based on age, mental illness, criminal conviction, and residency are not unreasonable. Therefore, these distinctions do not constitute discrimination under the Covenant.

The right to participate in public affairs and the right to have access to public service have additional qualifications beyond the allowance of reasonable restrictions. The former may be exercised either directly, or through "freely chosen representatives." The latter specifically requires only "general terms of equality." These two rights, however, have received less scrutiny than the right "[to] vote and to be elected ...."

The right to vote and to be elected has been interpreted to be a guarantee "that elections will be held and they should be free, without coercion or pressure." Several decades of varied practices among signatory States to the Declaration and the Covenant illustrate different and conflicting interpretations that have been accorded to this guarantee. One major disagreement has been over the significance of political parties in assuring "free and fair elections."

Many of the original parties to the Political Covenant insisted that the exercise of these rights required a political climate allowing for more than one list of candidates, that is, multi-party elec-

Id.

191. Fox, supra note 8, at 554.
192. The traditional unproblematic treatment of these exceptions would not persist under democratic guardianship. Experience has shown the extreme indeterminacy of these categories. Recall, that many people were judged insane or found guilty of serious crimes for opposing the former Soviet regime. Sexual orientation could lead to criminal convictions or loss of rights in many countries. Concerning age restrictions, in many countries, children work long hours or even fight in wars even as they are denied a role in the political process. See generally Victoria Brittain, Army of Children Fight Adult Wars, THE GUARDIAN, Nov. 1, 1996, at 16; Steven Lee Meyers, Clothing Makers Taking Steps to Limit Child Labor Abroad, N.Y. TIMES, Oct. 21, 1996, at A10. Mass migrations, the treatment of immigrants in many developed countries, the increased mobility of the techno-class, and indeed the creative political arrangements in Bosnia have also raised serious questions about traditional conceptions of residency. See SASKIA SASSEN, LOSING CONTROL?: SOVEREIGNTY IN AN AGE OF GLOBALIZATION (1996); Michael Hill, As Rwandan Refugees Head for Home, Camp Turns into a Ghost Town, BALTIMORE SUN, Nov. 18, 1996, at 8A; Laura Kay Rozen, For Bosnians, a Jobless Peace: Economy Struggles to Revive, CHRISTIAN SCI. MONITOR, Nov. 20, 1996, at 9; Colin Woodard, Few Welcome Mats out for Bosnia's Refugees, CHRISTIAN SCI. MONITOR, Sept. 26, 1996, at 6. See also Karl Josef Partsch, Freedom of Conscience and Expression, and Political Freedoms, in THE INTERNATIONAL BILL OF RIGHTS, supra note 66, at 238; Fox, supra note 8, at 554.
193. ICCPR art. 25(a). A proposal that all organs of authority be chosen through direct elections was rejected, thus neither indirect election of one chamber of a parliament or a chief executive nor appointment of officials is prohibited. See Partsch, supra note 154, at 239. The right to vote and be elected is an aspect of the right to participate in the conduct of public affairs. Id.
194. ICCPR art. 25(c). This issue is particularly troubling in societies like South Africa and Haiti where the unequal distribution of wealth is longstanding but the right to vote is recent. See WILLIAM MINER, KING SOLOMON'S MINES REVISTED (1986); SOUTH AFRICAN INSTITUTE OF RACE RELATIONS, RACE RELATIONS SURVEY, 1993/94 (1994); HUMAN RIGHTS WATCH, supra note 47, at 47-51, 100-06.
195. ICCPR art. 25(b).
196. Partsch, supra note 192, at 240.
197. Fox, supra note 8, at 556-57.
tions.198 Others insisted that the right could just as well be protected in one-party societies.199 Advocates of the latter view asserted that many societies—because of their history, demography, or stage of economic and social development—are better served when the socio-political divisions that multiple political movements encourage are avoided.200 In support, they argue that it would be quite possible for a single political party to encompass a broad spectrum of views and positions.201

While this debate may still have resonance at the theoretical level, time is on the side of those who interpret Article 25 as incompatible with one-party politics. The number of parties to the Covenant defending the one-party option has dwindled considerably in recent years.202 While the fall of communism in Eastern Europe played a major part in this decline of support for legitimizing one-party elections, strong U.N. support for multi-party elections—on those occasions when it has engaged in election administration, support or monitoring—has also been a significant factor.203 It should be acknowledged, however, that the U.N., as an entity, has not forthrightly advocated the position that one-party elections are incompatible with Article 25 of the Political Covenant.204 A U.N. democratic guardianship program would encourage open dialogue on the significance of political parties in the development of a democratic society. To the degree that one-party systems signify the limitation of choice—including the choice not to choose from among the options presented within the one-party system—they are clearly violative of the liberal democratic foundation of democratic guardianship.

The meaning of “equal suffrage” has also provoked some disagreements. A major dispute has been over whether it requires proportional representation or allows for a winner-take-all system.205 Supporters of a

198. Western nations have long maintained that multi-party elections are necessary for “genuine choice.” Id.
199. Id.
200. Id.
201. Tanzanian President Julius Nyerere stated that “in the 1960’s . . . the existence of multiple political parties was not a prerequisite to genuine electoral choice.” See Fox, supra note 67, at 556-57. In the USSR, Communist Party leaders argued that the party was capable of protecting the interests of all the people. Id. at n.75.
202. See Franck, supra note 11, at 47. According to Professor Franck, “As of late 1991, there are more than 110 governments, almost all represented in the United Nations, that are legally committed to permitting open, multiparty, secret-ballot elections with a universal franchise.” Id. at 47. This number, of course, changes on an almost regular basis since many Third World governments are threatened by, and sometimes succumb to, military coups. See also supra notes 31-33 and accompanying text (discussing U.S.-Cuba dispute).
203. See Fox, supra note 8, at 560.
205. For example, the United Kingdom objected to the term “equal suffrage,” fearing that it would involve “the institution of some form of proportional representation.” U.N.
majority winner-take-all system argue that "equal suffrage" means only that everyone has the same voting power, without implying that each vote should be guaranteed equal effect in some kind of proportional representation system.\textsuperscript{206} This argument appears to have been strengthened by state practices over time.\textsuperscript{207}

There have also been relatively minor disagreements over the meanings of other terms and phrases describing the right to vote and to be elected. For example, some parties to the Covenant took issue with the requirement of a secret ballot, arguing that it disadvantaged their illiterate citizens.\textsuperscript{208} Other parties expressed concern over permissible exceptions to the "universal . . . suffrage" requirement.\textsuperscript{209}

U.N. practice, evidenced by the record of many of its electoral missions, has tracked the interpretations outlined above and helped to bring greater clarity to the meanings of the various components of the right to political participation, especially that of free and fair elections.\textsuperscript{210} By adopting a clear and firm position on the interpretation of many of these components, this U.N. practice has aided the process of clarification and


\textsuperscript{207} Partsch argues that "[e]qual suffrage means that everyone has the same voting power, it does not imply that each vote has the same effect." Partsch, supra note 192, at 240.

\textsuperscript{208} Current debates in the U.S. over so-called minority districts, created in large measure to increase minority representation in the U.S. Congress, and the Supreme Court's deep division over the constitutionality of such districts, indicate continuing sharp divisions on the equal suffrage issue. See Shaw v. Reno, 509 U.S. 630 (1993). See also Brenda Wright, The Myths Behind Shaw v. Reno, COMMITTEE REPORT (Lawyers Committee For Civil Rights Under Law, New York, N.Y.), Vol. 5, No. 5 & 6, 1993, at 1. A major goal of many supporters for the redrawing of voting districts was to remedy historic underrepresentation of minorities in Congress. Opponents, at the core, rejected the idea that certain minority groups have representational needs that could not be satisfied by traditional winner-take-all politics. See generally Gutierrez, supra note 185. South Africa, on the other hand, is an example of a preference for proportional representation, with open acknowledgement that some minority groups might have representational needs that deserve recognition. The interim constitution in fact allowed for the two leading minority parties to be given a number of positions in the cabinet of the interim Government of National Unity. The leader of one, F.W. De Klerk, was one of the country's two deputy presidents until he resigned in May, 1996. See S.A. CONST., §§ 40 (1), 48, 84 (1), (2), and 88 (2), (3).

\textsuperscript{209} A secret ballot could be carried out only if the voters were able to read and write. Illiterate people would thus be excluded from voting and suffrage would no longer be universal." U.N. GAOR 3rd Comm., 3rd Sess., 132nd mtg. at 450 (1948) (remarks of Haitian delegate Mr. Saint-Lot); "[I]lliterate people could only participate in an open vote." Id. at 455 (remarks of Guatemalan delegate Mr. Garcia Bauer). But see U.N. GAOR 3rd Comm., 3rd Sess., 133rd mtg. at 463 (1948) (remarks of Soviet delegate Mr. Pavlov: "The declaration could not be based on the conditions prevailing in countries where illiterates were in the majority.").

\textsuperscript{210} The U.K., for example, objected to the term "universal" on the ground that it was "redundant in view of the opening words of this article." U.N. GAOR 10th Sess., Annexes, U.N. Doc. A/2910 and Add.1 at 7. The U.S.S.R. also objected to any qualifications based on property or level of income. See U.N. GAOR 3rd Comm., 3rd Sess., 133rd mtg., at 463, U.N. Doc. A/C.3 SR.133 (1948).
contributed to the strengthening of human right values. As such, while there can be scholarly debates over whether free and fair election require party pluralism, literacy standards, or proportional representation, for example, U.N. practice has led to implementing standards for each of these components that are now almost routinely followed.\textsuperscript{211} For example, U.N. practice has come down squarely on the side of party pluralism, weakening the assertion that one-party democracies are consistent with the right to free and fair elections.\textsuperscript{212} At a minimum, the practices of the U.N. send an uncomfortable message of disapproval to the leaders of the dwindling number of one-party states.

The U.N. has also strongly promoted a broad interpretation of the "universal and equal suffrage" component of the free and fair elections guarantee.\textsuperscript{213} Virtually all U.N. electoral missions have encouraged and facilitated the return of refugees and exiles prior to the elections.\textsuperscript{214} In keeping with its strong support for making the franchise as widely available as possible, U.N. practice also encourage very liberal voter eligibility and registration requirements.\textsuperscript{215}

U.N. electoral missions in support of the right to political participation provide a pathway to deeper international intervention on behalf of democracy and social justice. The right to political participation is an important building block of an international system which will help guard democratic gains. While political participation does not by itself signify democracy or guarantee social justice, it is undoubtedly seen by most of those working against oppression as a critical part of any democratic or social justice framework.\textsuperscript{216}

The standards tested in the decolonization and "international dimension" contexts must now be enriched and put to service on behalf of all people. No government should escape the scrutiny of international involvement in domestic political processes. There are tremendous benefits to making this involvement routine and reciprocative—to foster two-way exchanges between citizens of established democracies, like the United States and those of emerging democracies.

C. Objections to Democratic Guardianship as U.N. Policy

There would certainly be many objections, from both the left and right, to an expanded U.N. role in promoting and sustaining democracy in independent countries. The principal opposition would likely come from

\textsuperscript{211} See U.N. CENTRE FOR HUMAN RIGHTS, supra note 3, at 4-18.
\textsuperscript{212} Id. at 12-13.
\textsuperscript{213} Id. at 10-11. UDHR, art. 21 (3); ICCPR, art. 25(b).
\textsuperscript{214} See, e.g., UNITED NATIONS, THE UNITED NATIONS AND APARTHEID, supra note 40, at 95-97, 115-19 (on the return of refugees and the U.N.'s mandate).
\textsuperscript{215} Id. See also U.N. CENTRE FOR HUMAN RIGHTS, supra note 3, at 10-15.
\textsuperscript{216} One African scholar puts it this way: "It is now quite clear that without democracy, there can be no accountability, and without popular participation and accountability, there can be no genuine and sustainable development." Bade Onimode, \textit{A Critique of Structural Adjustment Programmes and a Proposal for an African Alternative}, \textit{Third World Econ.}, Jan. 16-31, 1992, at 12, 16.
governments and other powerful public and private defenders of traditional notions of sovereignty. In addition, Third World nationalists, in and outside of governments, fearful that an expanded and intrusive U.N. mandate would further strengthen foreign (Western) domination, would likely prevent strong opposition.

Opposition should also be expected from many in the West who may not object to the U.N. sending democratic guardianship delegations to Third World or formerly socialist countries, but would be scandalized by the effrontery and cost of dispatching similar missions to Alabama, Quebec, or Wales. Moreover, a more substantive interpretation of democratic governance that challenges dominant Western assumptions and deeply-held beliefs would likely create strong objections from many quarters. In particular, efforts to bring democracy to the private sector, that is, to make economic matters more political, or to democratize international relations should be expected to generate intense opposition. In the next section I argue that efforts to expand and deepen democracy are necessary despite these objections, given the importance of breaching the barriers national boundaries create to human relations and social justice within and across national lines.

D. Responses to Objections: Reimagining “We the Peoples”

Viewed from the outside, however, the Charter’s chief defect is that it is exclusively an interstate organization . . . If one of the purposes of Charter reform is the enhancement of programs such as human rights and the environment, then an instrumental goal should be a larger role for individuals and groups not affiliated with states. The ‘deadest letters’ in the U.N. Charter are in its very first words: ‘We the Peoples of the United Nations.’

W. Michael Reisman

It is important to emphasize that requests for U.N. involvement in national elections usually emanate from demands of those who lack state power and fear the power of the state, or from those who are unafraid of the will of the voters in any plebiscite. At present, it would be remarkable to find oppressed people in any part of the world who do not want some international involvement in the conduct of national elections.

217. Steiner & Alston, supra note 146 (citing W. Michael Reisman, Amending the U.N. Charter: The Art of the Feasible, A.S.I.L., Proceedings of the 8th Annual Mtg., 1994 (1995)). Those of us who endorse the sentiments expressed above must acknowledge, however, that no popular referendum of the “peoples” of the world preceded the adoption of the U.N. Charter. On the contrary, it was conceived in wartime largely by elitist diplomats, academics, and opinion-leaders, who properly saw it as a constructive response to the global catastrophe that was the Second World War. Its creators by and large never saw it as a substitute to national power or as a precursor to global federation. On the origins of the U.N., see Hilderbrand, supra note 107.

218. See Nigerians Protest, supra note 1.

219. In my experiences in Haiti and South Africa, I met few voters who did not embrace the presence of international observers. See, e.g., Lawyers Committee For Civil Rights Under Law, Final Report on South African Elections (1994). Generally, the few objections emanate from defenders of the status quo, or alienated intellectuals concerned about the indeterminacy and manipulability of liberal democratic ideals and
The growing demand for U.N. electoral involvements signify the development of a global consensus on human rights as interdependent, indivisible and universal. This should be seen also as an increasing rejection of notions of sovereignty and domestic jurisdiction as fixed, impermeable or indivisible.

Requests for international electoral involvements should be seen as the triumph of a more progressive understanding of the United Nations—a body not only fostering the peace and security of member states, but also pro-actively engaged in advancing global human rights. Expanding the human rights role of the U.N. properly complements its expanded role in the maintenance of international peace and security in the post-Cold War era. Human rights promotion is entirely consistent with the U.N.'s historic interpretation of Article 2(7) of the U.N. Charter. The integral connections between human rights and international peace have been well recognized, therefore, and need not be belabored here. What has taken a little longer to gain broad acceptance is the importance of timely U.N. intervention in domestic political processes before problems arising from failures in such processes threaten human rights and international peace and security.

Each new instance of U.N. involvement in national politics helps further erode artificial barriers separating groups of human beings into "separate, competitive, and minimally cooperating sovereign states . . . ."
thereby creating opportunities for a creative and humane reconsideration of our present world order. There hardly can be clearer demonstrations of support by people in oppressed societies for an external, supra-national entity to which they can turn for support when their domestic institutions have failed them than an embrace of international participation in their national elections.

The popular endorsement of international participation in domestic political processes has generated a high level of participation in international electoral missions from diverse national and international non-governmental organizations (NGOs). Many of these organizations work closely with the U.N. The NGOs are a critical part of a growth industry committed to marketing the liberal democratic model to countries newly liberated from oppressive leadership and desperate to attract western investment. This growth industry follows in the wake of a remarkable tide of movements and leaders who have (re)discovered the seductive language of liberal democracy and, at least in public pronouncements, accept the dominant Western interpretations of universal human rights guarantees. While one could remain skeptical of the depth and duration of this new-found “religion,” it is difficult to discount its potency. For those convinced of the inadequacy of liberal democracy in dealing with fundamental socio-economic issues dividing the world, a better strategy might be to employ the energy and enthusiasm generated by liberal democratic principles in support of a comprehensive examination of socio-economic relationships, within and across national boundaries.

Support for such a comprehensive reexamination of socio-economic relationships could come from those who have been part of the “business” of elections verification, either directly on behalf of the United Nations or as employees or volunteers for human rights NGOs. These individuals constitute a new corps of international human rights advocates who have established close working ties transcending national boundaries. While deeply suspicious of the roles of the major powers and the U.N. bureaucracy, these human rights workers are also cognizant of the U.N.’s tremen-


226. This point is underscored by the responses of many countries to the 1991 military coup against the Aristide government in Haiti’s. Many of the governments that condemned the coup and urged international effort to restore democracy in Haiti—Cuba, Cote d’Ivoire, and Zaire, for example—have been strongly criticized for not living up to democratic standards. See U.N. Security Council, Provisional Verbatim Record of the Three Thousand and Eleventh Meeting, U.N. Doc. S/PV. 3011 (1991).
dous possibilities for aiding the development of democracy and human rights. However, given the option to start afresh, many might suggest a type of vehicle very different from the U.N. for advancing global human rights. Given the commitments represented by the U.N. Charter and the resources already expended to make the U.N. system more cognizant of its human rights responsibilities, it would seem more sensible to focus on improving the U.N. role. It is for this reason that in June 1993, human rights advocates argued in Vienna for the universality, objectivity, non-selectivity, interdependence and equality of rights; it is also the reason why in September 1995 advocates travelled to Beijing to affirm that "women's rights are human rights."227

Conclusion

Human rights advocates understand from experience that complete protection for all comes only from a recognition that every human being has a vested interest in seeing that no one's fundamental human rights are violated behind a shield of "national sovereignty" or "domestic jurisdiction."228 Human rights advocates insist that the U.N. act as a representative of both popular and governmental interests, with a direct responsibility to the "peoples of the United Nations,"229 a responsibility that ought not be subject entirely to the desires of those who claim sovereign control over people.

There is still, however, considerable support for shielding from international scrutiny the manner in which the citizens of a country choose their government. The U.N. charter and many other international legal documents are replete with reminders of the traditional defenses accorded to nation states.230 Legal principles, such as the sovereign equality of states and a doctrine of non-interference in matters essentially within the domestic jurisdiction of states, continue to provide ready defenses against international efforts to scrutinize or improve the behavior of governments


228. See HENKIN, supra note 53, at 51-64.

229. See RUSSELL, supra note 107 on the background to the language of the Preamble to the U.N. Charter.

230. U.N. CHARTER art. 2 (7) is the principal provision generally cited in support of this sovereignty defense: "Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any State or shall require the Members to submit such matters to settlement under the present Charter . . .". See also U.N. CHARTER, art. 2(1) ("The Organization is based on the principle of the sovereign equality of all its Members.").
toward their citizens. None of these principles, however, promotes sufficient respect for the interests of people or communities within countries. On the contrary, these principles perpetuate the tragic myth that the interests of people are one with those of their national governments, a position reflecting a shocking failure to fully appreciate one of the major lessons of the international human rights movement.

The international validation of national governance through verification missions has helped to weaken the protections that sovereignty-based concepts have historically provided to governments of nation states. Displacing the predicates — international dimension, request from government, and self-determination — that have constrained U.N. involvement in national politics should aid the triumph of the human rights imperative in ensuring universality, indivisibility and interdependence of human rights.

U.N. intervention in the “domestic jurisdiction” or “internal affairs” of sovereign states through guardianship of the processes of selecting national leaders would bolster the position of human rights advocates who have long advocated stripping away those doctrinal barriers which frustrate and deter citizens who have been abused by their governments from gaining meaningful international recognition and support.231 The U.N. could also promote a deeper understanding of democracy that recognizes the interrelationship between the national and the international, the political and the economic, as well as between the public and the private.

231. Steiner observes that oppressive governments cannot grant the right to political participation without signing their death warrants. Steiner, supra note 30, at 930. U.N. guardianship of a more comprehensive version of the right to political participation would speed up the extinction of this vile and obstinate species.