The word “democracy” does not appear in the Charter of the United Nations, nor was it mentioned in the Covenant of the League of Nations. None of the standard textbooks on international law includes chapters on democracy. The International Court of Justice has not based any of its decisions on the legal application of democratic principles. If one were to look no further than these pillars of international law, one might conclude that democracy is not relevant. Yet the Vienna Declaration and Programme of Action adopted by the 1993 World Conference on Human Rights asserted in paragraph 8 of Section I, “Democracy, development and respect for human rights and fundamental freedoms are interdependent and mutually reinforcing. . . . The international community should support the strengthening and promoting of democracy, development and respect for human rights and fundamental freedoms in the entire world.” Though a nonbinding instrument, this Declaration represents a clear indication of the direction of international opinion and the development of international law.

Twice in the twentieth century the international community toyed with the notion of making democracy a norm of international law. The first time was when Woodrow Wilson described America’s entry into World War I as a crusade to make the world “safe for democracy.” Victors, however, earn the right to redraft the rules. The vindictive Treaty of Versailles divided the spoils and hobbled the vanquished, but it stopped
well short of enshrining democracy as the required means of domestic political organization. The furthest it ventured in this direction was to put forward the concept of self-determination as a means of dismantling moribund empires.

At the conclusion of World War II, the defeat of fascism again created an opportunity for the international community to make democracy a norm of international law. As will be elaborated below, some tentative steps in this direction were taken in the process of defining certain civil and political rights and in drafting the constitutive instruments of several international organizations. It may be argued that this formative period of modern international law did indeed plant the idea that democracy is an essential element of human rights, but the Cold War intruded far too quickly for the notion to take root in international law.

The conclusion of the Cold War has afforded the international community its third chance. There is strong evidence over the past decade pointing to the incorporation of democracy in international law, which develops through a process of international consensus, or at least widespread agreement. The expression of this incorporation varies from “the right to democracy” to “democratic entitlement” to “the right to democratic governance.” This norm is both articulated in various regional and global instruments and increasingly demonstrated in international practice by such policies as promoting democracy abroad, making democracy a qualification for membership in certain regional organizations, establishing democratic conditionality for development cooperation, and, in a limited number of cases, defending democracy through collective security mechanisms. This post–Cold War trend was first described by Thomas Franck and James Crawford in their seminal papers on the subject in the early 1990s, and useful definitional work was carried out by Jack Donnelly.1 This essay attempts to build on that body of work.

**Constitutive International Instruments**

While the concept of democracy did not find its way into the UN Charter, it did figure in other constitutive international instruments of the postwar period. The most notable of these is the 1948 Charter of the Organization of American States (OAS), whose Preamble espouses the conviction that “representative democracy is an indispensable condition for the stability, peace and development of the region.” The Preamble goes on to place the system of individual liberty and social justice “within the framework of democratic institutions.” The OAS Charter claims as one of its essential purposes “to promote and consolidate representative democracy, with due respect for the principle of non-intervention.”

The Americas may have had a special affinity for democracy, but it was also on the minds of the drafters of global instruments. The Preamble
to the 1945 Constitution of UNESCO states, “The great and terrible war which has now ended was a war made possible by the denial of democratic principle.” It is understandable that, having emerged from years of devastating war, the framers of the UNESCO Constitution should have conceived of their organization as a bulwark against war. The idea of democracy as a means of maintaining international peace and security would reassert itself decades later as one of the arguments for strengthening democracy-promotion programs.

Another critical legal instrument of the period, the 1948 Universal Declaration of Human Rights (UDHR), invokes democracy as the basis on which individual rights can legitimately be limited. Article 29 deals with duties to the community, and paragraph 2 makes clear that any limitations to individual rights and freedoms are severely circumscribed: They must be determined by law, be for the benefit of others’ rights, and be justified by meeting “the just requirement of morality, public order and the general welfare in a democratic society.” Democracy in this context takes on the role of a process that can legitimately meet the needs of the community—a process without which limitations to human rights would be subject only to the discretion of the authorities. The UDHR thus ascribes to democracy the role of arbiter in any contest between community and individual rights. The relationship thereby established between democracy and human rights has considerable merit, for both make the individual the ultimate decision maker and beneficiary.

A further indication of the central place of democracy in postwar political thinking can be seen in the 1949 Statute of the Council of Europe. Affirming democracy as a central goal, the Preamble speaks of the members’ devotion to individual freedom, political liberty, and the rule of law, “principles which form the basis of all genuine democracies.” (The use of the qualifier “genuine” is an early indication of the contestation over ownership of the term “democracy.”)

We can therefore conclude that in the period when modern international law was being formulated—the UN Charter era—several key constitutive instruments saw democracy as an indispensable condition for stability, peace, and development, as a bulwark against war, and as a means of determining society’s legitimate restrictions on its individual members. Yet over the next several decades democracy did not establish itself as a fundamental aspect of international law. In searching for a reason, one need look no further than the Cold War. It was at the insistence of the Soviet bloc that the term “democracy” did not figure in the UN Charter. Since democracy conferred a certain degree of legitimacy on regimes, it was a contested concept and both sides claimed to be its true interpreter.

During this international ideological conflict it was not possible for democracy to gain the broad acceptance necessary to secure a place in the development of international law. The term had political and
propagandistic uses for both sides, and it was in these fields that it was predominantly employed. Before it could become part of the international law lexicon, it had to gain a critical mass of international acceptance as a term meaning a system in which governments are put in place through regular and open elections. This would occur in the post–Cold War era and would dovetail with the growing understanding that properly functioning democratic institutions provide the best means of achieving good governance.

**Democracy and Human Rights**

The logical place for the concept of democracy to develop as a functioning principle of the international legal order is in human rights law. The basic principle is set out in Article 21 of the Universal Declaration on Human Rights, which describes “the will of the people” as “the basis of the authority of government” and calls for that will to be discerned through “periodic and general elections.” Observation of this principle—put in binding treaty form in Article 25 of the International Covenant on Civil and Political Rights (ICCPR)—establishes the procedural mechanisms that allow democracy to flourish. Caught in the Cold War confrontation, however, Article 25 was not given its ordinary and natural meaning, and single-party states were able to put on electoral displays that they claimed met the standards set in the Covenant.

It was not until 1996 that the United Nations Human Rights Committee, a body of experts established by the ICCPR, adopted General Comment 25, which elaborated on the rights enshrined in Article 25. The General Comment’s interpretation of Article 25 represents a considerable strengthening of the democratic ideal; applied correctly, its provisions would ensure free and fair elections. It requires freedom of expression, assembly, and association (paragraph 12); enshrines nondiscrimination with respect to the citizen’s right to vote (paragraph 3); rejects any condition of eligibility to vote or stand for office based on political affiliation (paragraph 15); calls for voters to be free to support or oppose the government without undue influence or coercion of any kind (paragraph 19); and requires states reporting under the Covenant to explain how the different political views in the community are represented in elected bodies (paragraph 22). The General Comment provides the jurisprudence that gives teeth to the Covenant’s obligation to hold “genuine periodic elections.” It establishes a checklist that, if followed, will result in a functioning electoral democracy—and, if combined with adherence to the other obligations in the basic human rights treaties, a functioning liberal democracy.

Even the General Comment, however, does not tackle the issue of multiparty elections head-on. It provides for the existence of opposition political parties and allows voters to support them, but it can also be
open to the interpretation that multiparty elections are not required if “the people” do not want them. This is the fiction behind which single-party states bound by the ICCPR seek shelter. As will be noted below, the United Nations Human Rights Commission—a body of 54 nations within the UN system—has been more forthright in tackling this issue.

The second paragraph of the Human Rights Committee’s General Comment makes it clear that the rights elaborated in Article 25 of the ICCPR “are related to, but distinct from, the right of peoples to self-determination. By virtue of the rights covered by Article 1(1), peoples have the right to freely determine their constitution or government.” The principle of self-determination is the other means through which democracy might have entered the human rights mainstream. This was not to be, however, as the concept was appropriated by the decolonizing world. In the main, these countries considered self-determination to be the decision to adopt a postcolonial form of political organization; to them, the right to self-determination had no further applicability—the Human Rights Committee’s assertions to the contrary notwithstanding.3

After the 1993 Vienna Declaration and Programme of Action, which firmly established democracy as a critical aspect of human rights, perhaps the most dramatic step in embedding democracy into human rights law was taken by the Commission on Human Rights at its 1999 session. It adopted Resolution 1999/57, with the striking title “Promotion of the Right to Democracy.” The title was perhaps the most controversial aspect of the resolution, and a Cuban effort to delete the term “right to democracy” was defeated by 28 votes to 12, with 13 abstentions. On examination of the text, however, one notes that the term “right to democracy” is not repeated. The resolution recalls the right of self-determination and then draws on the language of the Vienna Declaration concerning the interdependent and mutually reinforcing nature of democracy, development, and human rights, before coming to its first operative paragraph, which affirms that democracy fosters the full realization of all human rights, and vice versa. The resolution then speaks of the “rights of democratic governance” and lists a number of its aspects. Thus a significant step was taken in affirming the natural link between democracy and human rights. The resolution was adopted by 51 votes in favor to none against, with two abstentions (China and Cuba).

At its 2000 session, the Commission adopted Resolution 2000/47, entitled “Promoting and Consolidating Democracy”; the resolution, however, does not repeat the term “right to democracy.” The resolution contains a long checklist of the aspects of human rights, rule of law, electoral processes, and civil society required to strengthen democracy, but for the most part repeats well-known formulations. Its innovation is in operative paragraph 1(d)(ii), which deals with the right to vote in “a free and fair process . . . open to multiple parties.” This formulation is an advance on the Human Rights Committee’s General Comment on
Article 25 of the ICCPR and allows no further grounds for single-party states to claim that they have in place the mechanisms for functioning democracy. The resolution was passed by a strong majority of 45 votes to zero, but on this occasion there were eight abstentions—Bhutan, China, Cuba, Pakistan, Qatar, Congo (Brazzaville), Rwanda, and Sudan.

It is important to bear in mind Philip Alston’s injunction against the proliferation of “new” rights. Is there value in placing the right to democracy in the queue of putative rights, behind the right to development and the right to peace? Should we be focusing on new rights when basic civil and political rights are so often violated, and economic, social, and cultural rights largely remain to be implemented? The best answer is that it is not productive to see the issue in terms of competing rights. Focusing attention serially on different rights has not fully succeeded in establishing a culture of human rights around the world, and perhaps what is needed is a reexamination of the indivisibility of rights. The best response to those who object to “new” rights is that broadening the subject matter may be the most effective way to ensure the widest adherence to all human rights norms. The rights to development and democracy may be indispensable means of ensuring the attainment of other rights. These concepts need to be accepted as part of the human rights family so that individuals will see them not as discretionary benefits to be granted or withheld at the whim of leaders but as rights to be claimed by individuals everywhere.

**Promoting Democracy**

The last ten years have witnessed the emergence of a new form of international engagement: cooperation in promoting democracy. During the Cold War, efforts at international democracy promotion were tainted by suspicions that they were motivated by superpower competition. UN secretary-general Boutros Boutros-Ghali had the courage to point this out in 1996 in his *Agenda for Democratization*. The turning point came with the International Conference of Newly Restored Democracies, held in Manila in June 1988. I had the privilege of attending this conference as an observer from the Australian Embassy. It owed its inspiration and intellectual rigor to the late Philippine foreign secretary Raul Manglapus; its strength came from its independence from great-power politics and the commitment of the 13 participating countries to the ideal of democracy. The Manila Declaration adopted by the conference spoke of mutual support among the participating countries to strengthen their democracies and overcome “internal and external forces endangering emerging democracies.” The post–Cold War concept of international democracy promotion and cooperation outside the domain of the world powers was born.

A second meeting was held in Managua in July 1994, with broader
participation and a slightly revised title: the International Conference of New or Restored Democracies. It produced the Managua Declaration and Plan of Action, which called on the UN to become involved in the process of democracy promotion. The third conference took place in Bucharest in September 1997, with 80 government delegations participating. By this stage, the United Nations Development Programme (UNDP) was acting as a secretariat to the Conference; the extent of UN involvement had clearly placed democracy promotion on the multilateral agenda.

UN efforts in support of democracy have come in many fields, but perhaps have been most intense in electoral assistance. In 1991, the General Assembly approved Resolution 46/137, which led to the establishment of an electoral assistance unit; in 1994, it was enlarged into the Electoral Assistance Division. Since 1989, the UN has received more than 140 requests for electoral assistance from 84 member states.5

The phenomenon of electoral assistance has been paralleled by the rise of international electoral observation. Writing in 1992, Thomas Franck advocated building the foundations for the “emerging right of democratic governance” by having national elections observed and informally ratified by the international community, thereby giving the resulting governments international legitimacy.6 In many ways Franck was quite prescient, since international observation of national elections and referendums in countries claiming to be democratic has become the norm. The rejection of foreign electoral observers has come to be taken as a signal that the country concerned is not prepared to open itself to international scrutiny and is not interested in the international legitimacy that a positive report would bestow.

It must also be said, however, that electoral observation has not been the democratic panacea that Franck hoped for, inasmuch as it focuses upon the initial electoral process of transition from authoritarian to democratic rule. While the transition process is critical, experience has shown that the more difficult battle is that for democratic consolidation; simply put, one successful election does not create a democracy. Moreover, it is now increasingly accepted that international electoral observation, while it remains important, should be a supplement to domestic civil society efforts.

In the years since Franck wrote his article, international electoral observation has been overshadowed by international democracy assistance. With the realization that democratic consolidation is a difficult, long-term process, the international community has begun to channel an increasing amount of official development assistance to promoting democracy. The United States alone devoted $720 million to democracy assistance in 1998.7 Projects were undertaken in all parts of the world and in such fields as elections, legislatures, rule of law, civil-military relations, and civil society.
The move toward greater investment in democracy dovetails with a growing understanding that development requires good governance. The UNDP has been at the forefront of the growing international consensus that good governance and sustainable human development are indivisible. The World Summit for Social Development in 1995 illustrated the link between good governance and democracy when it noted in its concluding declaration that “democracy and transparent and accountable governance and administration in all sectors of society are indispensable foundations for the realisation of social and people-centred sustainable development.” Democracy assistance has thus transcended the political sphere and has become a key component of international development assistance.

Democracy as a Qualification for Membership

The global trend toward international democratic cooperation has been spearheaded by two regions: Europe and the Americas. The development of the concept in Europe has been particularly dramatic. When the participants in the Conference for Security and Cooperation in Europe adopted their Final Act in Helsinki in August 1975, the word “democracy” did not appear. The document does refer to self-determination and “the aspirations of peoples” and contains a reference to the human rights covenants, but it certainly does not single out Article 25 of the ICCPR.

Fifteen years later, in the adoption of the Charter of Paris for a New Europe, the leaders of Europe stated:

We undertake to build, consolidate and strengthen democracy as the only system of government of our Nations. . . . Democratic government is based on the will of the people, expressed regularly through free and fair elections. Democracy has as its foundation respect for the human person and the rule of law. Democracy is the best safeguard of freedom of expression, tolerance of all groups of society, and equality of opportunity for each person.

The European conception of democracy goes well beyond the holding of periodic open elections to incorporate guarantees for the respect of human rights and fundamental freedoms. Membership in the Council of Europe is dependent upon meeting these criteria, and the Council recently threatened to suspend Russia under Article 8 of the Statute of the Council of Europe because of its actions in Chechnya. This followed a 1997 decision of the Parliamentary Assembly of the Council of Europe to suspend the participation of the parliament of Belarus because of the illegitimate way in which it had been constituted. Democracy promotion has become one of the primary functions of the Organization for Security and Cooperation in Europe (OSCE). Its
Office for Democratic Institutions and Human Rights, as one of its four objectives, “promotes democratic elections through a cycle of in-depth observations of national elections and assistance projects aimed at strengthening democracy and good governance, and enhancing stability.” By the end of the 1990s, the OSCE had adopted the role of judging to what extent European countries were pursuing democratic development. For instance, the 1999 Istanbul Summit Declaration argued, in a particularly pointed case, that “the democratic shortcomings in the Federal Republic of Yugoslavia remain one of the fundamental sources of grave concern in the region.”

A similar process of negative and positive reinforcement of democracy—the threat of suspended membership in regional organizations combined with electoral observation and democracy promotion—can be seen in the Americas. As noted above, in its 1948 Charter the OAS was the first regional organization to consider representative democracy a purpose (Article 2b), a principle (Article 3d), and a condition of membership (Article 9). In 1980, OAS General Assembly Resolution 510 declared the democratic system to be the basis of a political society where human values can be realized. The 1985 Cartagena Protocol amending the OAS Charter proclaimed the promotion of democracy as one of its “essential purposes” and declared that representative democracy should be the basis for the political organization of the states of the hemisphere. A seminal step was taken in 1991 in Santiago with the adoption of a mechanism to react to situations where democracy is interrupted, allowing foreign ministers to meet to decide on collective action. In terms of positive reinforcement, the Unit for the Promotion of Democracy, established in 1990, has coordinated election observation missions and other activities aimed at establishing a culture of democracy in the Americas.

Other global and regional bodies are beginning to follow suit. The Commonwealth’s Harare Declaration of 1991 referred to “the individual’s inalienable right to participate by means of free and democratic political processes in framing the society in which he or she lives,” called on member states “to work with renewed vigour . . . in democracy, democratic processes and institutions,” and requested that members assist each other “in entrenching the practices of democracy.” The 1995 Millbrook Commonwealth Action Programme on the Harare Declaration added considerable enforcement powers: It established a Commonwealth Ministerial Action Group to deal with violations of the Harare principles, especially the unconstitutional overthrow of a democratically elected government. Its powers include mediation, exclusion from ministerial meetings, and suspension of Commonwealth Technical Assistance. Such measures have been taken at various times against the governments of Fiji, Nigeria, and Pakistan.

The Organization of African Unity is progressing down a similar path.
The 1999 Algiers Summit and the 2000 Lomé Summit struck blows against the unconstitutional overthrow of democratically elected governments, condemning these actions and refusing to invite putschists to the Summits. The Pacific Islands Forum has also armed itself to take similar action. In response to the need for a mechanism for dealing with future political and security crises in the region, the Forum adopted the Biketawa Declaration in October 2000. Under the Declaration, the Forum can take a number of actions to uphold democratic processes and institutions, including “targeted measures” if mediation steps do not resolve the situation.

Democratic Conditionality

The Commonwealth’s power to suspend aid programs in response to the unconstitutional overthrow of democratic governments is an example of a growing practice—democratic conditionality in the delivery of development assistance programs. In the course of the last decade, most major donors have practiced this aspect of aid conditionality, but the European Union (EU) has developed it most rigorously and has enshrined it in binding obligations.

The EU’s foreign relations are governed by a common foreign and security policy, one of whose objectives, according to article 11(1) of the 1992 EU Treaty, is “to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms.” One of the main means of accomplishing this task is the insertion of clauses on human rights into economic cooperation agreements with non-EU countries. The new 20-year Cotonou Agreement between the African, Caribbean, and Pacific states (ACP) and the European Union (which succeeds the fourth Lomé Agreement) includes human rights, democratic principles, and the rule of law as essential elements. The EU has also adopted a policy of including democracy clauses in its various bilateral agreements. Its recent bilateral treaties regard serious and persistent human rights violations or serious interruptions of the democratic process as a “material breach.” Article 60 of the Vienna Convention on the Law of Treaties states that “a material breach of a bilateral treaty by one of the parties entitles the other to invoke the breach as a ground for terminating or suspending its operation in whole or in part.” The EU has thus armed itself, at the level of international law, with the power to suspend or terminate bilateral aid agreements in the event of an extra-constitutional attack on democratic government.

This represents a fundamental shift in the status of aid, which had formerly been viewed as an entitlement of whatever government was effectively in charge. An additional factor must now be taken into account, at least in relation to development assistance—whether that government came to power by democratic means. A recent evaluation
of the EU development cooperation program refers to this as a shift from entitlement to conditionality.

An example of EU practice in this area may be found in its relations with Côte d’Ivoire after a military coup on 24 December 1999. The EU launched a bilateral discussion with Côte d’Ivoire on its breach of the democracy and human rights principles in Article 5 of Lomé IV. These consultations required the regime to stick to a timetable for the restoration of electoral democracy or else face a suspension of development cooperation.13

One of the most striking recent examples of democratic conditionality arose in an EU program entitled “Energy for Democracy.” In response to a proposal from Serb opposition forces, the EU agreed to supply heating fuel to Serbian towns run by “democratic forces”—ostensibly to advance democracy in Yugoslavia. This particular operation was in response to an unusual situation after the Kosovo intervention, but the initiative demonstrates the lengths to which democratic conditionality can be taken.

Defending Democracy

“We resolve jointly to co-operate to discourage and resist the threat to democracy posed by the overthrow of constitutionally elected governments.” So states the Warsaw Declaration, signed by 106 countries on 27 June 2000 at a gathering calling itself “Towards a Community of Democracies.” The participating countries spanned the globe, with every region represented. Although there was no elaboration on how they planned to react should one of these governments be unconstitutionally overthrown, the articulation of such an intention is significant in itself. The opinion of states as to what actions they may validly take is one factor shaping international law. Recent declarations by states and commentaries by academics are opening the way for the conclusion that people have a democratic entitlement to vote in free and fair multiparty elections.14 The corollary of that entitlement is that a national government’s legitimacy will be judged by its democratic credentials.

The democratic entitlement flows from individual and collective human rights, and, as in human rights law, the weakness of enforcement nationally or internationally does not vitiate the validity of the right. It remains true, however, that a right without adequate means of ensuring its realization is largely inchoate. National and international practice is needed to demonstrate widespread respect for the right, and international mechanisms are needed to strengthen its enforcement. National laws requiring multiparty elections are certainly spreading, with a recent count putting the figure at 130 nations.15 International practice is also developing in terms of election monitoring, the actions of regional organizations
A difficult issue facing international lawyers is whether the rhetoric in favor of defending democracy should translate into lawful intervention—including, if necessary, the use of force. The most prominent proponent of the use of force in defending democracy is Michael Reisman, who argues that the sovereignty of the people is violated by the dictator, not by the international force ousting him. Reisman makes the point that if, as is being increasingly demonstrated, democracy is the \textit{sine qua non} for international peace and economic development, then the international community has an obligation to sustain it, if necessary by recourse to the doctrine of humanitarian intervention.\(^{16}\)

A limited doctrine of intervention in support of democratic entitlement is developing with respect to enforcement measures under Chapter VII of the UN Charter. In the cases of East Timor, Sierra Leone, and Haiti, the Security Council took enforcement actions after reaching the conclusion that the situations under review were threats to peace and security—a conclusion that is required to justify such action under the Charter. It seems quite clear, however, that there was very little danger to international peace and security in these isolated conflicts, where primitive armaments dominated and no major powers were involved. Yet the Security Council confirmed the necessity of action. It did so, I would submit, on human rights and democracy grounds.

In the case of East Timor, there was little chance of the conflict spreading beyond the island, but there was a human rights emergency: The right to self-determination of the people of East Timor was being denied following their overwhelming vote for independence. In Resolution 1272 (1999), which established the UN Transitional Administration in East Timor, the Security Council set out a complex mandate, which included working toward “the development of local democratic institutions.”

In the case of Sierra Leone, a more persuasive argument could be mounted that the situation was a threat to regional peace and security, justifying recourse to Chapter VII. It is noteworthy, however, that the major demand made by the Security Council in Resolution 1132 (1997) was that “the military junta take immediate steps to relinquish power in Sierra Leone and make way for the restoration of the democratically elected Government and a return to constitutional order.” The Security Council’s action is certainly open to the interpretation that the restoration of democracy was its primary objective.

The most striking example is that of Haiti. It is very hard to see how the internal problems of Haiti constituted a threat to international peace and security. Indeed, in Resolution 940 (1994) the Security Council expressly stated that “the goal of the international community remains the restoration of democracy in Haiti and the prompt return of the
legitimately elected President.” It then established a multinational force to achieve that goal.

The defense of democracy was the main objective of the Security Council in Haiti, and it could be seen as a major objective in Sierra Leone and East Timor as well. The relevant resolutions speak of the restoration of democracy or the development of democratic institutions. The denial of a people’s democratic entitlement now appears to be sufficient grounds for lawful international enforcement action. The above examples, all in the past decade, span three continents and point to a developing rule of multilateral practice and international law.

Yet this falls short of Reisman’s call for a doctrine of unilateral humanitarian intervention when the democratic entitlement is denied. The weight of legal opinion continues to maintain strict limits on any doctrine of humanitarian intervention and to deny a right of unilateral intervention when democratic regimes are overthrown. To authorize such interventions would pose difficult questions that go to the heart of the UN Charter, which forms the cornerstone of modern international law. In the Charter era, resorting to force is justified for reasons of self-defense or in accordance with the collective security provisions of Chapter VII. To allow outside forces to intervene unilaterally in a country, even for the laudable purpose of restoring a democratically elected government, would open the way to violations of the non-use-of-force doctrine enshrined in Article 2(4).

One possible exception to the rule is the lawfulness of humanitarian intervention to stop genocide. It is on this basis that the NATO intervention in Kosovo can be understood. Security Council Resolution 1244 (1999), which authorized the intervention in Kosovo after the event, makes it clear that the primary goal was to deal with the grave humanitarian situation and the acts of violence against the Kosovo population. A subsidiary goal of promoting democracy also emerges in the mandate to establish “provisional democratic self-governing institutions,” but it would not be accurate to portray this as the initial or primary objective of the NATO intervention or to list Kosovo as an example of humanitarian intervention in defense of democracy.

It may be possible to construct situations where the defense of democracy appears to justify a humanitarian intervention—the case of Burma today comes to mind. Yet the arguments against employing force in these circumstances are compelling. The use of force might often depend on the interpretation of domestic constitutional rules, which
may not be clear-cut. The use of force might run up against a nationalist response, thus greatly complicating the issue. The use of force would require the rewriting of the rules of international law, with uncertain consequences. But the rejection of this ultimate recourse does not mean that there is no right to democracy. What it does mean is that this emerging right has only limited means of international enforcement in situations of the extraconstitutional overthrow of democratic government.

**A Democratic Trend**

Will the international community seize the opportunity presented by the end of the Cold War to incorporate a doctrine of democratic entitlement into international law? The response at this stage would have to be one of guarded optimism, since there is insufficient sustained practice to give a definite positive answer. The translation of the term “democracy” from its Cold War political meanings to a universally acknowledged entitlement within human rights law is an ongoing process. The fact that 25 of the 53 member nations of the UN Commission on Human Rights either voted “no” or abstained when confronted with the concept of the “right to democracy” demonstrates that there is a fair way to go before consensus or near-consensus on terminology is reached.

We should not lull ourselves into believing that there is anything inevitable about the triumph of democracy. The remaining single-party states—including China, an emerging superpower—cling to the notion that their system can successfully represent the needs and aspirations of their people. Nor can we be confident that democratic systems have successfully taken root in the many states that have recently made transitions to democracy. The development of international law will reflect any vicissitudes in this regard. There remains a crucial battle to be fought to translate aspirations for democracy into reality.

Yet there is no need to be guarded in identifying the direction of events. The evidence points clearly to the growing importance of the concept of democracy in international law. The Security Council’s willingness to authorize collective security action to defend democracy is a telling factor. The insistence on democracy as a qualification for membership in regional organizations in Europe and in the Americas is another sign of the times. Donor conditionality in development cooperation programs is also significant. The universality of the democratic form of government is based on a logic that flows from the innate dignity of human beings and their right to have a say in how they are governed. We therefore can look forward to a time in the near future when the universal applicability of the right to democratic governance will be as broadly accepted internationally as other human rights.
NOTES


15. Ibid., 27.
