Introduction

Democracy and human rights are universal aspirations and ideals which governments that claim to be legitimate should always respect. This is why the United Nations and its members commemorate December 10 as Human Rights Day and September 15 as the International Day of Democracy. While both are considered by the UN as "interdependent and mutually reinforcing"[1], they are also the subject of controversies which are complex, multi-faceted and politically sensitive.

There are scholars who feel that the emergence of the international regime of human rights, linking human rights to democracy, has weakened the preexisting ideological divide by conditioning governance to the requirements of human rights. This has been the case especially since the UN developed the Human Rights-Based Approach (hereafter HRBA), urging member-states to use this approach in the pursuit of political goals, such as development and good governance. Not surprisingly, some of the scholars who used to stubbornly defend this or that ideological school of thinking are now prepared to be flexible and accept the validity of human rights which were not tolerated traditionally by their ideological camps, such as the rights to health or education and minority rights. However, many others have remained in their ideological barracks, criticizing or belittling the UN approach to human rights and democracy because it deviates from their ideological orthodoxy. These scholars may never surrender until and unless the contours of international human rights law are perfectly aligned to their own ideological doctrines.

Many other scholars have preferred to watch from the sidelines as the HRBA takes root. Their silence has created a wide gap in the academic literature where contributions are most needed. Publications on HRBA which come after it is fully developed will still be welcome, especially for those interested in history. However, timely commentaries can make valuable contributions to debates around the direction democracy and human rights are taking. It is bearing this in mind that this study was undertaken.

The importance of this subject-matter hardly needs explaining. In 1998 the UN adopted the Declaration on Human Rights Defenders, encouraging the promotion of human rights awareness, and affirming the rights of individuals to be concerned with human rights and to claim their rights. In effect, this instrument lays the foundations for the measurement of

democracy based on application of the HRBA *from below*. In response to this, and in the interest of critically assessing the broader political implications of this approach, the academic world should share its intellectual insights rather than lagging behind. Scholars should feel free to express their own views, including those which further particular economic, social and political interests. This is, in fact, what most of them do, defending their respective beliefs in the name of justice, even though their conclusions are hardly reconcilable. Still, it is better for scholars to make contributions, rather than leaving questions relating to human rights and democracy to be shaped by political actors to meet their needs.

At the core of the discourse on human rights and democracy is the question of who the human being (*the self*) really is and how s/he relates to or should relate to society and the state. The philosophers who previously devoted their lives to answering these questions now rest in peace, after agreeing to disagree with one other, leaving their followers intellectually restless. The ideological camps that have gradually emerged are not only numerous, but also tolerant of multiple interpretations, thereby blurring the landscape. This is why we see all kinds of shades of opinion within liberalism or Neo-Liberalism, Marxism or Neo-Marxism, Social Democracy, Communitarianism etc. Less colorful, more focused and relevant to the real political world is the approach used by global political organizations, such as the UN. Their positions are widely accepted for the simple reason that they are products of a broader political consensus, which accommodates the diverse views of experts from different fields.

What makes the UN approach legitimate is the existence of a legal mandate to promote human rights as stipulated by article 1 paragraph 3 of its Charter. Using this mandate, this organization has adopted an impressive list of international human rights instruments which have been widely ratified by its member-states. The contents of some of these human rights instruments concern democracy, directly or indirectly, as will be shown later. The compliance by state with the undertakings assumed under these international instruments is monitored by a number of international bodies using a range of different methods, for example by considering reports and petitions received, or by tracking the progress made. Obviously, there is a long way to go before this international regime of human rights achieves its goals. However, no one can seriously question that the UN has reached a milestone by developing this international regime, thereby making the world a more

humane place than before.

When it comes to the promotion of democracy, *per se*, the contributions of the UN are often belittled by those who are displeased by the apparent neglect of the preferences of their own ideological camp. In fact, much was achieved, especially considering that the organization was prevented during the Cold War period from engaging in what was deemed to fall under the domestic jurisdiction of states by paragraph 7 of article 2 of its own Charter. It is also important to remember that there was no consensus around which political system served democracy best. Was it that of the U.S. in the 1950s, which excluded blacks and women from political participation? Or the Swiss confederal model, which did not permit women to vote until the 1970s? Or that of the socialist states in the Eastern bloc, which disregarded political rights?

Leaving this aside, the UN has played a crucial role in developing *the rights of peoples*, by elaborating the contents of these rights, e.g. the rights to self-determination, to social progress and to development. These clarifications were significant for democracy since they concern both peoples (the *demos*) and good governance (*kratia*). This approach addressed democracy head-on, and not only from a theoretical perspective. Decolonization was advanced by applying the Charter principle on the right of peoples to self-determination. The system of *Apartheid* in South Africa was confronted. Arbitrary usurpation of power was denounced in many countries, and the UN began to monitor elections in post-conflict situations or where there were serious political conflicts. The support which it gave and still gives to the promotion of gender mainstreaming, empowerment and participatory rights also concern democracy.

The collapse of the Socialist regimes in the former USSR and its Eastern European allies, who were the staunchest defenders of state sovereignty, removed one of the most serious hurdles to the promotion of democracy. The UN capitalized on this political development to raise the banner of democracy, which gained prominence on its agendas. The 1993 Vienna Declaration of Human Rights made abundantly clear that "(t)he international community should support the strengthening and promoting of democracy, development and respect for human rights and fundamental freedoms in the entire world."[2] This document linked democracy to "the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their

lives."[3] Within a decade or so, HRBA was developed. Initially, this approach was recommended as a tool for application in the promotion of economic development. However, gradually its use was extended to other areas, for example, to health, child welfare, gender mainstreaming etc. Although the UN maintains that it does not advocate a single model of democracy[4], one can wonder if the HRBA which it uses is not one such model, since it promotes a *bottom up* approach to politically sensitive questions including the question of what constitute sound governance.[5]

Proceeding from the above acknowledgement, this study examines the road map used by the UN in developing and promoting human rights and democracy, and how it urges its members to conduct themselves by applying HRBA. The questions which guide this study are clear-cut. Is there a UN perception of democracy? If so, what is the position of this organization regarding the contested ideological positions concerning who the individual *self* is, and how this person relates or should relate to society and the state? Has the UN's position discredited or sanctioned the views of this or that ideological school of thought? What are the consequences of relying on HRBA to promote democracy? Will this reliance promote democracy in form, as well as, in substance? Will it empower the victims of oppression and marginalization, thereby ending despotism, oppression and bad governance once and for all? What are the wider political consequences and implications of using this bottom-up approach? Will it lead to the fragmentation of multi-ethnic and multi-national states by making them ungovernable when the voices of the marginalized are heard? Will states reject HRBA because of fears that it will lead to the destabilization of their governments?

Since international human rights law is used in this study as the term of reference for measuring democracy, the reliance on a particular theory or hypothesis to guide the study has not been appreciated. Instead, what is done is to examine the relationship between the pertinent provisions of the human rights laws, sound governance and how the Human Rights-Based Approach offers. In effect, therefore, the study follows the indictive approach.

This is also why the answers to most of the questions posed above appear to be obvious from how the provisions of the different international human rights instrument have been formulated. Before examining these documents and the UN's approach to democracy, it is necessary to reflect on he ideological controversies surrounding the concept, and how it

evolved historically. Only then will one be able to judge the significance and implications of the approach used by the UN based on the application of the human rights norm.

Conceptual Clarification

Democracy, as was pointed out earlier, is praised and aspired to across the globe while at the same time being controversial. This is one reason why varied forms of democracies are found, whose goals and features are often at odds with one another. Take, for example, 'the Western model', which is known as liberal democracy. This model is supposed to guarantee individual political rights (freedom of expression, association and assembly), universal suffrage, a free media, and the multi-party parliamentarian model of governance based on the division of power (with checks and balances). However, the systems of governance in Italy, France, the United States and Denmark are far from being the same. The model that has been adopted in some of the Eastern European states, such as Hungary and Poland, is criticized and referred to illiberal democracy, 'low intensity' or 'empty' democracy because there are restrictions on individual civil liberties and the free media. If the attack on the media makes democracy illiberal then the U.S. is also heading in this direction since President Trump regards the media as the enemy of the people, except for a few extreme right-wing media outlets. Before the demise of the Socialist order in Eastern Europe and U.S.S.R the labels most commonly used by the Soviet bloc countries were proletarian democracy or people's democracy. In the Nordic countries the phrase social democracy is used to describe their welfare system, which is financed through higher taxation.

Even within a single country, we can see the bewildering variety of ways the word democracy is used. Sweden, for example, was governed during the last few years by a coalition led by the Swedish Social Democrats. The opposition camp included the Christian Democrats and the Swedish Democrats. Although the Swedish Democrats are supported by about 17% of the electorate, the party has been ostracized by all the political parties because of its racist roots. Adding more confusion to this scenario, a new political party called simply The Democrats has just come to prominence in the Gothenburg region by securing 17% of votes in municipal elections. All this may well make Swedish citizens wonder who the true democrats are.

Dictionaries define democracy in a variety of way, reflecting the divergent ways the term is

understood in the real political world. Sources that fail to do this or that tell only one side of this perplexing story run the risk of being criticized for being ideologically biased. This is why we find this term defined in different ways, reflecting the political mess in the real world. According to dictionary.com (*Thesaurus*), it can mean "a form of government in which the supreme power is vested in the people and exercised directly by them or by their elected agents under a free electoral system" or "a state of society characterized by formal equality of rights and privileges."[6] *Cambridge Dictionary* re-affirms this and underscores further the importance attached to the expression of opinions and that government should be elected.[7] Likewise, in *Merriam-Webster* we read that this term describes a system of "government in which the supreme power is vested in the people and exercised by them directly or indirectly through a system of representation usually involving periodically held free elections."[8]

These and other similar broad and varied definitions of democracy raise more questions than they answer. Does this term mean self-rule by the people collectively, as a group, where all the members of the community have equal voice and are the beneficiaries of this rule? Or does it mean majority rule? Does it require more than the presence of political institutions that allow the electoral system to function and 'formal' equality? For example, does the fact that the political system restricts voting rights to men only or to certain racial groups mean that there is no democracy? What about if the country does not respond to the needs of the people, e.g., by denying people economic and social rights? Should the political system promote real equality and a fair distribution of resources? Because these questions are answered in so many different ways Susan Marks correctly remarked that"democracy appeared to mean everything, and therefore nothing."[9]

One way of understanding democracy would be to examine the toot of the word itself, i.e. '***dēmo***'', which means 'people', and '***kratia',*** meaning authority or rule, in Greek.[10] When juxtaposed, these two words convey the idea that the inhabitant of a territory govern themselves by exercising political power or have a say in the affairs of governance. Ancient Greek cities, such as Athens and Sparta, are believed to have practiced ***dēmokratia***. Aristotle listed many other examples when he wrote:

"At Marseilles the oligarchy became more constitutional, while at Istrus it ended in becoming democracy, and in Heraclea the government passed from a smaller number to six

hundred. At Cnidus also there was a revolution… Another case was at Erythrea, where at the time of the oligarchy of Basilidae in ancient days, although the person of the government directed affairs well, nevertheless the common people were resentful because they were governed by a few, and brought about a revolution of the constitution".[11]

Over the years, these experiences of the Greek city-states inspired many political communities to emulate them. In the late 18th century, the American and French Revolutions raised the banner of democracy with the aim of ending despotism and replacing it with a democratic system. What distinguished their experiences from those of the ancient Greeks were the right-based justifications used to legitimize the political system and the structures that were created to ensure its continuity, e.g., through a system of division of powers, the codification of right and respect for the rule of law. The American Declaration of Independence sets out what are claimed to be 'self-evident' truths by underscoring the belief:

"*that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. — That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed*."[12]

When the French revolutionaries brought to an end the despotic feudal regime of the House of Bourbon, they proclaimed in their Declaration on the Rights of Man and the Citizens that "men are born and remain free and equal in rights" and that the goals of political association should be "the preservation of the natural and imprescriptible rights of man".[13] Subsequent constitutions of the French Republics included a commitment to respect the principle of "government of the people, by the people and for the people."[14]

Like the proponents of democracy in ancient Greece, the American and French revolutionaries claimed to have empowered the people by giving them self-rule. Unfortunately, this is often misinterpreted as meaning the total empowerment of all members of the political community (the people), in the sense of being full beneficiaries of the political system. This is far from true. The democratic experiments in Istrus, Heraclea, Cnidus, Erythrea and Basilidae, which Aristotle wrote about, did not permit all the members of these communities to participate in the political process (children, women and slaves, for

examples, were excluded).[15] In fact, Aristotle clearly stated that some people were slaves by nature, and lacked the necessary capacity to rule, and therefore it was advantageous for them to be ruled by the free people. Despite this obvious exclusion from power, the political system was called democracy, apparently because it was expected that those who were empowered by the system would promote the interests of the community as a whole, e.g. by sharing what the system has given them.

One can draw a parallel with the democracy which was promised by the American and French Revolutionaries at the end of the 18th century. The 'American people' emerged as a legally and politically constituted entity and were promised a democratic order. Yet those who held power were 'white men'. Before slavery was abolished in the 1880s black slaves were deemed to be the property of their white owners. Many of the celebrated fathers of the American Revolution, such as George Washington and Thomas Jefferson, were themselves slave-owners. White women too were marginalized and excluded from positions of power until the mid-1960s. Even the American Indians that had treaty relations with the United States were disempowered for too long, despite the fact that they were formally acknowledged as 'domestic sovereign entities'.

The French Republics which were established following the French Revolution also failed to deliver the democracy that had been promised, until after World War II. The 'French people' was recognized as a single political entity but power was in the hands of French white men. Although the 1879 French Declaration recognized 'the rights of man', the French slaves and the colonial peoples remained excluded from power despite being regarded legally as members of the French community.

'People' (*'dēmo''***).** Without knowing who 'the people' is and what the nature of its authority is, it is difficult to know what democracy means. Is this people composed of all the persons that are present in the country, including foreign residents and tourists, or only the citizens (wherever they may be), or is it selected categories of citizens (e.g. only men)? Is the power or authority of this people simply to choose who should rule, regardless of whether the chosen ruler is a tyrant or one who responds to the wishes and needs of the governed? In other words, does democracy empower the people to rule itself through elected representatives who can be removed if they fail to respond to what the electorate wants and expects?

The term **'people'**, in everyday usage, describes a collection of individuals. The term is commonly used to describe a particular social group by combining it with a social, territorial other factor.[16] Examples of this include the description of those inhabiting particular territory, as 'Hill People', those living in the countryside, as 'rural people', those who speak the same language as the 'French-speaking people' or the 'Arabic-speaking people' (the whole north Africa), or those who profess the same religion, as 'the Jewish people'. Whichever classification is used, the term 'people' groups together large number of individuals as a an entity sharing particular characteristics.

When used in the technical sense, for legal or political purposes, 'people' identifies a legally organized political community. The glue which unifies the individuals as an entity here is not necessarily a common language or religion or territory, but a political and/or legal identity. This means while people in a society can be divided according to the languages they speak, the religions they profess and the territories they inhabit, legally they constitute one entity. Examples of this include references that are made to "the American people", "the German people", "the Swiss people" or "the French people". The French-speaking "people' is not the same as "the French people" since the former embraces French speakers in France, parts of Belgium, Switzerland and Canada. "German-speaking people" is broader than the "German people" because the German language is spoken Germany, Austria and parts of Switzerland.

Appreciating this distinction, dictionaries acknowledge that the word 'people' also means "a political community"[17] or "any consolidated political body"[18] or "the entire body of those citizens of a state or nation who are invested with political power for political purposes."[19] Likewise, philosophers, jurists, political scientists, and other scholars also use 'people' as a code word, to mean a "body of the citizens"[20] or "a public family or nation (gens, natio) whose members are all related to each other as citizens of the state"[21], or simply as 'the "aggregate of individuals of both sexes who live together as a community in spite of the fact that they may belong to different races or creeds, or of different colour."[22] Not surprisingly, we see the plural form of this term in use as "peoples", as stated in paragraph 2 of article 1 of the UN Charter which deals with the self-determination of peoples.

Understood in this unique technical sense, a people can be very young, e.g. "the people of

South Sudan" which came into existence eight years ago, or over three hundred years old, like "the American people" which dates from in 1776. Two distinct peoples can merge, example as the East and West German peoples did following the fall of the Berlin Wall, and one people can split into two or more new political communities, as occurred in Yugoslavia and the USSR. Again, a people can also exist for well over a thousand years. The fact that no human being can live that long makes no difference. Grotius clarified the distinction that should be borne in mind between the lives of these kinds of imagined political communities and those of their members by stating the following.

"*(I)n comparing a river to a people, Aristotle said that rivers bear the same name, though different water is always replacing that which is flowing on. Again, it is not an empty name merely that remains, but 'the essential bond', which Conon defines as an 'inherent bodily character', Philo as a 'spiritual bond', and the Latins as a spirit.*"[23]

If the existence of a people as a political community is indisputable, a question which follows from this is how can this people govern itself as suggested by the term democracy? Does this necessarily mean that the voice and interests of all the members of this political community should count? Responding to this question, John Mills wrote:

"*The 'people' who exercise the power are not always the same people with those over whom it is exercised … The will of the people, moreover, practically means the will of the most numerous or the most active part of the people; the majority, or those who succeed in making themselves accepted as the majority…*"[24]

This honest statement exposes the hypocrisy surrounding those who brag about behaving in accordance with the principles of democracy. If democracy is the rule of the people as a whole, government which responds to the interests of a minority or a majority cannot be democratic. To argue otherwise is false or, in everyday language, a lie.

Governance. If the term people (*demo*) in democracy relates to an organized socio-political entity, what is its authority or rule ('*kratia*') when speaking of democracy? There are two ways of seeing this. One is to say that if sovereignty belongs to the people, power can only be delegated to the government. This means that the governmental authorities are mandated to serve as representatives, to act by responding continuously and transparently

to the wishes and interests of the people. The other interpretation reduces democracy to the means of legitimizing the government. Once the people has chosen the government, those elected should represent the state by exercising the sovereignty of the state. They can do this by promoting the interests of the majority or of a minority or minorities or those of the whole people as they see fit. Until its period in power is over, the government in charge does not have to step down just because there are people that are not pleased by how the country is governed. Whichever stance one takes, it is difficult to avoid those ideologically charged questions regarding the kinds of rights of the members of the political community should have, and the justifications for these rights. While a deeper discussion of this topic is beyond the scope of this contribution, it would be a mistake to ignore it altogether in any discussion of democracy and human rights.

The Discourse on Human Rights and Democracy

The Contentious Positions: The debate on human rights and democracy is very old, complex and linked to the kinds of political interests which deserve to be protected. The main aim here is not to attempt to disentangle all the thorny issues but merely to highlight the dominant positions as a backdrop for an examination of where international human rights law stands on this matter. The two most contested issues relate to (i) what is meant by 'the will of the people' and 'the government of the people' when speaking of democracy; and (ii) how individuals relate to this 'people', and the state. These questions cannot be answered without opening up a Pandora's Box of many other controversial questions. For the purpose of this paper, the debate can be narrowed down to one between the individualist and collectivist approach to rights. The dividing line concerns the justifications for the rights of individuals, what the limitations for them are and how they apply to individual as member of broader social groups inside political communities? Defenders of the rights and interests of the broader community maintain that since individuals are product of their communities, their rights and freedoms should be subordinated to the rights, interests and needs of their communities. Most individualists, on the other hand, reject this position and question the very existence of the community or society as a separate entity.

Whichever stance one takes (individualist or collectivist) in order to defend democracy, there is no escape from the requirement to justify why rights should be recognized in the

first place. The question which begs for an answer becomes what the foundation for the rights which is used as the bricks for building and sustaining the desired form of democracy? Defenders of Natural Law, positivism and other sources of rights have wrestled with this question, which brings to the surface seemingly intractable questions regarding the nature of the human being. Are humans social, humane and rationale, or self-centered, autonomous and evil beings, who should be tamed to conform to social requirements? Can democracy co-exist with individualism? Should the majority impose its will over the rest in the name of democracy? Is democracy merely the presence of a social contract whereby the governed choose who should rule? Should the governed have a say on how the government rules? These questions have been answered differently.

The theory of social contract has been advanced by different philosophers in the interests of the governed, even though the way it is formulated has varied considerably. Thomas Hobbes (1588-1679) used this theory to legitimize the rulers and the suppression of 'natural rights'. He was praised for having recognized the 'existence' of natural rights which entitle the individual to defend his life and interests on the basis of his own judgment.[25] However, because the exercise of these rights leads to "war of all against all" (*Bellum omnium contra omnes*). Hobbes called for their renunciation in the interest of the common good. This was justified because we are *not social* (like bees) but *individualistic*, egocentric, jealous, evil beings who constantly struggle for power and dominance.[26] This being the state of nature, the only way out from the 'war of all against all' is for people to *surrender* their natural rights by choosing the ruler (a king or an assembly) who governs by *suppressing* natural rights in the interest of peace and *the common good*. If the ruler fails to achieve this, the people should choose a different ruler.[27]

This Hobbesian formula advocates a government which is chosen *by the people* and *for the people* but is not *of the people*. The idea of social contract is used merely to legitimize the government and to disempower the governed in the conduct of the political affairs of the community. In other words, this is not democracy in substance. The despots of that time ridiculed Hobbes's recognition of natural rights and the idea of a social contract, whereby people would be free to choose and change who ruled them. However, they liked his endorsement of despotism, which is why Hobbes earned the title of apologist for tyranny.

Like Hobbes, John Locke (1632-1704) and Immanuel Kant (1724-1804) recognized natural

rights and supported the idea of a social contract theory. However, they did not use it to justify despotic form of governance. Both rejected Hobbes' negative view of the 'state of nature' of mankind. According to Locke, 'the war of all against all' that Hobbes wrote about arises not from the evil nature of mankind but from disregard for the Law of Nature.[28] It was this unfortunate condition which led to the need for civil government in the first place, i.e., as a "remedy for the inconveniences of the state of Nature".[29] The purposes of civil societies should, therefore, be to preserve the natural rights of the citizens, such as life, liberty and property.[30] When a government fails to protect these natural rights, the people should be able to remove and change it.

Immanuel Kant also dismissed Hobbes's negative view of the state of nature and the notion of war of all against all "as if there could have been no other relation originally among men but what was merely determined by force…"[31] The goals of establishing civil union should not be to ensure the destruction of natural rights, but to strengthen them "by laws of right."[32] The Kantian formula of social contract for governance asserts "the right of every citizen to have to obey no other law than that to which he has given his consent or approval …civil equality… (and) … the right to owe (one's) existence and continuance in society not to the arbitrary will of another, but to his own rights and powers as a member of the commonwealth…"[33] These thoughts of Locke and Kant were highly praised by many, especially by liberals and libertarians, who later used them to justify the establishment of a democratic political order which strengthens individual rights and limits to the powers of the government.

Jean Jacques Rousseau (1712-1778), who lived during the same period as John Locke, also defended both natural rights and the principle of social contract. "The people, being subject to the laws, ought to be their authors," he wrote, "the conditions of the society ought to be regulated solely by those who came together to form it."[34] He too dismissed the negative picture of the state of nature which Hobbes had painted. According to him, social life promotes morality and the values of humanity even if it is not always easy to suppress individual selfishness and anti-social behaviors. In other words, what is unique with his approach is the recognition that the individual should not be allowed to undermine the interests of the broader community. Individual rights and freedoms should be subordinated to those of the community. As he puts it, "whoever refuses to obey the general will shall be compelled to do so by the whole body. This means nothing less than that he will be forced to

be free".[35] This earned him the title 'Communitarian'.

For Karl Marx (1818-1883), the human being is a *social* being whose vital expression is nothing but "an expression and confirmation of social life."[36] By nature, man was not evil, as Hobbes maintained, but is good and social. However, men had been poisoned by the system of private property, which had reduced each individual to nothing more than a 'representative of property'. *Human* essence exists only when there is existence for one another "as the vital element of human reality".[37] This kind of social existence makes *society*"the perfected unity in essence of man with nature" or "the realized humanism of nature"[38], rather than something dissociated from individuals that comprise it. Marx argued that the social contacts proposed by the writers such as Hobbes, Locke, Kant and Rousseau cannot resolve the political problems and conflicts arising from social relations based on the appropriation of private property. The 'war of all against all', which Hobbes wrote about, was the class war.

Karl Marx dismissed some of the French and American revolutionary slogans, such as, liberty, security, freedom, and equality, as both empty words and deceptive. These ideals cannot be realized in a *political* community which relies on private property. As he argued:

"The liberty we are here dealing with is that of man as an isolated monad who is withdrawn into himself. The right of man to freedom is not based on the association of man with man but rather on the separation of man from man… The concept of security does not enable civil society to rise above its egoism…"[39]

The "rights of man" which the philosophers of the late 18th century defended were denounced by Marx because they protect the selfish interests of the bourgeoisie and tear human beings apart from their communities. Even if they appear appealing in theory, "not one of the so-called rights of man goes beyond egoistic man, man as a member of civil society, namely an individual withdrawn into himself, his private interests and his private desires and separate from the community."[40]

The electoral systems established after the French and American Revolutions were belittled by Karl Marx. In his opinion, the deputies that were elected could only serve as a rubber stamp for advancing the 'particular' class interests of the ruling class.[41] It was impossible

for the deputies to act otherwise since "the politeness ceases as soon as privilege is menaced."[42] Still, unlike his ideological colleague, Engels, he did attach some value to the electoral system to the extent that the workers could exploit it to speed up the demise of the political system.[43] However, in his view, emancipation of the oppressed class could only be achieved by transforming "the affairs of the state into the affairs of the people".[44] This means nothing less than dissolving *the old society* by overthrowing the ruling class "on which rested the power of the sovereign, the political system as estranged from the people. The political resolution is the resolution of civil society."[45] Besides encouraging the proletarian class to rise up to this end, Marx and his ideological compatriots and followers (F. Engels and V. I. Lenin) also supported, as legitimate, the struggle of historically constituted sociological nations to secede from oppressor nations and to establish proletariat nations.[46]

The flood of literature which is inspired by the above-mentioned thinkers and others before and after them is often categorized under various schools of thinking, such as Marxist and Neo-Marxist, liberal and Neo-Liberal, Libertarian, Communitarian, traditionalist and many others. Although writers sometimes resent being compartmentalized in this way, these labels will be employed in this study as they are used in the general literature to make it easier to understand who follows which position in the debate relating to human rights and democracy.

Liberals and libertarians are the champions of individual rights and freedoms and question the legitimacy of collective and group rights. The latter are defended by Communitarians, Socialists and Social Democrats. Having said this, care should be taken to avoid generalizations, since we find various shades of thoughts within each school of thought. This is why it is important to examine the formulations used by each writer before passing judgment on the democratic formulas defended by each school of thought. It is simply for purposes of simplifying this complex debate that this paper has chosen to divide them between two camps, namely those who defend normative individualism and those who are behind collectivism.

The thought of Ayn Rand, one of the most celebrated libertarians, can be used as an example of how many defenders of normative individualism think. For Rand, the best political system to live under is "a full, pure, uncontrolled, unregulated laissez-faire

capitalism."[47] This is because the system protects individualism by stimulating the pursuit of the selfish interests which she valued so highly. She rejected the existence of collective entities, including "– society,' since society is only a number of individual men".[48] She despised collective morality, such as solidarity and altruism because they lead to "renunciation, resignation, self-denial, and every other form of suffering, including self-destruction"[49] and ultimately bring "the morality of death."[50] Put bluntly, "if civilization is to survive," she wrote, "it is the altruist morality that men have to reject".[51] Instead of 'public morality' she believed in the merits of individual morality, to be used as "*the means of subordinating society to moral law*".[52]

Rand maintained that the sources of these kinds of individual rights, liberties and freedoms "is not divine law or congressional law, but the law of identity."[53] Rights, for her, represented "the property of an individual" and "society as such has no rights", thus "the only moral purpose of a government is the protection of individual rights".[54] She was well aware of the claims of those who regarded themselves as collective entities and who were demanding rights or protection but rejected their claims. "A group, as such, has no right", she wrote, and individuals who claim to exist as collective entities are nothing "but a gang or a mob".[55]

This rejection of community led Rand to question the role of government in promoting the wider interests of the society or in protecting marginalized groups. This was in part because this protection requires using revenues that are derived from taxing others (which she called 'robbery'). She strongly resented the use of tax revenues to provide benefits under the pretext of promoting the right to work, health services and standards of living. As far as she was concerned:

"There is no such thing as 'a right to a job' …(but) a man's right to take a job if another man chooses to hire him. There is no 'right to a home'.. 'rights' of special groups … There are only *the Rights of Man*."[56]

For her, the only legitimate rights were individual, civil and political rights, with the exception of property rights which are "man's only 'economic rights'", and the only rights that deserve to be called political rights.[57] Leaving this aside, there are "no 'economic rights', no 'collective rights,' no 'public-interest rights'."[58]

Liberals[59], like libertarians, applaud *normative individualism* because it protects *the rights* of the individual by disregarding the collective *needs* of the members of the community. This is justified on the grounds that the individual is "the primary normative unit" of society and the state. Jack Donnelly, for instance, remains convinced "that only individuals can have human rights" and therefore opposes group rights.[60] According to him, society and the state are constructed by individuals for the promotion of their interests. "Human rights are morally prior to and superior to society and the state," and can only belong to individuals "who hold them and may exercise them against the state in extreme cases."[61] Donnelly accepts that the individual "is a social animal", whose personality and potentials are "developed and expressed only in a social context", which is why society discharges "certain political functions" through its political organization (the State).[62] Because of this, individuals do have duties towards society.[63] However, when tension emerges between the interests of the society and its individual members, the conflict should always be resolved by giving priority to the wishes interests of the latter. "For the liberal," wrote Donnelly, "the individual is not merely separable from the community and social roles but specially valued precisely as a distinctive, discrete individual – which is why each person must be treated with equal concern and respect."[64] This distinctive existence, according to Donnelly, legitimizes *the rights* of the individual to enjoy the "liberty to choose and pursue one's own life", including by exercising those familiar civil and political rights known as "rights of man".[65] This reduces democracy to a form, which is an end in itself, i.e. for legitimizing government, rather being self-government by the people and to promote the welfare of the community, including marginalized social groups etc. "The democratic component of liberal democracy", stated Susan Mark, "comes to revolve, principally, around elections."[66]

There are Liberals who seek to give democracy substantive meaning by accepting the importance of promoting some collective interests of the community. Donnelly himself, for example, refers to the legitimacy of economic and social rights, such as the rights to food, health care and social insurance, and hence the role of the "society" in providing basic services such as "health care or universal material benefits".[67] This, according to him, also distinguishes him from John Locke, whom he criticized for failing to address key development issues.[68] The democratic formula which Donnelly supports, therefore, responds not only to the rights of the individual, but also to a certain extent to the *needs* of the community in the interest of justice.[69]

Will Kymlicka also moves the compass of liberalism closer to what matters for the marginalized and the *common good*. To defend this within the framework of liberalism he focuses on "a liberal theory of community and culture".[70] As he sees it, membership of cultural groups "gives rise to legitimate claims, and some schemes of minority rights respond to these claims".[71] According to him, protection of individual rights should not be perceived as necessarily leading to confrontation or tension within society. The members of the community are, after all, not separated from their groups since there are 'bonds of mutual respect" which motivate individual members to act responsibly and to "successfully pursue their understandings of the good."[72] This is how different groups of people have always co-existed and how they freely pursue "their shared communal and cultural ends, without penalizing or marginalizing those groups who have different and perhaps conflicting goals."[73] This approach brings normative individualism closer to what concerns communities and thereby to the acknowledgement of the roles of government to promote these needs. However, this does not go far enough to the recognition of collective life or groups. As Birch put it, "(T)he language of rights has to be used with great care when it is applied to groups".[74] Those who endorse this kind of middle-of-the-road approach are often called 'Social Liberal'.

Communitarians are not shy when it comes to defending communities, their interests and the role of governments. They dismiss Liberalism as a misleading ideology because it distorts who the self is and how social relations work. Michael Walzer calls this ideology an 'incoherent' and "a self-subverting doctrine" which cannot be reconciled with reality. The reality which Communitarians recognize acknowledges the presence of social bonds, values and loyalty to family, relatives, neighbors, friends and co-workers. Liberalism, according to Walzer, denies all this as if the individual exists in a vacuum and as if there is no community, no Jews, blacks, Catholics, religious organizations, etc.[75] Brian Lee Crowley relegates Liberalism to the sphere of an intellectual exercise that is in conflict with the real world.[76] According to him, the self is shaped by social forces, i.e., the community, language, culture, history etc. These social forces enrich the self, endowing it both with morality and roles and responsibilities. He dismisses the Liberal's 'universal' self as a one dimensional 'faceless' being who resembles a shadow, or even an inanimate object.[77] "The liberal social order", he states, "finds its justification in a realm of abstraction quite separate from the concrete and contingent."[78]

The self emerges in the real world, according to Crowley, from a social context, as a byproduct of complex processes of nurturing, training, relationships and attachment. These relationships "are partly constitutive of who we are, and to that extent our reflection on, and reasoning about, that part of our deeper self will entail the 'coming to self-awareness of an intersubjective being', whose boundaries transcend those of the individuals it comprises."[79]

This contextual self-awareness comes with social roles and social responsibilities which are linked to religious, cultural, national, professional and other requirements. Compliance with these expectations is not perceived by the self as something that is done for 'others', but for 'us', and hence for 'me'. The self is gratified by what it discharges for 'us' and is aware of the reciprocal services. The fusion between 'me' and 'us' is best explained by what MacIntyre calls 'our moral particularity', which derives from our particular social identity. This is why when the individual describes himself he brings others in the picture by stating:

"I am someone's son or daughter, someone else's cousin or uncle; I am a citizen of this or that city, a member of this or that guild or profession; I belong to this clan, that tribe, this nation. Hence what is good for me has to be the good for one who inhabits these roles. As such, I inherit from the past of my family, my city, my tribe, my nation, a variety of debts, inheritances, rightful expectations and obligations."[80]

This description reflects ways of life that exist in many developing countries. Here, individuals are often identified as "son of x or y" or as 'the person from this or that community or village". Even in the Western countries this survives in family names, such as Abrahamson or Johansson, meaning son of Abraham or Johan, or Kristbjörnsdóttir, meaning the daughter of Kristbjörn. These kinds of identifications sometimes bestow social benefits or disadvantages depending on the reputation of the person or family whose name is used. This approach to the understanding of the *self*reveals the interactive and reflective nature of the individual. It shows that the individual is not as isolated and independent as s/he appears from the outside but "a being emerging out of a dense social ground" with fluid character, "rough edges and ill-defined boundaries."[81]

Concluding Observations

The conflicting approaches used to the understanding of the nature of the human being (the *self*) and how s/he relates (or ought to relate) to society and the state, have led scholars to endorse varied forms of government. Of these, democracy is clearly the most favored system. However, how democracy should be understood concretely and applied in practice remains a puzzle because the point of departure for deciding how society should be organized differs depending on how the human being is perceived. That democracy should permit people to choose their government is not in dispute. The dividing line is on what kinds of rights, freedoms and obligations the individual should have and how these should be aligned to the interests of community.

The *nature* of the human being (*the self*), as understood in the Hobbesian, Libertarian and Liberal sense, is at odds with social reality outside the Western world. Except in times of hardship, such as, during periods of war, political chaos or confinement (in jails or hospitals), the human being in this part of the world is *social*. S/he is a by-product of community life, inter-dependent and bonded with the other members of his/her community and motivated to maintain this state of affairs. Even in times of extreme poverty or economic deprivation, which tests the limits of human loyalty, individuals remain attached to one another emotionally, socially and in many other ways.

Although the political models of governance recommended by Hobbes, Libertarians and Liberals are different, they are united in their affirmation of the individualistic nature of the human being. Where the latter two currents of thought differ from Hobbes is in their rejection of his characterization of human beings as evil *by nature*. They, therefore, come to different conclusions regarding the extent to which individuals deserve to exercise what are regarded as natural rights and freedoms. For Libertarians and Liberals there should be no hindrance to the exercise of civil and political rights by individuals. What is more, these rights should even be prioritized over the interests of the community. As far as they are concerned, a community is nothing more than the sum of its members, which means that the community (or social groups) cannot have distinct interests and rights. This is why they advocate reducing the role of governments and their influence over community matters and reject the idea of protecting marginalized social groups.

This political model, which prioritizes the rights of individuals over the needs of the community and rejects the idea that government should have a role in responding to these

needs, blocks the possibilities of achieving *democracy in substance*. Less governance, by definition, means less care for the collective needs and problems of the governed. Under these circumstances, it is difficult to see how there could be a government *for the people* as a whole. What the electoral system assures is only democracy *in form,* a means of legitimizing the power.

Social contract theory, as imagined by Hobbes, was also intended to *legitimize* the authority of the ruler. The government can be viewed as being "*of the people*' since the people chose it. This right to choose the ruler was justified by Hobbes because he believed that the individual has *natural rights*, i.e. the right to rule himself. However, since this person is assumed to be, by nature, egocentric, competitive and violent, Hobbes recommended surrendering these natural rights in the interest of the peace and interests of community life. One should note, in this regard, that Hobbes expected the ruler to govern by observing the mandates given by the governed – namely to protect the interests and safety of the community. This means, there would be 'a government *for the people*'. What is problematic in the Hobbesian formula is the assumption that people would choose to surrender their rights and freedoms and willingly submit to suffering under a tyrannical rule.

Liberal and Libertarian democracies are products of the historical evolution of Western European societies and those states which were established outside Europe by the descendants of Europeans. Liberal democracy is a political system which mirrors the nature of the prevailing social relations and which evolved from the requirements of the socio-economic and political structures of the industrialized capitalist states. It attaches special importance to the freedoms and values of the individual citizen and applies social contract theory as a means of legitimizing governance through regular elections. This constitutes a system of government *of the people*, hence democracy *in form*. The exercise of individual rights and freedoms opens the doors for empowerment *from below*, and governance *by the people*. However, since minorities are not able to participate effectively in the political machinery or to benefit from the economic wealth of these countries in the same way as the members of the majorities, the system has serious weaknesses.

In theory, this political model has the advantage of contributing to nation-building by shifting the loyalty of the individual away from his/her social group and traditional social structures to that of the state. However, *in reality*, this is possible only if states are

politically and economically strong and able or willing to meet the needs of their citizens, including that of the marginalized members of the vulnerable groups. Otherwise, the latter will be unwilling to abandon their loyalty to their traditional identities and social structures since they are the basis for their survival.

Whether this Western model of normative individualism works in the developing countries as it does in the West is an open question. To assume that the indigenous communities of the Amazon, the rural tribal communities of Africa or the religious communities of the Middle Eastern countries will replace their collective ways of life by normative individualism is to be naïve. Even in the more economically developed urban settings of these countries, social relations have a collective dimension. Unlike in the West, the governments on these continents are not politically or economically strong enough, to care for their citizens, with the exception of mineral exporting countries (like the Gulf countries) or the few industrialized Asian countries. The negative consequences of replacing the existing social fabrics of these collective societies by normative individualism, at a time when the state is unable or unwilling to provide the means of existence to the citizens, would be hard to predict. The massive exodus of 'migrants' from Africa to the European countries across the Mediterranean Sea might be one of these unfortunate consequences.

The fact that the developing countries have a heterogenous social base, in contrast to the homogenous nature of the nation-states of Europe, also calls into question the idea of rule of the majority which underpins democracy in Europe. This model of majority rule, that is characteristic of Liberal or Libertarian democracy, is appreciated by the members of the majorities since the political system adopts their ethnic, linguistic or religious characteristics. It is those who belong to the ethnic or linguistic or religious minorities who fear marginalization and discrimination based on their identities. It is no wonder, therefore, that the system can even tolerate and protect the exercise of individual rights and freedoms that are directed against ethnic, linguistic or religious minorities. This is also why when the racist, Nazi and Fascist groups mobilize the members of the majorities against the minorities they do it under the pretext of nationalism, by even describing themselves democrats.

For many of the African and Asian countries who have over one hundred smaller distinct ethnic, religious or cultural groups (e.g., Nigeria, Sudan, the Democratic Republic of the

Congo and Ethiopia), majority rule can mean political and economic domination by very few ethnic groups with large populations. In most of these countries, the official languages used in the government offices, courts, schools, hospitals, employment areas, etc. are the language(s) or these majority groups. By virtue of their numerical size these majorities can effectively dominate the other groups economically, politically, culturally, socially and in other respects. The fear of being dominated by other social groups, as well as the desire to protect and promote their own traditional collective interests, leads individual in these kinds of societies to think of their own narrower social groups rather than with the nation when the right to votes is exercised. Alex Thomas was right in underscoring the point that even the recognition of "(M)ulti-party democracy … opens up the possibility of full-scale mobilisation. After all, as Claude Ake points out, 'Liberal democracy assumes individualism, but there is little individualism in Africa'. Africans interact on a more communal basis."[82]

The other reason which makes normative individualism less attractive in countries that are not as economically developed as Western countries is that it is associated with calls to limit the role and authority of government in societal matters. People in countries with diverse social groups who suffer from neglect, deprivation and discrimination need centralized government policies and measures to provide assistance, for example, by expanding the infrastructure and providing education, health services, housing facilities and the like. This means *government for the people*. However, this is the exact opposite of what normative individualism calls for, particularly as inspired by the Randian political model.

This Randian model has been praised as the best system since it maximizes *individual* freedoms; however, at the same time it rejects the rights of individuals to work, health, education and a decent standard of living — i.e. to their very means of survival. Under this formula an unemployed person is given the option of accepting or rejecting an offer of employment. A person who is discriminated against in the field of employment, education or health has nowhere to turn to because the government is discouraged from responding to these kinds of social and economic problems. A citizen who is bankrupted after being forced to sell his home to pay for medical treatment for family member or who becomes disabled or ill due to conditions at work should not count on help from the government since the rights to health and a decent standard of living are not recognized. The individual merits no support as a citizen since the government has no authority to respond to such problems. Those private individuals who try to help by providing support

are ridiculed since altruism is considered as foolishness. This model is surely unacceptable in developing countries. Martti Koskenniemi was correct in stating that "(T)he nation-State and its democratic forms may not be for export as pure form" and in warning against the insistence on using democratic models as "an international or universal norm of 'democracy' … within existing political communities (where it) may in fact be unacceptable … and always suspect as a neocolonialist strategy".[83]

Concerned by the loophole in human rights which normative individualism has created, some Liberals, such as Jack Donnelly, Will Kymlicka, John Rawls and those who appreciate the virtues of Utilitarianism offer different kinds of remedies in the interest of social justice. Jack Donnelly endorses economic and social rights but not group rights, except indigenous rights. Kymlicka accepts group rights including minority rights. Both these positions deviate from normative individualism. Embracing Utilitarian ideas also creates obvious tension with the Liberal and Libertarian ways of thinking, whose very premise, at least as formulated in the thoughts of John Locke, Immanuel Kant and Jean Jacque Rousseau is the defense of natural rights. According to Jeremy Bentham, the father of Utilitarianism and positivism, the notion of natural rights is nonsense because it is fabricated based on passions.[84] "There are no rights without law", in his opinion and "no rights contrary to the law."[85] Rights, obligations, offence and services are all inter-connected and they are made by governments to govern the community.[86] When there are social problems or wrong things happen, it is the responsibility of the government to make them right, in ways that maximize benefits to the welfare of the governed. This is why Utilitarianism maintains that if a right is worth its name it should have utility.[87]

The collectivist schools of thoughts, such as, Communitarianism, Socialism and Social-Democracy embark from a solid base which considers the *self* as a by-product of the community and the defense of the collective interests. Unlike the proponents of normative individualism, they do not have to rely on imagined 'natural rights'. Their concern for collective and group interests makes their approach 'democracy friendly' since the people are groups, not individuals. Regarding the self as a by-product of the community leads to the idea of empowering communities. However, this creates tension inside multi-ethnic and multi-national societies, and may even lead to the disintegration of their states, as occurred in the former U.S.S.R, the Yugoslav Federation and Czechoslovakia. The challenge is to develop political models which extend democracy to the people of the state, as a whole,

while protecting the interests of communities.

An example of a common ideological platform which unifies diverse ethnic, religious and cultural groups under a common cause is the Marxist theory of Socialism which merges 'the workers' into one proletarian class. The weaknesses of this theory include (i) the rejection of the civil, political, economic, social and cultural rights of the individuals, (ii) the use of the top-down approaches of governance by elitists (central committees) to *dictate* on the people, and (iii) the assumption that all sociological nations should have the right to create their own political nations. The concept of the '*dictatorship* of the proletariat' implies elitist rule by those who claim to know the requirements of 'Scientific' Socialism and who are intolerant of dissent. We have seen, time and again, how opposition can be silenced by being condemned as anti-social, reactionary, counter-revolutionary.

The other problem with the Marxism model is its defense of national self-determination. The application of this theory would lead to the disintegration of multi-national states such as Russia, Spain and the United Kingdom as well as most African and Asian countries, as has already occurred in the former U.S.S.R, the Yugoslav Federation and Czechoslovakia. Moreover, this is likely to encourage smaller social groups, such as, indigenous groups, tribes, and religious and linguistic communities to also struggle either for separation or for some kind of autonomy, thereby further disrupting the fabric of national unity.

Social democracy has navigated between these contrasting positions of Marxism, Communitarianism and Liberalism. It accepts the social nature of mankind and rejects the notion of political emancipation through proletariat revolution. The electoral system and multi-party system are embraced as the best means of protecting individual rights and freedoms. This way, the notion of government *by the people* and *of the people* is guaranteed. The interests of the broader community are promoted in two ways. On the one hand, economic, social and cultural rights are recognized and promoted through higher taxation and key public sectors – such as schools, transportation, insurance, media – are placed under 'public' control. This political model has been used for decades and continues to dominate politics in the Nordic countries, such as Sweden. This model tolerates the existence of rival political parties, such as Liberals, Leftists, extreme Right-wing parties and Christian Democrats. While the Social Democratic Party of Sweden is not as powerful as it used to be it is still the strongest of all the parties, and the dominance of social democratic

ideas is such that even the rival parties do not dare to openly call for dismantling of the social benefits which Social Democracy has brought about. Interestingly, because Social Democracy has produced tangible results, the strategy which the populist parties use is to say that immigrants are threat to the nation and looting what is collected from the taxpayer. To put it crudely, their slogans are simple: 'elect us and we will drive the alien looters out'. Not surprisingly, these kinds of emotionally appealing promises have enabled the Swedish Democrats (the Extreme Right) to get about 17% of the votes in the most recent election.

Modern Democracy: Historical Evolution

The American and French revolutions created shock-waves among despotic leaders near and far and inspired hope among the victims of oppression. During the first decade of the 19th century the armies of Napoleon spread out over large parts of Europe, promising the fruits of the French Revolution to the inhabitants of the occupied territories. The leaders of the uprisings in European colonies of Central and South America took advantage of the occupation of Portugal and Spain by Napoleon to struggle for independence and start out on a new, democratic way of life. The louder and wider the drums of revolution, popular sovereignty and self-determination echoed, the more colonialism and despotism lost ground in the American hemisphere. European despots too were left with a choice between peaceful change and bloody uprisings.

Not surprisingly, constitutional proclamations upholding popular sovereignty started to make appearances in many places, even if what was promised and proclaimed was not always delivered. Article 49 of the May 17, 1814 constitution of the newly established state of Norway promised Norwegian citizens that the new order would place the legislative power in hands of their parliament (the Storting).[88] The Liberian Declaration of Independence of July 16, 1848 recognized the 'inalienable rights' of all men including "life, liberty, and the right to acquire, possess, enjoy, and defend property" and:

"*…to institute a government, and to choose and adopt that system, or form of it, which in their opinion will most effectively accomplish these objects, and secure their happiness, … to institute government and powers necessary to conduct it is an inalienable right and cannot be resisted without the grossest injustice*."[89]

Article 39 of the Mexican constitution of 1917 stated that "national sovereignty resides essentially and originally in the people. All public power originates in the people and is instituted for their benefit. The people at all times have the inalienable right to alter or modify their form of government"[90] Paragraph 1 of article 6 of the 1937 Irish constitution affirmed that:

"All powers of government, legislative, executive and judicial, derive, under God, from the people, whose right it is to designate the rulers of the State and, in final appeal, to decide all questions of national policy, according to the requirements of the common good."[91]

In light of this there is no doubt that the notion of 'the will of the people' has been transformed to an important international principle by the end of World War I.This is not, by any means, to suggest that democratic governments were established everywhere or that the states which purported to be democratic were acting democratically. The point is made merely to underscore that popular sovereignty was increasingly invoked and formally acknowledged in the American hemisphere and in Europe including in Russia where a Communist form of governance had been proclaimed. The enjoyment of effective democracy, however, had to wait for several decades until the required institutions were fully developed and the citizens (including women) were empowered to exercise their democratic rights.

The notion of 'the will of the people` received a face-lift when it was proposed for use as an international political norm by the victorious Allied Powers at the end of World War I. The intention behind this proposal was mainly to legitimize of the contours of the new political borders of Europe. This was to be done by asking some of the inhabitants of the frontier areas to choose between the bordering states they preferred to belong to. Speaking before the U.S. Congress, President Woodrow Wilson emphasized the significance of respecting the *rights of every people* to "be left free to determine its own polity, its own way of government" since "(N)o peace can last, or ought to last, which does not recognize and accept the principle that governments derive all their powers from the consent of the governed."[92] This idea was endorsed by the British Labour party with regard to the occupied German and Ottoman territories.[93]

There is no doubt that the problems that emerged following World War I were ultimately

settled according to the principle of 'Might is Right'. Few would doubt that the political behavior of the Allied Powers, on both domestic and international planes, was hardly reconcilable with this noble idea of 'the will of the people'. Nevertheless, by this time the concept of 'will of the people' had become popular and it was applied. albeit selectively, in border areas such as the Saar Basin, Upper Silesia, East Prussia, and Eupen and Malmedy by asking the inhabitants of these regions to indicate which states they wished be part of.[94] The inhabitants of these territories were not given the right to create separate states, or to have their own rule in the form of autonomy or self-administration. The principle of self-determination was applied in a restricted way.

The other innovative political development which occurred at this time was the establishment of the Mandate system. Under Article 22 of the Covenant of the League of Nations, the states that were awarded the administration of territories that were taken from Germany and the Ottoman Turks, were required to respect "the principle that the well-being and development of such peoples form a sacred trust of civilization". The manner in which this obligation was discharged was supervised by the League of Nations.

The Evolution of Democracy as a Universal Legal Concept

The Mandates and Roles of the UN. More relevant to the present era is how the notion of democracy was developed by the United Nations as a legal concept of universal validity. This development came about after a long and twisted process of negotiations and international political cooperation. The mandates for being concerned with this subject-matter were enshrined in the UN Charter as purposes of this organization. According to Article 1 paragraph 3 they include the promotion of respect for human rights and finding solutions to international economic and social problems. Paragraph 2 of this same provision obliges the UN to promote the equal rights and self-determination of peoples as the basis for friendly relations among nations. Even if the word democracy is not explicitly mentioned in these provisions, it is obvious that the realization of these goals would further the process of democratization.

Before explaining the road-map used by the UN to promote democratic values, it is important to remember two things. Firstly, the UN does not have the power to adopt legally binding decisions, other than those that concern international peace and security. This is

why its guidelines on the promotion of democracy are merely guidelines, unless they are embodied in legally binding instruments which are ratified by states. Example of this includes the right to take part in government which is recognized in article 25 of the international covenant on civil and political rights. Secondly, when it comes to the kinds of political systems which best promote democracy, the view of this organization is that it does not endorse any particular model. Whether this is stated merely for the sake of politeness to respect the Charter principle of state sovereignty, it is up to the reader to decide. What is equally obvious is that the UN is urging states to conduct themselves in accordance with the Human Rights-Based Approach, which suggests that this approach is the only acceptable method of promoting and measuring democracy in the absence of other acceptable apporaches.

The UN has been following two distinct 'pathways' to the promotion of democracy, one based on peoples' rights and good governance and the second one based on human rights.[95] The former focuses on the collective dimensions of the rights of peoples (political communities)– i.e. democracy 'from above'. The second approach focuses on how empowerment is to be promoted 'from below' by facilitating the exercise of rights by individuals and the members of some social groups. These two approaches are closely intertwined. Ignoring one or the other leads to a distorted understanding of how democracy, as a concept, is perceived by the UN. In the following section we will sketch the legal background for the UN's promotion of both *peoples' rights* and *human rights*. The significance of these legal frameworks for democracy will be explored in more detail later.

The Rights of Peoples: The UN developed the rights of peoples because its purposes include promoting "friendly relations among nations based on respect for the principle of *equal rights and self-determination of peoples*" (art. 1(2) emphasis added). Article 55 lists the conditions which are necessary for achieving stability based on people's rights. These include respect for human rights, and the promotion of economic and social development and other collective interests of the community. In Articles 73 and 76, this instrument addresses the rights of peoples inhabiting non-self-governing territories. All these references to the rights of peoples has evidently transformed the notion of 'people', which was earlier vague and an ideologically contested political concept, to a universally applicable legal concept with practical implications.

The UN Charter has not defined the concept of 'people'. Nor has it listed all the rights peoples have. However, it is apparent that its drafters took care to ensure that issues related to democracy were not left out altogether. For example, its preambles start with the words "We the peoples of the United Nations" and ends by stating that it is these peoples of the world "through representatives assembled in the city of San Francisco, who have exhibited their full powers … (and established) … the United Nations." Although many of the governments that were assembled to establish this organization in 1945 were not democratic, the form of the words used in the Charter sends a clear signal that states should belong to their peoples and not to the rulers. This implies the illegitimacy of despotism: a clear signal to despotic rulers that the UN would not tolerate the conducts of rulers who say, "I am the State" or "The State, That's me", as Louis XVI of France is supposed to have stated.

Using the mandates given to it by its Charter to promote friendly relations among nations based on respect for *people's rights*(art. 1(2)), human rights *and* development (art. 1(3)), the UN wasted very little time in clarifying the road-map that should be followed. The first bold step was taken in 1948 when it adopted Universal Declaration of Human Rights setting out the civil, political, economic, social and cultural rights of the individual. Article 21 of this Declaration specifies the role of democracy in guaranteeing human rights. According to the 3rd paragraph of this provision, "(T)he will of *the people*s hall be the basis of the authority of government" (emphasis added) and "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 first two operative paragraphs of this provision deal with the rights of the citizen "to take part in the government of his country, directly or through freely chosen representatives" and to "equal access to public service".

Leaving this implicit endorsement of democracy aside, group rights, such as minority or indigenous rights and the rights of peoples to self-determination were left out from the Universal Declaration of Human Rights.[96] Because of this the states that were disappointed by this omission wasted no time in mobilizing in defense of the rights of peoples. Since these states were in the majority, they were able to muster the necessary votes to recognize the right to self-determination as a human right[97] and to include this right in the two draft covenants on human rights which were prepared following the adoption of the Universal Declaration on Human Rights.[98] Henceforth, peoples' rights

were to be treated not only as human rights but also as a pre-requisite for the effective enjoyment of human rights.[99]

Bearing this in mind, as well as the pledges given by the colonial powers under article 73 and 76 of the Charter to respect the rights of *the peoples of the dependent territories*, including their "their political, economic, social, and educational advancement" and "self-government" (art. 73) or independence (art. 76) the UN pressed these powers to deliver on their pledges. When they dragged their feet, the General Assembly adopted, on 14 December 1960, the Declaration on the Granting of Independence to Colonial Countries and Peoples. The rest is history: colonialism was progressively dismantled, overseen by the Decolonization Committee, a process which led to the gradual advancement of democracy.

In the decades that followed, the UN adopted important instruments re-affirming and elaborating the different rights of peoples, including their right to social progress and development, to sovereignty over natural resources and wealth, etc. The adoption and coming into force of the International Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights further affirmed the validity and significance of human rights and peoples' rights. Monitoring bodies were set up to assess the compliance with the provisions of these Covenants by the states that had ratified them. Of special importance to democracy is the acknowledgement made in paragraph 1 of article 1 of these two covenants that:

"*All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.*"

This provision acknowledges the political, economic, social and cultural dimensions of the rights which peoples have. The exercise of the political rights entitles a people, i.e., an internationally recognized political community or *public family*, to decide what the international political status of its country should be, e.g. to be independent, to be united with other political entities, or to be associated in different ways. In addition, a people is also said to have the right to manage its domestic affairs by freely pursuing its economic, social and cultural development. How this is done is left to each people and its state. However, it is interesting to note, in this regard, that article 55 of the Charter considers the

promotion of “higher standards of living, full employment, and conditions of economic and social progress and development” as being essential for the realization of the rights of peoples. The UN is obliged by this provision to promote these goals, and members states have given their pledge to cooperate with these efforts, in accordance with article 56 of the Charter.

International Human Rights Law. The 1945 UN Charter reaffirms that all human beings have dignity and worth. It also made the promotion of human rights and freedom sone of its basic purposes. Proceeding from these premises the UN acknowledged, in 1948 the legitimacy of civil, political, economic, social and cultural rights when it adopted the Universal Declaration of Human Rights. The unique contribution which this document has brought to the discourse on human rights and democracy are highlighted by six key points of interest.

First, the declaration recognizes, in the third preamble, that “human rights should be protected by the rule of law” to avoid rebellion against oppression and tyrannical rule. This statement slams the door on the Hobbesian model of governance. Second, it articulates rights and freedoms by individualizing them (as the rights of individuals) as desired by Liberals and Libertarians. Third, it identifies the civil and political rights necessary for establishing and sustaining democratic governance, e.g., the rights to the freedom of expression, assembly, association and political participation. Fourth, it sets out the economic, social and cultural rights which good governance should promote – i.e. the entitlement to work, health, education, an adequate standard of living, etc. Fifth, in article 29, it accepts the positions of collectivists concerning the importance of subordinating individual rights and freedoms to the interests of the community. This provision makes it clear that individual rights can be restricted as “determined by law for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society”. At the same time, it acknowledges that the individual beneficiary of human rights “has duties to the community in which the free and full development of his personality is possible”. Last but not least, as pointed out earlier, this Declaration requires that the authority of governments should be based on “the will of the people”, which “shall be expressed in periodic and genuine elections”.

When the Universal Declaration on Human Rights was adopted no state voted against it. This was because its contents were formulated after considerable negotiations and because it was understood that it was not intended to be legally binding, but merely to set a "common standard of achievement for all peoples and nations" as indicated in the last paragraph of the preamble of the Declaration. As stated in article 10 of the UN Charter, the General Assembly has no power to adopt binding instruments. Still, there were six Socialist states, Saudi Arabia and South Africa abstained and two were absent during the voting (Yemen and Honduras). The Soviet Union and its allies did not support it consistent with the opposition of Marx to 'the rights of man'. The racist regime of South Africa and conservative Saudi Arabia had ideological reasons for refraining to give their support since both did not believe that all the members of their communities should be allowed to participate in politics. This is not to say that the domestic features of the other states who voted in favor of the declaration were fully in line with what required by the Universal Declaration of Human Rights. It is simply to explain what 'compelled' those states that chose to abstain to do so.

After the adoption of the Universal Declaration on Human Rights, the UN turned its attention to the preparation of legally binding covenants. On 5 February 1952 the UN General Assembly adopted resolution 543 (VI) requesting the Economic and Social Council to instruct the Commission on Human Rights to draft two separate covenants for subsequent adoption by the General Assembly. One was to deal with civil and political rights and the other with economic, social and cultural rights. During the drafting process the ideologically charged controversies relating to the validity of economic, social and cultural rights once again became the focus of intense debates. When it became clear that these were leading nowhere, the General Assembly stepped in to break the deadlock by asking the Economic and Social Council to instruct the Commission on Human Rights (the drafting body) to acknowledge that "when deprived of economic, social and cultural rights, man does not represent the human person whom the Universal Declaration regards as the ideal of the free man".[100]

Bearing this in mind, the Human Rights Commission was required to "include in the draft Covenant a clear expression of economic, social and cultural rights in a manner which relates them to civic and political rights and freedoms."[101] The Commission complied with this, which is why we now find, in the third preamble of both these covenants, an identical provision acknowledging that:

"the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights"

Ever since then, the inseparability of the linkage between civil and political and economic, social and cultural rights has been continually re-affirmed by the international community. In the 1968 Tehran Declaration, which was adopted on the twentieth anniversary of the adoption of the Universal Declaration of Human Rights, the General Assembly made it clear that:

"*Since human rights and fundamental freedoms are indivisible, the full realization of civil and political rights without the enjoyment of economic, social and cultural rights is impossible. The achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development*".[102]

This formulation was slightly reformulated gradually, when the General Assembly adopted the 1993 Vienna Declaration and Programme of Action, by stating:

"*All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis*."[103]

After the two international covenants were adopted by General Assembly resolution 2200 A (XXI) on 16 December 1966, and came to force in 1976, the stage was set for the emergence of many other human rights conventions. Some of these subsequent conventions provide protection for the members of the different vulnerable groups (e.g., children, women, those with disabilities, migrant workers, indigenous peoples and those belonging to minorities) by contextualizing the complex realities obstructing their enjoyment of rights on an equal basis with others. The international regime of human rights which is now in place has been further enriched by the practices of the international monitoring bodies of the UN, the treaty committees, those of specialized agencies (e.g., the International Labour Organization and UNESCO) and the regional organizations (e.g., the Council of Europe, the African Union, the Organization of American States, etc.).

These developments have been warmly welcomed by progressive states and non-state actors who are committed to the defense of human rights, as positive steps towards the creation of a human rights-sensitive just global order. However, because the existing international monitoring systems have obvious weaknesses, pressure to further develop these mechanisms have been growing. In response to these concerns, the UN has gradually developed its Human Rights-Based Approach to be used as a normative conceptual framework to assess and promote compliance with international standards for human rights. Since the UN considers that the progress that is made towards developing human rights is irreversible, it started to use this HRBA for assessing how states are conducting themselves in human rights sensitive matters, including when it comes to promoting democratic values.

The Human Rights-Based Approach and Democracy

Linking Human Rights to Political Conduct: the Earlier Experiment

It may well be asked whether governments will permit the international organizations such as the UN to assess their conduct under the lens of human rights. Can the international requirements to comply with human rights standards and the principles of social justice really shape the conduct of political actors? This is not a new question. It was raised as far back as 1919 in the preamble of the International Labour Organization, which clarifies why this organization was established:

"*Whereas universal and lasting peace can be established only if it is based upon social justice. And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperiled; and an improvement of those conditions is urgently required … The High Contracting Parties, moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world, and with a view to attaining the objectives set forth in this Preamble, agree to the following Constitution of the International Labour Organization*."

It may seem puzzling that states of this period, especially the colonial powers, agreed to the establishment of such an organization, committed to the promotion of social justice. The explanation lies in the timing: the ILO was set up in the aftermath of the 1917 Bolshevik

Revolution in Russia, when fears of the spill-over effects of this Revolution were real. The establishment of a communist regime in the USSR was justified as a response to the grievances of Russian workers against capitalism; and it seemed all too likely that workers in Western capitalist states would do the same. Added to this was the exhaustion of the Western powers after the First World War (1914-1918), leaving them with little alternative but to seek to establish more sustainable norms of political behaviour, based on humane values.

Unfortunately, this enterprise was not founded on solid grounds. The League of Nations which was established at the time to maintain international peace and security was not equipped with the legal and political mandates necessary to create a political order based on human rights. Instead, the League was used to protect the hegemonic interests of the rival big powers, including by preserving their spheres of colonial domination. An international organization which protects an unjust political order cannot survive and it soon became clear that the next annexationist wars were just around the corner.

The establishment of the UN brought about a unique situation which favoured the establishment of a more just order based on the promotion of human rights. The states which joined hands to create this organization made clear their determination, as stated in the preambles of the UN Charter that they are committed:

"*to save succeeding generations from the scourge of war…*

to reaffirm faith in fundamental human rights….

to establish conditions under which justice … can be maintained, and

to promote social progress and better standards of life in larger freedom".

The'peoples of the world' were thus promised an international order that would take issues related to human rights and justice seriously. To this end, the UN was given a clear mandate to promote the self-determination of peoples and universal human rights, as provided by article 1 of the Charter, bearing in mind the need for settling international disputes "in conformity with the principles of justice and international law". The regime of human rights

that was developed subsequently was based on the understanding that its operation should not contravene the principles of state sovereignty and non-intervention. The ratification of the human rights instruments is left up to each state, although this would be monitored by the international bodies that are created for this purpose. If states ratify these human rights instruments they are not at liberty to disregard the undertakings assumed thereunder. If they do, violations of human rights are seen as an *essentially* international concern, warranting the legitimate responses in accordance with the seriousness of the case.

It goes without saying, therefore, that states which have assumed international human rights obligations are required to conduct themselves as required by the ratified instruments. This means they should follow a human rights-based approach when pursuing their political objectives. The idea of empowering the UN to monitor how this approach was pursued was resisted during the Cold War by the ardent defenders of state sovereignty, such as the U.S.S.R. and its allies, since they were suspicious of the political intentions of the Western Powers. The states which are not as economically developed and politically stable as those in the West also feared that this approach could be easily exploited to undermine state sovereignty in the pretext of addressing human rights violations. When the Soviet Bloc collapsed, resistance to the use of this human rights-based approach by the UN started to crumble. The Western powers too started to pressure these weaker states to embrace this approach, if they are to participate in Western-led globalization. This basically meant they were required to respect human rights as perceived by Liberalism.

The UN Human Rights-Based Approach

As the Soviet Union and its allies became weaker towards the end of the 1980s, the Western powers, political activists, non-governmental organizations and units within the UN wasted no time in making sure that a human rights-based approach to development should be incorporated into the UN system. The basic idea was to use this approach by making human rights a cross-cutting and pivotal factor for all states and agencies involved in formulating policies and pursuing and assessing *development* programs. As UNICEF put it:

"A human rights-based approach is a conceptual framework for the process of human development that is normatively based on international human rights standards and operationally directed to promoting and protecting human rights."[104]

This approach, as its proponents see it, ensures further consolidations of progress achieved in developing the regime of human rights, since the excuses which are commonly made to disregard human rights in the pretext of development will no longer be tolerated. After all, in article 1 (1) of the 1986 Declaration on the Right to Development, development has already recognized the right to development as:

"an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized."

This means, when states design and implement their development plans, programs and activities, the human being should be "the central subject of development and should be the active participant and beneficiary of the right to development" (art. 2(1)). The human being should not be used as a tool for development.

One of the driving forces behind this promotion of *human development* is the United Nations Development Programme (UNDP), which published its first *Human Development Report* in 1990. Thereafter, the seeds of the HRBA began to be sown in the different international conferences that were arranged by the UN. The 1992 Rio Declaration on environment and development urged states to put human beings at the center of 'sustainable development" and to enhance the participation of women and indigenous peoples in the development process.[105] The 1993 Vienna Declaration and Programme of Action reaffirmed "the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights."[106] Article 16 of the 1995 Fourth World Conference on Women in Beijing called for the promotion of:

"*sustained economic growth, social development, environmental protection and social justice (which) requires the involvement of women in economic and social development, equal opportunities and the full and equal participation of women and men as agents and beneficiaries of people-centred sustainable development*".

That same year the World Summit for Social Development underscored, in article 66, the importance of pursuing a policy of social integration by enabling the individual to play an

active role in the process, and added that:

"*Such an inclusive society must be based on respect for all human rights and fundamental freedoms, cultural and religious diversity, social justice and the special needs of vulnerable and disadvantaged groups, democratic participation and the rule of law*".

Shortly thereafter, A UN Programme for Reform was launched, in order to inspire UN-affiliated entities "to mainstream human rights into their various activities and programmes within the framework of their respective mandates."[107] The idea behind this was to design a commonly agreed upon, right-based approach model for use by UN agencies, funds and programmes. The task was initially left to the UN Interagency Workshop on a Human Rights Based Approach, which met from 3 to 5 May 2003. This gradually led to the formulation of a "Common Understanding", which was subsequently endorsed by the 2005 World Summit, giving HRBA official political legitimacy, thereby paving the road for "developing concrete tools, instruments and processes … [and] coordinated system-wide actions in those areas."[108]

In the context of development, there are two basic requirements for compliance with HRBA. First, the goals of development policies, strategies, programs, activities, technical assistance and co-operation should always further human rights, as laid down in the Universal Declaration of Human Rights and other international human rights instruments. This means that the human rights standards contained in these instruments should guide development programming and cooperation in all sectors and in all phases of the development processes. Second, these development processes and cooperation should contribute to strengthening the capacities of the 'rights-holders' to claim their rights and the 'duty-bearers' to comply with their human rights obligations. This requires appreciating five key points: i. the universality of human rights, so that all human beings are in a position to exercise their rights; ii. the inalienable nature of human rights, which means that they cannot be abandoned; iii. The indivisibility, inter-dependent and inter-relatedness of civil, political, economic, social and cultural rights, without prioritizing one over the other; iv. The promotion of equal rights by combating all forms of discrimination, e.g. by ensuring inclusion and participation; and v. respect for the rule of law and the principle of accountability.[109]

When applied to the real world what this means is that development should be understood in human terms, as a means of safeguarding the dignity and worth of the human being, for the benefit and empowerment of all the right-holders without discrimination based on sex, age, linguistic, religious and other factors. This requires compliance by States with the obligations which they have assumed under the different international human rights instruments, including those protecting the members of vulnerable groups, such as children, women, migrant workers, persons with disabilities and those who belong to minorities and indigenous groups.

It is important to recognize that this HRBA is not legally binding or free from controversy. Its starting point which considers human rights as inter-related, interdependent and interconnected, as recognized in the Universal Declaration of Human Rights, is questioned by some states who have intentionally avoided from ratifying the covenant on civil and political rights or the covenant on economic and social rights, or some of the conventions which protect vulnerable groups. The principle of state sovereignty, which is recognized in paragraph 1 of article 2 of the UN Charter permits states to ratify or not to ratify the human rights instruments and to make reservations on the instruments they wish to ratify. As elaborated in principles 3 and 4 of the 1970 UN Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States the principle of sovereignty it also entails non-intervention in what is *essentially* a domestic matter. “Every State” under this declaration, “has an inalienable right to choose its political, economic, social and cultural systems, without interference in any form by another State.”

States that lag behind in economic development see the HRBA with suspicion because it can be used to stifle their development efforts by making allegations about human rights abuses. These states, especially those with marginalized and neglected multi-ethnic and multi-national groups, claim that they have inherited unjust economic, social and political structures from their colonial past. As they see it, there is no quick-fix to achieve development without making sacrifices. Without rapid economic development, human rights cannot be effectively realized and enjoyed by all on equal basis. These states, therefore, appear to be caught in a vicious circle with no easy escape from the traps of underdevelopment.

Under these circumstances, as governments of these developing countries see it, prioritizing

HRBA will not only frustrate the efforts which they are making to develop, but could even be used to de-legitimize these governments themselves and in the end weaken their states. The developed states do not have this problem because they are already developed – and mostly by sacrificing human rights. A case in point is the way the industrialized states in north America and the Western Europe were able to develop during the past centuries by benefiting from slavery and colonial subjugation. The point here is not to say that the developing countries should do what the developed ones have done, but to underscore the point that giving veto power to individuals and local groups on the pretext of human rights, e.g. when attention is turned to the construction of dams, railroads or highways, the large-scale development of agriculture and the exploitation of minerals, etc. runs the risk of arresting national development efforts.

Leaving behind these controversies surrounding HRBA, UN bodies, human rights monitors, donors, NGOs and an increasing number of states now use of this tool for evaluation of development policies, and to make sure that rights-holders are claiming their rights. UNDP relies on HRBA for assessing the success of development efforts of states in promoting sustainable human development and tackling inequalities and discrimination. Donor agencies use it to see how their development aid benefits the local populations on the ground. UNICEF uses it to assess the extent to which the welfare of children is being protected in accordance with the Convention on the Rights of the Child. Likewise, WHO uses HRBA to assess health service provision for children, compliance with the health service provision for women as required by the Convention on the Elimination of Discrimination against Women, and accessibility and acceptability of food, water, clothing and shelter to populations at large as required by articles 11 and 12 of the Covenant on Economic, Social and Cultural Rights.

At the same time as the HRBA is monitored *from above* by UN bodies, specialized agencies, donors and states, the UN was also making efforts to empower beneficiaries and defenders of human rights to apply HRBA *from below*. These efforts culminated in 1998 in the adoption of the "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms" (better known as the Declaration on Human Rights Defenders). This instrument sets out how the voices of the beneficiaries and defenders of human rights should be respected and promoted in the debates on human rights. "Individuals, groups,

institutions and non-governmental organizations", states article 18, "have an important role to play and a responsibility in safeguarding democracy, promoting human rights and fundamental freedoms and contributing to the promotion and advancement of democratic societies, institutions and processes."

The different provisions of this declaration underscore the roles which states should play in supporting human rights activities. More specifically, it defends the rights of individuals and groups "to promote and strive for the protection and realization of human rights at the national and international levels" (art. 1). These activities include the rights "to know, seek, obtain, receive and hold information about human rights" (art. 6(a)), to meet, assemble and participate in associations, to form non-governmental organizations, and to communicate with international organizations and NGOs (art. 5) and to engage in public awareness campaigns (art. 6(b) & (c) & 16). Further, the declaration affirms the rights of individuals and groups to solicit resources for their human rights activities (art. 13), to engage in peaceful activities (art. 12), to obtain effective remedies for the rights that are violated (art. 9(1)) and to approach governmental bodies and agencies to express criticism and propose improvements (art. 8).

Shortly after this declaration was adopted by the UN General Assembly, the Human Rights Commission also began highlighting the kinds of measures which states should take to promote democracy. These included respecting human rights in general, but also in particular political rights, such as the freedoms of expression, assembly and association (for example by allowing multiple political parties), and the right to participate in the government. Furthermore, states were urged to strengthen their electoral systems (by ensuring universal suffrage), to guarantee the impartiality of the judiciary, promote a pluralistic and independent media, ensure respect for the rule of law, and enhance the transparency and the accountability of government.[110] Support was also given by UN offices and programs to national and local initiatives to empower women, to strengthen human rights institutions, to safeguard the independence of the media and develop policies and laws promoting freedoms of expression, association and assembly.[111] All these measures were are necessary for the promotion of democracy.

The Human Rights-Based Approach to Democracy – The Group Rights Lenses

Collectivists, such as Socialists and Communitarians, and most of the defenders of state sovereignty prefer to see the UN focus on collective rights (and state sovereignty) when applying HRBA to promote and measure democracy. It is evident that HRBA is currently used mainly to check on the extent to which countries respect and promote individual rights and freedoms, as preferred by Liberals and Libertarians. Having said this, it would be a mistake to assume that the international regime of human rights has entirely abandoned the collectivist approach, especially how peoples' rights are promoted. The UN has been promoting empowerment both from below (by promoting individual rights) and from above (by promoting the rights of peoples) to further the processes of democratization.

The UN assumed its mandate to promote the rights of peoples on the basis of articles 1(2), 73 and 76 of its Charter. The earlier moves of this organization to promote the rights of peoples were aimed at facilitating the decolonization of the non-self-governing territories. This was achieved by following two separate approaches. On the one hand, the UN monitored compliance by administrators of colonial territories with their *human rights obligations* under articles 73 and 76 of the UN Charter, which had both collective and individual dimensions. On the other hand, this organization was promoting 'friendly relations among nations based on the principle of equal rights and self-determination of peoples' as provided by paragraph 2 of article 1 of the Charter. The latter, in essence, concerns promoting the rights of political entities (i.e. the dependent nations) and their relations with the administering powers. Operative paragraph 3 of General Assembly resolution 637 A (VII) 16 December 1952 encapsulates how these two approaches were used to achieve the same goal of ending colonialism. This provision provided that:

"The States Members of the United Nations responsible for the administration of Non-Self-Governing and Trust Territories shall take practical steps, pending the realization of the right of self-determination and in preparation thereof, to ensure the direct participation of the indigenous populations in the legislative and executive organs of government of those Territories, and to prepare them for complete self-government or independence."

Frustrated by the consistent demands of the UN General Assembly calling for the speeding up of the process of democratization in the non-self-governing territories, the colonial powers questioned the legal basis for these kinds of "interventions" by the UN, since they considered these questions as internal matters. At one point they even refused to send the

reports to the UN as required under article 73 of the Charter. If the UN was to proceed with this manner of 'intervention', it was argued, then other independent states too should do the same by speeding up the process of democratization within their realms e.g., by empowering minorities and indigenous groups. This political campaign was led by Belgium using the formula which was known at that time as 'the Belgian thesis'. The idea was to broaden the obligations mentioned in articles 73 and 76 of the Charter to all the UN members to promote self-government for all their minorities and indigenous tribes.[112] This idea was dismissed by the anti-colonial camp as an effort to meddle in the internal matters of independent states, by confusing *internal* and *international* issues, thereby distorting the purposes of articles 73 and 76 (the so-called colonial provisions).[113]

One of the arguments used by the colonial powers to reject the promotion of human rights, democracy and self-determination in their colonial territories was that the word self-determination is not mentioned in articles 73 and 76. The General Assembly responded by recognizing the right of peoples to self-determination as a human right, by resolution 421 D(V) of 4 December 1950. On 5 February 1952, the General Assembly went a step further by adopting resolution 545 (VI) which requires an article which deals with this right to be inserted in the international covenants that were being drafted. The colonial states, backed by most other Western states, rejected this by raising the familiar Liberal argument that the right of peoples to self-determination was a group right and not individual human right and therefore cannot be accepted as a human right. Even if the UN was to proceed with this idea, they argued, it would be difficult to apply it because it was difficult to define who the right-holders (i.e. the 'peoples') were.

The General Assembly justified its own moves by underlining that this right to self-determination was already recognized in paragraph 2 of article 1 of the UN Charter. Moreover, the UN would continue to promote this right throughout the dependent territories since they had international status and were not simply internal matters of the colonial powers. When the colonial powers refused to cooperate in dismantling their colonial rule based on the principle of the 'will of the people', the General Assembly adopted, in 1960, its Declaration on the Granting of Independence to Colonial Countries and Peoples. This was followed by the creation of its Decolonization Committee to speed up the demise of colonialism. The rest is the story of how around seventy per cent of the population of the world was set free from the yoke of colonialism. This was an important step forward for

democracy.

The UN Charter recognizes *the principle of equal rights and self-determination of peoples* and the two international covenants acknowledge the rights of "*all peoples*" to self-determination. Bearing this in mind, the UN has not refrained from expressing concern over how the principle of self-determination is respected even inside independent states. For instance, it will be recalled that this organization refused to recognize the credentials South Africa's *Apartheid* regime, as the legitimate representative of the people of South Africa and had imposed economic and arm embargoes on it. The UN Security Council has denounced the overthrown of the legitimate ruler of Haiti, President Jean-Bertrand Aristide, in 1991 (resolution 940) and the military take-over in the Fiji in 2006 (resolution 8893). This organization has also called for free and fair elections in many countries that were plagued by conflict, as in the case of the conflict in Rwanda in 1993 (resolution 872), the D. R. Congo, in 1999 (resolution S/RES/12134), Sierra Leone in 2002 (resolution 1389), Liberia in 2003 (resolution 1509) and Burundi in 2016 (resolution 2303). As the UN homepage on democracy indicates, only after the end of the Cold War, this organization "has provided various forms of electoral assistance to more than 100 countries — including advisory services, logistics, training, civic education, computer applications and short-term observation". All these concerns and efforts are intended to promote democracy inside independent countries.

How states conduct themselves when respecting and promoting the rights of people also continues to be of concern to the UN. Proceeding from this premise, the UN has continued to adopt important declarations which elaborate the different rights of all peoples. Examples include the rights to social progress and development[114], on sovereignty over natural resources and wealth[115], and the right to development.[116] In all these instruments attention is drawn to 'peoples' rights' and how the needs of the members of these political communities are to be met. It is important to recognize, in this respect, that unlike the right to self-determination, which is affirmed by the two legally binding covenants, most of above-mentioned rights are mentioned in declarations which are not binding and only set guidelines.

Equally important to note when it comes to how the UN promotes democracy are the steps taken to promote the rights of the rights of persons belonging to minorities and indigenous

groups. In 1992, this organization adopted the Declaration on the Rights of Persons Belonging to National, Ethnic, and Religious Minorities.[117] Although this declaration takes an individualized approach to minority rights it also acknowledges that the rights that are recognized can be exercised collectively. In 2007 the UN adopted the Declaration on the Rights of Indigenous Peoples. This instrument defends both the individual and group rights of these communities. In effect, this latter instrument which promotes the rights of 'indigenous peoples' follows the 'Belgian thesis' which was defended in the late 1940s and early 1950s. At the time Belgian was calling for expanding the obligations assumed by the Colonial Powers in relation to articles 73 and 76 to encompass all states.

The 2007 Indigenous Declaration acknowledges that indigenous peoples have the right to internal self-determination in the form of self-government or autonomy[118] and calls for the protection of their laws, cultures, traditions, languages, institutions, traditional medicines and land rights.[119] This instrument will clearly empower the members of the indigenous communities, as well as indigenous groups as entities, to pursue their own economic, social and cultural development. To stimulate this process the UN established a Forum for Indigenous Peoples inside the UN, for networking among representatives of indigenous peoples and to facilitate discussion of issues of interest to them with one another and with others. It has also appointed a Special Rapporteur to monitor their human rights.

The approach used by the UN to empower indigenous groups introduces an interesting question into the debate on the promotion of democracy, since minorities are not afforded similar group rights, for example to autonomy, self-government, and right to develop their own languages and cultures. It is to be recalled that when the Covenant on Civil and Political Rights were being prepared, the U.S.S.R. and Yugoslav both tabled draft resolutions calling for the recognition of the collective rights of minorities. The U.S.S.R.'s resolution defined these rights as follows:

"*The State shall ensure to national minorities the right to use their native tongue and to possess their national schools, libraries, museums and other cultural and educational institutions*"[120]

This idea was not accepted. Instead the formula that was agreed upon for minority rights focused on the right individuals not to be denied access to these benefits, as set out in

article 27 of the Covenant on Civil and Political rights:

"*In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own languag*e."

This defective formulation was widely criticized later by the defenders of minority rights as being insufficient and vague. To remedy this, the 1992 declaration on the rights of minorities affirmed that *persons belonging to* ethnic, linguistic, religious or national minorities "have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language" (art. 2). It also calls upon states to "encourage conditions for the promotion of that identity" (art. 1) rather than allowing the right-holder to do this. As set out in paragraph 2 of article 4: "States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards."

These formulas of promoting group rights and responding to their needs can be seen as positive steps in the promotion of empowerment and democracy. However, most states are wary of advancing the agenda of minority rights because of the fear that this could lead to ethnic-based rivalry and local nationalism, threatening national unity. In a worst-case scenario, they fear, this could tear apart their state. The indigenous question was seen differently because most states deny having such groups and argue that they exist only in states where the descendants of the European settlers have established states outside Europe, e.g. in Australia, New Zealand and the Americas.

The Human Rights-Based Approach to Democracy: The Civil and Political Rights Lenses

The Content of Civil and Political Rights. In the view of most of the defenders of normative individualism, democracy should only be measured with reference to individual civil and political rights and how these are respected and promoted. Before examining how

these lenses works, it is necessary to explore the contents of these rights as set out in the Universal Declaration of Human Rights and more importantly in legally binding International Covenant on Civil and Political Rights (CCPR). This latter instrument has been ratified by 172 states. Both these instruments list the civil and political rights which are derived "from the inherent dignity of the human person". According to the covenant on civil and political rights, what are acknowledged include the protection of life (art. 6), privacy (art. 17), family (art. 23), protection from slavery, forced labor and servitude (art. 8), from torture and similar cruel and inhuman punishment or treatment (art. 7), from arbitrary arrest (art. 9), and from punishment through retroactive application of laws (art.15). This covenant also acknowledges *the rights to freedoms* of religion (art. 18), expression (art. 19), assembly (21) and association (art. 22), as well as the right to take part in the conduct of public affairs in one's own country through direct elections or through representation by using the voting systems and access to public services (art. 25).

The manner in which these rights are framed in this Covenant makes it clear that most of them are subject to limitations. For instance, the freedoms of assembly and association may be restricted if this is "necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others" (art. 21 and 22(2) respectively). The exercise of religious freedom can be restricted by law when it is necessary "to protect public safety, order, health, or morals or the fundamental rights and freedoms of others." (art. 18(3)). Freedom of expression entails recognizing "duties and responsibilities" and can be restricted to protect "national security or of public order, or public health or morals" or to ensure respect for "the rights or reputations of others" (art. 19(3)(a) & (b)). What is more:

"*Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law*." (art. 20 (2))

There are very few rights which should not be subject to restriction. They are listed in article 4 of the Covenant. They include the protection of life, protection from slavery, torture, cruel and inhuman treatment and punishment, immunity from double jeopardy and from imprisonment for not fulfilling contractual obligations, recognition of the person by law, and religious freedom in principle (articles 6, 7, 8 (I & 2), 11, 15, 16 and 18). Freedoms are recognized in a manner that makes them limitable. The grounds for restricting them are

recognized by the regime of *rights*. This is why we speak of '*the right to the freedom* of expression or assembly or movement or religion. This is also why the political world chose the expression *human rights* rather than *human freedoms* as the title of the regime of rights. This suggests that the Libertarian position which calls for rights to be based on freedoms has been rejected since it is the regime of right which determines which freedoms are to be accepted as legitimate and how they should be exercised or not exercised.

Linking Civil and Political Rights to Democracy: Democracy is obviously inconceivable without civil and political rights. The notions of 'the will of the people', 'popular sovereignty' or 'government by the people, of the people and for the people', all lose their meaning without civil and political rights. If there is no protection of life or security, if liberty and equality are disregarded democracy will only have symbolic importance. To establish and sustain democracy it will be necessary to *freely* express opinions, by collecting the necessary information and distributing them to the other members of the society, to associate with one another (through the formation of political parties or associations) and to assemble to discuss political issues of interest. It is only when these political rights are respected and promoted that the members of the national community are able to manifest their will in choice of who should govern – i.e. by casting their votes, without constraint and discrimination, in free and fair elections.

In short, it is the effective exercise of civil and political rights which creates the conditions for empowering the citizens, to be able to choose their government, and to monitor how public affairs are conducted by their government. This way, the wishes of the citizens could be heard from within by tolerating inclusiveness in decision-making processes. This paves the road to the emergence of 'government by the people, of the people and for the people' and popular sovereignty. If the government does not operate in transparent ways by responding to the needs and desires of the people, then democracy is a sham. This is why the acknowledgement of "the will of the people" as the basis for government, in article 21 of the Universal Declaration of Human Rights, has been described as not just a revolution but "a 'revolution within a revolution'".[121]

One of the cornerstones of democracy, which is acknowledged in article 26 of the Covenant on Civil and Political Right, is the notion of equal rights and non-discrimination. According to this provision:

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

This principle is well anchored in this covenant. Under article 2 (1) of this instrument, the states parties to this Covenant have assumed the obligation "to respect and to ensure" all the civil and political rights that are mentioned therein "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". Article 3 of this covenant also requires ratifying states to "…ensure the equal right of men and women to the enjoyment of all civil and political rights".

The other democratic value that is acknowledged in the covenant on civil and political rights is the idea inclusiveness, which should be achieved through participation in political processes. This idea follows from paragraph 3 of article 21 of the Universal Declaration on Human Rights which considers "the will of the people" as the basis for "the authority of government" and calls for the use of "periodic and genuine elections … based on universal and equal suffrage .. or by equivalent free voting procedures". The first paragraph of this same provision acknowledges the importance of ensuring participation in government "directly or through freely chosen representatives" with "equal access to public service in (one's own) country". This idea is re-affirmed in article 25 of the covenant on civil and political rights which acknowledges the citizen's rights to:

"*(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;*

(b) 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;

(c) To have access, on general terms of equality, to public service in his country."

The universal validity of this political right is evident from the wider acceptance it has received under many other human rights conventions which prohibit various forms of discrimination that imposes limits on political participation. For instance, paragraph C of article 4 of the Convention on the Elimination of Racial Discrimination calls for the elimination of racial discrimination affecting the exercise of "(P)olitical rights, in particular the right to participate in elections— to vote and to stand for election—on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service". Article 7 of the Convention on the Elimination of Discrimination Against Women also calls the elimination of gender-based discrimination "in political and public life", including restrictions on the rights of women to vote in elections as well as "(T)o participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions."

Similar stipulations are included in the regional conventions. Examples include article 23 of the 1969 American Convention on Human Rights, article 3 of the first Protocol to the 1950 European Convention on Human Rights, article 13 (1) of the 1981 African Charter on Human and Peoples Rights and art. 29 of the 1999 Commonwealth Independent States Convention on Human Rights and Fundamental Freedoms. The 1994 Arab League Charter of Human Rights considers "the people" as "the source of authority" and acknowledges that the citizen has "political capacity" (art. 19) and "the right to occupy public office" (art. 33). In view of all these it is difficult to question that the right to be represented in the government is now clearly recognized in international law.

The Challenges of Relying Solely on the Civil and Political Rights Lenses

As clarified above, the merits of relying on civil and political rights to promote and measure democracy are obvious. Using *only* civil and political rights as a benchmark reduces democracy to nothing more than a political system with institutional features for electing the ruler. It also reduces the significance of the rights to the freedoms of expression, assembly, association, or the very purpose of having an electoral and multi-party systems, or equality, inclusiveness and participatory rights. It makes one wonder why people have to choose a government which oppresses them or which shields their oppressors? If 'less government' is the formula for democracy, as suggested by normative individualism, then

there is no government ‘for the people’ and what is in place is a government for the politically and economically dominant social groups.

The point in recognizing the freedoms of expression, association, assembly and voting rights is to enable people to secure their basic human needs – such as work, access to health or educational services, freedom from discrimination and corruption, and inclusion in social life. When people collect information and exchange views with others and use their voting rights during elections, what motivates them to exercise these rights is to secure their goals linked to survival rather than for sake of exercising rights and freedoms. If there were no government that is ready to help them achieve these goals and to respond to their collective needs, then the exercise of these political rights would have mainly symbolic significance. Unfortunately, this is why voting turnout are dwindling in many places because the citizens see no point in taking advantage of these opportunities. When they feel that there no government for them they lose confidence in democracy.

Civil and political rights are also being used in many places to threaten democracy. Example of this includes the protection that is given to the rights of individuals and groups who promote Neo-Nazi, Neo-Fascist and White Supremacy ideologies. After decades of tolerance to the freedoms of expression, assembly, association and voting rights of the members of these kinds of organizations, these groups are now poised to challenge the traditional political parties and to win political elections through democratic means. Some of these political parties are already accommodated in the process of governing in some of the Western countries. The Covenant on Civil and Political Rights clearly prohibits, in article 20 (2), “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence”. Yet, in these countries protecting political rights favoring these kinds of organizations appear to be more important than protecting the social groups which they target and the values of democracy.

The reliance on the lenses of civil and political rights only to measure democracy in the multi-ethnic countries of the Third World also poses challenges to democracy. In many of these countries, where the states are weak and unable to meet the needs of their citizens, individuals exercise their civil and political rights by promoting the economic, political, social and cultural interests of their own communities. This ‘self-centered’ or localized approach to the exercise of civil and political rights perpetuates narrow collective thinking,

exacerbating group rivalries and tensions instead of facilitating nation-building and displaying loyalty to the state. Some use these rights to mobilize for autonomy or self-rule for their own linguistic, cultural or religious groups. If these ways of exercising civil and political rights are not checked, there is a risk that the socio-political fabrics of these states will be torn apart. This tendency is less visible in the developed Western countries because their states are strong and able to meet the needs of their citizens and because their ways of life are more compatible with normative individualism.

Human Rights-Based Approach and Democracy: The Economic, Social and Cultural Rights Lenses

Opponents of normative individualism prefer to see democracy promoted and measured by the extent to which the needs and interests of the political community is promoted, without neglecting marginalized social groups. This includes by considering efforts made by governments to address economic, social and cultural problems and to create the conditions necessary for the exercise of economic, social and cultural rights the members of the national community without discrimination. They dismiss the arguments used by the critics of economic, social and cultural rights to reject or belittle the legitimacy of these rights. These critics advance different reasons when rejecting these rights, including by stating that they are vaguely formulated in the laws and are impractical, not least because of they cannot be claimed or because they entail high economic cost. The defendants of these rights, by contrast, argue that if these same tests were applied to civil and political rights, they too would fail the test of legitimacy. As they see it, all rights are socially constructed and can be claimed if desired. They are also vaguely formulated and their realization entail cost one way or another.

The Universal Declaration of Human Rights recognizes both these sets of rights. The preambles of the two international covenants underscore the point that all these rights are derived from the needs of protecting the dignity and worth of human beings. Further, operative paragraph 5, part I of the 1993 Vienna Declaration on Human Rights makes it clear that civil, political, economic, social and cultural rights are “indivisible and interdependent and interrelated”. Thus, the UN cannot afford to ignore economic, social and cultural rights when it addresses issues of democracy. Under article 1 of its Charter the UN assumed the obligation to promote human rights, conditions for economic and social

development and the respect for the rights of peoples to self-determination. Article 55 also mentions the obligations of the UN to promote the 'conditions' that are necessary for 'well-being' and for promoting "higher standards of living, full employment, and conditions of economic and social progress and development". When the UN meets these obligations, its members are expected to cooperate individually as well as collectively as pledged under article 56 of the Charter.

In the pursuit of these mandates, the UN adopted a range of human rights instruments recognizing economic, social and cultural rights. This is obvious from the provisions of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of Migrant Workers and the different conventions prohibiting discrimination. The ILO, UNESCO, WHO and the regional organizations too have acknowledged the legitimacy of economic, social and cultural rights by adopting specific instruments and are seen actively engaged in promoting and monitoring their implementation.

The concern for economic, social and cultural questions has both individual and collective dimensions. Example of the latter is the manner in which the rights of *peoples* to self-determination is promoted, including by promoting the pursuit of economic, social and cultural development. When this group rights is achieved, the individual members of the national communities will be able to enjoy and exercise their economic, social and cultural rights. The right to development is another group right that is recognized in the 1969 declaration on social progress and development, and the 1986 declaration on the right to development, as individual and group rights. The UN has been promoting both these two aspects of the right to development in the course of promoting democracy.

The specific economic, social and cultural rights which are recognized by the Universal Declaration of Human Rights include the rights to own property (art. 17) and to work (art. 23). By the latter, what is meant is not forced labor but work that is chosen or accepted freely by the person concerned. Moreover, this work should also be performed under "just and favourable conditions", under conditions that guarantee fair wages and right to establish and to join a trade union (art. 23). The social rights that are recognized include those which are necessary for a way of life which is indispensable for one's dignity (Art. 22), the right to education (art. 26), and the right to "a standard of living adequate for the health

and well-being of the individual … including food, clothing, housing and medical care" (art. 25). In addition, recognition is also given to the right "to participate in the cultural life of the community" (art. 27).

The legal obligations of states to acknowledge and promote these economic, social and cultural rights are clearly mentioned in the Covenant on Economic, Social and Cultural Rights and the other conventions which protect vulnerable groups. For instance, article 2 of the Covenant on Economic, Social and Cultural Rights, requires the ratifying states to promote the full enjoyment of these rights by using the resources at their disposal. This requires formulating clear economic, social and cultural policies, strategies and adopting the necessary measures. Further, these states are required to ensure that there will not be discrimination in the enjoyment of these rights. The manner in which these obligations are discharged require the adoption of sound systems of governance. How states comply with these obligations is monitored by UN bodies and programmes (e.g. by the UNDP), by the treaty committees (e.g., the Committee on Economic, Social and Cultural Rights), the regional human rights bodies and by some of the specialized agencies. For instance, the ILO monitors work related rights, UNESCO monitors rights related to culture and education and WHO monitors rights relating to health. This is done by assessing the available statistical data, on the level of unemployment, school enrollment, infant mortality, malnutrition, and prostitution; as well as by considering how health services are promoted, the extent to which social security is provided, and the availability, affordability and accessibility of food, housing, water, cultural heritage sites and museums. All these monitoring bodies give special attention to how states comply with the requirements of promoting inclusiveness and effective participation. The cumulative effect of monitoring how these obligations are complied with promotes democracy in substance.

This is in no way intended to suggest that the road-map for promoting substantive democracy is strait forward and easy. The mere fact this area concerns governance creates tensions between this right-based approach to promote democracy and the principle of sovereignty. The UN cannot compel states to cooperate in implementing the policies which it advocates. This is why the UN itself denies that it uses a specific model of democracy. National deficits in the promotion of the economic, social and cultural rights can also be caused, at least in part, by external factors. A good example of this is imposition of Structural Adjustment Programs on developing countries by the World Bank and IMF,

requiring these countries to reduce investment in the educational and health sectors. Engaging with globalization also requires deregulation, privatization, and weakening of trade unions. This means without international cooperation it may not be easy to resolve economic and social problems and hence the full realization of economic, social and cultural rights. It is therefore no wonder that article 28 of the Universal Declaration on Human Rights considers the creation of a just international order as necessary if human rights are to be fully realized.

Conclusion

Democracy and human rights are very appealing and politically sensitive complementary ideals, which people have both aspired to and fought for over the centuries. Paradoxically, while being universal ideals, they are also perceived and practiced differently. What makes them ideologically and politically contentious are disagreements over the nature of the human being, how s/he relates to the community and the state, what kind of individual rights and freedoms should be acknowledged and whether these rights should be subordinated to the interests of the community. Resolving the differences of opinion on these questions has always proved to be difficult because they are related to questions regarding the kinds of social and political systems and orders that humans aspire to. We have different political systems that recognize or deny the legitimacy of different political, economic and social interests, and that have different views on which rights and freedoms that should be protected. It is, therefore, no surprise that states, political actors and many writers have resigned themselves to simply agreeing to disagree. Rather than engaging in debate they dedicate themselves to glamorizing their own political systems, as the best model for democracy, and endlessly ridiculing or discrediting the systems used by their protagonists.

This, in part, is why the literature on democracy is in turmoil. It explains why democracy is equated with ‘legitimate rule’, ‘government *of the people*’, ‘the will of the people’ or ‘the rule by the majority’, ‘popular sovereignty’, ‘government *by the people*’, ‘government *for* the people’ or combinations of some or all of these. Although all these formulations legitimize power in the name ‘the people’, it is not always the case that all members of this ‘people’ are empowered by and benefit from the proposed political system. This is why some of these proposals are dismissed by their critics as symbolic or sham democracy or as democracy ‘in

form' only, while others are called 'true democracy' or 'democracy in substance'.

The literal meaning of the term 'democracy', in Greek, is the rule, authority or government of the people. The ancient Greek city states are said to have used this political system of governance as a means of allowing the governed to rule themselves. In fact, not all the inhabitants of these city states were able to participate in political life. Slaves and women, for example, were not empowered to do so. Likewise, those who claim that modern democracy is linked to the experience of the American and French Revolutions are ignoring the fact that the beneficiaries of the 'rights of man' which were proclaimed by these Revolutions did not empower the slaves, women, indigenous groups or their colonial subjects. Democracy was more of an ideal for the people, rather than a political reality.

It is the emergence of the United Nations, with its mandates to promote human rights and the rights of people to self-determination, which led to the modern concept of democracy if this concept is to be understood in the sense of *governance of the people* as the word suggests. The road-map that was used to this effect was twisted since there were two political currents that were competing to shape it. They were and still are normative individualism (supported by the Liberal and Libertarian positions) and collectivism (supported by Socialists, Communitarians, traditionalists, etc.). Navigating between these currents, the UN ended up by accepting something from both of them. On the one hand, it identified democracy as human rights by incorporating it in article 21 of the Universal Declaration of Human Rights, and using the bottom-up approach later when the HRBA was developed by empowering all the individual members of the political communities (in contrast to the restrictive model of promoting the historical 'rights of man' of few citizens). On the other hand, this organization proceeded by recognizing the existence of 'peoples' (***demos***), and by promoting their rights, including the right to self-determination and developing guidelines for how sound governance (***cracy***) should be promoted. This rights-based and double-sided approaches was intended to assure democracy *in form* as well as in *substance*. The former uses the lenses of civil and political rights and the latter is advanced by promoting economic, social and cultural rights, and the right to development and sound governance. This is what the goals of the Human Rights-Based Approach are about.

Because democracy has sensitive political, economic, social and cultural dimensions most states may well be unwilling to cooperate with the use of this HRBA to measure democratic

performance. This is in part because states incorporate a wide range of economic, social, political and cultural structures, making it difficult to use a single measurement tool for all cases. Further, as long as the principle of sovereignty permits states to refuse to ratify human rights conventions, serious doubts must arise regarding the legitimacy of using conventions which they have not accepted to measure their progress towards democracy. This, apparently, is why the UN relies on the Universal Declaration on Human Rights to promote the HRBA since this document, by contrast to the two international covenants, recognizes civil, political, economic, social and cultural rights as being inter-related and inter-dependent.

Endnotes

* Associate Professor, School of Global Studies, University of Gothenburg (Sweden). This paper represents a revised version of two earlier conference presentations. The first one, on "human rights, democracy and peace: the implications of the new challenges", was presented in the workshop held in Jyväskylä (Finland) in August 2017, jointly sponsored by the Academy of Finland, the University of Jyväskylä, Kone Foundation and The Åland Islands Peace Institute. The second paper was presented in the winter session of the Nordic Summer University, in Copenhagen, in February this year on "Dysfunctional Democracies, Empowerment and the Human Rights Based Approach". I am grateful to the organizers of these two workshops for the invitations. Special thanks goes Mogens Chrom Jacobsen, who was kind enough to invite me to workshops of the Nordic Summer University and to the Honorable, Reverend Doctor Ezra Gebremedhin for their valuable comments on the draft of this manuscript.

[1] Vienna Declaration and Programme of Action, part. I, operative paragraph 8. This declaration was adopted by UN General Assembly on 25 June 1993. See google.com

[2] *Ibid*.

[3] *Ibid*.

[4] UN, Democracy, http://www.un.org/en/sections/issues-depth/democracy/index.html Seen

on October 30, 2018

[5] Declaration on Social Progress and Development, A/Res/2542 (XXIV) 11 December 1969.

[6] *Thesaurus*, dictionary.com

[7] *Cambridge Dictionary*

[8] https://www.merriam-webster.com/dictionary/democracy

[9] Susan Marks," The End of History? Reflections on Some International Legal Theses", *European Journal of International Law*, Vol. 8, Issue 3, 1997 p. 449.

[10] https://www.merriam-webster.com/dictionary/democracy.

[11] Aristotle, *Politics*, trans. H. Rackham (Cambridge: Harvard University Press, 1959), Vol. 5, p. 403 (v.3-5).

[12] USHistory.Org, The Declaration of Independence, available from the web in, http://www.ushistory.org/declaration/document/

[13] The History Guide, *Declaration of the Rights of Man and the Citizen* (August 1789), art. 2, in http://www.historyguide.org/intellect/declaration.html

[14] Article 2 of the 1958 French constitution.

[15] Jack Donnelly, "Human Rights, Democracy, and Development", *Human Rights Quarterly*, Volume 21, Number 3, August 1999, p 615. See also Anthony H. Birch, *The Concepts and Theories of Modern Democracy*. Routledge London, 1993 (1996 reprint), p. 45. In the view of the latter, democracy is about form, i.e. the existence of political institutions. and not a question of substance, i.e. whether or the community as a whole governs itself. "The idea that there was a classical doctrine of democracy is," he wrote, "in fact, a most unhelpful piece of nonsense". *Ibid*., p. 52.

[16] *Webster's Encyclopedic Unabridged Dictionary of the English Language* (New York: Gramercy Books, 1989); *The Oxford Illustrated Dictionary* (Oxford: Clarendon Press, 1975); *Jewett's Dictionary of English Law*, Vol. 2 (London: Sweet and Maxwell Ltd., 1977); and *A Dictionary of Modern Legal Usage*, 2nd ed., Bryan A. Garner (Oxford University Press, 1995).

[17] *Cassell's Latin Dictionary*, D.P. Simpson (New York: Macmillan, 1957).

[18] *Ballentine's Law Dictionary,* 3rd ed., William S. Anderson ed., (Rochester: The Lawyers Cooperative Publishing Co. 1969): *Black's Law Dictionary*, Bryan A. Garner ed., 7th ed., (St. Paul: West Group, 1999).

[19] *Black's Law Dictionary*

[20] Samuel Pufendorf, *De Jure Naturae et Gentium Libri Octo*, Vol. 2, C.H. Oldfather & W.A. Oldfather, trans. 1688 ed. (New York: Williams S. Hein & Co., 1995), p. 1367.

[21] I. Kant, "The Science of Right," in *Great Books of the Western World*, R. M. Hutchin *et al*(eds.), (Chicago: Encyclopaedia Britinnica, Inc., 1952), Vol. 42, pp. 436 and 452.

[22] L. Oppenheim, *International Law: A Treatise*, Vol. I – Peace, 7th ed., H. Lauterpacht, ed., (London: Longmans, Green and Co., 1948), p, 114, §64.

[23] Hugo Grotius, *The Law of War and Peace: De Jure Belli ac Pacis Libri Tres*, trans. Francis W. Kelsey (New York: The Liberal Arts Press, 1925), p. 312.

[24] John Stuart Mill, "On Liberty, representative Government & Utilitarianism", in *Great Books of the Western World*, Robert Maynard Hutchins, *et al*(eds.), (Chicago: Encyclopaedia Britannica, Inc., 1952), Vol. 43, p. 269. Emphases original.

[25] Thomas Hobbes, *Leviathan*, in *Great Books of the Western World*, Robert Maynard Hutchins *el al*, eds., Vol. 23 (Chicago: Encyclopaedia Britannica, Inc., 1952 {1990 prt.}), p. 86.

[26] *Ibid.*,pp. 84-86 & 99-100.

[27] *Ibid.*,pp. 85-88 & 101-102, and 116.

[28] John Locke, "An Essay Concerning the True Original Extent and End of Civil Government", *Great Books of the Western World,* Robert Maynard Hutchins el al, Vol. 35, pp. 26-27.

[29] *Ibid.*,pp. 28-29.

[30] *Ibid.*, pp. 26-30, & 46-47.

[31] I. Kant,*The Science of Right*" in *Great Books of the Western World*, Vol. 42, R. M. Hutchin *el a*l, eds. (Chicago: Encyclopaedia Britinnica, Inc., 1952), p. 435 (Author's Emphasis)

[32] *Ibid.*,pp. 435 & 437.

[33] *Ibid.*, p. 436.

[34] Jean-Jacque Rousseau, *The Social Contract and Discourses*, G.D.H. Cole, trans. (London: J.M. Dent and Sons Ltd., 1913, 1977 prt), p. 193.

[35] *Ibid.*, p. 15. See further 41, 165, 170-1.

[36] Karl Marx, *Early Writings*, translated by Rodney Livingstone and Gregor Benton, Middlesex: Penguin Books, Ltd., 1975 (1977 prt.). 350.

[37] *Ibid.*, p. 349.

[38] *Ibid*.

[39] *Ibid.,* pp. 229-230.

[40] *Ibid*., p. 230.

[41] Karl Marx "Critique of Hegel's Doctrine of the State" in *Early Writings,* Rodney Livingstone trans. (London: New Left Review, 1975, 1977 prt.) p. 194.

[42] Karl Marx, "The Charists", in *Surveys from Exile: Political Writings*, David Fernbach, ed. (London: New Left Review, 1973), p. 194. p. 265.

[43] See the letter of Marx to Engels, 11 February 1865, in K. Marx, F. Engels and V. I. Lenin, *Selected Correspondence* (Moscow: Progress Publishers, 1975), p. 153. See also the letter of Marx to Engels, dated 18 Feb. 1865, in Karl Marx & Friedrich Engels, *Correspondence: 1846-1895.A Selection with Commentary and Notes* (Bristol: Western Printing services, Ltd., 1934?), p. 193.

[44] Karl Marx, *Early Writings*, pp. 232 and 234.

[45] *Ibid*., pp. 232-4.

[46] See V.I. Lenin, *Collected Works*, Bernhard Isaac, trans (Moscow: Progress Publishers, 1964, 1977 prt.), Vol 20, 1913-14, pp. 401-2 & 412; and, *The Rights of Nations to Self-determination* (Moscow: Progress Publishers, 1951,1971 prt) Progress Publishers, translation.

[47] Ayn Rand, *The Virtue of Selfishness: A New concept of egoism* (New York: The New American Library, 1962{1964}), p. 32. Any Rand, whose original name was Alisa Zinovyevna Rosenbaum, left Russia when she was 26, disappointed by what the Bolshevik Revolution had done to her country.

[48] *Ibid*., p. 123.

[49] *Ibid*. p. 33.

[50] *Ibid*. p. 32.

[51] *Ibid*. p. 34.

[52] *Ibid*. p. 122. Original italic.

[53] *Ibid*. p.126.

[54] *Ibid*. p. 124.

[55] *Ibid*. p. 137.

[56] *Ibid*. p.130.

[57] *Ibid*. p.131.

[58] *Ibid*. p. 134.

[59] According to Fernando Teson, liberalism is "a theory of politics founded upon individual freedom, respect for individual preferences, and individual autonomy", Fernando R. Teson, "Kantian Theory of International Law", *Columbian Law Review, Vol. 92,* 1992, p. 54, note 4. This position considers the end of governments and states to the protection of the rights and interests of individuals, and traces its root to the works of Kant in his essay on Perpetual Peace. *Ibid*., p. 54. For Anthony Arbaster, "Liberalism was inaugurated by the French Revolution. Anthony Arbaster, Liberalism and postmodernism", in James Meadowcroft, ed. *The Liberal Political Tradition: Contemporary Reappraisals* (Cheltenham: Edward Elgar, 1996), p. 162.

[60] Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, p. 20. Note that this Donnelly does not dismiss the idea that rights can be exercised collectively, p. 21.

[61] *Ibid*. p. 70.

[62] *Ibid*. p. 69.

[63] *Ibid*. p. 21.

[64] *Ibid*. p. 69.

[65] *Ibid*.

[66] Marks, Susan. "The End of History? …, p. 470. According to Birch there never was "a classical doctrine of democracy" to speak of. See Birch, note 15 above. For views defending democracy in substance see, Cerena, M. Christina. "Universal Democracy: An International Legal Right or the Pipe Dream of the West?" *New York Universal Journal of International Law and Politics*, Vol. 27, 1995, p. 126.

[67] Donnelly, *Universal Human Rights*, p. 73.

[68] *Ibid*. p. 103.

[69] *Ibid*. p. 87.

[70] Will Kymlicka, *Liberalism, Community and Culture*(Oxford: Clarendon Press, 1989), p. 254.

[71] *Ibid*., p. 4.

[72] *Ibid*. p. 254.

[73] *Ibid*.

[74] Birch, p., 133.

[75] Michael Waltzer, "The Communitarian Critique of Liberalism", in Amitai Etzioni, ed., *New Communitarian Thinking: Persons, Virtues, Institutions, and Communities* (Charlottesville: University Press of Virginia, 1995), pp. 62-63. This writer wonders where this 'solitary' and 'heroic' individual which Liberal intellectuals write about comes from, since it appears that s/he "is fully formed before the confrontation begins." p.

68.

[76] Brian Lee Crowley, *The Self, the Individual, and the Community* (Oxford: Clarendon Press, 1987), pp. v, and 255.

[77] *Ibid*., , p. vi. Liberals "require us to conceive of ourselves in ways which conflict with our understandings of reason and responsibility" he added, "and therefore conflict with our deepest moral sense". *Ibid*., p. 220.

[78] *Ibid*., p. 281.

[79] *Ibid*., citing Michael J. Sandel, *Liberalism and the Limits of Justice* (Cambridge: 1982) p 132.

[80] Alasdair MacIntyre, *After Virtue* (London: Duchworth, 1981{2007}) 3rd ed. p. 220.

[81] Jean Bethke Elshtain "The Communitarian Individual", in Amitai Etzioni, ed., *New Communitarian Thinking*…, p. 108.

[82] Alex Thomas,*An Introduction to African Politics,* 4th ed. (New York: Routledge, 2000{2016}), p. 254.

[83] Martti Koskenniemi, "Intolerant Democracies: A Reaction", *Harvard International Law Journal*, Winter, Vol. 37, 1996, p. 234.

[84] *The Works of Jeremy Bentham*, (New York: Russell & Russell, Inc., 1962, reproduced from the Bowring editions of 1838-1843, by John Bowring), Vol. III, pp. 218-220..

[85] *Ibid*., p. 221.

[86] *Ibid*., p. 159

[87] J. Bentham, *An Introduction to the Principles of Moral and Legislation* (Oxford: Clarendon Press, 1789 {1823 prt.}), p. 4.

[88] 1814 Constitution of Norway, see https://www.stortinget.no/en/Grunnlovsjubileet/In-English/The-Constitution—Complete-text/

[89] 1848 Liberian Declaration of Independence, see, Declaration Project, in http://www.declarationproject.org/?p=181

[90] Constitution of Mexico, 1917, in LatinAmericanStudies.org, in http://www.latinamericanstudies.org/mexico/1917-Constitution.htm

[91] 1937 Constitution of Ireland, in, Wikisource, https://en.wikisource.org/wiki/Constitution_of_Ireland_(original_text)

[92] U.S. *Congressional Record*, Vol. 54, *Senate*, p. 2, pp. 1742-1743.

[93] "British Labour's Message to the Bolsheviki", *New York Times Current History*. February1918, pp. 206-7.

[94] Eyassu Gayim, *The Principle of Self-Determination: A Study of Its Historical and Contemporary Legal Evolution*.Norwegian Institute of Human Rights, Publication no. 5, 1980, pp. 12-15.

[95] Franck, Thomas M. "The Emerging Right to Democratic Governance," *American Journal of International Law*, Vol. 86, 1992, pp. 46-91.

[96] Resolution 217 C(III), which was adopted at the same time as the Universal Declaration on Human Rights made it clear that "United Nations cannot remain indifferent to the fate of minorities" and will deal with this matter later after a thorough study was made concerning the problem.

[97] Resolution 421V (D) of 4 December 1950.

[98] Resolution 545 (VI) 5 February 1952 and 549 (VI) 5 February 1952

[99] Resolution 637(VII) 20 December 1952

[100] Resolution 421 (V), E preamble 4 December 4, 1950

[101] *Ibid*, E. operative paragraph 7.b.

[102] Operative paragraph 13, Proclamation of Teheran, Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968, U.N. Doc. A/CONF. 32/41 at 3 (1968).

[103] Vienna Declaration and Programme of Action Part I, operative paragraph 5.

[104] UNICEF, Human Rights-Based Approach to Programming, https://www.unicef.org/policyanalysis/rights/index_62012.html

[105] The Rio Declaration on Environment and Development, principles 1, 20 and 22 in UN Doc. A/Conf.151/26, Vol. 1, 1992 annex in http://www.un.org/documents/ga/conf151/aconf15126-1annex1.htm

[106] Vienna Declaration and Programme of Action Part I, operative paragraph 10

[107] http://www.unsystem.org/tags-hlcp/human-rights

[108] http://www.unsystem.org/content/2005-world-summit-outcome-human-rights-democracy-and-rule-law; & http://www.unsystem.org/tags-hlcp/human-rights

[109] Vienna Declaration and Programme of Action Part I, operative paragraph 5.

[110] UN HRBA Portal, The Human Rights Based Approach to Development Cooperation: Towards a Common Understanding Among UN Agencies, http://hrbaportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies

[111] Vienna Declaration and Programme of Action Part I, operative paragraph 5.

[112] See, *Yearbook of the United Nations*, 1952, p. 560, and also General Assembly,

10th session, Third Committee 669 mtg. p.226, para. 13.

[113] See UN Doc, E/2256, p. 7. Commission of Human Rights 8th session, April 14 to 16 June 1952, in *Commission on Human Rights, Official Records, Report of the Eighth Session, Economic and Social Council, 14th session, Supplement no*. 4. 1952.

[114] Declaration on Social Progress and Development, General Assembly resolution 2542 (XXIV) 11 December 1969.

[115] Permanent Sovereignty over Natural Resources, General Assembly resolution 1803 (XVII) 14 December 1962.

[116] Declaration on the Right to Development, General Assembly resolution 41/128, 4 December 1986, annex.

[117] Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, General Assembly resolution 47/135, 18 December 1986, annex.

[118] Declaration on the Rights of Indigenous Peoples, General Assembly resolution 61/295 of 13 September 2007, annex, arts. 3 & 4.

[119] *Ibid*., articles 11 – 14, 20, 25-26 and 31.

[120] E/1992, annexes IV, section, page 35. See also the Yugoslavia draft resolution in *UN Doc*.E/1992, annex IV, section A, article 10 b, p. 35, cited in the debate in the Commission of Human Rights 8th session, April 14 to 16 June 1952, *Official Records, Report of the Eighth Session*, Economic and Social Council, 14th session, Supplement no. 4. NY, UN, E/2256, p. 54.

[121] Allen Rosas, “Article 21”, in, Asbjorn Eide, Gudmundur Alfredsson and el al, eds., *The Universal Declaration of Human Rights: A Commentary*. Scandinavian University Press, 1993, p. 299.

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