

Secession of States and Self-determination in contemporary International Law

Internal Democracy and International Law

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Abstract: The main purpose of this paper is to describe the protection and promotion —as well as the grey zones and contradictions— of internal democracy within the international legal system. Firstly, we deal with the relationship between the internal and external (the right to secession) dimensions of self-determination. Secondly, we study the interaction between the internal and international perspectives as far as democracy is concerned: international law certainly promotes liberal regimes within countries but, at the same time, it may distort democratic principles through the erosion of sovereignty and due to the normative and institutional weaknesses of international law itself. Thirdly, we describe the historic evolution, mainly since the end of the Cold War, of democratic entitlement. The fourth section focuses on the ambiguous, dynamic, manipulated and virtuous concept of democracy, and some interrelated notions. Next, we examine the indefinite scope, actors and actions of international cooperation inspired by and oriented towards democracy. Finally, we analyze the current and disquieting assault of authoritarian regimes to liberal democracy.

Keywords: Democracy – Self-determination – Human Rights – Rule of law – International cooperation

(A) RIGHT TO SECESSION AND INTERNAL DEMOCRACY. PRELIMINARY REMARKS

The Charter of the United Nations proclaimed the principle of self-determination of peoples as one of the objectives of the organization without any reference to the domestic right to democracy. This silence symbolized, as Mirkin-Guetzevitch pointed out in 1954, “la triste régression politique-juridique de notre époque”.¹

Since 1945, self-determination has been considered a fundamental right (in the 1966 Covenants) and a peremptory norm (by jurisprudence and diplomacy),² and it has been relatively successfully implemented in the framework of the UN. Resolutions 1514 and 1541, adopted by the General Assembly in 1960, shed some light on the scope of the principle, which was set out in general terms: “All the peoples have the right to self-determination; by

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¹ B. Mirkin-Guetzevitch, “L’O.N.U. et la doctrine moderne des droits de l’homme. Le droit des peuples à disposer d’eux-mêmes”, *Revue Générale de Droit International Public* (1954). 530.

² *Case concerning East Timor (Portugal v. Australia)*, Judgment (1995) ICJ Reports, 1995; Judgment of the European Court of Justice (Grand Chamber) of 27 February 2018, *Fisheries Partnership Agreement between the European Community and the Kingdom of Morocco* C-266/16, ECLI:EU:C:2018:118.

virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development". Self-determination does not necessarily lead to independence and the formation of a new State. Independence is only one of the three possible options, alongside free association and integration with an independent State, among which a people can choose through democratic processes and under international monitoring. The referendum celebrated in New Caledonia on 4 November 2018 confirms the potential of the "free and genuine expression of the will of the people of the territories". It is not necessary to emphasize that this genuine will can be distorted for many reasons.

Moreover, not "all the peoples" actually enjoy this international right. Not every people has a distinct and separate juridical status to ensure its right to decide its secession under international law. As a matter of fact, international law highlights at the same time that self-determination must not dismember or impair the territorial integrity of any State, in spite of the wrong precedent set by the Kosovo case in violation of the letter and the spirit of Resolution 1244 adopted by the Security Council in 1999. Certainly, in international terms, fundamental rights of States are still more appreciated than fundamental rights of peoples. As main creators of international law, States oppose the proliferation of new States, which would further complicate internal and international governance and would encourage other non-state nations to embark upon a breakaway process. Experience and history show that this type of movements usually entails violence and degradation of human dignity, even after the proclamation of the new State, very often a failed State, as the case of South Sudan shows. Many African peoples are still awaiting a second decolonization, this time from the endogenous oppressor, as it is happening in Equatorial Guinea. In such circumstances, governments of new States tend to invoke self-determination of States over self-determination of peoples. The concepts of "State", "nation", and "people" are indeed very susceptible to manipulation, confusion and misunderstanding.

The implosion of the former Soviet Union and Yugoslavia, and its ramifications, proved the existing tensions between nationalism and democracy, despite the common and simultaneous origin of both concepts. In other words, democratic values were challenged by the push towards external self-determination. The "Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union", adopted by the European Community and its member States in 1991, in fact subordinated the recognition to the compliance with democratic, peaceful and legal principles.

Besides the defence of territorial integrity, international law, according to Resolution 2625 (XXV) of the General Assembly, denies a right to secession within States "possessed of a government representing the whole people belonging to the territory without distinction as to race, creed or colour". This must be properly interpreted in current terms and from an

international legal prospective as an acknowledgment that a democratic State ought to be preserved from internal separatism. Only in cases of tragic and unjust oppression could a right to secession be granted in favour of an intrastate territory: the so-called remedial secession.

The right to self-determination, once almost exhausted its external dimension (the right to independence), must be essentially conceived in its internal dimension: the right to democracy. Both rights belong to peoples, not to States. The right to democracy belongs, furthermore, to the whole people of a country, not a fraction of it (unless otherwise established by the national constitution), irrespective of the singular idiosyncrasy and the argued national character of a given region. Democratic entitlement is an everlasting and permanent right, never full or definitive, inextricably interlinked with the protection of individuals and groups (including, of course, the freedoms of minorities), and with the rule of law.

In the European scenario, the Venice Commission –the Council of Europe’s advisory body for Democracy through Law– has explained that the rule of law must prevail in any breakaway referendum. This is obviously applicable to the Catalanian case, as Xavier Pons has painstakingly clarified.³ The political connotations of this kind of problems and, of course, the need for a greater involvement of intrastate entities in international governance are a very different issue.

Internal democracy, is, and must continue to be, in spite of the current challenges, the main premise to walk on towards an international community of peoples, and not exclusively of States, as well as a touchstone for the development of other international commons. This way, the first words of the Charter of the United Nations (“We the peoples”) would acquire a deeper meaning. This paper focuses on the protection and promotion –and also the grey zones and contradictions– of municipal democratic regimes from a legal international perspective: the internal dimension of the principle of self-determination.

(B) THE INTERACTION BETWEEN INTERNAL AND INTERNATIONAL APPROACHES TO DEMOCRACY

It is well-known that, as far as foreign policy is concerned, the separation of powers works differently than it does within States, in favor of the executive and to the detriment of the political and legal checks and balances exerted by the legislative and the judiciary.⁴

³ X. Pons Rafols, *Cataluña: derecho a decidir y derecho internacional* (Reus, Barcelona, 2015).

⁴ This phenomenon is also visible in the framework of the European Union. The limits and possibilities of judicial control over the European Foreign and Common Policy are under review in the *Rofnet* judgment of 28 March 2017. C-72/15, ECLI:EU:C:2017:236. The predominance of the councils in this field in respect to the European Parliament’s powers is notorious. See Arts. 23 et seq. of the European Union Treaty (TEU).

This flaw of internal democracy is caused and aggravated by the idiosyncrasy and weaknesses inherent to the international legal order itself: questions concerning the creation and threshold of legal obligation; limitations to international responsibility; voluntary jurisdiction in the framework of free choice of means for the peaceful settlement of disputes, etc. Since decolonization, it is precisely the Third World that has most vigorously claimed a democratic international legal community in order to be more represented in the construction of a new international order, and against the oligarchic nature of the traditional international system. Additionally, within States, international law becomes a centralising factor for international norms and institutions. The State stands as a unity at the expense of a decentralised territorial administration, which is more complex for the management of the international affairs. This is one of the paradoxes of international law: it entails a limitation of national sovereignty and at the same time it supports the State structure for global governance. Another issue is whether popular sovereignty must belong to the State as a whole or it could be fragmented, as argued by the current breakaway movement in Catalonia in spite of the Spanish constitutional provisions.

The lack of democratic credentials is not only a deficiency of the rule of law, but also of international institutions, including the Security Council, the International Monetary Fund, G-7 and G-20. The most developed and sophisticated example of transnational democracy is certainly embodied in the European Union's integration. Notwithstanding its permanent strive to combine municipal and supranational democracy, the democratic deficit haunting the European Union is constantly discussed.⁵

Aside from legal considerations about international relations, we are witnessing the widespread phenomenon of globalization. This movement overpasses internal democracy without a proper transfer of democratic principles to the international community. There is a growing gap between the scope of the polls and the transnational scope of the problems. As the famous Rodrik's trilemma of the world economy explains, it is not possible to achieve democracy, sovereignty and globalization at the same time; only two of these factors may be attained simultaneously.⁶ Globalization raises much discontent,⁷ ultimately and most acutely in the prosperous world, and shakes the foundation of the social and democratic rule of law. The range of decisions and electoral choices are restricted in favour of a so-called technocracy

⁵ The reflection on the democratic nature of the European integration is a recurrent and always updated debate. See, for example, about new ideas to improve the democratic pedigree, S. del Río, "Institutional initiatives for a solid and participatory European democracy" (2018), *Real Instituto Elcano* ARI 60/2018. 27 April 2018.

⁶ D. Rodrik, *The Globalization Paradox. Democracy and the Future of World Economy* (Copyrighted Material, New York, 2011)

⁷ J. Stiglitz, *Globalization and its discontents*, (Norton & Company, New York, 2002), and by the same author *Globalization and its discontents revisited* (Norton & Company, New York, 2017).

and a certain immutability of public policies. Citizens seem to remain distant and unconscious of the real centres of power, unaware of who runs the world. There is one more stage of diplomacy, political decisions and public and private interference, which much be considered, for better or for worse: cyberspace. Cyberspace is a global agora with unaccountable algorithms where human dignity and citizenship are at stake, and democracy should adapt to take it into account.⁸ Not surprisingly, international instruments related to cyberspace emphasize the need to preserve human rights.⁹

Therefore, it is logical and understandable that, for the sake of democratic values and popular support, the EU has acted to harness globalization, seeking “a Europe that protects” in front of its excesses.¹⁰ The new trade defence measures have been taken within this framework.¹¹ Another circumstance that vividly affects the scope of municipal democracy and its capacity to international adaptation is, undoubtedly, the intense movement of people across nations. The status of economic and political immigrants, who are often subjected, in legal or factual terms, to a duality of norms and statuses, a second-class condition or even segregation, is particularly relevant. Denying individuals the right to vote or citizenship, and sparking populist or nationalistic streams, are both threats to the dignity or survival of democracy.¹²

Paradoxically, though international law tries, albeit imperfectly, to import democratic principles (transparency, legal security, etc.) to its structure and debilitates the democratic and liberal States due to its own limitations, this works in favour of the promotion and protection, sometimes even imposition, of democratic national regimes. This is for its own good, for the legitimacy and efficiency of the rest of States in these times of decisions and effects with rampant extraterritoriality. With democratic credentials and the free consent of States, international norms become more genuine and more popular, despite the informality permitted within the international system. This internationally-backed movement towards democracy is also carried out despite the fact that an autocracy may theoretically be more sustainable to organize a more foreseeable and more continuous future, less subject to opposition claims and wins. However, for these purposes, we must not forget the *Tinoco* arbitration judgment delivered in 1923: the successor government was bound by all the acts of

⁸ A critical point of view in C. O’Neil, *Weapons of Math Destruction*, (Crown Books, New York, 2016).

⁹ It is the example, already remote in technological terms, of the 2001 Budapest Convention on Cybercrime, drawn up by the Council of Europe.

¹⁰ European Commission, Reflection Paper on Harnessing the Globalization, COM (2017) 240, 10 May 2017.

¹¹ European Commission, 36th Annual Report from the Commission to the European Parliament and the Council on the EU’s Anti-Dumping, Anti-Subsidy and Safeguard activities 2017, COM (2018) 561 Final, 31 July 2018.

¹² This is the context surrounding the current dispute Qatar versus United Arab Emirates before the International Court of Justice: the alleged violation and discrimination of Qatar citizens by and in the UAE.

its predecessor as its constitutionality or legitimacy was deemed irrelevant. The global commons of the international community (peace and security, protection of environment, international cooperation and even integration, the rule of law, human rights) are preserved and boosted further with municipal democratic institutions and values, as confirmed by the Sustainable Development Goals enshrined in the 2030 Agenda, especially Goal 16. Nationalism and authoritarianism are interconnected and both degrade the international principles. Consequently, internal democracy –including the intrastate sphere– and international democracy are essentially synergic and cross-fertilising in their search of democratic multilevel governance. This interdependence is a sign of the growing interaction between domestic and international political and legal thoughts. In fact, a recently published book has provocatively been titled “Is International Law Really International?”¹³

This paper is focused on the aforementioned prospect of the interaction between national and international systems concerning democratic principles; that is, national democracy as a goal of international law.

(C) A LOOK AT RECENT HISTORY: THE EMERGENCE OF DEMOCRATIC ENTITLEMENT IN INTERNATIONAL LAW

The political regime of a State has never been irrelevant for international relations. From the 20th century Spanish perspective, it is worth reminding the boycott imposed, even by the United Nations, in its first years, to Franco’s dictatorship, considered an accomplice of the Nazi regime and, consequently, a threat for international peace and security.

However, the international law of coexistence reigning the Cold War period and grounded in the structural principles enshrined in the General Assembly Resolution 2625 (XXV), adopted in 1970, proclaimed the equal sovereignty of States and non-intervention in the internal affairs of third States. In its 1986 Judgment in the *Nicaragua v. United States* case, the International Court of Justice refused any legal obligation to hold free and plural elections and a right of external interference in the domestic affairs of other States.¹⁴

The fall of the Communist bloc between the late 1980s and the early 1990s seemed to blur this international law of indifference vis-à-vis national regimes, no longer considered a *domaine réservé*. According to a famous article by Thomas Franck published in 1992, a democratic entitlement, a right to democratic governance was emerging in International

¹³ A. Roberts, (Oxford Press, 2017).

¹⁴ *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*. Merits, Judgment (1986) ICJ Reports 1986, p. 14.

Law.¹⁵ In *Democracia y Derecho internacional*, published in 1994, we discuss this phenomenon and its repercussions on the structural principles of International Law¹⁶.

There was indeed a generalized convergence of political governments—or at least of their explicit values and international commitments—towards Western-styled liberal democracies. Not only post-Soviet States, but also less-developed countries, now less in favour of creating a new political and economic international—and domestic—order. This loss of political neutrality of the international community in respect of national governance affected, not unexpectedly, the European system where “a new era of democracy” was solemnly voiced in the Charter of Paris for a New Europe, adopted in 1990.¹⁷ The regional American order was also influenced and in 1991 the Organization of American States took a decisive political step in favour of the protection of democracy in its “Santiago Commitment to Democracy and Renewal of the Inter-American System”, and in 2001 the Inter-American Democratic Charter was adopted at the expense of the other, antagonistic principle of the Continent: non-intervention in internal affairs.¹⁸ It was mainly, and significantly, in the framework of the universal language and action of the United Nations that this transformation of the political and legal mentality took place. For instance, the Security Council decided in 1994 that the *coup d’État* perpetrated in Haiti constituted a breach of the international peace.¹⁹ In 1996, the Secretary-General Boutros-Ghali issued his Agenda for Democratization. Democracy, he said, is today an “ideal that belongs to all humanity”.²⁰ Bearing this in mind, it is not surprising that the first electoral monitoring mission to a sovereign State sent by the UN took place just in 1990, or that the UN Commission on Human Rights, by a vote of 51-0 with 2 abstentions (China and Cuba) promulgated a resolution affirming that “democracy fosters the full realization of all human rights” in 1999, inextricably interconnecting the previous international protection of fundamental rights with the liberal democratic system within countries²¹. Since then, the United Nations has erected a vast and thick legal and organic structure in favour of national democracy: the United Nations Development Programme (UNDP), the United Nations Democracy Fund (UNDEF), the Department of Political Affairs (DPA), etc.

¹⁵ T. Franck: “The Emerging Right to Democracy”, *American Journal of International Law* (1992) 46-91. doi.org/10.2307/2203138.

¹⁶ J. Roldán Barbero, *Democracia y Derecho internacional* (Civitas, Madrid, 1994).

¹⁷ F. Mariño Menéndez, “La Carta de París para una nueva Europa”, 18 *Revista de Instituciones Europeas* (1991), 153-176.

¹⁸ J. Roldán Barbero, “La Carta Democrática Interamericana aprobada el 11 de septiembre de 2001 por la Asamblea General de la OEA”, 54 *Revista Española de Derecho Internacional* (2002), 459-465.

¹⁹ SC Res. 940 (1994) 31 July 1994.

²⁰ B. Boutros-Ghali: *Agenda for Democratization*, 1996.

²¹ Resolution “Promoting the Right to Democracy”, 1999/57, 27 April 1999.

Therefore, in the 1990s, the international system appeared to be the source of legitimacy of municipal governments; domestic democracy was a requirement and an explicit aspiration of international cooperation. This democratic impulse had a horizontal effect on international law as a whole, having an impact on its own foundations, the reformulation of its nuclear principles, the law of treaties, the nature of State sovereignty, the use of force, membership of international organizations, etc. This stream was of course not exempt from ambiguities, contradictions and setbacks in the factual world. In fact, a part of the international scholars, mainly Western, criticized the “risk of imperialism”, the new division and discrimination of States between liberal and non-liberal²² or the messianism and complacency that this tendency entailed.²³

From the end of the 20th century to the current evolution of the 21st century, legal literature in this field has grown substantially and remains very fertile nowadays.²⁴ But times are changing: a distinguished political scientist has recently affirmed that the central political issue in 2017 has been the frailty of democracy.²⁵ On 25 September 2018, UN Secretary-General António Guterres warned that democratic principles are under siege in his opening speech of the 73rd session of the General Assembly. Certainly, the new political conditions and the reality and contrast of municipal and international facts and rules have seriously disrupted the credibility and solidity, but not the essence, of the right and obligation to democracy in the international arena, as we will discuss below.

(D) DEMOCRACY: DEFINITION AND RELATED CONCEPTS

(1) A mutable and subjective concept

The dividing line between democracy and dictatorship is becoming more and more blurred in times of fake news, post-truth, general demagoguery, propaganda, cheats and alternative facts, times of sharp contrast between legal and factual realities, between facts and words. It is difficult to determine when a democratic system is beginning or ending or whether political upheaval and transformation deserves the qualification of putsch. Almost no political regime

²² M. Koskeniemi, “Whose Intolerance, which Democracy?”, in G. H. Fox, B. R. Roth (eds.), *Democratic Governance and International Law* (Cambridge University Press, 2000), at 436-440.

²³ B. R. Roth: “Evaluating Democratic Progress”, in G. H. Fox, B. R. Roth (eds.), *Democratic Governance and International Law* (Cambridge University Press, 2000), 493-516.

²⁴ Besides other titles cited elsewhere, we can highlight here: H. Charlesworth: “Democracy and International Law” (Vol. 371), in *Collected Courses of the Hague Academy of International Law* (2014), 43-152; A. Mangas Martín, *Humanización, democracia y Estado de Derecho en el ordenamiento internacional* (Real Academia de Ciencias Morales Y Políticas, Madrid, 2014); L.-A. Sicilianos, *L’ONU et la démocratisation de l’État* (Pedone, Paris, 2000); J. Wouters et alii: “Democracy and International Law”, Monograph, 34 *Netherlands Yearbook of International Law* (2003).

²⁵ F. Vallespín, “Guerras identitarias de distracción”. (2017) *El País*. 29 December 2017.

defines itself as authoritarian or totalitarian. The adjective “democratic” continues to be virtuously and absolutely groundlessly used in the name of States (Democratic Republic of Korea...), the condition of political regimes (Venezuelan *chavismo* is proud of its democratic credentials...) or political parties (Swedish Democrats is the name of a far-right party in Sweden). The Franco regime in Spain considered itself an organic democracy. The proliferation of elections, as further explained below, is no guarantee at all of a clean, sustainable and proper democracy. The twilight zone of the political spectrum gives rise to new oxymoronic political terminology like “elective dictatorships”, “illiberal democracies” and “liberal autocracies”²⁶, “post-democracy”²⁷ or “democratura”. Pierre Rosanvallon considers that our democracies are democratically elected but they do not behave nor are they ruled as such.²⁸ National regimes are questioned at all levels (regional, local), and, at the same time, they are becoming more and more influential and interlinked to international matters.

Democracy, just for its virtuous connotations, is subject to manipulations and graduations. That is also the case of the related concept “liberal”, more attached to the exercise of power than to its origin, as “democracy” is. No democracy is fully, perfectly, undoubtedly, definitively “democratic”. Political leaders themselves frequently experience an ideological and pragmatic transformation in their nature and attitudes. The external point of view is increasingly important for the legitimacy of any domestic regime, inter alia for the evaluation of asylum-seekers coming from a certain country. Many international institutes and think tanks issue periodic reports devoted to analysing and categorizing the degree of democratic performance of political regimes. They all point at the liberal backward of our times. According to the 2017 Freedom House Report, 71 countries suffered net declines in political rights and civil liberties, with only 35 registering gains. This marked the 12th consecutive year of decline in global freedom, despite the proliferation of polls...²⁹

Sometimes there are important discrepancies between the perception inside and outside the country, basically because the latter is more interested in the formalities and stability of the model whereas the local population legitimizes the political system according mainly to its social results. The case-law of the European Court of Human Rights on the dynamic conception of “democratic society” confirms the volatility and subjectivity of the notion and perception inherent to liberal democracies. A large number of municipal polls are scrutinized and assessed (hailed or blamed) by universal or regional institutions. The international community tends to urge an inclusive government, but refuses to proclaim a single model of

²⁶ F. Zakaria, “The Rise of Illiberal Democracies”, 76 *Foreign Affairs* (1997), at 22. DOI: 10.2307/2004827

²⁷ A. Ortega, *Recomponer la democracia* (RBA, Barcelona, 2014).

²⁸ P. Rosanvallon, *Good Government: Democracy beyond Elections* (2018).

²⁹ In similar terms, the Economist Intelligence Unit’s Democracy Index 2017 records the worst decline in global democracy in years.

democracy. Beyond temporary considerations, democracy is also relative to geographical, cultural or historical parameters, although this relativity might be used as a tool of political discrimination towards different countries and populations. The current ideological crisis, the increasing confusion between leftist and rightist axioms and ideals, astonishes public opinion and experts. In some other occasions, the same democratic tools and procedures, such as referenda, parliamentary sessions or, evidently, elections contribute to the legalization of anti-democratic decisions, like the perpetuity of a leader in power, as in the case of Burundi and Chad. Nowadays referenda, considered the quintessence of the direct popular will, are used for irregular purposes and surrounded by blatant manipulations and demagoguery, some of them external, as the Brexit referendum or the Hungarian referendum on the migration quotas largely confirmed.

Free and fair elections, held according to international standards and frequently subject to international scrutiny and assessment, are the original and essential act of a genuine democracy.³⁰ They are not only the genesis, but also a necessary, albeit insufficient, condition for the exercise of power; elections represent a vital element for democratic credentials. And yet, the holding and even the proliferation of polls are a masquerade that conceals authoritarian foundations and purposes of some governments. In Venezuela, for instance, the *chavismo* has organized 20 popular consultations eventually leading to a chaotic and tyrannical political system, which has been the object of targeted sanctions applied by the European Union, after the 2018 presidential elections were “neither fair nor free and their outcome lacked any credibility as the electoral process did not ensure the necessary guarantees for them to be inclusive and democratic”. We are facing fake democracies, with vicious campaigns, irregular electoral processes, electoral fraud, legal —and sometimes violent— protests, different levels and causes of turn-out and abstentionism; in other words, democracies without any real pluralism and competition which boost one man-rule and indefinitely abort democratic regeneration. Very often electoral results lead to hideous and pernicious consequences for the country where the election was held and for the international community, which is prone to bypass the verdict of the polls, as happened in Algeria in 1990 or more recently in Tunisia and Egypt in the wake of the so-called Arab Spring. The international community has straightforwardly condemned some election processes, as in the case of the announcement of polls in the separatist Ukrainian republics of Donetsk and Lugansk, occupied territories in Eastern Ukraine. Not to mention the amount of post-electoral conflicts, very often of a violent nature, usually originated as a result of the protests and discrepancies over an electoral process and the official results. Several electoral processes

³⁰ On this and other correlated ideas see Á. Jarillo Aldeanueva, *Pueblos y democracia* (Tirant lo Blanch, Valencia, 2012).

are marred by intimidation, violence and corruption. The *ius post-bellum* is sometimes very problematic to manage and ballots do not pacify but spur the distortion of public order and governance. In general terms, we agree with the theory of democratic peace, according to which democracy is normally an instrument of preventive diplomacy, a tool and goal of the peaceful settlement of disputes.

We will now establish certain affinities between the concept of democracy and other related notions

(2) Certain Concepts Related to Democracy

Political liberalism interacts with ‘ECONOMIC LIBERALISM’. Capitalism is of course more criticized than democracy, and has less apologists and less moral strength than democracy³¹, but it has turned out to be more resilient in spite of the warnings about its senility and decay. There is a natural connection between the two domains, inviting the citizen/consumer to choose, to “purchase” a “product” and reject the erection of monopolies (also in cyberspace³²). Capitalism needs legal certainty, but above all it needs stability. That is why economic interests can disrupt and even overthrow a democratic government or system. Democracy becomes this way instrumental since its legitimacy also depends on the social results that it provides. “It’s economy, stupid!” one could say. “How much poverty—and inequality—does a democracy bear?” is also a recurrent reflection. We are seeking another social contract. Furthermore, it is also indisputable that we live in times of individualism at the expense of public virtues,³³ and that economic globalization (for instance, free, deregulated and unfair trade) shakes, as indicated above, national democracies; inequality becomes bigger inside internal societies and distorts the credibility of the political liberalism. Companies must observe, but they often do not, democratic and humanitarian guidelines in their internal and external activity. International law, as Sustainable Development Goal 17 exhorts, must underline and improve the fight against this gap that certainly threatens the structure of a modern society and may boost populism. Capitalism is certainly the best, though manifestly imperfect, pattern of social organization, but it must be rationally regulated and tamed through democratic tools: “ordoliberalism”. Otherwise the citizens or their data simply become consumers or goods, market dominates the political arena and democracy may turn to a parody, a mockery.

³¹ A clear and solid eulogy and criticism of the anti-globalization movement in J. Norberg, *In Defence of Capitalism* (New York, 2003).

³² A tough criticism of the digital governance in J. Lanier: *Ten arguments for deleting your social accounts right now* (Copyright Material, New York, 2018).

³³ See as a reference M. Sandel, *Liberalism and the Limits of Justice* (1982).

Naturally, the notion of HUMAN RIGHTS and the notion of democracy are not only correlated, but, as a matter of fact, inseparable. While democracy points at the origin and organization of power, fundamental rights point to the freedoms of citizens. However, democracy is not just -must not just be- a mere procedural, formal term, but also a substantial and material one.

Article 21 of the Treaty on European Union enumerates the three concepts (democracy, rule of law and protection of human rights) as differentiated but correlative ideas. The jurisprudence of the European Court of Human Rights has also interlinked the three concepts, as it did in its 1979 *Sunday Times* judgment.³⁴

Nevertheless, democracy and human rights are not always coincidental. Nowadays, even in our western world, some decisions voted and backed by the population and taken by legal procedures infringe human rights postulates, especially where rights of aliens are concerned. We live times of serious setbacks and challenges for the democratic and humanitarian principles, but also certain positive breakthroughs are being achieved and encouraging progress is being made. It is the case of rights of homosexual people, in the general interest of the non-discrimination principle. Human rights and the rest of democratic principles must be taken very seriously, for they are under a range of attacks, as is reflected in a fecund social bibliography.³⁵

When democracies flagrantly and grossly violate fundamental rights, human rights are useful to unmask this flawed, merely formal, disguised democracy, to denounce the abuse of the popular will. It is true that veteran and refined democracies, like the USA's democracy, maintain and carry out the death penalty, a violation of the right to life. It is also true that beyond the own borders there is a general relaxation of human rights standards. Thirdly, the ratification of human rights treaties does not always guarantee scrupulous respect, alas.³⁶ Fundamental rights are useful for gauging the quality of democracy. In the current degradation of democracy in our societies there are certain freedoms that are particularly under attack, such as the freedom of press and speech or the independence of the judiciary in Hungary, Poland, Turkey ... The temporary state of emergency imposed in France, Ukraine or Turkey reveals the ordeal or the pretexts of democracies to confront certain challenges without restricting human liberties. On the other hand, democracies may strongly disagree on

³⁴ Judgment of 26 April 1979, *Sunday Times v. United Kingdom* (1979) Series A. No. 30, 526.

³⁵ See D. Rieff, "The End of Human Rights?" *Foreign Policy Magazine* (2018). April.

³⁶ See this discussion in R. Goodman, D. Jinks, "Measuring the Effects of Human Rights Treaties", 14 *European Journal of international Law* (2003), 171-183.

specific aspects regarding human rights, as the agreements between the USA and the EU on the exchange and protection of data corroborate.³⁷

The Strasbourg Court, according to the 1950 Rome Convention, often invokes the necessities of a democratic society to ponder the scope and effectiveness of a determined right. In this regional system it is consubstantial that the violation of human rights is occasional, episodic, rather than structural. This is thus a current and deep problem in Russia or Turkey and in the system as a whole. There is of course a hierarchy of human rights and of the infringement of human rights. Certain breaches might represent a crime against humanity. For instance, the current European panorama shows cases of slavery. Before the proliferation of people, acts or parties in Europe against democratic values, the question arises, to what extent must democracy surrender to these trends that benefit from public freedoms to disrupt the very core of democracy? How tolerant must plural democracies be against intolerance? However, the most frequent reality is that dictatorships entail the fall of humanitarian values. As is happening now with the Inter-American Commission on Human Rights regarding the crisis in Nicaragua and Venezuela, the survey encompasses the whole political regime, and not only individual fundamental rights and freedoms. Logically, the level of involvement and of criticism of the international community depends, beyond geostrategic considerations, on the number, frequency, nature and gravity of the breakdown of human rights.

Certainly, several rights, especially the political rights, are more inherent to the electoral genesis and the implementation of a liberal and representative democracy: freedom of assembly and association, freedom of expression...The right to vote is evidently at the core of the system, and its real scope (age, people with disabilities...) is under discussion and objections in many countries and it is the background of some judicial disputes.³⁸ The internationalization of the movement of people entails at the same time certain internationalization of the electoral campaigns and of the people's vote. The problem is, however, that democracy continues to be enshrined and exercised basically in the internal arena, but must be defended and boosted internationally because it is endowed with an increasing advanced frontier, an extraterritorial dimension.

³⁷ The last version is the *Private Shield*, a framework for transatlantic exchange of personal data, which replaced the *Safe Harbour* principles, and is still subject to different political and legal discrepancies between and within the two parties.

³⁸ The *Matthews* case, centered in the right to suffrage at the European elections by a Gibraltarian, is very significant. This controversy has been subject to study, with different contenders and different approaches, by the European Court of Human Rights and by the European Court of Justice. See Judgment of 18 February 1999, *Matthews v. United Kingdom*, ECHR (1999) 24833/14; and Judgment of the European Court of Justice (Grand Chamber) of 12 September 2006. *Kingdom of Spain v United Kingdom*, C-145/04, ECLI:EU:2006:543.

The main novelty of the democratic entitlement of the 1990s, in international terms, has been that democracy begins to be conceived as a collective right itself and an individual right for every citizen, turning the post-war external right to self-determination into an internal right. The right to democracy appears then as a right to political development and as a corollary of the human rights theory: both fields are under international scrutiny and governed by a multilevel regulation. Both international aims are contemplated as complementary and subsidiary of municipal governance. In fact, the international protection of human rights could never be disconnected from the social and political regime of a State. The Universal Declaration, adopted 70 years ago, contained a reference to democracy and to the necessity of a political and social context where human dignity flourishes and is safeguarded.³⁹ The surrounding and permanent question concerns the presumed universality and immutability of democracy linked to the alleged universality of the “inalienable rights”.

The concept of the RULE OF LAW is clearly complementary to democracy because in its profound dimension it inevitably encompasses human rights and free elections. “Wherever law ends, tyranny begins”, John Locke wrote. It is true that there may be occasional clashes between humanitarian purposes, popular will and legal provisions (for example, in relation to the salvation and assistance of irregular immigrants or to electoral commitments breaking the law in order to attract votes⁴⁰), but the relationship between these three ideals is mostly natural. The definition and preservation of the rule of law, both internally and internationally, has evidently grown in importance over the last years in the agenda of regional organizations like the EU, the Council of Europe and the OAS and in the agenda of universal organizations, first and foremost the United Nations, but also the IMF and others.⁴¹ Its antagonistic vector, corruption —the essential denial of the Law— is parallelly fought by different international institutions in the municipal law and also within their own organs. Corruption is conceived as a cancer for democracy in a very illicit world, dominated by the dark collusion of public and private interests and the seizure of public aims by private objectives. A part of this corrupted behaviour is linked to the functioning of the electoral system and political parties, but dictatorship is undoubtedly the ultimate form of corruption.

In the following section we will describe the actors, actions, limits and contradictions of the pro-democratic network of the international community. In other words, we will try to determine the scope of the principle of international cooperation in this matter.

³⁹ See in particular Arts. 21 and 28.

⁴⁰ See Y. Mounk, *The People versus Democracy. Why our Freedom is in Danger & How to Save it* (Cambridge, 2018).

⁴¹ See the data and the reflections, with many contributions, in D. J. Liñán, P. Martín (dirs.), *Estado de Derecho y Unión Europea* (Tecnos, Madrid, 2018).

(E) THE SCOPE OF INTERNATIONAL PRO-DEMOCRATIC COOPERATION

(1) General Remarks

The very nature of the pro-democratic tendency in international law is at odds with the mere coexistence intended and restrained by traditional international law. It is cooperation, and even integration, which is required because this tendency entails intra-state involvement, reaching the core of the political sovereignty and intimacy of a State.

It is complex, probably impossible, to determine and to exhaust the scope of international cooperation towards democracy. The deep, genuine intentions of international actors in this field often remain unknown, disguised or mistaken, and the relationship between the different actions launched in this area and the safeguard and promotion of democracy is controversial and intricate. Furthermore, there is a proliferation and dissemination of soft law in this field, giving rise to uncertainties about the legal dimension of this essentially politicized kind of cooperation.⁴² Therefore, pro-democratic international cooperation is a transversal area of international law that interacts with the other areas and with its constitutional principles. To a certain extent, it is also a precondition for the rest of areas of cooperation, above all as far as the democratic principle is erected as a *sine qua non* (conditionality) of bilateral relations. There are, of course, certain aspects of international life more or less subject and bound to ideological and political affinities. The provider of democratic principles seeks not only external freedom itself but also its own security and stability, as the current crisis in Venezuela and its neighbouring countries clearly shows. It is also utterly clear that the recent objective, even obsession of fighting insecurity, in particular the curse of terrorism, has weakened the cause of freedom in international relations and relegated it in favor of security. The values of security and liberty are united in many internal and international texts, but usually clash in practice. The ferocious economic competition is also a factor that damages the democratic commitment and authenticity in the international arena.

(2) The Actors

Traditionally, the international relationship has been implemented from State to State, mainly in intergovernmental terms, but this bilateralism (in reality, the unilateral measures taken against a “democratic” violator) raises the problem and the malaise of the external and unfriendly (or illicit) intrusion and indoctrination in the inner independence and dignity. It is clear, as George Sorensen has explained, that international relations nowadays try to

⁴² F. Jiménez García, “El Derecho internacional en mutación. El test “civilizatorio” del estado del Derecho internacional (¿soft law de alta o baja intensidad?) y el régimen de las fuerzas de estabilización de paz”, 35 *Revista Electrónica de Estudios Internacionales* (2018). DOI: 10.17103/reei.35.02.

prioritize liberalism of restraint over liberalism of imposition.⁴³ Truly, action is sometimes implemented not by a democratic government but, paradoxically and perhaps more efficiently, by other autocratic States, which may be more influential over their co-religionist about the pertinence of starting a political reform. In general terms, the power structure is very decisive because only the most powerful or closest States are capable of exerting a real influence, pressure and conditionality on this internal illiberalism. It is, therefore, necessary to pay attention to the current and changing geopolitical dimension in order to verify who can spark a political reform in third States. The identity and capabilities of States is crucial. In this regard, the rise of China and the decay of the western-style societies is very bad news for the cause of democracy as an international value.

The aforementioned flaws of bilateralism/unilateralism boost association among States in order to impose synergic and more efficient and legitimate measures against autocracy.⁴⁴ Organized guardianship is always preferable to unilateral and more subjective counter-measures. This association may, and must ideally, be institutionalized within the framework and the statutes of an international organization, both in its internal functioning *vis-à-vis* membership and also in relation to its external decisions and activities. For this purpose, we can consider the valuable coordination between United Nations-European Union-African Union in view of credible general elections in the Democratic Republic of Congo by the end of 2018. Undoubtedly, the European Union model is outstanding and unique, but many other intergovernmental organizations maintain permanent electoral assistance divisions amid many other pro-democratic interventions. The OSCE, for instance, is specialized in this task, even monitoring and criticizing election processes in EU Member States like Hungary. As happens in the whole international legal order, the phase of control and enforcement—the descendant stage—is essential for the credibility and effectiveness of this branch of international relations.

The most outstanding circumstance is that these institutionalized pro-democratic and external activities occur in the universalized system of the United Nations and its family of specialized organisms, confirming the general and cosmopolitan legitimacy and determination of the international community and averting the blame based on a sectarian and “neocolonialist”, “eurocentrist” behavior.⁴⁵ For the same reason it is always better that a political reform starts and develops in the concerned country. Western countries have

⁴³ G. Sorensen, *A Liberal World Order in Crisis* (Cornell University Press, 2018).

⁴⁴ M. Esteban, L. Simón, “Europe-Japan Cooperation for a Rules-based International Liberal Order”, *Real Instituto Elcano*. ARI 10/2018.

⁴⁵ See in general terms J. A. Sanahuja Perales, “Reflexividad, emancipación y universalismo: cartografías de las relaciones internacionales”, 70 *Revista Española de Derecho Internacional* (2018), 101-125. <http://dx.doi.org/10.17103/redi.70.2.2018.1.04>

emphasized the universal character of this crusade in order to reject its alleged authoritarian and arrogant character.⁴⁶

For obvious reasons regarding the political and teleological similarities, regionalism is more productive and more ambitious in the pro-democratic commitment. The activity of the regional institutions should be analysed not only according to their constitutional foundations, but also in relation to their effective and practical performance. The OAS, for instance, has been very erratic in this field depending on the geostrategic panorama and even on the personality of its Secretary-General. The ECOWAS (the Economic Community of West African States), initially created for economic purposes, has become very active and very successful in the constitutional crisis in the Gambia in 2017 with a military intervention called “Operation Restore Democracy”. The geographic and cultural proximity among the members diminish the reluctance and increase the reasons for a democratic action. In Asia the international and institutional network in favour of freedoms is particularly unfledged.

In our world and times, the role played by individuals in fostering democracy abroad or inside is ramping and very visible. We should consider and pay tribute to the modest fruit vendor who self-immolated, fuelling the discontent and provoking, alongside the cybernetic response from many places, the change towards a more liberal regime in Tunisia in 2011.

Organized civil society, frequently orchestrated and financed from abroad, is a very useful tool for the uprising against dictatorial systems, avoiding straight diplomatic confrontation and intervention, and vaguely evoking the suggestive idea of a world citizenship.

(3) The Actions

As previously indicated, the procedures and tools that may preserve, protect, encourage, improve or impose a democratic regime in third States are unnumbered and inaccurate. They are so inaccurate that some formulae could be productive or counterproductive in this sense depending on the circumstances: for instance, help to equip and to instruct security forces and army abroad. If we take one particular example: will the external pressure and coercion on Iran spark a new, more democratic establishment or a harder-line one? Organically speaking, does the financial rescue agreed with the IMF give more or less political stability

⁴⁶ In the EU Regulation 235/2014, establishing a financial instrument for democracy and human rights worldwide, it is underlined that this policy is based in the Universal Declaration of Human Rights and the two UN Covenants adopted in 1966 (OJ L 77/85, 15 March 2014). However, in some bilateral agreements the wording is more cautious. See Council Decision of 14 May 2012 on the signing, on behalf of the Union, of the Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the one part, and the Republic of the Philippines, of the other part (OJ L 34, 24 May 2012). In its Art. 1 the compliance is invoked only in reference to the international instruments of human rights in which the parties of the agreement are contracting parties. Additionally, in this and many other international agreements the EU and its partners invoke at the same time principle of non-intervention, providing a certain schizophrenic mix of guiding principles in cooperation.

and freedom to the recipient country?⁴⁷ In the next section we will discuss the opposite case: how autocracies currently tend to erode democracies... while pretending to appear as democracies themselves.

The European Court of Justice has supported expansive ways to promote democracy in third countries, signalling that the contribution to a moratorium on small arms and light weapons—and eventually the maintenance of international peace and security—is related to democratic objectives.⁴⁸ At the same time, the Luxembourg Court has underlined the close effects of the democracy over another public good, the social development of the people.⁴⁹ Indeed, a rational, liberal political system based on the rule of law does not only pursue a philanthropic purpose, but also a technical goal towards the progress.⁵⁰

Political conditionality, i.e. the subordination of bilateral cooperation to the respect of the liberal principles, is especially suitable and practiced when there is an imbalance between the two countries and cooperation is aimed at development: in this way, the provider may influence the recipient in the preconditions of the aid. In any case, though good governance is occasionally a requirement, it must always be a goal of external aid. This is the reason why the EU Regulation 235/2014, which institutes a financing instrument for the promotion and support of democracy and human rights worldwide, allows for assistance to be provided independently of the consent of the governments and public authorities of the third countries concerned.

The European Union has been particularly conspicuous in the interaction between democracy and development with the aforementioned Regulation and its predecessor. The European practice affects both its internal, unilateral measures and its conventional actions where a democratic clause is included, linking the continuity of the cooperation to the maintenance of the democratic record. However, the suspension of the concessions and support has only taken place in a few and flagrant opportunities and after the failure of a political dialogue. Soft diplomacy prevails over tough diplomacy in this field.⁵¹ In the near

⁴⁷ E. Paparella, *Il fondo monetario internazionale nell'eurozona. La stretta condizionalità e la sovranità condizionata* (Jovene, Roma, 2018). C-91/05.

⁴⁸ Judgment of 20 May 2008. *Commission v. Council*. ECLI:EU:C:2008:288.

⁴⁹ Judgment of 3 December 1996. *Portuguese Republic v. Council*. C-268/94. ECLI:EU:C:1996:461.

⁵⁰ D. Acemoglu, J. A. Robinson, *Why Nations fail. The Origins of Power, Prosperity and Poverty* (2012).

⁵¹ Many works are devoted to survey and assess the European policy in this field: J. D. Janer, *La promoción de los derechos humanos y de los principios democráticos en las relaciones exteriores de la Unión Europea: mecanismos jurídicos* (Atelier, Barcelona, 2005); M. C. Muñoz Rodríguez, *Democracia y Derechos humanos en la acción exterior de la Unión Europea* (Reus, Barcelona, 2010). From a particular point of view, R. Marín Aís, "La condicionalidad social en la política comercial común", in L. M. Hinojosa, P. Martín (eds.), *International Market Regulation and the Erosion of the European Political and Social Model* (Thompson/Reuters/Aranzadi, Madrid, 2018). Other works focus on the legal judgment of political conditionality: I. Forcada, *El condicionamiento político y económico de la ayuda oficial al desarrollo* (Tirant lo Blanch, Valencia, 1996).

future, the European Union must bolster its engagement with the international liberal order, above all after USA's, hopefully transitory, withdrawal from this kind of values. Nevertheless, some opinions allege that Europe must abandon the role of making the world in their own image.⁵² The European Union cultivates the principle of "more for more", offering more cooperation according to the democratic progress of its partners. The principles governing its foreign policy match its internal and foundational values (Article 21 TEU), but it is out of question that the international stage entails more hesitations and problems to the thriving of the democratic ideals. The external action of the European Union lacks consistency and visibility, inter alia to coordinate and optimize the pro-democratic actions by the EU and by its member States.⁵³ Furthermore, the unanimity rule still dominating the European Foreign and Security Policy is a handicap to spur the number and ambition of this sort of European decisions.

Another categorization of the measures aiming at democracy is the dichotomy between positive and negative measures, that is, the traditional dilemma of an ethical, political and legal nature, between the carrot and the stick. Both sorts of measures have different addressees: sometimes the aid is addressed to the opposition or the civil society in order to bypass the autocratic government and to boost its crisis or its fall, occasionally and unofficially considering an eventual putsch or magnicide. As far as restrictive measures are concerned, the recent practice of averting sanctions bound to the whole country and instead imposing targeted sanctions bound to concrete individuals and entities belonging to the circle of the authoritarian power is outstanding. This way, it intends to avoid the penalization of the population struggling under the tyranny. Naturally, the positive measures are less controversial and the EU and 13 third States have just launched the "Good Human Rights Stories initiative" in the framework of the General Assembly of the United Nations, to provide a more optimistic and less severe view of this policy. Positive measures encompass a panoply of initiatives ranging from the diplomatic, financial and political fields (for example, reinforcing the constitutional system or trying to reform it internationally), to the concern about particular human rights issues. It would, however, be a violation of international law to try to interfere in favour of a political option in a pluralistic electoral process. The provision of electoral assistance is also one of the most frequent positive measures, but it is not always successful in peaceful and liberal terms. It is noteworthy to observe what happened in the last Presidential election in Kenya in 2017. The election was praised and validated by

⁵² M. Leonard, "L'Europe qui protège: Conceiving the next European Union", *European Council of Foreign Relations*, 30 August 2017.

⁵³ The Member States usually have consistent national provisions emphasizing the democratic goals of their foreign policies. See, in the Spanish Case, Arts. 2(2) and 24 of the Law 2/2014, of 25 March, of the External Action and Service of the State (BOE no.74, 26 March 2014).

international observers and then annulled by the Kenyan Supreme Court. We must also consider that the post-electoral violent revolts in Kenya and Ivory Coast caused big humanitarian crises leading to the intervention of the International Criminal Court.

In general terms, positive and negative measures are surrounded by political factors and dilemmas: the persistence, and even revival, of the principle of non-intervention in internal affairs, the new geostrategic system, the in-determination on the real willingness of change within the local population, the doubts of Western countries about their own legitimacy to exert this pedagogy, the double standard concerning the response to the anti-democratic tendencies, the doubts about the degree of efficiency of the measures taken, the futile and even counterproductive consequences of the measures, etc.

Democracy within and around the European Union has another interrelated dimension. For example, and very disquietingly, Europe must fight the illiberal streams inside its Member States. It suffers the so-called “Copenhagen dilemma”: the EU can have greater influence and put more pressure on candidates than on Member States. The enlargement process represents the intersection between internal and external matters. Besides, the own democratic (or non-democratic) nature of the European integration is a relevant and connected subject, as mentioned earlier, especially regarding its architecture towards foreign policy.⁵⁴

Last, but not least, the European Union itself is subject to international scrutiny. Although it has traditionally been considered a normative power and the best example of the promotion and observance of international law, the European response to its migration flows has resulted in a great deal of criticism in humanitarian issues from governmental and non-governmental organisms. The assault on democratic principles takes place, therefore, from within and from outside the system, putting the internal and external strengths of the democratic values at risk, as we continue to explore from a different prospect.

(F) THE INTERNATIONAL ASSAULT TO DEMOCRACY. FINAL CONSIDERATIONS

As we have previously indicated, democratic principles and systems have been suffering a visible setback at national level during the last decade.

Although there are some concurrent encouraging events, like the first constitutional and peaceful takeover of Liberia in 2017 since its foundation in 1944, or advances in the status of women, this pessimistic general trend must inevitably be considered by international law. The frequent, and commonly rhetorical and hypocritical, eulogy to democracy cannot hide

⁵⁴ J. Santos Vara, S. Rodríguez Sánchez-Tabernero (eds.), *The Democratisation of EU International Relations Through EU Law* (Routledge, 2018)

the absence of a repeated and uniform practice of democratic entitlement. Democratic impulse seems rather to respond to historic and political cycles and waves.⁵⁵

Currently, the enemies of open societies are proliferating, as are the warnings against this phenomenon.⁵⁶ Democracy must be defended with a new narrative. Some political processes are not based on the transitional justice towards a liberal system, but the opposite: towards a de-democratization.⁵⁷

Municipal democracies naturally suffer their own and traditional loopholes, but they also endure new attacks from inside with the deterioration of democratic parties and a visible rise of national populist ones. This phenomenon is notorious in the European Union with some member States, particularly Hungary and Poland, forming an illiberal front, now subject to political and judicial procedures before the EU, in search of its own credibility and survival. It is disquieting that this involution, mainly boosted by migration flows, is encouraged and endorsed by a large part of the citizenship and justified as a way of preserving the real European identity and values.⁵⁸

However, attacks on the national and constitutional order are also simultaneously carried out from outside by what has been called a “sharp power”, in opposition to the soft power that normally characterizes liberal systems.⁵⁹ This kind of intrusion is paradoxically launched by governments that are hostile to the international protection of human rights and are, therefore, in favour of its consideration as a *domaine réservé*. These States are becoming the new interventionists as western States and societies turn to a more cautious vision regarding foreign incursions.⁶⁰ Saudi Arabia, which appears more and more reluctant and responsive before external criticism over its regime, is becoming increasingly involved, directly or vicariously, in foreign affairs and conflicts. China, based on the non-interference on domestic matters, is practicing a more assertive foreign policy, thus gaining significant world power and influence. Russia is implementing an inadmissible external intrusion in the political and electoral processes of third countries, notably including the Western hemisphere, trying to distort democracy and the European integration and fostering anti-establishment parties. We

⁵⁵ These cycles would corroborate the sort of analysis made by S. Huntington in “Democracy’s Third Wave”, *Journal of Democracy* (1991), 12-34. (DOI: 10.1353/jod.2018.0040). On the other hand, undoubtedly, tyranny represents a permanent temptation and curse for the human and social nature. See T. Snyder, *On Tyranny. Twenty Lessons from the Twentieth Century*. (Bodley Head, 2017).

⁵⁶ M. Albright, *Fascism. A Warning* (HarperCollins, 2018); R. Riemen, *To Fight against this Age. On Fascism and Humanism* (Copyrighted Material, 2018).

⁵⁷ L. Tomini, *When democracies collapse. Assessing Transitions to Non-Democratic Regimes in the Contemporary World* (Routledge, 2018); S. Levitski, D. Ziblat, *How Democracies Die* (Harvard University, 2018).

⁵⁸ I. Krastev, “Eastern Europe’s Illiberal Revolution”, *Foreign Affairs*. May-June 2018.

⁵⁹ National Endowment for Democracy, *Report on Sharp Power. Rising Authoritarian Influence*, December-2017.

⁶⁰ M. Leonard, “The New Interventionists”, *European Council of Foreign Relations*. 2016.

are living times of fake news and fake principles, of general simplification and manipulation. Western and hacked democracies try to defend themselves against the insidious disinformation campaign run through cyberspace where the Internet giants must assume a greater responsibility, without instituting a sort of Orwellian society that restricts freedom of information and expression.⁶¹ This is undoubtedly a national security threat against the rule of law and the dignity of the State, independence and unity, as is explicitly recognized in the new French and Spanish security strategies. The same liberal democracies face a serious challenge to their own traditional values, as the current US political panorama exemplifies, questioning the level of resilience and tolerance of the system and the suitable degree of appeasement: may democracies resort to “undemocratic” means to defend their existence? This is in addition to the lasting Jihadist threat, Jihadism obviously being the more sophisticated and terrible realization of totalitarianism.

Autocracies achieve a bonus of legitimacy by creating an external enemy in their domestic sphere and through the abolition of the independent opposition. Support against the isolationism of autocracies is also an antidemocratic behaviour that undermines the pro-democratic initiatives of Western liberalism, as in the cases of China and Venezuela.

To some extent the current situation can be described as a struggle between tribalism and internationalism, the main present ideological alternative. These movements represent a challenge to, and a revision of, the international liberal order unfolded since 1945, and an amendment to the power structure. It is important, therefore, to read the essay *Postwar* by Tony Judt or the novel *L'ordre du jour* by Éric Vuillard, or to watch the movie, based on a novel, “Remains of the day”, in order to realize or remember where we come from and to bear in mind the tragedy inherent to the fanaticism and nationalism. Democracy has also been the best, or the least bad, solution to arrange public matters internally and internationally. A report issued by the OECD about the political and economic landscape in 2060 foresees that the development of a society will depend on the strength of its institutions, law and freedoms.⁶² We should neither forget nor despise the legacy of the enlightenment and the progress achieved so far, as the “new optimists” remind us in spite of or just due to the gloomy prospects for human dignity.⁶³

⁶¹ D. Fried, A. Polyakova, *Democratic Defence against Disinformation*, (Atlantic Council, 2018).

⁶² OECD, “The Long View: Scenarios for the World Economy to 2060” (2018).

⁶³ S. Pinker, *Enlightenment now: the Case for Reason, Science, Humanism, and Progress* (Penguin Books, 2018).