

CHAPTER 24

DEMOCRACY PROMOTION

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THE extent to which international organizations (IOs) engage in democracy promotion says something important both about the organizations and about the normative climate in which they operate. According to a strictly Westphalian notion of sovereignty, how a government comes to power and how it rules is not a matter of international concern. The emergence of international human rights law puts a significant dent in that absolutist notion of sovereignty; the practice of democracy promotion puts an even deeper dent. Not surprisingly, several Western regional organizations have engaged in democracy promotion for many years. More surprising is the extent to which the United Nations (UN) has taken this on. The word democracy is nowhere to be found in the UN Charter. There is no body of law on democratic governance, nor is there a “committee on democracy” to interpret it. Moreover democracy promotion by the UN would appear to be at odds with Article 2(7) of the Charter, which prohibits it from interfering in the domestic affairs of member states.

Despite the absence of a clear mandate or overarching normative framework, the UN has responded with surprising ingenuity to emerge as an active proponent of democratic governance. In 2009, UN Secretary-General Ban Ki-moon expressed a clear commitment by the UN to “principled, coherent, and consistent action in

support of democracy.”¹ Other intergovernmental organizations have likewise emerged as stalwart supporters of democratic governance, even in parts of the globe where democracy is still consolidating or has yet to take root. In an international system where states superintend a great diversity of domestic political systems—from autocracies and constitutional monarchies to pseudo-democracies and hybrid regimes—what are IOs doing to promote democratic governance? What is the normative basis for these substantive activities? Are the activities of IOs giving content to an emerging right to democracy?

This chapter chronicles the major normative and operational developments engaged in by IOs in the field of democratic governance. We observe that democratic norms are being articulated and acted upon by IOs. As evidence, we look to the development of democracy’s normative roots as well as the following operational activities: electoral assistance, the good governance agenda of development programs, and peacebuilding. We argue that those activities are both rooted in and have had an impact on the normative climate in which IOs operate—both in a positive and negative way. We do not argue that an international right to democracy exists—there is still too much contestation to make that claim—but rather use the activities of international organizations as a yardstick for measuring whether, how, and to what extent such a right may crystallize.

APPROACHES TO DEMOCRACY PROMOTION

Democratic governance, in simple terms, means that the will of the people “shall be the basis of the authority of government,” a principle embodied in Article 21 of the Universal Declaration of Human Rights. It is true that many fuller definitions of democracy have been put forward. For instance, one widely used conception distinguishes between “procedural” and “substantive” democracy.² Meanwhile,

¹ UN, “Guidance Note of the Secretary-General on Democracy,” 2009.

² The procedural lens views democracy in minimalist terms, focusing narrowly on the rules, procedures, and processes of democratic governance—chiefly a free and fair electoral process. The substantive definition is much more expansive. It sees democracy as embodying a full range of civic, political, and even social and economic rights required to give effect to democratic governance, embodied in robust institutions such as a free press, balanced branches of government, and an independent judiciary. For more on the procedural definition, see Joseph A. Schumpeter, *Capitalism, Socialism, and Democracy* (New York: Harper & Row Publishers, 1942); Adam Przeworski, *Democracy and the Market: Political and Economic Reforms in Eastern Europe and Latin America* (Cambridge: Cambridge University Press, 1991).

theorists speak of liberal, republican, deliberative, and other variants of democracy.³ Rather than fixate on competing definitions or view democracy in aphoristic terms, we adopt a framework proposed by Thomas Carothers, who differentiates between “political” and “developmental” approaches to democracy promotion.⁴

The political approach underscores the importance of “elections plus rights” when prioritizing democracy assistance, to include ensuring a free and fair election process, support for political parties, and upholding core civil and political rights such as freedom of expression. As a consequence, social and economic rights tend to get overlooked. In contrast, the developmental approach is guided by the conviction that transparency, accountability, inclusivity, and other general features of democratic governance deserve the most attention. While elections and political rights are important, so are accountability and responsiveness to the demands of citizens, especially the poor. Less confrontational methods of promoting democracy, such as capacity-building and good governance, win out over activities that risk easy politicization. While the political approach views democratization as a kind of political struggle in which pro-democratic forces compete against undemocratic forces (often within the context of landmark political or electoral events), the developmental approach sees democratization as a “slow, iterative process” where “substantive outcomes,” such as equality and justice, are most valued.⁵

Carothers’s framework is useful because it accepts that pro-democracy actors themselves often view democracy with diverging lenses. As will be seen, IOs have employed both of these approaches to democracy promotion in their operational activities. Interestingly, the evolving landscape of democracy assistance within IOs reflects a clear shift away from the political approach, to contemporary operations based on a largely developmental framework. What is more, IOs have altered the political and normative climate in which pro-democracy actors operate, legitimizing likeminded efforts by NGOs and bilateral actors. The international election monitoring regime provides a fitting example of this. Finally, IOs have themselves shaped—and arguably hardened—a norm of democratic governance. They have served as “transmission belts” in which ideas surrounding a norm of democratic

³ For diverse accounts of democracy, see Robert A. Dahl, *Polyarchy: Participation and Opposition* (New Haven and London: Yale University Press, 1972); Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge, MA: The MIT Press, 1998); Fareed Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad* (New York: W. W. Norton & Company, 2003); Larry Diamond, *The Spirit of Democracy: The Struggle to Build Free Societies Throughout the World* (New York: Henry Holt and Company, 2008); Arend Lijphart, “Typologies of Democratic Systems,” *Comparative Political Studies* 1/1 (1968). See Freedom House and Polity IV data sets for liberal democracy frameworks consisting of a range of democracy variables across multiple categories.

⁴ Thomas Carothers, “Democracy Assistance: Political vs. Developmental?,” *Journal of Democracy* 20/1 (2009).

⁵ Ibid.

governance have coalesced. As a result, they have established a normative basis for an emerging right to democratic governance.

NORMATIVE ROOTS

It is a mystery of sorts that despite the absence of an overarching normative framework, the idea of democratic governance has gained widespread appeal and spurred great discussion in and around IOs. It would not be hyperbole to say that IOs have played a crucial role in articulating and advancing this norm. While support for democracy has recently been conflated (somewhat disparagingly) with the actions of Western countries, particularly in the aftermath of the 2003 Iraq War and the Bush administration's Broader Middle East and North Africa Initiative, IOs were active in the norm's earliest formulations. In this regard, IOs have served as transmission belts where the concept of democratic governance has coalesced and taken on new meanings. From patchwork origins, IOs have guided the norm's development from an embryonic idea to one that was described as a "universal" value in the 2005 World Summit of the UN General Assembly (UNGA).⁶

Agenda for Democratization

No document has made a more explicit case for the UN's involvement in democracy promotion than Boutros Boutros-Ghali's *Agenda for Democratization*, a companion to his earlier *Agenda for Peace* and *Agenda for Development*.⁷ With a bit of creative interpretation, the Secretary-General wove together varied sources to highlight an "emerging consensus" on the value of democratic governance and justify (if belatedly) the UN's burgeoning activities in this area.

Agenda begins by identifying three sources that provide "a clear and solid foundation" for a UN role in democratization. Despite the formal absence of democracy in the UN Charter, Boutros-Ghali saw the pluralistic language of the Preamble's opening line, "We the Peoples of the United Nations," as rooting the authority of member

⁶ "We reaffirm that democracy is a universal value based on the freely expressed will of people." UNGA, "2005 World Summit Outcome," A/RES/60/1, October 24, 2005.

⁷ Boutros Boutros-Ghali, *An Agenda for Democratization*, A/51/761, December 20, 1996; Boutros Boutros-Ghali, *An Agenda for Development*, A/48/935, May 6, 1994; Boutros Boutros-Ghali, *An Agenda for Peace*, A/47/277-S/2411, June 17, 1992.

states in their citizenry. In addition to the Charter, Boutros-Ghali refers to the Universal Declaration of Human Rights of 1948, especially Article 21, which states that “the will of the people shall be the basis of government,” and the Declaration on the Granting of Independence to Colonial Countries and Peoples.

The Secretary-General was equally innovative in his ability to explain democracy’s utility in fulfilling the UN’s purposes, as comprised of three basic pillars. First, democracy contributes to peace and conflict prevention. Because democracies manage conflict through elections, courts, and other nonviolent forms of dispute settlement, this is tantamount to promoting peace and security in both inter- and intrastate conflicts. Second, he viewed democratic governance as inherently linked to development. Social and economic progress is more likely to take place within the context of transparent and accountable democratic institutions. Third, democracy promotes human rights. Democratic systems are more likely to safeguard values such as freedom of thought and the rule of law.

For all this, *Agenda* stopped short of labeling democracy as a universal right. Indeed, Boutros-Ghali took pains to specify that the UN only supports democratic processes in member states that specifically request its assistance. Nor does the Organization impose a “particular model” of democracy. In this way, he was able to claim that democracy assistance did not violate Article 2(7) of the Charter.

The Secretary-General knew he was walking a fine line when making his case. In outlining his three pillars, Boutros-Ghali saw democracy, development, and peace as “inextricably linked.” His instrumentalist assessment—rather than declaring democracy to be a good in itself—reveals some trepidation in advancing a norm that was seen as ahead of its time.⁸ Indeed, UN member states did not seize on the Secretary-General’s agenda and so there was little follow-up at the intergovernmental level after he left office.⁹

A Right to Political Participation

An international right to political participation, also known as popular sovereignty, is rooted in a strong legal framework. More than 160 states are party to the International Covenant on Civil and Political Rights (ICCPR).¹⁰ Article 25 enshrines a right “to vote and to be elected at genuine periodic elections ... guaranteeing

⁸ Boutros-Ghali was counseled by senior advisors and UN officials to reconsider releasing the report. Boutros Boutros-Ghali, *Unvanquished: A US-UN Saga* (London: I. B. Tauris, 1999); Caroline E. Lombardo, “The Making of an Agenda for Democratization,” *Chicago Journal of International Law* 2/1 (2001).

⁹ Simon Rushton, “The UN Secretary-General and Norm Entrepreneurship: Boutros Boutros-Ghali and Democracy Promotion,” *Global Governance* 14/1 (January–March 2008): 95–110.

¹⁰ International Covenant on Civil and Political Rights, GA Res. 2200A (XXI), December 1966.

the free expression of the will of the electors.” The UN Human Rights Committee, delegated to interpret the ICCPR, clarified in its General Comment 25 that this provision requires, *inter alia*, access to a free press, freedom of association, the right to form political parties, and access to judicial review.¹¹ A number of legal arrangements at the regional level further augment this norm, for instance Article 3 of the first Protocol of the European Convention on Human Rights,¹² Article 23 of the American Convention on Human Rights,¹³ and Article 13 of the African Charter on Human and Peoples’ Rights.¹⁴ Democracy entails more than political participation so the fact that the right is firmly rooted in treaty law does not itself constitute a right to democracy. But it is an important element of most conceptions of democracy and therefore a critical piece of the normative foundation.

Charters of Regional Organizations

Overt democratic principles can be traced to the constituent principles of the charters of many regional organizations. Article 2 of the European Union (EU) Treaty states that it is founded on “the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights.”¹⁵ The founding documents of the Organization for Security and Co-operation in Europe (OSCE) are even more adamant. The Charter of Paris, for instance, states that OSCE participating states “undertake to build, consolidate, and strengthen democracy as the only system of government of our nations.”¹⁶ The charters of many other organizations embrace democratic principles, including the North Atlantic Treaty Organization (NATO), the Commonwealth of Independent States, Organization of American States (OAS), Mercosur, and the Andean Community. One of the objectives of the African Union (AU) is to “promote democratic principles and institutions, popular participation and good governance” and in 2007 the AU adopted a Charter on Democracy, Elections and Governance, which came into force in February 2012. The Association for Southeast Asian Nations (ASEAN) was founded on the principle of noninterference in internal affairs but in 2007 adopted a Charter that calls for “adherence to the rule of law, good governance, the principles of democracy, and constitutional government.”¹⁷ Notable exceptions to this rule include the Arab

¹¹ General Comment 25 of the Human Rights Committee, UN Doc. CCPR/C/21/Rev.1/Add.7, 1996.

¹² Convention for the Protection of Human Rights and Fundamental Freedoms, First Protocol, European Court of Human Rights.

¹³ American Convention on Human Rights, “Pact of San José, Costa Rica” (B-32).

¹⁴ African Charter on Human and Peoples’ Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 ILM 58 (1982), entered into force October 21, 1986.

¹⁵ The Treaty of the European Union, 2008.

¹⁶ The Charter of Paris for a New Europe, November 1990.

¹⁷ The Charter of the Association of Southeast Asian Nations.

League, South Asian Association for Regional Cooperation, and the Organisation of Islamic Cooperation.

UN General Assembly Resolutions

Soft law—norms that are “formally non-binding but habitually obeyed”¹⁸—is also evidence of a growing normative consensus for democratic governance. Approximately every other year between 1991 and 2015, the UNGA passed a resolution entitled affirming the importance of elections and democracy.¹⁹ The most recent version stated in unequivocal terms that democracy is a “universal value based on the freely expressed will of the people.” Another oft-cited text is the 1999 resolution of the UN Human Rights Commission provocatively entitled “Promotion of the Right to Democracy.”²⁰ Although the word democracy is nowhere listed in the body of the text, this nonbinding resolution, adopted by a vote of 51–0 (with only Cuba and China abstaining), affirms a series of rights related to democratic governance. Finally, a resolution on “Support by the United Nations System of the Efforts of Governments to Promote or Consolidate New or Restored Democracies,” adopted multiple times between 1994 and 2007, is equally forthright, arguing for “the need to continue to encourage and promote democratization” and describing democracy as a “universal and indivisible” core value of the UN.²¹

Despite the large number of UNGA resolutions and other soft law advocating for democratic governance, these developments have met with resistance. Notably, a series of counter-resolutions on the topic of “Respect for the Principle of National Sovereignty and Non-Interference in the Internal Affairs of States in their Electoral Processes” have been passed every other year beginning in 1991 until 2005.²² Initially drafted by the Soviet Union, these counter-resolutions urge states to respect Article 2(7) of the Charter and to abstain from supporting domestic political

¹⁸ Kenneth W. Abbott and Duncan Snidal, “Hard Law and Soft Law in International Governance,” *International Organization* 54/3 (2000): 421.

¹⁹ UNGA, “Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections,” A/Res/45/150, February 22, 1991; UNGA, “Strengthening the Role of the United Nations in Enhancing Periodic and Genuine Elections and the Promotion of Democratization,” A/RES/70/168, December 17, 2015.

²⁰ UN Commission on Human Rights, “Promotion of the Right to Democracy,” E/CN.4/RES/1999/57, April 27, 1999.

²¹ UNGA, “Support by the United Nations System of the Efforts of Governments to Promote and Consolidate New or Restored Democracies,” A/RES/62/7, November 8, 2007.

²² UNGA, “Respect for the Principle of National Sovereignty and Non-Interference in the Internal Affairs of States in their Electoral Processes,” A/RES/45/151, February 22, 1991. See also UNGA, “Respect for the Principles of National Sovereignty and Diversity of Democratic Systems in Electoral Processes as an Important Element for the Promotion and Protection of Human Rights,” A/RES/60/164, December 16, 2005.

parties. The counter-resolutions underscore the degree of normative contestation among the UNGA on the question of democracy assistance by the UN.

Democracy Forums and the 2005 World Summit

Significantly, the above normative signposts paralleled the establishment of a number of influential forums. For instance, some 100 nations convened for the International Conferences of New and Restored Democracies, first held in the 1990s, which led to the creation of the UN Democracy Caucus, a body that was influential in the passing of the aforementioned resolution on promoting or consolidating new or restored democracies. Likewise, the Community of Democracies Conference, consisting of 107 countries, agreed to “uphold ... core democratic principles and practices” in the 2000 Warsaw Declaration.²³

The 2005 UN World Summit deserves special note. In many ways the culmination of the legal-normative developments that preceded it, this gathering of the UNGA brought together 191 member states which unanimously declared their support for democracy. In his report leading up to the World Summit, *In Larger Freedom*, Secretary-General Kofi Annan laid the groundwork by explaining that “democracy does not belong to any country or region but is a universal right.”²⁴ This led to a striking paragraph in the World Summit Outcome document, whereby the GA reaffirmed that democracy is a “universal value based on the freely expressed will of people” and established the United Nations Democracy Fund to promote it.²⁵ If the *Agenda for Democratization*, written ten years earlier, tiptoed around the language of universality, *In Larger Freedom* and the World Summit Outcome exhibited unqualified support for it.

Secretary-General’s Guidance Note on Democracy

A nonbinding document, the Secretary-General’s Guidance Note on Democracy of 2009,²⁶ lays out a normative framework for UN democracy assistance that is “based on universal principles, norms and standards” and commits the UN to “principled, coherent, and consistent action in support of democracy.” The Secretary-General starts with the same three pillars on which the UN’s democracy promotion efforts

²³ Council for a Community of Democracies, Final Warsaw Declaration, June 27, 2000.

²⁴ UNGA, “In Larger Freedom: Towards Development, Security and Human Rights for All: Report of the Secretary-General,” A/59/2005, March 21, 2005.

²⁵ UNGA, “2005 World Summit Outcome,” A/RES/60/1, October 24, 2005.

²⁶ UN, “Guidance Note of the Secretary-General on Democracy,” 2009.

are grounded that appeared in *Agenda for Democratization*: peace and security, development, and human rights. The document then sets out eight guiding principles for effective assistance, such as the maxim of “do no harm,” and lists eight areas where the UN has a comparative advantage and should focus its efforts, including fostering “a culture of democracy” and supporting a “strong and vibrant civil society.” Gone is the reticence of *Agenda for Democratization*, which more loosely tied democracy to ideals of justice and human rights and sidestepped overt pronouncements of democracy’s universal character. What is more, the document reveals something about the overarching political climate in which it was written. If Boutros Boutros-Ghali faced a chilly reception from member states for his statements in support of democracy, Ban Ki-moon arrived on the scene amid a more permissive normative backdrop.

This evolving consensus is a fitting case study of IOs’ function as transmission belts for ideas,²⁷ and of how norm entrepreneurs can stimulate a process by which norms become institutionalized in IOs and then become internalized by states.²⁸ Yet recent years have witnessed a backlash, reflected not so much in declarations and other normative statements, but in the operational activities of IOs. In the next section, we look at how those operational activities have both reinforced the norm and undermined it. The progress has never been linear, but there does seem to have been a swing of the pendulum away from universal acceptance of democratic norms.

OPERATIONAL ACTIVITIES

International organizations have not only articulated a democracy norm, they have also acted on it. The operational activities of IOs have effectuated this norm by supporting democratic rules, processes, institutions, and even a culture of democracy in member states. Far from implementing a static program of action, IOs have experimented with a panoply of strategies and methods. Advancing free and fair elections, strengthening democratic institutions in the name of development, and democratic peacebuilding in post-conflict settings all fall under the purview of IOs.

²⁷ Louis Emmerij, Richard Jolly, and Thomas G. Weiss, *Ahead of the Curve? UN Ideas and Global Challenges* (Bloomington: Indiana University Press, 2001).

²⁸ Martha Finnemore and Kathryn Sikkink, “International Norm Dynamics and Political Change,” *International Organization* 52/4 (1998), 817; Harold Koh, “Why Do Nations Obey International Law?” *Yale Law Journal* 106 (1997–97): 2599; Ian Johnstone, “The Secretary-General as Norm Entrepreneur,” in *Secretary or General?: The UN Secretary-General in World Politics*, ed. Simon Chesterman (New York: Cambridge University Press, 2007), 123–38.

Interestingly, the scope of the provision of democracy assistance has evolved from the “political” approach to the more “developmental” approach described above. The UN’s initial activities in this area, which focused on electoral outcomes, conferred legitimacy on electoral proceedings and otherwise adopted a remarkably minimalist bent from the standpoint of democratic governance, have largely given way to multidimensional, long-term development projects aimed at building the institutions of democratic governance and the ultimate transformation of the politics of the societies in which they are placed. This section chronicles that evolution.

Electoral Assistance: Organizing and Monitoring Elections

The UN’s foray into democracy promotion began with electoral assistance, which remains the most common form of democracy assistance engaged in by IOs. Between August 2013 and August 2015, for instance, the UN provided electoral assistance to sixty-five member states, of which eleven fell under the mandate of the UN Security Council (UNSC).²⁹ Historically, IOs have provided several different types of electoral assistance including organizing and conducting elections, supervision and verification, election monitoring, coordination of international and domestic election monitors, and technical assistance.

The origins of this set of activities can be traced to the rather involved electoral support missions of the early 1990s. The most rare and intrusive of these is when the organization assumes full responsibility for organizing elections in lieu of a sovereign government. This usually occurs under the auspices of an international transitional administration when the IO assumes executive authority over a territory for a transitional period, including authority over the electoral process. The UN has administered elections in Kosovo, Cambodia, East Timor, and Eastern Slavonia; the OSCE conducted elections in Bosnia and Kosovo. Supervision missions, also uncommon, occur when a large number of UN personnel certify each step of the electoral process, from drafting of electoral laws and the campaign period to election-day operations. These high-stakes, heavy footprint operations occurred primarily in the 1990s under the aegis of UN peace operations in post-conflict societies. Only slightly less intrusive, verification occurs when the UN makes a judgment on the freeness and fairness of the election as a whole. Much less intrusive is

²⁹ “Strengthening the Role of the United Nations in Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections and the Promotion of Democratization: Report of the Secretary-General,” A/70/306, August 7, 2015. In that report the Secretary-General worried that the field of electoral assistance was becoming overcrowded and claimed “the most effective situations are those in which the UN has been given a coordinating or convening role with respect to external assistance providers,” para. 37.

election monitoring. On many occasions, the UN deployed election monitors to member states to observe and assess the integrity of election-day proceedings, as well as report on the pre-election and post-election cycle.

How did member states react to this growth in UN electoral assistance? No doubt, the electoral missions of the early 1990s generated fears among some member states for their potentially precedent-setting ability.³⁰ Prior to 1989, the means by which a government assumed power was not deemed a matter of international concern. That an international organization could comment on, let alone validate the legitimacy of, a domestic political process was seen as antithetical to the principle of sovereignty under the UN Charter.

The initial skepticism on the part of many member states quickly gave way to an unprecedented enthusiasm for electoral assistance. Because verification and monitoring missions could give (or deny) the UN's stamp of approval to a country's elections—essentially conferring legitimacy on the winner—this led to an increase in demand from political actors eager to receive the “blessing” of the UN, from only one observer request in 1989 by Nicaragua to sixteen in 1992.³¹ Leaders who wished to claim authority to rule were seen as requiring the imprimatur of the UN. For instance, Russia solicited the Electoral Assistance Division to verify its December 1993 elections.³² In fact, the number of requests for electoral assistance grew to the point where the UN could not accommodate them all. The Electoral Assistance Division (formerly the Electoral Assistance Unit) of the Department of Political Affairs was founded in the 1990s in part to evaluate the growing number of requests.

This meteoric rise in requests for UN electoral assistance is remarkable and says something about the evolving nature of sovereignty: countries increasingly were seeking the approval of international and regional organizations for validation of their domestic governmental systems. This suggests that member states were less concerned about standing on an absolutist principle of sovereignty when it came to the UN's involvement in an area previously considered within the domestic jurisdiction of the host government.

For all this activity, today the UN is almost never given a mandate to engage in the organization or monitoring of elections. It deployed its last monitoring mission to Fiji in 2001 and has since taken a backseat role.³³ For reasons explained below, today, the UN's involvement in election monitoring is limited to playing a coordinating and support role for the monitoring activities of other organizations.

³⁰ Thomas Franck, “The Emerging Right to Democratic Governance,” *The American Journal of International Law* 86/1 (1992): 72.

³¹ Michael Schroeder, “The Evolution of UN Electoral Services,” *Global Governance* 19/2 (2013): 219.

³² Simon Rushton, “The UN Secretary-General and Norm Entrepreneurship: Boutros Boutros-Ghali and Democracy Promotion,” *Global Governance* 14/1 (January–March 2008): 95–110.

³³ “Overview: Electoral Assistance,” UN Department of Political Affairs website.

Yet despite the formal retreat of the UN from this area, election monitoring continues to enjoy wide support and is widely engaged in by nongovernmental and regional actors; in 2013 alone, more than eighty national elections or referendums were observed by international monitors.³⁴ Nearly 80 percent of national elections were monitored by international observers in 2006.³⁵ The OSCE, for instance, requires participating states to undergo routine election monitoring and has conducted more than 250 election observation missions between 1991 and 2015.³⁶ Likewise, the OAS has deployed more than 210 election observation missions to its member states.³⁷ As of 2012, the AU (formerly the Organization of African Unity) has observed around 250 elections, its first mission sent in 1989 to monitor elections in Namibia alongside UN observers as part of the country's decolonization process.³⁸ The EU, the Commonwealth of Independent States (CIS), and, more recently, the League of Arab States all participate in election monitoring. Many of these regional organizations have also developed infrastructure from which to oversee electoral assistance operations. These include the OSCE's Office for Democratic Institutions and Human Rights (ODIHR), the AU's Democracy and Electoral Assistance Unit, and the OAS's Department of Electoral Cooperation and Observation.

In addition, a number of nongovernmental organizations (or quasi nongovernmental organizations) such as the National Democratic Institute, the Carter Center, the Electoral Institute for Sustainable Democracy in Africa, and L'Organisation Internationale de la Francophonie actively observe elections. The Carter Center alone has observed ninety-nine elections in thirty-eight countries as of March 2015.³⁹ The election monitoring regime serves as a useful indicator of the legitimizing effect that the UN provides for similar activities by these regional and nongovernmental actors. With exceptions noted below, these efforts are generally not perceived as violating the sovereignty of nations but are in fact requested by

³⁴ Based on the number of unique election observation reports in 2013 listed on the ACE Electoral Knowledge Network website and the web portals for several regional organizations. Accessed March 2015, <http://www.aceproject.org>.

³⁵ Susan Hyde, "Catch Us If You Can: Election Monitoring and International Norm Diffusion," *American Journal of Political Science* 55/2 (2011).

³⁶ "ODIHR Election Activities by Year," OSCE Office for Democratic Institutions and Human Rights, <http://www.osce.org/odihr/elections>; Judith G. Kelley, *Monitoring Democracy: When International Election Observation Works, and Why it Often Fails* (Princeton: Princeton University Press, 2012).

³⁷ The OAS deployed more than 180 electoral observation missions between 1962 and September 2011, and approximately thirty additional missions were conducted between September 2011 and March 2015: OAS, "Electoral Observation Missions," <http://www.oas.org/en/spa/deco/moe.asp>; "OAS Electoral Observation Missions 2011," Presentation from the OAS Department for Electoral Cooperation and Observation, http://www.oas.org/en/ser/dia/institutional_relations/Documents/2011/AU%20Forum/Presentation%20MOEs%202011.pdf.

³⁸ Shumbana Karume and Eleonora Mura, "Reflections on African Union Electoral Assistance and Observation," in *The Integrity of Elections: The Role of Regional Organizations*, ed. R. Cordenillo and A. Ellis (Stockholm: International Institute for Democracy and Electoral Assistance, 2012), 21–39.

³⁹ The Carter Center Democracy Program, <http://www.cartercenter.org/peace/democracy/index.html>.

host governments who seek the benefits associated with the arrival of international monitors and other pro-democracy actors, such as an influx of aid money. It is possible that the UN's initial involvement in this area was meant to undercut arguments that democracy assistance activities were part of a "neocolonial agenda" by Western powers. Regardless, it is hard to envision the success and validation of these efforts without the legitimating function provided by IOs.

However, if the UN brought a stamp of legitimacy to election monitoring in its initial stages, then the subsequent retreat of the UN from election monitoring may be dirtying the waters. While it continues to attract wide support overall, election monitoring has met resistance from a number of states in recent years. Notably, Russia placed restrictions on the OSCE's planned monitoring mission during the 2008 presidential elections, prompting the Organization to not deploy at the last minute.⁴⁰ The EU's abortive election observation mission to Zimbabwe in 2002 is another clear instance where a state has pushed back in a way atypical during the heyday of UN monitoring.⁴¹ A similar situation occurred in 2013, when Zimbabwean President Robert Mugabe barred Western monitors from observing a constitutional referendum and general elections, supposedly as retribution for sanctions imposed on his country for human rights violations.⁴² That same year, former Nigerian President Olusegun Obasanjo suggested that non-African monitors should be banned entirely from observing polls on the continent.⁴³

More common than flat-out refusal of election monitors, however, is the emergence of so-called "shadow" election monitoring organizations.⁴⁴ These organizations frequently offer lenient assessments of electoral processes in pseudo-democracies, in effect condoning undemocratic elections. This occurred, for instance, during the 2008 parliamentary elections in Belarus when a delegation of monitors from the CIS called "free and democratic" the elections that led to a sweeping victory for President Alexander Lukashenko's party.⁴⁵ During Venezuela's 2004 and 2006 elections, OAS teams headed by parties "sympathetic" to the Chavez government praised the elections and glossed over a series of infractions identified by the opposition.⁴⁶ African monitoring teams from the AU, the South African Development Community, and the Economic Community of Central African States released a joint statement declaring "successful" the 2011 Democratic Republic of Congo elections that re-elected President Joseph Kabila, despite the fact that the EU, the International Foundation

⁴⁰ "OSCE/ODIHR Regrets that Restrictions Force Cancellation of Election Observation Mission to Russian Federation," OSCE, February 7, 2008.

⁴¹ "Zimbabwe Expels EU Monitor Chief," CNN, February 20, 2002.

⁴² "Zimbabwe to Bar Western Election Observers: Paper," *Reuters*, March 5, 2013.

⁴³ "Africa: Obasanjo Canvasses Ban on Non-African Election Observers," *AllAfrica*, March 13, 2013.

⁴⁴ Kelley, *Monitoring Democracy*.

⁴⁵ Clifford Levy, "Electoral Rot Nearby? The Russians Don't See It," *The New York Times*, December 16, 2008.

⁴⁶ Ruben M. Perina, "The Future of Election Observation," *Americas Quarterly*, Spring 2012.

for Electoral Systems, the Carter Center, and many citizen observers felt it “lacked credibility” and identified “significant irregularities and attempted cheating.”⁴⁷

In sum, the influence of international organizations in this area has been significant. Not only has the UN acted as midwife to the modern-day election monitoring regime involving many organizations; it has brought us to the point where election monitoring is a common, indeed expected, occurrence. Nevertheless, the recent backlash has begun to undermine the legitimacy of election monitoring while also calling into question the commitment to democratic principles of many countries.

Electoral Assistance: Technical Assistance

Whereas supervision, verification, and monitoring missions predominated in the immediate post-Cold War period, today technical assistance is the most common type of electoral assistance provided by IOs. Technical assistance engages a group of technical advisers from multiple organizations (such as the UN Development Programme (UNDP), UN High Commissioner for Refugees, and the UN Department of Peacekeeping Operations) working in conjunction with national authorities over an extended period to improve the participatory nature of electoral institutions, such as design of election laws, updates to the voter registry, and logistics and procurement. A related type of mission, known as an “expert panel,” consists of a handful of experts to advise informally on the electoral process.⁴⁸ With their light footprint and nimble character, expert panels keep a decidedly low profile.

It is interesting that technical assistance missions have supplanted other, more intrusive types of electoral assistance. This shift may be explained as a necessary counterbalancing of the surging demand for an active UN presence.⁴⁹ Because the UN possessed a unique ability to confer legitimacy on the electoral process, this legitimizing function could be exploited by autocratic and hybrid regimes who wished to “signal their government’s commitment to democratization.”⁵⁰ This also resulted in the widespread belief that “all true-democrats” invite observers.⁵¹ Yet these regimes merely paid lip service to democratic norms, and their commitment to free and fair elections was questionable at best.

⁴⁷ Helidah Ogude, “An Appraisal of Election Monitoring and Observation in Africa: The Case of the Democratic Republic of Congo’s 2011 Presidential Elections,” *Consultancy Africa Intelligence*, March 2012.

⁴⁸ e.g., the UN deployed a three-member expert panel to follow Algeria’s April 2014 presidential elections: “Commending Peaceful Presidential Elections, Secretary-General Reiterates Support for Democratic Reforms in Algeria,” UN Press Service, April 24, 2014.

⁴⁹ Schroeder, “The Evolution of UN Electoral Services.”

⁵⁰ Hyde, “Catch Us If You Can: Election Monitoring and International Norm Diffusion.”

⁵¹ Ibid.

Embracing the mantra of technical assistance, therefore, allowed the UN to sidestep the highly politically charged task of verifying elections and thereby maintain its legitimacy on these matters.⁵² By shifting its efforts to less controversial and less visible technical assistance, such as support to electoral management bodies, the UN could better maintain its appearance of political neutrality. Thus, technical assistance missions provided a useful crutch to mitigate the unintended consequences of rising requests for electoral assistance that empowered democratic regimes as well as pseudo-democrats.

Development and Good Governance

The expansion of technical assistance aligns closely with the UN's development agenda and the broader "good governance" agenda of the UNDP, the World Bank, and other development actors. UNDP devotes over one-third of its budget to democratic governance programs.⁵³ With the backing of the World Bank, the EU, and many other development agencies and donor governments, the development agenda focuses on building the institutions of democratic governance, which ought to be transparent, accountable, well-functioning, and technocratic in the Weberian sense. UNDP democratic governance programming therefore seeks to make government institutions more accountable, support anticorruption efforts, and promote the rule of law. Not surprisingly, this agenda reflects Carothers's "developmental" approach to democracy promotion.

The idea of good governance has its roots in the policies of structural adjustment promoted by the Bretton Woods institutions. A backlash against the so-called Washington Consensus began in the early 1990s, and crystallized with the World Development Report of 1997 which focuses on state effectiveness: not less government, as the Washington Consensus called for, but better government. Better government implies obvious things like rules and restraints on public officials and less corruption. More deeply, the strategy calls for "bringing the state closer to the people," by allowing those most directly affected by decisions greater participation in making those decisions and by devolving power to the level of government best placed to deal with a problem.⁵⁴

The UNDP took this a step further in its 2002 Human Development Report, with its forthright appeal not simply for good governance, but "democratic governance."⁵⁵

⁵² Schroeder, "The Evolution of UN Electoral Services," 219.

⁵³ "Fast Facts: UNDP Democratic Governance," UN Development Programme, October 2011, <http://www.undp.org/content/dam/undp/library/corporate/fast-facts/english/FF-Democratic-Governance-2011.pdf>.

⁵⁴ World Bank, *World Development Report 1997: The State in a Changing World* (New York: Oxford University Press, 1997).

⁵⁵ UNDP, *Human Development Report 2002: Deepening Democracy in a Fragmented World* (New York: Oxford University Press, 2002).

First, the report argues that political freedoms and political participation is part and parcel of human development. Second, democratic governance helps to protect the poorest of the poor from economic and political catastrophes via government accountability mechanisms. Third, democratic governance can trigger a virtuous cycle of development: political freedom empowers citizens to press for policies that expand social and economic opportunities. It is a sign of the evolving normative climate when the development organization most trusted by developing countries embraces a notion of good governance that is more overtly political than that of the World Bank.

The idea of democratic governance has also received crucial backing from the AU in the form of its development framework, the New Partnership for Africa's Development (NEPAD). Led by Nigeria and South Africa, but pan-African in scope, NEPAD lists "democracy and governance" as one of its four pillars. Following a series of pro-democracy protests that swept across the Arab world in 2010–11, the "Deauville Partnership" was launched by the G8 in partnership with several Arab countries and regional development organizations, including the Islamic Development Bank and Arab Monetary Fund. This is a multi-billion dollar development effort designed to support transitions in Egypt, Tunisia, Morocco and elsewhere towards "free, democratic, and tolerant societies," although it has come under criticism.⁵⁶ In both of these cases, it is telling that at significant moments in the histories of the two regions democracy was considered an underlying pillar of development even outside the aegis of the West.

If the expansion of democratic governance projects under UNDP, the World Bank, and the AU underscored its increasing relevance to sustainable development, then the Millennium Development Goals (MDGs) were a sobering reminder of the obstacles that remained to its complete acceptance. While the Millennium Declaration of September 2000 declared "democratic and participatory governance" to be a "fundamental" value for the twenty-first century,⁵⁷ the MDGs that followed failed to codify any concrete action in favor of promoting pluralistic government. Governments refused to endorse an explicit good governance indicator in the MDGs. Excluding a pledge to strengthen democracy in the MDGs only served to decouple democratic governance from the development agenda, much to the chagrin of pro-democracy actors.

Despite this backlash at the turn of the millennium, it should be noted that even in the area of UN electoral assistance, the presence of UNDP and other UN development actors is deeply felt. As discussed, technical assistance missions have trumped other forms of electoral assistance, but there is now a third wave of electoral assistance that seeks to "go beyond technical advice" to broader reform of

⁵⁶ Ibrahim Warde, "Forgotten Promises of Aid for Arab States: So Where's the Money?," *Le Monde Diplomatique*, October 3, 2014.

⁵⁷ UN Millennial Declaration, UNGA Res. 55/2, September 8, 2000.

electoral processes.⁵⁸ The Secretary-General in his 2013 biennial report on elections, for instance, emphasizes that elections are fundamentally political events which require “more than improving technicalities.”⁵⁹ In effect, we may be witnessing a gradual convergence of UN electoral assistance with the broader good governance agenda. As evidence of this, the UN has diversified its technical assistance efforts from primarily working with election monitoring bodies to more diffuse, long-term strategies implemented during all phases of the electoral cycle.⁶⁰ These capacity-building measures include voter education, political party finance, domestic observer training, and removing barriers to equal participation particularly by women and minorities. The UN Democracy Fund, a voluntary trust fund established in 2005, likewise promotes systemic drivers of democratization by funding civil society organizations and grassroots activism, rather than state-centric approaches to electoral reform. Although we are not there yet, it is becoming increasingly true with the UN that “the line between ... democracy support and development aid ... is often blurred or hard to find.”⁶¹

The debates over the 2030 Sustainable Development Goals (SDGs) may serve as a bellwether of how a norm of democratic governance is converging with the development agenda. When the Millennium Development Goals (MDGs) expired in 2015, many argued that the time was ripe for governments to push to include commitments relating to governance in the post-2015 MDG framework.⁶² Thus goal sixteen of the 2030 SDGs, formally adopted by the UNGA in September 2015, is dedicated to “the promotion of peaceful and inclusive societies for sustainable development, the provision of access to justice for all, and building effective, accountable institutions at all levels.” One of the targets under this goal is “to ensure responsive, inclusive, participatory, and representative decision-making.”⁶³ The

⁵⁸ “Deepening Democracy: A Strategy for Improving the Integrity of Elections Worldwide,” Report of the Global Commission on Elections, Democracy, and Security, chaired by Kofi Annan, September 2012.

⁵⁹ “Strengthening the Role of the United Nations in Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections and the Promotion of Democratization: Report of the Secretary General,” A/68/301, August 9, 2013.

⁶⁰ Based on informal interviews and consultation with members of the Electoral Assistance Division, Department of Political Affairs, UN, 2012.

⁶¹ Thomas Carothers, “Democracy Support and Development Aid: The Elusive Synthesis,” *Journal of Democracy* 21/4 (October 2010).

⁶² Daniel F. Runde and Conor M. Savoy, “Good Governance as a Post-2015 Millennium Development Goal,” Center for Strategic and International Studies, March 5, 2014. Thomas Carothers and Saskia Brechenmacher, “Closing Space: Democracy and Human Rights Support Under Fire,” Carnegie Endowment for International Peace, February 20, 2014; Michael Snyder, “What Does Good Governance Look Like? Democracy and the post-2015 Development Agenda,” *The Global Observatory*, International Peace Institute, August 5, 2014, <https://theglobalobservatory.org/2014/08/good-governance-democracy-post-2015-development-agenda/>.

⁶³ UNGA, “Transforming Our World: The 2030 Sustainable Development Agenda,” A/RES/70/1, October 21, 2015.

inclusion of such a goal—while falling short of an overt endorsement of democratic governance—heralds a further shift in the progression of a democracy norm under the banner of development.

Conflict Prevention and Peacebuilding

A final area of engagement is democratic peacebuilding. While democracy has long been considered essential in the pursuit of peaceful relations among states, it is in no small part due to IOs that democracy is equally regarded as a vital tool in preventing civil wars from occurring or recurring. As the Secretary-General explained in the *Agenda for Democratization*, democratic institutions are believed to be more effective at managing the high stakes of political competition by ensuring that conflict is resolved peacefully through the ballot box, legal system, and wider political process.

This reasoning has guided the UN's efforts in post-conflict societies for more than two decades. In practice, this means that UN peace operations have been active in converting rebel groups into political parties, supporting the organization of post-conflict elections, building democratic institutions, such as independent electoral commissions, and establishing a functioning judiciary. With little mincing of words, the Security Council ordered the UN Mission in Mali to assist that country toward "full restoration of ... democratic governance."⁶⁴ Security Council Resolution 2040 gave the UN Mission in Libya a broad mandate to "manage the process of democratic transition" including not only giving technical advice, but also a wide variety of measures aimed at improving institutional capacity and promoting political participation.⁶⁵ The Peacebuilding Fund, managed by the UN Peacebuilding Support Office, can also "exceptionally support elections at critical junctures for peacebuilding,"⁶⁶ as it did in Guinea-Bissau in 2014.⁶⁷ More broadly, one of the Peacebuilding and Statebuilding Goals endorsed by some twenty "fragile states" (the so-called G7+) is "legitimate and inclusive politics."⁶⁸

⁶⁴ UNSC Res. 2100, S/RES/2100, April 2013.

⁶⁵ UNSC Res. 2040, S/RES/2040, March 2012.

⁶⁶ "Strengthening the Role of the United Nations in Enhancing the Effectiveness of the Principle of Periodic and Genuine Elections and the Promotion of Democratization: Report of the Secretary General," A/68/301, August 9, 2013.

⁶⁷ "[The Chair] also reminded that the PBF has approved \$4.2 million for support to Guinea-Bissau's elections, youth and women, media training for the elections and the high-level strategic commission": "Chair's Summary of the Informal Meeting of the Guinea-Bissau Configuration," United Nations Peacebuilding Commission, May 12, 2014, http://www.un.org/en/peacebuilding/doc_guinea-bissau.shtml#informalmtg.

⁶⁸ The New Deal for Engagement with Fragile States, Busan Declaration 2013, "Peacebuilding and State-Building Goals," <http://www.oecd.org/dac/HLM%20one%20pager%20PSGs.pdf>.

This peacebuilding agenda pursued by IOs is not without its detractors. There is currently a backlash against the idea that so-called “liberal peacebuilding” can reconstruct war-torn societies and transform them into democracies. Roland Paris identifies a number of recurring criticisms, including that it is a value-laden process bound up in international politics and a Western, neoliberal agenda.⁶⁹ While some critics see a problem with the *concept* of democratic peacebuilding, others point to its *implementation*. In certain cases, the UN has been forced to backtrack by narrowing the scope of its peacebuilding activities. For example, the UN Mission in South Sudan, initially conceived in 2011 to foster “longer-term statebuilding,”⁷⁰ was scaled back to a more limited protection of civilians mandate following the December 2013 breakout of civil war.⁷¹ It is suggested that rather than focus their efforts on strengthening existing state institutions, which can be “predatory” toward the local population, practitioners should instead seek to “build resilient local communities.”⁷²

In addition, the peacebuilding agenda has come to recognize that there is danger in overemphasizing the importance of elections and premature elections in particular. While international actors may be pressured to hold early elections because it offers a convenient “exit strategy,” this should not come at the cost of other elements of democratic society. At the same time, elections frequently serve as a flashpoint for internecine violence and can even be destabilizing, as occurred in Angola in the early 1990s. IOs must take into account a variety of considerations, not only the timing and sequencing of elections, but also their “integrity”⁷³ and the design of the political/electoral system. Winner-takes-all majoritarian systems are believed to be more conflict-prone than proportional representation systems and group-based arrangements, such as consociationalism.⁷⁴

Societies undergoing democratic transition have also become the site of conflict-prevention efforts by IOs. It is a well-known irony that while consolidated democracies are more peaceful, democratization is often a turbulent process accompanied by deep-seated social and political conflict and even violence.⁷⁵ In the wake of the

⁶⁹ Roland Paris, “Saving Liberal Peacebuilding,” *Review of International Studies* 36/2 (2010); see also David Chandler, *Empire in Denial: The Politics of Statebuilding* (London: Pluto Press, 2006).

⁷⁰ UNSC Res. 1996, S/RES/1996, July 2011.

⁷¹ UNSC Res. 2155, S/RES/215, May 2014.

⁷² Paul Williams, “Protection, Resilience, and Empowerment,” *Politics* 33/4 (2013): 287–98.

⁷³ Pippa Norris, “Why Electoral Malpractices Heighten Risks of Electoral Violence,” presented at the annual gathering of the American Political Science Association 2012; Michael R. Snyder, “For Want of a Credible Voter Registry: Do Problems in Voter Registration Increase the Likelihood of Electoral Violence?,” *Josef Korbel Journal of Advanced International Studies* 5 (2013).

⁷⁴ Benjamin Reilly, “Elections in Post-Conflict Scenarios: Constraints and Dangers,” *International Peacekeeping* 9/2 (2002): 118–39; Kristine Hoglund, “Electoral Violence in Conflict-Ridden Societies: Concepts, Causes, and Consequences,” *Terrorism and Political Violence* 21/3 (2010); Benjamin Reilly, “Electoral Systems for Divided Societies,” *Journal of Democracy* 13/2 (2002).

⁷⁵ Edward Mansfield and Jack Snyder, *Electing to Fight: Why Emerging Democracies Go to War* (Cambridge, MA: MIT Press, 2005).

protests that swept the Arab world beginning in 2010, the UN has taken a strong interest in supporting democratic political transitions including, inter alia, facilitating a national dialogue and the formation of a unity government in Libya and support to the constitutional process in Tunisia. Another oft-cited example is Kenya during the 2007–8 presidential elections. Following destabilizing election violence that left more than 1,000 people dead, UN Special Envoy Kofi Annan was called upon to broker a settlement between the opposing parties who had each claimed an election victory, preventing a deadly slide into violence in the subregion.⁷⁶

The linear relationship between democracy and peacebuilding may have to be re-examined. Returning to the Kenyan crisis, it is a “deep and enduring dilemma” that the perpetrators of election violence were “rewarded” with a seat at the table by the UN and the international community.⁷⁷ In Cambodia, the UN rewarded Hun Sen with a power-sharing agreement after he threatened renewed conflict following the 1993 electoral contest.⁷⁸ In both cases, the opposition was compensated with more political power as a result of inciting violence than they would have been granted had they grudgingly accepted defeat. This dilemma can likewise be witnessed in the acquiescence of the international community to the flawed 2009 Afghan elections.⁷⁹ The legacy of peace operations has galvanized consensus on the importance of democracy in peacebuilding, and the idea that no peace process can succeed without participatory governance is widely held. However, when faced with competing norms of democratic governance on the one hand and security on the other, the actions of IOs reveal a subtle preference for stability over democracy.

“Enforcement” of Democratic Norms

Although uncommon, the UN Security Council has on several occasions authorized the use of force to restore or support democratically elected regimes, notably in Haiti, Sierra Leone, and Côte d’Ivoire. Traditionally, the rule used to determine the legality of a government as representative of the state follows from whether government exerts *de facto* control over the state’s territory. However, the Security Council has begun to weigh more heavily the *means* by which a party comes to power, not just whether it exerts territorial control.

⁷⁶ Human Rights Watch, “Ballots to Bullets: Organized Political Violence and Kenya’s Crisis of Governance,” *Human Rights Watch Report 20/1* (March 2008): 1–79.

⁷⁷ Timothy Sisk, “Elections in Fragile States: Between Voices and Violence,” paper prepared for the International Studies Association Annual Meeting, March 2008.

⁷⁸ Benjamin Reilly, “Post-War Elections: Uncertain Turning Points of Transition,” in *From War to Democracy: Dilemmas of Peacebuilding*, ed. Anna K. Jarstad and Timothy Sisk (New York: Cambridge University Press, 2008), 165–6.

⁷⁹ Peter W. Galbraith, “UN Isn’t Addressing Fraud in Afghanistan,” *The Washington Post*, October 4, 2009.

The aftermath of the 1991 coup in Haiti presents arguably the clearest case of coercive intervention to support democracy. Security Council Resolution 940 invoked Chapter VII of the UN Charter and authorized a multinational force to use “all necessary means” to reverse the coup.⁸⁰ It justified this on the basis of upholding democracy, stating directly in its Preamble that its goal was “the restoration of democracy in Haiti and the prompt return of President Aristide.” Under different circumstances, the Economic Community of West Africa States (ECOWAS) intervened in Sierra Leone in 1998 to remove a regime which had toppled the democratically elected government, a decision that was approved by the UN Security Council *ex post facto*. ECOWAS again threatened the use of military force during Côte d’Ivoire’s 2010 political crisis, in which opposition candidate Laurent Gbagbo rejected the results of democratic elections and proclaimed himself the victor.⁸¹ Ultimately, the UN Security Council stopped short of authorizing the use of force to remove Gbagbo, but called on other measures under Chapter VII such as targeted sanctions, and a stronger mandate to protect civilians. Robust action by UN peacekeeping troops and French forces led to the eventual capture of Gbagbo by supporters of Alassane Outarra, the winner of the elections.

The significance of these coercive interventions is hotly debated.⁸² While the language of the Haiti and Sierra Leone resolutions in particular suggests that the actions were in the name of democracy, these countries were also host to a civil war, human rights abuses, and larger humanitarian crises that might also have justified Chapter VII action. Some claim these interventions are highly selective, chiding the P5’s bias in deciding which overthrown regimes will be restored and which will be left on the sidelines. The US invasion of Iraq in 2003 has also cast a pall over the idea of using force in the name of democracy. Without greater consistency and frequency of action on this matter by the Security Council, there will continue to be considerable skepticism of the idea that the UN is moving in the direction of endorsing pro-democratic intervention, a shift that would effectively expand the definition of what constitutes a threat to international peace and security.

A less coercive type of enforcement is the so-called red-card principle, where regional organizations suspend states from participation in the organization for unconstitutional changes in the democratic order. This began with the Western or Western-driven organizations. Thus the OAS includes the 1991 Santiago Commitment and the Inter-American Democratic Charter, which calls for suspension in case of “unconstitutional interruption of the democratic order.” Honduras faced suspension by the OAS following the 2009 coup by Manuel Zelaya, the first

⁸⁰ UNSC Res. 940, S/RES/940, July 1994.

⁸¹ Alex J. Bellamy and Paul Williams, “The New Politics of Protection? Côte d’Ivoire, Libya, and the Responsibility to Protect,” *International Affairs* 87/4 (2011).

⁸² See, e.g., Gregory H. Fox and Brad R. Roth (eds.), *Democratic Governance and International Law* (Cambridge: Cambridge University Press, 2000).

time this happened since Cuba was suspended in 1962. The Andean Community and Mercosur both have language allowing for suspension of members under similar circumstances. The Commonwealth Ministerial Action Group suspended Nigeria's membership in 1995, Zimbabwe in 2002, Fiji in 2006, and Pakistan in 2007, each following a usurpation of the democratic order. The OSCE's Moscow Document, implemented after the attempted 1991 coup in the Soviet Union, likewise directs its members not to recognize a regime that seizes control from a democratically elected government.

The phenomenon spread to Africa, where Articles 4(p) and 30 of the Constitutive Act of the AU provides that governments which come to power "by unconstitutional means" cannot participate in the Union. Côte d'Ivoire was reprimanded in precisely this way when Gbagbo refused to accept the outcome of the elections in 2010. Most recently, Burkina Faso was suspended following the coup there in September 2015. It is worth noting that "unconstitutional" changes in government can in fact be pro-democracy, so Articles 4(p) and 30 should be read in light of Article 4(m), which requires respect for "democratic principles, human rights, the rule of law and good governance." This idea gained further momentum as a result of NEPAD. Approximately thirty countries have signed into the partnership. Asia and the Middle East, given their historical lack of democratic tradition, would be expected to forego these enforcement measures. Nevertheless, the League of Arab States suspended both Libya and Syria from its membership during those political crises, and the ASEAN allows for suspension in the case of unconstitutional changes of government, a provision which has yet to be invoked.

IMPACT OF OPERATIONAL ACTIVITIES ON INTERNATIONAL LAW

As early as 1992, Thomas Franck argued that an emerging right to democratic governance, or "democratic entitlement," was rapidly accelerating into customary international law. He claimed this emerging right comprised not only a right to political participation (as spelled out in the ICCPR), but a constellation of other principles including a right to self-determination and a right to freedom of expression. A combination of regional jurisprudence, soft law in the form of UNGA resolutions, and UN operational activities all served as evidence of this entitlement. Were acceptance of election monitoring and other forms of democracy assistance to become general practice among states, it would herald the norm's ascendance. He wrote, "We are not there yet, but we can see the outlines of this new world in which

citizens of each state will look to international law and organization to guarantee their democratic entitlement.” Was Franck prescient? In the intervening twenty-four years, has a right to democracy crystallized in international law?

As one of us has argued elsewhere, the law can “harden” through the operational activities of IOs. The process, in a nutshell, is as follows. Much of IO practice occurs against the backdrop of widely acknowledged but not well-specified norms. The IOs are not trying to enforce the norms but carry out their mandated activities in a manner that conforms to them. The purpose is to achieve programmatic goals; the effect may be to harden international law.

According to the authors of an influential volume on “the legalization” of world politics, all law falls on a spectrum, with the hardest law being clearly obligatory, precise, and subject to judicial or some other form of dispute settlement delegated to third parties, while the softest law is nonbinding, vague, and subject to diplomatic dispute settlement.⁸³ This spectrum has been criticized for relying on too narrow of a conception of international law, missing out on its broader nature as a “social phenomenon deeply embedded in the practices, beliefs and traditions of societies and shaped by interaction among societies.”⁸⁴ But if modified to include perceived legitimacy as an element of the felt sense of obligation and the implicit authority to interpret and implement the law as an element of delegation, then the three criteria are useful for assessing the movement from soft to hard law.⁸⁵

Applying this to democracy norms, Gregory Fox contends that the election monitoring missions of the 1990s gave content to the right to political participation by insisting on political party pluralism—the requirement that at least two political parties compete in elections in order to provide voters with an actual choice.⁸⁶ In terms of the legalization criteria, the right to political participation became more *precise* as a result of election monitoring and related activities. Multiparty elections were increasingly seen as *obligatory* in the sense that governments became anxious

⁸³ Judith Goldstein et al. (eds.), “Legalization and World Politics,” *International Organization* 54/3 (2000): 1, republished as a book in 2001. The concept of legalization is set out briefly in the introduction to the volume, and then elaborated more fully in Kenneth Abbott et al., “The Concept of Legalization,” 54 *International Organization* (2000): 401; and Kenneth Abbott and Duncan Snidal, “Hard and Soft Law in International Governance,” *International Organization* at 54 (2000): 421. Georges Abi Saab identified similar criteria: the circumstances of the adoption of the instrument, including the amount of support for it; the concreteness of the language; and the existence of follow-up procedures: Georges Abi-Saab, “Cours general de droit international public,” *Recueil des Cours* 207 (1987): 160–1.

⁸⁴ Martha Finnemore and Stephen Toope, “Alternatives to Legalization: Richer Views of Law and Politics,” *International Organization* 55 (2001): 743–58. For the author’s response to the critique, see Judith Goldstein et al., “Response to Finnemore and Toope,” *International Organization* 55 (2000): 759–60.

⁸⁵ For a fuller development of this modified “legalization” criteria, see Ian Johnstone, “Law-making through the Operational Activities of International Organizations,” *The George Washington International Law Review* 40/1 (2008): 115–16.

⁸⁶ Gregory Fox, “The Right to Political Participation in International Law,” in *Democratic Governance and International Law*, ed. G. Fox and B. Roth (New York: Cambridge University Press, 2000), 48–78.

to claim the external and internal legitimacy that certification of “free and fair” elections bestows, and that certification would only be forthcoming if political parties were allowed to form. Finally, the *delegation* criterion is satisfied if one considers the electoral monitoring and assistance missions to be implicit interpretations of the ICCPR and similar regional instruments. As Oscar Schachter put it: “UN interpretation does not usually have an adjudicative character. The task faced by most UN bodies is practical and instrumental—that is to prepare a plan of action or to ... achieve a goal ... Interpretation is implicit in the measures adopted.”⁸⁷ If one adds to this implicit delegation to the Security Council to enforce electoral outcomes (as in Haiti, Sierra Leone, and Côte d’Ivoire), then the case for a “hardening” of the right to political participation becomes stronger.

However, even in respect of the right to political participation—the most widely accepted democratic norm—there has been a backlash. As noted above, the UNGA has adopted almost as many resolutions calling for noninterference in electoral processes as those that call for “periodic and genuine elections”; the UN itself retreated from election monitoring after 2001; some states, like Russia and Zimbabwe, have become bolder in rejecting external election monitoring without paying much of a price; and “shadow” election monitoring organizations are making it easier for autocratic states to pay lip service to free and fair elections, undermining the credibility of the whole enterprise.

If one looks beyond political participation to other democratic norms, the picture is even more mixed. Consider the good governance programs of development organizations. On the one hand, UNDP, the World Bank, and the African Union (through NEPAD) have embraced democracy promotion as a development goal—even if they do not all use that term. Moreover, the line between short-term electoral assistance activities and long-term political development strategies has begun to blur, with technical advice by international organizations spanning both. On the other hand, one of the criticisms of the MDGs is that they did not address governance issues sufficiently. And a faultline of debate over the 2030 SDGs was whether indicators of democracy should be included in the new development goals, which they eventually were, albeit in a modified and watered-down form. Meanwhile, China has been relatively successful at presenting itself as a model for an alternative path to development and has pursued aid and investment policies in Africa and elsewhere to back that up.

Similarly, promoting democracy is still very much part of the peacebuilding agenda. Despite the liberal peacebuilding critique that has taken hold in the scholarly literature, most new missions have in their mandates electoral assistance and human rights promotion, and security sector, justice, and other institutional reforms geared toward building a democratic polity. Yet in actual practice, most

⁸⁷ O. Schachter, “The UN Legal Order: An Overview,” in *The UN and International Law*, ed. Christopher Joyner (New York: Cambridge University Press, 1997), 9.

peacebuilding operations fall well short of achieving these ambitious goals—in part because the agenda is less widely embraced by those on the receiving end of the assistance than by the peacebuilders themselves.⁸⁸ Moreover, the challenges of post-conflict peacebuilding in the aftermath of the interventions in Iraq, Afghanistan, and Libya have dampened enthusiasm for making liberal democracy the exit strategy (perhaps reinforced by the uncertain trajectory of countries coming out of the Arab Spring). This is not to say that cultivating democratic habits like inclusive and deliberative politics have been abandoned⁸⁹, but these relatively modest peacebuilding goals do not add much to the case that a hard right to democracy has emerged.

As for the few cases of Security Council-approved coercive interventions that gave effect to electoral outcomes, none were undertaken solely in the name of democracy, and in any case remain the exception rather than the rule. Even the red-card principle, a striking regional development that has spread beyond the Americas and Western Europe, is subject to wide regional variation and inconsistent application. And while the credentials process in the UN opened the door for a majority of member states to register disapproval of how a government comes to power and rules (most notably South Africa during the apartheid era), the UN is a long way from adopting its own variant of the red-card principle.

So where does that leave the state of international law? The backlash, regional variation and inconsistency make it clear that a global right to democracy has not crystallized. That being said, the sheer volume of democracy promotion practice by IOs—and the contestation that surrounds those activities—are a useful bellwether of where the law is heading. It may well come down to definitional issues. The ICCPR and regional conventions calling for genuine and periodic elections are evidence of a right to political participation, but not a more all-encompassing right to democracy. Such a right to democracy would ostensibly include many other rules and norms outlined in this chapter and operationalized by IOs, such as a robust civil society, freedom of expression, rule of law, balanced government institutions, and civilian control over the military. If a broader, “substantive” definition of democracy is adopted, the legal threshold becomes more difficult to attain, and there is less obligation to comply with the rule. If a narrow, “procedural” definition of democracy is embraced, which roots democracy strictly “in the will of the people” via free and fair elections, such precision makes it easier to claim a general right—even if this means a watering down of democracy’s content. This dilemma, perhaps embodied in “electoral autocracies” which conduct free and fair elections but then proceed to rule with an iron first, is not lost on international lawyers. Until imbued

⁸⁸ Michael Barnett, Songying Fang, and Christoph Zurcher, “Compromised Peacebuilding,” *International Studies Quarterly* (2014): 1–13, 5.

⁸⁹ Ian Johnstone, “Consolidating Peace: Priorities and Deliberative Processes,” *Annual Review of Global Peace Operations 2007* (Boulder: Lynne Rienner Publisher, 2007), 13–27.

with greater precision, obligation, and delegation—or all three—the question of a right to democracy in international law will remain contested.

CONCLUSION

IOs have been at the center of global efforts to promote democracy. They have advanced the development of democracy's normative roots, and they have operationalized democracy promotion via electoral assistance, peacebuilding, and development programs. Collectively, these point to a fragile consensus on the value of democratic governance, which was described as a "universal right" by the Secretary-General and a "universal value based on the freely expressed will of the people" in the 2005 World Summit of the General Assembly.

As described, IOs have acted as transmission belts for a norm of democratic governance, a process that was set in motion by the creation of regional organizations with democracy promotion mandates, strengthened in a series of UNGA resolutions and the *Agenda of Democratization*, and culminated quite spectacularly with the 2005 World Summit. It is also telling that the number of requests for UN operational activities, especially electoral assistance, has skyrocketed. This suggests that member states are less concerned about the UN's involvement in a domestic area previously considered within the jurisdiction of the host government.

However, strong legal arguments can be made against the formation of a right to democratic governance. One notable critique is that there is considerable geographic variation in support for democracy. For this reason, normative developments at the *regional* level may be a more telling indicator of progress toward crystallization of the rule. Some progress can be traced to the constituent principles of the charters of regional organizations, in regional human rights agreements, and the red-card principle used to suspend membership of undemocratic regimes. The UN's recent involvement in the Middle East in the wake of the Arab uprisings, in countries like Tunisia, Libya, Yemen, and Egypt, seemed to portend a growing democratic consensus in that region. Yet recent developments there illustrate how hard it can be to translate principles into practice. Meanwhile, China is a long way from embracing multiparty democracy, and its growing economic influence in Asia, Africa, and elsewhere makes it harder for IOs like the UN and AU to push a democracy agenda through development and good governance policies.

As a practical matter, IOs face the challenge of ensuring effective democracy assistance while simultaneously preserving their legitimacy and impartiality. Democracy promotion is an inherently political act. The high-profile verification

missions of the 1990s and the ensuing rise in requests from pseudo-democrats served to undermine the UN's legitimacy as a credible servicer of electoral assistance. Attempts to safeguard the UN's legitimacy may help to account for why it shifted its efforts away from what Thomas Carothers calls a "political" approach to democracy promotion to a quieter "developmental" agenda. This is exemplified by the UN's retreat from election monitoring and subsequent embracing of the good governance agenda of UNDP.

This shift in strategies is not without drawbacks, however. As Carothers argues, the indirect methods of the developmental approach can verge on being "toothless." This does not mean that such techniques are inferior; however, they are not substitutes for the advantages of the political approach, such as its capacity to highlight electoral competition—the arena where civil and political rights are played out in practice. It is a contradiction of sorts that, as the UN has developed the normative and institutional architecture to promote democracy, it has shied away from more visible methods (such as delegitimizing elections) that may be necessary to bring autocratic regimes to account. This means that its influence may be less felt precisely when its benediction (or condemnation) is needed most.

IOs must also balance the competing norms of democratic governance on the one hand and the imperative of maintaining peace and security on the other. Of course, democracy and security can be mutually reinforcing, and the Secretary-General has argued persuasively that strengthening democracy also contributes to conflict prevention. However, the reality of UN peacebuilding in post-conflict countries has not corroborated this in every instance. While the majority of post-conflict elections have been peaceful, the legacy of premature elections in Angola and elsewhere highlight a number of variables endogenous to the success of elections such as their timing and level of "integrity." Even more remarkable is that on several occasions the UN has actively undermined democracy in the name of security—for example, by endorsing fraudulent elections in Afghanistan and empowering the losing party in Kenya. It seems likely that IOs will continue to prioritize conflict prevention over democratic governance, presenting a quandary for IOs in the foreseeable future.

The operational activities of the UN, regional organizations, and development agencies have shaped and been shaped by democracy norms. While the sands have shifted, the field remains sufficiently vibrant that scholars and policymakers would do well to keep a close eye on developments in and around IOs. The lessons of democracy promotion efforts are important not only for their own sake but also to better understand how international law evolves. Consistent practice of IOs that conforms to an emerging norm can cause it to harden; practice that undermines the norm can cause it to soften. While it would be premature to declare an "international right to democracy," it is also too soon to declare its death.

CHAPTER 25

COMMUNICATIONS AND THE INTERNET

MILTON MUELLER

INTERNATIONAL organization (IO) studies typically rest on three explanatory pillars—the political, the economic and the sociocultural. Often missing from this triumvirate, however, is the *technical*. Technology can alter the scope and scale of social relations. By constantly changing human capabilities it can reshuffle the distribution of power among actors. It can create a need for new kinds of cooperation or coordination, which IOs may be called upon or created to solve. It can create new resource spaces that generate demands for rules or governance among actors seeking to exploit or appropriate the resources. Further, complex large-scale technical systems are supported by epistemic or expert communities who standardize, design, construct, operate, and maintain them; these technical and scientific communities can be transnational and develop a kind of normative autonomy. Thus, one would be unable to describe or explain international organization in the communication-information sector without reference to specific technologies and technological changes. The relationship between technology and international organization is two-way, of course. Changes in technology are accelerated or retarded by changes in policy, business, ideas, and ideologies.

In 1865 the transaction costs associated with the operation of separate telegraph organizations produced the first modern international intergovernmental organization, the International Telegraph Union, to facilitate interconnection of national systems. By 1932 the growth of voice telephone service had relegated telegraphy to secondary status in the communication sector, and the Union evolved into the International

Telecommunication Union (ITU). For six decades, the ITU was the central IO in the sector. But the rise of computer technology and industry, combined with new regulatory regimes in telecommunications, created yet another generational change in international organization of the sector. A new, still-emerging order centered on the Internet has progressively marginalized the ITU and empowered new IOs.

What we call “the Internet” is based on software, a suite of data communication protocols for facilitating the exchange of information among separate networks. In what is actually a suite of standards based on Transmission Control Protocol/Internet Protocol (TCP/IP), “the Internet” was formally standardized in 1981.¹ The gradual emergence of TCP/IP as the dominant standard for interconnecting computers worldwide, which occurred from about 1984 to 1994, corresponds closely (neither clearly preceding nor obviously lagging) with growing theorization about “globalization” and growing interest in “governance without governments” and “global governance.”

This chapter attempts to examine the transformative effect of the Internet and the rise of computer technology on international organization of communications. It begins by describing the liberalization of telecommunication services, which provides the essential point of departure for understanding the contemporary situation. Next, the key IOs involved in Internet governance are identified, described, and classified into four categories. This survey of organizations is heavily biased toward entities that are involved in Internet operations and governance. It gives short shrift to communication industries and IOs that have not (yet) been taken over fully by Internet protocol, such as traditional radio and television broadcasting. The next section puts this collection of organizations into motion by describing their power struggles over the control of the Internet. Along the way, the chapter invokes several theories of organization, such as regime theory, principal–agent concepts of delegation, and theories of networked governance derived from transaction cost theory.

GLOBAL LIBERALIZATION OF TELECOMMUNICATIONS SERVICES

The emergence of what we now think of as the Internet was preceded and enabled by the liberalization of telecommunications and information services. Liberalization

¹ J. Postel, *Internet Protocol (Vol. RFC 791)* (Arlington, VA: Defense Advanced Research Projects Agency, 1981).

² J. Rosenau and O. Czempel, *Governance without Government: Order and Change in World Politics* (Cambridge: Cambridge University Press, 1992).

is an umbrella term for a series of economic and regulatory changes that transformed an industry once dominated by state-owned post, telephone, and telegraph monopolies into a commercial, private sector industry primarily governed by market competition. It involved the privatization of state-owned monopolies, the replacement of monopoly with competition in most markets, some deregulation of prices, and technical unbundling of the elements of the network. Beginning in the United States in the 1960s and mostly completed by 2000, telecommunications industry liberalization dramatically changed domestic regulatory regimes and then international organization.³

Although there were many subtle but important regulatory changes in the United States that preceded it, the breakup of the AT&T monopoly from 1980–4 could be cited as the “big bang” of global liberalization. The United Kingdom and Japan quickly took steps along the same path, privatizing their state-owned monopolies and encouraging the growth of multiple, competing networks. Technical standard-setting for the sector was largely liberated from national governments. Regulators and market forces began to chip away at what had once been a vertically integrated industry by unbundling network services from the provision of telephone handsets and other equipment, and by splitting local access from long-distance service. As a stampede of new competitors entered information service and equipment markets, prices fell dramatically, usage increased by orders of magnitude, and penetration levels surged. International telecommunications was redefined as “trade in services” and included in free trade agreements.⁴ The World Trade Organization (WTO) concluded a major free trade agreement for information and communication technology (ICT) equipment in 1995; one for basic telecommunication services was concluded in 1997.⁵ In the telecom liberalization process, state actors were driving change, and intergovernmental organizations (IGOs) such as the WTO and the ITU were the key venues for changes in international organization (although US initiatives led to a shift from the ITU to the WTO as the central governance institution). This change was aptly described as a “regime change” in that it involved new principles, norms, rules, and procedures.⁶

³ G. Brock, *Telecommunications Policy for the Information Age* (Cambridge: Harvard University Press, 1994); W. Li and C. L. Xu, “The Political Economy of Privatization and Competition: Cross-Country Evidence from the Telecommunications Sector,” *Journal of Comparative Economics* 30 (2002): 439–62; J. P. Singh, “The Institutional Environment and Effects of Telecommunication Privatization and Market Liberalization in Asia,” *Telecommunications Policy* 24/10–11 (2000): 885–906.

⁴ J. D. Aronson and P. F. Cowhey, *When Countries Talk: International Trade in Telecommunications Services* (Cambridge, MA: Ballinger Pub. Co., 1988); W. J. Drake and K. Nicolaidis, “Ideas, Interests, and Institutionalization: ‘Trade in Services’ and the Uruguay Round,” *International Organization* 46/1 (1992): 37–100.

⁵ W. J. Drake and E. Noam, “The WTO Deal on Basic Telecommunications: Big Bang or Little Whimper?,” *Telecommunications Policy* 21/9–10 (1997): 799–818.

⁶ P. Cowhey, “The International Telecommunications Regime: The Political Roots of Regimes for High Technology,” *International Organization* 44 (1990): 169–99; W. J. Drake, “The Rise and Decline

The Internet protocols developed independently of the traditional telecommunication industry, but the momentous changes in telecommunication policy and economics were a precondition for the rise of the Internet. The new economy emerging around computers and information services was able to thrive in the more open and competitive telecommunications environment. Here again, US initiatives sparked the change. In the mid 1960s, American policymakers knew that they did not want the fledgling new computer and information services industry to be dominated and stifled by the AT&T monopoly. So the US Federal Communications Commission created a regulatory distinction between “basic” and “enhanced” services. Any service that added “information processing” to a telecommunications transmission would be defined as an “enhanced service” and would be unregulated and open to market entry.⁷ Basic telecommunication service, on the other hand, would continue to be regulated as a common carrier. Separating information services from telecommunication allowed the former to ride on the telephone companies’ infrastructures without being subject to all the entry restrictions and gatekeeping regulations of the telephone companies and their governments.

Starting in the early 1980s, the United States pushed for trade rules that would internationalize these reforms, seeing this sector as one of the few in which it enjoyed a competitive advantage and a potential trade surplus. Negotiated at the ITU during the early stages of global liberalization, the 1988 International Telecommunication Regulations (ITRs) failed to explicitly endorse or mandate liberalization, but did create a huge opening for new information services. Article 9, Private Arrangements, allowed international carriers to commercially contract for new kinds of international information services, exempting them from the heavier regulations applied to standard voice communication. By doing so, the United States started to pry open space for “enhanced services,” which was then a small and largely experimental market. The 1988 negotiations over the ITRs took a month to obtain these openings. Consequently, information services began to slip out of the grasp of the formal, regulated telecommunications interconnection arrangements and were able to rely on private contracting among the businesses involved.

The early Internet was considered an “information service” by the United States and other major economies such as Britain and Japan. In the early 1990s it was able to spread like rhizomes into the global path cleared for it by the international deregulation of information services and the availability of competitive, unbundled telecommunication facilities. In mid 1990s trade negotiations, some countries saw little harm in opening up such a tiny market; they were more concerned about protecting the gigantic revenue streams and monopoly profits made in voice telephony.

of the International Telecommunications Regime,” in *Regulating the Global Information Society*, ed. T. M. Christopher (London: Routledge, 2000), 124–77.

⁷ R. Cannon, “The Legacy of the Federal Communications Commission’s Computer Inquiries,” *Federal Communications Law Journal* 55/2 (2003): 167–206.

Little did those early trade negotiators know that, fifteen years later, the massive telephone voice market would be all but swallowed up by an “information service” known as the Internet. Nor could they have known that this seemingly small and obscure “information service” would transform newspapers, TV and audio broadcasters, cable TV systems, book publishers, and practically every other mode of communication.

FOUR TYPES OF INTERNATIONAL ORGANIZATIONS

By converging many industries and technologies onto an integrated digital platform, the rise of the Internet cut across many different industry sectors, a variety of legal regimes, and many international organizations. In order to simplify the analysis, this chapter groups the relevant IOs into four categories:

- i) technically-focused organizations that develop global standards and manage and set policy for the naming and numbering resources created by Internet standards
- ii) transnational forums and alliances of private sector operators and equipment manufacturers
- iii) governments and IGOs
- iv) multi-stakeholder entities that try to serve as a bridge between the governmental and nongovernmental organizations.

At this stage, the chapter will briefly describe the organizational entities that fall into each category. Later sections will set these pieces into motion, describing their emergence, their interactions with Internet governance, and the power struggles among them. The nature, function, and role of the organizations will become much clearer in that narrative.

Technical Organizations

In this category we place the core institutions of global Internet governance—the organizations that control the standards development processes and coordinate the management of unique protocol parameters, naming, and addressing.

The Internet Engineering Task Force (IETF) is the technical standards development forum for the Internet. It dates back to a small and informal gathering of engineers and computer scientists located at major research universities and private sector defense contractors in January 1986. One could consider the IETF to be one of the world's first open-source software development communities. It uses open working groups, based on email lists and supplemented by twice-yearly meetings, to draft and adopt official protocol standards for the Internet. Unlike the ITU, which restricts its standards documents to members, IETF standards have always been openly published. It had—and still has—no formal membership and its working groups are open to anyone who cares to join. In most cases adoption of IETF standards is completely voluntary. It was unincorporated until recently when parts of its structure were folded into and supported by the Internet Society. From its beginnings to the present, the IETF developed a series of numbered documents known as the Request for Comments (RFC) series. These documents contained detailed technical specifications for the protocols that made the Internet operate, but they also defined procedures by which the Internet technical community agreed on standards and policies.⁸ RFCs are routinely referred to as a kind of “law” by the Internet technical community and often engaged with issues of policy.⁹

Two additional types of organizations are required to operationalize the Internet protocols and standards. Critical to its functioning are two standardized forms of addressing that require global coordination. Internet Protocol (IP) addresses are 32-bit numbers that are assigned either statically or dynamically to particular computers. These numerical addresses (e.g., 192.14.75.112) are the ones actually used by machines to address and route data packets. The other addressing method, the domain name system (DNS), consists of hierarchically organized character strings that usually form recognizable words or phrases to users (e.g., www.batmanforever.com). Easier to remember and key in than IP addresses, they also provide a more stable identifier, as network administrators may need to share or rearrange the numerical addresses.

IP addresses are coordinated by five regional organizations known as Regional Internet Registries (RIRs). There is one for the North American region (ARIN), one for Europe and the Middle East (RIPE-NCC), one for Africa (AFRINIC), one for Latin America and the Caribbean (LACNIC) and one of the Asia Pacific region (APNIC). Like the Internet Society (ISOC), the RIRs are all incorporated as private sector nonprofit organizations. The RIRs are membership organizations; most of

⁸ K. W. Abbott and D. Snidal, “International ‘Standards’ and International Governance,” *Journal of European Public Policy* 8/3 (2001): 345–70.

⁹ S. Braman, “Internet RFCs as Social Policy: Network Design from a Regulatory Perspective,” *Proceedings of the American Society for Information Science and Technology* 46/1 (2009): 1–29; S. Braman, “The Framing Years: Policy Fundamentals in the Internet Design Process, 1969–1979,” *The Information Society* 27/5 (2011): 295–310; C. Vincent and J. Camp, “Looking to the Internet for Models of Governance,” *Ethics and Information Technology* 6/3 (2004): 161–73.

the members are Internet service providers, hosting companies and other organizations for whom IP addresses are a critical input into their business. The key activity of the RIRs is to maintain registries that show which blocks of Internet numbers have been given to which organizations. They also formulate policies regarding the allocation and assignment of blocks of unique numbers to applicants. The RIRs govern by private contract; companies that apply for or receive IP number blocks sign registration service agreements that bind them to the policies set by RIR membership collectively.¹⁰

Domain name assignment is coordinated globally by the Internet Corporation for Assigned Names and Numbers (ICANN). ICANN is a private corporation to which the US government has delegated the task of maintaining the authoritative root zone of the DNS.¹¹ Unlike the RIRs, ICANN has no members; instead, it has a relatively open but highly complex and diffuse set of representational organs that develop policy recommendations and play a role in the selection of board members. ICANN's board of directors (and indirectly, its staff) has near-absolute power over its policies and processes; the outcomes of its bottom-up policy development organs are basically just recommendations that the board can accept or reject as it pleases, and there are no truly binding forms of appeal or judicial review of its policies.¹² Like the RIRs, ICANN governs the domain name industry by private contracts with domain name registrars and registries. It decides what new top-level domains will exist, assigns the right to manage them, and determines how much they have to pay for that privilege. ICANN also can set policies regarding the behavior of domain name managers and (indirectly) users; for instance, it contractually binds registrars to a dispute resolution process for trademark domain name conflicts or requires them to publish identification data about registrants. Because of the intense policy conflicts around domain names, ICANN is far more politicized than the RIRs. It has a Governmental Advisory Committee which serves as a de facto IGO in microcosm during ICANN's policymaking processes. Because of its roots in National Science Foundation contracts, ICANN is tethered to the US government through a contract (the IANA contract) that authorizes it to make changes to the DNS root. But in March 2014, in the wake of the Snowden revelations, the US announced that it would withdraw from this role and two years later a plan for the full privatization of ICANN was developed. ICANN also plays a role in IP addressing, as it makes the initial delegations of large blocks of IP addresses to the RIRs.

¹⁰ M. L. Mueller, "Critical Resource: An Institutional Economics of the Internet Addressing-Routing Space," *Telecommunications Policy* 34/8 (2010): 405–16.

¹¹ M. L. Mueller, *Ruling the Root: Internet Governance and the Taming of Cyberspace* (Cambridge, MA: MIT Press, 2002); J. Weinberg, "Geeks and Greeks," *Info* 3/4 (2001): 313–32.

¹² M. L. Mueller, "ICANN, Inc.: Accountability and Participation in the Governance of Critical Internet Resources," *Internet Governance Project* (2009), <http://internetgovernance.org/pdf/ICANNInc.pdf>.

ISOC is now one of the organizational linchpins of the Internet technical community, which could be described as the epistemic community that developed around the principles, norms, and expert knowledge associated with designing and implementing the Internet protocols. ISOC began in 1992 as an attempt to provide the IETF with an institutional home and financial support.¹³ Incorporated as a nonprofit organization, ISOC did not easily achieve its intended status. The fiercely independent and anti-hierarchical IETF participants initially rejected ISOC as its parent organization. For the next decade ISOC coexisted in a looser, informal relationship with the IETF, and it was not until the mid 2000s that the IETF was formally incorporated into ISOC. Most leaders and board members in the RIRs and in ICANN are affiliated with ISOC in one way or another.

Private Sector Operator Forums and Associations

Aside from ICANN and the RIRs, a variety of other private sector entities play a significant role in global Internet governance. Because they are more like voluntary industry associations and have not been directly delegated global governance or coordination responsibilities, their politics are less dramatic than ICANN's, but their role in the actual operation of the Internet is just as important. Liberalization allowed responsibility for many of the interconnection and coordination decisions, as well as certain forms of self-policing, to be assumed by the private actors or sorted out in the market.

Network operator groups are professional associations of the Internet service providers, operators of educational networks, and some content and services firms in the Internet industry. The NOGs, as they are known, tend to be regional in scope, reflecting the Internet's need for transnational cooperation while also responding to the cultural, political, and economic differences around the world. The oldest of these groups, the North American Network Operators Group (NANOG), grew out of the National Science Foundation's Internet backbone and routing project that ran from 1987 to 1995. There is a European NOG and an Asia Pacific Regional Internet Conference on Operational Technologies (APRICOT) which describes its mission as providing "a forum for those key Internet builders in the region to learn from their peers and other leaders in the Internet community from around the world." The NOGs often hold their meetings in conjunction with the RIRs. Both NANOG and APRICOT are membership organizations organized as tax-exempt nonprofits. While they have no hierarchical control of Internet resources analogous to ICANN's they function as a space where private sector providers and others

¹³ V. Cerf, "IETF and the Internet Society" (1995), <http://www.internetsociety.org/internet/what-internet/history-internet/ietf-and-internet-society>.

can discuss problems and generate self-regulatory solutions. There are also trade associations of country code top-level domain (ccTLD) operators. These too are private sector international organizations that represent the interests of and provide services to the operators of country code top-level domains, such as .UK for Great Britain, .DE for Germany, or .BR for Brazil. The largest of these associations, the Council of European National Top-level Domain Registries (CENTR), has sixty members and twelve observers that include the domain name registries for almost all of Europe and significant parts of the Middle East, as well as entities from North America and the Asia-Pacific region.

Internet exchange points (IXs) are even more directly connected to Internet operations. These organizations operate neutral meeting points at which multiple Internet service providers can directly interconnect their networks to exchange traffic. IXs interconnect Internet Service Providers (ISPs) at lower cost, lower latency, and faster bandwidth than most other forms of interconnection. Examples of these organizations include Germany's DE-CIX (the world's largest); London's Internet Exchange (LINX), the Hong Kong Internet Exchange (HKIX), Amsterdam's Internet Exchange (Ams-IX) and so on.

A variety of action on security issues and cybercrime is routinely taken by the industry. Associations such as the global Forum for Incident Response and Security Teams (FIRST) bring together computer and network security experts from around the world and facilitate cooperative action. Although national policy authorities sometimes play a major role in botnet takedowns, just as often Internet operators work among themselves. Entities like the Anti-Phishing Working Group are private sector initiatives that coordinate the efforts of banks, domain name registries and registrars, browser manufacturers, and hosting companies to rapidly identify and take down websites that are engaged in a form of fraud known as phishing. The Conficker cabal was a loose, ad hoc network of operational actors formed to combat a powerful worm that seemed to be establishing the infrastructure for a massive botnet. The networks of technical experts and operators underlying these kinds of cooperation can only be understood in the context of network theories of organization¹⁴ and by highlighting the broader network of operator forums and associations, and specialized Internet security communities.

Two other private sector entities merit a brief mention in this content. The International Chamber of Commerce Business Action to Support the Information Society (ICC-BASIS) is an industry lobbying group that regularly participates in global Internet governance debates. ICC-BASIS tends to support a private sector-led and business-friendly approach to governance, but is not rooted in the Internet technical community. It is more representative of large multinational corporations

¹⁴ M. Kahler (ed.), *Networked Politics: Agency, Structure and Power* (Ithaca, NY: Cornell University Press, 2009); M. L. Mueller, *Networks and States: The Global Politics of Internet Governance* (Cambridge, MA: MIT Press, 2010).

and their interests in trademark protection, regulation, and security. The Global Network Initiative (GNI) on the other hand is a multi-stakeholder human rights initiative that seeks to get major Internet operators (such as Google or Microsoft) to take into account human rights concerns when they do business in repressive countries. The GNI is premised on the centrality of the private sector in setting operational policies that affect what Internet users can see and do online. It joins together civil society advocacy groups and industry players to counter efforts by governments to control Internet users by requiring social media operators, ISPs, or search engines to cooperate with or facilitate repression.

Governments and IGOs

The emergence of the Internet in the early 1990s caught governments off-guard, leading to a relative cession of initiative to the private sector actors mentioned above. But it did not take governments long to rebound. Among IGOs, the Internet was quickly recognized as a new arena in which they could apply or expand their missions. Because of the way digital technology converged different media, different industries, and once-segregated systems of law and regulation, many IOs rushed in to stake out territory, often in an overlapping or even competitive manner.

IGOs who have been both early movers in the Internet space and persistent presences have been the Organisation for Economic Co-operation and Development (OECD), the International Telecommunication Union (ITU), the World Intellectual Property Organization (WIPO), and the Council of Europe. The OECD has played a “soft power” role, facilitating convergence on norms and principles by the major Internet economies. There have also been more sporadic forays by various United Nations (UN) entities into the Internet space, for example by UNESCO, the UN Office of Drugs and Crime, and the UN Human Rights Council’s Special Rapporteur on Freedom of Expression.

The WTO, on the other hand, has been surprisingly dormant with regards to Internet governance. Although the 1997 Basic Telecommunication Services agreement incorporated information services and has been invoked to resolve a few Internet-related trade disputes (most notably involving gambling), most of the trade-related action in the Internet sphere has since moved to US-initiated bilateral negotiations and US-led plurilateral trade agreements such as the Anti-Counterfeiting Trade Agreement (ACTA) and the Trans-Pacific Partnership.

In addition to more formal intergovernmental treaties, the Internet’s rise has led to informal transgovernmental networks and governmental participation in some of the private sector networks mentioned above. One transgovernmental network, the London Action Plan, convenes mid-level law enforcement agency

personnel with some private sector actors to cooperate on the problem of controlling email spam.

The US government can also be considered a transnational actor in the Internet space, due to its global power and reach and the centrality of US infrastructure and services in the global Internet industry. The US Commerce Department has had a pre-eminent role in the oversight of ICANN due to its administration of the IANA contract. The various revelations and whistleblowers from the US National Security Agency from 2005 to 2013 showed that user data from nearly any country might be subject to interception or search provided it touches a US service provider or network. US regulations affecting the flow of money, implemented during the antiterror reaction after 2001, can be used to regulate online service providers by cutting off credit card transactions or bank transfers. US law enforcement agencies have leveraged the presence of the major domain name registries to seize domains registered to foreign businesses because of their association with forms of copyright or trademark infringement that are illegal in the United States. The European Commission on the other hand does not have quite the same clout, but it can also exert transnational leverage through its antitrust proceedings, which might require dominant service providers based in the United States to alter their practices.

Multi-stakeholder Entities

A political tension between the transnational, private sector-led organizations/governance mechanisms characteristic of the Internet and the sovereignty-based governance of national and intergovernmental institutions has been a recurring feature of the evolution of Internet governance. Multi-stakeholder entities are IOs that serve as a bridge between these two worlds. Multi-stakeholderism inserts representatives of civil society and the private sector into intergovernmental proceedings, more or less as peers. The UN Internet Governance Forum (IGF) is the main multistakeholder organization. It was expressly created by the World Summit on the Information Society to serve such a bridging function. The IGF itself sits in a sometimes uncomfortable place between the two worlds. It is part of the UN system but must raise its own money as it is not guaranteed funds from the general budget like a UN bureau would be. The IGF runs an open annual meeting that typically attracts about 2,000 people, where the problems of Internet governance are discussed in a nonbinding dialogue. The program of the IGF is established by a Multi-Stakeholder Advisory Group which contains representatives from governments, business, and civil society. Since the first meeting of the IGF in 2006, regional and national IGFs have proliferated which reproduce this pattern locally.

Some writers use a broader definition of multi-stakeholder; they would categorize ICANN and the RIRs, for example, as multi-stakeholder institutions or

as exemplars of “the multi-stakeholder model.” But it is important to remember that the label “multi-stakeholder” was only applied to ICANN and the RIRs retroactively, in the wake of the battles over Internet governance during the World Summit on the Information Society (WSIS). And the concept does not apply to the IETF at all, because it is based entirely on individual participation not on classes of “stakeholders.” In fact, the term “multi-stakeholder” was applied to the organically developed Internet institutions after the WSIS debates only as a kind of political ploy: to leverage the rhetoric of broader inclusion and representation that civil society activists had brought into the UN system during WSIS and make the Internet institutions more palatable to states and the UN system. The fact remains, however, that the original Internet institutions were private sector-led forms of self-governance that in some ways were intended to exclude or avoid governments. The White Paper that established the basis for the ICANN regime, for example, described it as a “privatization” of the DNS. Only *after* governments asserted themselves in the WSIS process was the term “multi-stakeholder” applied to ICANN, the RIRs, and IETF. The tendency now is to consider governments as “stakeholders” on a par with private sector and civil society organizations. Governmental participation as peers, however, almost never works because of their inherently bureaucratic and hierarchical structure, and their ability to overrule or even repress other stakeholder groups. While in some sense states are also network operators and users and thus share many concerns with other stakeholders, there is a certain naivety about the treatment of states as “stakeholders” when the pre-existing political and governance system is built around the notion of states as sovereign decision-makers who are above specific stakeholder groups.

THE INSTITUTIONALIZATION OF INTERNET GOVERNANCE

A starting point for understanding transnational organization around the Internet is to articulate a concept of the Internet technical community. This is a self-conscious community of standards developers and technical experts committed first to building and then to operating and maintaining the Internet. The unique forms of knowledge and technical expertise associated with the Internet protocols, the networks of actors, as well as the rise of companies based on that technology and the relative decline of traditional telecommunication firms, empowered this community. IETF served as ground-zero for the Internet technical community, and its

leaders rose to positions of authority along with the Internet's success, and pushed to institutionalize their position.

Phase 1: The Creation of ICANN

The Internet and its domain name and IP addressing systems grew for about twelve years (1981–93) without creating any notable public policy issues or shifts in international organization. During most of those years, the Internet was closed to the general public and to commercial uses and applications. As a research and education network subsidized by the US National Science Foundation (NSF), the Internet was relatively small and was insulated from commercial forces. Among other restrictions, the NSF imposed an “acceptable use policy” (AUP) in 1985 that prohibited commercial traffic on the subsidized Internet backbone. US government agencies or federal contractors handled the central coordinating functions. In July 1991 only 645 second-level domain names had been registered, and more than half of them were under the .edu, .mil, and .gov top-level domains.

But in 1992, as the huge commercial value of a globally interoperable data communications standard started to become evident, the NSF began to privatize the Internet infrastructure. It gradually withdrew subsidies from telecommunications backbone and access providers and permitted the growth of a private, commercial ISP industry. In 1995 it shut down the NSFNet backbone and its functions were seamlessly taken over by competing private telecommunication firms. The AUP restrictions disappeared and the Internet was fully open to commerce.

The year 1995 can be used as the date when the Internet became a truly commercial, public medium. The popularization of the World Wide Web application two years earlier¹⁵ facilitated the explosion of consumer and business activity. The rapid growth of users produced a rush of demand for websites, and every new business wanting a website needed a domain name. The number of new domain name registrations went from 300 per month in 1992 to 45,000 per month by late 1995, and the NSF allowed the contracted registry to begin charging for domains. This created an institutional problem. Significant sums of money were being made on domain registrations, and policy issues regarding domain name trademark conflicts and the economic regulation of the domain name industry surfaced. Yet management and policymaking were in the hands of a tiny group of computer scientists and US government contractors with no mandate to make regulatory policy for the entire world.

¹⁵ The first widely disseminated Web browser, “Mosaic,” was produced by the University of Illinois NCSA beginning in 1993. In 1994 the commercialized version of Mosaic known as Netscape was released.

As early as 1994–5, ISOC was looking for a way to privatize the central coordinating function of the DNS to allow it and the technical community to retain control of it. In what now would appear to be a strange alliance, it joined with the ITU and WIPO to create an International Ad Hoc Committee to propose new governance arrangements that would institutionalize DNS management in the hands of ISOC, WIPO, and the ITU. At the same time, some commercially oriented actors were attempting to create new, competing DNS roots. Firmly rejecting both ISOC's attempt to self-privatize and what it saw as a power grab by the ITU, the US government intervened in 1997. The US Department of Commerce asserted control over the root and initiated a formal notice and comment process that led to the creation of ICANN. A 1998 White Paper served as the charter and founding document for ICANN.¹⁶ It avoided direct government action while inviting international participation in governance, concluding that “the U.S. Government is prepared to recognize, by entering into agreement with, and to seek international support for, a new, not-for-profit corporation formed by private sector Internet stakeholders to administer policy for the Internet name and address system.” ICANN was incorporated as a California nonprofit public benefit corporation and in 1999 it was recognized by the Commerce Department as the entity that would take over coordination and policymaking for the DNS.

There were three reasons why the problem of governing the root of the domain name system and the IP address hierarchy was solved in this way.

First, there was the influence of a particular epistemic community, namely the Internet technical community. As new stakeholders and commercial interests impinged on DNS management, the technologists' control was threatened. This stakeholder group, therefore, resisted traditional forms of international collective action and favored private sector arrangements based on their own, organically developed institutions—the IETF and the Internet Society.

The second factor was the need for global rather than national jurisdiction. In forming its policy toward the Internet and global electronic commerce in the mid-to-late 1990s, the Clinton administration was very concerned about the possibility that the promise of global electronic commerce would be undermined by the assertion of territorial jurisdiction.¹⁷ It feared that national governments in particular would impose upon the naturally global arena of the Internet a patchwork of inconsistent or conflicting national laws and regulations. A private sector governance authority based on private contracts was perceived as a way around this problem. The Clinton administration's policy called for “private sector leadership” and noted “governments should establish a predictable and simple legal environment based

¹⁶ US Commerce Department, National Telecommunications and Information Administration, Management of Internet Names and Addresses, Docket Number: 980212036-8146-02 (“The White Paper”), June 5, 1998, http://www.ntia.doc.gov/ntiahome/domainname/6_5_98dns.htm.

¹⁷ “The Internet is emerging as a global marketplace. The legal framework supporting commercial transactions on the Internet should be governed by consistent principles across state, national, and

on a decentralized, contractual model of law rather than one based on top-down regulation.”¹⁸

The third factor was the desire of the US government to avoid existing international regimes, which it viewed unfavorably. US telecommunication businesses and information policymakers shared a long-standing antipathy toward the ITU’s role in communications regulation in particular. The United States was also leery of European-led efforts to create a new international treaty or charter for regulation of the Internet,¹⁹ fearing that it would open the door to the imposition of a UN-like bureaucracy upon the Internet. In this manner the United States sidestepped traditional international arenas and moved the governance problem to an entirely new forum where governments and IGOs were not the central players. In a fateful move, however, the European Commission convinced the United States to add a Governmental Advisory Committee to the ICANN model in 1998. Out of deference to the powerful intellectual property interests, the United States also asked WIPO to develop policy guidance for domain name trademark conflicts.

Out of this complicated process ICANN emerged as a new international organization: a private corporation charged with global governance responsibilities with a group of governments sitting as an advisory committee. This delegation to a private actor, invoked by the US government and bound to its supervision through the IANA contract, gave ICANN the authority to modify the authoritative root zone file of the DNS, but only with the approval of the United States. This supervisory authority, which the Clinton Administration originally asserted would end after two years, has remained in place until 2016. Political pressure from US interests, primarily the company running the .com registry and the trademark lobby, prevented full privatization. Later, security concerns and worries about the capture of ICANN by others encouraged the United States to hang on. The current IANA contract requires ICANN to be headquartered in the United States. ICANN was thus organized as if it were a nonprofit membership corporation—but it had no members, and thus it had no real accountability to anyone except the US government.

Also emerging at this time were RIRs which governed the allocation and assignment of IP addresses. These were also organized as nonprofit organizations, but with actual voting members who elected their boards. The RIRs have adhered more closely to the classical bottom-up governance model of the Internet technical community. Although they have encouraged participation by representatives of governments, and have formed special working groups to liaise with law enforcement

international borders that lead to predictable results regardless of the jurisdiction in which a particular buyer or seller resides.” *A Framework for Global Electronic Commerce*, The White House, July 1, 1997.

¹⁸ Ibid.

¹⁹ On September 8, 1997, EU Commissioner Martin Bangemann, in a speech prepared for an ITU conference in Geneva, called for an “international charter” to regulate the Internet. The proposed charter would deal with questions such as technical standards, illegal content, licenses, encryption, and data privacy.

agencies, they have no equivalent of the GAC and no contract or oversight from the United States.

A key contributor to the success of ISOC was the 2003 decision by ICANN to award Public Interest Registry (PIR) control of the .ORG top-level domain. In an attempt to promote competition, the US Commerce Department had extracted from Network Solutions an agreement to divest itself of one or two top-level domains. PIR, a wholly owned subsidiary of ISOC, applied to operate the new domain and was successful. Before it controlled .ORG, ISOC had been plagued by financial problems and stumbled along with a somewhat confused mission. From 1995 to 1998 ISOC made several unsuccessful or semi-successful attempts to influence the intensifying international politics around the Internet.²⁰ Possession of the .ORG registry, however, changed everything. It put ISOC in command of a stable, growing income stream in the tens of millions of dollars. With these financial resources, ISOC was not only able to provide support for the RFC editor and the IETF process, but also to become a formidable lobbying power in domestic and international policymaking related to the Internet. It also expanded its technical influence, making a major donation supporting the operation of the World Wide Web Consortium (W3C), which develops and maintains standards such as HTML and HTTP for the Web. ISOC has hired as policy staff former diplomats and government officials involved in the ICANN regime as well as former Department of Commerce staff members who were once responsible for supervising ICANN. Indeed the relationship between ICANN and ISOC is a good example of how the success of the Internet empowered and institutionalized the Internet technical community.

Phase 2: The World Summit on the Information Society (WSIS)

The WSIS (2002–5) can be characterized as the world's governments collectively waking up to the revolution in governance that was taking place around the Internet, and making a strenuous effort to reassert traditional forms of sovereignty. It had started as an attempt by the ITU to marshal resources for telecom infrastructure development, but conflicts among states over Internet governance, and in particular ICANN, came to dominate the summit agenda. Several developing country governments, egged on by the ITU, challenged both the unilateral power held by the US government over ICANN and the prevalence of nongovernmental policymaking mechanisms for the Internet. While some of these governments were authoritarian

²⁰ R. Werle and V. Leib, "The Internet Society and its Struggle for Recognition and Influence," in *Private Organisations in Global Politics*, ECPR Studies in European Political Science, ed. R. Karsten and S. Volker (London, New York: Routledge, 2000), 102–23.

states such as China and Middle Eastern dictatorships, the sovereigntist backlash also included developing-world democracies such as Brazil and South Africa. The summit also served as a battleground over the principle of the representation of nonstate actors in intergovernmental proceedings (i.e., multi-stakeholderism). A civil society mobilization demanding voice in WSIS helped to forge an ongoing political alliance between private sector Internet businesses, the technical community, and civil society rights advocates.

WSIS had two phases, the first in Geneva and the second in Tunis. The Geneva phase produced a multi-stakeholder Working Group on Internet Governance (WGIG) charged to define the term “Internet governance” and to identify the public policy issues involved. The WGIG—a group of forty people in which civil society, governments, and private business were all represented and had equal status—produced a broad definition: “Internet governance is the development and application by Governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programmes that shape the evolution and use of the Internet.” While anchored in the theory of international regimes from academic international relations literature,²¹ the definition also reveals some of the political imperatives at work. In deference to the important role of private actors, it makes a point of noting that Internet governance is done not just by governments but also by other stakeholder groups. But the phrase “in their respective roles” signals a concession to the sovereigntists’ insistence that governments alone are responsible for public policy. The report’s concept broadened the definition of Internet governance beyond “ICANN issues” to include almost any policy issue that touches on Internet usage or coordination.

The Summit went on to articulate a set of broad principles regarding Internet governance: “The international management of the Internet should be multilateral, transparent and democratic, with the full involvement of governments, the private sector, civil society and international organizations.” The Geneva principles, along with the WGIG report, formally recognized the principle of multi-stakeholder participation in Internet governance. Unlike the ICANN regime, however, the Geneva principles envisioned “full involvement” of national governments and posited “multilateral” governance as a norm, indirectly criticizing the special role of the United States. The final document produced by the summit, the Tunis Agenda, also made it clear that states were reserving to themselves the right to make policy for the Internet: “Policy authority for Internet-related public policy issues is the sovereign right of States. They have rights and responsibilities for international Internet-related public policy issues.” The Tunis Agenda also agreed to create the IGF, a nonbinding, multi-stakeholder dialogue where states, business, civil society, and the technical community would meet annually to discuss Internet governance.

²¹ S. D. Krasner (ed.), *International Regimes* (Ithaca, NY: Cornell University Press, 1983).

WSIS had a huge impact on ICANN. The intergovernmental system had failed to ‘take over’ ICANN or push its functions into the ITU, as the G77 states had wished. In some respects that challenge strengthened and stabilized ICANN. China, for example, rejoined the GAC once it was clear ICANN was not going to go away. ICANN emerged from WSIS with more awareness and support from civil society groups, which appreciated the contrast between its open participation and the restriction of intergovernmental proceedings to state actors. ICANN also came across as more grounded in the Internet’s original ethos and less likely to be authoritarian than the intergovernmental system. On the other hand, WSIS greatly strengthened the role of governments in ICANN, moving it closer to an intergovernmental regime. The US government began to use ICANN’s GAC as a tool to keep restive nation-states happy, so as to keep them inside the regime and satisfied with what it now referred to as “the multi-stakeholder model.” As a result, the US government itself, and other governments in the GAC, frequently invoked the Tunis Agenda’s claim that governments had a special status in the formulation of “public policy.” The GAC was used to remake or veto policies developed by nonstate actors in ICANN’s formerly bottom-up process.

Phase 3: The WCIT and the Rise of Cybersecurity Nationalism

The eight years after WSIS saw the rise and decline of the IGF, continuing efforts by counter-hegemonic states to promote the ITU or the UN as the appropriate venue for Internet governance, and a convergence of Internet governance and national security concerns brought on by cyberespionage and cyberweapons use. The latter development brought a new epistemic community—foreign policy and military/strategic thinkers—into the institutional field of Internet governance. That community had little grounding in, and sometimes little sympathy for, ideals of bottom-up policymaking, multi-stakeholder governance, or the free flow of information and open systems, tending instead to see governance issues in the traditional framework of great power geopolitics and national exclusivity.

In the early years of the IGF, equal-status dialogues among governments, civil society, and business on Internet issues proved to be refreshing and workable. As time passed, however, the nonbinding exchanges evidently had no discernable impact on the basic governance arrangements. That failed to satisfy those governments who were either resentful of the privileged role of the United States or seeking a more sovereignty-based regime. By the same token, Internet organizations such as ISOC and the RIRs (which had openly opposed the creation of the IGF in the first place), quickly learned that their expertise and resources enabled them to dominate the IGF agenda and planning committees. The happier the traditional

Internet community became with the IGF, the more dissatisfied the statisticians became. Thus, five years after WSIS, the fissure between national sovereignty and transnational, private sector governance advocates reappeared. Intergovernmentalists attempted to bring the IGF more firmly under the control of the UN, or asked the UN General Assembly to create a state-centric alternative to the IGF (a Committee on Internet-Related Policies); their opponents sought to preserve the status quo “multi-stakeholder model.”

Another weakness of the IGF was the lack of serious participation from the private sector entities with real operational control of the Internet. To them, IGF was more of a public relations function than an arena for exploring or negotiating new governance mechanisms. As the IGF approached its tenth anniversary, it appeared likely to survive, but unlikely to achieve its hoped-for status as the primary meeting point for states, Internet businesses, and civil society on matters of Internet governance.

The ITU also reappeared as an alternative institutional venue for nation-states dissatisfied with the ICANN regime and/or eager to work against what they perceived as US hegemony on the Internet. The ITU floated initiatives to create “country Internet registries” that would provide an alternative IP address allocation mechanism to the transnational private sector-led regime of the RIRs.²² Resolutions passed at ITU plenipotentiary conferences laid the groundwork for continued involvement of the ITU in Internet governance discussions. The ITU also began positioning its World Telecommunication Policy Forum as an alternative to the IGF. The role of the ITU in Internet governance came to a head, however, in the December 2012 World Conference on International Telecommunications (WCIT).

The goal of the WCIT was to revise the 1988 International Telecommunication Regulations, a binding treaty governing the international interconnection arrangements among telecommunication carriers. Some aspects of the treaty were badly in need of updating; for example, there were still references to telegraph and telex technology in them. For nearly ten years prior to the 2012 WCIT meeting, there were discussions and debates about whether the ITRs should be revised or allowed to expire. By 2009, when the United States and Europe finally agreed to go ahead with a revision, the Internet had long supplanted traditional voice telecommunications as the predominant form of international communication. The ITRs’ status as a binding treaty, some feared (or hoped), might allow states to give the ITU and nation-states more authority over the Internet. This led some big Internet firms to generate a major public relations campaign claiming that the ITU was out to “take over” and censor the Internet. They succeeded in mobilizing many civil society

²² R. K. Murugesan and S. Ramadass, “The Country Internet Registry (CIR) Model: An Alternative Approach for the Allocation and Distribution of IPv6 Addresses,” presented at the 6th International Symposium on High-Capacity Optical Networks and Enabling Technologies (HONET), Alexandria, Egypt (December 28–30, 2009).

groups opposed to censorship and content regulation. Civil society mobilization around WCIT pressured the ITU to open up access to its negotiating documents in unprecedented ways.

The United States and most other Western developed states insisted on modifying the treaty in ways that kept its definitions and its scope strictly limited to telecommunications. Other states proposed incorporating cybersecurity, spam, and other Internet-related issues into the treaty. In a calculatedly provocative move, Russia tabled a proposal to include in the new ITRs definitions for the Internet, Internet Governance, and a new concept called the “national Internet segment.” In the end, the final draft of the revised ITRs retained its narrow scope and rejected nearly all of the controversial proposals.²³ Yet a nonbinding resolution authorized the ITU to continue to debate and discuss Internet governance.²⁴ Only 89 of the 144 eligible states signed the amended ITRs. With the exception of India, which joined the nonsignatories, most of the signatories were non-Western developing countries and most of the rejecters were developed economies in Europe and North America. Countries that refused to sign will continue to operate under the 1988 ITRs.

Yet even as the Western powers were raising fears of an Internet dominated by nation-states, their own security interests and intelligence agencies were in the process of fostering a new Internet nationalism based on what they saw as the convergence of cybersecurity and national security. The United States created a Cyber Command and deployed a powerful cyberweapon known as Stuxnet against Iran. Restrictions on the use of Chinese-manufactured telecommunications equipment in the US market were called for, based on unproven but not entirely implausible fears that the foreign-made equipment might have “back doors” that would allow spying by China’s government. Exposure of Chinese cyberespionage against many organizations, companies, and governments worldwide by a number of sources contributed to the perception that the Internet was becoming an instrument of foreign and military policy.²⁵ A committee that approves foreign investment in the United States used its gatekeeping position to extract ever-stronger commitments from telecommunication providers to provide US intelligence and law enforcement agencies with knowledge of and access to their networks, and to limit foreign equipment purchases. The June 2013 revelations of whistleblower Edward Snowden, along with a string of

²³ ITU, 2013.

²⁴ Resolution Plen/3 (Dubai, 2012), “To Foster an Enabling Environment for the Greater Growth of the Internet,” Final Acts of the World Conference on International Telecommunications, Dubai, 2012, p. 20, <http://www.itu.int/en/wcit-12/Documents/final-acts-wcit-12.pdf>. Part 1 refers to resolutions related to Internet governance adopted by WSIS and ITU at previous conferences. Part 2 invites ITU member states and the ITU Secretary-General to engage in Internet-related public policy issues using the multi-stakeholder model.

²⁵ S. Adair et al., *Shadows in the Cloud: Investigating Cyber Espionage 2.0*, Information Warfare Monitor and Shadowserver Foundation (April 6, 2010); R. Deibert et al., *Tracking Ghostnet: Investigating a Cyber-Espionage Network* (Toronto: Information Warfare Monitor, 2009); Mandiant, *APT1: Exposing One of China’s Cyber Espionage Units* (Washington, DC: Mandiant, Inc., 2013).

several other disillusioned National Security Agency (NSA) employees, showed the world that the world's most powerful government was already collecting and observing massive amounts of Internet and telephone data, leveraging their special relationships with American phone and Internet service providers. While the debate in the United States focused narrowly on whether the NSA's surveillance respected legal boundaries intended to protect US citizens, it was evident to the rest of the world that they enjoyed no such protection, reinforcing further the tendency to think of infrastructure and information services in national rather than transnational terms.

The NSA revelations provoked a powerful backlash. States such as Brazil and Germany began thinking in terms of "data sovereignty." Trade negotiations between Europe and the United States were affected. The US attempt to promote norms of Internet freedom was severely undermined. In October 2013, one of the most shocking reactions to the NSA revelations occurred when the leaders of all the Internet technical community issued a statement calling for the independence of ICANN from unilateral US oversight,²⁶ and ICANN's CEO joined Brazilian President Dilma Rousseff in a call for a global summit to discuss a new, more "equal" approach to Internet governance.

CONCLUSION

Perhaps more than any other sector, communications and information is pioneering change in the role of states and leading to new forms of transnational governance. Yet in the realm of cybersecurity the traditional concerns about national security and interstate rivalry, espionage, and war remain. With only the murky concepts of multi-stakeholder governance and public-private partnerships to serve as a bridge, the world is groping for new forms of Internet governance that reconcile the opposing demands of globalized communication and territorial government. The arena is characterized by intense competition for authority and influence among international organizations of both the state-centric and nonstate variety. With the NSA exposure revealing—and therefore undermining—US pre-eminence on the Internet, a nationalist backlash has taken place. But it is checked by the norms and networked ties among industry, civil society, and some entities within governments who view a globally interoperable Internet as a social value of tremendous importance.

²⁶ Montevideo statement October 10, 2013, <https://www.icann.org/news/announcement-2013-10-07-en>.