A LEAGUE OF THEIR OWN:  
THE RATIONALE FOR AN INTERNATIONAL  
ALLIANCE OF DEMOCRACIES

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The Republican nominee for President in 2008, John McCain, proposed that the United States promote a “League of Democracies” (League) to supplement existing international organizations in the task of promoting and consolidating democracy around the world. This was one of the bolder foreign policy proposals articulated during the 2008 presidential election cycle. According to the then Republican-nominee-presumptive,  

We need to renew and revitalise our democratic solidarity. We need to strengthen our transatlantic alliance as the core of a new global compact—a League of Democracies—that can harness the great power of the more than 100 democratic nations around the world to advance our values and defend our shared interests.¹

Senator McCain set out the idea of this “new global compact” at the Hoover Institution early in the campaign (May 1, 2007),² and he reiterated it a number of times. It was a major statement of foreign policy intention. The organizational principle behind it distinguishes the proposed compact from existing efforts to promote democracy through multilateral institutions and from universal organizations, past and present:

This would not be like the universal[ ]membership and failed League of Nations’ of Woodrow Wilson but much more like what Theodore Roosevelt envisioned: like-minded nations working together in the cause of peace. The new League of Democracies would form the core of an international order of peace

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based on freedom. It could act where the UN fails to act, to relieve human suffering in places like Darfur. It could join to fight the AIDS epidemic in sub-Saharan Africa and fashion better policies to confront the crisis of our environment. It could provide unimpeded market access to those who share the values of economic and political freedom, an advantage no state-based system could attain. It could bring concerted pressure to bear on tyrants in Burma or Zimbabwe, with or without Moscow's and Beijing's approval. It could unite to impose sanctions on Iran and thwart its nuclear ambitions. It could provide support to struggling democracies in Ukraine and Serbia and help countries like Thailand back on the path to democracy.3

By its proposed title, the compact indeed triggers thoughts of the post-World War I League of Nations failed experiment in international organization. The League of Nations, however, was replaced in 1945 by a new organization, the United Nations. Where the League of Nations had the aspiration to include the entire community of states,4 the United Nations achieved it.5 To understand fully the rationale behind the League of Democracies, it is just as important, or more so, to consider the distinctions between such an organization and the present-day universal organization.

As McCain stated, the purposes of the new League would be diverse—from “reliev[ing] human suffering in places like Darfur” to bearing down on “tyrants in Burma or Zimbabwe.”6 It also would tackle the main task suggested by its title—promoting democracy, for example, in Ukraine, Serbia, and Thailand.7 Such a new organization would be consistent with American principles of coordinated action in foreign policy leadership: the United States long has sought to cooperate with its allies to multiply the effectiveness of action taken in pursuit of shared objectives.

Arguably, the most salient aspect of the new League, however, would be the logical correlation it would embody between the tasks it would perform and the constituency of states that it would include. The experience of international organization since World

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7. Id.
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War II suggests that the institutions in which the constituent states hold common objectives are the ones most effective in executing their chosen missions. Official declaration of a mission perhaps sets the stage for attempted international action; but it is mere formalism if the states behind the declaration lack a common view and refuse to make a joint commitment respecting the organization's area of activity. States build successful international organizations upon the organizational principle that the organization's membership follows from the organization's task. This principle is reflected in the last half century of experience in international organization, and the experience of the pitfalls of universal organization that have arisen in the United Nations in particular: universal membership has been one of the main achievements of the United Nations, but it simultaneously has constrained the areas of activity in which the organization can be expected to function effectively. The main rationale behind the League is that it will be comprised of states that share a conviction in support of its mission. The present Essay examines how the composition of the League would have differed from existing organizations and how a selective policy on membership would have enabled the League to perform tasks that existing organizations no longer satisfactorily perform in all cases.

A. The Crisis of the United Nations

The United Nations began as an alliance of states forged in wartime against a common threat. Its evolution thereafter eventually resulted in something considerably different. Though it would continue to discharge important functions, the United Nations quickly lost its character as a mechanism for responding to the main security threats facing the Free World. Other deficiencies, discussed below, also arose. The result would have been a gap in international organization. In response, the United States and its allies—and sometimes the United States and its adversaries—built new institutions. Some of the new institutions, like the North Atlantic Treaty Organization (NATO), continue to serve certain of their intended functions and to serve them well. Some even have expanded their functions; NATO is again an example.\(^8\) Other post-1945 institutions, however, have undergone changes that limit

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\(^8\) The framers of the North Atlantic Treaty in 1949 likely would not have expected NATO to operate, for example, in Afghanistan through a force like the International Security Assistance Force (ISAF). See NATO’s Role in Afghanistan, http://www.nato.int/issues/afghanistan/index.html (last visited Mar. 19, 2010).
their efficacy. This Essay will turn shortly to considering how the League could address such changes and restore the efficacy that they have eroded. First, to understand the modern architecture of international organization and the position of the United States and the proposed League in that architecture, one must understand its midcentury genesis.

The United States emerged after World War II as the premier world power. Though some writers have said that Americans exaggerate the distinctiveness of the United States under a rubric of exceptionalism, at least two features distinguish the policies of the American republic from states in the past that have held a position of preeminence. The United States since World War II has recognized two closely related features of international order: its own centrality as guarantor of certain values (perhaps western in origin but universal in aspiration), and the necessity of coordinating its international action with other states. The pursuit of certain core values in its foreign relations and the post-war project of constructing durable international institutions were by no means predetermined by the United States' rise to superpower status; other great powers through history have been considerably less concerned to do either. The promotion of core values and the coordination of strategies through multilateral institutions were elective, and they were central features of the United States' foreign policy from 1945 onward. As Harold Koh has said, "To this day, the United States remains the only superpower capable . . . to commit real resources and make real sacrifices to build, sustain, and drive an international system committed to international law, democracy, and the promotion of human rights." 

The values that the United States has sought to guarantee have remained nearly constant. Central among these are material secur-

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10. This is not to ignore instances in which other powers have attempted to develop a foreign policy of principle and coordination. For example, Russia, under Tsar Nicholas II, took the lead in establishing the Hague institutions at the end of the nineteenth and beginning of the twentieth centuries, and this was motivated, in part, by a desire to promote, inter alia, humanitarian rules in connection with the conduct of war and the principle of pacific resolution of disputes. For a succinct overview, see Charles H. Brower, II, The Functions and Limits of Arbitration and Judicial Settlement under Private and Public International Law, 18 DUKE J. COMP. & INT'L L. 259, 275-79 (2007).

11. Harold Hongju Koh, On American Exceptionalism, 55 STAN. L. REV. 1479, 1487 (2003). Professor Koh, former Dean of the Yale Law School, served as Assistant Secretary of State for Democracy, Human Rights, and Labor in the Clinton Administration and was confirmed on June 25, 2009 as Legal Advisor of the Department of State.
ity, rule of law, human rights, and democracy. The modalities that the United States has employed to protect and promote these values have changed over time. The extent to which any given value has needed protection has varied, and the extent to which international conditions have been conducive to the promotion of values has varied as well. The character of threats (and opportunities) is not constant. One near constant has been that United States policy makers have recognized the utility of coordinating United States policy with that of its allies. The United States has strengthened itself as a great power by coordinating its actions efficiently.

The modern American role in the world, characterized by vigorous projection of influence abroad, arguably began to take shape in the 1890s, but World War II definitely marked the emergence of the United States both as a great power and as a power recognizing that it could not disengage from international relations. The United States joined others during the war to resist fascist aggression, and coordinated action was a major characteristic of the international relations of the time. To be sure, the United States, United Kingdom, France, China, and Russia (the principal Allies) each had reason to resist the encroachments on their security—indeed, the countries directly attacked had no choice but to resist. The threat was existential, and it was immediate. Each ally fought the war on its own footing, and there was never an “Allied army” or a truly functionally unified command across all theaters. Yet the shared interests of the Allies—interests that were articulated and given some, if minimal, institutional form at the wartime conferences in Casablanca, Cairo, Teheran, and Yalta—influenced their conduct.

As the war drew to a close, the Allies came to the view that a good deal more would be needed than ad hoc conferences, if coordinated action were to be maintained in the interests of global sta-

12. Consider in that decade, for example, the expansion of the U.S. naval fleet to match those of the major European powers and the Spanish-American War, the “easiest labor any nation ever endured in giving birth to an empire.” 2 WALTER LAFeBER, THE CAMBRIDGE HISTORY OF AMERICAN FOREIGN RELATIONS: THE AMERICAN SEARCH FOR OPPORTUNITY, 1865-1913, at 113-18, 145 (1993).

13. Even within a given theater (for example, Western Europe), Allied command was divided into essentially national units. See Richard M. Leighton, Allied Unity of Command in the Second World War: A Study in Regional Military Organization, 67 POL. SCI. Q. 399, 400-01 (1952).

14. The conferences made it clear that, though the League of Nations had not yet been formally wound up, a new institutional focal point was developing for coordinated international action. See generally ROBERT L. WENDEZEL, INTERNATIONAL POLITICS: POLICYMAKERS AND POLICYMAKING (1980).
bility. A lasting institutional architecture was needed—and one more robust than that of the post–World War I League of Nations. One of the striking features of the post–World War II settlement was the Allies’ decision to forge a lasting organizational expression of their shared interests: the victorious powers, convened at Dumbarton Oaks, drafted a Charter, a constitutive treaty of a new United Nations organization, and through this they intended to fully institutionalize their wartime efforts and thus apply themselves to postwar tasks. It is doubtful that the fascist aggressors would have been beaten if any one of the chief allied powers had not engaged itself in the fight, so it stood to reason that major tasks which lay ahead, too, required a unified approach.

The main task of the United Nations was to preserve peace and security. The founding states hoped that the United Nations would prevent a repetition of the catastrophic wars which, in the words of the Charter preamble, “twice in our lifetime [had] brought untold sorrow to mankind.” This was not the only task assigned the new organization. The founding states by Chapter X of the Charter created an Economic and Social Council (ECOSOC), not as an afterthought but as a “principal organ” of the United Nations. Article 55 sets out as goals of international economic and social cooperation the promotion, inter alia, of “higher standards of living,” “international cultural and educational co-operation,” and “universal respect for, and observance of, human rights and fundamental freedoms.” At its first meeting, held on December 10, 1946, ECOSOC established the Commission on Human Rights, a body that would function as the main human rights organ of the United Nations. The Universal Declaration of Human Rights, adopted two years later, underscored the role of the United Nations in promoting the rights of the individual. Peacekeeping operations, from the Congo intervention in the early 1960s forward, became a major task of the United Nations and involved the organization in policing internal disturbances—a type of mission scarcely contemplated by the United Nations’ founders.

17. See id. arts. 62-66.
18. Id. art. 55(a)-(c).
19. In 2006, the Commission was dissolved and replaced by a new Human Rights Council, which the General Assembly established as its own subsidiary organ by way of G.A. Res. 60/251, ¶ 1, U.N. Doc. A/RES/60/251 (Mar. 15, 2006).
in 1945 when state-against-state warfare was the main threat to security but consistent nevertheless with the organization's omnibus role as the chief international public institution. Article 13(1) of the U.N. Charter provides that the General Assembly encourage "the progressive development of international law and its codification"; a U.N. International Law Commission aids the Assembly in this task and has carried out major treaty-drafting projects. The U.N. system as a whole contains organs acting in various fields of regulation, including health, the environment, and economic development. An extensive portfolio of tasks thus belonged to the United Nations from the start, and it expanded over the course of the U.N. era.

A first step toward achieving a collective international task is to include the task as part of the portfolio of an institution. States sometimes do this by setting up an institution and stating in the governing charter or treaty that a particular task is their shared goal. But this is only a first step. The probability that the task will

21. The independence of the Congo in 1960 witnessed a breakdown of political coordination within the territory of that state. The attempted secession of Katanga, the mineral-rich southeastern province, led to fears that post-colonial boundaries throughout the region might be called into question, thus resulting in a chain reaction of wars and governance crisis. The United Nations deployed a peacekeeping force in 1960. For a comprehensive treatment of the force, including its international law basis, see generally ERNEST W. LEFEVER & WYNFRED JOSHUA, UNITED NATIONS PEACEKEEPING IN THE CONGO, 1960-1964: AN ANALYSIS OF POLITICAL, EXECUTIVE AND MILITARY CONTROL (1966).


be achieved depends in large part on the will of the parties involved. And whether the parties involved in the task have the will to achieve it in turn will depend in large part on who the parties are. This observation was implicit in the way the United Nations was constituted—at least at the start.

The U.N. Charter designates its first member states as the "original members."28 Numbering fifty-one, these included the core group of allied states united against the fascist aggressors in World War II.29 The original members also included certain other states, but the core group had disagreed as to which other states precisely ought to be included. The disagreement concerned certain states that had not joined the Allies until very late in the war; the Soviet Union opposed their inclusion as original members. Molotov, the Soviet foreign minister, protested at the U.N. conference in San Francisco that Argentina in particular, which had declared war on Germany only weeks before victory in Europe, in truth was not an ally but a Nazi fellow traveler; Argentina had converted to the cause only when other states had already finished the journey on their own road to Berlin.30 The matter ended with Argentina gaining admittance. The Soviets secured a number of concessions in return, such as the seating of the contested pro-Soviet Polish government,31 and U.N. membership for Belorussia and Ukraine (which, at the time, certainly were not states).32 The question of original membership would prove to be only the first in a series of membership disputes.

28. U.N. Charter art. 3.
29. The original member states were Argentina, Australia, Belgium, Bolivia, Brazil, Belarus, Canada, Chile, China, Colombia, Costa Rica, Cuba, Czechoslovakia, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Greece, Guatemala, Haiti, Honduras, India, Iran, Iraq, Lebanon, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Panama, Paraguay, Peru, Philippines, Poland, Saudi Arabia, South Africa, Syrian Arab Republic, Turkey, Ukraine, Union of Soviet Socialist Republics (USSR), United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, and Yugoslavia. Czechoslovakia ceased to exist upon its division into the Czech Republic and Slovakia on December 31, 1992. Following the USSR's dissolution, its membership continued under the title "Russian Federation." Egypt and Syria merged into the United Arab Republic but later separated; their status as original members apparently survived these transactions. Yugoslavia's membership probably did not survive the disappearance of the Socialist Federal Republic of Yugoslavia (SFRY). I address the fate of original membership and the various states undergoing political and legal transition since 1945 in Grant, supra note 5, at 25-27, 172-75, 231-35.
30. On the Argentine controversy, see Grant, supra note 5, at 25-27.
The early Charter era occasioned a political breakdown over admission of new members. Charter Article 4 provides that the United Nations is open to "other" states—that is, states which were not original members—so long as an applicant to membership is a "peace-loving" state, "accept[s] the obligations contained in the . . . Charter," and "in the judgment of the Organization, [is] able and willing to carry out these obligations." After 1945, a number of states sought admission as new members. A handful were admitted in the first ten years—Afghanistan, Iceland, Sweden, Thailand, Pakistan, Yemen, Indonesia, Burma, and Israel. A number of others, however, applied and were not admitted. Over that period, the number of applicants awaiting admission increased. Eventually, some eighteen states found themselves effectively stalled in the antechamber to membership—a significant percentage of the total number of states in the world at the time. Contemporaries referred to the situation as a "logjam."

The Soviet satellites in Eastern Europe and some of the Western European states that had been neutral during the war were among the states that would face frustration in their quest for membership, at least for a time. [This final note covers the paragraph as a whole.]

The continued exclusion of this large and diverse bloc of states seemed inimical to the purpose of the United Nations to serve as a general international forum. According to Secretary General Dag Hammerskjold,

> Almost half the countries of Europe are absent from the council tables. It is inevitable that the effectiveness and influence of the United Nations are lessened by this fact, not only as regards the questions of direct concern to Europe, but other problems, too, where the experience of the European peoples would make possible a great contribution towards their solution. This consideration applies also to the peoples in other parts of the world who do not yet have the representation in the United Nations to which their role in world affairs entitles them.

The logjam presented one of the first major constitutional crises of the United Nations. In the Security Council, each of the five Permanent Members held the veto, which meant that one or the other superpower could always block the requisite recommenda-

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33. U.N. Charter art. 4, para. 1.
34. See GRANT, supra note 5, at 89-94.
35. See id.
36. See id.
tion to admit applicants aligned with its adversary. By the early 1950s, of all existing states, approximately twenty were not yet members of the United Nations.\footnote{38 See Grant, supra note 5, at 64-67.} If one accepts the secretary general's view, then the United Nations and its member states could not long tolerate their exclusion.

The logjam continued until the 1955 General Assembly session, when the Soviet and western bloc states at last entered into a bargain: all states would be admitted together. The "package deal," as people called it,\footnote{39 See Grant, supra note 5, at 65 n.9.} met with objection; for example, some said, the Charter did not permit states to condition admission of one state upon admission of another. The deal nevertheless went forward, and the logjam was cleared.\footnote{40 The sixteen states subject to the package deal were admitted to membership on December 14, 1955 under G.A. Res. 995 (X), ¶ 1, U.N. Doc. A/3099 (Dec. 14, 1955). For a summary of objections, see Grant, supra note 5, at 97-98. For a more detailed exposition, see id. at 86-97. The states admitted were Albania, Jordan, Ireland, Portugal, Hungary, Italy, Austria, Romania, Bulgaria, Finland, Ceylon (Sri Lanka), Nepal, Libya, Cambodia, Laos, and Spain. See G.A. Res. 995 (X), supra, ¶ 1.} This resolved the crisis of the moment. It gave rise, however, to another crisis—one that would remain with the United Nations to the present day.

Article 4 of the Charter sets out the criteria for admission of states to the United Nations, as noted above.\footnote{41 U.N. Charter art. 4.} It also sets out a procedure for admission.\footnote{42 Id. art. 4(2).} The Security Council votes whether to "recommend[ ]" admission; then the General Assembly votes whether to admit.\footnote{43 Id.} The International Court of Justice made clear in the 1950 Competence advisory opinion\footnote{44 Competence of General Assembly for Admission of a State to United Nations, Advisory Opinion, 1950 I.C.J. 4, 7 (Mar. 3).} that both organs must vote in the affirmative if a state is to be admitted. The Court in the 1948 Conditions of Admission advisory opinion\footnote{45 See Conditions of Admission of a State for Membership in United Nations, Advisory Opinion, 1948 I.C.J. 57, 62 (May 28).} made clear that the substantive criteria for admission are mandatory. As noted, the member states in 1955 reached a political bargain to clear the logjam.\footnote{46 See generally Annual Report of the Secretary-General, supra note 37; Grant, supra note 5, at n.9.} The bargain preserved at least the procedural component of Article 4. The Security Council recommended admission
of most of the states then seeking admission; and the General Assembly voted to admit them.\footnote{47} The question is whether the package deal respected the substantive component of Article 4. The admission criteria in Article 4 make clear that a state, to be admitted, must accept Charter obligations—which means \textit{all} Charter obligations—and be able and willing to carry out \textit{all} the obligations.\footnote{48} The portfolio of tasks included in the U.N. Charter, as noted, is extensive. Whether states like the Soviet satellites of Eastern Europe were “able and willing” to promote human rights, for example, was doubted at the time; their subsequent record did little to dispel the doubt.\footnote{49} And subsequent practice in admitting new member states only added to the roster of states in the United Nations that the competent U.N. organs scarcely had evaluated for compliance with the substantive provisions of Article 4, if they had evaluated them at all. Scores of new states resulted from the end of European colonial rule in territories in Africa, Asia, and the Caribbean, and these filled the ranks of the United Nations from the late 1950s through the 1980s.\footnote{50} Some of the new states established a laudable record with respect to core U.N. values—for example, Botswana and the former British West Indian island territories (Barbados, St. Kitts & Nevis, Dominica, etc.). Others did not.\footnote{51} In aggregate, the result was that the United Nations entered a perpetual crisis of membership: the organization came to include far more states than originally expected, and some member states systematically failed to adhere to core U.N. principles. The Allies at the end of World War II had intended that the United Nations would perform certain tasks, but the organization could not accomplish the intended tasks in view of its vastly expanded constituency. Universal membership became an impediment to some of the central goals of the United Nations.

\footnote{47}{G.A. Res. 995 (X), ¶ 3, U.N. Doc. A/3099 (Dec. 14, 1955); S.C. Res. 109, ¶ 3, U.N. Doc S/3509 (Dec. 8, 1955).} \footnote{48}{U.N. Charter art. 4, para. 1. If a text says “fulfill obligations in the treaty” that might be taken to mean that the party need fulfill only \textit{some} of the obligations. But if it says “fulfill the obligations,” it would strain construction to say that the party could get away with merely partial fulfillment.} \footnote{49}{For a review of the contemporary debates over Bulgaria, Romania, and Hungary, see GRANT, supra note 5, at 92-94.} \footnote{50}{For a table of dates of admission to membership, see JAMES CRAWFORD, THE CREATION OF STATES IN INTERNATIONAL LAW 727-39 (2d ed. 2006).} \footnote{51}{See Freedom House, Freedom in the World, http://www.freedomhouse.org/template.cfm?page=505 (last visited Mar. 27, 2010) (examining and scoring every state for its performance in relation to multiple categories of personal freedoms and human rights and compiling this information in spreadsheet form).}
Nowhere has the problem of universal membership been more acute than in the human rights functions of the United Nations. Critics have identified failings in the former Commission on Human Rights in particular. Insofar as the U.N. crisis is a crisis in confidence, the participation of seemingly inappropriate member states in the human rights apparatus of the United Nations may be its fulcrum. States such as Libya, Cuba, and North Korea have held seats in the former Commission on Human Rights and other human rights organs; the cost to the United Nations in prestige and credibility is clear enough. Various commentators have identified this as a problem. The 2005 Report of the Gingrich-Mitchell Task Force, for example, regrets inclusion in the (since dissolved) Commission on Human Rights of “the world’s worst violators.” Kofi Annan, U.N. secretary general at the time, also understood that there is a problem. This by no means impugns every project of the U.N. human rights apparatus; the work of the thematic rapporteurs, independent experts, and other organs of the human rights system has made a valuable contribution. The problem is the relative erosion of the system’s credibility overall.

One might ask whether the Commission on Human Rights had included the occasional state with a very bad record in human rights as against a generally creditable constituency: perhaps an outlier or two drew attention to themselves but did not reflect a systemic problem with the institution. The proposition can be tested by reference to the human rights performance of states in general and that of states in the Commission. Freedom House, a nongovernmental organization that promotes democracy and rule


54. Id.

of law,\textsuperscript{56} has compiled data since the early 1970s concerning political rights (PR) and civil liberties (CL). The data cover most national jurisdictions.\textsuperscript{57} The PR and CL scores assigned by Freedom House each are aggregates of more specific indicia of human rights performance.\textsuperscript{58} Political scientists researching human rights have proposed various measures of human rights performance.\textsuperscript{59} The Freedom House data, however, have advantages: their compilers have used the same scoring scale for a considerable period; they have covered most relevant states (that is, nearly all U.N. member states); and they are readily accessible.\textsuperscript{60} The PR and CL scores each range from one to seven.\textsuperscript{61} A combined PR + CL score thus may lie within a range of two to fourteen. Low scores denote better performance than high scores.\textsuperscript{62}

The mean PR + CL score of members and nonmembers of the Human Rights Commission and Human Rights Council suggest two conclusions.\textsuperscript{63} First, there is a general improvement both in the human rights body and U.N. membership as a whole, at least for most of the period covered. Second, members of the human rights body were persistently more highly rated (that is, lower Freedom House PR + CL scores) than nonmembers, but this relation was maintained only up until the late 1990s. From the year 2000, the human rights body no longer improves in line with the general improvement of U.N. member states. The data do not permit the conclusion that after 2000 the member states in the human rights body became significantly less highly rated than nonmember states, but the earlier observed relation—that is, members having better ratings than nonmembers—is no longer in evidence. This change in the relation between the two groups of states took place at roughly the time when governmental and nongovernmental criticism of the human rights organ increased. The erosion of public


\textsuperscript{57} See Freedom House, supra note 51.

\textsuperscript{58} See id.


\textsuperscript{61} See Freedom House, supra note 51.

\textsuperscript{62} Id.

\textsuperscript{63} For these scores, see Freedom House, supra note 60. A figure illustrating these calculations is on file with the author.
confidence in the body may not have coincided with its constituents having become less highly rated in human rights than non-member states, but it does appear to have coincided with the disappearance of a one-time qualitative superiority of the member states over nonmember states as measured in Freedom House scores. The inclusion of a small number of conspicuously underperforming states as members afforded critics prejudicial material against the Human Rights Commission. Moreover, from around the turn of the century, the relative human rights record of the membership of the human rights body as a whole was deteriorating.

The problem, at any rate, came to a head, and the General Assembly on March 15, 2006, accepted a proposal for replacing the old Human Rights Commission with a new Human Rights Council. Yet, considering its performance during its first sessions, the new Human Rights Council has failed to answer the critiques of the body it replaces.

A comparison of the median PR + CL scores of member states of the old Commission to that of member states of the New Council demonstrates that the two bodies exhibit very little difference in composition. Nor is there a significant difference between the interquartile ranges as calculated for the two bodies. The median for the new Council is plotted slightly lower than that for the old Commission, which might be taken to suggest a slight improvement in human rights rating. However, the 95 percent confidence interval for the mean PR + CL score of the Commission is (6.30, 7.29); and for the Council the interval is (5.54, 7.06). These two confidence intervals overlap, so there is no evidence of any significant difference between the two bodies. The Human Rights Council is new enough that, perhaps, it is too early to make a definitive assessment of its performance. On the existing data, it is not possible to say that the new Council is a clear improvement over its predecessor. Performance to date therefore does not prove the hypothesis, proof of which would tend to justify the new institutional apparatus.

Considering the framework that the General Assembly established in 2006, it is hard to see how the new Council will improve

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64. G.A. Res. 60/251, supra note 19 (Israel, Marshall Islands, Palau, and the United States were against; Belarus, Iran, and Venezuela abstained).
65. See Freedom House, supra note 60. A figure illustrating these calculations is on file with the author.
66. See G.A. Res. 60/251, supra note 19.
its composition in upcoming sessions. A rigorous approach to the admission of states to the body would achieve that end, but the new approach to admission is not much more rigorous than the old one. The United States, through its permanent representative at the time, had proposed a selection system that would have preferred states with a solid human rights record, but the General Assembly rejected this. Instead, a universalist approach, with only minor qualifications, prevailed. As suggested by the record to date, to establish a new body that still operates under the universalist presumption does little more than reshuffle the institutional deck.

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A simple axiom underlies this experience: the limits and potentials of any international initiative are determined by what countries dedicate their energies to its fulfillment. Put in terms of international organizations such as the United Nations, this is to say that membership determines the tasks that an organization effectively can perform.

The American public and its political leaders scarcely ever have relieved the United Nations of scrutiny. The Gingrich-Mitchell U.N. reform study of 2005 marked a high point in systematic questioning of the efficacy of the world’s principal international organization by its principal political and financial supporter. Corruption in key U.N. programs, lax ethics oversight, failure to retire outdated mandates, and misconduct by peacekeeping forces number among many problems which American observers have identified as constraining the United Nations. Internal critics—including the last secretary general, Kofi Annan—echo some of the main points. The institution reprimanded itself in reports concerning Srebrenica and Rwanda. The 2005 World Summit

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69. The transactions of the Australian Wheat Board in connection with the Iraq oil-for-food program were prominent examples. *See* Karim v. AWB Ltd., No. 06 Civ. 15400 (S.D.N.Y. Sept. 30, 2008); Boyd v. AWB Ltd., 544 F. Supp. 2d 236, 241-42 (S.D.N.Y. 2008).


71. *Id.* at 12.


Outcome "pledge[d] to enhance the relevance, effectiveness, efficiency, accountability and credibility of the United Nations system." Though the expression "U.N. crisis" has, perhaps, been overused, problems in the organization are not a figment of one country's imagination. Nor does it necessarily reflect an American antipathy toward the organization that some of the most trenchant and tenacious criticism of the United Nations originated in the United States; it instead reflects the unique position of the United States as the main international military, economic, and cultural power in the U.N. era. The country most involved in the international order is the country likely to be most assiduous in guarding the institutions it helped build to ensure that order. That the U.N. crisis is a real crisis in any case is widely acknowledged. The problem may have multiple causes; one of them is that the U.N. membership no longer follows logically from the United Nations' tasks.

C. Obstacles to the Democratic Initiative

Notwithstanding the constraints it faces, the organization of 1945 continues to perform vital functions. A world of nearly 200 independent states, representing a wide diversity of effective capabilities, needs a forum open to them all. The principle of sovereign equality, enshrined in the U.N. Charter, makes the United Nations, especially its General Assembly, an indispensable mechanism for communication among states. Certain other functions, like the drafting of treaties intended for general application, also are best performed in a body with universal representation. States that aim to pursue major reforms of international order, however, often will find their own initiatives thwarted in such a body. The record of the United Nations demonstrates the problem.

The United States and its main allies long have pursued as a main initiative the promotion and consolidation of democracy, human rights, and rule of law. Policy makers and scholars debate


75. On the relation between universal membership in the United Nations and sovereign equality, see Grant, supra note 5, at 75-81.

the exact relation among these values and material security. Whatever the relation, democratic polities share a broad commitment to protecting these values wherever they already are entrenched and to encouraging their entrenchment where opportunities exist to do so. Three specific obstacles have arisen in recent years that have obstructed reform-minded states in this initiative.

First, states with authoritarian regimes, or those in which democracy has eroded, have manipulated international institutions, and resorted to other means, as well, to free themselves from constraints that the democracies might otherwise impose on them. The drive for autonomy from an emergent democratic order has become more pronounced in recent years. This has taken place both within and without international organizations.

Within international organizations, nondemocratic states have used voting mechanisms to seize autonomy from democratic pressure. The Security Council veto, a prerogative of Russia and China, assures that the United Nations poses little constraint on the freedom of action of those states or their clients. This is not a new development. The veto was a major factor limiting the United Nations as a peace and security institution during the Cold War. The current significance of the veto is that it prevents the Security Council from serving as a check by democratic states on the international conduct of Russia or China. It also prevents that organ from encouraging democratic development within those states. No
significant statement can be expected from the principal organs of the United Nations with respect to Russia’s conduct of counterinsurgency in Chechnya or China’s treatment of protesters in Tibet.\textsuperscript{80} Nor can the erosion of democratic institutions and basic freedoms in Russia expect an answer from those quarters. The People’s Republic of China similarly can be confident that the principal organs of the United Nations would offer little response if significant reversals occurred in the field of human rights and basic freedoms in the Hong Kong Special Administrative Region,\textsuperscript{81} and Russia knows that the United Nations will not tie its hands in any future encroachment on Georgia.\textsuperscript{82} The democratic initiative finds itself largely stymied in the United Nations and within international organizations generally.

Outside international organizations, the nondemocratic states have sought a level of autonomy from the democratic initiative


\textsuperscript{81} This leaves other, subsidiary bodies as the possible guardians of treaty rights in the region. Hong Kong, before its transfer to Chinese control in 1997, was under British administration. The United Kingdom ratified some of the U.N. human rights instruments with respect to Hong Kong territory, and these have remained in force since the reorganization of Hong Kong as a Special Administrative Region (SAR) of China in 1997. At least one Hong Kong-based writer concludes that reporting has been satisfactory with respect to the SAR under the two 1966 Covenants. See International Covenant on Civil and Political Rights, Dec. 16, 1966, S. TREATY DOC. No. 95-29, 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, S. TREATY DOC. No. 95-19, 993 U.N.T.S. 3; Dinusha Panditaratne, \textit{Reporting on Hong Kong to UN Human Rights Treaty Bodies: For Better or Worse since 1997?}, 8 HUM. RTS. L. REV. 295, 321-22 (2008).

\textsuperscript{82} Speculation arose in early 2009 that Russia might renew military operations against Georgia later in the year. See Liz Fuller, Commentary, \textit{Does U.S. Charter Protect Georgia Against Renewed Conflict with Russia?}, RADIO FREE EUROPE / RADIO LIBERTY, Mar. 11, 2009, available at http://www.rferl.org/content/Does_US_Charter_Protect_Georgia_Against_Renewed_Conflict_With_Russia/1508110.html.
commensurate with that which they enjoy within. Russia in particular aims to free itself from checks that democratic states otherwise might place on its international conduct. A graphic example is the Nord Stream natural gas pipeline. Bypassing Ukraine and Poland—two major emerging democracies formerly in the Russian sphere—the pipeline will give the Russian gas export industry direct access to Western European markets. While developing a Eurasian energy infrastructure is justifiable on economic grounds, behind Russian energy policy there are evident geopolitical purposes. Bypassing Ukraine and other countries formerly in the Russian sphere frees Russia of political influence that these new democracies might otherwise exert.\textsuperscript{83} Russian energy policy even may expose those democracies (especially Ukraine) to pressure to reconsider their own internal reforms.\textsuperscript{84} China also has pursued a resource-based strategic policy (especially in Africa). It superficially appears the opposite of Russia’s: China seeks access to sources of raw materials that it consumes,\textsuperscript{85} while Russia seeks access to markets in which to sell raw materials that it extracts. But China’s support for authoritarian regimes in Africa and elsewhere—noticeably lacking the good-governance conditions attached to International Monetary Fund (IMF) loans\textsuperscript{86}—well may have a wider purpose: namely, China would appear to seek an international space in which its own internal policies will not be questioned. The autonomy that current international institutions


\textsuperscript{86} See, e.g., Gráinne De Búrca, \textit{Developing Democracy Beyond the State}, 46 \textit{COLUM. J. TRANSNAT’L L.} 101, 139 n.128 (2008) (noting that Kenya, Angola, and Zimbabwe accepted Chinese loans and other support in preference to International Monetary Fund loans which would have been conditional upon democracy and human rights performance).
give Russia and China thus finds a synergy in the policies they have pursued bilaterally and unilaterally.

A second problem facing the democratic initiative is that the standards developed in the 1990s and earlier, specifically for the purpose of promoting democracy, have been diluted. Membership in institutions like the Organization for Security and Co-operation in Europe (OSCE) was purposefully broad rather than narrow, for the reason that inclusion of states undergoing a process of democratization was believed to encourage them to adopt and comply with international standards.\(^87\) A theory of "socialization" underlay this proposition: nondemocratic or democratizing states would benefit from exposure to established democracies in the framework of multilateral institutions.\(^88\) The record of the Organization for Security and Co-operation in Europe, however, does not confirm the theory. The influence of the Russian Federation would appear to have stalled, not fostered, democracy-promotion;\(^89\) Russia scarcely hides its antipathy toward the OSCE’s Office for Democratic Institutions and Human Rights (ODIHR), and particularly for its efforts in former Soviet countries like Ukraine and Georgia.\(^90\) Russia has insistently demanded a lowering of the standards of the ODIHR’s election observer missions, so as more readily to secure the “free-and-fair” seal of approval for increasingly un-free and unfair elections. Recently, Russia stopped ODIHR from functioning on its territory altogether.\(^91\) The Council of Europe perhaps has a better record and greater resilience: Turkish democracy has strengthened during Turkey’s time in the Council,\(^92\) and the


\(^{89}\) See, e.g., Jos Boonstra, OSCE Democracy Promotion: Grinding to a Halt? 1, 3 (Fundación para las Relaciones Internacionales y el Diálogo Exterior, Working Paper No. 44, 2007) (regarding Madrid).


\(^{91}\) The Office for Democratic Institutions and Human Rights (ODIHR), owing to “unacceptable restrictions” imposed by the Russian government, decided to cancel election monitoring for the presidential election in Russia held on March 2, 2008. Russia: OSCE Election Monitor Cancels Plans To Monitor Vote, RADIO FREE EUROPE / RADIO LIBERTY, Feb. 7, 2008, available at http://www.rferl.org/content/article/1079444.html.

\(^{92}\) In particular, the Council of Europe took a firm stance against the military government that came to power in Turkey in September 1980. Under that pressure, the military eventually relinquished control in favor of democratic institutions. See DIRECTORATE
Council has not backed down from insisting on rigorous standards, including on the admission of states to its membership.\footnote{Of Human Rights of the Council of Europe, 1985 Yearbook of the European Convention on Human Rights 151-59 (1991).} Tentative steps by the Council of Europe toward censuring Russia for its conduct in the Caucasus, however, did not lead to any firm measures or lasting improvement, so the record of the Strasbourg institution on this front overall is mixed.\footnote{International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, S. Treaty Doc. No. 95-18, 660 U.N.T.S. 211.} As for the treaty organs of the United Nations, intended to monitor compliance with rules such as those in the Convention on the Elimination of All Forms of Racial Discrimination,\footnote{International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, S. Treaty Doc. No. 95-18, 660 U.N.T.S. 211.} the record is no more encouraging. So, at the same time that they have been maneuvering for autonomy from democracy-promoting countries and institutions, certain states also have been acting to dilute the standards embraced by those countries and institutions.

A third problem relates to inclusiveness. The established democratic states should include new democracies in as many relevant international processes as possible. Inclusion consolidates a new state's position in international relations. It also reassures the domestic proponents of democratic reforms that the international environment supports the progress they have achieved or the change that they seek. As suggested above, when it comes to the task of promoting democracy, rule of law, and human rights, over-inclusiveness has impeded the United Nations. Under-inclusiveness now also may be a problem. Taiwan and Kosovo are both entities that the democratic world champions.\footnote{Consider, for example, the European Parliament's support for "Taiwan's achievements as regards the establishment of a fully-fledged democratic system, social pluralism, and respect for human rights and the rule of law ...." European Parliament resolution on relations between the EU, China and Taiwan and security in the Far East, Eur. Parl. Doc. P6_TA 297, ¶ 4 (2005). Also consider the U.S. Congress' view that "Taiwan today is a full-fledged multi-party democracy respecting human rights and civil liberties." H.R. Con. Res. 117, 108th Cong. (2003) (enacted). Respecting Kosovo and its recognition by the United States and United Kingdom and non-recognition by China and Russia, see Grant, supra note 5, at 186-89. See also The Henry Jackson Society, Why Kosovo Matters, http://www.henryjacksonsociety.org/stories.asp?id=525 (last visited Mar. 19, 2010).} The former has...
achieved noteworthy progress in the past decade and a half, making a transition from one-party rule and martial law to plural democracy and respect for human rights. The latter has established itself as an independent state, as against the claims of a country that had committed gross abuses of the fundamental rights of its inhabitants. Neither Taiwan nor Kosovo belongs to the United Nations. The Security Council veto would prevent admission of either (assuming that the Secretariat even were to refer an application by one of these entities to the Council). A considerable problem of credibility arises when an established democracy and a reforming state working toward democracy both are excluded from the organization. A further rationale for a new international framework for democracy is that the states that build it would be free to include all relevant communities in its work.

D. Membership Should Follow the Task

A fictional case illustrates the principle that membership should follow from the task an organization is intended to perform. A group of friends have established a drinking club. They have adopted formal articles of association. Among the articles of association is a statement of the purposes of the club. The main purpose, as stated, is to hold drinking parties. Members agree to pay dues according to a schedule in the articles. The club is to allocate the largest fraction of dues to the purchase of alcoholic drinks. The club board designates dates, hours, and places for drinking parties. It is all in good order.

The articles of association also include a provision for electing new members to the club. Existing members, satisfying certain quorum provisions, meet and by, say, a favorable two-thirds majority vote upon motion of one member, may admit a candidate to membership. This, too, is in good order, and the club runs smoothly for a time. The existing members admit a number of new members. The number of members increases. Then, a handful of teetotalers are introduced to the club. They are friends from the extended social circle of certain existing members. One by one, these individuals (by definition none of whom drink) are admitted as members. Their credentials are otherwise impeccable. Indeed, some of them display conspicuous virtues. However, in time, the club comes to consist of a majority who do not drink, for the new, nondrinking members, in turn introduced their own

97. See U.N. Charter art. 27, para. 3.
friends to the club, and, out of a sense of collegial good will, the existing members admitted them all with scarcely a dissenting vote. At first, the new members pay their dues and forebear, as the club continues its intended activities. It soon becomes clear, however, that a certain divergence of opinion has arisen among the old or "original" members and the new members as to the uses to which club is to put its dues. A motion arises that half the dues go to the support of a temperance program. The motion carries easily (as the club determines such matters on a simple majority basis). An extraordinary fund for a fruit juice vending machine is raised by auctioning off the club's vintage beer steins and the choicest bottles from its wine cellar. Now fewer than half the club's members show up for drinking parties, which, in any case, the other members tend to frown upon. The club gives itself over to various good works, including anti-drunk driving courses for youngsters, as well as wholesome recreational activities, including badminton tournaments. Some neighbors think the late transformation improves things, for they no longer have to listen to the rowdy groups who used to sing drinking songs in the small hours. Whatever else the club may be, however, it is scarcely any longer a drinking society in the original intended sense.

The serious point is that the United Nations, at least as regards certain objectives it was intended to attain, has included constituencies in its membership, which, at best, will not support those objectives, and at worst, will work to impede their attainment.

The membership of an international organization determines its potentials and limits. An organization whose founding treaty assigns it the task of regulating salmon stocks in the North Pacific would do well to include Russia, Japan, Canada, and the United States. To include Switzerland, Paraguay, and Chad would be, at best, superfluous. If such countries actively participated in such an organization, they well could impede its main work, even if their intentions were entirely benign. Nondrinking and non-fishing members well may have no malign intent; they nevertheless may undermine the purposes of an organization. In the real world of general international organizations, like the United Nations, it cannot be assumed that all participants are benignly motivated. Intentional obstruction is not unheard of. The need thus is all the more clear for building international institutions with membership that follows logically from the task.

Georges Scelle, in the capacity of agent for France in the Conditions of Admission advisory proceedings in 1948, observed that
within an international organization, there is a “nécessité d’une
certaine homogénéité d’ordre politico-psychologique”—“a need
for a certain homogeneity of political-psychological order.”
Scelle was referring to the United Nations, but the principle under-
lying the reference has general application. Openly to declare the
general application of the principle may be politically awkward.
We live in a world in which the connections among societies have
become more numerous and deeper than ever before. Leaders
hesitate to say that “homogeneity” is a necessity; to say as much may
be taken out of context and thus taken to imply a rejection of a
century’s development of international relations. Transposed to a
domestic setting, such a statement may appear particularly perni-
cious. But Scelle was not rejecting the myriad relations between
diverse groups, which in 1948 already were beginning to take shape
as a characteristic of global order. And by no means was he coun-
seling ethnocentrism. The French jurist was making quite another
point: for states to pursue certain tasks together, they must share
certain basic assumptions about political and social order. Democ-
racies and dictatorships certainly can cooperate against common
threats, like environmental degradation or the spread of patho-
genic organisms. They cannot cooperate to promote human rights
and democracy. States that reject such values will not promote
them, for to do so is antithetical to the systems on which they rely
to maintain internal order. An international organization that
includes such states must come to grips with the limits that their
inclusion places on its own portfolio of tasks. The universal princi-
ple behind U.N. membership allows the United Nations to dis-
charge certain important functions. It equally restricts, perhaps
even precludes, the United Nations from discharging others.

A League of Democracies would be born of a realization that
membership should follow the task: for an international initiative
to succeed, it must recruit a constituency that supports its pur-
poses. The League, as a body of democratic states, working along-
side the United Nations in accordance with Chapter VIII,\footnote{99. U.N. Charter arts. 52-54 (setting forth the framework for relations between regional organizations and the United Nations).} would be better equipped than the United Nations alone to pursue
democratization and related tasks. No antidemocratic veto would
impede the democratic states’ initiatives. Dilution of institutional
focus could be avoided. And emerging democracies might find in

the League a forum in which the strategic objections of certain states would not preclude their membership.

The political divergences among democratic states are not insignificant, so the construction of a League of Democracies would present its own difficulties. Its sponsors would have to build consensus among the relevant constituents. Its designers would have to choose an appropriate institutional form for it—the League could be a standing international organization or, like the G8, it could exist as a diplomatic arrangement, \(^{100}\) rather than as a formal institution bearing legal personality. Though it would appear unlikely that the United States will pursue a League of Democracies as part of its foreign policy in the near future, the rationale underlying such an initiative remains sound. It holds considerable promise for solving practical problems in a world of diverse states.

100. As John McCain envisaged it, the League could have taken any one of a variety of institutional forms and did not necessarily have to be constituted as a standing international organization: conversation between John McCain and the author, March 2008.