Is Côte d'Ivoire a Test Case for R2P? Democratization as Fulfilment of the International Community's Responsibility to Prevent

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Is Côte d’Ivoire a Test Case for R2P? Democratization as Fulfilment of the International Community’s Responsibility to Prevent

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Abstract

After the election deadlock in Côte d’Ivoire, the international community recognized Ouattara as the winner of the elections, while the incumbent president, Gbagbo, also claimed victory. When they were both sworn in, violence ensued. UN Secretary General Ban Ki-Moon stated that the international community had a responsibility to protect citizens. Thereafter, the UN, African Union and ECOWAS attempted to quell the violence through mediation and the threat of force. Gbagbo was eventually ousted by Ouattara’s forces. This article examines the international community’s responsibility to prevent and its actions in that regard. If democratization is a means to prevent mass atrocities, what was the nature of the international community’s responsibility to Ivorians to prevent conflict? What should be the international community’s reaction to internal agitations for democracy? Some answers to these questions lie in the framework for the international community’s responsibility to prevent the four crimes related to R2P.

INTRODUCTION

For Côte d’Ivoire, the beginning of 2011 heralded a period of violence that resulted in loss of life and property as well as internal displacement, migration and injury. A runoff election had been held on 28 November 2010; the opposition candidate Alassane Ouattara was recognized as the winner by the Economic Community of West African States (ECOWAS), African Union (AU) and the United Nations (UN).1 However, both the incumbent President Laurent Gbagbo and Ouattara were sworn in as president, by different Ivorian legal institutions; Gbagbo refused to step down, resulting in tension and violence. The international community took the side of Ouattara, urging Gbagbo to step down.2

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Gbogbo’s claim to the presidency rested on the revised 51 per cent vote that the Constitutional Council alleges he won. On the other hand, the Electoral Commission declared Ouattara the winner, with a 54 per cent majority, before the council annulled a large number of votes from his northern support base.

The UN, which observed the election, supported the Electoral Commission and Ouattara. Gbagbo, however, resorted to support from technical constitutionalism. The Constitutional Council awarded him a majority and swore him back into office, thus constitutionally legitimizing his presidency. This caused some to suggest that Gbagbo had organized a constitutional coup. Violence ensued in the country, pushing it to the brink of a return to civil war. With the aid of the UN and France, Ouattara’s supporters stormed the presidential residence and arrested Gbagbo; Ouattara was then installed as president.

This is a summary of the 2010–11 crisis; to understand the tensions in Côte d’Ivoire that led to it, one has to examine the country’s historical roots and political evolutionary trends.

**PRE-COLONIAL AND COLONIAL IVORIAN HISTORY**

Before the French formally colonized Côte d’Ivoire, the area was occupied by pre-colonial kingdoms that were frequently in conflict to gain control of resources and trade routes. However, the territory of present day Côte d’Ivoire did not form a central part of any predatory kingdom, but was peopled by small ethno-linguistic groups subject to raids from the larger kingdoms surrounding them, such as Mali, Songhai and Ghana. Over 60 different ethno-linguistic groups now inhabit Côte d’Ivoire. Going to war was an integral part of the administration of pre-colonial territories. They had to ward off external invasion and war was a source of revenue. There were also wars

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8 J Lombard “The kingdom of Dahomey” in Forde, Kaberry et al (eds), id, 70 at 86; Stride and Ifeka Peoples and Empires, above at note 5 at 60.
over succession. Interstate conflict was rife in pre-colonial West Africa. Many pre-colonial nation states suffered from: internal weaknesses due to conflicts over succession and weakened central government; incompetent, corrupt, extravagant, tyrannical and/or ineffective rulers who employed questionable imperial administration techniques; ethnic and cultural clashes between heterogeneous peoples of a nation-state; and religious conflict mainly due to the introduction of Islam. These factors were further exacerbated by the fact that there was always the risk of external invasion, sometimes with jihadi overtones. This combination usually led to weaker states like those which existed in pre-colonial Côte d’Ivoire being attacked and destroyed by invaders.

The result was that, between the 1500s and the 1800s, the territory of present day Côte d’Ivoire was already going through political decline while contact with Europeans increased. Interestingly, contact with Europe was initially confined to trade; the Portuguese were at the forefront of this contact as they discovered the West African coast in the 15th Century. Trade was initially limited to food produce, gold, ivory, pepper and ostrich feathers, in exchange for cheap cloth, beads, iron rods, gunpowder, etc. Before long however, West African-European trade was dominated by traffic in slaves. The slave trade primarily weakened the strength of hinterland states by causing diversion of trade to the coast, thus weakening control over the trade routes. Conversely the coastal states became more important to the region. Thus the peoples of southern Côte d’Ivoire increased in wealth and influence. Furthermore, the slave trade caused antagonism between neighbouring states which would have been potential allies against colonization, and increased

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9 Stride and Ifeka, id at 23 and 129.
10 Onwubiko School Certificate History, above at note 5 at 21, 45, 65, 101, 161 and 205; Davidson and Buah A History of West Africa, above at note 5 at 80; Stride and Ifeka, id at 44, 54, 61, 75, 302 and 318.
11 Onwubiko, id at 45 and 140; Stride and Ifeka, id at 80.
12 Onwubiko, id at 45, 65–66 and 101; Stride and Ifeka, id at 54, 62, 76, 124 and 318.
13 Onwubiko, id at 194; Stride and Ifeka, id at 55 and 302–03.
14 Onwubiko, id at 66 and 102; Davidson and Buah A History of West Africa, above at note 5 at 80 and 184; Stride and Ifeka, id at 44.
15 Onwubiko, id at 22, 46, 66–67, 85–86, 100, 141, 206 and 218; Davidson and Buah, id at 43; Stride and Ifeka, id at 62, 77 and 125.
16 Stride and Ifeka, id at 41 and 303.
17 Onwubiko School Certificate History, above at note 5 at 22, 46, 66–67, 85–86, 100, 141, 206 and 218; Davidson and Buah A History of West Africa, above at note 5 at 43; Stride and Ifeka, id at 125 and 303.
18 Onwubiko, id at 4 and 224. The Portuguese were not the first Europeans to have visited West Africa though; Greeks were said to have visited between 200 and 400 AD; Stride and Ifeka, id at 173–84; Davidson and Buah, id at 191.
19 Onwubiko, id at 4 and 232; Stride and Ifeka, id at 185.
20 Onwubiko, id at 227; Stride and Ifeka, id at 185–87; Davidson and Buah A History of West Africa, above at note 5 at 194–99 and 208.
21 Onwubiko, id at 100, 140 and 205.
civil wars, decimating the population and stability of the region; the wars were helped along by the firearms sold to West Africans by the Europeans.22

The end of the slave trade overlapped with the gradual colonization of West Africa. Colonization was embarked upon ostensibly to ensure that the international (European) treaties abolishing the slave trade were implemented in West Africa.23 Legitimate trade in agricultural produce was re-established;24 economic developments in Europe needed the resources of West Africa.25 The abolition campaign had inspired interest in West Africa, which induced European explorers, missionaries and traders to the region; the missionaries helped to open West Africa to European trade and administration.26 European administration occurred as a result of European desire to protect their traders in West Africa, procure raw materials from the hinterland at cheap prices and ensure the abolition of the slave trade.27

The coastal and forest peoples of present day Côte d’Ivoire fought against the French from 1891 until 1918 to remain independent.28 Before these series of wars, the French had signed treaties with the local people of the region, but broke the treaties by meddling in internal politics and using military might to subdue the people.29 The Baule from the southeast were at the forefront of the opposition to French rule, confining the French to the coast.30 The secret to this long resistance was co-operation by the small chieftaincies despite the absence of large centralized kingdoms in the area.31 The French eventually occupied the region by a brutal campaign which resulted in the destruction of many towns and the deportation of 220 African chiefs.32 This explains, in some way, the entrenched hostility that still exists to French intervention.

The French did not have an overarching system of colonial governance. In some areas they employed indirect rule, but in a stricter form than the British version.33 The French did not seek to maintain the existing traditional structure of governance in their colonies and removed chiefs who were unwilling to adapt.34 The French also pursued a policy of assimilation,

23 Onwubiko, id at 285; JB Webster, AA Boahen The Revolutionary Years: West Africa Since 1800 (1980, Longman) at 52 and 113.
24 Onwubiko, id at 288; Webster, Boahen et al, id at 81–4 and 140–41.
25 Webster, Boahen et al, id at 53.
26 Onwubiko School Certificate History, above at note 5 at 289.
27 Ibid; Webster, Boahen et al The Revolutionary Years, above at note 23 at 92.
28 Webster, Boahen et al, id at 187.
29 Ibid.
30 Ibid.
31 Id at 188.
33 Webster, Boahen et al, id at 210.
34 Id at 211.
transferring French civilization to Côte d’Ivoire. They introduced French culture, language, history and law to the colonial state and allowed their colonial subjects to elect representatives to the French Parliament. As a step towards assimilation, the French adopted a system of association which recognized colonial subjects as French subjects with very limited rights; this was the official policy until 1946 when all African subjects officially became French citizens. French colonialism thus de-emphasized the African identity of its subjects while not allowing them to become sufficiently French. It deconstructed or disregarded the traditional structures of pre-colonial government in favour of “civilized” French governance. The accepted use of forced labour and the collection of exorbitant taxes by recognized chiefs caused resentment of French colonial rule. Consequently, the nature and means of colonial occupation affected the post-colonial state as did the propensity for internal conflict within the post-colonial state. French colonial administration did not emphasize the statehood of the colonies. Rather, the colonies were administered according to their constituent parts or as outer-lying, inferior parts of an all encompassing super-state.

The establishment of the colonial state in Africa had as its main economic task infiltrating the pre-colonial economy and opening it for primary accumulation by imperial capital, and the development of a restricted export market. To this end, Europeans established coffee plantations in the colony. This imperative drew Côte d’Ivoire into a new set of economic relations designed to benefit the dominant classes of France, the mother country. This produced a conflict between completely divergent methods of production: the pre-capitalist indigenous modes and imperial capitalism. This clash was reconciled through the complete suppression of the local economy by the needs of colonial production. Though colonial administration intended that colonies be self supporting, the colonies could not survive without subsidies from the

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35 Id at 214; Crowder West Africa Under Colonial Rule, above at note 32 at 167.
36 Webster, Boahen et al, id at 215; Crowder, id at 128.
37 Webster, Boahen et al, ibid.
38 Ibid.
39 Ibid.
40 Crowder West Africa Under Colonial Rule, above at note 32 at 189, 191 and 192.
42 W Pfaff “A new colonialism? Europe must go back to Africa” (1995) 74/1 Foreign Affairs 1 at 1–6, particularly at 5.
43 R Hallett Africa Since 1875: A Modern History (1976, Heinemann) at 327.
44 Id at 321-22.
mother state; this made the continued existence of the state dependent on financial patronage from the mother state.

Nationalism emerged in French West Africa in the 1950s. At the core of the movements for independence in West Africa were West Africans who had been educated in the West. While they purported to bring local West African grievances to the negotiating table, they represented a minute part of the populace, were markedly divorced from the pre-colonial states of West Africa and had more affinity with the colonial creations. Politics was unlawful in French West Africa. Africans were not granted the right to assembly, or to form political parties, nor freedom of speech. Newspapers were censored and usually owned by Europeans; in 1935, *L’Eclaireur de la Côte d’Ivoire* [The Côte d’Ivoire Scout] became the first African-owned newspaper in Côte d’Ivoire. However, strikes, riots and demonstrations demonstrated colonial dissatisfaction with administrative policies of taxation and government.

French West Africa’s decolonization was marked by France’s desire for empire. Thus the process of decolonizing French West Africa was influenced heavily by internal French politics. Initially, this influence did not allow for the independence of West African colonies, but in 1958 an independence referendum was held in the colonies. Guinea-Conakry alone voted for independence. This upset the ambitions of those West African politicians who wished to create a French West Africa confederation in the region, although Côte d’Ivoire was resolutely opposed to confederation. Interestingly the elite Ivoirian government and France did not wish to lose their special relationship despite independence and drew up agreements to that effect.

French-Ivoirian decolonization was therefore characterized by a struggle for individual identity while not losing French assistance. This struggle was compounded by the fact that cultural identity in French West Africa had been eroded by years of assimilation into French culture. Côte d’Ivoire’s president at independence, Félix Houphouët-Boigny, ensured economic growth by measures that may qualify as neo-colonist; he allowed French military,

46 Hallett *Africa Since 1875*, above at note 43 at 320–21.
47 Crowder *West Africa Under Colonial Rule*, above at note 32 at 405 and 415; Webster, Boahen et al *The Revolutionary Years*, above at note 23 at 243–44.
48 Webster, Boahen et al, id at 265.
49 Crowder *West Africa Under Colonial Rule*, above at note 32 at 433; Webster, Boahen et al, id at 244 and 249–50.
50 Crowder, id at 438.
51 Webster, Boahen et al *The Revolutionary Years*, above at note 23 at 245.
53 Hallett *Africa Since 1875*, above at note 43 at 369.
54 Id at 371.
55 Id at 372.
56 Id at 373.
57 Ibid.
technicians and administrators to remain in Côte d’Ivoire and maintained strong political and economic ties between his country and France.58

POST-COLONIAL IVORIAN HISTORY

The post-colonial Ivoirian state resembled a colonial state more than any pre-colonial West African state. Unlike the pre-colonial state, which usually had inherent checks on the absolutism of a ruling monarch, there were no checks on the executive power of post-colonial executives, just as there had been no internal checks on the colonial administrative powers as the legal system only exercised authority over indigenous misdemeanour, usually indicting a protected chief for offences such as corruption.59 According to Akuffo, it was the colonial state that produced the modern post-colonial state and attendant structural underdevelopment, impossible debts, chronic balance of payment difficulties and resultant poverty; thus there is little difference between the new state and the colonial state.60

In initial post-colonial Côte d’Ivoire, one party rule was the norm; the dominant party absorbed or outlawed smaller parties.61 State government was centred on the person of the head of state; Houphouet-Boigny became president in 1960 and did not leave office until his death in 1993, a total of 33 years.62

After the death of Houphouet-Boigny, Henry Konan Bedié became president; his rule coincided with the lowest end of a downturn for the Ivoirian economy.63 It was he who invented the theory of ivorité [the quality of being Ivoirian in truth].64 This concept was codified into law as a stipulation that political candidates and voters must be born of two native Ivoirian parents.65 This move intensified a pre-existing xenophobia which virtually disenfranchised most of the north of Côte d’Ivoire, including Ouattara.66 In the days of economic prosperity these divides did not matter so much.67 When Bedié was ousted in 1999 by General Robert Guei in a military coup, ivorité continued and Ouattara was again barred from the polls; Gbagbo won that

58 Id at 398–400.
60 Akuffo “Equity in colonial West Africa”, above at note 45 at 138.
61 Post The New States, above at note 59 at 84; Souare Civil Wars and Coups, above at note 59 at 21.
62 Chirot “The debacle”, above at note 6 at 63; Post The New States, above at note 59 at 96.
63 Chirot, id at 64 and 68; JM Toungara “Ethnicity and political crisis in Côte d’Ivoire” (2001) 12/3 Journal of Democracy 63 at 66.
65 Klaas, id at 116; Toungara, ibid.
66 Klaas, id at 116–17; Chirot “The debacle”, above at note 6 at 67 and 68; Toungara, id at 68.
67 Chirot, id at 64 and 67.
The concept of ivorité is a catalyst for violence, because it disenfranchises people like the Malinke or Dioula, whose ethno-linguistic groups have been living in Côte d’Ivoire for centuries. This problem results from the fact that the northern part of West Africa is predominantly Muslim; secondly, many tribes in the north of Côte d’Ivoire are dispersed across countries such as Mali and Burkina Faso, through the effect of colonial borders which disregarded the sanctity of pre-existing tribes. ECOWAS has recognized the concept of border-nation “pays-frontière” as: “a geographical space astride the borderline between two or several neighbouring countries inhabited by people with socioeconomic and cultural relationships”.

POLITICAL VIOLENCE IN CÔTE D’IVOIRE

This ethno-political shenanigans and a failed coup meant that civil war erupted in Côte d’Ivoire in 2002; violence was partially quelled by ECOWAS and the UN by 2004, but the country remained in a state of flux and division. Disputes arising from election results in Côte d’Ivoire in 2010 led to violence which killed at least 200 people; the incumbent president, Gbagbo, had also been accused of abducting political opponents.

Côte d’Ivoire continues to score high in the failed states index. The concept of state failure is a matter of functional collapse, ie state malfunction or non-function, when a state is not able to perform the fundamental functions

68 Klaas “From miracle to nightmare”, above at note 64 at 117; Toungara “Ethnicity and political crisis”, above at note 63 at 69–70.
70 Hallett Africa Since 1875, above at note 43 at 254 and 340.
71 Toungara “Ethnicity and political crisis”, above at note 63 at 65.
72 UN Office for West Africa (UNOWA) “Strengthening media and civil society awareness of conflict prevention and peace-building cross-border issues in West Africa” (paper presented at the UNOWA workshop on reporting for peace, held in Dakar, Senegal on 4 May 2005) at 2.
74 Olonisakin, ibid; Souare Civil Wars and Coups, above at note 59 at 22.
attributed to it by scholars like Hobbes and Locke.\textsuperscript{76} According to the Failed States Index 2010, Côte d’Ivoire is 12th on the list of failed states, its failure mainly due to factors such as delegitimization of the state, factionalized elites, group grievance, and external intervention.\textsuperscript{77}

In response to the latest crisis in Côte d’Ivoire, in 2011 the UN increased its peacekeeping strength from 9,000 to 11,000 troops.\textsuperscript{78} The AU Peace and Security Council established The High Level Panel for the Resolution of the Crisis in Côte d’Ivoire on 28 January 2011; this panel was to travel to Côte d’Ivoire and negotiate a peaceful end to the crisis with the parties concerned.\textsuperscript{79} The president of the ECOWAS Commission stated that ECOWAS was seeking peaceful means to install Ouattara as president and had not decided to use force.\textsuperscript{80} On 11 April 2011, Gbagbo was forcefully ousted by Ouattara’s supporters and placed under arrest. Ouattara was inaugurated as president on 23 May 2011.

The international community was wary of using force in the case of Côte d’Ivoire. This wariness is supported by the illegitimacy attached to the use of force and the desire to exhaust peaceful means of conflict resolution,\textsuperscript{81} and the ability of force to violate human rights\textsuperscript{82} and cause more suffering rather than institute peace.\textsuperscript{83} Furthermore, due to the civil nature of internal

\begin{itemize}
  \item \textsuperscript{76} State failure is one of the root causes of internal conflict, according to CL Sriram and K Wermester “Preventive action at the United Nations: From promise to practice?” in FO Hampson and D Malone (eds) \textit{From Reaction to Prevention: Opportunities for the UN System} (2002, Boulder Lynne Rienner Publishers) 381 at 384.
  \item \textsuperscript{77} Foreign Policy “Failed states index 2010”, available at: <http://www.foreignpolicy.com/articles/2010/06/21/2010_failed_states_index_interactive_map_and_rankings> (last accessed 2 August 2011).
  \item \textsuperscript{80} ECOWAS “Press statement by the president”, above at note 1.
  \item \textsuperscript{81} UN Charter, art 2(4): “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.” UN Charter, art 33(1): “The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.” M Dixon \textit{Textbook on International Law} (2007, Oxford University Press) at 275.
  \item \textsuperscript{83} SJ Stedman “Conflict and conciliation in Sub-Saharan Africa” in ME Brown (ed) \textit{The International Dimensions of Internal Conflict} (1996, MIT Press) 235 at 252.
\end{itemize}
conflict, sending in troops may lead to civilians being targeted as non-governmental opposition forces may form part of the civilian population.84

West African crises have already proven expensive to the international community. Overall the large and expensive UN peacekeeping forces in Côte d’Ivoire, Liberia and Sierra Leone represented an immense expenditure for the international community, with Liberia needing $520 million in stabilization aid for the period of 2004–05 alone.85 Economically West Africa is pivotal to the international community; McGowan posits that “[t]he export of primary commodities in exchange for core manufactures established in the colonial era remains in place.”86 These factors should have induced the international community to seek a speedy, inexpensive and non-military solution to the Ivoirian crisis.

Relevant R2P and Prevention

During the height of the crisis, UN Secretary General Ban Ki-Moon, referring to the concept of responsibility to protect (R2P), stated that the crisis in Côte d’Ivoire triggered an international community responsibility to protect civilians. He made no definitive suggestion of how the UN would engage with and carry out this responsibility. This is an indication of the ambiguity of the secondary responsibility of R2P and R2P in general.

R2P was formulated by the International Commission on Intervention and State Sovereignty (ICISS) and modified and accepted by state representatives at the World Summit 2005. Paragraph 139 of the World Summit outcome document states that the international community has a responsibility to protect populations from genocide, war crimes, crimes against humanity and ethnic cleansing, where the parent state is unwilling and/or unable to do so.87

R2P is divided into a continuum of three responsibilities: the responsibility to prevent; the responsibility to react; and the responsibility to rebuild.88 The ICISS report gave priority to the responsibility to prevent as the pivotal part of the R2P continuum.89 It stated that “prevention options should always be

85 McGowan “Coups and conflict”, above at note 22 at 7.
86 Id at 10.
87 UN doc A/Res/60/1. The 2005 World Summit was held from 14 to 16 September 2005; it was a high level plenary meeting meant to be a follow-up meeting to the UN 2000 Millennium Summit at which the millennium development goals were agreed. The agenda was extracted from proposals made by the then UN Secretary General Annan in his report “In larger freedom” and the report of the High Level Panel on Threats, Challenges and Change, titled “A more secure world: Our shared responsibility”. See “The 2005 World Summit: An overview”, available at: <http://www.un-ngls.org/ orf/un-summit-overview.pdf> (last accessed 13 June 2012).
89 Id at xi.
exhausted before intervention is contemplated, and more commitment and resources must be devoted to it”.90

The prevent dimension of R2P resides in the secondary responsibility to prevent in an undefined “international community”, ie the international community as a recognizable and cohesive community or the resulting actions of actors in the international sphere acting independently, interdependently or co-dependently but still on behalf of a overarching “international community”. While the use of military means to halt mass atrocities has been argued to be a right, albeit a contested one, such depth of privilege or obligation is rarely attached to necessary efforts from the prevention of atrocities that (may) occur during internal conflict. Preventive measures are usually not embarked on by states; prevention is perceived mostly as something which should be done, but is not mandatory to be done. It is not argued as an irrevocable obligation but an optional right. In line with the above, political and developmental governance has been cited as a viable means of prevention.91

This article will now address whether, in the case of Côte d’Ivoire, the international community has a responsibility to prevent atrocity by promoting democracy.

THE “RESPONSIBLE” INTERNATIONAL COMMUNITY

The first question to be answered is: who is the international community in relation to Côte d’Ivoire? International community can be achieved through interworking of various types of bodies who may be instrumental to preventive activities. Bodies such as individuals, states, international organizations (governmental or otherwise), non-governmental organizations (NGOs) and civil society are all part of a cohesive whole international community. The, UN, AU and ECOWAS have been involved on an African level in managing Ivorian conflict. During the 2002 internal conflict, France and ECOWAS mediated and intervened to quell the violence.92 These examples show that the international community, cohesively formed, has been discharging in part a responsibility to react to crisis. What then becomes of its responsibility to prevent?

For the purpose of this article, the international community is defined as the conglomeration and effective, co-operative cohesion of all entities mentioned in the previous paragraph.93 The ICISS report itself mentions that prevention can only be undertaken by strategic co-operation between “States, the

90 Ibid.
92 Olonisakin “Windows of opportunity”, above at note 73 at 192.
93 ME Brown “Internal conflict and international action” (1996) in Brown (ed) The International Dimensions of Internal Conflict, above at note 83, 603 at 603, defined
UN and its specialized agencies, the international financial institutions, regional organizations, NGOs, religious groups, the business community, the media, and scientific, professional and educational communities.  

Nevertheless, we should not forget that the international community is largely a hypothetical community or at best a theoretical community of uneven and sometimes unwilling or reluctant members. The problem with the use of the phrase “international community” is that it invites obfuscation; presently the “international community” has no apparent recognizable legal personality. Neither is there any agreed definition of what it is. Perception of who the addressee may be, or whose action may be desired in response to a call to the “international community”, differs. There is no provision in international law for the establishment of this community, though the UN Charter has been said to be a constitution of the international community. Nevertheless, this international community is the holder of much of the secondary responsibility of R2P, i.e., the responsibility that accrues to the international community if a parent state fails to protect its own people from the four R2P crimes.

The definition of “international community” is primarily obscured by the fact that actors in international relations and politics comprise not only states but also intergovernmental organizations, NGOs, civil society organizations (CSOs), transnational companies and other such actors who are capable of incurring liabilities and impacting policy changes in international law. The international community as a product of the international society comprises and receives the effects of the actions of not only state actors but also organizations and individuals. Who the international community is, taken from a literal interpretation of community, could be obscured by the expectation or the reality of all these entities acting together. This is further obscured by a differentiation of the entities that can act and those that cannot, those that will act and those that will not. The fact that the legal burden put on individuals, states and organizations differs makes it an uneven community of personalities, though this does not affect the legal force of any agreement concluded between such personalities. There is a significant difference between the literal meaning of the phrase and the expectations

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ternational community broadly as the collective of “sovereign states, international organizations, and nongovernmental organizations”.

94 ICISS The Responsibility to Protect, above at note 88 at 26–27, para 3:36.
97 Weiss “Researching humanitarian intervention”, above at note 95 at 423.
of the drafters of legal documents. This expectation is affected by capacity and political will.

Furthermore, the drafters of the ICISS report, the World Summit outcome document and UN Security Council resolution 1674\(^9\) may have had divergent views on who the actors should be when they used the phrase “international community”. Even though it may be regarded as a binding resolution, resolution 1674 only reaffirmed the provisions of paragraph 138 and 139 of the World Summit outcome document. The World Summit outcome document, particularly paragraph 139, merely states that the international community has a responsibility to protect populations from the four crimes of R2P\(^{100}\) where the parent state is unwilling and/or unable to do so. While the binding nature of the UN Security Council resolution may be of potential significance to the acceptance of the responsibility to protect, it does not add much to the definition of the international community in respect of the responsibility to protect.

To this end there is increasing debate in international law, international politics and international relations on the possible existence of a unitary actor on the international scene known as the “international community” or an emergence of an international collective order.\(^{101}\) It is almost logical that the use of the word “community” precludes it from being an actual unitary actor. Menon constructs this as a conception of a virtual “international community, unified by a conception of the common good and with the means to prevent egregious violations of its core principles”.\(^{102}\) One can thus imagine that the entities examined above are unified by a conception for a common good, and that they have the means and inclination to prevent the grave violations of international law and international human rights law, and the commission of the four crimes of R2P.

While the obligations of sovereign states in this regard are quite clear, other members of the international community also have a duty under international law to protect international law. Thus, international organizations, international governmental organizations (IGOs), NGOs, CSOs and individuals should not be involved in any activity that would amount to any of the four

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\(100\) The four crimes are: genocide, war crimes, crimes against humanity and ethnic cleansing.


\(102\) Menon, id at 237.
crimes; neither may they, by omitting to act, permit the commission of any of those crimes. International law is, however, vague about what overt action non-state members of the international community should take to maintain peace, security and international order.\textsuperscript{103} Despite this, many of these non-state actors, most especially IGOs and some NGOs, have accepted rights and legal personality in international law.\textsuperscript{104}

The International Court of Justice in its advisory opinion on \textit{Reparation for Injuries Suffered in the Service of the United Nations 1949} decided that the UN Charter bestows upon the UN rights and obligations which differ from those of its members. The charter, furthermore, confers upon the UN the important political tasks of maintaining international peace and security.\textsuperscript{105} The court concluded that, as the UN possessed rights and obligations, it had at the same time a large measure of international personality and the capacity to operate upon an international plane.\textsuperscript{106} This same analysis applies to the AU and ECOWAS, as both bodies have rights and duties different from those of their members and political tasks conferred on them by their members.\textsuperscript{107} This confers international responsibility on both these African organizations.

Without the unified action of an evolving and emerging international community, it may be difficult to achieve proficient conflict and mass atrocity prevention in Côte d’Ivoire. Accurate analysis of early warning signs is paramount to a precise prescription of preventive action. Such analyses require co-operative interaction between and among the component members of the international community, not only from NGOs and IGOs but also from local CSOs and individuals residing in Côte d’Ivoire. The focus should be broad based and not solely on the installation of Ouattara as president to the detriment of a more complex form of prevention.

There exist great ethnic, historical and national divisions, poverty, infrastructural and technological incapacity in Africa. This is evident in the concept of \textit{ivorité} which erupted from economic disparities but is still rooted in historical and ethnic differences. Therefore, the theory of “African solutions for African problems” cannot work without international sustenance and authorization.\textsuperscript{108} This is because some of these problems are due to a localized

\begin{thebibliography}{99}
\bibitem{104} C Brölmann “The International Court of Justice and international organisations” (2007) 9/2 International Community Law Review 181 at 182.
\bibitem{106} Id at 178–79.
\bibitem{108} CI Obi “Economic Community of West African States on the ground: Comparing
system of problem solving. International regulation and law prohibit the commission of international crimes within Côte d’Ivoire and external to the country. While members of the international community close to the cause of the conflict (AU, ECOWAS, neighbouring states, CSOs and NGOs) may be better placed to act when crises occur, they are usually unable to take the required action because they lack the resources to do so. Furthermore, their closeness hampers their analytical ability to evaluate the problems and solution unemotionally and they may not always operate within the limits of international law or within the interests of vulnerable populations. Neighbouring states such Liberia and Guinea are more interested in restricting the flow of refugees; the action of states such as Mali and Burkina Faso may be biased in favour of ethnic Ivoirian allies, while the positions of regional hegemonies like Nigeria are often open to abuse.

There is therefore a danger that the wider international community will always step back from its responsibility to prevent crises such as that of Côte d’Ivoire; action may not be taken to prevent the four crimes or preventive action may engender more harm than succour. There is a secondary danger that instability in Côte d’Ivoire may spread to other parts of the continent.

Generically, the UN forms the nucleus around which the state and non-state actors exhibit traits of community in the organism known as the international community. In cases where the UN is unable, unwilling or not suited to act as the nucleus or pivot, the organism changes character. For example when a regional organization such as ECOWAS exhibits the characteristics of the international community within its region without recourse to the UN, except for retrospective approval, binary fission occurs, splitting the international community into different organisms with different self-interests. This in itself may have a negative effect on other volatile situations around the world. The role of the UN as the central guardian of international security is significant. Although it may be that in some situations the UN can only play a supervisory role, it should never be left out of the equation. Nevertheless, none of the documents on R2P give a clear indication of the nucleus entity of R2P, especially in non-military preventive action; the nucleus is pivotal in deciding what the international community is in relation to R2P and if that entity remains static or changes on a case-by-case basis. On the one hand the notion of “African solutions for African problems” may seem to provide a philanthropic rationale to such regional action; realistically however, states in West Africa have more to lose from instability in Côte d’Ivoire than other states

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from other parts of Africa or outside Africa. Nevertheless, all of the international community is bound to observe international law.

THE RESPONSIBILITY OF THE INTERNATIONAL COMMUNITY IN INTERNATIONAL HUMAN RIGHTS LAW

Primarily, the international community is bound to prevent mass atrocity and inherent conflict. It is enshrined in the principles and purposes of the UN Charter that disputes should be settled peacefully to ensure the maintenance of international peace and security.111 This provision and principle has been said to amount to a *jus cogens* [peremptory norm] of international law.112 This is because the peaceful settlement of disputes or prevention of violent conflict is in the interest of the international community and necessary for the maintenance of public order, which is in the legal interest of each state.113 In this case, various issues for dispute have arisen, not least of which is who won the 2010 elections. Other pre-existing disputes include uneven development, the issue of *ivorité*, the disenfranchisement of parts of the populace and liability for crimes arising from the 2002 conflict.

Furthermore, there is a legal obligation for members of the international community to prevent violations of international human rights and thus prevent the commission of the four crimes of R2P, because the four crimes comprise human rights violations. Prevention of these crimes is interconnected with preventing the violation of human rights contained in international human rights treaties.114 For example, in order to prevent genocide, it is necessary to prevent the violation of the right to life and/or the right to be free from torture.116 Other human rights applicable to the four crimes of R2P include: the right to a fair trial (crimes against humanity and ethnic cleansing); the prohibition of slavery (war crimes and crimes against humanity); the right to freedom of movement (war crimes, crimes against humanity and ethnic cleansing); and the right to favourable conditions of life.

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111 UN Charter, art 2(3).
113 Id at 617–18; Vienna Convention on the Law of Treaties, art 53.
115 ICCPR, art 6.
116 Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment 1984, art 1.
117 ICCPR, art 9.
118 id, art 8; Slavery Convention 1926 (approved by UN General Assembly res 794 (VIII) of 23 October 1953), art 1.
119 ICCPR, art 12.
(all four crimes). Therefore the obligation to prevent these crimes under R2P would also present a duty to prevent the composite parts as well. Gibney has suggested that there is an implicit obligation to prevent the occurrence of human rights violations; according to him it is only logical that an international convention which outlaws an act intends to prevent the occurrence of that act. To understand this further, we have to examine the obligations states and the international community have in international human rights law. The obligations of states and the international community arising in the protection of human rights are usually divided into three levels: an obligation to “respect”; an obligation to “protect”; and an obligation to “fulfil”.

These obligation levels have been researched mainly in relation to economic, social and cultural rights. They are closely related to the Roman tradition of obligations which are divided into three levels: “not to do, to do and to give”. The Committee on Economic, Social and Cultural Rights has adopted them in many of their general comments. Nevertheless, they equally apply to civil and political rights; this article makes no distinction between the two categories of rights. The main focus here is the obligations to “respect” and “protect” rights.

Eide states that the obligation to “respect” a right requires the duty bearer “to abstain from doing anything that violates the integrity of the individual or infringes on her or his freedom”. This obligation to respect is mostly treated as a negative obligation, ie action the duty bearer is meant to refrain from...
doing; it is a duty not to violate rights.\textsuperscript{128} Strauss has considered negative obligations to be part of the responsibility to prevent; he states that, as part of their responsibility to prevent, both the state and the international community should refrain from acts that could result in any of the four R2P crimes.\textsuperscript{129} In this formulation it can therefore be assumed that a responsibility to prevent means that the duty bearers should “avoid depriving” populations or individuals of the component rights to the R2P crimes. This is considered to be the major thrust of a responsibility to prevent: a negative obligation on states and the international community to refrain from committing genocide, war crimes, crimes against humanity and ethnic cleansing. When viewed from a human rights perspective, it is an obligation not to violate any of the component rights that comprise the R2P crimes. One may well ask if this is the sole legal content of the responsibility to prevent. To answer this query, we have to consider the content of the obligation to protect.

The obligation to “protect” a human right, as stated by Eide, requires measures to prevent “other individuals or groups from violating the integrity, freedom of action, or other human rights of the individual”.\textsuperscript{130} When contrasted with the obligation to respect, this obligation presents a positive obligation to enact laws and create mechanisms. Both expositions also contain the word “prevent”. On the other hand, when ICISS expounded on the responsibility to prevent, it did not propose a critical legal definition of this responsibility but suggested forms in which the responsibility could be exercised. ICISS suggested developmental assistance, advancement of democratic rule, mediation efforts, inducements and similar measures to prevent the violation of human rights.\textsuperscript{131} It also recognized the UN resolutions in support of prevention as steps in the right direction.\textsuperscript{132} It should be noted that actively realizing rights would prevent violation of those rights; in a small measure, observing the obligation to fulfil human rights may therefore be a means of prevention. One major difference between the ICISS formulation on prevention and the obligation to protect is the mention of third parties. This could be seen as a question of perspective. Eide was primarily considering the protection of individual human rights within a state, and subsequently by the international community, similar to R2P. However, the obligation to protect assumes that the state is practising its sovereign responsibility and is only hampered by incapacity. In this formulation, only third parties would violate human rights. On the other hand, the secondary responsibility of

\begin{itemize}
\item \textsuperscript{128} H Shue \textit{Basic Rights: Subsistence, Affluence, and US Foreign Policy} (1996, Princeton University Press) at 36.
\item \textsuperscript{129} E Strauss \textit{The Emperor’s New Clothes: The United Nations and the Implementation of the Responsibility to Protect} (2009, Nomos) at 31, 33 and 34.
\item \textsuperscript{130} Eide “The new international”, above at note 122 at 14–15; Eide “Realization of social”, above at note 127 at 37.
\item \textsuperscript{131} ICISS \textit{The Responsibility to Protect}, above at note 88 at 19, paras 3.3 and 3.4.
\item \textsuperscript{132} Id at 19, para 3.5.
\end{itemize}
R2P is concerned with situations where the state is irresponsible and may, in addition to third parties, be the perpetrator of human rights violations.

Specifically targeted instruments, like the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, are an indication that the international community is discharging part of its responsibility to prevent. These conventions primarily provide rules for the protection of human rights by stating what a human right is and exhibiting what would amount to a violation. Furthermore, the conventions have, within their corpus, provision for monitoring and/or ensuring the adherence of members states. The UN also has subsidiaries to monitor human rights implementation: the Committee on Economic and Social Rights was established by the Economic and Social Council to monitor national implementation of rights and the Human Rights Council embarks on a periodic review to estimate each state’s fulfilment of its human rights obligations.\(^{133}\) However, without a guarantee that these laws work, discharge of the initial part of the responsibility (prevention) is inadequate. On the other hand, there is only so much that the UN and its subsidiaries can do to ensure compliance by member states if states do not wish to be bound or do not consider it in their best interests to be bound. In fact, in a situation such as that of Côte d’Ivoire which ostensibly has two governments, it is difficult to ensure that either Gbagbo or Ouattara abides by international human rights law.

**TWO MEANS OF RESPONSIBLE INTERNATIONAL COMMUNITY PREVENTION**

**Promotion of human rights**

The conflict in Côte d’Ivoire has some of its roots in the human rights violations instituted against northern Ivoirians.\(^{134}\) However, it may be too oversimplistic to assume that complete adherence to international human rights will eliminate all possibility of conflict.\(^{135}\) While promoting the protection of human rights may be at the core of R2P, using the promotion of human rights as a means of implementing R2P creates another legal quandary. International law is not explicit when defining the extraterritorial obligations of states to prevent violations of human rights in the territory of other states.\(^{136}\)

Furthermore, the protection of human rights is primarily the obligation of domestic states; any attempt by the international community to ensure the adherence to human rights within the territory of a sovereign state may be seen as an imposition of foreign precepts on people unwilling to accept

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133 UN General Assembly res 60/251, para 5(e).
134 Toungara “Ethnicity and political crisis”, above at note 63 at 68.
them as their own. However, as has been discussed above, the international community has an obligation to prevent human rights violations. Some of the violations that are evident in Côte d’Ivoire are the disenfranchisement of a large part of the population and the institution of two presidents contrary to the political wishes of the electorate. The international community has a responsibility to ensure that these violations, among others, do not continue to occur in Côte d’Ivoire.

**Encouraging democratization without the use of force**

Due to the nature of post-colonial West African states, democratically elected governments recognized by the rest of the world are quite a new introduction to the political landscape.\(^{137}\) Democracy has been encouraged because “good governance is a crucial element for conflict prevention, while autocracy has been shown to fuel conflict in a number of cases”.\(^{138}\) Furthermore, at the end of the Cold War, the West prescribed democracy as the major solution to Africa’s problems;\(^{139}\) this led to the withdrawal of aid from Côte d’Ivoire until it conducts elections that are acceptable to the international community.\(^{140}\) It is also essential to elect the right people after a conflict.\(^{141}\) This presupposes of course that democracy is the only form of “good governance”. Good governance itself has been cited by the International Monetary Fund (IMF) and World Bank as a requirement for the economic development of any state.\(^{142}\) According to Kaufmann and Kraay, the crux of good governance is “a capable state that is accountable to citizens and operating under the rule of law”.\(^{143}\) The IMF and World Bank encourage good governance that can be achieved through accountability, political stability, adherence to the rule of law, government effectiveness, the ability to promote private sector development, transparency and the eradication of corruption.\(^{144}\)

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139 Chirot “The debacle”, above at note 6 at 67.

140 Toungara “Ethnicity and political crisis”, above at note 63 at 71.

141 J Hanlon “Is the international community helping to recreate the preconditions for war in Sierra Leone?” (2005) 94 The Round Table 459 at 461.


143 Kaufmann and Kraay, id at 2.

Admittedly, the accepted method of achieving such accountability is through periodic democratic elections as enshrined in article 25 of the ICCPR. However, the choice of democracy for post-colonial African states has been rife with controversy. It has been suggested that democracy “must ultimately be the choice and responsibility of those who are to live under it rather than outsiders”. Therefore, the international imposition of democracy on people who have not chosen to have democratic government denies them the freedom of choice and the fundamental freedom of existence. This makes a mockery of the intentions of democracy. The imposition of democracy can become a violation of fundamental freedoms. Elections themselves are conflict-inducing in a tense society undergoing fragile or unstable peace: elections have sparked inter-group conflicts and political activities and discrediting of political opponents revive hidden conflicts. While it may be presupposed that periodic elections are a sign of peace, they may not specifically answer a people’s problems but highlight differences and heighten tensions as local internal states exist alongside the nation state. They may also serve as a smokescreen for the international community to be obscured from human rights violations and bad governance occurring behind the guise of continuous “peaceful” handovers. This is not to deny the fact that bad governance in itself may cause the occurrence of the four crimes of R2P, but to emphasize the fact that good governance and apparent democracy are not synonymous. Ogundiya states that good governance is impossible where democracy is not comprehended by a political elite who are unable to achieve the essence of the state. It is good governance that should be encouraged in whatever form this may take, as the lack of good governance has been suggested to be a cause of socio-economic instability and conflict in Africa. Every member of the international community can utilize this form of prevention; however it is advisable that this form is appropriately applied. While governmental actors have enough legitimacy and clout to

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146 Id at 729.
150 Ayelazuno, id at 46–47; ICG, id at 1 and 8.
encourage democracy in states, there has to be adequate research and evaluation of the political culture to ensure that democratization does not cause more problems than it solves by hiding atrocities under a façade of acceptability. The veil of elections has to be lifted to ensure that they produce accountable and equitable sovereign governments. Unfortunately, the forceful ousting of Gbagbo was tantamount to the use of force to entrench peaceful democracy, causing the UN and France to distance themselves from the outcome.

INTERNATIONAL COMMUNITY RESPONSIBILITY TO PREVENT IN CÔTE D’IVOIRE: A LOST CAUSE?

Not only has the international community imposed democracy on Côte d’Ivoire by withholding financial aid through the years,\textsuperscript{153} it has chosen a winner for an election without institutionally counting the votes. It is evident that there were inconsistencies in the voters’ registration and election results and irregularities in the electoral process;\textsuperscript{154} the Constitutional Council of Côte d’Ivoire claims that Gbagbo won according to its deductions under Ivoirian constitutional law. The international community seems not to have investigated thoroughly the claims of the Constitutional Council or of the electoral commission before reaching its conclusion.

At the beginning of 2011, protests swept across North Africa and the Middle East. Protesters in countries such as Egypt, Tunisia, Algeria and Libya called for the ousting of their long-reigning autocratic rulers and the entrenchment of democracy.\textsuperscript{155} Without much more than pressure and censure from the international community, these protests seem to have continued through their own internal momentum. The protests in North Africa and the Middle East are examples of internal outcry for democracy, and seem to be a better model for achieving textbook democracy.

\textsuperscript{153} Toungara “Ethnicity and political crisis”, above at note 63 at 71.
Furthermore, democratic elections as prescribed by the international community and international human rights law have been held in Côte d’Ivoire; technically the letter of the law has been fulfilled. However, this does not seem to have solved the problems of imminent violence on ground. In fact there is no assurance that the international community sought anything other than the removal of Gbagbo and the institution of Ouattara as president. There is no indication that this will solve the problems that existed in Côte d’Ivoire before the 2002 conflict and after the resolution of that conflict. One civil society co-ordinator has asserted that the welfare of Ivoirians has been bypassed in favour of ensuring that elections are held. Gbagbo risked increasing isolation from the international community as he held fast to the path he chose; however, his position was not as precarious as that of the people of Côte d’Ivoire for, while he was and still is protected by the trappings of power, Ivoirians suffer more from isolation. A return to internal conflict seems imminent; an influx of refugees arrived in neighbouring Liberia which was not completely able to cater for the refugees itself. The international community’s approach to the Ivoirian crisis is an episodic one; it looks to cure the effects of the current crisis rather than taking Ivoirian history as a whole and using past and present knowledge to prescribe and implement adequate solutions to the problems on the ground. There is no indication that Ouattara as president will end Ivoirian woes; he was prime minister from 1990 to 1993 under Houphouet-Boigny. As noted above, Côte d’Ivoire’s high position on the failed states index can be traced to delegitimization of the state, factionalized elites, group grievance and external intervention. These problems cause democracy to be eschewed and have to be solved to ensure democracy. Owing to the wide range of conflict prevention methods, those bodies able to use them also come in a diverse range. Prevention cannot be achieved in an impromptu way; the right tools have to be used at the right time, and not the tools available to whichever party is willing or desirous to act. To achieve cohesive action, all organizations and bodies must of necessity play their part consistently to achieve a habitual culture of prevention.

What is the effect of the technical constitutional legality of the election results? Technically, Côte d’Ivoire had two presidents. While statehood can be conferred by international recognition, ideally presidency is conferred by the results of elections. In this case where the international community

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157 Cooke “The election crisis”, above at note 3 at 11.
159 Chirot “The debacle”, above at note 6 at 68.
160 See above at note 77.
recognizes one president rather than the other, there is no legal or historical precedent to equate international recognition with internal legitimacy. On the other hand, there have been many unconstitutional rulers recognized by the international community. Is the international community not paving the way for a dangerous precedent here? Even if the international community believes that a particular election result was wrong, there is no provision in international law for the international community to insist forcefully on the implementation of those election results, contrary to article 2(4) of the UN Charter.

Can democracy ultimately prevent violence? Yes it can, but democracy in the case of Côte d’Ivoire should rise above an exercise upon which the elite embark to satisfy the international community. Neither should the international community be satisfied with apparent and not actual democracy. Voter registration would still be hampered by the latent practice of ivorité. The people of Côte d’Ivoire and their desires should be foremost on the international community’s to-do list; human rights promotion is vital. The international community should engage with civil society on the ground to heal the hurts of disenfranchisement and halt the violence that has resulted from it.

CONCLUSION

The international community has an obligation to ensure the observance of international law and international human rights law. R2P emphasizes this. Any attempt to ensure the entrenchment of democracy in Côte d’Ivoire should not only avoid the commission of R2P crimes but be in accordance with the principles of the international community recognized in its international law. As a test case for R2P, Côte d’Ivoire highlighted the deficiencies of contemporary international relations to ensure the observance of obligations in international law highlighted by the R2P “prevent” dimension.

Therefore, for Côte d’Ivoire as a sovereign state and for its people, the implementation of R2P specifically and of international law generally has been inadequate. Côte d’Ivoire’s history and present crisis result from both negative and positive influences from the international community as well as bad leadership and imprudent fiscal policies. When these issues culminated in a full-blown civil war, the international community’s response was to recommend and implement a democratization programme. It is evident from the fallout of the election that the “democracy” cure for Côte d’Ivoire’s malaise did nothing to ameliorate Ivoirian ills but exacerbated divisions and dissatisfaction on the ground. The failings of the international community in this case appear to exist not only in misunderstanding the content of its responsibility to prevent but also in a lack of preparedness to perform this responsibility. Finally, while democracy is a goal that should be desired by all sovereign nations, meaningful democracy can by no means be imposed but must evolve in tandem with the evolution of any sovereign nation.