



Kant, Democracy and Liberalism in International Law

- Tanishq Mishra (III B.A.LL.B.)

The modern relationship between democracy and international law still cannot be divorced from the oft-cited & debated proposition that democracies do not go to war with each other. This foundational assumption of modern political thought goes back to Immanuel Kant's 1795 essay on perpetual peace. Since the 1990s Liberal academics in international law have made a state's internal governance a subject of their analysis. The advancement of this liberal theory has manifested voluminous academic development pertaining to the role of democracy in international law. The liberal theory of international law in its early form led to the (arguably false) assertion that democracies are more likely to comply with International law. These assertions have now been truncated to a more refined submission that democracies would be more likely to commit to international regimes along with having a higher affinity for creating structures like courts and international organizations for the purpose of monitoring their

behavior, which in turn would reinforce compliance. These academic developments warrant an analysis of the work that first laid down (though rudimentarily) the foundation of the liberal theory of International law- perpetual peace.

Kant's essay rejected the then-prevailing view of Grotius that war was restricted by legal rules. Instead, he articulated a vision of international law as cooperation. He viewed a society of republics as necessary, but not sufficient, for the achievement of world peace stating that international cooperation among these states was also a necessary condition.

Kant's emphasis on cooperation foreshadows a "league of nations" with a special authority in articulating international law. "The law of nations," he wrote, "shall be founded on a federation of free states". By federation Kant does not allude to a single world government but rather a consortium, in which diverse states agreed to refrain from war. He expected that such a group would gradually expand to end war.

The essay further calls for a "cosmopolitan" international law, in

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The UN Subcommittee on Prevention of Torture (SPT) will first visit the State of Palestine from 10 to 21 September to assess measures taken to protect people deprived of liberty from torture and ill-treatment. The SPT will also assist the Palestinian Authorities on the establishment of a national preventive mechanism (NPM), a monitoring body that all States parties to the Optional Protocol to the Convention against Torture (OPCAT) must establish. For more information, click [here](#).

Methamphetamine trafficking in Afghanistan and neighbouring countries is surging, according to a report published on Sunday by the UN Office on Drugs and Crime (UNODC). Seizures suspected to have been reported from Eastern Africa, Southeast Asia, and the European Union. "Regional coordination targeting the diversion and smuggling of chemical precursors is essential to stopping the continued expansion of illicit methamphetamine manufacture in and around Afghanistan." For more information, click [here](#).



which all states agree to provide hospitality for foreigners, to promote beneficial exchanges. This call anticipates the minimum standard of treatment in international economic law and is connected with Kant's dictum that "the commercial spirit cannot coexist with war."

Thus, the principles foreshadowed by Kant remain evident in understanding the role of democracy in international law. This is evident from the works of Fernando Tesón who articulates a normative "Kantian Theory of International Law" in which he argues in favour of a necessary link between the political triumph of human rights, democracy, and the theoretical foundations of international law and politics.

Democracy Withheld: The Declining Media Freedom in Democratic Countries

- Sana Kulkarni (III B.A.LL.B.)

Sometimes mere words are enough to shatter the otherwise quintessential display of a democratic country. Noted populist leaders from around the world heading large democracies lack the spine to bear even the

attempt of fair dissent. The decline of a free press and the increase in threats to the safety of journalists is a global phenomenon, sharply visible in backsliding democracies and recalcitrant totalitarian States. Starting with Xi Jinping's crusade against journalism making China the world's biggest prison of journalists and press freedom advocates, to Myanmar, which became an information black hole since the coup of February 2021. The acquisition of media outlets by oligarchs who maintain close ties with political leaders also dangerously restricts the free flow of information as seen in regimes such as India, where governmental persecution of independent media and opaque censorship of investigative journalism has intensified.

Free speech is a matter of human rights, according to Article 19 of the Universal Declaration of Human Rights, Article 19 of the International Covenant on Civil and Political Rights and Article 10 of the European Convention on Human Rights (ECHR) however states sometimes censor, and criminalize, a wide range of online content via vague or ambiguous laws prohibiting "extremism,"

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Norway may become the first country to start commercial deep sea mining, if parliament approves a government proposal to open an offshore area larger than the United Kingdom, despite international calls for a global moratorium. The government's proposal has been criticised by some green groups, such as the World Wildlife Fund, but also by its own environmental agency, which said the gaps of knowledge about deep sea biology were too big to decide on the opening. For more information see [here](#).

Governments have no time to lose when it comes to implementing a new global ocean treaty to protect the high seas as threats from human activities intensify, a report by environmental group Greenpeace said on Thursday. In March, more than 100 countries completed a groundbreaking treaty to protect the high seas after years of negotiations. It was adopted at the United Nations in June and states can signal their intent to ratify it at the U.N. General Assembly on Sept. 20 For more information see [here](#).



“blasphemy”, “defamation”, and “propaganda”. In The Sunday Times V. United Kingdom, the first judgment concerning freedom of expression and information via the press, the European Court of Human Rights held that the interference did not correspond to a social need sufficiently pressing to outweigh the public interest in freedom of expression within the meaning of (ECHR) and such interference did not meet the “necessary within a democratic society” standard.

The Radio Broadcasting Company B92 AD v. Serbia involved disproportionate civil sanctioning for a TV news broadcast and publication of an online article defaming a public official. The applicant company alleged that it interfered with its right to impart information which was unwarranted in a democratic society. The European Court of Human Rights held that the courts had overstepped their limited leeway to restrict discussion on matters of public interest and the interference with the applicant company’s freedom of expression had been disproportionate to the aim pursued and not “necessary in a democratic society”, in violation of Article 10 of the ECHR.

Freedom of the media is essential to enable democratic and participative societies. Journalists and the media are integral to ensuring transparency and accountability from public authorities. When journalists are threatened, attacked or otherwise forced into silence, the truth dies. We must keep it alive.

How Democratic Can the Propagators of Democracy Be? - Vidhi Khimavat (V B.A.LL.B.)

Promoting democracy is an institutional goal of the United Nations (UN) and other International Organizations (IOs) like the European Union (EU). While certain IOs have incorporated democratic features in their decision-making processes, such as the UN General Assembly which provides each member state with one vote, regardless of its size or power, others like the UN Security Council and the EU Council of Ministers have weighted voting. The need for establishing and maintaining a democratic structure in IOs is long felt. Concerns about the rise of unilateralism and disregard for multilateralism by certain powerful states when it comes to problem-

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The UN World Food Programme (WFP) said on Tuesday that a historic funding shortfall was forcing it to “drastically” cut rations in most of its operations, potentially pushing an additional 24 million people to the brink of starvation. Experts at WFP fear that a humanitarian ‘doom loop’ is being triggered, where the UN agency is being forced to save only the starving, “at the cost of the hungry.” Unless there is investment in early response and community resilience “we continue the cycle of emergency to emergency.” For more information see [here](#).

The United States-Mexico border is the world’s deadliest land route for migrants, with at least 686 deaths and disappearances last year, the UN migration agency (IOM) said on Tuesday. Agencies, including IOM and the UN refugee agency (UNHCR) have been advocating for a “collaborative, comprehensive and regional approach” in responding to humanitarian and protection needs of people on the move across the whole region. For more information see [here](#).



solving and global governance, unequal representation where a few powerful and developed states dominate decision-making, and lack of accountability and transparency, have questioned the legitimacy of these IOs.

As Thomas Zweifel has noted “Democracy is on the rise as a core value and the dominant governance principle worldwide [...]. But international institutions have not necessarily followed suit; as states transfer more and more rule-making powers to them, they suffer from a growing crisis of legitimacy.”

Two categories of hypotheses attempt to give an explanation for this. Exogenous explanations argue that IOs mirror the prevailing power dynamics and values in the global system, rendering reform improbable, if not entirely unfeasible. While the majority of realists contend that the global status quo is upheld by the equilibrium of power among powerful states, some liberal theorists posit that it results from an increasing schism between fragile democracies and strong dictatorships.

On the other hand, endogenous explanations postulate that IOs are inherently lacking in democratic attributes. This perspective, referred to as the 'skeptical view,' was initially put forth by Robert Dahl, who argued that IOs structured around democratic ideals would face significant challenges in functioning effectively as fundamentally they are opaque 'bureaucratic bargaining systems.' Consequently, such organizations would inherently lack mechanisms for democratic control and accountability.

As a solution to these arguments, scholars have suggested that methods to enhance the accountability of IOs and curtail their arbitrary exercise of power do not necessarily have to adhere to democratic principles. On the other hand, Robert Dahl has suggested that rather than being thought of as global democracies, IOs should be seen as global polyarchies.

What he essentially means by a global polyarchy is the acquisition of democratic institutions within a political system that fosters the

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UN-appointed independent human rights investigators told the Human Rights Council on Monday that Myanmar's people continue to suffer deeply from the effects of horrific crimes committed by the country's military, amid intensifying violence. Moreover, Some 10,000 Rohingya people are believed to have been killed, with more than 300 villages burnt to the ground and over 700,000 forced to flee to Bangladesh in search of safety. For more information see [here](#).

The UN expressed concern over Russia's holding of "elections" in areas of Ukraine currently under Moscow's military control and condemned any actions that could further heighten tensions. "These so-called elections in the occupied areas of Ukraine have no legal grounds," Assistant Secretary-General Miroslav Jenca told the Security Council. "We also recall that, as the occupying power, the Russian Federation is obligated under international humanitarian law to respect, unless absolutely prevented, the laws of Ukraine in force in the areas that it occupies." For more information see [here](#).



participation of a plurality of actors. It describes democratization as a process in contrast to democracy itself. Key elements include universal suffrage, fair electoral representation, autonomous societal actors, accountable government, and free access to information. Polyarchy, thus, is a prospective solution for the IOs and serves as an empirical and normative framework for assessing democracy without having a higher degree of centralized authority that could potentially face significant resistance from sovereign states.

However, the question remains if the IOs should adopt these alternative government models to eradicate the persisting challenges of legitimacy or should these institutions inculcate values of democracy as strictly as they themselves propagate globally.

Undermining Democracy: Analyzing the Impact of Transnational Corruption

- Shreya Basu (III B.A.LL.B.)

Currently, the only comprehensive convention against corruption in international law is the United

Nations Convention Against Corruption (UNCAC). The UNCAC is the product of the Ad Hoc Committee of the United Nations Office on Drugs and Crime (UNODC). It focuses on:

1. The prevention of corruption,
2. Enforcement of the law and criminalization,
3. International cooperation,
4. Asset recovery,
5. And an exchange of information as well as technical assistance.

Currently, 189 countries are party to this convention. The convention assigns criminal liability to corrupt persons and attempts to penalize them through appropriate punishments that fall within the ambit of the right to life in the UDHR. All acts of corruption are to constitute crimes and States are required to prosecute them and provide remedies. Article 11 of the UNCAC additionally provides for the right to a fair trial and due process. However, most States in the Global South lack judicial infrastructure or competence to carry all these out effectively. Precedence given to the punishments given in this convention of domestic law depends on whether State

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UN experts have criticised a new law drafted in Iran's parliament that sets out severe punishments, including 10-year imprisonment, for those who do not wear the mandatory hijab. The bill, titled the 'Bill to Support the Family by Promoting the Culture of Chastity and Hijab', penalize those that serve women without hijab. UN experts have stated that the law "could be described as a form of gender apartheid, as authorities appear to be governing through systemic discrimination with the intention of suppressing women and girls into total submission". For more information see [here](#).



obligation is fulfilled or not under Article 5. In case this obligation remains unfulfilled, The UNCAC is the first convention of its kind to discuss asset recovery (Article 57). It provides several remedies to the same; for example, property that is confiscated in cases of embezzlement is returned at the request of the particular state.

On 16 August 2022, a deal was signed between Uzbekistan and Switzerland for the recovery of confiscated assets through the establishment of a trust fund, which would thereafter be utilized for charity in [Uzbekistan](#). In a more recent pending case, Equatorial Guinea initiated action against France in the ICJ under Article 57 for the same, however, the result highly depends on France's cooperation with international [law](#).

It is to be noted that Article 57 leaves asset returns to the discretion of the State, and the state might not have the political and economic power to actually do so. It has no provisions for enforcement for lesser developed countries and judgments might also be obstructed due to a regime change, or absence, flight, or death of the accused.

Developing countries have advocated for amendments to improve the UNCAC although coordination in the international community is crucial for the implementation of these changes. There have been frameworks such as the [GFAR Principles](#), and the [OHCHR Recommended Principles on Human Rights and Assets](#) to name a couple. Corruption undermines the very pillars that democracy is built on - sowing public distrust in the government and its institutions, influencing social welfare policymaking to suit the interests of a few and erasing accountability and transparency in the government [system](#). Adversely affecting the development of all countries, not just resource-scarce developing ones, the UN must take into consideration the additional frameworks by member States and focus on enforcing them to successfully achieve its goal of eliminating corruption once and for all.

Information Warfare: The Democracy Malware

- Manasi Barve (V B.A.LL.B.)

In today's digital age, information has become a weapon more powerful than ammunition itself.

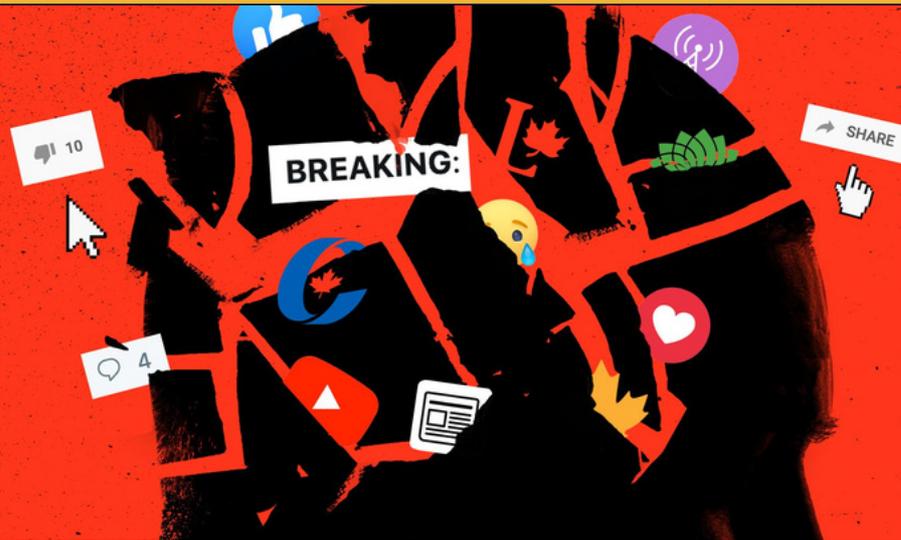
Upcoming Activities

Asia/Pacific Conference: Law and Technology in a Changing World

In the Asia/Pacific 2023 Fall Conference in Seoul, South Korea on Law and Future of Technology from Oct. 10-13, 2023, we will discuss current issues facing businesses involved in high-tech, covering everything from artificial intelligence and cybersecurity to biotechnology and digital platforms. More details are available [here](#).

Call for Papers: The University of Coimbra Institute for Legal Research, [UCILeR](#), Portugal.

[UCILeR](#) is an investigation center devoted to the analysis of the legal implications and possible solutions for societal challenges. Proposals should be submitted no later than 20 September 2023 by e-mail to dulcel@fd.uc.pt and paulavit@fd.uc.pt. The proposals should include: the proposed title; an abstract of no more than 300 words; Details can be found [here](#).



Information warfare is a term used to describe the collection, distribution, modification, disruption, interference with, and degradation of information to gain some advantage over an adversary. Disinformation is a scheme used to conduct this information warfare wherein, a piece of knowingly false information is widely distributed to harm the aimed entity.

Election meddling is the prime aim of disinformation spread. It helps in altering voter mindsets, controls the political atmosphere of a country and ultimately affects its sovereignty & independence. For instance, Russia significantly manipulated the 2016 U.S. Elections by using tactics like voter manipulation through disinformation. This has been said to have significantly benefited the Trump Government. According to a report by the Canadian Centre for Cyber Security, almost 88% of the world's cyber threat activities since 2010 have strategically targeted democratic political processes to influence their outcome. These practices undermine electoral processes by affecting citizen's right to making an informed decision. Disinformation not only affects voting patterns but also

instills distrust in democratic institutions causing deepening tensions and polarization. This distrust hampers the effective functioning of public institutions like Governments and Courts.

One solution to the problem of disinformation has been proposed by the inoculation theory which aims to reduce public susceptibility to disinformation by fostering scepticism, encouraging critical thinking and leading them to question the accuracy of their sources. Various nations like Canada, Brazil, and Australia have in place legislative actions to combat disinformation. The EU has created the East StratCom Task Force to identify disinformation and fake news and to notify the media and public about it.

On an international scale, although the Tallinn Manual and Budapest Convention address issues related to cybercrime and cyber attacks, none of them address disinformation. However, the Joint Declaration on Freedom of Expression and "Fake News," Disinformation, and Propaganda (2017) addresses this. It provides that State actors should not knowingly indulge in the spread of

Upcoming Activities

Symposium on International Law and Maldives Navigating Geopolitics, Trade and Sovereignty.

The Faculty of Shariah and Law, Villa College, Maldives is hosting the Symposium on 20-21 December 2023 in Malé, Maldives. It aims to provide a platform for scholars, practitioners, policymakers, and researchers to engage in thoughtful discussions regarding the legal dimensions of the Maldives' engagement with international law. For details click [here](#).

Accountability for the Crime of Aggression Conferences

Twin conferences are being organized by International Law and International Relations of the Faculty of Law of the University of Vienna and the Department of International Law of the Faculty of Law, Charles University (Prague) focusing on current legal developments in the enforcement of the crime of aggression. For more information, see [here](#).



disinformation or propaganda and ensure free speech and expression. On the contrary, this declaration does not have a strong enforcement mechanism, rendering it inefficacious. Notably, the principles of Sovereignty and Non-Intervention do help determine States' obligations but a lack of clearly established obligations for states renders international law insufficient.

The fight against disinformation is indeed a challenging one. However, by implementing media literacy campaigns, fact-checking mechanisms, and legal frameworks, States can safeguard the integrity of their democratic institutions. One major consideration while addressing the disinformation issue should be the protection of freedom of speech and expression. Extreme censorship [like in China and Russia], while preventing disinformation might prove to be counterproductive. However, completely avoiding such censorship might result in only punitive measures and not avert such attacks.

A fine balance between expression liberties and state security needs to

be maintained. With the ever-evolving information warfare landscape, international agencies and governments will have to defend the disinformation attack with dynamic tactics.

Upcoming Activities

Call for Papers: CyCon 2024

CyCon, the International Conference on Cyber Conflict, is organised annually by the NATO Cooperative Cyber Defence Centre of Excellence (CCDCOE). The 16th iteration of CyCon will take place 28 – 31 May 2024 in Tallinn, Estonia. The theme of CyCon 2024 is "Over the Horizon". The deadline for submission of abstracts is 16 October 2023. For more information, see [here](#).

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