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Tarptautinė teisė ir demokratijos imperatyvas: demokratinių rinkimų privalomumas tarptautinėje teisėje

International law and the democratic imperative: the binding nature of democratic elections in international law

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LIST OF ABBREVIATIONS

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CIS	Commonwealth of Independent States
COBS	Concluding observations
CoE	Council of Europe
CRPWD	Convention on the Rights of Persons with Disabilities
CSCE	Conference on Security and Cooperation in Europe
CSOs	Civil society organizations
E.C.	European Community
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
GRECO	Group of States against Corruption
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ILD	International Law of Democracy
MEPs	Members of the European Parliament
OAS	Organization of American States
ODIHR	Office for Democratic Institutions and Human Rights
OSCE	Organization for Security and Co-operation in Europe
SACL	Supreme Administrative Court of Lithuania
UDHR	United Nations Universal Declaration of Human Rights
UN	United Nations
UNGA	United Nations' General Assembly
USSR	Union of Soviet Socialist Republics
V-Dem	Varieties of Democracy Institute

ANNOTATION AND KEY WORDS

This thesis analyzes the obligation of states to organize democratic elections under international law. It examines the provisions of the ICCPR and the ECHR, as well as the jurisprudence of the ECtHR and the COBS of the HRC. Doctrinal, empirical and comparative methods of analysis are used to assess academic literature, treaty interpretations and state practice. The study also seeks to determine whether there is an emerging *opinio juris* on customary norms requiring democratic elections by analyzing the observations of UN treaty bodies, international community and the reactions of states.

Keywords: democratic elections, elections' requirements, *opinio juris*, right for democracy.

CONTENTS

INTRODUCTION

Relevance of the topic. The legitimacy of electoral processes has become increasingly contested in the international arena. This could be observed particularly in the context of rising authoritarianism and flawed electoral practices in countries such as Russia, Belarus, India, China, and Turkey. Without resorting to more extreme examples like North Korea, critiques have also been directed at the Hungarian political system for being undemocratic, or at least for its electoral system not aligning with the principles of liberal democracy. These critiques often highlight the dominance of the governing party over state-owned media, which undermines the "alternative sources of information," - element of democratic elections as defined by Dahl's classification. The issue is exacerbated by the Hungarian membership in the European Union, as well as the Council of Europe, - both of which stay on columns of democracy, rule of law, and human rights. As the CoE emphasizes, democratic elections are the cornerstone of democracy, let alone are decisive for ensuring the legitimacy of democratic institutions. The persistence of such challenges within a Member State raises broader concerns about the effectiveness of these organizations in safeguarding democratic standards across their constituencies. The prevailing assumption that elections must inherently be democratic, in order to be recognized as legitimate, raises complex legal questions. Central to this debate is whether international law imposes an obligation on states to ensure that their elections are democratic and whether a failure to adhere to democratic principles renders an electoral process illegitimate.

The *democratic imperative* means the inherent ambiguity of international law's status between law and politics. Namely, the democratic imperative covers both a legal obligation to ensure democracy and a political aspiration for democratic values. The interpretation of this notion by scholars, states, and international organizations reflects this complexity, demonstrating that the boundaries between legal normativity and political discretion are indistinct. The conceptual overlap between law and politics complicates efforts to delineate where law ends, and policy begins. This thesis critically engages with these questions, seeking to determine whether international law explicitly requires elections to be democratic and, if not, whether there is an emerging *opinio juris* that could crystallize into a norm of customary international law, thereby affirming a human right to democratic elections in the absence of a directly binding legal provision.

Research subject. This thesis examines a current international law landscape from the perspective of States' obligation to ensure democratic elections. As such, the thesis analyzes the regulatory framework governing elections on an international scale, specifically within the context of the United Nations system and the European region. This is supplemented by the jurisprudence of the European Court of Human Rights alongside the practice of the United Nations' Human Rights Committee. The thesis specifically focuses on the International Covenant on Civil and Political Rights and the European Convention on Human Rights application: the thesis analyses the relevant provisions of these treaties, the accompanying jurisprudence, and the interpretative guidance provided by treaty bodies and international courts to ascertain the legal obligations they impose on States concerning the conduct of elections. Additionally, the research explores the broader landscape of international law, including state practices and statements of international law subjects[1], to assess whether there is a discernible movement towards recognizing a customary norm that mandates democratic elections.

Research Aim. At its heart, the thesis strives to critically assess whether international law imposes a legal obligation on States to conduct democratic elections and to explore the potential emergence of an *opinio juris* that could establish this obligation as a norm of customary international law. By engaging with both the doctrinal foundations and the practical applications, the research seeks to clarify the existing legal landscape and identify any evolving trends that could reshape the international community's approach to democratic governance.

Research Objectives. To achieve this aim, the thesis will pursue several interrelated objectives:

1. To systematically analyze the current approach prevailing in the doctrine with respect to the existence of democratic elections requirement, critically evaluating the arguments for and against the existence of such a requirement.
2. To conduct an in-depth analysis of the ICCPR and ECHR, through the prism of legal doctrine, along with the interpretation and application of relevant provisions by

[1] This thesis presents statements and resolutions of the UN Security Council, the UN General Assembly, the European Parliament, the Council of Europe, the Organization of American States and the Commonwealth of Independent States, *et cetera*.

international courts and human rights bodies, with the goal of determining whether these instruments impose a binding obligation to hold democratic elections.

3. To empirically assess the concluding observations of treaty bodies and other relevant international institutions, investigating whether these bodies consistently demand democratic elections as a prerequisite for legitimate governance, particularly in states with warning human rights records.

4. To examine state practice and the development of *opinio juris*, focusing on how states recognize or condemn the legitimacy of elections in other countries, and whether these practices indicate an emerging consensus on the necessity of democratic elections under international law.

Research Methodology. This thesis employs a rigorous multi-methodological approach that combines doctrinal, empirical, and comparative analyzes. The doctrinal analysis involves a meticulous examination of the ICCPR and ECHR, alongside their interpretative commentaries, to uncover the legal obligations these treaties may impose concerning democratic elections. This analysis is complemented by a critical review of relevant case law from international and regional courts, providing a comprehensive understanding of how these legal instruments are applied in practice. ICCPR[2] and ECHR[3] are the two core treatises, analyzed in this master thesis as imposing obligations on the states regarding their electoral system. The empirical component of the research involves a detailed analysis of at least 20 concluding observations issued by the UN Human Rights Committee. The latter, in turn, offers insights to the extent to these bodies emphasize the requirement for democratic elections in their assessments of state compliance with international obligations. Concluding observations are selected from the UN Human Rights treaty bodies database[4] by reviewing every single COBS regarding Article 25

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[2] Article 25 of the ICCPR: *"Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; (c) To have access, on general terms of equality, to public service in his country."*

[3] Article 3 of Protocol No. 1 of the ECHR: *"Everyone has the right to elect the government of his/her country by secret vote. Without this right there can be no free and fair elections. It guarantees the citizens' free expression, the proper representativeness of elected representatives and the legitimacy of the legislative and executive bodies, and by the same token enhances the people's confidence in the institutions."*

[4] https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=5

of the ICCPR. Additionally, the research conducts a comparative study of state practices, particularly focusing on how states respond to the outcomes of elections in third countries, and whether these responses reflect a growing recognition of democratic elections as a customary norm. In this way it will be possible to identify whether states identify the lack of democratic elections as a breach of international law, hence, considering democratic elections to be required in international law.

Originality and Contribution to Knowledge. This thesis contributes to the existing body of scholarship on international law and democratic governance by addressing a critical and underexplored question[5]: whether there is a binding requirement under international law for states to conduct democratic elections. There is, in fact, an ongoing debate about whether democratic elections are mandated by international law or whether such claims represent an overreach of scholarly enthusiasm without any legal basis[6]. While previous studies have examined the relationship between democracy and international law[7], this research offers a novel perspective by exploring the potential emergence of an *opinio juris* that could establish this requirement as a norm of customary international law. The thesis also extends the analysis beyond the traditional focus on treaty obligations, incorporating a broader examination of state practice and the role of treaty bodies in shaping the international legal landscape. By doing so, it provides a comprehensive and nuanced understanding of the evolving relationship between international law and democratic governance.

Key Sources and Theoretical Framework. The theoretical underpinning of this thesis is informed by a wide array of scholarly contributions, including seminal works by Slaughter (1995), who explores the influence of liberal states on international law, Franck (1992), who discusses the emerging right to democratic governance, and Rasulov (2009), who provides a critical perspective on the politics of international legal scholarship concerning democracy. These foundational texts, together with recent contributions by scholars such as Miller (2015)

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5 The only comparable research was conducted in 2010 by Christian Pippan; however, it did not analyze the legal framework of the ECHR, the jurisprudence of ECtHR, and the COBS of the HRC. Moreover, due to the emergence of substantial new jurisprudence and the rapid transformation of the political climate, the relevance of this research has become outdated. Consequently, this thesis aims to contribute to the prevailing trend and potentially evolving *opinio juris* concerning democratic election requirements. A survey of the extant literature reveals the absence of any master's thesis in Lithuania that has examined this subject from a legal perspective.

6 *See*, for example, debate between Thomas Franck (1992, 1994), Anne-Marie Slaughter (1995), Gregory H. Fox (2000), Brad R. Roth (2000) and Akbar Rasulov (2009, 2021).

7 *See*, for example, Klabbers, J. et al. (2021).

and abovementioned Rasulov (2021), form the basis for a thorough examination of the legal, philosophical, and practical dimensions of democratic elections under international law. The main doctrinal debate is striking between pro-international law and democracy scholar Akbar Rasulov and anti-international law and democracy scholar Brad Roth, which will be discussed in this master's thesis. Additionally, the thesis engages with the latest jurisprudence, state practices, and the COBS of the HRC, ensuring a comprehensive and up-to-date analysis that is both theoretically robust and empirically grounded.

1. The Legal Concept and Assessment of Democratic Elections

A peculiarity of the democratic process of creating representative bodies is its reliance on the principle of free elections. The so-called "*third wave of democratization*" in the 1990s, following, among other things, the collapse of the communist system, created favorable conditions for efforts to make it more precise and effective, including standards for democratic elections. At present, the "*right to democracy*" ("*right to democratic governance*") is recognized as an element of international law in general (Slaughter, 1995) or the developing international law of democracy (Burchill, 2001), which in its implementation is supported by various instruments and mechanisms for the promotion and protection of democracy. Although, in the light of international acts, "*democratic governance*" means more than the holding of free and fair elections, namely, the general active political participation of society in decision-making processes; nevertheless, they are a vital link of this governance and, at the same time, such a guarantee of it (Wheatley, 2002). G.H. Fox's observation is accurate: "*actors on the international stage understand elections as an essential institution through which other 'democratic' goals are achieved. In a world of multifarious states, the achievement of consensus even in such a minimal understanding of democracy should be considered an extraordinary event*." (Fox, 2000) An analysis of international documents (both global and regional) also shows that this consensus encompasses the basic rules for the realization of the general idea of free and fair elections; they should be cyclical elections, held based on universality and equality, secret balloting, and ones that do not discriminate against any groups of voters, or certain candidates or parties (Fox, 2000).

However, for further analysis of regulation and requirements of democratic elections in international law, it is crucial to examine the theoretical concept of democracy, democratic elections and decide on a common ground what can be considered as democratic elections and how it correlates with the country's political regime.

1.1. Theoretical concept of democratic elections

Democracy means rule by the people. A more precise definition is difficult to formulate because democracy is a dynamic entity that has acquired different meanings over the course of time depending on change in society and different interpretations by analysts of the consequences of these changes for democracy (Sorensen, 1998). The principle that, "*while all democracies share common features, there is no one universal model of democracy*," has been

a consistent theme throughout United Nations documents on democracy and its promotion since the adoption of UN General Assembly Resolution 55/96 (2000). However, for the purpose of this thesis it is necessary to find common determinants for evaluating states, and further, evaluating elections.

To begin with, scholars endeavor to classify political regimes into four categories: closed autocracy, electoral autocracy, electoral democracy and liberal democracy. First, we separate along the democratic and autocratic regime spectrum and then develop the democratic and autocratic subtypes. In a minimalist, Schumpeterian sense, democracies are regimes that hold *de-jure* multiparty elections. However, many would agree with Pastor that "*the essence of democratic government is* ***accountability***" (Pastor, 1999). Such accountability (responsibility) can only evolve if incumbents fear retribution at the ballot box (Lindberg, et al., 2017), and to this end, mere *de-jure* multiparty elections are not enough (e.g., (Levitsky & Way, 2010); (Schedler, 2013)).

Figure 1. **Regime classification** (Lührmann, et al., 2018)

Closed Autocracy	Electoral Autocracy	Electoral Democracy	Liberal Democracy
No *de facto* multiparty, or free and fair elections, or Dahl's institutional prerequisites not minimally fulfilled		De facto multiparty, free and fair elections, and Dahl's institutional prerequisites minimally fulfilled	
No multiparty elections for the chief executive or the legislature	*De jure* multiparty elections for the chief executive and the legislature	The rule of law, or liberal principles not satisfied	The rule of law, and liberal principles satisfied

For Fukuyama, a liberal democratic state requires three things. First, it is democratic, not only in the sense of allowing elections, but in the outcomes of these elections resulting in the implementation of the will of the citizenry. Second, the state possesses sufficient strength and authority to enforce its laws and administer services. Third, the state – and its highest representatives – is itself constrained by law. Its leaders are not above the law. (Fukuyama, 1992). Fukuyama's position could be well described by a Latin phrase *"non rex is lex sed lex est rex" (the king is not the law, but the law is king).*

Dahl's theory of polyarchy (1971, 1998) certainly provides the most comprehensive and most widely accepted theory of what distinguishes a democracy based on six institutional guarantees: *(i)* elected officials, *(ii)* free and fair elections, *(iii)* freedom of expression, *(iv)* alternative sources of information, *(v)* associational autonomy, and (*vi)* inclusive citizenship (equal chance of exercising their rights). This conception requires not only free and fair elections but also the freedoms that make them **meaningful**, and thus avoids the electoral fallacy (Diamond, 2002). This allows for demarcation between electoral autocracies and democracies, unlike minimalist definitions. In short, in democracies, rulers are *de facto* accountable (responsible) to citizens through periodic elections, and, in autocracies, they are not. Therefore, we approach *de facto* multiparty and free and fair elections as necessary, qualitative criteria for labelling a regime as a democracy.

We distinguish between electoral democracies that only achieve the basic criteria above, and liberal democracies. We focus on this distinction because it is the most common within the democratic regime spectrum (e.g. (Diamond, 1999); (Diamond, 2002); (Merkel, 2004); (Munck, 2009)). In addition to fulfilling the criteria for electoral democracy, liberal democracies are characterized by an additional set of individual and minority rights beyond the electoral sphere, which protects against the "*tyranny of the majority*"; thus having limits on government is intrinsic to democracy itself (e.g. (Dahl, 1956); (Hamilton, et al., 1789/2009); cf. (Coppedge, et al., 2017); (Lindberg, et al., 2014)). This is in Dahl's words "*Madisonian*" democracy (Dahl, 1956).

Core components thus include legislative and judicial oversight over the executive providing checks and balances, as well as the protection of individual liberties, including access to, and equality before the law. In particular, the rule of law is a fundamental prerequisite for the implementation of the liberal principle as it ensures that decisions are implemented (Merkel, 2004).

Autocracies are regimes where rulers are not accountable to citizens by Dahl's standards. The key differences along the authoritarian spectrum are whether the office of the chief executive and seats in the national legislature are subject to direct or indirect multiparty elections (Schedler, 2013). In closed autocracies, the chief executive and the legislature are either not subject to elections, or there is no *de facto* competition in elections such as in one-party regimes. Regimes with elections that do not affect who is the chief executive (even if

somewhat competitive) also fall into this category ((Brownlee, 2009); (Donno, 2013); (Howard & Roessler, 2009)). North Korea could be considered as an example of a closed autocracy. Although there is a clear framework for conducting and monitoring elections, the system's structure denies voters any choice and precludes opposition to the incumbent leadership. The government uses the mandatory elections as an unofficial census, tracking whether and how people voted, and interpreting any rejection of the preselected candidates as treason (Freedom House, 2024).

In electoral autocracies, on the other hand, the chief executive is dependent on a legislature that is itself elected in *de-jure* multiparty elections (in parliamentary systems), directly elected alongside a separately elected legislature (in presidential systems), or a combination of both (in semi-presidential systems). In an electoral autocracy, these institutions are *de-facto* undermined such that electoral accountability is evaded ((Diamond, 2002); (Gandhi & Lust-Okar, 2009); (Way & Levitsky, 2010); (Schledger, 2002), (Schedler, 2013)). They thus fall short of democratic standards due to significant irregularities, limitations on party competition, or other violations of Dahl's institutional requisites. This conceptualization builds on Schedler's influential work on electoral authoritarianism ((Schledger, 2002), (Schedler, 2006), (Schedler, 2013)) and the notion of competitive authoritarianism developed by Way and Levitsky ((Way & Levitsky, 2010)).

Many research questions require that scholars use a discrete regime variable, either on the right- or left-hand side. Extant approaches to this task are laudable but are often either limited in their temporal or geographical coverage, not fully transparent in their coding procedures, or have questionably low thresholds for democracy. None of them provide measures of measurement error or other sources of uncertainty to help identify ambiguous cases situated close to thresholds. (Lührmann, et al., 2018) In between elections, democracy requires freedom of expression and independent media capable of presenting alternative views on matters of political importance.

We, hence, should classify countries only as democratic if a minimum level of Dahl's (1971) famous institutional requisites are fulfilled in terms of freedom of expression and alternative sources of information, freedom of association, universal suffrage, free and fair elections, and the degree to which power is *de-facto* vested in elected officials.

Thus, it also becomes clear that the political regime of the states is interdependent with the type of elections held; specifically, can they be considered democratic? While some states can officially include "*democratic*" in their titles, while assessing the actual political regime in the country, we *inter alia* can predetermine the type of elections held. However, it is not an invention made in this master's thesis. What is crucial is that taking into account the correlation and interdependence of political regime and the type of elections held, we can determine that we can apply nearly the same standards for elections to be considered democratic as for political regime itself (Kirkpatrick, 1984).

Democracy can be considered as a spectrum, making it more difficult to measure precisely whether a threshold for democratic elections has been reached. It is also unclear whether such a threshold exists, or it is subject to a margin of appreciation depending on historical, cultural, economic, or other contextual factors. This approach of treating democracy as a spectrum is applied in evaluating countries' democracy indices, where the range spans from "*highly undemocratic*" to "*highly democratic*" (Herre, 2022). However, treating democracy as a spectrum poses challenges for determining whether a country is genuinely democratic and, *inter alia*, whether its elections are democratic. Such an evaluation lacks a clear threshold for deeming a country "*democratic enough*" and thus for recognizing its elections as essentially democratic. Consequently, this approach is rejected by the author of this thesis, as it lacks the clear determinants necessary to categorize countries into the two primary groups of "*non-democratic*" and "*democratic*". As a result, this thesis will take Dahl's and other mentioned scholars' criteria as a basis for determining whether countries and elections are democratic.

In conclusion, for elections to be recognized as democratic, they must first take place, then they must guarantee freedom of expression, alternative sources of information, associational autonomy, inclusive citizenship and free and fair elections, which include the accountability of the elected officials in the form of periodicity of elections and multiparty system.

1.2. The Mandatory Democratic Elections: Legal Doctrine Perspectives

Having discussed what constitutes a democratic election in the political dimension and having identified the cumulative criteria that would qualify an election as democratic, it is now necessary to look at the legal doctrine's view of whether democratic imperative exists and

whether it is required by international law. This chapter will be solely based on scholars' position, whilst legal examination will be provided in following chapters.

The debate on whether democracy is a requirement under international law is not new. Looking at the research of the last three decades generally, we can distinguish two predominant approaches. One of these strands, of which the famous 1992 article by Franck is a good sign, has explored to what extent there is a positive norm of international law requiring democracy, and if so, under what circumstances and under what regime of responsibility (Franck, 1992). The second strand, some elements of which, interestingly, predate the first, examines the democratic character of the international legal system itself.

A further distinction can be made between two approaches in time: the initial post-war enthusiasm, which persisted until the year 2000; and the subsequent more critical approach, which emerged after 2000 and interrogated the underlying principles of the aspirational democratic entitlement statements that had been previously expressed (*See*, for instance, Rasulov, 2009 or Rasulov, 2021). This thesis will focus on the analysis of the different approaches taken in the two respective periods.

Most closely connected to the classic international law and democracy scholarship of the 1990s is the debate between Akbar Rasulov and Brad Roth. Indeed, Rasulov revives the first strand of scholarship, namely that on the "*democratic entitlement*" thesis à la Thomas Franck, by challenging all those who have critiqued it as a doctrinally unfounded wishful thought on the part of overly enthusiastic international lawyers (Rasulov, 2021). Rasulov argues that this view has become "*received wisdom*" but reflects a profoundly flawed epistemological and ideological approach pervasive among international law scholars, which upholds political conservatism in the name of methodological rigor. In reply to Rasulov, Roth questions the assumption that dismissing the democratic entitlement thesis has been accepted as conventional wisdom, pointing to the persistent influence of the international law and democracy narrative (Roth, 2000). More fundamentally, Roth argues that rather than reflecting conservative political tendencies, methodological skepticism towards the democratic entitlement thesis is animated by the opposite political concern, namely, that the right to democratic governance might serve as a pretext for Western neo-colonialism in a new guise (Klabbers, et al., 2021).

Jean d'Aspremont, for example, argues that democracy after the Cold War has become a criterion for the legitimacy of a government and that this legitimacy can be earned through democratic elections. This does not mean that a non-democratic government will consistently be recognized as legitimate, especially if it has been in power for a long time (d'Aspremont, 2011). Sometimes the non-democratic nature of a government is overlooked for more critical geopolitical and strategic reasons.[8] Nevertheless, we can conclude from this author's statement that democratic elections are now the practice in most countries. Reliance on a complex and multi-layered system of electoral observation has become an aspiration, which is helpful for governments to be recognized as legitimate, but this does not follow from a specific legal norm, which will be discussed later in this thesis (*see* Chapter 2).

Provided examples of existing discussions demonstrate that this topic does not have a single answer for whether democratic elections are required by international law. Still, it also indicates that democratic elections, even if not needed by law *expressis verbis* as it will be discussed later, are considered impartial by some scholars. However, there is still no single consensus in the academic community.

1.2.1. Approach in legal doctrine before 2000

Consider the evolution of the general disciplinary consensus concerning the so-called principle of democratic legitimacy. The early 1990s had seen the greatest measure of enthusiasm for the idea. "*[T]he law of recognition"*, writes an early exponent of the ILD (International Law of Democracy) project Fernando Tesón in the January 1992 issue of the *Columbia Law Review* journal, "*should prohibit"* the recognition of democratically illegitimate regimes: "*only democratic governments that respect human rights should be allowed to represent [states]*", "*the law of diplomatic relations should be amended to deny diplomatic status to representative of illegitimate governments*", "*conditions of admission and permanence in the United Nations*" have to be amended accordingly and "*only democratic states [ought to] be accepted as new members*" of the international community (Tesón, 1992).

Tesón's argument emerges at a critical moment, both in terms of tone and timing: his article was published just a month after the dissolution of the USSR, and the claims he makes

[8] As an example, we can take People's Republic of China which government is taken as legitimate by majority of the countries even though it does not have free and fair electoral process (HRC, Concluding observations on the second periodic report of Macao, China (2022) CCPR/C/CHN-MAC/CO/2, paragraph 42).

are still framed as a policy proposal ("*international law should"*) rather than a statement of legal fact ("*international law does"*). The concept of a democratic revolution had not yet reached its peak, and the politics behind the shift toward democratic legitimacy were still rooted in ideals and aspirations. In the months that follow, however, the discourse shifts significantly. Alongside Tesón's work, a wave of pro-ILD scholarship begins to appear, giving the impression that there is a rapidly growing scholarly endorsement of democratic legitimacy as a principle. The tone of these arguments gradually shifts from tentative idealism to assertive positivism, moving from discussions of what "*ought*" to be toward declarations of what "*is*". By the summer of 1992, for example, Gregory Fox published an article citing both the 1991 Moscow Document of the Conference on Security and Cooperation in Europe and statements from the Organization of American States concerning the coup in Haiti, suggesting that a transformative shift in customary law regarding non-recognition might already be underway. Just a few months prior, Thomas Franck, in his work on the right to democratic governance, reached a similar conclusion: he argued that the rule 'which requires democracy to validate governance' had evolved from a "mere" moral prescription into a legal obligation that now imposes new and significant requirements on states. (Franck, 1992)

In the April 1993 issue of the *American Journal of International Law*, Slaughter repeats the same claim: *"[t]he current criterion of 'government' as one of the elements of statehood must logically give way to 'democratic government'*." (Burley, 1993) Like Franck and Fox, where Tesón and Slaughter had postulated an "*ought"*, Henkin and Schachter have something that looks very close to an "*is*". The brief review of the September 1991 speech by the then US Secretary of State, James Baker, and the December 1991 European Communities (EC) Declaration on the Guidelines on the Recognition of New States (Committee, 1991) is formulated in terms implying that not only the obligation of "*safeguarding of human rights"* but also the principle requiring "*support for democracy and the rule of law"* were, if not already an established international custom, then at the very least a norm that was well on its way to becoming that (Henkin, 1993).

Writing in 1995, Antonio Cassese decides to qualify the EC's 1991 decision to make recognition conditional on democratic legitimacy as an idea so "*innovative <...> one could even term it revolutionary*" (Cassese, 1995). To be sure, he adds immediately "*the great emphasis laid by the [EC states] on respect for democracy and the rights of minorities <...> as a condition for the international endorsement and legitimation of independent statehood',*

‘*coupled with the formal upholding of the principles of democracy by <…> developing countries*”, are both “*clear indications”* of an “*emerging normative trend”* (Cassese, 1995). But all that this means, he concludes, is that customary international law in this area is “*in the process of changing*”, nothing more (Cassese, 1995).

Similar reservations also appeared in Rosalyn Higgins’s *Problems and Process* published in 1994. The “*making of recognition conditional upon <…> the representative quality of a government*”, writes Higgins, represents a growing tendency in international law and can certainly be considered a sign of a rather commendable trend on the part of the international community “*to harness every means at its disposal to encourage democracy and free choice*” (Higgins, 1994). But Rosalyn Higgins immediately adds to herself that it is still only a policy, and not an actual rule of customary law.

Over the next few years, the trend intensified. Peter Malanczuk could say about the principle of democratic legitimacy in 1997 that it represented “*a common position”* of the European Community and its Member States, carefully avoiding making any pronouncements about its legal status (Malanczuk, 1997). Two years later, Sean Murphy, a former legal adviser at the US State Department, arrived at an even more skeptical conclusion. While it is certainly plausible, he writes, that “*the international community is [becoming] increasingly interested in democratic legitimacy as a factor in its recognition practice”*, “*it is difficult to see that [it] has taken the <…>step of crystallizing this notion as a legal norm, or is even over time moving towards such a legal norm*” (Murphy, 1999). Relegating the principle of democratic legitimacy to the status of “*just another policy element”*, Murphy continues, may seem like “*an unattractive conclusion”*, but there is, alas, nothing in the existing international practice or treaty law that signals anything to the contrary. As matters stand, he concludes, international law seems to have recognized neither a “*norm obligating States not to recognize an emerging State simply because its political community is not democratic in nature*”, nor “*a norm permitting intervention so as to establish a democratic government*” (Murphy, 1999).

A marginally less harsh verdict was delivered the same year by Brad Roth (Roth, 1999) and Thomas Grant (Grant, 1999). Democracy had been repeatedly and “*overtly declared a principle relevant to recognition*”, writes Grant, but the patterns of state practice certainly put the lie to this idea (Grant, 1999). And while, in principle, the criterion of democratic legitimacy could be something that a hypothetical drafting body charged with the task of codifying the

future law of statehood and recognition might want to look into, given its inherently political nature, adding it to the list of international legal criteria would certainly not help "*promote the rule of law*" (Grant, 1999).

1.2.2. Approach in legal doctrine after 2000

By the early 2000s, the turnaround had been completed. By the time the first edition of Malcolm Evans's collected volume International Law came out in 2003, the principle of democratic legitimacy, under the pen of Colin Warbrick, was safely relegated to the status of a merely "*discretionary test"*, the test itself was declared "*inchoate"*, the practice relating to its use was found to be at best "*inconsistent"* (Warbrick, 2003) and the 1991 EC Guidelines on the Recognition of New States – the very document that earlier had so excited Henkin and Schachter and encouraged Cassese and Higgins – was dismissed as nothing more than an attempt "*to take advantage"* of a normatively unstable situation (Warbrick, 2003). Believing that the principle of democratic legitimacy—or any other part of the new legal framework suggested by ILD scholars in the early 1990s—was genuinely grounded in international law is now often seen as either an indication of naiveté and amateurism or a failure to apply careful analysis and good faith. This view is highly supported by modern scholars, e.g., Akbar Rasulov, who reflects on it from the current reality perspective (Rasulov, 2021).

This thesis supports Akbar Rasulov's position, viewing it as a more analytically robust and realistic assessment of the democratic entitlement thesis. Rasulov's critique effectively exposes the weaknesses of the democratic entitlement argument, particularly its lack of grounding in established international law. The democratic entitlement thesis, advocated by scholars like Thomas Franck in the early 1990s, was fueled by post-Cold War optimism and sought to elevate democratic governance to a legal norm. However, Rasulov highlights that this enthusiasm was based more on ideological aspirations than on legal evidence, leading to a skewed interpretation of international law that conflates moral ideals with legal obligations. Unlike the democratic entitlement advocates, Rasulov points out that there is no consistent state practice or treaty law to substantiate democracy as a legally binding standard for legitimacy in international relations. Additionally, he argues that promoting democracy as a legal requirement reflects a Western-centric viewpoint that ignores diverse governance structures worldwide, risking the imposition of ideological biases. Thus, the strength of Rasulov's position lies in its methodological rigor and its call for caution against projecting

normative ideals as legal norms, recognizing that international law must remain grounded in observable state practice and universal principles, not the shifting tides of political idealism.

The essential claim here is that international law's democratic revolution, in fact, never took place, and any reports to the contrary are baseless. However, how, in light of this fact, should international lawyers understand the phenomenon of ILD-focused scholarship? The essential argument here is that the entire democratic turn episode in post-Cold War international legal discourse was, in effect, a product of overly excitable scholarly imagination – not exactly an outright corruption of lawyerly neutrality, but definitely a lapse in professional standards, sober judgement and analytical rigor. (Rasulov, 2021)

However, if we look at the essence of the arguments of ILD enthusiasts, the essence of the new international legal regime supposedly produced as a result of international law's ongoing democratic revolution, in terms of its doctrinal expression, came down to four distinct components:

(i) the so-called "*democratic entitlement"*: a putative universal human right to live under a democratically constituted government (Franck, 1994);
(ii) the obligation to hold "*periodic free and fair elections"* and, in doing so, to submit to some form of election monitoring (Fox, 2000);
(iii) a duty of mandatory non-recognition of non-democratic states and regimes (Tesón, 1992) (Franck, 1992); and
(iv) the putative right to use limited force and intervene in the domestic affairs of other states with a view to strengthening and promoting therein the workings of democratic governance (Reisman, 1990).

The reason why these four points are significant – quite apart from the fact that they provide an important insight into the underlying politics of the pro-ILD discourse and the general worldview of ILD enthusiasts – is that all things considered, this was, from the standpoint of the anti-ILD narrative, all anyone could say with any degree of confidence about the pro-ILD scholars' general concept of international law's democratic revolution, and the implications this lack of concreteness raised was certainly very significant.

The effects of the anti-ILD critique did not take long to take root. Less than a decade after it was first put forward, Franck's assertion that the concept of democracy had finally attained a sufficient degree of determinacy to be deployable in legal settings increasingly came

to be rejected (Franck, 1992). The best one could say about democracy as an international legal category by the end of the 1990s was that it was an opaque "*riddle"* (Marks, 2000) and that the entire premise of international law's democratic revolution had been based on a mix of "*facile universalism*" and an entirely "*superficial empirical account"* (Carothers, 1992); the worst, that for international lawyers to have developed such a sudden interest in it was a symptom of a millenarian frenzy (Marks, 2000). Neither conclusion implied anything flattering about the intellectual and professional qualities of the pro-ILD camp.

To conclude this point, the ILD episode can largely be seen as an overreach of scholarly enthusiasm rather than a true shift in international law. Despite some changes in global governance after the Cold War, these did not amount to a legal mandate for democracy, nor did they establish democratic legitimacy as a replacement for sovereign equality or elevating election monitoring to customary international law. The "*democratic revolution*" in international law, touted by ILD advocates like Franck, Fox, and Slaughter, remained more of an aspirational vision than a reality. The ILD debate ultimately illustrates the need for international legal scholarship to maintain analytical rigor and avoid political biases, focusing instead on grounded, precise legal reasoning.

Another significant aspect of the so-called "*democratic imperative"* is the human rights perspective. Democracy is a core principle of international human rights law, alongside subsidiarity, equality, and universality. Given that states are obligated to respect human rights, the question arises: are undemocratic states therefore illegitimate? One position in legal doctrine asserts that for a state to be politically legitimate, it must respect human rights; this implies that undemocratic states lack legitimacy and do not deserve the respect afforded to legitimate states (Miller, 2015). However, this stance could undermine the view held by those who envision a pluralistic world, where liberal democracies coexist on equal terms with "*decent hierarchical societies"* whose institutions may not be democratic (Rawls, 1993). Rawls notably excludes the right to democracy from his list of core human rights, emphasizing that human rights should not be confused with the full array of rights that liberal states might provide. Therefore, there is a clear distinction between universal human rights and additional rights that states may guarantee.

In line with this thesis and Miller's perspective, it is unhelpful to stretch the concept of democracy beyond its practical boundaries. Defending the democratic imperative as a basis for

declaring state illegitimacy may be more moral than legally sound (this will be further examined in Chapter 2). It also remains unproven that non-democratic systems cannot effectively produce laws that uphold equal regard for all people; therefore, there is no basis to claim that non-democratic states are inherently incapable of fully and equally respecting human rights, however counterintuitive this may seem. Without delving into a complex philosophical debate, it is clear that there is no definitive answer regarding the democratic imperative in human rights, though democracy's status as a core principle remains uncontested.

It could be hypothetically assumed that the surge of pro-ILD ideology and the so-called democratic entitlement may have been catalyzed by the political and historical context, particularly the end of the Cold War and the collapse of the USSR. This context supported the legitimacy of newly formed or re-independent countries as they embraced a pro-democratic path to distance themselves from the questionable "*democratic"* regime of the USSR. It could also have served as an ideological tool for Western countries seeking to reinforce the notion that non-democratic states lack legitimacy in the international arena due to their undemocratic governments. Although these assumptions are hypothetical, they are not necessarily far-fetched and should be considered to gain a broader understanding of the "*democratic imperative"* or "*democratic entitlement"*. Therefore, the post-Cold War rise of ILD ideas likely had a significant political-ideological impact; however, as carefully analyzed by A. Rasulov, it did not establish any imperative. Nonetheless, varying positions within legal doctrine suggest that the idea of the 1990s' "*third wave of democratization"* could re-emerge, potentially leading to the creation of "*hard law"* mandating democratic governance or elections.

The impression is that an attempt is being made to make existing electoral practice (positive claim) mandatory (normative claim). This phenomenon is evident even in the scholarly work examined in this chapter, as well as in the case law of the courts and the countries, a topic that will be addressed subsequently in this thesis. The prevailing position within doctrine may be cyclical, and a shift toward pro-ILD dominance could be likely in response to recent political turbulence resulting from elections in specific countries, such as Belarus (2020 and 2025 presidential elections), Turkey (2023), and Russia (2024). This is further supported by the fact that at least 64 countries, as well as the EU, which altogether represent almost half the global population, held elections in 2024, and 70 countries hold elections in 2025.

2. Codification of Democratic Election Requirements in Legal Instruments

From a geographical perspective, electoral standards and good practices can be classified into two categories: international and regional. International standards are derived from key instruments such as the 1948 United Nations Universal Declaration of Human Rights and the 1966 ICCPR, including the authoritative interpretations of the ICCPR by the HRC in the form of General Comments. While the UDHR is not a treaty, several of its provisions have gained universal acceptance and are recognized as customary international law. Regional standards, on the other hand, stem from instruments such as the 1950 CoE ECHR and its Protocol No. 1, which provide further protection for electoral rights within the European context.

From a legal standpoint, these standards and practices encompass both binding and non-binding instruments. Legally binding treaties, such as the ICCPR and the ECHR, impose clear obligations on state parties to uphold electoral rights. Additionally, soft law instruments, while not legally binding, contribute significantly to the development and implementation of electoral standards. These include politically binding commitments, such as the 1990 Copenhagen Document adopted by the Organization for Security and Co-operation in Europe (OSCE), as well as interpretative documents like ICCPR's General Comment No. 25. Furthermore, international good practices, including the Venice Commission's *Code of Good Practice on Electoral Matters* and the OSCE/Office for Democratic Institutions and Human Rights (ODIHR) election observation reports and recommendations, serve as important guidelines for the conduct of democratic elections.

These standards and best practices are closely linked to other fundamental rights enshrined in the aforementioned legal instruments. These include the rights to freedom of opinion and expression, peaceful assembly, association, movement, and protection from discrimination, as well as the right to an effective legal remedy. Additionally, these electoral standards align with other universal and regional human rights instruments that provide specific protections for certain groups, such as women, minorities, persons with disabilities, internally displaced persons, and refugees, along with the corresponding obligations imposed on states to uphold their electoral rights.

In this chapter, the focus will be on universal instruments and legal framework, specifically electoral standards in the system of the UN, ICCPR and Electoral standards in Europe.

2.1. Legal framework for internationally recognized electoral standards

Universal instruments have been developed and adopted within the UN, usually because of negotiation and diplomatic exchanges. Since almost all states are represented in the UN, instruments and texts adopted tend to have a large degree of support at the universal level. The term "*legal framework for elections"* generally refers to all legislation and pertinent legal and quasi-legal material or documents related to the elections (International Institute for Democracy and Electoral Assistance, 2002).

An extraordinarily momentous role in making democracy a reality falls to the "*international agency for democracy"* (Joyner, 1999) – the UN. However, it is worth recalling that the Charter of the UN does not use the term "*democracy"* or terms close to it at all, which must undoubtedly be taken as a sign of the times in which it was adopted; undoubtedly, the most important thing at that time was the establishment of a system of collective security and peaceful coexistence of states, but the fact that the proposal to introduce the aforementioned terms into the Charter was blocked by the USSR should also be borne in mind (Rich, 2001). What is important, however: in many interpretations of its content, particularly the phrase "*We the Peoples of the United Nations*" used by it, and the principle of "*self-determination of peoples*" adopted (in the intra-state aspect), it has been pointed out that it is based on a vision of democratic political systems, the reflection of which is the recognition of the principle of freedom of expression of the social will, and therefore freedom of elections (Cassese, 1979).

Such interpretive efforts were no longer necessary in relation to the provisions of the UDHR of 10 December 1948, which, among other things, enshrined such fundamental principles of democracy as the right of everyone to participate in the governance of his country (either directly or through freely elected representatives) and the right to access (under conditions of equality) public service. From Article 21 of the UDHR, which speaks of these rights, one can read the aspiration to introduce a standard that the principle of people's power should be considered a fundamental premise for the formation of international democratic law (Nations, et al., 1992). It emphasizes: "*The will of the people shall be the basis of the authority of government*", adding that "*this will shall be expressed in periodic and genuine elections*

which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures." So, it made a general characterization of democratic elections, by pointing out their most essential elements, while strongly emphasizing the feature of their freedom regarding the act of voting.

Whilst Article 21 of the UDHR does not make any distinction between individuals based on, for instance, citizenship, the norm obviously presumes an organic link of some sort to a particular country, either based on residence or citizenship. The article mainly concerned the level of central government, rather than regional or local government. While the exact body with which everyone is entitled to participate is not specified, it could be the parliament or even the executive in cases where the executive is elected. However, the judiciary is outside the scope of Article 21, because of the reference to government.

Participation in the government of a country should, according to Article 21, be either direct or through freely chosen representatives. It is easy to make a *prima facie* conclusion that such participation is determined either through a referendum or an election. In Article 21(3), it is said that the will of the people shall be the basis of the authority of government. Hence the exercise of public power is to be legitimized by the people. However, the sentence does not say very much about how the legitimacy of government is created. The minimum level of participation in government is defined after the semi-colon, where an explanation is given of how the will of the people shall be expressed, with reference to a series of election elements. The first requirement in Article 21(3) is that elections must indeed be held; otherwise, the government does not ground its authority in the will of the people. The other explicitly expressed elements are periodic elections, genuine elections, universal suffrage, equal suffrage, and secrecy of the vote (European Commission; Directorate-General for External Relations, 2016). Generally, electoral principles are categorized and understood as described below.

The requirement for "*periodic elections"* implies that a country's legislation should prescribe a certain period after which elections must take place. Nothing is said about the length of the period, although it should probably not be unduly long, usually, for example, *The Venice Commission in Code of Good Practice in Electoral Matters* states that the legislative assembly's term of office must not exceed five years. However, longer periods are possible for presidential elections, although the maximum should be seven years (Venice Commission, 2002). While no particular schedule of periodicity is set by the instruments, general limitations

on discretion are discernible. At the very least, elections must be held often enough to ensure that governmental authority continues to reflect the will of the people, which, as already noted, is the basis of governmental authority (UN Office of the High Commissioner for Human Rights; Centre for Human Rights, 1994). This element also contains the implicit need for a responsive and independent election administration or other such structure to ensure the timely holding of the election.

The *"genuine elections"* element shall be understood as bringing other political freedoms and rights, such as freedom of assembly, expression, association and movement, also from the other side, giving the voters a real choice in elections rather than an illusion of choice. In some way it could also be defined as "*free suffrage"*, which encompasses both the free formation of the elector's opinion and the unrestricted expression of that opinion. This principle ensures that voters have the autonomy to develop their political views without undue influence or coercion. It also requires the state to uphold the principle of equal opportunity, particularly in relation to access to mass media, political demonstrations, billposting, and the financing of political parties and candidates. Moreover, freedom of expression, especially in the context of political debate—must be safeguarded to maintain an open and competitive electoral environment. Furthermore, the process of counting and transferring election results must be transparent and impartial, ensuring that the true will of the electorate is accurately reflected in the final outcome.

"Universal suffrage" ensures that all eligible citizens have the right to vote and stand for election, as well as the practical ability to exercise these rights. In assessing the inclusiveness of universal suffrage, certain key considerations arise. First, the interpretation of "*universal"* suffrage should be as inclusive as possible while recognizing that a legitimate relationship between the individual and the states, such as citizenship, may be required. The right to vote may, however, be subject to specific, well-defined conditions, typically based on criteria such as age, nationality, residence, and mental capacity. It is essential to examine whether these restrictions are narrowly tailored and proportionate. Additionally, beyond these commonly accepted criteria, other restrictions may apply, such as requirements related to language proficiency or the payment of an electoral deposit for candidacy. The legitimacy of such additional conditions must be scrutinized to ensure that they do not unduly limit electoral participation. Regarding candidacy rights, the conditions for disqualifying individuals from standing for election are often less stringent than those for disenfranchisement. Certain

restrictions on candidacy may be justified where holding public office could conflict with broader public interests. As noted by the Venice Commission, such disqualifications must be assessed considering their necessity and proportionality in a democratic society (Venice Commission, 2002).

"Equal suffrage" ensures that all electors have the same number of votes, adhering to the fundamental principle of "*one voter - one vote"*. This principle requires that multiple voting be effectively prevented both in law and in practice. Given the difficulties of ensuring absolute equality in practice, the interpretation is for every vote to have as equal weight as possible with all other individual votes, which affects boundary delimitation and seat allocation in the case of multi-member electoral districts of varying population size (International Institute for Democracy and Electoral Assistance, 2002). Additionally, equal suffrage mandates that constituency boundaries be drawn in a manner that ensures fair representation in legislative chambers. The allocation of seats should be based on clearly defined criteria, which may include the number of residents, the number of registered electors, or the number of actual voters.

In the European electoral tradition, equal suffrage also extends to equal voting power. The Venice Commission's *Code of Good Practice on Electoral Matters* provides detailed explanations of this principle. However, it is important to note that the right to equal voting power has not, to date, been enforced by the ECtHR.

"Secrecy of suffrage" ensures that voters can make their choices free from coercion or undue influence. The element of a secret vote is quite clear, at least in principle. It holds that the voter should cast his or her vote in secret. Nobody else should be able to see how the voter votes, guaranteeing that the person is actually in a position to vote according to his or her own conviction, free from influence and coercion from anybody else during the act of voting. Strict safeguards should prevent any form of voter control, such as family voting, and ensure that voting remains an individual act. Proxy voting, where permitted, must be subject to stringent conditions to uphold the integrity of the secret ballot.

The secrecy of the vote should also imply that it is impossible to attribute a vote marked in the secrecy of the polling booth, to any particular voter. Rather, the ballot paper, when marked and dropped into the ballot box, must be completely anonymous in relation to the voter who marked it. There may, of course, be special procedures for people unable to mark the ballot

paper themselves, such as illiterate or physically impaired voters. As far as possible, the secrecy of the vote should be respected for these people as well. This is partly provided for in the qualification of secrecy of the vote, which provides for "*equivalent free voting procedures"*.

"Direct suffrage" ensures that at least one chamber of the national parliament is elected through a universal vote by the people. Similarly, at the sub-national level, legislative bodies or local councils should be elected by direct suffrage to uphold democratic representation and legitimacy.

The UDHR has had a major impact on lawmaking and the functioning of political institutions in many countries. Its impact on democratization processes, however, necessarily had to be weakened by the non-binding nature of the document. Although some of its provisions have become a component of customary international law, in general, the same cannot be said of the principles arising from Article 21 (Steiner, et al., 2008). Hence the great importance of enshrining these principles, including the right of citizens to freely express their will in an electoral act, in Article 25 of the ICCPR adopted by the UNGA on December 16, 1966, a document that is an integral part of international law, has been signed and ratified by over 160 States and is legally binding on all ratifying countries, which will be further analyzed later in Chapter 2.2.

In addition to having legal force, these instruments have strong political and moral force. Other universal treaties also provide standards for the conduct of elections. These include the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of Persons with Disabilities.

Thus, an overview of the main electoral requirements of the UN system reveals that the various electoral elements set out in Article 21(3) of the UDHR give the right to participate in an operational dimension, which is important as a starting point for assessing elections. Although the UN's view is also reflected in the electoral standards enshrined in the ICCPR, as well as in other instruments or case law, which will be reviewed later in this thesis, some conclusions can already be drawn on the binding nature of electoral standards and democratic elections.

Given the fundamental electoral standards established in international law, the differing perspectives of scholars, and the judiciary's discretion in interpreting and applying legal norms, one could presume that while democratic elections as an explicit legal requirement are not formally enshrined, the presence of all essential electoral elements could imply a broader obligation to ensure democratic elections. This inference follows from the correlation between these elements and the conditions previously discussed for elections to be deemed democratic. However, such a conclusion would be flawed, as it would amount to the judicial creation of a new right to democratic elections, which does not currently exist in international law. Despite the clear entrenchment of fundamental electoral elements and their protection in United Nations instruments, these do not explicitly establish a standalone right to democratic elections.

It is possible to hypothesize that the intention was never to codify a direct requirement for democratic elections but rather to ensure the protection of individual electoral elements. This approach arguably provides a higher degree of electoral safeguards and strengthens democratic standards by emphasizing the significance of each element independently. In this sense, democratic elections emerge as a result of adherence to these fundamental components rather than as a legally mandated end in themselves.

The ECtHR has addressed similar interpretative dilemmas within the framework of its *"living instrument"* doctrine. As the ECtHR has recently summarized its case law, this approach "*does not ... mean that to respond to present-day needs, conditions, views or standards the Court can create a new right apart from those recognised by the Convention ... or that it can whittle down an existing right or create a new 'exception' or 'justification' which is not expressly recognised in the Convention*." (*Austin and others v. the United Kingdom*, nos. 39692/09, 40713/09 and 41008/09, 15 March 2012) What qualifies as a "*new"* right or exception, however, remains a matter of legal interpretation.

By analogy, interpreting democratic elections as a direct legal obligation risk leading to the recognition of a right that has not been explicitly codified in legal instruments. However, the emphasis on individual electoral elements ensures a more structured and comprehensive protection of electoral integrity, preventing arbitrary state interference while maintaining fidelity to the original intent of international legal frameworks. The interaction between these elements and the broader democratic principles recognized in case law and scholarly discourse

underscores the evolving nature of electoral rights without contravening the established boundaries of international legal interpretation.

Additionally, it is worth examining to what extent the regulation of democratic elections is a matter of aspirations and policymaking and, more broadly, the degree to which international law can influence national electoral processes. This raises the question of whether the push for democratic elections is primarily driven by the majority's preference that the obligation for democratic elections be imposed on states that lack such traditions or whose governance systems were never intended to align with democratic electoral practices. However, this point remains more as rhetorical as it falls out of the scope of this thesis.

To conclude, the UN system establishes a clear legal standard requiring that elections be held a priori and adhere to the principles of periodicity, genuineness, universal suffrage, equal suffrage, and ballot secrecy.

2.2. Democratic Election Standards in the ICCPR

The plan to create a global Bill of Human Rights came to its completion in 1966 with the adoption of the two UN Covenants, ICCPR and the other on Economic, Social and Cultural Rights. In relation to the Charter of the UN and the UDHR, the two UN Covenants implement the UDHR by creating a binding set of human rights norms at the level of international law (European Commission; Directorate-General for External Relations, 2016). ICCPR is a legally binding treaty standard for a state that has ratified it. As of 2025, ICCPR unites 174 State Parties; 24 states have not been parties to it, while 6 states have signed the ICCPR but not ratified it (China, Comoros, Cuba, Nauru, Palau and Saint Lucia).

ICCPR stipulates that every citizen must be provided with the right and opportunity, without discrimination based on distinctions of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status and without unreasonable restrictions, to vote and to be elected at genuine periodic elections.

The HRC examines reports by State Parties and addresses its concerns and recommendations to the reporting party in the form of Concluding Observations, which contain reasoned instructions on how States Parties should remedy breaches of rights protected by the ICCPR.

Each State Party to the ICCPR adopted by the UNGA on December 16, 1966, having decided that it is necessary to give effect to the binding effect of this international treaty by ratifying it and subsequently implementing its provisions in its domestic law and practice, is obliged to respect these rights of its citizens, irrespective of the provisions of its own constitution and political system. According to the HRC, "*Article 25 lies at the core of democratic government based on the consent of the people and in conformity with the principles of the Covenant*."

Unlike the UDHR, the ICCPR allows States Parties a considerable margin of discretion in the definition and restriction of fundamental rights and freedoms. The UDHR unequivocally states that "*nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein*" (Article 30 of the UDHR). While the ICCPR equally protects several articles from derogation (Articles 19, 21, 25 of the ICCPR), it subjects other rights, including the freedom of expression, assembly and association, "*to restrictions which are prescribed by law and are necessary to protect national security, public order, or the rights and freedoms of others*" (Article 19(3) of the ICCPR). Contrary to the UDHR, the ICCPR also envisages that Article 25 rights can be suspended by officially proclaimed public emergencies, albeit only "*to the extent strictly required by the exigencies of the situation and never involving discrimination*".

Originating in 1996, the General Commentary to Article 25, while stating the connection between the rights contained therein and the right of the people to self-determination (§ 2), concretizes the forms and methods of their realization - most broadly in the context of the right to authentic elections, the essence of which is, first of all, "*to ensure the responsibility of representatives for the exercise of the legislative or executive power vested in them*" and to be carried out at such intervals that the authorization to exercise power is constantly grounded in the freely expressed will of the voters (§ 9). According to the Commentary, the fundamental conditions for the effective exercise of the right to vote, subject to complete protection, are freedom of expression, assembly, and association (§ 12). Persons entitled to vote must be free to choose between candidates, as well as to support or oppose the government; there must be no pressure or coercion of any kind that could distort or inhibit the free expression of the voters will - "*voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any*

kind" (§ 19). The Commentary further stated the obligation of states to shape electoral systems that guarantee freedom of expression and provide guarantees of effectiveness in this regard (§ 21) and to submit reports on this (§ 22). It is worth mentioning that in General Comment No. 25, "democratic" is mentioned only twice by referring to democratic government (§ 1) and democratic process (§ 19). However, it still does not impose an *expressis verbis* requirement on elections to be democratic for a person to exercise his right to participate in public affairs. As we can see, the fact that the General Comment does not describe the requirement for democratic elections suggests that democratic elections are not a prerequisite for the human right to participate in public affairs under international law.

The concept of "*participation in the conduct of public affairs"* can vary depending on the type of political regime and the form of government. For example, in a parliamentary democracy based on the principle of separation of powers, "*participation in public affairs"* may be limited to the election of legislative bodies, provided that the executive is bound to respect the laws made by such bodies. In such a case, Article 25(a) would not be violated even if a monarch or an authoritarian leader directly appointed the other branches of government (executive and judiciary), without regard to the opinion of the citizens.

It is also important to mention what Article 25(b) does not contain. Firstly, it does not contain a definition of democracy, although it seems to have a preference for a representative system of government. Direct popular decision-making is, however, not excluded. Secondly, it does not prescribe any particular electoral system.

If now we would look at position presented by HRC regarding democratic elections, in the case of Vietnam (2019), the Committee has expressed concern about the one-party system. Citizens are not allowed to form political parties; the only party is the Communist Party of Vietnam. Therefore, even if citizens are allowed to participate in public affairs, there is no diversity of political orientations in the country, more needed to say that this right is fully respected. A similar situation was stated by the Committee about Turkmenistan's (2017) excessive restrictions on the establishment and functioning of political parties, even though it also welcomed its legislative framework providing for a multiparty system. The Committee in its consideration of Sri Lanka (2023) and Israel (2012) has raised concerns about excluding certain groups of people by their ethnicity/religious beliefs by doing it indirectly, for example,

by setting Sinhala-centric language practices in public institutions, excluding Muslims and Tamils or excluding non-Jewish communities who are exempted from military service.

Many concerns express violence and prosecution of opposition political candidates, for instance, Nicaragua (2022), Russia (2022), Belarus (2018), Burkina Faso (2016), Guinea (2018). HRC recommends countries fully comply with the ICCPR in all of those cases. Still, Article 25 of the ICCPR or any other article does not require elections to be democratic. We can conclude that, in COBS, there is no requirement to have democratic elections, the only expressed requirement is to guarantee free and fair elections. Furthermore, the outcomes of those "*unfair"* elections are not judged, which is also noticeable in the report of the Special Rapporteur (2021).

The most recent COBS focus on freedom of expression, including the freedom to debate public affairs and to criticize and oppose (Turkey (2024)) or unequal broadcasting opportunities in media for all candidates (Maldives (2024), right of indigenous and tribal people to participate in public affairs (Suriname (2024); Guyana (2024)), low voter turnout (Syrian Arab Republic (2024)), including low quota for women's representation, "*discriminatory attitudes and stereotypes*" (Somalia (2024)); corruption and undue influence (Indonesia (2024)) and accessibility issues for persons with disabilities to vote (Indonesia (2024)). More extended concerns are presented in COBS on Serbia (2024), indicating numerous irregularities of a systemic nature in the context of the parliamentary and local elections held in December 2023, including: abuse of public resources; campaigning by officials; intimidation of and pressure on voters, including cases of vote-buying; breaches of the secrecy of the ballot; so-called family voting; ballot box stuffing; and the falsification of voters' signatures and statements of support in the context of registering electoral lists.

We observe different types of concerns in COBS, like freedom of expression (Japan (2008), Turkey (2024)), restrictions on permission to campaign (Azerbaijan (2016)), and not restoring the right to vote due to a felony conviction (the United States of America (2006)) but in any of those we won't find concerns about not democratic elections since it is not a requirement to have it democratic. The only exception is COBS on Swaziland (2017), and we would interpret it as divergence from the COBS former practice. Because of that, we may question whether this decision is right on the law and seeing that it completely contradicts all the rest of COBS, the author's approach would be rather negative.

In conclusion, there are different views in academic society on whether democratic elections are a requirement to ensure the right to participate in public affairs, thus it is a matter of choice of position. Meanwhile, an examination of the HRC's General Comments, ICCPR Article 25 and the COBS does not reveal a requirement for elections to be democratic in order to ensure the right to participate in public affairs. The closest requirement is to have free and fair elections.

2.3. Democratic Election Obligations in Europe

Post-1948, the plan to adopt at the global level a complete Bill of Human Rights of a binding nature proved to be a difficult matter, mainly because of the Cold War and the differences of opinion between the West and the East concerning the contents of human rights. Instead, steps were taken at the regional level, particularly in Europe, where the CoE and ECHR were created in 1949 and 1950, respectively (European Commission; Directorate-General for External Relations, 2016).

The CoE is open to any European state that upholds the rule of law, human rights, and fundamental freedoms (Articles 3 and 4, CoE Statute). As of May 2023, it had 46 Member States representing around 700 million people[9]. The Council has been a key player in setting human rights standards, developing conventions and guidelines on issues such as data protection, electronic voting, political finance, the rights of older people, Internet freedoms, and corporate responsibility. As the European region is in the leading position among other regions in the protection of international election standards, it was decided to take a closer look at the CoE's system of rights protection.

The CoE seeks to establish a common understanding of the principles that define elections as "*free and fair*" by democratic standards. These standards must be fully implemented in all elections within its jurisdiction and in states aspiring to join the Organization or engage in a privileged relationship with it (Parliamentary Assembly, 2012). Although Articles 3 and 4 of the Statute of the CoE do not explicitly require democratic institutions as a condition for membership, a state's eligibility to join the Organization is contingent upon adherence to fundamental democratic standards. The absence of compliance with human rights and democratic principles may lead to suspending the accession process, as

[9] https://www.coe.int/en/web/portal/the-council-of-europe-key-facts

exemplified by the case of Belarus, which held special invitee status between 1992 and 1997 before its accession process was frozen. The Gardetto Report underscores the necessity of applying universally accepted democratic principles in all elections held within the CoE Member States and in those seeking closer ties with the Organization (Parliamentary Assembly, 2012).

The CoE, through its institutions, including the ECtHR, the Parliamentary Assembly, the Venice Commission, and the Group of States against Corruption — plays a major role in the development of European electoral standards. Additionally, civil society organizations (CSOs) contribute significantly to the practical implementation of these standards by bridging the gap between legal frameworks and electoral realities, both during election periods and in the intervals between them. A critical question arises as to the extent to which fundamental electoral principles—particularly the principle of fairness—are integrated into the CoE's legal and institutional framework. Two primary sources of authority inform this framework: the jurisprudence of the ECtHR and the expert analysis of the Venice Commission.

The Venice Commission undertakes comprehensive examinations of electoral law and conceptualizes key principles that have been recognized as European electoral standards. A cornerstone of this work is the *2002 Code of Good Practice in Electoral Matters*, which provides a detailed set of recommendations. However, it is important to note that these recommendations, while carrying considerable political significance, remain non-binding and constitute part of the broader corpus of soft law.

By contrast, the ECtHR issues legally binding rulings, both in relation to the respondent state in a specific case and, more broadly, as precedents applicable within the European legal order. However, the Court's jurisprudence primarily focuses on individual electoral rights—specifically, active and passive suffrage—while addressing systemic concerns such as electoral fairness and pluralism with greater restraint. From a treaty law perspective, the ECHR goes beyond a strictly individualistic conceptualization of electoral rights. It explicitly guarantees the secrecy of the ballot and, in more general terms, requires that elections be "*free"* and held "*under conditions that ensure the free expression of the people*" at regular intervals (Article 3, Protocol No. 1). Additionally, the preamble to the ECHR emphasizes that the protection of human rights must be anchored in a "*genuinely democratic political system*." Similarly, the

Statute of the CoE preamble highlights the necessity of a commitment to political liberty and the rule of law as the foundational pillars of democracy.

2.4. Democratic Election Standards in the ECHR

The drafting of relevant ECHR provisions was a deliberate choice, reflecting an understanding that the formulation of fundamental electoral law principles should remain within the purview of Member States, while the Convention would focus on institutional guarantees (Parliamentary Assembly, 2012). The principle of true democracy thus serves as the foundation, establishing that elections must be regular, pluralistic, and fair to ensure genuine political participation. A particularly significant legal provision in this regard is Article 3 of Protocol No. 1 to the ECHR, which differs from other Convention articles in that it imposes obligations on states rather than directly conferring individual rights. While the ECtHR has consistently interpreted this article as establishing a subjective right to vote, it also imposes positive obligations on states to safeguard electoral integrity. These obligations encompass enacting legislation to ensure transparency, preventing electoral fraud, and instituting independent mechanisms to oversee electoral disputes (*The Communist Party of Russia and Others v. Russia*, no. 29400/05, 19 June 2012; *Davydov and Others v. Russia*, no. 75947/11, 30 May 2017). However, states retain a considerable margin of appreciation in structuring their electoral systems, as Article 3 does not serve as an exhaustive electoral code (*The Communist Party of Russia and Others v. Russia*, no. 29400/05, 19 June 2012).

The hard core of the European electoral heritage consists mainly of international rules. The relevant universal rule is Article 25 (b) of the ICCPR, which expressly provides for all of these principles except direct suffrage, although the latter is implied (*see* Article 21 of the UDHR). The common European rule is Article 3 of Protocol No. 1 to the ECHR, which explicitly provides for the right to **periodical elections** by **free** and **secret suffrage**; the other principles have also been recognized in human rights case law.

The ECtHR has constantly held that democracy constitutes a fundamental element of the "*European public order"*, and that the rights guaranteed under Article 3 of Protocol No. 1 are crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law (*see*, among many other authorities, ECtHR judgements in *Ždanoka v. Latvia (No. 2),* no 42221/18, 25 July 2024; *Tănase v. Moldova*, no. 7/08, 27 April 2010; *Karácsony and Others v. Hungary*, nos. 42461/13 and 44357/13, 17 May 2016).

The right to direct elections has also been admitted by the Strasbourg Court, at least implicitly (*Matthews v. the United Kingdom*, no. 24833/94, 18 February 1999). However, the constitutional principles common to the whole continent do not figure only in the international texts: on the contrary, they are often mentioned in more detail in the national constitutions (E.g. Article. 34 of the Lithuanian Constitution, Article 38.1 of the German Constitution, Article 68.1 and 69.2 of the Spanish Constitution and Article 59.1 of the Romanian Constitution, Article 96 of the Polish Constitution). Where the legislation and practice of different countries converge, the content of the principles can be more accurately pinpointed (Commision, 2002).

In its initial form the ECHR contained provisions pertaining to the adjacent political rights of everyone's freedom of speech, freedom of association, and freedom of assembly, but it made no mention of participation in and of itself. Remarkably, Article 3 of the 1952 Protocol No. 1 requires the States to hold elections rather than granting individuals the right to vote. The Preamble to the ECHR states that "*an effective political democracy*" is the greatest way to preserve fundamental human rights and freedoms. For this reason, Article 3 of the First Protocol is very important in the structure of the ECHR.

Therefore, there is no indication of an individual right to vote in elections in the text of Article 3. However, the ECtHR has taken a stand on the issue and construed the article as an individual right, which allows a person under a Member State's authority to lodge a complaint against that state on an individual basis. The Court's interpretations have altered the article's text so much that it may be interpreted as establishing that Article 3 of Protocol No. 1 implies individual rights, comprising the right to vote (the "*active"* aspect) and to stand for election (the "*passive"* aspect) (Registry of the Court, 2022). "Passive" aspect as the right to stand for election was developed in the case law, for example, *Podkolzina v. Latvia* where the ECtHR stated that the right to stand for election is "*inherent in the concept of a truly democratic regime*" (*Podkolzina v. Latvia*, no. 46726/99, 9 April 2002).

While Article 3 of Protocol No. 1 uses the phrase "*The High Contracting Parties undertake*," the other substantive clauses in the Convention system use the words "*Everyone has the right*" or "*No one shall*." As a result, the Court held for many years that Article 3 of the First Protocol did create an obligation for State Parties to hold free elections, but it did not create substantive rights for individuals. The Court then moved to the concept of subjective rights of participation - the "*right to vote"* and the "*right to stand for election to the legislature"*

(e.g., *Ādamsons v. Latvia*, no. 3669/03, 24 June 2008; *Tănase v. Moldova*, no. 7/08, 27 April 2010; *Davydov and Others v. Russia*, no. 75947/11, 30 May 2017).

Elections according to Article 3 in Protocol No. 1 shall, in addition, be by reasonable intervals. This qualification is somewhat more specific than the principle of periodic elections in Article 21 of the UDHR and Article 25 of the ICCPR. In addition to the requirement of fixed intervals in national legislation, Article 3 asks the state to establish a reasonable interval for the elections (European Commission; Directorate-General for External Relations, 2016). However, it is not quite clear on the basis of the wording of Article 3 what the "*conditions which will ensure the free expression of the opinion of the people*" are, but generally speaking the idea is to facilitate an atmosphere during the election times which is free from intimidation or coercion (European Commission; Directorate-General for External Relations, 2016).

The Venice Commission has explicitly endorsed this approach. In its 2002 explanatory report accompanying the *Code of Good Practice in Electoral Matters*, the Commission underscores that democracy constitutes a fundamental pillar of European constitutional heritage and that democratic elections must adhere to specific core principles, often referred to as European electoral heritage. This heritage consists of two primary components: first, the essential principles of electoral law, namely universal, equal, free, secret, and direct suffrage; second, the structural conditions necessary for democratic elections, including fundamental rights protections, the stability of electoral law, and effective procedural guarantees. Recognizing the interdependence of these components, the Venice Commission emphasizes that electoral law must ensure not only individual voting rights but also a well-regulated and transparent electoral process (Garlicki, 2020).

Three systemic conclusions emerge from this perspective. First, elections must be understood as a multistage process, encompassing distinct yet interrelated phases that often operate concurrently. European electoral standards apply across all dimensions of this process, including campaign conduct, which must conform to principles of fairness and pluralism (*see Davydov and Others v. Russia*, no. 75947/11, 30 May 2017). Second, the broader institutional environment plays a decisive role in determining electoral integrity. Public institutions, particularly state-controlled media, must maintain strict neutrality. Executive authorities must refrain from engaging in election campaigns in a manner that disproportionately benefits ruling parties. In extreme cases, such interference risks eroding the distinction between the state and

the governing party, a phenomenon characteristic of post-authoritarian states in democratic transition (Council for Democratic Elections, 2016). Third, states are required to establish judicial and administrative safeguards to protect electoral integrity and prevent electoral manipulation. This includes ensuring access to independent judicial review, empowering courts to oversee electoral disputes, and instituting mechanisms to verify the validity of election results. While states retain discretion in shaping their electoral frameworks, their regulatory choices must conform to overarching democratic principles and reflect historical and political contexts (e.g. *Etxeberria and Others v. Spain*, nos. 35579/03 and 3 others, 30 June 2009; *Vona v. Hungary*, no. 35943/10, 9 July 2013; *Ayoub and Others v. France*, nos. 77400/14 and 2 others, 8 October 2020) (Garlicki, 2020).

The structure of the *Code of Good Practice in Electoral Matters* and other Venice Commission documents follows this logic. They begin with an articulation of the general principles of electoral law before progressing to an analysis of subjective electoral rights, election administration, and mechanisms for dispute resolution. This framework allows for a detailed examination of how the principles of fairness and pluralism operate in various electoral contexts. The interplay between the soft law recommendations of the Venice Commission and the binding jurisprudence of the ECtHR shapes the evolving landscape of European electoral law. While the Venice Commission's recommendations provide a normative framework, the ECtHR ensures their practical enforcement within the European legal space. The combined effect of these institutions has contributed to the development of a coherent set of electoral standards that inform both domestic legal frameworks and international oversight mechanisms.

The right to free political choice, as enshrined in foundational documents like the UDHR and the ICCPR, is further echoed in the principles established by the OSCE within the Copenhagen Document, a product of the post-Cold War era (European Commission; Directorate-General for External Relations, 2016). This document, specifically in Paragraph 3, acknowledges the significance of political pluralism. It asserts that legitimate government authority stems from the freely and fairly expressed will of the people through regular and genuine elections. Furthermore, it underscores the importance of citizen participation in governance, either directly or through freely chosen representatives selected via equitable electoral processes.

The Copenhagen Document reinforces this concept of free choice in the context of political competition. Paragraphs 7.1 and 7.2 stipulate that participating states must allow open contestation for seats in at least one chamber of their national legislature through popular vote. This principle is reiterated in Paragraph 7.6, which stresses the need for legal safeguards ensuring equal treatment before the law and authorities for all political parties and organizations, thus enabling fair competition. This competitive environment forms the foundation for citizens to freely express their political preferences.

A significant area of further inquiry is the extent to which these principles apply beyond legislative elections. While Article 3 of Protocol No. 1 explicitly refers only to the election of a "*legislative body*", its underlying principles—regularity, fairness, and pluralism—arguably extend to presidential elections as well. Given the growing complexities of electoral disputes in the European context, ongoing analysis of ECtHR case law and Venice Commission recommendations remains essential for assessing the robustness of European electoral governance.

An analysis of the case law of the (ECtHR reveals that the Republic of Lithuania has been involved in only three cases concerning potential violations of international election standards, namely case *Paksas v. Lithuania*, no. 34932/04, 6 January 2011; *Uspaskich v. Lithuania*, no. 14737/08, 20 March 2016; and *Eigirdas VĮ "Demokratijos plėtros fondas" v. Lithuania*, nos. 84048/17 and 84051/17, 12 September 2023.

In *Eigirdas VĮ " Demokratijos plėtros fondas " v. Lithuania*, the applicants complained that the requirement to publish the decisions of the media self-regulatory body, by which they had been punished for violating the ethical requirements of journalists and publishers in relation to an article they had written and published, violated their right to freedom of expression. In its analysis, the ECtHR reiterated that a fundamental distinction must be made between reporting on the details of a private person's life and reporting on facts that may contribute to the debate in a democratic society concerning politicians exercising their official functions. Also in this case, the ECtHR confirmed that freedom of expression ensures the proper functioning of a democratic society.

The ECtHR considered that the national court had not properly carried out a balancing exercise between the need to protect Mr. M.'s reputation and the public interest in obtaining information and the Convention standard, which requires very good reasons to justify

restrictions on the debate on matters of public interest. The ECtHR therefore concluded that there had been a violation of Article 10 of the Convention. In the present case, the ECtHR did not refer to or interpret Article 3 of Protocol No. 1, but equally importantly, it emphasized the importance of freedom of expression in a democratic society in the context of elections.

The dispute in *Paksas v. Lithuania* arose after the 2004 impeachment and removal of Rolandas Paksas from the office of President of the Republic of Lithuania for a serious violation of the Constitution. Shortly thereafter, Mr. Paksas sought to run again in the presidential elections scheduled for 13 June 2004. In response, on 4 May 2004, the Seimas amended the Law on Presidential Elections by introducing a restriction prohibiting persons removed from office by impeachment from running for President for five years. A group of members of the Seimas appealed this amendment to the Constitutional Court of the Republic of Lithuania, which ruled on 25 May 2004 that such a restriction was not in itself unconstitutional but that the imposition of a specific time limit was unconstitutional. In accordance with this decision, on 15 July 2004, the Seimas amended the Law on Elections to the Seimas and prohibited people excluded by impeachment from being elected as members of the Seimas. Mr. Paksas subsequently appealed against these restrictions to ECtHR, claiming that Lithuania had violated his right to stand for election.

In this case, ECtHR emphasized that Article 3 of Protocol No. 1, which enshrines a fundamental principle of an effective political democracy and is accordingly of prime importance in the Convention system, implies the subjective rights to vote and to stand for election, however, it still recognized room for "*implied limitations"* and margin of appreciation for the states. Important aspect for interpretation of this provision was that for the purposes of applying Article 3 of Protocol No. 1, any electoral legislation or electoral system must be assessed in the light of the political evolution of the country concerned, which is crucial if we look at the context of post-soviet countries, as the same conclusion was drawn in other cases, for example, *Ždanoka v. Latvia (No. 2),* no 42221/18, 25 July 2024.

Nevertheless, on 6 January 2011, the ECtHR ruled that the lifetime ban preventing Mr. Paksas from standing as a parliamentary candidate was disproportionate and violated Article 3 of Protocol 1 to the ECHR. It is worth mentioning, in this case, violation was found due to permanent restriction from standing from parliamentary elections; however, as powers of the Head of the State cannot as such be construed as a form of "*legislature*", claims regarding

standing for presidential elections are inadmissible before ECtHR. If it could be established, that the Head of the State would be given the power to initiate and adopt legislation or enjoyed wide powers to control the passage of legislation, then it could arguably be considered to be a legislature within the meaning of Article 3 of the Protocol No. 1 (*Boškoski v. the former Yugoslav Republic of Macedonia*, no. 11676/04, 2 September 2004; *Brito Da Silva Guerra and Sousa Magno v. Portugal*, no. 26712/06, 17 June 2008). This possibility has never been used, however, and has not even been mentioned in the case of *Paksas v. Lithuania*.

Considering this Mr. Paksas appealed to HRC under Article 25 of the ICCPR (*HRC, Communication No. 2155/2012, 29 April 2014*). The Committee noted that Article 25, paragraphs (b) and (c), have no equivalent in the ECHR and its Protocols as regards access to public office other than the legislature. In this regard, the Committee found a violation of Article 25 of the ICCPR and stated that the Lithuania is under obligation to provide Mr. Paksas with an effective remedy, including through revision of the lifelong prohibition of his right to be a candidate in presidential elections or to be a prime minister or minister.

Notably, in 2020 Supreme Administrative Court of Lithuania (SACL) applied to the ECtHR for an advisory opinion in the election case regarding the legality and validity of the decision of the Central Electoral Commission to refuse the registration of the candidate Mrs. Neringa Venckienė of the political party "*Drąsos kelias*" for members of the Seimas. The situation was closely connected also to the judgement of Mr. Paksas, however the ECtHR, on purpose did avoid answering SACL questions which could potentially let reconsider and alter ECtHR's previous decision in *Paksas v. Lithuania* case, however ECHR remained consistent with the previously formed practice of interpreting Article 3 of the Protocol No. 1 and emphasized wide margin of appreciation of the States and importance of historical context and political evolution of the country concerned (Advisory Opinion on the assessment…, 2022).

In both its 2011 judgment and its 2022 advisory opinion, the ECtHR recognized that comprehensive European integration promotes long-term democratic stability. In 2011, the Court's view of participation in the EU and CoE as strengthening a state's democratic nature made it less necessary to exclude lawmakers with harmful ties or abuses of power. However, the ECtHR's own caseload by 2022 showed a regressive trend, including Russia's invasion of Ukraine, the emergence of "*illiberal democracy"* in Hungary, and political influence over the Polish judiciary (Neuman, 2023). Consequently, it had less incentive to trust European

integration as a safeguard for democracy. Furthermore, there are no analogous guarantees in the larger global human rights framework.

In the case of *Uspaskich v. Lithuania*, the applicant complained that the national courts, at the request of the prosecutors, had imposed house arrest on him as a suspect in a criminal case concerning the Labor Party's fraudulent bookkeeping and the submission of false data on income, profits or assets, preventing him from effectively participating in the October 2007 elections to the Seimas in the Dzūkija single-mandate constituency. The ECtHR considers that what is at stake in the present case is not the applicant's right to win the parliamentary election in the Dzūkija single-member constituency, but his right to stand freely and effectively for it, this right being inherent in the concept of a truly democratic regime

The ECtHR concluded that there was no violation of Article 3 of Protocol No. 1 considering that he had been able to take part in the elections, while knowing that a court order for his arrest and detention had been issued and that he could not have reasonably expected to take part in those elections without any constraints.

However, what is important to mention as it touches upon very essence of this thesis topic is that the ECtHR states that the State has "*positive duty under Article 3 of Protocol No. 1 to hold democratic elections*". The same duty to hold democratic elections is stated case of: *Yumak and Sadak v. Turkey*, no. 10226/03, 8 July 2008; *Namat Aliyev v. Azerbaijan*, no. 18705/06, 8 April 2010; *Sitaropoulos and Giakoumopoulos v. Greece*, no. 42202/07, 15 March 2012; *Özgürlük ve Dayanışma Partisi (ÖDP) v. Turkey*, no. 7819/03, 10 May 2012; *The Communist Party of Russia and Others v. Russia*, no. 29400/05, 19 June 2012; *Gahramanli and Others v. Azerbaijan*, no. 36503/11, 8 October 2015; *Riza and Others v. Bulgaria*, nos. 48555/10 and 48377/10, 13 October 2015; *Davydov and Others v. Russia*, no. 75947/11, 30 May 2017; Guðmu*ndur Gunnarsson and Magnús Davíð Norðdahl v. Iceland*, nos. 24159/22 and 25751/22, 16 April 2024.

Most of those cases are based on very first case regarding Article 3 of the Protocol No. 1 application *Mathieu-Mohin and Clerfayt v. Belgium*, no. 9267/81, 2 March 1987. This raises concern whether the ECtHR has not stretched Article 3 of Protocol No 1 to include the obligation for States to organize democratic elections, even though the requirement of democracy *per se* is not provided for in the ECHR text.

In case *Mathieu-Mohin and Clerfayt v. Belgium,* the ECtHR stated, that Article 3 of the Protocol No. 1 provides only for "*free"* elections "*at reasonable intervals"*, "*by secret ballot"* and "*under conditions which will ensure the free expression of the opinion of the people*". Nevertheless, the ECtHR agrees with the concept that the interpretation of the latter Article 3 has evolved over time. Initially, the European Commission of Human Rights viewed it as an "*institutional right"*, meaning states had an obligation to hold free elections (*X v. Belgium*, no. 1028/61, 18 September 1961). Later, the focus shifted to "*universal suffrage"* (*X v. Germany*, no. 2728/66, 6 October 1967), and eventually to recognizing "*individual rights"* —specifically, the **right to vote** and **the right to stand for election** (*W, X, Y, and Z v. Belgium*, nos. 6745-6746/76, 30 May 1975). The ECtHR confirmed this final interpretation, establishing that Article 3 of Protocol No. 1 protects individual political rights, not just the general obligation of states to hold elections.

It appears that the interpretation of Article 3 of Protocol No. 1 has evolved to a new level, imposing a more stringent requirement that elections must be genuinely democratic. This is also apparent from the ECtHR judgement in *Sitaropoulos and Giakoumopoulos v. Greece,* where the Court held, that *"in the twenty-first century, the presumption in a democratic State must be in favour of inclusion",* that current concept and interpretation towards Article 3 of Protocol No. 1 shifted to putting even bigger obligation for the states which was previously not included in ECtHR wording as direct positive obligation for democratic elections (*Sitaropoulos and Giakoumopoulos v. Greece*, no. 42202/07, 15 March 2012).

Thus, while neither the text of the ECHR nor other regional instruments explicitly impose an obligation on states to hold democratic elections, the ECtHR has significantly expanded the requirements of Article 3 of Protocol No. 1 concerning both active and passive electoral rights. And even if we conclude that the ECHR imposes an obligation on states to hold democratic elections, we have to bear in mind that since Article 3 of Protocol No.1 of the ECHR only covers the election of a legislative body, the election of a head of state does not fall under the obligation of democratic elections, which leaves a certain ambiguity and legal uncertainty. After all, we cannot conceive of an obligation to organize democratic parliamentary elections without requiring democratic presidential elections. However, the key finding of this thesis, based on an analysis of the Court's case law, is that the ECtHR has, in effect, established a positive obligation for states to ensure democratic elections.

Figure 2. **ECHR and ICCPR requirements comparison (summary)**

ICCPR	**ECHR** (only election of the "legislature")
• Periodic elections • Genuine Elections • Secret suffrage • Free expression of the will of the voters • Stand for election • Universal suffrage • Voting in elections on the basis of the right to vote • Equal suffrage	• Periodic elections • Free suffrage • Secret suffrage • Free expression of the opinion of the people • Equal suffrage However, ECtHR extended requirements to: • Stand for elections • Voting in elections on the basis of the right to vote • Universal suffrage ECtHR continues to develop a substantive corpus of principles in its case law related to Article 1 of the Protocol No. 1, as for example, requirement to hold democratic elections.

Source: Compiled by the author from the sources listed in Chapter 2

3. Customary International Law and Unwritten Norms on Democratic Elections

After analyzing legal doctrine and scholarly opinion regarding electoral standards, potential requirement to hold democratic elections, and relevant international norms, it was identified, that there is no treaty explicitly established requirement to hold democratic elections. Although there is an established positive obligation by the ECtHR for the states to hold democratic elections, it applies only in context of election of legislative power as parliament. Consequently, there is no explicit democratic requirement for presidential elections even in the European regional system.

However, states can be bound not only by express wording of the treaty, but also by *opinio juris*, which denotes a subjective obligation, in that a state perceives itself to be bound by law in question. Considering this, the current chapter will examine whether there are formed *opinio juris* requiring the states to hold democratic elections.

State practice and states' subjective perceptions of their legally obligatory commitments, or *opinio juris*, are the two components of customary international law. *Opinio juris* is defined as "*a belief that [a] practice is rendered obligatory by the existence of a rule of law requiring it*" by the International Court of Justice (ICJ) in its judgement on the North Sea Continental Shelf (*North Sea Continental Shelf, Germany v Denmark,* Judgment on Merits, 20 February 1969).

It is generally accepted that multilateral treaties may be considered as elements of state practice relevant for determining the existence of a rule of customary international law (Treves, 2012). For such a rule to be established, additional evidence of pertinent practice and *opinio juris* is needed (*North Sea Continental Shelf, Germany v Denmark*, Judgment on Merits, 20 February 1969). As the ICJ has affirmed, evidence of customary international law can be derived, *inter alia*, from the stance adopted by states towards resolutions of the UNGA. Both the substance of these resolutions and the circumstances surrounding their adoption are regarded by the Court as pivotal in determining the relevance of such resolutions in establishing a general rule of international law (*Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons*, 8 July 1996). In the context of assessing the customary legal standing of the right to political participation, it is essential to account for the fact that the UNGA has repeatedly reaffirmed, through a series of resolutions (*Advisory Opinion on the Legality of the*

Threat or Use of Nuclear Weapons, 8 July 1996), the principle that government authority must be founded on the will of the people, as expressed through periodic and genuine elections, alongside the right to freely choose representatives in such elections[10].

3.1. Effect of Non-Recognition of Undemocratically Elected Governments on the Legitimacy of the Government

In this regard it is worth discussing recognition of non-democratically elected governments and its parallel with recognition of the governments and States.

Consensus regarding State discretion *vis-à-vis* recognition is illustrated by statements made over the years by governments, announcing unilaterally (or in groups) that they will recognize or not recognize other governments. In relation to Libya in 2011, for example, a group of 32 States issued a statement declaring that "*the Qaddafi regime no longer has any legitimate authority*", and that they would "*deal with the National Transitional Council as the legitimate authority in Libya*" (Fourth Meeting of the Libya Contact Group Chair's Statement, 15 July 2011). In 2016, five States and the EU issued a statement describing Libya's new Government of National Accord as the "*only legitimate government in Libya*" (Statement on Libya, 2016). In August 2021, Canada's Prime Minister announced that his government would not recognize the Taliban (Ellsworth, 2021). As Lord Atkin said in the UK House of Lords in 1939, "*our sovereign has to decide whom he will recognize as a fellow sovereign in the family of states*" (*Government of The Republic of Spain v SS Arantzazu Mendi,* AC 256, HL(E), 23 February 1939).

Governments cannot unilaterally determine the legal status of other governments is also highlighted by the international reaction to requests for foreign military intervention. In 2014, Russia intervened militarily in Ukraine at the request of ousted President Yanukovych. Yanukovych was not regarded internationally as representing the Ukrainian Government, and the intervention was widely regarded as illegal (Corten, 2015). In other words, Russia was not at liberty to unilaterally decide upon the legitimacy of the ousted President, and to intervene militarily at his request. The same question can arise now, as in 2025 Russia still disputes

[10] For example, UNGA Res 64/155 (18 December 2009) UN Doc A/RES/64/155 preamble para 8, UNGA Res 62/150 (18 December 2007) UN Doc A/RES/62/150 preamble para 4, and UNGA Res 60/162 (16 December 2005) UN Doc A/RES/60/162 preamble para 4.

legitimacy of president Volodymyr Zelensky due to ban of elections while martial law act is in force (Hodunova, 2025).

Conversely, France's intervention in Mali in 2012 at the request of the ousted Malian President was widely regarded as legal ((Security Council Resolution 2100, 25 April 2013), (Weller, 2015)). In justifying the intervention, France stressed that it had "*international political support*" and the support of the UN (Fabius, 2013). France did not assert an unrestricted right to intervene based solely on its own evaluation of the requesting government's legitimacy. Rather, it acted on the assumption that intervention was permissible when the request originated from a government whose legitimacy was recognized at the international level. This underscores the principle that individual states cannot unilaterally determine the legal status of other governments. Instead, international recognition plays a crucial role in such determinations. However, the absence of a formalized process for collectively establishing governmental legitimacy leaves an open question: to what extent can states assess and determine whether elections were democratic and, consequently, whether a government is legitimate?

In this sense we shall understand that "*recognition*" of the governments is a prerogative of governments and in this sense cannot determine legal status. However, it is still an important indication of the State's position and potentially forming *opinio juris*.

Regarding 2025 presidential elections in Belarus, the Members of the European Parliament stressed that Belarus' Central Election Commission has registered four other *pro forma* candidates in addition to Lukashenko, and that the presidential election campaign is being conducted in an environment of severe repression that does not meet even the minimum standards for democratic elections. Democratic candidates, the European Parliament resolution noted, are not allowed to participate in the campaign, media freedom is severely restricted, voters are intimidated, and the lack of independent election observation further undermines the legitimacy of the electoral process. European Parliament's resolution of 22 January 2025 reiterated 2020 presidential election to be fraudulent and that the European Union (EU) and "*many of its democratic partners"* did not recognize the results of the elections or Aliaksandr Lukashenka as legitimate leader and President of Belarus (EP resolution on the need …, 2024/3014(RSP), 22 January 2025).

Given these circumstances—marked by severe restrictions on fundamental freedoms, the absence of credible election monitoring, and the lack of a transparent vote-counting process, the forthcoming elections fail to meet internationally recognized standards of democratic legitimacy. What is important is that Resolution No. 2024/3013(RSP) stresses as one of the reasons for categoric rejection of those elections as they fail "to meet even the minimum international standards for democratic elections" (EP resolution on the need …, 2024/3014(RSP), 22 January 2025).

The same statement was made in CoE, which stressed, that "*so-called elections organised in Belarus on 26 January 2025 do not meet the minimum international standards for democratic elections and lack any democratic credibility, and there are no grounds for recognising the legitimacy of Aliaksandr Lukashenka as president*" (Parliamentary Assembly, Resolution 2587 (2025), 30 January 2025). The resolution was adopted unanimously, demonstrating the international community's strong recognition of the importance of democratic elections. In total there are 14 countries and 11 international organizations, institutions, and political figures not recognizing 2025 sham election in Belarus (Tsikhanouskaya, 2025).

From these statements, two distinct conclusions can be drawn: first, that elections must adhere to **international** standards to be considered democratic; and second, that there is an expectation for these standards to be met, suggesting the possible formation of *opinio juris*.

There a several more examples where international community questioned legitimacy of elected representatives and democratic essence of the elections, for example, since 2021 both the military government of Myanmar and the Taliban in Afghanistan, despite being in control of public institutions, have been denied seats in the UNGA and has kept vacant Afghanistan and Myanmar's seats for delegates representing the overthrown constitutional governments (Gudzenko, 2024). In October 2023, the Parliamentary Assembly of the CoE called on its Member States to recognize Vladimir Putin as illegitimate after the end of his current presidential term "*due to the further extension of presidential term limits by the 2020 constitutional reform*" which enabled him to run for the office for the fifth time (Examining the legitimacy and legality…, Resolution 2519 (2023), 13 October 2023). However, while this development is undoubtedly significant, it does not signify the emergence of a new era in which

all non-democratic regimes would automatically lose their legitimacy to represent their respective states based on an emerging international rule on governmental legitimacy.

3.2. Progress what is made to recognize emerging *opinio juris* for democratic imperative

At the time, some international legal scholars argued that democracy "*had become a normative entitlement of all individuals*." ((Franck, 1992) (Tesón, 1992) (Slaughter, 1995)) In this context, the European Community (E.C.) Member States adopted a number of documents that explicitly expressed their willingness to grant recognition only to those new states which had constituted themselves on a *"democratic basis"* (Declaration on the "Guidelines on…, 17 December 1991*).* In this sense "*democratic basis"* shall be understood as reflecting "*democratic procedure"* (alteration of its legal status in accordance with the will of the people) and "*democratic government structures"* (adherence to a particular political system) (Vidmar, 2013).

International institutions in Europe and beyond responded swiftly to the transformative events of the era, marking the onset of a new democratic age. The Conference on Security and Cooperation in Europe (CSCE), which brought together key players from the fading East-West conflict, officially committed to "*build, consolidate, and strengthen democracy as the only system of government*" (Charter of Paris for a New Europe, 21 November 1990) for its Member States. Similarly, in mid-1991, the Organization of American States (OAS) affirmed that "*representative democracy is the form of government of the region*." (Santiago Commitment to Democracy and…, 4 June 1991) Six months later, eleven former Soviet republics signed the Alma Ata Declaration, establishing the Commonwealth of Independent States (CIS) and expressing their dedication to "*building democratic states under the rule of law*." (Alma Ata Declaration and Protocol, 21 December 1991)

Indeed, almost every international actor involved in domestic democracy promotion today firmly believes that democratic administration involves more than just conducting regular, free elections (McMahon & Baker, 2006). Resolution 55/96 of the UNGA, which was enacted in December 2000, on "*Promoting and consolidating democracy*", offers a particularly instructive example in the case of the most important actor on the international scene, the UN (UNGA Res 55/96, 4 December 2000). The Assembly demonstrated its support for a comprehensive approach to democracy that includes both procedural and substantive

components by urging states to act in a number of areas, such as human rights, electoral systems, the rule of law, civil society participation, good governance, sustainable development, and social cohesion. The UN World Summit in 2005 reaffirmed the support of the international community for a dynamic and inclusive definition of democracy. The participating heads of state and government acknowledged democracy as a "universal value" in the UNGA resolution that emerged from the event, but they also stated that there is no single model of democracy, even though democracies share common features. (World Summit Outcome, UNGA Resolution 60/1, 16 December 2005).

Despite being officially non-binding, the majority of UN and regional texts that deal with democracy and democratization conceptually still represent a wide range of international agreement on some of the structural and procedural pillars of democratic governance. The final product isn't a comprehensive global democracy model. Instead, it serves as a normative minimum standard that offers direction to governments implementing democratic reforms as well as to foreign players in circumstances (such those following a conflict) where they are asked to assist a nation's democratic transition. States' adherence to vague political pledges they have signed to further democratic governance, such those outlined in the UN Millennium Declaration and the UN World Summit Outcome, may likewise be evaluated using the new international standard or emerging *opinio juris*.

Considering E.C.'s guidelines for recognition of new states, democratic procedure, as well as democratic elections, is important for the recognition of the state, however it is not crucial for the entity to exist as a state (Fikfak, 2022). From this we can draw the conclusion on the requirement of democratic elections as a part of democratic procedure, concluding that democratic elections are important for recognition of the state and its government, which further could be understood as customary international law.

Most recognition crises invoking the "*free and fair election"* argument, whether in legal or rhetorical terms, have emerged predominantly after 2006, coinciding with the widely acknowledged decline of the third wave of democratization (Diamond, 2015). Grounding recognition in an electoral mandate appears to be a universal argument, employed in the foreign policy rhetoric of both purportedly democratic and authoritarian states alike (Gudzenko, 2024). While considerations of electoral legitimacy can be traced back to periods predating the post-

Cold War era, this criterion has recently re-emerged as a frequently cited standard for government recognition (Gudzenko, 2024).

Furthermore, there are only 7 countries in the world which not self-identify as democratic: Afghanistan (Taliban), Oman, Saudi Arabia, Vatican, Brunei, Quatar, United Arab Emirates. Recent Oxford/Dublin research shows that majoritarian support for much stronger and more democratic global governance, and indeed, indicates people wish for "democratic entitlement" to become a reality (Ghassim & Pauli, 2024). In this regard it is evident that people see democratic governance as their preference, however, it does still do not evolve into clear manifestation of democratic elections requirement.

3.3. Obstacles preventing the emergence of *opinio juris*

On the other hand, the Democracy Report 2024 by the Varieties of Democracy Institute indicates that the level of democracy enjoyed by the average person in 2023 is down to 1985 levels (Variaties of Democracy Institute, 2024). According to the report, approximately 71% of the world's population – 5.7 billion people – live in autocracies, an increase from 48% a decade ago. Of particular concern for the OSCE region, the report indicates that the pattern of democratic backsliding has been especially "*stark*" in Eastern Europe and Central Asia, as well as in South Asia. (OSCE PA Special Respresentative on Gender Issues, 2024)

Notwithstanding the occasional non-recognition of regimes resulting from coups against freely elected leaders – there is virtually no international practice suggesting that the capacity of long-standing authoritarian regimes to act on behalf of their respective states would be called into question simply because of the absence of free and fair electoral processes (Fox, 2001).

The absence of free elections in numerous states, including prominent regional powers such as China and Saudi Arabia, calls into question the emergence of a universally recognized legal standard for democratic electoral governance. While scholars critical of the notion of democratic entitlement do not dispute that the international community largely regards free and fair elections as the optimal method for selecting national leaders, they challenge the extent to which this preference has crystallized into a binding legal norm. And even though we notice strong position of European region in regard to Belarus' or Russia's presidential elections, it is

probably not enough to establish *opinio juris*, as the remaining part of the world remains mostly silent, or rejection of non-democratically elected officials remains quite selective.

Yet now, more than twenty years later, when the backlash against the rule of law in Hungary and Poland is clear (Dziegielewska, 2022), EU institutions remain hesitant to respond to or sanction these states. Although the rule of law and democratic processes were prerequisites for membership, they are now, at least to some extent, no longer fully upheld in Hungary and Poland. Nevertheless, both states remain active members of the CoE and the EU. This suggests a clear distinction between the standards applied to prospective members and those applied to existing ones. Looking more closely, it is only Russia that has been first suspended and then later expelled from the CoE: in response to its 2022 invasion of Ukraine, the Committee of Ministers drew a red line that when use of force is in question, other Member States cannot stand by quietly and accept such behavior ((Consultative Council of European Prosecutors , 2022)), (Council of Europe, 2022)).

While widespread support for UN affirmations of the right to vote and participate in genuine elections may suggest the existence of corresponding *opinio juris*, the reluctance of some states to ensure truly free and fair elections indicates that a customary rule in this regard has not yet fully developed. Alternatively, it could be argued that such a rule applies only to states that have demonstrated acceptance through the practice of holding periodic and genuine elections, while those that neither adhere to this standard nor recognize relevant treaty obligations could be considered "*persistent objectors"* with a legitimate claim to exemption (Pippan, 2010).

Even if the principle of periodic and genuine elections is accepted as customary law, a key issue remains whether there is a universally shared understanding among states and international actors regarding its precise interpretation. While universal and equal suffrage, secret ballots, and the absence of coercion are clear requirements, neither Article 21 of the UDHR nor Article 25 of the ICCPR explicitly mandate a pluralistic electoral process (Pippan, 2010).

In conclusion, the potential for the formation of *opinio juris* regarding a customary requirement for democratic elections remains an open question. While there is increasing recognition of democratic governance as a normative ideal, the absence of a universally accepted and consistently applied legal standard suggests that full customary status has yet to be achieved.

However, continued state practice and widespread endorsement of electoral legitimacy as a criterion for recognition may, over time, contribute to the consolidation of democratic elections as a binding norm under customary international law.

CONCLUSIONS

1. According to scholars and generally accepted views, including ICCPR and ECHR, the purpose of elections is to ensure freedom of expression, alternative information sources, associational autonomy, inclusive citizenship, and fairness. Elected officials must be accountable through periodic elections and a multi-party system. The nature of elections directly correlates with the political regime, meaning the standards for democratic elections align closely with those for democratic governance.
2. While scholars have examined the "*democratic imperative*" and ILD, these concepts are still aspirational and not legally binding. Despite changes in global governance since the Cold War, no legal mandate for democracy has emerged. The push for democracy in international law lacks consensus, and non-democratic states are not conclusively shown to violate human rights more than democratic ones. The evolution of ILD is heavily influenced by political contexts, and its future development remains uncertain. This furthermore reflects the thin line between international law as politics and international law as law.
3. The UN has established clear standards for electoral processes, emphasizing universal suffrage, periodicity, and secrecy. The concept of a direct legal right to democratic elections remains contentious and is not *expressis verbis* formulated in the corpus of international law. Instead, the focus is on safeguarding individual electoral components, with the broader goal of ensuring electoral integrity rather than mandating democracy as a legal obligation. While international law protects key electoral principles, democracy is more of an aspirational political goal than a legal requirement (*lex lata*).
4. The ECtHR has definitively broadened the scope of Article 3 of Protocol No. 1 (embedded in the regional human rights instrument), imposing a clear positive obligation on States to ensure genuinely democratic elections, especially in terms of active and passive electoral rights. This evolving interpretation clearly signals a growing legal responsibility for states to uphold democratic standards in electoral processes. This legal activism by the ECtHR leaves room for broader protection to democratic elections while establishing a requirement for them. However, it does not establish a requirement for democratic elections for every kind of election and is limited to elections of legislative bodies. In the ECtHR practice, Article 3 of Protocol No. 1 applies only to legislative elections (*stricto sensu*), leaving

presidential elections outside its scope. This creates legal uncertainty, as it is difficult to justify the exclusion of presidential elections from democratic standards. It creates a clear imbalance, as the State has an obligation to hold democratic elections for its parliament, yet it can still be ruled by a dictator.

5. The ICCPR guarantees the right to participate in public affairs, but it does not explicitly require elections to be democratic. While the HRC ascribes great weight to free and fair elections in its General Comments and COBS, it falls short of imposing a direct mandate for democratic elections. Instead, the HRC focuses not on a broader context, but on particular sides of democratic elections standard, namely the absence of coercion, freedom of expression, and equal access to electoral systems. The HRC has raised concerns about practices undermining political pluralism or marginalizing certain groups, albeit ICCPR primarily calls for free and fair elections, rather than mandating a fully democratic electoral system. Article 25's right to participate in public affairs requires guarantees for fair elections, not necessarily democratic ones.
6. The idea of democratic elections as a universal legal requirement has not yet become binding customary international law. While there is increasing international support for democratic elections and "*democratic entitlement"*, the absence of a universally accepted standard for democratic elections prevents the formation of a clear customary rule. There is still no universally shared understanding among states and international actors regarding elections requirements. This is evident from, on the one hand, a very strong commitment to democratic elections from European regions, but still a huge push back from the rest of the world on the other hand.

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SUMMARY

International law and the democratic imperative: the binding nature of democratic elections in international law

Viktorija Višnevskaja

This master's thesis critically examines the legal obligation of states to hold democratic elections under international law. Employing a conceptual, empirical, and comparative methodology, the study analyzes key legal instruments, including the ICCPR and the ECHR, alongside the evolving jurisprudence of the ECtHR and the COBS of the HRC. It assesses academic literature, treaty interpretations, and state practice to provide a nuanced understanding of the legal framework surrounding electoral processes.

The research's key findings reveal that while democratic elections are crucial for electoral integrity, existing international legal provisions remain largely aspirational. The thesis highlights the absence of a definitive legal mandate for democracy. It notes that UN standards for electoral processes emphasize fundamental principles like universal suffrage and fairness, yet the concept of a direct binding right to democratic elections remains contentious.

Further analysis explores the requirements of Article 3 of Protocol No. 1 of the ECHR, shaped by ECtHR activism, which obligates states to hold democratic elections for legislative bodies but lacks clear standards for presidential elections. The study also addresses the limitations of the ICCPR, which guarantees participation in public affairs but falls short of mandating democratic elections, instead establishing requirements for separate elements.

Finally, the thesis investigates the potential for an emerging *opinio juris* regarding customary norms, requiring the conduct of democratic elections, drawing upon observations from the UN treaty bodies and state responses and practices. The research concludes that while a strong political aspiration for a democratic imperative in elections exists, understanding the pluralism of political systems makes the emergence of such an *opinio juris* uncertain, despite the current strong commitment to democracy by the majority of the international community. The author concludes that the customary law, as it stands today, does not impose a binding commitment upon States to carry out their elections democratically.