

## The “Good Governance” Crusade in the Third World: A Rich, Complex Narrative – Magic Wand or Smoke Screen?

Jackson Nyamuya Maogoto\*

Senior Lecturer in International Law, University of Newcastle (Australia)

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### Abstract

The project of governance, which has been heralded as a contemporary advance in the development of international law, has a very old lineage. Since the beginnings of the modern discipline of international law in the sixteenth century, international law has devised a number of doctrines directed at shaping and reforming the government of the non-European State. This Paper argues that good governance exerts an extraordinarily powerful influence on the thinking of the international community in part because it is connected with human rights, the universal language in this “age of rights”. The link suggests that the Third World State is the focus of concern: it is the aberrant Third World State which both violates rights and engages in bad governance. The Paper critiques the stance that the problem of addressing international justice can be largely achieved through the project of good governance which would reform the Third World State. It seeks to argue that democratic experimentalism, not the so-called “McDonaldization” (globalization as homogenization) of the world, is important. This is based on the premise that “McDonaldization” minimizes the complex way in which the local interacts with the international.

### Keywords

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### I. Introduction

Since the middle of the last century, there has been a steady move towards “altruism” by international entities and organizations with an agenda of promoting good governance in the Third World (more politically correct referred to as the developing world). However it is of note that the initiatives of relevant entities have been more or less Western-centric in style and form. Even though international organizations and donors (pre-dominantly Western countries) offer an increasing variety of technical support programs, these programs come with a healthy dose of political induction to restructure the powers of the Third World State and of the State’s socio-political organizations geared towards “good governance”.

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\*) LL.B (Hons) (Moi), LL.M (Hons) (Cantab), LL.M (UTS), PhD (Melb), GCertPPT (UoN). The author acknowledges the financial assistance of a research grant from the Australian National Commission for UNESCO.

In the course of the nineteenth century, the focus was “government”. In this era copious amounts of ink were expended speaking magnanimously of “government” and its central role in transforming the uncivilized world with its hotch-potch of traditional governmental structures and institutions which did not fit in with a Western centric understanding. To solve this complex and politically discredited institutions, the solution was an infusion of Western models even though this meant eroding democratic centralism prevalent in Africa and socialist models prevalent in Asia.

Fast forward to the twentieth century and “governance” become the new terminology. The shift means though that a much broader range of relations affecting the Third World State are brought into the fold. Thus by stealth a larger jurisdiction over the affairs of the Third World State has been handed over to the machinations of the West. While “government” discourse in the nineteenth century was effective, the achievement of independence in colonies with what approximated Western government was not the delivering results envisaged more so because this had been done largely on the criteria spelt out by the West. In any case “government” suggested activities that are backed by formal authority, by police powers to insure the implementation of duly constituted policies, whereas “governance” was mooted as a softer terminology that refers to activities backed by shared goals that may or may not derive from legal and formally prescribed responsibilities and that do not necessarily rely on police powers to overcome defiance and attain compliance.<sup>1</sup> In arguing that it embraced governmental institutions as well as informal, non-governmental mechanisms, the West has sought and still seeks to discredit nationalism in Third World States, a not too healthy initiative considering the inner contradictions in Third World States.

Unlike the more stable and cohesive Nation-States of developed west, the post-colonial States of the Third World are still struggling with the task of nation building and consolidating their territorial integrity and other State structures. There are deep-seated divisions, which along with acute scarcity of resources constantly hamper the process of nation building. Lack of domestic consensus creates an easy ground for the assertion of autonomy and self-determination by the disparate groups.<sup>2</sup>

Even the most perfect public deliberative process is incomplete and fragile without some sense of the social ends toward which it is directed. There is a necessity to experiment with ways to measure “voice” in a bid to balance individual and group interests. This Paper argues that with the benefit of compounded learning of the Third World’s diverse societies and the variegated socio-political issues, this knowledge can be ploughed back into the process of developing considered, creative new options for a satisfactory collective future as a means of facilitating

<sup>1</sup> James N. Rosenau, Governance, Order and Change in World Politics, in *Governance without Government: Order and Change in World Politics* (James N. Rosenau & Ernst-Otto Czempiel eds., 1992) pp. 1, 4.

<sup>2</sup> Priyankar Upadhyaya, “Human Security, Humanitarian Intervention, and Third World Concerns”, 33 *Denver Journal of International Law* 7 Policy 71 (2004) p. 87.

entrenched antagonisms giving way to shifting, overlapping coalitions and novel accommodations. The underlying theme is premised on the basis that thorny issues should and ought to be approached from different angles. This allows different groups/stakeholders to learn that having a diversity of perspectives represented in their discussions demonstrably improves outcomes (in terms of reaching workable accommodations) because it enlarges the range of options on the table and opens up new ways of thinking about old stalemates.

## **II. The Legacy of the Nineteenth Century – The Smoke Screen: Defining and Excluding the Uncivilized**

A central feature of the nineteenth century (the heyday of positivism) was the distinction that was made between civilized and uncivilized States. This was at the expense of the natural school of thought that was gradually eroded and the thoughts of its leading philosophers (Vittorio, Grotius etc) displaced. Nineteenth century positivist jurists repudiated the naturalist notion that a single, universally applicable law governed a naturally constituted society of nations. Leading nineteenth century writers such as Wheaton claimed that international law was the exclusive province of civilized societies. Given that the civilized/non-civilized distinction had the practical effect of expelling the non-European world from the realm of law and society, positivist jurisprudence sought to justify their position by asserting that cultural difference translated into legal difference. This was to have an enduring effect on non-European societies and establish a history of exclusion as a legacy of nineteenth century positivism.

The positivist stance of the nineteenth century was to have a profound and enduring consequence for the non-European world. Basically, it presented non-European societies with the fundamental contradiction of having to on one hand comply with authoritative European standards in order to win recognition, but on the other hand offering a platform for them to assert themselves. The implications of this stance are encapsulated in the following observation by Franz Fanon (arguably the twentieth century's pre-eminent thinker on the psychopathology of colonization):

Man is human only to the extent to which he tries to impose his existence on another man in order to be recognized by him. As long as he has not been effectively recognized by the other, that other will remain the theme of his actions. It is on that other being, on recognition by that other being, that his own human worth and reality depend. It is in that other being in whom the meaning of his life is condensed.<sup>3</sup>

Stepping back in history, Professor Thomas Lawrence captured the prevalent mood and ideology of his era – the nineteenth century (which was somewhat the

<sup>3</sup>) Frantz Fanon, *Black Skin, White Masks* (Charles Lam Markham trans., 1967) (1952) pp. 216–17.

apex of the “evils” that partly inspired Fanon decades later). Lawrence reflecting on the fundamental nexus between race and law noted: “International law may be defined as the rules which determine the conduct of the general body of civilized States in their dealings with one another.”<sup>4</sup> A century later, Professor Louis Henkin in a seminal work with other leading scholars tore apart the self-righteous tenor of nineteenth century positivism when he noted that international law is defined as “the law of the international community of States”.<sup>5</sup> The notion of community was retained, but no distinctions were made between civilized and non-civilized States, a perspective that was off course already apparent in the incisive works of Emmanuel Kant that advocated cosmopolitanism (in the author’s opinion he did do some disservice to his great contributions by seeking to dabble into race and its cleavages).

By the late twentieth century, the international community appeared open, cosmopolitan, accommodating, and neutral with sovereignty seen as a set of powers and competencies that can be enjoyed by all States regardless of their particular cultural identities. However, it should not be forgotten that sovereignty is a flexible instrument that readily lends itself to the powerful imperatives of the civilizing mission, in part because through that mission, sovereignty extends and expands its reach and scope. Not surprising, the essential structure of the civilizing mission can readily be reconstructed in the contemporary vocabulary of human rights, governance, and economic liberalization.

The so-called “McDonaldization” (globalization as homogenization) of the world<sup>6</sup> minimizes the complex way in which the local interacts with the international.<sup>7</sup> Much of what is described as “local culture” as opposed to “outside ideas” is in fact already a reflection of the global. Conversely, the “local” influences, and is reflected in, the global.<sup>8</sup> In an observation that challenges “McDonaldization” (whose basis is “universalism”), Cristie L. Ford cautions:

... questions about language, identity, and culture cannot be contained within the abstract world of formal politics; in complicated and immediate ways, they spill over into the personal, cognitive, social, economic, and local realms. New stakeholders emerge and the community seems more diverse than ever.<sup>9</sup>

<sup>4</sup> Thomas Lawrence, *The Principles of International Law* (1895).

<sup>5</sup> Louis Henkin et al., *International Law* (3rd ed. 1993).

<sup>6</sup> See generally Benjamin R. Barber, *Jihad vs. McWorld* (1995).

<sup>7</sup> See Arjun Appadurai, “Disjuncture and Difference in the Global Cultural Economy” in *Global Culture: Nationalism, Globalization and Modernity* (Michael Featherstone ed., 1990) pp. 295, 304.

<sup>8</sup> Roland Robertson calls this phenomenon “glocalization.” See Roland Robertson, “Glocalization: Time – Space and Homogeneity – Heterogeneity” in *Global Modernities* (Mike Featherstone et. al. eds., 1995) pp. 25, 26.

<sup>9</sup> Cristie L. Ford, “In Search of the Qualitative Clear Majority: Democratic Experimentalism and the Quebec Secession Reference”, 39 *Alberta Law Review* (2001) 511.

Ford goes on to note rather poignantly that: “In a decentralized and globalizing world, discontented minorities within a single Nation-State, often with long-standing grievances and a historical sense of nationhood, are not uncommon. The questions they face are hard ones that go to the very roots of their identities.”<sup>10</sup> The Third World has long been performing a difficult balancing act between the need to ensure the survival of its own distinct socio-political cultures and traditions, and the need to protect their economic well-being in an increasingly interconnected global community that devalues or undermines internal diversity.

### **III. Governance in Contemporary Setting: Is it a Universal “Crop”**

“Good governance” like “development” before it is an esoteric term which lends itself to a number of malleable interpretations depending on the interpreter or stakeholder. Like development, good governance has what at first glance appears to be a universal appeal: all peoples and societies would surely seek good governance. There can be no doubt that all peoples and societies desire to advance to new levels – this is the essence of development.

However the practical dynamics shatter this, to use a crude analogy it is a house of mirrors – mirrors reflecting off other mirrors – meaning that truth is but a mirror image, and we should not injure ourselves on the shards when the mirror breaks!!! Although good governance may be seen as an uncontested term, it is not. No small wonder then that it can come across as a standard term and ideology but justifies a whole series of very different and perhaps inconsistent projects and initiatives. There is a very powerful strand in the whole system of ideas related to governance, because when scrutinized closely, it suggests that good governance has a particular significance for developing countries, for these are the countries which lack governance. This eviscerates the concept that good governance, with its reliance on universal international human rights norms is a neutral concept.

In practice good governance is a concept which is largely developed in relation to, and is principally applied to, Third World States. The “good governance” crusade hides the dirty reality that it provides the moral and intellectual foundation for the development of a set of doctrines, policies and principles, formulated and implemented by various international actors to manage, specifically, the Third World State and Third World peoples – promotion of democracy, free markets, and the rule of law. These initiatives have a basic structure in common: in all cases, the basic task is that of reproducing in the non-Western world a set of principles and institutions which are seen as having been perfected in the Western

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<sup>10</sup> The statement is made in the context of a discussion of the Quebec Secession Question but bears a direct and practical bearing on the central themes of the Paper. Ford, “In Search of the Qualitative Clear Majority” *ibid.* at p. 512.

world and which the non-Western world must adopt if it is to make progress and achieve stability.

Good governance exerts an extraordinarily powerful influence on the thinking of the international community. In addition to regulating who gets what, when, and how, governance has a constitutive function.<sup>11</sup> In this sense, global governance is conceptualized as multiple and overlapping processes of decision for defining and distributing authority and power worldwide.<sup>12</sup> The “grand-narrative” then would have us believe global governance structures in the world by determining what constitutes relevant political behaviour and which dimensions of collective life are most significant. By creating the very terrain in which authority and power are exercised, the constitutive function of governance has great importance for States and non-State participants who try to exert some influence or control over human rights issues. It is the constitutive function of “governance” that provides a source and marker for the legitimacy of State governments and international organizations.<sup>13</sup> Legitimacy is central to the enforcement of human rights. Only human rights processes and bodies perceived as legitimate are taken seriously; only States perceived as legitimate can enforce human rights norms successfully.<sup>14</sup> This link between governance and human rights suggests that the “aberrant” Third World State is the focus of concern: it is the Third World State which both violates rights and engages in bad governance. This in turn suggests that the problems of the Third World lie within the Third World itself. These propositions in the authors’ opinion don’t so much speak to reform of the Third World State but rather serve to raise serious concerns.

Because of its affinity with human rights, the project of bringing about good governance suggests that this is a modern project which may trace its origins in modern international human rights law. However, the project of governance, which has been heralded as a new advance in the development of international law and its noble endeavour to devise a number of doctrines and technologies directed at shaping and reforming the government of the non-European State, is not new. The reality of the matter is that trade and civilization have been the principal justifications for the colonial project (in yester centuries) and now the neo-colonial project (in contemporary times). It is no wonder that suspicions

<sup>11</sup> See Keith Krause, Address at the 1997 ACUNS/ASIL Meeting on Global Governance at Brown University (29 July 1997).

<sup>12</sup> See Phillip Allott, *Eunomia: New Order for a New World* (1990) p. 210 (explaining the constitutive nature of this kind of power as “a power over consciousness itself, through its control of society’s reality-forming, as well as the power to embody the values derived from such reality-forming in legal relations and to interpret and apply those legal relationships authoritatively.”).

<sup>13</sup> See generally David Caron, “Governance and Collective Legitimation in the New World Order”, 6 *Hague Year Book of International Law* 29 (1993) (considering fundamental principles of governance).

<sup>14</sup> W. Michael Reisman, “Sovereignty and Human Rights in Contemporary International Law”, 84 *American Journal of International Law* 866 (1990) p. 867.

abound in the Third World that human security has a “donor driven agenda”, which intends to legitimize the forces of globalization.<sup>15</sup> Donors according to Anne Itto’an, “live far away from the realities of emergencies and too often have a close-minded paternalistic attitude that they know what is best; in fact, some agencies have no right to be involved in the delivery of humanitarian assistance.”<sup>16</sup>

#### A. *Enforcing the Homogeneous Governance Paradigm*

In the late 1970s and early 1980s, pressure on government to achieve better results came from three sources common to all Western democracies at the time: the political and economic need to reduce public spending, the widespread decline of public confidence in the effectiveness and quality of public programs, and the need for Nation-States to compete in a new, global economic order.<sup>17</sup> In the 1980s, the “new public management” model was developed as a tool for enforcing restraint on government during Margaret Thatcher’s tenure in Britain as part of a larger economic and political program of enforcing restraint on government.<sup>18</sup> Its demonstrated value in improving regulatory efficiency and effectiveness and subsequently was adopted by governments across the political spectrum.<sup>19</sup>

Efforts were made to emphasize performance and measurable results, to break up ossified institutional structures, and to prioritize responsiveness.<sup>20</sup> Along with decentralization, the model consciously borrowed other effective private sector management strategies, such as performance and outcome measures (including targeting and benchmarking), best practices comparisons, and steps to augment the flexibility, cost-effectiveness, and “corporatization” of the public service. On a deeper level, the new model was also a response to conceptual questions about the legitimacy of the modern administrative State.<sup>21</sup>

The author argues that networks of piecemeal local experiments may aggregate into something noteworthy rather than the current emphasis by Western powers that seek to rely on the efficacy of the “meta-narrative” that informs universalism.

<sup>15</sup> Human Security: Safety for People in a Changing World, a paper prepared by the Department of Foreign Affairs and International Trade, Government of Canada, at [http://www.humansecurity.gc.ca/safety\\_changingworld-en.asp](http://www.humansecurity.gc.ca/safety_changingworld-en.asp).

<sup>16</sup> Anne Itto, “Insiders View of Humanitarian Assistance”, 24 *Fletcher Forum of World Affairs* 23 (2000) pp. 23–24.

<sup>17</sup> See P. Aucoin, *The New Public Management: Canada in Comparative Perspective* (1995) pp. 1–4, 31–38.

<sup>18</sup> Ford, “In Search of the Qualitative Clear Majority”, above note 9 at 519.

<sup>19</sup> *Ibid.*

<sup>20</sup> See J. Cohen & C. Sabel, “Directly Deliberative Polyarchy”, 3 *European Law Journal* 313 (1997) pp. 327–30.

<sup>21</sup> Aucoin, *The New Public Management*, above note 17 at pp. 25–34, 49–82; J. Boston et al., *Public Management: The New Zealand Model* (1996) pp. 316–47.

The reality is that instruments revered in the democracy/governance discourse in the West for measuring public opinion such as yes/no referendums, single issue election votes etc can be divisive and unsatisfactory in the Third World where you have two dominant layers of authority “formal” Westminster government models and the “informal” traditional leadership – which though lying outside the former nonetheless exert a powerful influence particularly at the grassroots.

Groups remain fluid and it is important that that the interests they represent not become entrenched hence a need for a shift away from familiar hierarchical, rigid decision-making governmental structures in favour of more pragmatic, team-based organizing principles that rely on continuous information exchange and collaboration among key players to identify, consider, and realize objectives. The outstanding characteristic of this paradigm is the decentralization of decision-making power characterised by continuous, non-hierarchical and effective communication.<sup>22</sup>

#### B. *Embracing the Heterogeneity of Governance*

Dorf and Sabel<sup>23</sup> articulate the primary tenets of a properly functioning democratic deliberation as an ongoing, argumentative process properly characterized not only by a respect for individual rights, but also by a strong sense of political participation and active citizenship.<sup>24</sup> Democratic experimentalism questions the ability of any group legitimately to speak for all of its members, on every issue, across time and space. It denies that there can be any unshakeable group-based “way to be” that can prescribe and predict individual potential in every respect. Thus it recognizes that important group identities, while they are entitled to space and respect, are nonetheless complicated and contestable.<sup>25</sup> Democratic experimentalism imagines a collaborative method of social problem solving that can only occur through an ongoing, open-minded and respectful dialogue between social stakeholders, primarily at the level of direct democracy.

Democratic experimentalism shows the influence of Roberto Mangabeira Unger’s important work on “radical democracy” based on a flexible, plastic structure that encourages and assumes constant revision by human agents. A comprehensive understanding of citizens’ legal rights should include “destabilization

<sup>22</sup> C. Sabel & M. Dorf, “A Constitution of Democratic Experimentalism”, 98 *Columbia Law Review* 267 (1998) pp. 350–54.

<sup>23</sup> J. Cohen, *On Democracy: Toward a Transformation of American Society* (1983); F. Michelman, “Symposium: The Republican Civic Tradition: Law’s Republic”, 97 *Yale Law Journal* 1493 (1998) p. 1493

<sup>24</sup> C. Sabel & M. Dorf, “A Constitution of Democratic Experimentalism”, above note 22 at pp. 293–314.

<sup>25</sup> See M. Minow, *Not Only For Myself: Identity, Politics and the Law* (New York: New Press, 1997) at 34–46, who has commented on the tendency, in group-based analysis, to reduce complex individuals to one identifying trait and then to imagine that they can be described for all purposes along that axis; see also A. Harris, “Race and Essentialism in Feminist Legal Theory”, 42 *Stanford Law Review* 581 (1990) p. 581.

rights,” which would allow citizens to challenge existing hierarchies of power and privilege and empower them to prevent factions from gaining a long-term hold upon the levers of social power.<sup>26</sup>

Even the most perfect public deliberative process is incomplete and fragile without some sense of the social ends toward which it is directed. There is a necessity to experiment with ways to measure “voice” in a bid to balance individual and group interests. With the benefit of compounded learning from multiple local experiments, all the imaginative resources of the region’s diverse society can be ploughed back into the process of developing considered, creative new options for a satisfactory collective future thus facilitating entrenched antagonisms give way to shifting, overlapping coalitions and novel accommodations – contingent always, issue-specific, pragmatic and discrete – and by an accretion of small agreements, even the questions refine and reformulate themselves.

Democratic experimentalism acknowledges that rights are not based on first principles; that inevitably they are socially constructed and historically contingent; and that they are closely connected with both individual and group identity.<sup>27</sup> Allowing a community to describe and define rights on its own terms grants explicit recognition to an interplay between rights and identity that is taking place anyway. Moreover, as a function of this honesty and of its flexible principles, democratic experimentalism holds out the potential of discovering “new and reconcilable understandings of rights”<sup>28</sup> through the active and direct discussion it engenders.

As a consequence of these developments, international law – and the initiatives it creates – are not in themselves seen as racist or discriminatory. Rather, international law and institutions are presented as responding to the realities of Third World poverty, violence and lack of resources. It is unquestionable that Third World peoples suffer enormous hardships and difficulties, as a result, very often, of the corrupt and oppressive Third World State. But what must be questioned in the narratives that support international initiatives such as good governance is the world view that suggests that the causes of poverty are entirely indigenous; that poverty may be alleviated by the redeeming and neutral mechanism of the market; and that political failure is entirely due to local corruption. The task confronting us is how to find a middle path.

<sup>26</sup> R.M. Unger, *Politics: False Necessity: Anti-Necessitarian Social Theory in the Service of Radical Democracy* (Cambridge: Cambridge University Press, 1987) p. 530 [hereinafter *False Necessity*]. *Ibid.* at 530.

<sup>27</sup> C. Sabel & M. Dorf, “A Constitution of Democratic Experimentalism”, above note 22 at pp. 470–73.

<sup>28</sup> C. Sabel & M. Dorf, above note x “DE,” *ibid.* at pp. 470–73. *Ibid.* at 451.

#### IV. Conclusion

The vocabulary of civilization or non-civilization is no longer required in its explicit form, because international law has developed a rich and complex vocabulary to represent non-European peoples in terms which appear natural and uncontroversial. Imposing democracy on States through outside force may unsuccessfully affect positive social change.<sup>29</sup> Human rights norms generally only work when they are internalized and not forced on a local body politic by some outside power.<sup>30</sup> One of the most basic lessons of the foreign development world that is applicable to human rights is that any transplants “must support domestically rooted processes of change, not attempt to artificially reproduce pre-selected results.”<sup>31</sup> This corresponds with Franck’s argument that States and processes are unlikely to gain respect and affect compliance if they are not viewed as legitimate.<sup>32</sup>

Thus the Third World which was more often referred to as “underdeveloped”, increasingly is referred to as “developing” – in essence if we have two cleavages; it means that the developing world is aspiring to be developed. The terminology of “developing world” is supported by a comprehensive set of theories involving an inter-related set of concepts which complement each other: development as something requiring the free market, civil society, and good governance – all of which are lacking in the non-European world. Just as the concept of “development” has enabled extensive international involvement in the economic affairs of Third World States, the concept of “governance,” has achieved a similar result in the political realm. To create a firm ground, a humanitarian and universal element is infused into the whole system.

Wholesale exports of Western liberal democratic governance as a universal package could and in some instances have backfired. Some observer’s fear that the notion of democratic entitlement could “create new opportunities for Western imperialism”<sup>33</sup> and “a continuation of humiliating intervention by States bent on ‘civilizing’ missions.”<sup>34</sup> Professor Richard Falk in an incisive look at the coherence of doctrine versus the incoherence of experience suggests that serious questions arise as to whether it is possible to transplant western-style, market-oriented democracy to other countries and international institutions without violating

<sup>29</sup> See Yoshikazu Sakamoto, “Introduction: The Global Context of Democratization”, 16 *Alternatives* 119 (1991) (describing this phenomena as “democracy from above”) p. 120.

<sup>30</sup> See, e.g., *Human Rights in Africa: Cross Cultural Perspectives* (Abdullahi An-Na&thamza;im & Francis M. Deng eds., 1990).

<sup>31</sup> Thomas Carothers, “The Rule of Law Revival”, 77 *Foreign Affairs* 95, (March/April 1998) p. 104.

<sup>32</sup> See Thomas M. Franck, *Fairness in International Law and Institutions* (1995) p. 46 (examining the notion of democracy as validating governance).

<sup>33</sup> Dianne Otto, *Challenging the “New World Order”: International Law, Global Democracy and the Possibilities for Women*, 3 *Transnational Law & Contemporary Problems* 371 (1993) p. 383 (1993).

<sup>34</sup> See Thomas M. Franck, *Fairness in International Law and Institutions* (1995) p. 80.

international human rights norms.<sup>35</sup> The idea of democracy in international human rights law, as stated in the Declaration from the 1993 World Conference on Human Rights, is “based on the freely expressed will of the people to determine their own political, economic, social and cultural systems.”<sup>36</sup> Whenever Western States or non-State participants coerce Third World governments to accept “standardised” governance norms, such actions run contrary to the spirit and tenets of democracy.

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<sup>35</sup> See generally Richard Falk, *The Right to Self-Determination Under International Law* (2002).

<sup>36</sup> Vienna Declaration and Programme for Action, U.N. GAOR, World Conf. on Hum. Rts., 48th Sess., pt. II, para. 5, U.N. Doc. A/CONF. 157/124, reprinted in 32 I.L.M. 1661 (1993) [hereinafter Vienna Declaration].

