

Human Rights, Democracy and Peace in International Constitutionalism of Universal International Society

Hideaki Shinoda

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This essay seeks to examine the historical and theoretical contexts in which human rights norms are institutionalized in contemporary international society¹⁾. This essay argues that it is almost impossible to conceptualize the international dimension of normative values like human rights and democracy without comprehending the constitutional context of international society as a whole. Thus, the essay shows that an exploration of human rights and democracy in international society is an exploration of *international constitutionalism*. In doing so, this essay characterizes the nature of contemporary universal international society in the history of the development of “international society,” while it illustrates theoretical pillars of the emergence of *international constitutionalism* in its peculiar form in our contemporary world. The essay describes how the overall constitutional framework of contemporary international society links human rights, democracy, sovereign states and the ultimate goal of “international peace and security.” The liberal understanding of international society constitutes the current framework of international constitutionalism.

¹⁾ The original version of this paper was initially presented at Carnegie/Uehiro/Oxford Conference on Human Rights, Democracy and Democratization in November 2009 at Carnegie Council for Ethics in International Affairs, New York,, USA.

1. Introduction

One fundamentally contemporary observation concerning human rights and democracy is that they are no longer purely domestic values. They have international dimensions and regularly appear as crucial topics in discussions on international society. International organizations like the United Nations and regional organizations like the European Union have permanent bodies to deal with human rights issues. Individual governments often express their concerns about human rights in other countries and even justify their interventions in the name of human rights protection. While democracy may not have the same level of recognition as human rights in international society,²⁾ it seems safe to say that democracy is often mentioned as a value to be promoted even in the context of intervention. There used to be a time when these values had almost no space in the international field. But it no longer holds true nowadays.

The difference may seem to have arisen on perceptions and behaviors of international organizations and individual states concerning human rights and democracy. It is true that these actors in international society could facilitate substantive differences. But in the end it is a matter of social norms that sustain certain perceptions and behaviors of actors. Individual actors intend to act in accordance with the norms of their society to which they belong. When the way they accept a certain specific value changes collectively in a certain coherent manner, we would naturally say that there has been a *social* change in value system. When such a *social* change has taken place *internationally*, we assume that there has been a change in *international society*.

If the contemporary understanding of human rights and democracy necessarily contains international dimensions, we would have to proceed to analyze a type of society in which such norms are incorporated and another type in which such norms are not. If the way such norms are incorporated in the society seems

²⁾ The rich body of international human rights law in international law is a visible proof of the status of human rights in contemporary international society. On the other hand, democracy does not have such a solid legal foundation in international society.

to have changed substantively at some point, we would have to proceed to analyze how such changes have occurred in the history of the *society*. What this essay tries to offer is such an analysis, even though it provides only a rough sketch.

The society which we will focus on here is called *international society*. Thus, what this essay seeks to do is, in summary, an analysis of the way international society has brought about social changes in its acceptance of values like human rights and democracy. That is the reason why this essay first explores *international society* especially from a historical point of view. Then, we shall identify historical transformation of *international constitutionalism* in order to see a value system of international society in which human rights and democracy are internationally embedded.

2. The Emergence of Universal International Society

When we say that human rights and democracy are embedded in contemporary international society, we do not necessarily assume any complex layers of international spheres. We rather tend to assume that there is one universal international society in our contemporary world. While it is also true that a smaller international community may have some distinctive normative spheres as in the case of the geographically definable sphere of the European Union or a non-geographical community of member states of the International Criminal Courts, we safely tend to assume that international society at the universal level has its own distinctive normative framework based on the values of human rights and democracy. Namely, human rights and democratic values are applicable to some extent in principle anywhere in this world. Thus, it is notable to ask whether there is such a thing as universal international society in the first place and, if it exists, how it emerged.

Hedley Bull, leading figure of the so-called English School in the discipline of International Relations, defined “international society” as a society of states, which, “conscious of certain common interests and common values, form a society in the sense that they conceive themselves to be bound by a common set of rules in their relations with one another, and share in the working of common

institutions.”³⁾ According to him, international society first appeared in Europe several centuries ago in the form of “Christian international society” where rules derived from the Christian tradition were shared by a group of states. It developed into “European international society” where secularized rules were shared by a group of states in Europe before the advent of the twentieth century. “Universal international society” was the characterization by Bull of the society of states in the twentieth century, in which a common set of particular rules and institutions were shared by sovereign states in the worldwide area.⁴⁾

Bull provided a significant insight into our understanding of international society by describing the development of international society, though which the concept of *universal international society* is brought in as a historical stage of international society in the twentieth century. On the other hand, however, it does not seem that Bull fully elaborated on characteristics of universal international society. Bull identified balance of power, international law, diplomacy, great powers, and war, as “common institutions” of international society, in an apparently conservative way in line with the traditional nature of European international society. Bull highlighted these “institutions” in order to emphasize the coherent nature of international society throughout centuries up to the twentieth century. Yet, it is apparent that Bull was more interested in nineteenth century elements in twentieth-century international society than in new elements in the twentieth century.

It is obvious that European international society was peculiar in the history of human beings, since it expanded to absorb a great portion of the earth. European colonization was not a rapid single process, but it anyway reached a point by the end of the nineteenth century that no area on the earth is immune from the dominance of European international society; only the exceptional few territories remained independent without being colonized by European powers. Only after the process of colonization most parts of the world became European-style “sovereign states.” When European powers lost the status of great powers in international

³⁾ Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (London: Macmillan, 1977), p. 13.

⁴⁾ *Ibid.*, p. 16.

society, the wave of “de-colonization” created a number of newly independent states. They, however, did not go back to their indigenous political communities; they rather claimed that they would become new “sovereign states.” In other words, they decided to follow institutional settings of traditional European international society, although differences between traditional theories a sovereign state and the reality of newly independent states were evident. This brought a significant change in international society.

Bull observed the geographical expansion of international society. But he did not fully recognize its change in character from the time of European international society to universal international society. If universal international society in the twentieth century was a just geographically expanded form of European international society, Bull’s conservative perception might be correct. But it seems more accurate to say that universal international society is not simply a geographically expanded version of European international society; it has its own distinctive nature.

Bull’s conservatism marks a limit in his argument, although this should not prejudice the importance of grasping international society as a whole. Our contemporary universal international society would not sufficiently be explained by such a traditional perception, while Bull’s insight into the emergence of universal international society is full of suggestions. We thus need to re-conceptualize and re-examine universal international society that emerged especially in the twentieth century by looking at much broader rules and institutions, and values and principles.

3. The Historical Character of Universal International Society

While the graphically universal expansion of European international society took place in the nineteenth century, this essay argues that international society has grown to a universal international society in the twentieth century. This essay argues that there are numerous new characteristic pillars of *universal* international society. Looking at the principles of the United Nations Charter, for instance, we can easily identify critical pillars of the structure of international society which were unknown

in European international society in the nineteenth century. Human rights are among such new normative principles in addition to self-determination, prohibition of use of force, and non-interference in domestic jurisdiction. Furthermore, it is more interesting to look at how even a seemingly traditional concept like sovereignty has transformed to revise its contents in twentieth-century universal international society.

In the nineteenth century the system of sovereign states geographically expanded through imperialism from Europe to other parts of the world to cover almost the entire earth. European imperial powers competed to colonize Asia and Africa. The entities called “sovereign states” invented by Europeans dominated and absorbed the entire world, although the most of the areas in Asia and Africa were colonial parts of the imperial powers. Thus, it was in the twentieth century that for the first time the worldwide system of sovereign states of people living their own territory became a global reality.

While the principle of state sovereignty, for instance, was already an established principle in international law, its understanding in the nineteenth century or at the beginning of the twentieth century was different from our contemporary one. The principle of the “sovereign equality” of states, stipulated in UN Charter Article 2(1) for the purpose of inviting small states to the United Nations, was unknown in traditional “European international society.”

For instance, John Westlake, great nineteenth century British international lawyer, urged “the student of international law” to “appreciate the actual position of the great powers of Europe.” He asserted that at no time and in no quarter of the globe can small states ever have been admitted by large ones to political equality with themselves. The legal field cannot exist aloof from this actuality. He rather preferred to say that there were two “facts.” In spite of the equality of states as the first fact, ‘the second fact’ was that the general rules of international law apply only to sovereign states like France or the United Kingdom, and to natural persons brought into relation with sovereign states, but not to “semi-sovereign entities” like

Bulgaria.⁵⁾

The most authoritative British international lawyer in this period, Lassa F. Oppenheim, clearly declared that “If a state lacks ‘full sovereignty,’ it is named ‘not-full Sovereign State,’ which is understood as an ‘imperfect International Person.’” Oppenheim noted that the conception of sovereignty “has never had a meaning which was universally agreed upon,” for there have been two schools on sovereignty; one admits the divisibility of it, and the other does not. Especially after the Peace of Westphalia of 1648 the existence of several hundred reigning princes “enforced the necessity upon publicists to recognise a distinction between an absolute, perfect, full sovereignty, on the one hand, and, on the other, a relative, imperfect, not-full or half-sovereignty.”⁶⁾

Sovereignty in the nineteenth century was not the sovereignty for the principle of sovereign equality in the latter half of the twentieth century. The former was a reflection as well as a justification of the Realpolitik of European international society in the nineteenth century. It acknowledged the significance of a balance of power maintained by great powers to the detriment of small powers. European international society had a social class system in which power counted more than other factors. The mutual respect for each other on the basis of the principle of “equality” applies only to great powers, not to all the states in the society. This society of unequal members should not be regarded as strange, since most European countries had never achieved a democratic society even in their domestic spheres; they were rather accustomed to the society of unequal members.⁷⁾ European international society as well as domestic societies in Europe shared the same understanding that a society has unequal members of different social classes.

This practice of society of unequal members was a traditional type of

⁵⁾ John Westlake, *The Collected Papers of John Westlake on Public International Law*, edited by L. Oppenheim (Cambridge: Cambridge University Press, 1914), pp.92-3; and John Westlake, *Chapters on the Principles of International Law* (Cambridge: Cambridge University Press, 1894), pp.86-7.

⁶⁾ Lassa Francis Lawrence Oppenheim, *International Law: A Treatise*, Volume 1, Peace (London: Longmans, Green, and Co., 1905), pp.99-107

⁷⁾ For this point, see Hideaki Shinoda, *Re-examining Sovereignty: From Classical Theory to the Global Age* (London: Macmillan, 2000), Chapter 3.

international society in Europe from the early modern period despite the myth of “the Westphalian system” in the discipline of International Relations. Those who emphasize the epoch-making nature of the Peace of Westphalia of 1648 often go as far as to say that the modern state system emerged in 1648. But many recent historical studies have revealed that this is just a myth.⁸⁾ There was no notion of sovereignty at that time. Absolutism of secular princes was never imagined with some constraints introduced by the Treaties of Münster and Osnabrück. The Roman Empire did not disappear, but rather coexisted with more than 300 German princes and city entities that were recognized as treaty-parties. The idea of equality of states was not regarded as a condition of international order. The principle of this type of international society was not sovereignty in the modern European sense.⁹⁾

Later, international order was often seriously challenged and new international treaties were introduced to restore the balance of power (Peace of Utrecht of 1713) or royal legitimacy (Peace of Vienna of 1815).¹⁰⁾ The theory of sovereignty began to justify the absolutist and imperialist nature of great powers. International lawyers had difficulty in recognizing other smaller states as sovereign.

⁸⁾ It is a matter of course that sovereignty in the modern sense did not exist prior to the eighteenth century despite traditional discourses on “the myth of Westphalia” in the discipline of International Relations. A thick volume of historical studies for criticisms to careless presupposition that the Peace of Westphalia of 1648 was the beginning of modern state sovereignty includes Kinji Akashi, *Acta Pacis Westphalicae: Mythos et Veritas* (Tokyo: Akashishoten, 2010) (Japanese language). See also, for instance, Benno Teschke, *The Myth of 1648: Class, Geopolitics, and the Making of Modern International Relations* (London: Verso, 2003); Stephen Krasner, *Sovereignty: Organized Hypocrisy* (Princeton: Princeton University Press, 2003).

⁹⁾ The historical importance of the Peace of Westphalia lies in the practice of convening an international conference to make comprehensive peace agreements among conflict parties. This is the point which is shared by the essence of the theory of social contract as in *Leviathan* of Thomas Hobbes. This is a result of the necessity of creating legitimacy without resorting to divine law or natural law after the collapse of the Christian international society or religious political authorities in the seventeenth century. The question of whether the modern state in the sense of the twentieth century was established in the seventeenth century is not only anachronistic, but also pointless. See Shinoda, *Re-examining Sovereignty*, Chapter 2

¹⁰⁾ See Ian Clark, *Legitimacy in International Society* (Oxford: Oxford University Press, 2005), Chapter 4 and 5.

Practitioners seldom regarded great powers and small states as equal partners. In the theoretical presupposition of European international society, great powers annexed, divided, neutralized, guaranteed and created small states at liberty in the name of maintenance or restoration of international order. In the nineteenth century, sovereignty was a standard of supreme power understood to be a substantive entity. States had to prove themselves to be sovereign; otherwise, they had to be subject to great powers. The theory of sovereignty tested, assessed and classified states in reality. When a certain state's power seemed insufficient in the eyes of the theory of sovereignty, the state was not regarded as an equal sovereign state.¹¹⁾

The appearance of “universal international society” or a kind of “globalization of international society” in the twentieth century made a drastic shift in the history of international society. Universal international society of the twentieth century no longer had an institutional setting to admit practices in the previous age. Universal international society has obtained a completely different institutional setting. It presupposes that all the states in the world must be sovereign nation-states by definition, no matter how much reality betrays this presupposition. Sovereignty is now a normative principle to be challenged by reality. European international society had an institution in which the standard of sovereignty distinguished states between great ones and small ones with their respective different privileges. Universal international society has an institution in which every citizen and every territory are naturally supposed to constitute a sovereign nation-state, while in reality “fragile states” or “failed states” are informally identified. Such problematic states are still regarded as sovereign states institutionally, but many believe that they appear to be fragile and failing. Thus, they receive international assistances to become less fragile as a fellow member of universal international society, instead of being excluded from the list of sovereign states.

It was after the First World War and the United States intervened in Europe to reconstruct a new international order that the environment of international society dramatically changed. Its significant consequence is the introduction of the principle of “self-determination,” which was usually interpreted as “the right to

¹¹⁾ See Shinoda, *Re-examining Sovereignty*, Chapter 3.

national self-determination.” More importantly, it paved the way to the movement of decolonization in the second half of the twentieth century. The Second World War facilitated the further breakups of the empires and independence of colonized territories. With the end of the Cold War, the collapse of the Soviet Union led to the creation of more legally and politically independent states. It is often said that the remaining empire in the twenty-first century is only the United States, which is a unique empire in its non-territorial informal nature based on the spread of liberalism and market economy in addition to its military power.

The three worldwide wars in the twentieth century, the First and the Second World War and the Cold War, ushered in dramatic reshaping of international society in each case. The First World War had a truly worldwide stretch for the first time, while major wars in Europe as well as other regions in previous centuries reconfigured power balances among states and had limited geographical impacts. When the First World War ended, political and intellectual leaders had to contemplate a worldwide security system. The Second World War was a great struggle for world dominance. The victory of Allied powers might have meant the successful prevention of domination of the world by Axis powers, but eventually led to a bipolar world divided by the two competing dominant superpowers during the Cold War period. It is true that the Cold War can be said to have ended, as in the cases of most other wars, with a victory of one camp. The war contained numerous hot wars and the victory of the liberal camp did not mean at all that all such small wars ended with victories of the same camp. Nevertheless, it would more or less be true to say that the world in the twentieth century finally reached a kind of global dominance by the same one camp of states which were aligned in the name of the doctrine of liberal democracy.

This phenomenon of the emergence of universal international society with its own universal institution of sovereign nation-states apparently prepared for the universal validity of human rights and democracy in our contemporary world. But we need to more carefully examine the implications of this phenomenon.

4. The Transformation of Two Types of International Constitutionalism

When the right to national self-determination was introduced, international society was based upon a particular theoretical assumption that international society was a society of states, like human society is a society of individuals. The original form of European international society was based upon the assumption of “domestic analogy.”¹²⁾ Simply, as in many countries or almost every country in Europe at that time, society was not composed of equal citizens. Universal suffrage had not been introduced, for instance, in Europe or even in the United States; inequality existed in domestic society everywhere and it was perceived as natural. So it was perceived as natural that international society was a society of unequal members. The status of great powers and even imperialism interpreted in the Darwinian sense were to be explained by the analogy between domestic society of unequal individuals and international society of unequal states.

This way of thinking of “domestic analogy” was derived from one theoretical assumption; states are analogous to humans. In fact, from the nineteenth century to the twentieth century, there was a school of thought that looked at states as if they were a sort of living creatures. The state was sometimes recognized as something that had will and character. This is a theory of organic nation-state notably led by distinguished philosophers in Germany,¹³⁾ by which a sort of “anthropomorphism of nations” constituted a theoretical foundation of international society.¹⁴⁾ This theory was characteristic in the era of nationalism in which national unity was emphasized in light of national history and culture. This theory influenced many circles in the era from the nineteenth century to the middle of the twentieth century and the very theoretical framework of international law.

This framework of international society based upon the “anthropomorphism

¹²⁾ See Bull, *The Anarchical Society*, pp. 46-47. See also Hidemi Suganami, *The Domestic Analogy and World Order Proposals* (Cambridge: Cambridge University Press, 1989).

¹³⁾ For a good summary, see Rupert Emerson, *State and Sovereignty in Modern Germany* (New Haven: Yale University Press, 1928).

¹⁴⁾ See Shinoda, *Re-examining Sovereignty*, Chapter 3.

of nations” indicated an appearance of a form of *international constitutionalism* based on domestic analogy.¹⁵⁾ The reason why the First World War led to the creation of the League of Nations was because policymakers including Woodrow Wilson planned a kind of “international constitutionalism” in a society of nations. He believed in the supremacy of modern constitutionalism and especially US style federalism as its one crystallization.¹⁶⁾ But the point of constitutionalism in this sense is that individuals or states who participate in “social contract” are protected only when they agree to establish a government. This is the traditional Anglo-American political theory of Thomas Hobbes, John Locke and American Federalists. Wilson believed that a new international order ought to be brought in for international peace and a kind of constitutionalism should be required to achieve the goal. He was convinced that nations ought to agree to establish an international constitutional code and an international government, at least, as regards their collective security, just like individuals agree to establish them to be protected in domestic society. This theory was an apparent application of domestic analogy between individuals and nations and between domestic society and international society.¹⁷⁾

A form of international constitutionalism based on the anthropomorphism of nations represented the era in which the rise of nationalism was a conspicuous phenomenon in international society. The understanding of international society composed of nations as constitutive units appealed to public sentiments at that time. The principle of “self-determination of peoples” in the UN Charter or what is usually understood as national self-determination facilitated the process of decolonization and established the myth that all nations could become states or that all states ought to be nations.

¹⁵⁾ “International constitutionalism” in the sense used in this article can emerge without a world-wide written constitution. As the United Kingdom, an origin of modern constitutionalism, still does not have a written constitutional code, “constitutionalism” is a form of ideology derived from the belief that there is a fundamental law which no man can or should abrogate.

¹⁶⁾ See Woodrow Wilson, *Constitutional Government in the United States* (New York: Columbia University Press, 1908).

¹⁷⁾ See Shinoda, *Re-examining Sovereignty*, Chapter 4.

But the reality of the Cold War never allowed international constitution or international government to be created. Newly independent states demanded that a new international order should be created, but not for the sake of international constitutionalism envisioned by Woodrow Wilson. They rather appealed to nationalism of their populations by pursuing agendas like nationalization of natural resources exploited by foreign companies. This form of international constitutionalism continued to be betrayed by reality. The expectation that the United Nations could take the role of international government rapidly disappeared. For a certain period of time after the Second World War some influential scholars even campaigned for world constitution,¹⁸⁾ but such movements also gradually disappeared in face of serious difficulties in reality of international politics.

According to Hedley Bull, domestic analogy is unnecessary or even harmful to establish or identify international order. An individual and a state are different. The former is a natural entity, while the other is a fictitious one.¹⁹⁾ Constructing constitutionalism based on the belief in the validity of domestic analogy is quite dangerous to Bull, so he rather tried to identify a common set of rules and institutions, instead of international constitution or international government, as prerequisites of international society.

A new form of international constitutionalism gradually appeared in the latter half of the twentieth century, especially toward the final stage of the Cold War.²⁰⁾ This new framework of international constitutionalism does not envision creations of international constitution or international government. Instead, it seeks to reinforce a common set of rules and institutions and values and principles. Once we believe that international constitutionalism does not really require an international constitutional code or an international central government, we would rather concentrate on how to strengthen vital rules, institutions, values and principles that are and can be shared by players in international society. The Western countries more or less headed by leaders of Anglo-American states prepared for

¹⁸⁾ For instance, see Grenville Clark and Louis B. Sohn, *World Peace through World Law* (Cambridge, MA: Harvard University Press, 1958).

¹⁹⁾ See Bull, *The Anarchical Society*, pp. 46-47.

²⁰⁾ See Shinoda, *Reexamining Sovereignty*, Chapter 8.

such a conceptual framework of international order in the 1980s and especially after the Cold War.

This post-Cold War style international constitutionalism can be characterized by its rejection of domestic analogy. It does not really reject the importance of nation-states. Instead, they institutionalize them by regarding the issue of state sovereignty not as a matter of sentiments of nationalism, but as a matter of principles of new constitutionalism. Sovereignty is no longer an embodiment of standardized supreme power, but a constitutional principle of international society to institutionally sustain universal international society. Sovereignty ceased to test and select great powers; it is a normative status granted to the entities recognized as states by other members of international society. There is no need to compare individuals to nations, or domestic society to international society. New international constitutionalism has its own principles in its own normative framework.

5. New International Constitutionalism in Universal International Society

What appears after the rejection of domestic analogy, namely, anthropomorphism of nations, is a set of values in which influential political circles usually believe. With the end of the Cold War, liberal democracy became victorious, as the Western bloc led by the United States became victorious. Values and institutions of liberal democracy became the international standard worldwide in many fields. Political values and economic values of liberal democracy, individual freedom and market economy, became dominant in international society. This is a significant phenomenon, since international society did not traditionally share the same set of political and economic values derived from one particular ideological standpoint.

This new form of international constitutionalism has a new theoretical foundation, but it is a development of liberal democracy solidly established in dominant countries in the former Western bloc. The previous vision of international constitutionalism adopted domestic analogy, but avoided directly applying political values dominant in some particular domestic societies. But the new form

of international constitutionalism seeks to establish consistent sets of values by eliminating domestic analogy. What is abolished together with the assumption of domestic analogy is the perception that international society is a completely separate society and has no connection with domestic societies. New international constitutionalism of universal international society does not presuppose that values should not cross national borders; it presupposes that international society and domestic societies can consistently maintain the same values, even if they do so with different institutional settings. With the disappearance of domestic analogy to compare international society to domestic society, the assumption that there is a fundamental distance between international society and domestic society has become blurred; the two are now interlinked to each other.

Human rights constitute a very essential foundation of liberalism or constitutionalism itself. The theoretical foundation of social contract theory was the belief that individuals have natural rights even in the “state of nature.” The liberal theory derived from social contract theory spread constitutionalism in order to establish the political environment of “rule of law” that prohibits the ruler from violating fundamental rights of individuals in any circumstances. International constitutionalism may directly share this theoretical foundation, once it decides to look at every single state from the perspective of constitutionalism. The twentieth century saw the worldwide spread of Western-style constitutionalism. If so, the value system of international society may presuppose that every single state ought to respect the rule of law through which human rights must constitutionally be protected. If many national constitutions in states have provisions concerning democratic institutions, international society may accordingly apply international constitutionalism based upon values of democracy.

There is a fundamental difference between the two forms of international constitutionalism; one based on domestic analogy of anthropomorphism of nations and the other based on the direct application of liberal values. The former presupposes that international society is a separate distinctive society, which however may have a similar structure compared to domestic societies. The latter presupposes that international society may have the same value system with various domestic societies, even if international society and various domestic societies

might have different institutions. It is true that both contributed to the establishment of universal international society in the twentieth century. However, while the one was dominant in the first half of the century, the other spread in the latter half of the century and prepared the way for international order in the twenty-first century.

Human rights issues could never be an agenda of international society, as long as institutionalization of international society was based on domestic analogy in which the anthropomorphism of nations had paramount influence. The latter half of the twentieth century after the Second World War saw a “revival” of classic liberal values directly applied in international society. The new type of international constitutionalism was contained in one of the two camps during the Cold War. But it gradually came to dominate the normative framework of universal international society toward the end of the century, especially with the end of the Cold War. Human rights and democracy constitute the ethical pillars of the new form of international constitutionalism, since they are based on the assumption that natural human beings have direct roles in international society beyond the limit of domestic analogy.

Institutionalization and internationalization of human rights have a direct impact upon the constitutional framework of international society. It is a significant challenge to the assumption that international constitutionalism ought to be based on the domestic analogy of the anthropomorphism of nations. The new form of international constitutionalism has its origin in liberalism. It directly applies human rights of individuals in international society. In the vision of new international constitutionalism, there is no parallel relationship between domestic society and international society. There is only one global society in which multiple domestic societies and universal international society coexist by directly sharing the same set of core values and principles. Liberal values embodied in international human rights law are now the critical foundation of this international order.

The analogical international constitutionalism after the First World War could not prevent another disastrous war. After the Second World War, a group of leading developed states began to construct international order based on new international constitutionalism of liberal values. This new international constitutionalism is not really contradictory to the achievement of universal

international society. The contemporary world is filled with nation-states with the assumption that there is substantially no moral, legal and political room for exercising colonialism on the earth. Every human being is now understood to belong to his or her own nation-state where his or her human rights are protected domestically as well as internationally. The international standard of fundamental human rights ought to be applicable in nation-states which are constitutive elements of universal international society. If so, then, a nation-state requires a functional principle applicable in international society to establish and sustain its own existence as a nation-state. In short, a state has responsibility as a member of international society; a state must be responsible in order to be a member of international society.²¹⁾

The emphasis upon the normative basis of “nation-states” as universal entities often reinforced democracy, although it is not the only way to strengthen national unity: for instance, monarchy could easily represent national unity. Nevertheless, when the United States decisively intervened in the First World War to usher in a new world order against empires, democracy obtained a status to justify mobilization of mass populations in the era of total war. Democracy naturally became a new orthodoxy when empires collapsed and colonial powers withdrew from their former colonies. But this process was not swift. By the time of the Second World War, Germany and Japan fell into totalitarianism after the collapses of their democratic regimes. The two countries wanted political systems to regain outright national unity bypassing often slow and stagnated processes of democracy. Dictatorship regularly appeared in the twentieth century in Latin America, Asia, Middle East, Africa, and even Southern Europe, which claimed national unity in the name of national self-determination, anti-colonialism and non-interference. Both the Western and Eastern blocs during the Cold War era insisted that their own political system was more democratic than the other. But both of them allowed the governments of their allies to oppress democratic movements, as long as the maintenance of national unity, despite its brutality, kept maintaining their spheres of

²¹⁾ The International Commission on Intervention and State Sovereignty, *The Responsibility to Protect* (Ottawa: International Development Research Center, 2001).

influence. However, with the end of the Cold War, it is now apparent that democracy is the best possible candidate to constitute a nation-state in line with the framework of new international constitutionalism.

When the set of values and principles of liberalism is institutionalized, other institutional settings like traditional respect for royalty and ideology of class struggles would no longer effectively work. Namely, since a nation-state does not have any other special means to mobilize the “nation” of a nation-state, democracy usually comes to be regarded as the best way to constitute the moral and political basis of the existence of a nation-state.

6. Consequences of Contemporary International Constitutionalism

One characteristic point in the process of international constitutionalism, which has internationally institutionalized human rights and democracy, is its association with the goal of peace. International society’s fundamental prerequisite is its own preservation and the preservation of its constitutive units, namely states, which are understood as the goal of “international peace and security” in the wording of the UN Charter. Sovereignty, self-determination and human rights are all fundamental constitutional principles of international society; but the value of peace is paramount over other principles within the current international legal framework.

In the framework of new international constitutionalism all the constitutional principles are expected to contribute to the supreme value of peace. Namely, human rights are expected and actually believed to be contributory to “international peace and security,” as in the cases of other international norms like sovereignty and self-determination. This is indeed a belief of our contemporary international society. There is no scientific proof that the realization of human rights will always contribute to building peace or “international peace and security.” But since this is the very essential framework of new international constitutionalism of universal international society, we tend to believe that this holds true or at least we should make best possible efforts to make it true.

In the discipline of International Relations there is a famous theory

of “democratic peace.” According to it, the statistical tendency indicates that “democracies do not fight each other.” But we are not sure whether this is really a scientific truth. It really depends on the definition of democracy. And most democracies have been aligned with each other against others. In any case we should not misunderstand the actual connotations of the theory. Democratic peace does not mean that democracies are free from war or intrinsically peaceful. Democracies often fight war, if not between themselves, but with others. Democracies are quite often very keen to vigorously defend themselves against others. In the end, the theory of democratic peace shows the valid sphere of new international constitutionalism. Democratic peace does not guarantee at all any peaceful relationship between the liberal sphere and outside of it. As long as the same value system is applicable, in other words, as long as the relations among liberal democracies sharing the same values of liberalism and democracy are concerned, international society is able to maintain peace.

International society requires such values as human rights and democracy to be coordinated with other critical values. Peace and security are the supreme values in mainstream international society. The importance of human rights and democracy are often assessed in light of the level of their contributions to peace. The idea of peace through human rights and democratization even affected very practical aspects of policies of post-conflict “peacebuilding.” Gradually, there appeared even a belief that human rights and democracy would naturally lead to peace.

This point illustrates a fundamental change in the perception of political values in international society after the end of the Cold War. Values like human rights and democracy used to be understood as the matters of international justice, while values like balance of power and sovereignty were about international order. But once we assume that human rights and democracy rather contribute to international peace and security, the distinction between order and justice in international society would become blurred. The assumption that human rights and democracy pave the way for international peace and security is in fact based on another assumption that justice is the way to order. Bull’s famous antithesis, order versus justice, does not make sense in the world of triumphant liberalism in the

twenty-first century.²²⁾

Liberal democracies might fight non-liberal democracies. According to the international doctrine of liberal democratic peace, threats to international peace and security come from outside of the sphere of the community of liberal democracies. So if liberal democracies fight somebody, it would be because they defend peace in addition to human rights and democracy against non-peaceful forces. Those who defend peace would unequivocally face threats to international peace and security which would also be against human rights and democracy. Human rights and democracy are not purely defended for their own sake; they are now justifiable from the perspective of international peace and security. This is a revolutionary doctrine in the history of international society, but orthodoxy in twenty-first-century universal international society.

In the era of universal international society, the constitutional settings based on the values and principles of human rights, democracy, and peace have universal validity, although this does not really mean that they are never challenged. They continue to be challenged by such forces and incidents as terrorists, civil wars, bad governance, abject poverty, and so on. Universal international society has outsiders and challengers, not geographically, but constitutionally. Since universal international society has its own international constitutional settings that are supposed to cover the entire world, it has outsiders and challengers geographically within itself. Outsiders and challengers are regarded as “threats to international peace and security,” since now universal international society has its own specific set of values and principles to maintain peace. Threats must be contained by various means like development assistance, peacekeeping operations, humanitarian aid, military intervention, etc.

Since post-war reconstruction of Japan and Germany as precedents, there have been many attempts with great efforts to sustain international order through institutionalization of human rights and promotion of democratization in line with international constitutionalism. Many examples of peacebuilding in contemporary universal international society are grand experiments of implementing new

²²⁾ Bull, *The Anarchical Society*, Chapter 4

international constitutionalism for the purpose of peace. Human rights and democratization with reference to state-building are key issues to the strategy of building peace. Fragile states, rogue states, failed states, etc., must be rectified for the sake of maintaining international order and justice. Non-peaceful, non-human rights, non-democratic elements ought to be corrected for the sake of this current form of international constitutionalism of liberal democracy.

It might be observed that reconstructions of Germany and Japan after the Second World War were more successful than many recent examples of various peace operations by United Nations or military interventions in Afghanistan and Iraq by the United States. In any event, recalling that it is almost impossible to reproduce the conditions existent for Germany and Japan, for instance, complete destruction, unconditional surrender, outright military occupation, Cold War style confrontation in international politics, tens of thousands of US troops remaining in each country, etc., we can learn our tasks in international society are enormously difficult. In the contemporary world we are committed to international society whose constitutional order is being implemented, but critically tested.

7. Some Concluding Remarks: Human Rights and Democracy in Peacebuilding and State-building in the 21st Century

We have observed that human rights and democracy are now constitutive principles of new international constitutionalism of universal international society. In such a context we look at the linkage between human rights, democracy, and peace in contemporary international society of sovereign nation-states. The theoretical examination of such a linkage has significant implications even to operational issues of peacebuilding.

From the ethical and philosophical perspectives too, the relationship between human rights and democracy could be examined also in the context of their linkage with other values like peace. Especially in the age of universal international society, human rights and democracy have been promoted within the framework of new international constitutionalism and they are expected to contribute to the

supreme value of “international peace and security” in its peculiar constitutionalism. It still remains to be seen how much this constitutional framework is valid in reality despite numerous successful and unsuccessful experiments of human rights protection, democratization, and peacebuilding activities. This is a crucial topic for our contemporary international society, because it is committed to its own value system of new international constitutionalism.

A crucial fact is that our universal international society is composed of nation-states that almost occupy the entire earth. We need to achieve the goals of human rights, democracy and peace within this framework of universal international society. This means that we need to examine the task of identifying the issue of state-building as a key to the critical linkage between human rights, democracy and peace. This does not mean at all that only the state has exclusive supreme power. Nevertheless, sovereign nation-states are based on the normative framework of contemporary international society in which human rights, democracy and peace are intrinsically linked. Many ethical and philosophical questions will inevitably arise from the examination of this critical linkage in our contemporary universal international society.

When a flaw in the society of sovereign states appears in the case of a “fragile state” or “failed state” or even “rogue states,” international society takes actions to rectify it by organizing peace operations, development assistance, humanitarian aid, military intervention, etc. Flaws in a state’s appropriate existence in the international constitutional system are constitutional problems in international society, thus ought to be corrected by international society as a whole. A state which sustains human rights, democracy and peace is a constitutive unit in international constitutionalism. International society has a stake in maintaining such constitutive units. In reconstructing any of the failed units, international society relies on the assumption that human rights and democracy will contribute to peace.