SHORTER ARTICLES, COMMENTS AND NOTES

DEMOCRACY AND DEVELOPMENT

A. Introduction

This note addresses the possible correlation between "democracy" and "development", and the implications, if any, of such a correlation for the World Bank. This calls, first, for providing a definition of the two concepts as they are used here. To clarify the matter further, a distinction is made from the beginning between "development" in the broad sense and the concept of "economic growth" in the strict sense.

By *democracy* lawyers usually mean that form of government in which the sovereign power resides in and is exercised by the whole body of citizens directly or indirectly through a system of representation.[1] More generally, it is a system where ordinary citizens have a meaningful, even if indirect, role in the affairs of the State, including the formulation of policies and laws and their implementation. Western-style democracy is furthermore typically characterised by the separation of State and Church, the separation within the State of the legislative, judicial and executive powers, legal protection of fundamental human rights (at least for citizens) and due process under the rule of law.[2] Some of these features are not exclusive to democracies, however. For instance, to the extent that protection of fundamental human rights constitutes an obligation under international law, it is legally required of all States. However, such a protection is likely to be greater in a democracy, with more emphasis on economic and social rights in socialist democracies.

Development in the broad sense covers all forms of human progress and the enjoyment of a better quality of life. It is not limited to the material betterment of economic conditions (e.g. higher *per capita* income) or better physical standards of living; it covers human progress in all its aspects, including fair distribution of the fruits of growth and political rights under a form of government based on broad participation.[3] This broad concept of development is reflected in UN resolutions and declarations such as the 1968 Proclamation of Tehran at the 27th meeting of the UN International Conference on Human Rights,[4] the 1986 UN General Assembly Declaration on the Right to Development[5] and the 1993 UN Declara-

1. See *Black's Law Dictionary* (6th edn, 1990), p.432.

2. A typical "Western democracy" includes the following elements: a system in which political powers are derived directly and/or indirectly from the people, where free elections are held, a competitive party system exists, the protection of fundamental rights is guaranteed, executive, legislative and judiciary powers are separated but subject to checks and balances, and the "rule of law" applies. See D. L. Sills (Ed.), *International Encyclopedia of the Social Sciences*, Vol.3 (1972), pp.112, 117–118.

3. See in general H. Henderson, *Paradigms in Progress: Life Beyond Economics* (1991).

4. Proclamation of Tehran, adopted at the International Conference on Human Rights, Tehran, Iran, 13 May 1968.

5. GA Res.128, UN GAOR, 41st Sess., UN Doc.A/Res/41/128 (1987).

https://doi.org/10.1017/S0020589300060826 Published online by Cambridge University Press

tion on Human Rights,[6] which all emphasise that development includes economic, social and cultural as well as basic political rights.

Economic growth is a narrower concept, usually expressed in terms of the annual increase of gross domestic product and gross domestic product *per capita*.

B. Are These Concepts Linked?

To determine whether a linkage exists between the concepts described above, the distinction between economic growth in the strict sense and development in the broad sense should be kept in mind. With regard to economic growth, there seems to be no empirical evidence that democracy is a necessary precondition for such growth.[7] Actual country cases show a mixed record.[8] There is evidence, at least in the short term, that some countries have achieved high growth rates under regimes which were not democratic.[9] Conversely, improvement in the standard of living, in particular increases in the middle-class share of income and education have been found in a large number of countries to have a positive impact on the rise of democracy, as measured by a subjective indicator of political freedom.[10] Some researchers seem to insist that democratic regimes, being usually more conducive to stability and predictability, are likely in the long term to be more supportive of economic development.[11] Others argue that this is probably due more to the

6. Declaration adopted at the World Conference on Human Rights, Vienna, Austria, 14–25 June 1993, UN Doc.A/CONF.157/24 (1993).

7. See e.g. J. M. Mbaku, "Political Economy of Development: An Empirical Analysis of the Effects of the Institutional Framework on Economic Development" (1994) 29 Studies in Comp. Int. Development 3–21 (using four sets of national-level data and panel regression analysis to examine the relationship between institutional/governmental framework and various measures of economic development, and suggesting that there is yet no single empirical model of economic development that can be applied to all societies). The same conclusion was reached by the Panel on Democracy, Economics and Security organised by the International Institute for Democracy and Electoral Assistance (IDEA) in Stockholm, Sweden, in June 1996. See *Newsletter of International IDEA*, No.9 (Aug. 1996), pp.6–7.

8. See World Bank, *The World Development Report—The Challenge of Development* (1991), pp.133–134.

9. See e.g. World Bank, *The East Asian Miracle—Economic Growth and Public Policy* (1993) (attributing recent years' rapid growth in East Asian countries to such public policies that improve physical and human capital rather than introducing democratic governmental systems); T. Cheng and L. B. Krause, "Democracy and Development: With Special Attention to Korea" (1991) 10 J. Northeast Asian Studies 3–25; Y. Zheng, "Development and Democracy: Are They Compatible in China?" (1994) 109 Political Science Quarterly 235–259; J. Isham, D. Kaufmann and L. Pritchett, *Governance and Returns on Investment* (World Bank Policy Research Working Paper No.1550, 1995) (concluding that the type of political regime and the status of more purely political liberties do not appear significantly to affect project performance in spite of a statistical linkage between a country's civil liberties and the performance of its aid-financed government investment projects).

10. Robert J. Barro, "Determinants of Democracy" (paper presented to the World Bank, July 1996, based on an analysis of the experience of 100 countries between 1960 and 1995 and arguing that "the net effect of democracy on growth is uncertain" and that "cross-country work finds a non-linear effect of democracy on growth"). See also S. M. Lipset, "Some Social Requisites of Democracy: Economic Development and Political Legitimacy" (1995) 53 American Political Science Rev. 69, 75.

11. See E. Weede, "Political Democracy, State Strength and Economic Growth in LDCs: A Cross-national Analysis" (1984) 10 Rev. Int. Studies 297–312 (asserting that democracy is particularly conducive to steady and stable economic growth).

https://doi.org/10.1017/S0020589300060826 Published online by Cambridge University Press

impact of the rule of law than to any necessary linkage to a Western-style system of democracy.

Different conclusions of the analysis of the same facts may be based on the use of different criteria but may also reflect the ideological orientation of their authors, rather than historical experience.[12] It may be safe to state, however, that in different periods of time rapid economic growth has taken place "within a variety of political systems and with quite different ranges of public policies".[13] Growth, in other words, is not the exclusive monopoly of any political system.

C. Democracy and Development

In this sense, democracy and development have more in common than the letter "D" with which the two words begin. Both words describe continuous processes of change. Both imply, indeed require, a long struggle to cause this change to occur. And both depend primarily on indigenous efforts. Obviously, not all countries are at the same stage of democracy or development, but there is continued progress on both fronts. Quite often, but not always, more democratic countries are also more developed and more developed countries are also more democratic.[14] It is difficult, however, to conclude that either process necessarily precedes the other, although

12. See Sirawy and Inkeles, "The Effects of Democracy on Economic Growth and Inequality: A Review" (1990) 25 Studies in Comp. Int. Development 126–157 (containing case studies with varied conclusions). See also "Democracy and Growth: Why Voting is Good for You", *The Economist*, 27 Aug.–2 Sept. 1994, pp.15–17 (stating that democracy entrenches economic freedoms and in doing so underpins growth contrary to what believers in the "Asian Way" argue); "Measuring the Price of Politics", *The Economist*, 27 Jan. 1996, p.72 (reporting that some economic statistics have found a direct link between growth and the nature of the political regime while others have not and that, while it is uncontested that political factors can affect a country's economic growth, the difficulty lies in measuring them); M. Chatterji, "Political Economy, Growth and Convergence in Less-Developed Countries" (1993) 21 World Development 2029–2038 (reporting that various econometric models reveal a positive correlation between political freedom and economic growth); J. F. Helliwell, *Empirical Linkages between Democracy and Economic Growth* (National Bureau of Economic Research Working Paper No.4066, 1992); A. Pourgerami, "Authoritarian versus Non-Authoritarian Approaches to Economic Development: Update and Additional Evidence" (1992) 74 Public Choice 365–377 and "Political Economy of Development: A Cross-National Causality Test of Development—Democracy-Growth Hypothesis" (1988) 58 Public Choice 123–141 (also arguing that democracy is conducive to economic development).

13. L. W. Pye, *Aspects of Political Development* (1966), p.34. See also K. E. Bauzon, *Development and Democratization in the Third World; Myths, Hopes, and Realities* (1992) (generally noting that there is no best recipe that would guarantee economic development by referring to different experiences in different countries); M. Beker and P. Aarts, "Dilemmas of Development and Democratization in the Arab World" (1993) 23 Int.J. Political Economy: A Journal of Translations 87–107; D. L. Blaney and M. K. Pasha, "Civil Society and Democracy in the Third World: Ambiguities and Historical Possibilities" (1993) 28 Studies in Comp. Int. Development 3–24; J. F. Clark, "Constraints on Democracy in Sub-Saharan Africa: The Case for Limited Democracy" (1994) 14 Sais Rev. 91–108; A. W. Pereira, "Economic Underdevelopment, Democracy and Civil Society: The North-East Brazilian Case" (1993) 14(2) Third World Quarterly 365–380. See in particular G. Sorensen, *Democracy, Dictatorship and Development: Economic Development in Selected Regimes of the Third World* (1991).

14. E.g. most OECD countries which lead the list of economies doing well in the world have a democratic governmental system.

https://doi.org/10.1017/S0020589300060826 Published online by Cambridge University Press

recent studies suggest that economic liberalisation is conducive to political liberalisation, and that the propensity of democracy is likely to rise with economic development.[15] As we come to accept that development is a costly and time-consuming process, fraught with ups and downs, we should be able to accept that the transition to democracy is also a complex process and we should not expect a country with no democratic history to convert overnight to a successful Western-style democracy. If such a miracle were to happen, it is likely to be short-lived. We should aim at a democracy which lasts, a sustainable democracy.[16]

1. Sustainable democracy

Sustainable democracy must be embedded in the local conditions and must result from real forces within society. This does not mean that there is no scope for outside assistance to nurture the process. But as in the case of development assistance, if external assistance is not carefully channelled, it can be counterproductive.

The process of change on both fronts has greatly increased with three rising phenomena: globalisation in the flow of information, goods and services, liberalisation of trade and investment, and urbanisation.[17] However, change is not always positive and the picture is blurred by increasing poverty (in terms of the numbers of the absolute poor) and increasing frustration with the status quo in many countries, leading large numbers of their populations to resort to the refuge of religion, sectarianism and tribalism. The rise of fundamentalism in India, Iran, the Arab world and Africa provides ample examples.

2. The involvement of international organisations

The close linkage we propose between development in the broad sense and democracy does not necessarily mean that every international financial institution must concern itself with political reform in the countries it purports to assist. There is the need to honour the charter of each organisation and to respect the specialisation of different international organisations as reflected in the statutory requirements of their respective charters. Such is the case, in particular, with the charters of specialised UN agencies, such as the World Bank, which delimit the mandate of each organisation.[18]

15. See Barro, *op. cit. supra* n.10. See also E. Huber, D. Rüschemeyer and J. D. Stephens, "Impact of Economic Development on Democracy" (1993) 7 J. Economic Perspectives 71–85 (contending that economic development can indirectly support democratic reform by creating the environment in which ideas of democratic reform can flourish).

16. Cf. J. E. Nyang'aro and T. M. Shaw, *Beyond Structural Adjustment in Africa: The Political Economy of Sustainable and Democratic Development* (1992).

17. See R. Kothari, "Globalization and Revival of Tradition: Dual Attack on Model of Democratic Nation Building," (1995) 30 Economic and Political Weekly 623–633 (25 Mar.) (asserting that while globalisation can positively influence democratic development it can also threaten it in that it represents a development which may be too rapid and therefore not give people enough time to digest the changes that come along with it).

18. A recent decision of the ICJ declining to answer a request by the World Health Organization for an advisory opinion highlights the importance of the principle of specialisation of international organisations. See Advisory Opinion No.95, *The Legality of the Threat or Use of Nuclear Weapons* (8 July 1996).

https://doi.org/10.1017/S0020589300060826 Published online by Cambridge University Press

The World Bank's[19] charter does not include specific provisions setting forth political goals with regard to development assistance. On the contrary, the World Bank's Articles of Agreement include a specific provision prohibiting it from engaging in political activities or from being influenced by the political character of its members in its decision-making.[20] Instead, the Articles direct the World Bank to take "only economic considerations" into account in its decisions.[21] The World Bank's mandate thus limits this institution's range of activities, and excludes assistance of a political nature from that range. It specifically directs it:[22]

(1) to assist in the development of its members by facilitating the investment of capital for productive purposes;
(2) to promote private foreign investment by guarantees and loans; and
(3) to promote the balanced growth of international trade and the maintenance of equilibrium in balances of payments by encouraging international investment.

Plainly, these provisions do not envisage a role for the World Bank in the political reform of its borrowing members.

This is very different from the case of the European Bank for Reconstruction and Development, whose charter explicitly authorises it to support not only economic development in Central and Eastern European countries but also, first and foremost, the economic transition to markets and the political transition to multiparty democracy.[23] The European Bank's specific mandate can be explained by referring to the special circumstances which led to its creation. Established in 1990 at a time when historic political and economic changes were taking place in Central and Eastern Europe, when countries of that region had just started to consider restructuring their political and economic systems, moving from communist regimes and command economies to democratic systems and market economies, the European Bank was meant to become the regional financial institution which could foster development in these very processes.

D. The World Bank

By expanding the scope and types of World bank lending in order to adapt to the changing needs of its borrowing members, the Bank has continuously developed its *functions* beyond the literal provisions of its Articles of Agreement while

19. For the purposes of this article, references to the World Bank include the International Bank for Reconstruction and Development and the International Development Association.

20. See Art.IV, Section 10, first sentence of the IBRD's Articles of Agreement, providing: "The Bank and its officers shall not interfere in the political affairs of any member; nor shall they be influenced in their decisions by the political character of member or members concerned." See also Art.V, Section 6, first sentence of IDA's Articles of Agreement, containing an identical statement.

21. See IBRD's Arts., *idem*, second sentence and IDA's Arts., *idem*, second sentence.

22. See Art.I of the IBRD's Arts. of Agreement. Art.I of IDA's Arts. is somewhat shorter in its description but does also emphasise that the institution's foremost purpose is to promote economic development.

23. For more details on the broad mandate of EBRD, see I. F. I. Shihata, *The European Bank for Reconstruction and Development—A Comparative Analysis of the Constituent Agreement* (1990), pp.2, 41.

https://doi.org/10.1017/S0020589300060826 Published online by Cambridge University Press

respecting the overall *purposes* stipulated in these Articles. The Bank's operations now cover numerous diverse issues including population, education, health, women in development, social security, privatisation, the environment and "governance", none of which is mentioned by name in the Bank's Articles. Under the rubric of "governance", the Bank is assisting developing countries in a number of areas with clear relevance to their economic development such as their efforts to improve public sector management, address weaknesses in the civil service, and strengthen legal, regulatory and judicial frameworks.[24] The Bank has defined governance in this context as "the manner in which power is exercised in the management of a country's economic and social resources for development", thus limiting its concern for good governance to issues which have undisputed economic implications.[25]

According to a legal opinion I issued in late 1990, political reform of borrowing countries is not part of the Bank's purposes provided for in its Articles of Agreement. Violation by a member country of the political human rights of a citizen or citizens is not *per se* a matter that requires a certain action or omission by the Bank. However, the Bank may take into account pervasive violations of such rights to the extent that they have obvious and significant effects on the economy of the country it assists.[26]

Moreover, the Bank's participatory approach in development finance has led it to seek the participation of affected people in the design and implementation of many types of the projects it finances. The Bank also requires consultation with local communities and local non-governmental organisations, for example in the preparation of the "environmental impact assessment" of projects with significant impact on the environment.[27] Such participation and consultation, to be useful at all, require a reasonable measure of free expression and assembly. The Bank would therefore be acting within proper limits if it asked that this freedom be ensured when needed for the above purposes. Its potential denial of lending for a

24. In particular, in transition economies the Bank has financed projects that support the establishment of legal institutions and the "rule of law". See World Bank, *World Development Report—From Plan to Market* (1996), pp.87–97. For an explanation of the "rule of law" as defined under the World Bank's mandate see I. F. I. Shihata, *The World Bank in a Changing World*, Vol.I (1991), chap.2 ("The World Bank and 'Governance' Issues in Its Borrowing Members"), pp.53–96, at p.85 (noting that a system of rules and institutions which is based on the "rule of law" for Bank purposes would mean that there is a set of rules which are known in advance, such rules are actually in force, mechanisms exist to ensure the proper application of the rules and to allow for departure from them as needed according to established rules, conflicts in the application of the rules can be resolved through binding decisions of an independent judicial or arbitral body, and that there are known procedures for amending the rules when they no longer serve their purpose).

25. For further details on governance issues in the Bank's work see Shihata, *ibid.*

26. See *ibid* and *idem*, Vol.II (1995), chap.19 ("The World Bank and Human Rights"), pp.567–578, at p.577.

27. On the Bank's participatory approach in development assistance in general see World Bank, *The World Bank Participation Sourcebook* (1996). For more details with regard to the Bank's participatory approach in the environmental field see *idem*, Vol.II, chap.5 ("The World Bank and the Environment: Legal Instruments for Achieving Environmental Objectives"), pp.183–236, and for the involvement of NGOs in the preparation and implementation of Bank-financed projects, *idem*, chap.6 ("The World Bank and Non-Governmental Organizations"), pp.237–274.

https://doi.org/10.1017/S0020589300060826 Published online by Cambridge University Press

given project in the absence of such a freedom cannot be qualified as an illegitimate interference in the political affairs of the country concerned, even though the rights to free expression and assembly are normally listed among civil and political rights. The Bank's advocacy of participatory development is not meant to constitute political interference in the affairs of its borrowing countries; it is a lesson drawn from the experience of development effectiveness, and thus founded on sound economic grounds.

Another exceptional case is the Bank's duty to pay attention to the binding decisions of the UN Security Council taken under Articles 41 and 42 of the UN Charter which require the Bank not to deal with a certain country.[28] The Bank is bound in this respect by virtue of its Relationship Agreement with the United Nations.[29] In addition, all its members (except Switzerland) are also UN members and in that capacity are required by the UN Charter to implement Security Council decisions, an obligation of member States which under the UN Charter prevails over their other treaty obligations such as those under the Bank's Articles of Agreement.

1. Promoting good governance

The Bank's promotion of good governance in its borrowing members and of a broad array of economic, social and cultural human rights clearly plays a role in paving the way to more democratic forms of government. But the most obvious impact in this direction results indirectly from three areas of the Bank's intervention, which are typically considered to be of an economic or social, not political, nature. These consist of the Bank's support of economic liberalisation, its financing of education for all, and its efforts in support of the legal reform, judicial reform and civil service reform in its borrowing countries. These areas constitute in a sense the infrastructure, the enabling environment, for a democracy that evolves from within the societies involved and thus has the prospect of sustainability.

2. Political involvement

There is an increasing demand on the Bank and other multilateral financial institutions generally to be involved, in an open way, in the protection of political rights and the promotion of political reform.[30] The question whether the Bank's

28. For more details see Shihata (1995), *op. cit. supra* n.26, at p.576.

29. See Art.VI, Section 1 of the Agreement between the United Nations and the International Bank for Reconstruction and Development (1948) 16 U.N.T.S. 346, providing: "The Bank ... will in the conduct of its activities, have due regard for decisions of the Security Council under Articles 41 and 42 of the United Nations Charter."

30. This has been recently reflected in a report of a Committee of the Canadian House of Commons for the agenda of the Halifax Summit and in a draft resolution by a Committee of the Parliamentary Assembly of the Council of Europe. See House of Commons, Canada, *From Bretton Woods to Halifax and Beyond: Toward a 21st Summit for the 21st Century Challenge*, Report of the House of Commons Standing Committee on Foreign Affairs and International Trade on the Issues of International Financial Institutions Reforms for the Agenda of the June 1995 G-7 Halifax Summit (1995), pp.38–40. This report called on the Task Force established by the Development Committee to review the work of the Bank (and other IFIs) to consider whether the Arts. of Agreement should be amended for the purpose. See also Parliamentary Assembly of the Council of Europe, Report and Draft Resolution,

https://doi.org/10.1017/S0020589300060826 Published online by Cambridge University Press

Articles of Agreement should be amended to limit the Bank's assistance to countries which extend adequate protection to political rights may therefore be raised. This is of course a matter of policy left for the Bank's members.[31]

Such an amendment would, however, inevitably raise questions as to the fairness of depriving the people plagued by a despotic government of Bank assistance rather than targeting such assistance to help improve their standard of living and their education while working with their government on liberalising the economy and improving the system of governance. Even if possible and desirable, an amendment to deny Bank lending to countries with records of human rights violations may be superfluous. The Bank's Board of Executive Directors, which represents its members, approves all Bank loans. Such approval would not be obtained if the loan does not receive majority support.

Drawing the Bank, which is an international institution of a predominantly financial character, directly into politically charged areas, with their typical vagaries and double standards, can only politicise its work and jeopardise its credibility, both in the financial markets where it borrows and in the member countries where it lends. In the final analysis, the purposes of the world community may be better served if *political* reform is pursued by political organisations, and *political* human rights are monitored by the relevant UN organisations, regional agencies, courts, commissions and the non-governmental organisations established for this purpose. These institutions are not only in a better position to weigh political considerations; their representation and voting structure are not tied to financial contributions, as is the case with the Bank. If these institutions are not effective, or are under-resourced, the answer should be to strengthen them, not to ask other organisations with no mandate and no competence in the field to substitute for them. The creation of the office of the UN High Commissioner for Human Rights is a clear recognition of an appropriate allocation of roles in this field. By contrast, further politicisation of international financial institutions, even for a moral purpose, could undermine their standing in financial markets and their ability to play the role for which they have been established.[32]

E. Conclusion

Drawing the Bank into a direct and explicit political role for which it has neither the mandate nor the competence would not only raise major legal and policy issues; it would also threaten its existing practice of promoting a large number of human rights while avoiding the use of this term in its work as part of its continuous attempts to insulate its operations from the partisan politics of its members. Coun-

7th Committee on Economic Affairs and Development on the Bretton Woods Institutions (Doc.7256, 17 Feb. 1995). The draft calls for the amendment of the Bank's Arts. of Agreement.

31. An amendment of the Bank's Arts. of Agreement requires the formal approval by Bank members through a process which ultimately needs a majority of 60% of the members having 85% of the total voting power (80% in the case of IDA).

32. See similar conclusions, with respect to the IMF, in Sir Joseph Gold, *Political Considerations are Prohibited by Articles of Agreement when the Fund Considers Requests for the Use of Resources*, IMF Surv. 146, 148 (1983) and, more generally, Riesman, "Through or Despite Governments: Differential Responsibilities in Human Rights Programs" 72 Iowa L.Rev. 391, 395 (1987).

https://doi.org/10.1017/S0020589300060826 Published online by Cambridge University Press

tries which join the Bank as borrowing members expect it to behave in the manner prescribed in its charter, as a source of development finance which is required not to interfere in their political affairs or to judge their domestic political behaviour, rewarding or punishing them accordingly. No such function is needed to enable the Bank to play a positive role in the human rights field. Nowhere is this clearer than in the area of poverty alleviation. Freedom from poverty is for many people a basic freedom without which no other human right could be fully enjoyed. For the Bank, it is the overarching objective which underlies most of its activities.

IBRAHIM F. I. SHIHATA*

TREATIES AND TREATY MATERIALS: ROLE, RELEVANCE AND ACCESSIBILITY

MANY, if not most, matters regulated by international law tend now to bring into issue obligations under treaties. Yet even if a dispute centres on interpretation of a particular treaty provision, the text of the treaty will not necessarily be the sole consideration. More often than not tribunals look to preparatory work of a treaty, sometimes almost as a first resort rather than as a subsidiary means of interpretation;[1] and both formal and less formal instruments associated with a treaty—declarations, reservations and a whole range of possible materials—may be relevant to the particular matter. All these are described here as "treaty materials" and it is the present purpose to explore the scope and role of such materials.

Treaties as instruments drawn up under, and governed by, public international law fulfil a function in that system of law which bears some guarded analogies with both legislation and contractual obligations in national systems of law. Any analogy with the former is rather weak because of the principle that States are bound only by treaties to which they have consented. However, in as much as certain treaties, or some provisions in a treaty, codify, crystallise or in some other way come to be regarded as stating customary rules, those treaties or provisions may be viewed in a loose way as akin to legislation.

Yet to a greater extent than is the case with legislation, interpretation and application of provisions in a treaty can be subject to explanation, development, adaptation and modification without formal renegotiation or amendment. This takes place in the context of relations between States and through the mechanisms of

* Senior Vice President and General Counsel, World Bank; Secretary-General, International Center for Settlement of Investment Disputes (ICSID). This article is based on two oral presentations, one at the Washington College of Law, American University Conference on "The Role of the State in Promoting Sustainable and Equitable Development", Washington, DC, 3 Oct. 1996, and the other at the Democracy Forum of the International Institute for Democracy and Electoral Assistance (IDEA), held in Stockholm, Sweden, 10–14 June 1996. Opinions expressed in this paper are those of the author in his personal capacity.

1. The role of preparatory work as a subsidiary means of interpretation is set out in Art.32 of the Convention on the Law of Treaties, Vienna, 1969, U.K.T.S. No.58 (1980) Cmnd.7964. This Convention is referred to below as "the Vienna Convention".

https://doi.org/10.1017/S0020589300060826 Published online by Cambridge University Press