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Democracy Promotion in the Obama Administration: An Opportunity to Match Action to Rhetoric

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**Democracy Promotion in the Obama Administration:
An Opportunity to Match Action to Rhetoric**

Patrick J. Glen

We will not apologize for our way of life, nor will we waver in its defense. And for those who seek to advance their aims by inducing terror and slaughtering innocents, we say to you now that our spirit is stronger and cannot be broken – you cannot outlast us, and we will defeat you.... To those who cling to power through corruption and deceit and the silencing of dissent, know that you are on the wrong side of history, but that we will extend a hand if you are willing to unclench your fist.¹

President Barack Obama
Inaugural Address
January 20, 2009

There is only one force of history that can break the reign of hatred and resentment, and expose the pretensions of tyrants, and reward the hopes of the decent and tolerant, and that is the force of human freedom. We are led, by events and common sense, to one conclusion: The survival of liberty in our land increasingly depends on the success of liberty in other lands. The best hope for peace in our world is the expansion of freedom in all the world.... So it is the policy of the United States to seek and support the growth of democratic movements and institutions in every nation and culture, with the ultimate goal of ending tyranny in our world.²

President George W. Bush
Second Inaugural Address
January 20, 2005

I. INTRODUCTION

In the opening months of the Obama Presidency, the new administration, consistent with its campaign rhetoric, has distanced itself from the practices and policies of the Bush administration in many key and divisive areas, including such disparate initiatives as stem cell

¹ Barack Hussein Obama, Inaugural Address (Jan. 20, 2009), *available at* <http://www.whitehouse.gov/blog/inaugural-speech/> (last visited June 10, 2009).

² George W. Bush, Second Inaugural Address (Jan. 20, 2005), *available at* <http://www.bartleby.com/124/pres67.html> (last visited June 10, 2009).

research,³ archiving and release of presidential documents,⁴ the detention facility at Guantanamo Bay,⁵ interrogation policy,⁶ policy and planning review within the executive branch,⁷ foreign aid expenditures to organizations that advocate abortion as a facet of family planning,⁸ and continuance of the State Children's Health Program.⁹ Without passing judgment on the administration's shift in these areas, and many others, it is worth noting that change is good – so long as continuity is not what is needed. One area where the new administration should take note of its predecessor, and continue and build on many of the policies and initiatives advocated by the Bush administration, is in the area of democracy promotion and its place within U.S. foreign policy. Although the idea of “democracy promotion” is emerging from the Bush administration with a black eye (or two), the concept and practice of democracy promotion is itself sound, so long as one can wade through the competing and often groundless critiques leveled at the policy. Moreover, democracy promotion is a multi-faceted instrument that can promote a broad array of important foreign policy goals, above and beyond its clearest aim, *i.e.*, bringing democracy, broadly understood, to areas where authoritarian rule is still present. As current Vice-President Joseph Biden stated in 2006, “in our struggle against terrorism, and in

³ Exec. Order No. 13,505, 74 Fed. Reg. 10,667 (March 9, 2009), *revoking* Exec. Order No. 13,435, 72 Fed. Reg. 34,591 (June 20, 2007).

⁴ Exec. Order No. 13,489, 74 Fed. Reg. 4,669 (Jan. 21, 2009), *revoking* Exec. Order No. 13,233, 66 Fed. Reg. 56,025 (Nov. 1, 2001).

⁵ Exec. Order No. 13,492, 74 Fed. Reg. 4,897 (Jan. 22, 2009) (“Review and Disposition of Individuals Detained at the Guantanamo Bay Naval Base and Closure of Detention Facilities”).

⁶ Exec. Order No. 13,491, 74 Fed. Reg. 4,893 (Jan. 22, 2009), *revoking, inter alia*, Exec. Order No. 13,440, 72 Fed. Reg. 40,707 (July 20, 2007).

⁷ Exec. Order No. 13,497, 74 Fed. Reg. 6,113 (Jan. 30, 2009), *revoking* Exec. Order No. 13,258, 67 Fed. Reg. 9,385 (Feb. 26, 2002); Exec. Order No. 13,422, 72 Fed. Reg. 2,703 (Jan. 18, 2007).

⁸ Presidential Memorandum, Mexico City Policy and Assistance for Voluntary Population Planning, 74 Fed. Reg. 4,903 (Jan. 23, 2009), *revoking* Presidential Memorandum, Restoration of the Mexico City Policy, 66 Fed. Reg. 17,303 (Mar. 28, 2001); Presidential Memorandum, Assistance for Voluntary Population Planning, 68 Fed. Reg. 52,323 (Aug. 29, 2003).

⁹ Presidential Memorandum, State Children's Health Insurance Program, 74 Fed. Reg. 6,347 (Feb. 4, 2009).

promoting security and stability, the [Bush] administration is right: democracy is our most powerful weapon.”¹⁰

Vice-President Biden is not alone in noting the general importance of democracy promotion as a tool of foreign policy, or of the specific contributions that the Bush administration did make in this area. Democracy promotion has been embraced by both Democrats and Republicans in the name of security, morality, and on account of the myriad linkages between divergent interests that currently exist in international law and policy, and which can all be served by some aspect of the democracy promotion project. Thus, former U.S. Representative Tom Lantos stated, in 2005, that “[i]t is clear that promoting democracy through diplomacy is crucial to our country’s long-term security as well as to the stability of many other countries in the world.... the lack of democracy can create safe havens for nihilistic and destructive forces that do not value human life.”¹¹ Echoing this sentiment and the statement of Biden, Senator Joseph Lieberman has written that “security at home is partly dependent on the degree of freedom and democracy in lands abroad.... As we address the challenge of terrorism before us, there is little doubt the spread of democracy is our most powerful ally.”¹²

Coupling the threat of terrorism with former President Bush’s turn towards a more realist foreign policy made his administration an obvious benefactor of the democracy promotion paradigm. Testifying before the U.S. House of Representatives’ Committee on International Relations in 2005, then Under Secretary of State Paula Dobriansky stated: “President Bush and Secretary of State Condoleezza Rice have made democracy a defining component of our Nation’s role in the world. Advancing freedom has become a hallmark of this administration’s

¹⁰ *Non-Governmental Organizations and Development of Democracy: Hearing Before the Senate Committee on Foreign Relations*, 109th Cong. (2006) (statement of Sen. Joseph Biden), available at 2006 WLNR 9895993 (2006).

¹¹ *Promoting Democracy Through Diplomacy: Hearing Before the Committee on International Relations, House of Representatives*, 109th Cong. 4 (2005) (statement of Rep. Tom Lantos).

¹² *Id.* at 7 (statement for the record of Sen. Joseph Lieberman).

foreign policy.”¹³ In a statement one year later, Senator Richard Lugar made a similar observation: “Support for democratic, grassroots organizations in many countries around the world has become a centerpiece of America’s international outreach.”¹⁴ Bush’s focus on democracy promotion is certainly a quantitative departure from prior administrations, focusing on the resources and appropriations expended in its pursuit, but the administration’s focus was also qualitatively distinct as well, a fact rooted in Bush’s own high opinion of the transformative potential of democracy promotion. Drawing this distinction during the course of a 2007 panel discussion on democracy promotion, Larry Diamond, a noted democracy scholar and political science professor at Stanford, stated that “it could be argued that President Bush is the most pro-democracy and pro-democracy-promotion president in American history. Certainly no previous American president has so elevated the goal of promoting democracy and freedom ... as the central goal of his foreign policy.”¹⁵

The Bush administrations many initiatives in this area were distinctly distilled during Dobriansky’s testimony before the Committee on International Relations in 2005. Broadly stated, the former administration’s “comprehensive democracy strategy ... include[d] technical assistance, reporting and advocacy, public and private diplomacy, educational and cultural exchanges, and punitive measures. It [was] bilateral and multilateral.”¹⁶ Coordination across the federal government of these different policies and initiatives took place through the Policy

¹³ *Id.* at 14 (statement of Under Secretary of State for Global Affairs Paula Dobriansky); *see also* Michael Mandelbaum, *Democracy Without America*, FOREIGN AFF., Sept.-Oct. 2007, at 119, 119 (“The administration of George W. Bush has made democracy promotion a central aim of U.S. foreign policy.”).

¹⁴ *Non-Governmental Organizations and Development of Democracy: Hearing Before the Senate Committee on Foreign Relations*, 109th Cong. (2006) (statement of Sen. Richard Lugar), available at 2006 WLNR 9895994 (2006).

¹⁵ Statement of Larry Diamond, *Panel: The Future of Democracy Promotion After Iraq*, 5 SANTA CLARA J. INT’L L. 293, 299-300 (2007).

¹⁶ *Promoting Democracy Through Diplomacy: Hearing Before the Committee on International Relations, House of Representatives*, 109th Cong. 19 (2005) (statement of Under Secretary of State for Global Affairs Paula Dobriansky).

Coordinating Committee on Democracy, a working group convened by the National Security Council.¹⁷ The administration also focused much energy and efforts on the Broader Middle East and North Africa Initiative (BMENA), which was designed to build on progress and reforms in that region.¹⁸ In the same region, the “Middle East Partnership Initiative ... sought to bring the resources, experience, and determination of the United States to bear in an effort to bolster the reform movement in the Middle East.”¹⁹ Multilaterally, the United States worked with and through the Forum for the Future, the BMENA, the G-8, and other governmental and inter-governmental bodies, “all united around a common agenda that advances the universal values of human dignity, democracy, economic opportunity, and social justice.”²⁰ The administration additionally focused attention on women’s issues, including the establishment of the U.S.-Afghan Women’s Council, and worked diligently to connect initiatives across thematic groups, such as trafficking, human rights and religious freedom, and public diplomacy via the broadcast media.²¹ More direct financial and institutional support was also apparent. At the time of Dobriansky’s testimony, the United States Agency for International Development possessed funds of one billion dollars for democracy promotion efforts in over 80 countries worldwide.²² The administration was also a driving force being the United Nations Democracy Fund, which provides support to innovative organizations supporting a wide variety of democracy promotion efforts, including rule of law initiatives and institution and capacity building in developing and transitional states.²³

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 20-21.

²² *Id.* at 19.

²³ *Id.* at 19-20.

The Bush administration's accomplishments in this area should, however, be placed in broader context. The administration did make significant strides in placing democracy promotion on international and regional agendas, and did disburse significant amounts to various nongovernmental groups pursuing democracy promotion initiatives. Yet many times these funds did not reach the groups that most needed the money or could put that money to its best use. Additionally, many of the forums and working groups advanced by the Bush administration became simply talking groups, a place to advance the principles and justifications for democracy promotion, but not a source of concrete action towards the realization of those principles. These criticisms, although certainly valid, are more in the line of a wish that the administration had gone further in taking actions to match its broad and expansive rhetoric on the issue of democracy promotion. Nonetheless, in the area of democracy promotion the Bush administration has bequeathed to the Obama administration a legacy worth building upon and extending.

Although there are a wide variety of tactics the new administration could use to further democracy promotion, the focus of the instant article is on a legislative enactment that should be brought to the fore in the new administration's democracy promotion efforts and initiatives: The ADVANCE Democracy Act of 2007. Section II of this article reviews the provisions of that Act, states the implementation status of the relevant provisions, and addresses the broader importance of the policy and measures embodied therein. Realizing that democracy promotion efforts are by no means a universally lauded proposition, Section III addresses some of the more widely held critiques of U.S. democracy promotion efforts, while ultimately concluding that none of the mainstream criticisms should hinder the continuing support for such efforts by the Obama administration. Finally, Section IV provides a framework for how to proceed down the road to

more efficacious democracy promotion, while also taking aim at regimes that consistently and chronically thumb their noses at increasingly accepted democratic and human rights' norms. Although in the final analysis vigorous democracy promotion may not be a panacea to all that ails the world, it undoubtedly has untapped potential to make the lives of countless millions far better and far more secure than they currently are. This potential should itself be a sufficient ground by which the new administration can justify a measure of continuity with the previous administration.

II. THE ADVANCE DEMOCRACY ACT OF 2007

Section II of the instant article will proceed in two parts. The first part addresses the ADVANCE Democracy Act of 2007 along the lines noted in the introduction; it reviews its provisions, notes the implementation status of the relevant sections, and explores the deeper policy initiatives behind the language of the specific provisions. The second part of this section places the Act as passed within its historical context. The ADVANCE Democracy Act of 2007, as passed by Congress, significantly differed from a previous version of the Act advanced by both the House and Senate in 2005, and by the House version of the Act introduced and reported in 2007. The Act as passed was, to a large extent, a more “discretionary” version of these prior attempts to institutionalize democracy promotion in the State Department, although still a significant and important step forward. Thus, the final part of this section addresses how the Act morphed from its 2005 introduction into its 2007 final form, while providing reasons why these changes took place.

A. The ADVANCE Democracy Act of 2007

The ADVANCE Democracy Act of 2007, or, by its more cumbersome title, the Advance Democratic Values, Address Nondemocratic Countries, and Enhance Democracy Act of 2007,²⁴ was passed in August 2007 as Title XXI of the Implementing Recommendations of the 9/11 Commission Act of 2007.²⁵ The ADVANCE Act was the culminating moment in a struggle extending back at least three years to institutionalize democracy promotion within the Bush administration and, in the words of Representative Ileana Ros-Lehtinen, “reflects the interests of the Congress in working with the Administration to develop a comprehensive strategy that translates the objectives of democracy promotion into concrete steps toward the fulfillment of this mandate.”²⁶ The Act focused on the State Department and a shift towards what the administration had termed “transformational diplomacy.” The ADVANCE Act sought to enhance transformational diplomacy and “ensure that the Department of State, as an institution, embraces democracy promotion and the protection of human rights in a formal sense.”²⁷ In the words of one notable supporter, the Act “would transform [U.S.] embassies into freedom houses and our ambassadors and other diplomats into active, trained supporters of non-violent campaigns for democracy.”²⁸ In its long passage through the Congress, the Act was also supported by notable international democracy activists, including Soviet dissident Natan

²⁴ Pub. L. No. 110-53, Title XXI, §§ 2101, *et seq.*, 121 Stat. 526, *codified at* 22 U.S.C. §§ 8201, *et seq.* (2007).

²⁵ Pub. L. No. 11-53, 121 Stat. 266 (Aug. 3, 2007).

²⁶ *Promoting Democracy Through Diplomacy: Hearing Before the Committee on International Relations, House of Representatives*, 109th Cong. 2 (2005) (statement of Rep. Ileana Ros-Lehtinen).

²⁷ *Id.* at 5 (statement of Rep. Tom Lantos).

²⁸ *Non-Governmental Organizations and Development of Democracy: Hearing Before the Senate Committee on Foreign Relations*, 109th Cong. (2006) (statement of Ambassador Mark Palmer), *available at* 2006 WLNR 9895406 (2006).

Sharansky, who opined that he wished such an Act had been in place during his days in the former Soviet Union,²⁹ and Rebiya Kadeer, a Chinese Uyghur political and democracy activist.³⁰

The following subsections will deal with the provisions of the Act, broken down into three classifications: those dealing with the Congressional findings and framework of the Act, the policy provisions, and the institutional provisions. Additionally, the implementation status of each relevant provision will be noted, along with the importance of the provision within the broader democracy promotion project.

1. Congressional Findings and the Framework of the ADVANCE Act

The Congressional findings regarding the ADVANCE Act is the prism through which the remainder of the Act must be viewed. These findings both ground the imperative to action and dictate the bounds of that action. First and foremost in that list of findings is the observation that the foundational documents of the American polity, the Declaration of Independence and the Constitution, guarantee to American citizens substantive rights and freedoms, as well as participatory rights in government, while also recognizing the fundamental equality of all human beings.³¹ Far from these rights, freedoms, and principles being solely American ideals, however, the Act recognizes that the development of international law in the wake of World War Two, specifically the United Nations Declaration of Human Rights, reflects the very same ideals.³² Despite this hint of universality about the ideals that undergird democracy, the Act does not fall within the familiar pitfall of thinking that one form of democracy can be readily imposed instantaneously in any country. Rather, the Act recognizes that the “development of democracy constitutes a long-term challenge that goes through unique phases and paces in individual

²⁹ *Promoting Democracy Through Diplomacy: Hearing Before the Committee on International Relations, House of Representatives*, 109th Cong. 9 (2005) (letter from Natan Sharansky).

³⁰ *Id.* at 10 (letter from Rebiya Kadeer to Rep. Frank Wolf).

³¹ 22 U.S.C. § 8201(1).

³² *Id.*

countries” as democratic institutions, including free media and an independent judiciary, develop.³³ Most importantly, the ultimate development of democracy “must be led from within such countries,” a clear, though implicit, recognition that reform cannot be imposed from without.³⁴

These two initial subsections of the Act establish a legal and moral foundation for action, while also delineating the lines within which that action must take place. The subsequent subsections establish the *need* for action and the types of actions that can be advanced by both the United States and the general international community of democratic countries. For instance, the Act recognizes what democracy and international scholars have termed a “democratic rollback:”³⁵ “[i]ndividuals, nongovernmental organizations, and movements that support democratic principles, practices, and values are under increasing pressure from ... governments of nondemocratic countries [and democratic transition countries], including by using administrative and regulatory mechanisms to undermine the activities of such individuals, organizations, and movements.”³⁶ Nonetheless, the Congress determined that these setbacks can themselves be countered through improved assistance mechanisms to democratic reformers, an enhanced roll for democracy promotion within the diplomatic corps, and a “broad-based effort with cooperation between all democratic countries.”³⁷

These findings are most important when viewed in the context of *how* to go about the business of democracy promotion. It cannot be all about assistance or elections, but rather must focus on institutional development and targeted assistance to individuals devoted to beginning down, or maintaining their country’s travel on, the path to democracy. Such a broad and

³³ 22 U.S.C. § 8201(2).

³⁴ *Id.*

³⁵ See, e.g., Larry Diamond, *The Democratic Rollback*, FOREIGN AFF., Mar.-April 2008, at 36.

³⁶ 22 U.S.C. § 8201(3).

³⁷ 22 U.S.C. §§ 8201(5) & (6).

expansive view of what to target through democracy promotion initiatives greatly increases the chance that a country can start down the path to democracy or, in the case of transition countries, realize the final shift towards broad-based democratic governance. As Jennifer Windsor, Executive Director of Freedom House, testified before the House Committee on International Relations in 2005, “the emergence of broadly based civic nonviolent coalitions is the most important condition and mechanism [for] creating democracy.”³⁸ These civic coalitions can themselves then begin to institute the civil society reforms that are necessary to bring democracy to fruition. As then-Senator Joseph Biden noted in 2006, these internal reforms provide the very foundation for further democracy promotion and the ultimate realization of democracy within a given country: “A democracy must rest on the foundation of a strong civil society – on building the institutions of democracy: political parties, effective government, independent media and judicial systems, non-governmental organizations and civil society. [E]lections are important, but so is support for things like grassroots governance, human rights, and education for girls. We must put more emphasis on this necessary, comprehensive approach.”³⁹ Along with providing the necessary catalyst for change, however, the type of broad-based democracy promotion effort envisioned by the ADVANCE Act is also important for the strength it will endow any resulting democracy. Again in the words of Windsor, “[w]hat is critical is not just the importance of these factors in triggering transitions, but actually in determining the quality of democracy that results years after that transition.”⁴⁰ In short, the concept of democracy promotion embraced by the Act will not only increase the chances that such efforts will succeed

³⁸ *Promoting Democracy Through Diplomacy: Hearing Before the Committee on International Relations, House of Representatives*, 109th Cong. 41 (2005) (statement of Jennifer Windsor).

³⁹ *Non-Governmental Organizations and Development of Democracy: Hearing Before the Senate Committee on Foreign Relations*, 109th Cong. (2006) (statement of Sen. Joseph Biden), available at 2006 WLNR 9895993 (2006).

⁴⁰ *Promoting Democracy Through Diplomacy: Hearing Before the Committee on International Relations, House of Representatives*, 109th Cong. 41 (2005) (statement of Jennifer Windsor).

in bringing about democratic change, but may also ensure that such change is lasting while protecting against any potential “rollback” effect.

Section 8203 of the Act contains definitions, only one of which is of particular relevance to the instant article. The Act defines “nondemocratic country or democratic transition country” in the following manner:

- The term “nondemocratic country” or “democratic transition country” shall include any country which is not governed by a fully functioning democratic form of government, as determined by the Secretary [of State], taking into account the general consensus regarding the status of civil and political rights in a country by major nongovernmental organizations that conduct assessments of such conditions and whether the country exhibits the following characteristics:
- (A) All citizens of such country have the right to, and are not restricted in practice from, fully and freely participating in the political life of such country.
 - (B) The national legislative body of such country and, if directly elected, the head of government of such country, are chosen by free, fair, open, and periodic elections, by universal and equal suffrage, and by secret ballot.
 - (C) More than one political party in such country has candidates who seek elected office at the national level and such parties are not restricted in their political activities or their process for selecting such candidates, except for reasonable administrative requirements commonly applied in countries categorized as fully democratic.
 - (D) All citizens in such country have a right to, and are not restricted in practice from, fully exercising such fundamental freedoms as the freedom of expression, conscience, and peaceful assembly and association, and such country has a free, independent, and pluralistic media.
 - (E) The current government of such country did not come to power in a manner contrary to the rule of law.
 - (F) Such country possesses an independent judiciary and the government of such country generally respects the rule of law.
 - (G) Such country does not violate other core principles enshrined in the United Nations Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, United Nations Commission on Human Rights Resolution 1499/57 (entitled “Promotion of the Right to Democracy”), and the United Nations general Assembly Resolution 55/96 (entitled “Promoting and consolidating democracy”).
 - (H) As applicable, whether the country has scored favorably on the political, civil liberties, corruption, and rule of law indicators used to determine eligibility for financial assistance disbursed from the Millennium Challenge Account.⁴¹

⁴¹ 22 U.S.C. § 8203(6).

This definition is extraordinarily important, as it recognizes that “democracy,” properly understood, is about a comprehensive form of governance and not simply about elections. This is an important distinction in current international affairs, as the electoral victory of Hamas in Gaza demonstrated, but too often democracy promotion efforts are tied up with election monitoring and other electoral-directed activities. Elections do not a democracy make, however, and, commensurate with the broad plan of action envisioned by section 8201, the Act takes into account a range of factors in determining whether a country is nondemocratic or in transition to democracy, not the least of which is its devotion to or abrogation of foundational liberal rights and freedoms.

2. The Act’s Policy Provisions

The Act’s policy provisions prescribe a course of action to be implemented within the general framework of the Congressional findings, while also taking into account the definition the Act provides of “nondemocratic country” and “democratic transition country.” Thus, the specific policy initiatives contemplated by the Act are manifold. First, the Act places democracy promotion firmly within the canon of foreign policy goals by dictating that such efforts shall be “a fundamental component of United States foreign policy.”⁴² As a function of this general directive, the Act also contains specific constitutive and derivative directives. It reaffirms the United States’ commitment to the international rights and freedoms contained in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, and places condemnation of any violations of the rights therein contained within the ambit of U.S. foreign policy objectives.⁴³ It additionally establishes a policy of promoting, fostering, and protecting core human rights, including the freedoms of association, expression, press, religion,

⁴² 22 U.S.C. § 8202(1).

⁴³ 22 U.S.C. § 8202(2).

and property.⁴⁴ These policy provisions pertain to the protection and promotion of specific constitutive rights and freedoms that are inherent in any “realized” or transitioning democracy.

Relating back to Biden’s exhortation, and the expansive vision for democracy promotion embodied in the Congressional findings, section 8202(4) pertains to foundational issues and the United States’ policy on promoting institutional development within nondemocratic and transitional countries. Thus, it shall be the policy of the United States “to commit to the long-term challenge of promoting universal democracy by promoting democratic institutions, including institutions that support the rule of law [], an independent and professional media, strong legislatures, a thriving civil society, transparent and professional independent government auditing agencies, civilian control of the military, and institutions that promote the rights of minorities and women[.]”⁴⁵ To bring these policies to life, so to speak, the Act provides that the United States will use its influence to provide political, economic, and other support to governments willing to undertake a democratic transition, and to nongovernmental and individual actors who are working within nondemocratic and democratic transition countries on behalf of democratic ideals and principles.⁴⁶ Perhaps most importantly, the Act also envisions a strengthening of support between democratic countries in the common pursuit of promoting and consolidating democratic gains throughout the world.⁴⁷

Section 8213 establishes authority to investigate and take action against violators of established international human rights norms. The President and Secretary of State, together with the Under Secretary of State for Democracy and Global Affairs and the Ambassador-at-Large for War Crimes Issues, “shall collect information regarding incidents that may constitute

⁴⁴ 22 U.S.C. § 8202(3).

⁴⁵ 22 U.S.C. § 8202(4).

⁴⁶ 22 U.S.C. § 8202(5).

⁴⁷ 22 U.S.C. § 8202(6).

crimes against humanity, genocide, slavery, or other violations of international humanitarian law.”⁴⁸ Moreover, the Act further directs the President to ensure that any violators are brought to account in an appropriate forum.⁴⁹ Bringing offenders to account is obviously a difficult task in an international order that is still, more or less, devoted to the notion of the inviolability of national sovereignty. Nonetheless, significant norm-creating inroads have been made since Nuremberg, and the United States has both international options and domestic alternatives for the prosecution of individuals accused of crimes against humanity and other violations of international criminal and humanitarian law. Regarding the investigative directive of this particular section, implementation is underway on two fronts. First, the State Department’s Bureau of Democracy, Human Rights, and Labor has been collecting information via taskings to the Department’s Intelligence and Research Bureau and the Central Intelligence Agency. Second, the Bureau has additionally begun to give grants to various indigenous organizations to collect such evidence of violations, an important move considering the often opaque view of the internal workings of nondemocratic and dictatorial regimes.

The need for specificity in democracy promotion efforts across different continents, cultures, and circumstances is bespoke by section 8221. That section directs, *inter alia*, that the State Department build on its efforts to develop country specific strategies for promoting democracy by expanding those efforts to as many nondemocratic and democratic transition countries as possible.⁵⁰ Additionally, the newly mandated “Annual Report on Advancing Freedom and Democracy” should contain the United States’ “priorities for the promotion of democracy and the protection of human rights for each nondemocratic country and democratic transition country,” as well as any “specific actions and activities of chiefs of missions and other

⁴⁸ 22 U.S.C. § 8213(a).

⁴⁹ 22 U.S.C. § 8213(b).

⁵⁰ *See* 22 U.S.C. § 8221(a).

United States officials to promote democracy and protect human rights in each such country.”⁵¹ This section has been technically implemented, but there will always be areas to build upon as events on the ground unfold in each subject country. The first *Advancing Democracy and Freedom Report* was submitted to the Congress in May 2008, and contained strategies of varying complexity and efficacy for 106 countries.⁵² Although there is much still to be accomplished in the realm of creating and implementing strategies for democracy promotion in these countries, the 2008 Report provides a solid foundation for work in subsequent years, and certainly a good base from which the Obama administration can proceed with renewed vigor.

A similar country specific initiative, although seemingly mundane, is the directive that the State Department’s Country Reports on Human Rights Practices, Annual Report on International Religious Freedom, Trafficking in Persons Report, and any other discrete report on democracy and human rights, be timely translated “into the principal languages of as many countries as possible, with particular emphasis on nondemocratic countries, democratic transition countries, and countries in which extrajudicial killings, torture, or other serious violations of human rights have occurred.”⁵³ This task is seemingly mundane, as it entails simply recounting abuses that have occurred, yet the power of accurate reporting on such issues should not be underestimated in the many countries where the state runs the media and the populace may be largely unaware of rampant abuses occurring in its communities. As the internet likewise expands into even the most remote areas, a report posted on the local U.S. Embassy website or Department of State website might be the only information citizens have on the abuses of their governments. Since passage of the ADVANCE Act, this provision has largely been implemented, with as many as 85% of the Human Rights Reports being translated into the native

⁵¹ 22 U.S.C. § 8221(c).

⁵² See <http://2001-2009.state.gov/g/drl/rls/afdr/2008/index.htm> (last visited July 22, 2009).

⁵³ 22 U.S.C. § 8222(a).

language or languages of the subject state shortly after issuance. Such quick and expansive translation had long been a goal of the Bureau of Democracy, Human Rights, and Labor, and it is telling that it took a legislative enactment to push through such a simple, but far-reaching and important, reform. This tension between the Bureau's objectives and other sectors of the State Department, specifically the regional bureaus, although apparent here, is even more evident in the institutional provisions that will be addressed *infra*.

The remaining "policy" sections of the Act pertain to cooperative ventures with other democracies and the United States' own various internal organizations working towards democracy promotion, and the funding of various democracy promotion programs and initiatives, domestic, regional, and international, and both governmental and nongovernmental in nature. The most important of these provisions may be section 8262, which pertains to coordination and consultation between solely domestic democracy promotion programs and organizations. Thus, the whole range of governmental institutions involved with democracy issues, including the State Department and the U.S. Agency for International Development, as well as institutions like the government-funded National Endowment for Democracy, should increase their coordination both as to the development of strategies and initiatives aimed at democracy promotion and the delivery of such assistance to the end consumers.⁵⁴ Moreover, the panoply of delivery methods and initiatives that could prove efficacious in promoting democratic transitions must be explored, and the internal guidelines for vetting ideas within the Executive Branch, and for consulting with Congress, should be strengthened so as to bring as much expertise to bear on these issues as is feasible.⁵⁵ The importance of this provision should not be

⁵⁴ See, e.g., 22 U.S.C. § 8262(b)(1)(B).

⁵⁵ See 22 U.S.C. § 8262(a)(2) ("the purpose of the [State] Department's Human Rights and Democracy Fund should be to support innovative programming, media, and materials designed to uphold democratic principles, practices, and values, support and strengthen democratic institutions, promote human rights and the rule of law, and build civil

underestimated, as a lack of coordination and consultation between the various arms of the U.S. government could lead to situations of “too much” and “too little” in any given area. Moreover, a lack of internal consultation could impede U.S. cooperation with other countries or multilateral institutions, where it is integral that its foreign policy goals be declared in a unitary sense rather than as the prerogatives of the various agencies and departments that comprise the U.S. government. Clear lines of planning and consultation increase the chances that U.S. democracy promotion efforts will succeed, that those efforts will be directed at the necessary and most important areas, and that the money appropriated for the pursuit of such efforts will be efficiently and economically disbursed and spent.

Regarding the need for the United States to work with other democratic states on the international stage, in a provision regarding the sense of Congress, it is hoped that the United States will cooperate with other like-minded countries in the pursuit of democracy promotion.⁵⁶ Although such cooperation seems axiomatic if democracy promotion efforts are to succeed, such cooperation does not currently prevail, at least not at the level envisioned by the Act. As Ambassador Palmer noted during his 2005 testimony before the House Committee on International Relations, “[t]he democracies produce 89% of the world’s GNP, we are overwhelmingly the most powerful militarily and in democracy we have by far the most magnetic political values and system. But we all too often have not worked together.”⁵⁷ This fact has to some extent changed since passage of the Act. The State Department has increased

societies in countries around the world”); 22 U.S.C. § 8262(b)(2) (“It is the sense of Congress that the Secretary and the Administrator of the United States Agency for International Development should develop guidelines, in consultation with the appropriate congressional committees, building on the existing framework for grants, cooperative agreements, contracts, and other acquisition mechanisms to guide United States missions in foreign countries in coordinating United States democracy assistance and selecting the appropriate combination of such mechanisms for such assistance.”).

⁵⁶ 22 U.S.C. § 8251(a).

⁵⁷ *Promoting Democracy Through Diplomacy: Hearing Before the Committee on International Relations, House of Representatives*, 109th Cong. 41 (2005) (statement of Ambassador Mark Palmer).

both its bilateral and multilateral cooperation and consultation with other democracies, so as to increase the democracies' impact in various regional and international forums, while also consolidating and focusing policy vis-à-vis nondemocratic and democratic transition countries. Part and parcel with this reform is the establishment of a permanent Secretariat for the Community of Democracies in Warsaw, Poland.⁵⁸ The Act sought such a permanent mechanism so as to increase the ability of the organization to conduct work and business between ministerial meetings, while also creating a more permanent presence that could be appealed to if necessary.⁵⁹ However, the Act also proscribes participation in the Community of Democracies, and other "democratic" organizations aimed at democracy promotion, by nondemocratic states.⁶⁰ Such an exclusionary policy has broad support, was advocated by Republican presidential candidate Senator John McCain during the 2008 election cycle,⁶¹ and was forcefully espoused by Representative Tom Lantos during the 2005 House committee hearings on the Act.⁶² The Act also provides for the detail of American personnel to the Community of Democracies or any member-state thereof and the establishment of an office for multilateral democracy promotion to advocate for U.S. interests in various regional and international forums, but neither of these provisions has been implemented on account of staffing shortages and insufficient full-time employees at the State Department.⁶³

⁵⁸ The Community of Democracies has roots in the Clinton Administration, and extending even further back, although it was aided in birth by then-Secretary of State Madeline Albright. *See* MADELEINE ALBRIGHT, *MADAM SECRETARY* 444-47 (New York: Miramax 2003).

⁵⁹ 22 U.S.C. § 8251(b)(1)(A).

⁶⁰ 22 U.S.C. § 8251(b)(1)(B).

⁶¹ *See, e.g.,* John McCain, *An Enduring Peace Built on Freedom*, FOREIGN AFF., Nov.-Dec. 2007, at 19, 25-26.

⁶² *Promoting Democracy Through Diplomacy: Hearing Before the Committee on International Relations, House of Representatives*, 109th Cong. 23 (2005) (statement of Rep. Thomas Lantos) ("One of the concerns I have with respect to next year's meeting of the Community of Democracies is that we will not be careful enough in the invitation list which, of course, is the seal of approval for these governments."). Representative Lantos has also advocated expelling Russia from the G-8 until it returned to the path of democracy and political liberalization. *See id.* at 22-23.

⁶³ *See* 22 U.S.C. §§ 8251(b)(2) & (c).

The financial commitments contemplated by the Act have likewise only been partially fulfilled. Although an appropriation of one million dollars per annum for years 2008, 2009 and 2010 was made for the International Center for Democratic Transition, only a portion of these appropriations has been disbursed.⁶⁴ This is especially unfortunate, as the Center is the only multilateral institute specifically dedicated to issues of democracy promotion and democratic transitions.⁶⁵ An amount of fourteen million dollars was appropriated for disbursement to the United Nations Democracy Fund for each of the years 2008 and 2009,⁶⁶ yet, although twenty-five millions dollars had been received by the Fund between the years 2006 and 2008, no funds have thus far been granted for 2009.

3. The Act's Institutional Provisions

The preceding two subsections dealt with the ADVANCE Act's provisions pertaining to the general framework and thrust of the Act, as well as the Act's provisions regarding policy. The instant section deals with those provisions that establish necessary institutional reforms within the Department of State regarding the personnel who will be charged with implementing, on a daily basis, the policy provisions of the Act, and who will be the face of American democracy promotion efforts to those individuals who most need the help the Act seeks to provide.

⁶⁴ See 22 U.S.C. § 8251(d).

⁶⁵ See *Promoting Democracy Through Diplomacy: Hearing Before the Committee on International Relations, House of Representatives*, 109th Cong. 39 (2005) (statement of Ambassador Mark Palmer) ("It is striking that there are numerous multinational bodies like the World Bank and IMF responsible for economic development and quite intrusive in insisting upon modern free market economic strategies and programs. There are no multinational equivalent institutions for political development, insisting upon and guiding transitions from dictatorship to democracy.").

There are, however, other multilateral institutions devoted to democracy issues as they pertain to electoral politics and electoral assistance, such as the International Institute for Democracy and Electoral Assistance, in Sweden. See <http://www.idea.int>. Additionally, several European countries have NED-like institutions to promote democracy abroad, including the United Kingdom (the Westminster Foundation for Democracy) and The Netherlands (The Netherlands Institute for Multiparty Democracy).

⁶⁶ See 22 U.S.C. § 8261.

First and foremost, the Act establishes the position of “Democracy Liaison Officer,” a post under and reporting to the Assistant Secretary of State for Democracy, Human Rights, and Labor.⁶⁷ These officers are meant to be posted at various international and regional missions, including the United Nations, European Union, African Union, and the Organization of American States, as well as any relevant specialized agencies within these broader organizations, regional public diplomacy centers of the Department of State, U.S. combatant commands, and other posts as designated by the Secretary of State.⁶⁸ Once assigned, it is contemplated that these officers will provide their “hosts” with “expertise on effective approaches to promote and build democracy[,] assist in formulating and implementing strategies for transitions to democracy,” and fulfill any other relevant assignment given to them by the Department.⁶⁹ Moreover, these positions are meant to be new positions, to be filled by new hires, rather than “reorganized” positions or positions simply realigned from elsewhere.⁷⁰ Hiring and assignment of these individuals has, unfortunately, not yet taken place. The Bureau of Democracy, Human Rights, and Labor would like to assign officers to the African Union, ASEAN, the Organisation of the Islamic Conference, the Organization of American States, and the Community of Democracies, but it has not yet obtained the requisite number of full-time employee slots (FTEs) to do so. One obvious reason for this failure was the need for additional FTEs for the Department’s missions in Afghanistan and Iraq, which has limited the availability of such positions for other bureaus and offices within the Department.

⁶⁷ 22 U.S.C. § 8211(a).

⁶⁸ 22 U.S.C. § 8211(a)(1).

⁶⁹ 22 U.S.C. § 8211(a)(2).

⁷⁰ *See* 22 U.S.C. § 8211(a)(3).

One reform within the Bureau that has been completed pertains to the establishment of an office related to democratic movements and transitions.⁷¹ This office was established consistent with the Congressional mandate after an internal reorganization within the Bureau of Democracy, Human Rights, and Labor, and the requisite personnel assignments have been made to meet staffing concerns within the office. The mandate of this office is relatively far-reaching, as it is charged with developing relations and consultation arrangements with democratic movements, nongovernmental organizations, the governments of other democratic countries, and individuals working toward promoting and consolidating democracy.⁷² Additionally, the office is directed to provide assistance to the Department's regional bureaus in the development and implementation of strategies and programs aimed at fostering democracy in the nondemocratic and democratic transition countries falling within the respective purviews of those bureaus.⁷³

Another significant provision pertains to the Chiefs of Mission in each nondemocratic and democratic transition country.⁷⁴ The Act's directive to these individuals is worth quoting in full, as it represents a seachange of sorts in the conduct of diplomacy by American missions in such countries:

- ... Each chief of mission in each nondemocratic country or democratic transition country should—
- (1) develop, as part of annual program planning, a strategy to promote democratic principles, practices, and values in each such foreign country and to provide support, as appropriate, to nongovernmental organizations, individuals, and movements in each such country that are committed to democratic principles, practices, and values, such as by—
 - (A) consulting and coordinating with and providing support to such nongovernmental organizations, individuals, and movements regarding the promotion of democracy;
 - (B) issuing public condemnations of violations of internationally recognized human rights, including violations of religious freedom, and visiting local

⁷¹ See 22 U.S.C. § 8211(b)(1).

⁷² 22 U.S.C. §§ 8211(b)(2) & (b)(3).

⁷³ 22 U.S.C. § 8211(b)(2)(C).

⁷⁴ See 22 U.S.C. § 8211(c).

- landmarks and other local sites associated with nonviolent protest in support of democracy and freedom from oppression; and
- (C) holding periodic meetings with such nongovernmental organizations, individuals, and movements to discuss democracy and political, social, and economic freedoms;
 - (2) hold ongoing discussions with the leaders of each such nondemocratic country or democratic transition country regarding progress toward a democratic system of governance and the development of political, social, and economic freedoms and respect for human rights, including freedom of religion or belief, in such country; and
 - (3) conduct meetings with civil society, interviews with media that can directly reach citizens of each such country, and discussions with students and young people of each such country regarding progress toward a democratic system of governance and the development of political, social, and economic freedoms in each such country.⁷⁵

This provision dictates a forwarding looking, proactive posture by U.S. missions abroad in nondemocratic and democratic transition countries, centered on a pro-democracy action plan.⁷⁶

Such an approach is certainly contrary to traditional U.S. diplomacy in such states, which has centered on reacting to provocations rather than taking initial actions to increase the costs of such provocations or establishing an environment that makes clear such provocations are unacceptable and will not be tolerated. As Ambassador Palmer testified in 2005:

Often we find that our embassies and diplomacy are merely reactive – allowing the dictator to manipulate his own people and us, for example by regularly arresting people and then releasing them as a supposed sign of liberalization and response to us, even asking for policy rewards, only to have the same people or others arrested shortly thereafter. As each country situation has its own specific features, our plans need to [be] well-grounded in reality, but they also need to be creative and benefit from successful experiences elsewhere. Conventional diplomacy is fine under conventional circumstances, but often in non-democratic countries unconventional diplomacy is called for and works.⁷⁷

⁷⁵ *Id.*

⁷⁶ See *Promoting Democracy Through Diplomacy: Hearing Before the Committee on International Relations, House of Representatives*, 109th Cong. 38 (2005) (statement of Ambassador Mark Palmer) (“The Act requires action plans for each non-democratic state to guide our diplomacy. These plans would begin with our embassies asking local democrats what their strategy is and how we can help them achieve it.”).

⁷⁷ *Id.*

The Ambassador's testimony is borne out in his own experiences. After serving in U.S. embassies in the Soviet Union during the height of the Cold War and in Yugoslavia under General Tito, during which outreach to dissidents was often muzzled, the efficacy of Ambassador Palmer's conception of "unconventional diplomacy" was demonstrated in Hungary in 1988, 1989 and 1990, when that country successfully transitioned to democracy after years of communist rule and a failed revolution in 1956 that saw the United States sit idly by as Soviet tanks rolled through Budapest. Implementation of this policy shift is currently underway, as noted previously, insofar as country strategies for 104 countries were included in the first *Advancing Democracy and Freedom Report*, although these strategies do vary significantly in quality and detail. The Bureau of Democracy, Human Rights, and Labor is also enjoying close collaboration with the Offices of Foreign Assistance and Resource Management, to ensure that strategies are tied to budgetary realities, and the Department's regional bureaus, so that the strategies adopted can reflect realities on the ground and be complementary with the Department's various other goals and initiatives. Nonetheless, it remains to be seen to what extent these action plans will actually be put into action.

The Act also established an Advisory Committee on Democracy Promotion, which acts in a consultative capacity by advising the Secretary of State on how to "improve the capacity of the Department to promote democracy and human rights" and "how to improve foreign assistance programs related to the promotion of democracy."⁷⁸ Many other institutional reforms relate to the personnel system or issues that fall within the purview of the Department's personnel system. For instance, the Act establishes the ADVANCE Democracy Award, to be awarded to a Department employee on criteria to be established by the Secretary.⁷⁹ Additionally,

⁷⁸ 22 U.S.C. § 8231.

⁷⁹ 22 U.S.C. § 8242.

the Act seeks to increase incentives for individuals to serve in the Bureau of Democracy, Human Rights, and Labor, and to target recruitment of Foreign Service Officers and others into the Bureau.⁸⁰ A lack of willing personnel in the Bureau has been a chronic concern, exacerbated by the stress on Department personnel occasioned by the wars in Afghanistan and Iraq. Another victim of this over-burdening is section 8212, establishing the Democracy Fellowship Program.⁸¹ This provision sought to detail personnel associated with democracy promotion and human rights issues to domestic legislative offices, as well as international and nongovernmental organizations, with primary responsibility and oversight over issues pertaining to democracy and human rights.⁸² Such detailing has not occurred, with the main reason given the pressure of staffing posts in Iraq and Afghanistan.

A mundane, yet important directive, is contained in section 8232, which relates to the Department's website and the need to have a site dedicated to issues of global democracy and human rights.⁸³ This type of site is important in the same way that translations of the various U.S. government human rights reports is – it might be the only fount of true information for citizens regarding what is going on in their countries. This section specifically refers to the need to have the major human rights reports posted, especially in translations, but goes further and notes the importance of including narratives and histories of prior successful democratic movements and of the general importance of ensuring democracy and protection for human rights.⁸⁴ This provision has largely been implemented, and the Bureau is likely to have all relevant information included on the democracy website by the end of 2009.⁸⁵ In addition, the

⁸⁰ See 22 U.S.C. §§ 8211(d), 8243.

⁸¹ 22 U.S.C. § 8212.

⁸² *Id.*

⁸³ 22 U.S.C. § 8232.

⁸⁴ See 22 U.S.C. §§ 8232(1)-(4).

⁸⁵ See <http://www.america.gov/global/democracy.html>.

Bureau itself is seeking to update its own State Department website with relevant information, perhaps overlapping in places.⁸⁶

Finally, the issue of training. Section 8241 is directed at training members of the Foreign Service and career civil service in democracy promotion and the protection of human rights.⁸⁷ On this count, reform is needed both in reaching those individuals who need the necessary training, and in promulgating relevant and quality materials to use in such training. Training in democracy promotion and human rights within the Department is currently spotty, both regarding personnel trained and the materials used. A “Diplomat’s Handbook” on democracy promotion has been compiled and is in use at the Department’s Foreign Service Institute,⁸⁸ but the Act also directs additional training and compilation of materials in a number of other areas:

- (1) International documents and United States policy regarding the promotion of democracy and respect for human rights.
- (2) United States policy regarding the promotion and strengthening of democracy around the world, with particular emphasis on the transition to democracy in nondemocratic countries and democratic transition countries.
- (3) For any member, chief of mission, or deputy chief of mission who is to be assigned to a nondemocratic country or democratic transition country, ways to promote democracy in such country and to assist individuals, nongovernmental organizations, and movements in such country that support democratic principles, practices, and values.
- (4) The protection of internationally recognized human rights (including the protection of religious freedom) and standards related to such rights, provisions of United States law related to such rights, diplomatic tools to promote respect for such rights, and the protection of individuals who have fled their countries due to violations of such rights.⁸⁹

Progress on meeting the Act’s requirements in these areas is underway, but is far from complete.

This is not surprising, given that this section represents the practical side of the Act’s embrace of transformational diplomacy and the central role that U.S. missions abroad must take in being

⁸⁶ See <http://www.state.gov/g/drl>.

⁸⁷ 22 U.S.C. § 8241.

⁸⁸ See <http://www.diplomatshandbook.org> (last visited Aug. 12, 2009).

⁸⁹ 22 U.S.C. § 8241(a).

proactive about the protection of human rights and the advancement and promotion of democratic ideals. Nonetheless, a definitive push on these educational and training issues may only come if democracy promotion and human rights protection holds a place of importance within the new administration's foreign policy goals. Otherwise, the inertia of tradition and long-practice may carry the day.

* * *

The ADVANCE Act provides the skeleton over which the Obama administration can lay the flesh of renewed democracy promotion efforts – so long as the administration is willing to incorporate democracy promotion as a central focus of its foreign policy, and is capable of devoting the necessary resources and time to the issues raised by such an incorporation. Much still needs to be accomplished from an implementation point of view, and the actual implementation of the act must be brought to concrete reality. It is one thing to dictate that Chiefs of Mission in nondemocratic countries establish action plans; it is quite another to ensure that these individuals put their plans into action and take steps towards advancing democratic ideals in these closeted countries. In light of domestic and international economic troubles, existing U.S. financial and assistance commitments in the developing world and two existing combat theaters, and a general backlash against democracy promotion efforts in the United States and more generally in the democratic world, it may be too much to hope that the administration embraces democracy promotion in its first year in office. Nonetheless, it does have a ready-made framework from which to launch such efforts should it desire to take the initiative.

Ultimately, as recognized in the introduction, democracy promotion efforts are of strategic interest to the United States, not simply a “feel-good” initiative to vacuously promote freedom and human rights. Dealing with democracies in resource rich areas, such as the Urals

and the Middle East, would be infinitely easier than dealing with the petulant Russian government or the opportunistic authoritarian regimes of the greater Middle East and North Africa. From a security perspective, the expansion of freedom in the world serves as a buffer to extremism, and it is oft correctly stated that, since the advent of the modern international legal order, democracies do not go to war with other democracies. The mere confluence of interests between democracies also serves to focus regional and international debate on important issues, such as climate change. In short, there is not only a moral imperative to action, but also very real strategic interests in play when one discusses the issue of democracy promotion. Fitting democracy promotion within the broader rubric of this administration's foreign policy would pay dividends on any number of currently contentious issues, while also increasing the likelihood that the future will be more peaceful and tranquil than the present.

B. A Cautionary Coda: The ADVANCE Democracy Act of 2007 in Historical Context

The ADVANCE Democracy Act of 2007, written and passed as Title XXI of the Implementing Recommendations of the 9/11 Commission Act of 2007, is the law of the United States, and it is the text of that law as passed that the Obama administration must deal with in its own democracy promotion efforts. Nonetheless, as noted frequently in the foregoing, the ADVANCE Act is itself the product of a long history of back-and-forth between Congress and former President Bush, in which the Act gradually lost a significant portion of its mandatory character. This history is worth noting in passing, as the struggle to get the ADVANCE Democracy Act of 2007 passed in any form can serve as a cautionary tale of sorts to proponents of democracy promotion in the executive and legislative branches, as well as in non-governmental organizations. Even with a sympathetic president in place, the kind of far-reaching reforms that are necessary to vigorously advance democracy promotion efforts may

come up against entrenched interests that have little inclination to budge. Nonetheless, with an administration currently in place that, at least in its campaign rhetoric, is far less infatuated with assertions of executive power, it may be hoped that more progressive steps down this path may be taken in the coming months and years.

The first incarnation of what would become the ADVANCE Democracy Act was simultaneously introduced in the House and Senate on March 3, 2005, through bipartisan co-sponsors Representatives Frank Wolf, Tom Lantos, Christopher Smith, and Donald Payne, and Senators John McCain and Joseph Lieberman.⁹⁰ This first version of the bill included several provisions that were dropped not only from the final implementation of the Act, but even the version introduced in the House in 2007. Among other provisions, H.R. 1133 sought to codify the position of Under Secretary of State for Global Affairs,⁹¹ establish regional democracy hubs that would support the U.S. missions in nondemocratic countries falling within their geographic region,⁹² mandate a yearly report regarding the status of U.S. cooperation with other democracies on the issues of democracy promotion and protection of human rights,⁹³ and establish a working group specifically charged with gauging the progress of democracy promotion efforts in nondemocratic and democratic transition countries.⁹⁴ Other provisions represent far more comprehensive versions of provisions that were eventually included in the final act as passed in 2007, including those pertaining to the advisory committee and the training of Foreign Service Officers.⁹⁵ The most far reaching provisions sought to ensure that executive and Departmental appointments to diplomatic missions in nondemocratic countries went to individuals who

⁹⁰ See S. 516, 109th Cong. (2005); H.R. 1133, 109th Cong. (2005). This bills are identical, but all subsequent citations will be solely to the bill reported as H.R. 1133.

⁹¹ H.R. 1133 § 101(a).

⁹² H.R. 1133 § 101(d)(2).

⁹³ H.R. 1133 § 206.

⁹⁴ H.R. 1133 § 104.

⁹⁵ See H.R. 1133 §§ 106, 109.

displayed special competence in democracy promotion,⁹⁶ encouraged the President to take a range of actions in regards to countries that are deemed nondemocratic on the criteria established by the Act,⁹⁷ and mandated the position of Special Assistant for nondemocratic countries on the National Security Council.⁹⁸ Ultimately, however, this version of the ADVANCE Democracy Act was not passed, and little action was taken on the legislative front for almost two years.

The second incarnation of the Act is the House version of the bill that would, after consultation with the Senate, become the ADVANCE Democracy Act of 2007.⁹⁹ This version of the Act closely mirrors the implemented version, from its statement of policy and its definition of nondemocratic country,¹⁰⁰ to its substantive provisions providing for an Office Related to Democratic Movements and Transitions, Democracy Liaison Officers, additional training in democracy promotion and human rights for Foreign Service Officers, and its establishment of an Advisory Committee on Democracy Promotion.¹⁰¹ Nonetheless, significant portions of the initial House version of the Act were omitted from the final implementation. In a “sense of the Congress” provision, H.R. 982 pronounced that there should be three Deputy Assistant Secretaries of State overseeing the Bureau of Democracy, Human Rights, and Labor, rather than the one such position currently prevailing.¹⁰² Congress also included a provision that required

⁹⁶ H.R. 1133 § 111.

⁹⁷ H.R. 1133 §§ 501, 503.

⁹⁸ H.R. 1133 § 601.

⁹⁹ See H.R. 982, 110th Cong. (2007).

¹⁰⁰ Compare H.R. 982 § 4 with 22 U.S.C. § 8202 (statement of policy); compare H.R. 982 §5(6) with 22 U.S.C. § 8203(6) (definition of nondemocratic country).

¹⁰¹ Compare H.R. 982 § 101(b)(1) with 22 U.S.C. §8211(b) (Office Related to Democratic Movements and Transitions); compare H.R. 982 § 101(b)(2) with 22 U.S.C. § 8211(a) (establishing the position of Democracy Liaison Officer); compare H.R. 982 §107 with 22 U.S.C. § 8241 (regarding training in democracy promotion and human rights); compare H.R. 982 § 104 with 22 U.S.C. § 8231 (establishing the Advisory Committee on Democracy Promotion); see also H.R. 982 §§ 102 (pertaining to the translation and content of Department’s human rights reports), § 103 (establishing the democracy fellowship program), § 105 (pertaining to the Department’s website and the need for a website on democracy issues), § 401 (directing the investigation of violations of humanitarian and human rights law by the executive). Titles II and III of H.R. 982, dealing with issues of funding and closer cooperation with other democratic countries and organizations, are similar to the relevant enacted provisions.

¹⁰² See H.R. 982 § 101(b)(4).

the executive branch to monitor and document the financial assets held in the United States by nondemocratic leaders and their associates.¹⁰³ Neither of these provisions has a counterpart in the Act as passed. Another, more grievous omission, pertains to the appointment of Foreign Service Officers in nondemocratic countries. Section 109 of H.R. 982 provided for the amendment of the Foreign Service Act of 1980 by adding the following sentence to 22 U.S.C. § 3944(a)(1): “If the country in which the individual is to serve is a nondemocratic country or a democratic transition country as defined in section 5 of the ADVANCE Democracy Act of 2007, the individual should possess clearly demonstrated competence in and commitment to the promotion of democracy, including competence in promoting democratic principles, practices, and values, such as through regular interaction with individuals, including students and young people, who support and advocate such principles, practices, and values.”¹⁰⁴ There is, unfortunately, nothing in the final version of the Act that addresses an individual’s qualifications to serve in a mission in a nondemocratic or democratic transition country.

These omissions are troubling in themselves, but perhaps more so are the places where the initial House version of the Act does have a final implementation counterpart, but one where the mandatory nature of the initial provision was stripped. For instance, section 101(b)(5) of H.R. 982 directs that at least 50% of the non-administrative staff of the Bureau of Democracy, Human Rights, and Labor should be Foreign Service Officers by December 31, 2012.¹⁰⁵ The final Act simply directs the Department to establish more targeted recruitment into the Bureau, with no hard number or temporal limits for that recruitment.¹⁰⁶ Regarding the actions that Democracy Liaison Officers are charged to undertake, the initial House bill directed that these

¹⁰³ See H.R. 982 § 101(b)(3).

¹⁰⁴ H.R. 982 § 109.

¹⁰⁵ See H.R. 982 § 101(b)(5).

¹⁰⁶ See, e.g., 22 U.S.C. § 8211(d).

Officers “shall” undertake the activities within the purview of their job description, including providing “expertise on effective approaches to promote and build democracy,” assisting “in conceiving and implementing strategies for transitions to democracy,” and carrying “out such other responsibilities as the Secretary and the Assistant Secretary may assign.”¹⁰⁷ Although the range and nature of the activities these Officers are charged with undertaking did not change in the final version of the Act, the “shall” was replaced with the far more discretionary “should” regarding the imperative to action.¹⁰⁸ This same replacement of language is evident in the provisions dealing with the actions to be undertaken by the chiefs of mission.¹⁰⁹ Moreover, a specific and important provision relating to the actions to be undertaken by the chiefs of mission was omitted from the final version of the bill. The House version directed chiefs of mission or other principal officers of the local mission to “spend time at universities and other institutions of higher learning to [] debate and discuss values and policies that promote democracy [and] [] communicate, promote, and defend such United States values and policies.”¹¹⁰ This type of outreach is tremendously important, as recently highlighted once again by the fallout following the contested presidential election in Iran, as universities and colleges are often hotbeds for change.

If Representative Ros-Lehtinen was correct in expressing the thought that the House bill as introduced represented a collaboration between the Congress and the Bush administration,¹¹¹ why is it that the Act was largely stripped of its mandatory character by the time it was passed into law? The answer is that the rhetoric of the Bush administration conflicted to a large degree

¹⁰⁷ H.R. 982 § 101(b)(2)(B).

¹⁰⁸ See 22 U.S.C. § 8211(a)(2).

¹⁰⁹ Compare H.R. 982 § 106(a) with 22 U.S.C. § 8211(c).

¹¹⁰ H.R. 982 § 106(b).

¹¹¹ See *Promoting Democracy Through Diplomacy: Hearing Before the Committee on International Relations, House of Representatives*, 109th Cong. 2 (2005) (statement of Rep. Ileana Ros-Lehtinen).

with its own expansive view of the powers of the President and the focal point of the presidency itself in the theory of the unitary executive. This fact is succinctly summed up in the administration's statement of policy following the inclusion of H.R. 1133 as Title VI of H.R. 2601, the Foreign Relations Authorization Act for fiscal years 2006 and 2007.¹¹² The administration did note its appreciation of the intent behind the ADVANCE Democracy Act, but thought that many of the provisions could constrain the administration's conduct of foreign affairs by limiting its ability to disburse discretionary foreign assistance, unduly limiting the Secretary's own ability to manage personnel positions and offices within the Department, and infringing on the "President's constitutional authority to conduct the Nation's foreign affairs and supervise the unitary Executive Branch."¹¹³ Accordingly, rather than mandating, for instance, that Democracy Liaison Officers and Chiefs of Mission shall take certain actions, the final act bowed to executive branch pressures requesting greater discretion in whether or not and to what extent they would carry out the objectives of the Act in any given situation. This is to say only that, within the broader framework of the Act, the Department maintains the discretion to dictate the missions of the Liaison Officers and Chiefs of Missions, rather than having those missions mandated by Congress via legislation. In a sense, then, the Department retains the discretion to do what it has always had the discretion to do, but now must do so within a distinct framework. Again, the ADVANCE Democracy Act does represent a significant step forward, and its provisions can serve as a baseline from which democracy promotion efforts can and should be launched. Nonetheless, for these efforts to prove truly efficacious, the Obama administration must be less beholden to claims of executive power and must strip away some of the discretion

¹¹² Executive Office of the President, Statement of Administrative Policy: H.R. 2601 – Foreign Relations Authorization Act, Fiscal Years 2006 and 2007 (July 20, 2005), available at <http://georgewbush-whitehouse.archives.gov/omb/legislative/sap/109-1/hr2601sap-h.pdf> (last visited Aug. 18, 2009).

¹¹³ See *id.*

that the Department of State now enjoys in the advancement of these goals. In this sense, the current administration can transcend the rhetoric of its direct forbear and truly match actions to its words.

III. CRITIQUES OF DEMOCRACY PROMOTION

Thus far, this article has assumed that democracy promotion should continue to be a part of the United States foreign policy agenda and given an explication of a Congressional enactment designed to institutionalize democracy promotion as a central facet of the United States' engagement with the international community. In Section IV, *infra*, this article will also address areas and ways in which the United States can build on what has been accomplished over the preceding decades in the field of democracy promotion, so as to increase the likelihood that we can see a more free world in the near term and a totally free world in the not-too-distant future. Yet no matter how "magnetic" the idea of democracy is, the concept of democracy promotion does not enjoy any universal appeal within Western countries, and has engendered significant animosity in the many nondemocratic and democratic transition countries throughout the world. In some ways, this may be easy to understand. Obviously, nondemocratic regimes, and even democratic transition governments, may have significant vested interests in the status quo. Why individuals in existing democratic countries should oppose efforts to more fully realize democracy abroad is a different matter. Although this article means to be constructive in nature, it would be remiss if it failed to address some of the most prominent critiques of the democracy promotion project currently prevailing in foreign policy circles. What follows is a brief explication of three of these critiques, those that I believe carry the most weight within the current debate, as well as refutations of their logic.

A. Democracy Promotion = Regime Change / Imposition by Force

The conflation of democracy promotion with regime change, or the notion that democracy can be imposed at the end of a rifle, is an unfortunate repercussion of the Bush administration's post hoc rationalization of the Iraq war. As current Vice-President Biden stated in 2006, "[f]airly or not, the [Bush] administration has created the impression around the world that it believes democracy can be imposed by force."¹¹⁴ Biden's view was mirrored in an article by Thomas Carothers in the March/April 2006 issue of *Foreign Affairs*, wherein Carothers noted that, for the vast majority of the world's populace, the United States' rhetoric regarding democracy promotion and the Iraq war gave the impression that the phrase "democracy promotion" was nothing more than veiled short-hand for regime change or invasion.¹¹⁵ In the same hearing in which Biden's statement was made, Senator Richard Lugar opined that "[g]roups that promote democracy must come to grips with the fact that they are being vilified for allegedly promoting regime change."¹¹⁶ To take the cue from then Senator Biden, these assertions are unfair characterizations of what has transpired both during the Bush years, and generally throughout the history of U.S. democracy promotion efforts.

President Bush did not go to war in Afghanistan or Iraq to impose democracy on those populations. Each conflict was supported by strategic rationales that have held up to the test of time and scrutiny to varying degrees. Nonetheless, what can be said with some certainty is that neither invasion was part of a global crusade to impose democracy. Ironically, the history of the U.S. cuts against any assertion that it has favored domestic constituents who crave democracy,

¹¹⁴ *Non-Governmental Organizations and Development of Democracy: Hearing Before the Senate Committee on Foreign Relations*, 109th Cong. (2006) (statement of Sen. Joseph Biden), available at 2006 WLNR 9895993 (2006).

¹¹⁵ See Thomas Carothers, *The Backlash Against Democracy Promotion*, FOREIGN AFF., Mar.-April 2006, at 55.

¹¹⁶ *Non-Governmental Organizations and Development of Democracy: Hearing Before the Senate Committee on Foreign Relations*, 109th Cong. (2006) (statement of Sen. Richard Lugar), available at 2006 WLNR 9895994 (2006).

from the imposition of the Shah in Iran, to the toppling of Salvador Allende in Chile, to the continued support of any number of Middle East and African dictators. There was no rhetoric to support these assertions outside the Iraq war, and even then, the notion arose solely because the administration felt placed on the defensive by the failure to find the claimed weapons of mass destruction. In short, there is no support in reality for the proposition that U.S. support for democracy promotion is code for regime change or violent imposition of democracy.

From the outside looking in, obviously regime change, broadly understood, is the end goal of democracy promotion. The ideal seeks to have democracy win the day, which means, in a nondemocratic country, vanquishing the nondemocratic ruler or, in a democratic transition country, ensuring that the last vestiges of the old regime are swept out with the chafe. Yet democracy promotion from the United States side is simply aid for one side in a domestic struggle. It is not violent in nature, nor does the ADVANCE Act itself countenance anything but support and appropriations for *non-violent* groups and organizations. This approach seeks to place democracy within the market place of ideas – a place where it is not welcome in the many countries where authoritarianism remains dogma. No matter how threatened these rulers may feel, however, they will ultimately be defeated by the better system, not by American guns or soldiers. In the final analysis, “[w]e should not allow the complexities of Afghanistan and Iraq to obscure the successes of non-violent democracy promotion or to sap our will to persevere.”¹¹⁷ Thus, this critique provides no basis from which the Obama administration could or should conclude that the types of non-violent democracy promotion efforts contemplated by the ADVANCE Act need to be shelved.

¹¹⁷ *Non-Governmental Organizations and Development of Democracy: Hearing Before the Senate Committee on Foreign Relations*, 109th Cong. (2006) (statement of Ambassador Mark Palmer), available at 2006 WLNR 9895406 (2006).

B. Some Countries Are Not Amenable to Democracy

This invidious argument proposes that democracy, and the ideals that undergird democracy, is a specifically Western construct rather than a system of universal appeal and significance. That being the case, democracy promotion is doomed to fail, as it simply will not “play” well in most non-Western settings, whether that setting be Asia, the Middle East, Africa, or elsewhere.¹¹⁸ As Mohsen Milani recently wrote in relation to Iran, “[democracy promotion is m]ore a feel-good fantasy than a viable strategy, [which] [] misleadingly assumes that democracy can be exported, like cars, or imposed by force[.]”¹¹⁹ The notion that Iran could not be fertile ground for democracy is itself incompatible with the massive protests following the contested 2009 presidential election, but even more generally, arguments such as Milani’s rest on several false premises concerning the capabilities and end goals of democracy promotion.

First, these arguments assume that democracy, as conceived by democracy promoters, is constructed as a ready-made system of governance that can be implemented fully in any country, given the right opportunity. This assumption pertains both to the method of promoting democracy, and the qualitative aspect of the democracy that may be realized. Regarding the method, it is patently false, as is clear from even a cursory reading of the ADVANCE Act. That Act recognizes the many different cultures, systems, and histories of the remaining nondemocratic countries, and seeks plans premised on what will fit each country best. This determination itself is meant to be made only in consultation with local activists and interested parties, not by some bureaucrat in Washington dictating end-results from afar. This personalized and specific approach does not contemplate a one-size-fits-all mentality, and the Act, in its substantive provisions and its statement of findings, disclaims any attempts to approach

¹¹⁸ For a comprehensive report on both democratic and economic efforts in the Arab world, *see generally* *Waking from its sleep: A special report on the Arab world*, THE ECONOMIST, July 25, 2009, at 1-16.

¹¹⁹ Mohsen M. Milani, *Tehran’s Take: Understanding Iran’s U.S. Policy*, FOREIGN AFF., July-Aug. 2009, at 46, 61.

democracy promotion in this way. The result of the case-specific approach is that democracy in one place will never look identical to democracy in another place. The United States, England, France, Turkey, and South Africa are all democracies, but the countries have a great deal of obvious differences, from executive leadership, to voting procedures, to the nature of the substantive rights and freedoms guaranteed. An example of a country in transition is China, where many democratic and market reforms have been embraced, although an authoritarian state remains. But one can rest assured that, if and when democracy comes to China, it may look very different from other Western democracies, despite a certain base-line of similarities.¹²⁰ As a threshold matter, however, the Act's requirement for specific strategy plans implemented on a country-by-country basis means that any domestic circumstances can be accounted for in the implementation of democracy promotion initiatives.

Second, a usual facet of this argument is that a specific class of people is incapable of embracing democracy, either because of their peculiar history or on account of the pre-existence of a similarly "total" system, such as Islam, already dominating the relevant society. This argument fails on empirical evidence, and on any meaningful engagement with the allegedly incompatible system. A recent book highlights the accomplishments and travails of a number of democracy and human rights activists operating in a group of nondemocratic countries whose populations have largely been written off as not particularly inclined towards democracy, whether for historical or religious reasons.¹²¹ The existence of these activists, in Saudi Arabia, Iraq, Iran, Egypt, Palestine, Kuwait, and Syria, as well as other countries not mentioned, belies any blanket statement to the effect that individuals in these countries will not militate for change

¹²⁰ Cf. John L. Thornton, *Long Time Coming: The Prospects for Democracy in China*, FOREIGN AFF., Jan.-Feb. 2008, at 2.

¹²¹ See JOSHUA MURAVCHIK, *THE NEXT FOUNDERS: VOICES OF DEMOCRACY IN THE MIDDLE EAST* (New York: Encounter 2009).

along more liberal lines. In fact, the successes of the activists mentioned might well have been greater and more significant had U.S. efforts to reach out to them been coordinated and systematized in the way the ADVANCE Act contemplates they will be. The claim against Islam is more scurrilous than the nationalist claims, as it plays on obvious phobias and prejudices arising from the 9/11 tragedy, and is less grounded in a meaningful engagement with the system pilloried. Most who advance this claim, if not nearly all, have no true understanding of Islam, and base their assertions on understandings cribbed from the radicals and extremists who many Muslims view as hijackers in their own right – they have hijacked a religion for alternative purposes that, even close to a decade after 9/11, are not entirely crystalline. I am not an expert on Islam either, but I am inclined to agree with positions advocated by Muslims who generally do yearn for more liberal values. Benazir Bhutto’s legacy will be just such a treatise, which distills Islam and Sharia law in clear and lucid prose, while demonstrating not only the compatibility of Islam and democracy, but the very real desire of many Muslims living under the yoke of authoritarianism to break free.¹²²

Judged fairly and impartially, there are no inherent hurdles to democracy promotion in those countries which remain nondemocratic or only partly free. As Under Secretary Dobriansky testified, “[w]e see that freedom’s call is resonating with more and more people around the world. From Georgia to Ukraine to Iraq to Lebanon to Afghanistan, the cynicism of skeptics and the oppression of autocrats has been answered by peaceful protests, ballot boxes, and constitution drafts.”¹²³ The incoming administration has the opportunity to ensure that freedom’s

¹²² BENAZIR BHUTTO, *RECONCILIATION: ISLAM, DEMOCRACY, AND THE WEST* (New York: HarperCollins 2008).

¹²³ *Promoting Democracy Through Diplomacy: Hearing Before the Committee on International Relations, House of Representatives*, 109th Cong. 15 (2005) (statement of Under Secretary of State for Global Affairs Paula Dobriansky).

call will continue to resonate in new areas of the world, without drawing tenuous and unfounded distinctions regarding who is and who is not capable or willing to embrace democracy.

C. Democratic Gains Should be Consolidated

Finally, some argue that rather than expending funds and resources promoting democracy in nondemocratic countries, the United States and its democratic brethren should focus on ensuring the successful and lasting transition of partially democratic countries into the democratic column.¹²⁴ In essence, the United States should consolidate the gains it has made over the past two decades rather than seeking new windmills to tilt. There is undoubtedly some truth to the notion that countries that were on the road to democracy in the early 1990's have backslid, with Russia often being cited as the archetypal example.¹²⁵ It is not so much that democratic countries are becoming nondemocratic, however, but rather that transitioning countries have returned to authoritarian rule, or simply stalled in their transition. This can at least partially be attributed to the rapid process of democratization in the late 1980's and early 1990's, which is unlikely to be matched at any subsequent stage of the democracy promotion project.¹²⁶ Judged against those successes, certainly, progress has slowed and the outlook in dislodging the world's remaining authoritarian regimes looks dimmer.

Without arguing about whether this trend exists, and there is by no means total agreement that there has been any meaningful backslide,¹²⁷ there is no necessary tension between

¹²⁴ See LARRY DIAMOND, *THE SPIRIT OF DEMOCRACY: THE STRUGGLE TO BUILD FREE SOCIETIES THROUGHOUT THE WORLD* (New York: Holt 2008); Larry Diamond, *The Democratic Rollback*, FOREIGN AFF., Mar.-April 2008, at 36.

¹²⁵ See ANNA POLITKOVSKAYA, *PUTIN'S RUSSIA: LIFE IN A FAILING DEMOCRACY* (New York: Holt 2004); YURI FELSHTINSKY & VLADIMIR PRIBYLOVSKY, *THE CORPORATION: RUSSIA AND THE KGB IN THE AGE OF PRESIDENT PUTIN* (New York: Encounter 2008).

¹²⁶ *Promoting Democracy Through Diplomacy: Hearing Before the Committee on International Relations, House of Representatives*, 109th Cong. 41 (2005) (statement of Jennifer Windsor) ("while we continue to see overall gains each year, forward progress has clearly slowed since the unprecedented breakthroughs in the early 1990s").

¹²⁷ See, e.g., Daniel Deudney & G. John Ikenberry, *The Myth of the Autocratic Revival*, FOREIGN AFF., Jan.-Feb. 2009, at 77.

consolidating gains and continuing to support democratic groups in nondemocratic countries. As an initial matter, this critique *does* carry the most weight of those surveyed, for the very practical reason that it is based on underlying realities – finite budgetary and temporal resources. The United States, along with its democratic allies, has only a limited amount of funds it can disburse and only a limited number of personnel to assign to any given problem, region, or task. In light of these obvious limitations, then, it certainly makes sense to devote those resources that we *do* have available to ensuring that countries who have started down the road of democratization reach the end goal of democratic governance and remain firmly within the democratic camp. Yet a certain logic is all this critique has going for it.

There is no reason that democracy promotion cannot proceed along side the consolidation of gains that have been made in the previous decade. For one, there is not necessarily significant personnel overlap between consolidation and promotion. As made clear in the ADVANCE Act, a great deal of responsibility will devolve to the chiefs of mission in nondemocratic and democratic transition countries, meaning that the front-line fighters for democracy promotion will not have to choose between promotion and consolidation – the choice will have been made for them by their placement within the United States’ global diplomatic web. To the extent that a certain upper echelon of bureaucrats will be concerned with both issues, consolidation and promotion mutually inform each other, and any work done in one realm is clearly applicable, and transferable, to the other. Finances may force difficult choices at different stages during the promotion and consolidation process, but the mere fact that one may have to make such choices in the future is not a reason to forego one road for the other at this stage. Promotion and consolidation can proceed side-by-side as foreign policy goals, notwithstanding the fact that at certain junctures, one may necessarily have to take priority over the other. Yet this is the exact

quandary virtually every aspect of foreign policy finds itself in. In short, there is no definitive argument against pursuing democracy promotion in nondemocratic countries while consolidation is proceeding in transitioning and newly democratic countries.

IV. STRENGTHENING AND DIVERSIFYING DEMOCRACY PROMOTION

So, the Obama administration has a necessary and bipartisan-supported tool already in place from which to launch renewed democracy promotion efforts, and none of the prevailing critiques of democracy promotion as a project strike definitive blows. What is left, then, is the question of where to go from here? The ADVANCE Act provides a necessary baseline from which to proceed, but it should not be left on its own in the fight to extend the reach of democracy in the Twenty-First Century. Testifying before the Senate Foreign Relations Committee in 2006, Ambassador Palmer optimistically stated that “[a]chieving a 100% democratic world is possible over the next quarter century – but only with radical strengthening of our primary frontline fighters for freedom.”¹²⁸ It is the purpose of the instant section to explore ways in which the Ambassador’s optimistic pronouncement may be brought to fruition.

A. Full Implementation of the ADVANCE Act Should be a Priority

The easiest way to quickly strengthen the United States’ capabilities regarding democracy promotion is to fully implement those provisions of the ADVANCE Act that have heretofore not been implemented or been only partially implemented, and to ensure that the shift to transformational diplomacy takes hold in the U.S. diplomatic corps. Foremost among these implementation priorities should be an increase in the number of FTEs devoted to democracy promotion efforts. This would permit the contemplated detail of State Department personnel to various regional and international organizations, as well as endowing the Department with a

¹²⁸ *Non-Governmental Organizations and Development of Democracy: Hearing Before the Senate Committee on Foreign Relations*, 109th Cong. (2006) (statement of Ambassador Mark Palmer), available at 2006 WLNR 9895406 (2006).

corps of employees who can pursue the democracy promotion agenda in a more focused and deliberate way.¹²⁹ Implementation of more full-time positions targeted at democracy promotion should be possible once the personnel pressures of Iraq and Afghanistan begin to wane, as well as if Secretary Clinton is successful in persuading those holding the purse-strings that the State Department has suffered from chronic under-funding over the course of the previous decades.¹³⁰ The Bureau of Democracy, Human Rights, and Labor should also work closely with the personnel office at the State Department to establish a plan to implement more targeted recruiting into the Bureau.¹³¹ Commensurate with such targeted recruitment, the Bureau should also work closely with the Foreign Service Institute in devising a rigorous and expansive course of study and training for Officers devoted to positions involving democracy promotion and advocacy on behalf of human rights.¹³² Finally, as pertains to specifically internal implementation necessities, the Department and Bureau should work to finish the upgrades to their websites so as to ensure that relevant democracy and human rights information is available to as many individuals as possible in as many languages as possible, especially those working within nondemocratic and democratic transition countries.¹³³ Again, this may seem like a mundane issue, yet the power of information should not be underestimated.

Funding will most likely be a chronic problem, but amounts should be spent and disbursed commensurate with the amounts appropriated, something that has not yet occurred.¹³⁴ Organizations such as the Democratic Transition Center should also be given significantly more attention than they now garner. Ambassador Palmer was correct to question why there are so

¹²⁹ See 22 U.S.C. §§ 8211(a), 8212, 8251(b)(2), 8251(c).

¹³⁰ See, e.g., *At a glance*, U.S.A. TODAY, Feb. 27, 2009, at 6A.

¹³¹ See 22 U.S.C. § 8211(d).

¹³² See 22 U.S.C. § 8241.

¹³³ See 22 U.S.C. § 8232.

¹³⁴ See 22 U.S.C. §§ 8251(d) (pertaining to the Democratic Transition Center), 8261(U.N. Democracy Fund).

many regional and international bodies militating for capitalist market reforms, yet no such mainstream organizations advocating similar political and governmental reforms.¹³⁵ Given the right resources, the Democratic Transition Center may be able to make real inroads in some of the more intransigent areas of the authoritarian world, which would have the effect of also increasing the odds that these countries can liberalize economically.¹³⁶ Finally, and perhaps most importantly, each diplomatic mission currently operating in a nondemocratic country or democratic transition country must act more aggressively in establishing specific and detailed country-oriented policies for promoting democracy within their given state.¹³⁷ These strategic plans must be a collaborative and ongoing project, involving the main stake-holders and democratic activists in each state, and they must be grounded in practical realities rather than rhetoric and verbiage. Doing what is possible at each step, while always keeping the end goal in focus, will prove far more significant in instituting change than merely relying on grandiloquent statements about the “inexorable path of freedom.”

These final implementation issues are comparatively small concerns when viewed in light of the passage of the Act itself. Nonetheless, the Obama administration should work as quickly as possible in placing these final pieces of the ADVANCE Act puzzle into place. Funding and personnel issues may linger for a longer time than would be desired, but other aspects of the Act, including most specifically the promulgation of the country-specific strategy plans, need not, and should not, wait any longer. Plans that have been established should be revisited and honed,

¹³⁵ See *Promoting Democracy Through Diplomacy: Hearing Before the Committee on International Relations, House of Representatives*, 109th Cong. 39 (2005) (statement of Ambassador Mark Palmer) (“It is striking that there are numerous multinational bodies like the World Bank and IMF responsible for economic development and quite intrusive in insisting upon modern free market economic strategies and programs. There are no multinational equivalent institutions for political development, insisting upon and guiding transitions from dictatorship to democracy.”).

¹³⁶ See also Section IV.E, *infra*.

¹³⁷ See 22 U.S.C. §§ 8211(c), 8221(a).

where necessary, and those countries lacking any detailed and targeted plan should be directed to draw up such initiatives by the end of 2010.

B. U.S. Advocacy for a Right to Democracy

Advocacy for a “right to democracy” under international human rights law is nothing new, and has roots extending at least as far back as the early 1990’s and the period of expansive democratization following the fall of the Soviet Union.¹³⁸ Since that time, an explicit right to democracy has been recognized and institutionalized by the Organization of American States,¹³⁹ and been pronounced by the former United Nations Commission on Human Rights.¹⁴⁰ Moreover, the United Nations General Assembly has itself advocated on behalf of promoting democracy and consolidating democratic gains.¹⁴¹ Besides these explicit pronouncements of a right to democracy, it is clear that prevailing international law largely protects all those rights, both substantive and procedural, that comprise modern conceptions of liberal democracy.¹⁴² Prevailing international law protects participatory rights in government, as well as the most important substantive rights, including the freedoms of assembly, free speech, and the press. Although it seems that these international instruments are more honored in the breach, at times, it cannot be said that they do not reflect the current status of the international legal order. Some have even argued that the existence of these legal obligations coupled with state observance

¹³⁸ See, e.g., Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT’L L. 46 (1992).

¹³⁹ Inter-American Democratic Charter, OAS Doc. OEA/Ser.P/AG/Res.1 (Sept. 11, 2001); The Santiago Commitment to Democracy and the Renewal of The Inter-American System, OAS General Assembly, 3d Plen. Sess. (adopted June 4, 1991), OAS Doc. OEA/Ser.P/XXI.O.2 (1991); Representative Democracy, OAS General Assembly, 5th Plen. Sess. (adopted June 5, 1991), AG/Res.1080 (XXI-0/91), OAS Doc. OEA/Ser.P/XXI.O.2 (1991).

¹⁴⁰ Promotion of the Right to Democracy, Commission on Human Rights Res. 1999/57, U.N. Doc. E/CN.4/RES/1999/57 (1999); see also Michael J. Dennis, *The Fifty-Fifth Session of the UN Commission on Human Rights*, 94 AM. J. INT’L L. 189, 191 (2000).

¹⁴¹ Promoting and Consolidating Democracy, G.A. Res. 55/96, U.N. Doc. A/RES/55/96 (Dec. 4, 2000); Promoting and Consolidating Democracy, Commission on Human Rights Res. 2000/47, U.N. Doc. E/CN.4/2000/L.45/Rev.1 (April 18, 2000).

¹⁴² See International Covenant on Civil and Political Rights, G.A. Res. 2200(A), U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6315 (1966); Universal Declaration of Human Rights, G.A. Res. 217A, U.N. GAOR, 3d Sess., U.N. Doc. A/810 (Dec. 12, 1948).

thereof have created a customary international law right to democracy.¹⁴³ To the contrary, others contend that these instruments solely contain a hortatory obligation on the part of states to develop towards democracy.¹⁴⁴ The view that there is a customary international law right to democracy may assume too much, at least at this stage, but the view that these instruments establish a bare obligation to develop *towards* democracy degrades the rights already recognized under international law. It seems clear that if a state were to respect the rights contained in the established human rights treaties, including the International Covenant on Civil and Political Rights, that state could not be anything but a democracy. A state that would adhere to the precepts contained in these treaties would respect the populace's participatory rights in governance, as well as a substantial swath of substantive rights, from the rights to due process, life, and liberty, to the specific freedoms of assembly, free speech, and the press, to mention just a few. Looked at in this way, the right to democracy becomes a kind of second-order right, itself derived from the respect for these other discrete rights, as well as a right culminative in nature – the end result of the state's respect for its citizens' particular human rights.

The United States should be at the forefront of this effort to advocate on behalf of a right to democracy in the present, as it has been previously in both the former Human Rights Commission and the Organization of American States. This advocacy should continue in the form of non-binding resolutions and pronouncements, such as those made by the OAS and United Nations General Assemblies, but it could also take the form of a more legally binding convention or treaty, either regional in nature or under the auspices of the United Nations.¹⁴⁵

¹⁴³ See JUDE I. IBEGBU, *RIGHT TO DEMOCRACY IN INTERNATIONAL LAW* (Lewiston: Edwin Mellen Press 2003); *but see* Same Varayudej, *A Right to Democracy in International Law: Its Implications for Asia*, 12 ANN. SURV. INT'L & COMP. L. 1 (2006).

¹⁴⁴ See, e.g., Niels Petersen, *The Principle of Democratic Teleology in International Law*, 34 BROOK. J. INT'L L. 33 (2008).

¹⁴⁵ See Reginald Ezetah, *The Right to Democracy: A Qualitative Inquiry*, 22 BROOK. J. INT'L L. 495, 529-34 (1997).

Such an approach would have the benefit of grouping together in one instrument all those rights and freedoms deemed necessary for democratic governance to flourish, and declaring that respect for the listed rights and freedoms is the baseline a country will have to meet in order to be deemed democratic under international law. However the United States proceeds in this area, it should rest assured that its advocacy of a right to democracy serves its long-term strategic interests as well as representing the global realization of those ideals and imperatives that lead to its own founding over two centuries ago.

C. International Action Against Dictatorship and Authoritarian Rule

Although there were undoubtedly positive defining moments for humanity during the course of the Twentieth Century, to a large extent that time period was defined by such unsavory terms and phrases as war, genocide, and crimes against humanity. Looking to the personalities behind the century's worst atrocities, it is not difficult to find a unifying characteristic:

The 20th Century was the bloodiest in human history because dictators made it so. An estimated 169 million people died at the hands of their own leads – Hitler, Stalin, Mao, Kim Il Sung and Kim Jong Il, Pol Pot, Saddam Hussein – an estimated three times that also historic number of combatants killed in the wars started by these same men. The 21st century could be even bloodier and filled with wars as the world's remaining dictators have or are seeking to gain weapons of mass destruction and foster or actively support terrorists themselves intent upon massive destruction.¹⁴⁶

Authoritarian rule, especially dictatorships, is the target of democracy promotion efforts, insofar as these efforts seek to have democracy triumph and take the place of these regimes. Though this “replacement” is central to the theory and practice of democracy promotion, authoritarian regimes, as such, are not particularly targeted. Democracy promotion is meant to be a constructive process which lives in the advancement of the benefits democracy can bring,

¹⁴⁶ *Promoting Democracy Through Diplomacy: Hearing Before the Committee on International Relations, House of Representatives*, 109th Cong. 37 (2005) (statement of Ambassador Mark Palmer)

especially when juxtaposed against the prevailing domestic status quo. Efforts should be made, however, to specifically target these regimes.

In his 2005 book, *Breaking the Real Axis of Evil*, Ambassador Palmer advanced several practical ways in which the world's remaining authoritarian regimes could be brought to heel, from diplomatic engagement and dialogue, to targeted "smart sanctions" against the regime and its main domestic players.¹⁴⁷ Many of these strategies are already in place and working to varying degrees, from attempts at engagement with regimes in Sudan and Zimbabwe, to targeted sanctions against the reclusive and brutal regimes in Burma and North Korea. It may also be possible to take international action in the form of a convention, in essence mirroring what a convention on a right to democracy would contain, *i.e.*, it would legally prohibit certain types of regimes under international law.¹⁴⁸ The legal grounding of this convention would rest on the same grounds as the convention on a right to democracy – the fact that international law currently protects all those rights that constitute a democratic system of governance. It would, however, have the added benefit of describing precisely those types of regimes that should no longer be countenanced in the international order. This type of definitive action may well be unlikely, especially given the substantial presence of authoritarian regimes within key sectors of the United Nations and other regional bodies, but the United States should, nevertheless, keep pressure on the worst abusers, whether through sanctions or other stick-and-carrot approaches, as a complement to its more purely constructive democracy promotion efforts. Positively promoting democracy while simultaneously condemning and chastising the abusive actions of these regimes cannot help but increase the chances of democratic successes.

¹⁴⁷ See MARK PALMER, *BREAKING THE REAL AXIS OF EVIL: HOW TO OUST THE WORLD'S LAST DICTATORS BY 2025* (Lanham: Rowman & Littlefield 2005).

¹⁴⁸ See Patrick J. Glen, *Towards the Criminalization of Dictatorship: A Draft Proposal for an International Convention on Dictatorship*, 14 BUFF. HUM. RTS. L. REV. 15 (2008).

A specific convention may also aid in the eventual prosecution and punishment of those authoritarian rulers that have held onto power despite the progress towards global democracy in the last decades. The notion of bringing these types of dictators and authoritarian rulers to justice has taken a significant hit in the wake of the Iraq war, but it should not be forgotten nor swept under the rug. In the past three decades, several prominent former presidents and political leaders have been tried for their crimes while in office, and there is no sound reason why the international community should not continue to seek justice in the international sphere. Moreover, the ADVANCE Act specifically provides the president with the power and authority to institute investigations of various international crimes, and to take appropriate action if an individual is found to have committed such violations.¹⁴⁹ As stated previously, this provision is operative, although no investigations have been completed as of this writing. Nonetheless, in the hands of a willing president, this provision provides broad power to ensure that violators of human rights and humanitarian norms will be brought to justice, either in domestic or in international forums.

D. Broader Cooperation Amongst Democracies on Behalf of Democratic Ideals

The new administration should also capitalize on the global popularity of President Obama by pressing for closer cooperation amongst our democratic allies on issues pertaining to democracy promotion and human rights. This cooperation could take several forms, from more active participation and use of the Community of Democracies, to the establishment of a global forum where democratic governance is a precondition to sitting at the table.¹⁵⁰ On the other hand, institutionalized cooperation via a “club” or “league” of democracies is not necessary, and

¹⁴⁹ See 22 U.S.C. § 8213.

¹⁵⁰ See, e.g., McCain, *supra* note 61, at 25-26.

might not even be an efficacious way in which to pursue these issues.¹⁵¹ Even without such an institutional forum for presenting and debating these issues, the U.S. can proceed with closer cooperation bilaterally and multilaterally, through traditional diplomatic channels, or act through existing international and regional institutions which have shown a dedication to democratic ideals, such as the Organization of American States.¹⁵² Such an approach has the obvious benefit of bringing additional resources and minds to bear on the issue, while providing necessary cover for allegations that democracy promotion is a distinctly American pursuit hiding darker and ulterior motives.¹⁵³

Nonetheless, the United States should also seek to lift the status of the Community of Democracies and to work through that organization on democracy promotion issues. One of the simplest ways to lift the status of the organization, and one that would almost certainly appeal to the Obama administration, would be through a summit-level meeting of the Community's member states. This would provide the first ever high-level meeting between the world's democracies, and might provide the impetus necessary to push the organization towards global relevance. Although the Community has made great strides in recent years, including the establishment of a permanent secretariat, it is chronically underfunded, understaffed, and underutilized. A vibrant and engaged Community of Democracies is vitally important for the advancement of the democracy promotion project, as it provides an institutional counterweight to

¹⁵¹ See, e.g., Charles A. Kupchan, *Minor League, Major Problems: The Case Against a League of Democracies*, FOREIGN AFF., Nov.-Dec. 2008, at 96.

¹⁵² Without much needed reform, the United Nations will largely remain impotent when it comes to meaningfully engaging in democracy promotion efforts, as China and Russia wield veto powers within the Security Council, and the make-up of the General Assembly includes a vast number of authoritarian regimes.

¹⁵³ See, e.g., *Non-Governmental Organizations and Development of Democracy: Hearing Before the Senate Committee on Foreign Relations*, 109th Cong. (2006) (statement of Sen. Richard Lugar), available at 2006 WLNR 9895994 (2006) ("American-funded democracy promoters should underscore that democracy is not a singularly American endeavor. The European Union; the U.N. Democracy Fund; and NED-like initiatives sponsored by Germany, Taiwan, Poland, Slovakia, the Czech Republic, and others are part of the democracy-promotion community. American democracy groups should stress that they often work with such organizations, and they should cultivate these relationships.").

the often intransigent United Nations. The United Nations too often is held in the sway of dictatorships and authoritarian regimes, blocking the needed disbursement of funds and recourse to action necessary to advance the causes of human rights and democracy. So long as the necessary reforms have not been undertaken at the United Nations,¹⁵⁴ the Community of Democracies can and should serve as a free forum in which to debate democracy issues, while also advancing that cause through concrete steps and actions.

E. Targeted Development and Institutional Assistance

Finally, the United States should utilize its vast expenditures of foreign assistance dollars to create an environment ripe for democratic change. In recent years, much has been written about the interplay of democratic and economic development.¹⁵⁵ Although it remains somewhat unclear what this relationship actually is, whether democratic gains contribute to economic development, or economic development promotes democratic reforms, at bottom there is likely to be a symbiotic relationship between economic and political development, with each advance in one igniting necessary reform in the other. This being the case, foreign assistance should be targeted at institutions lying at the cross-roads of economic and political development. Institution and capacity building initiatives are key, as are rule-of-law projects and infrastructure development. As societies open up, economies should develop which should lead to further societal openings.¹⁵⁶ In this sense, the United States can provide the conditions for democratic development while remaining largely aloof from the actual development within the state.¹⁵⁷

¹⁵⁴ See, e.g., Ernst-Ulrich Petersmann, *How to Reform the United Nations: Lessons From the International Economic Law Revolution*, 2 UCLA J. INT'L L. & FOREIGN AFF. 185 (1997/1998); *Idem*, *How to Reform the UN System? Constitutionalism, International Law, and International Organizations*, 10 LEIDEN J. INT'L L. 421 (1997).

¹⁵⁵ See, e.g., Ronald Inglehart & Christian Welzel, *How Development Leads to Democracy*, FOREIGN AFF., Mar.-April 2009, at 33.

¹⁵⁶ Cf. Peter D. Sutherland, *Transforming Nations: How the WTO Boosts Economies and Opens Societies*, FOREIGN AFF., Mar.-April 2008, at 125; Michael McFaul & Kathryn Stoner-Weiss, *The Myth of the Authoritarian Model*, FOREIGN AFF., Jan.-Feb. 2008, at 68.

¹⁵⁷ See Mandelbaum, *supra* note 13.

V. CONCLUSION

Democracy promotion will remain a hot-button issue in foreign policy circles for the foreseeable future, but the fact that such efforts may be controversial should not lead to their abandonment. In fact, such efforts should be adopted and vigorously pressed by the Obama administration through the baseline established by the ADVANCE Act. Such an effort would be commensurate with much of the new administration's campaign rhetoric, which itself mirrored the eloquent defense of democracy promotion given by former Under Secretary Dobriansky in 2005:

We believe the expansion of ordered liberty to be the most effective long-term deterrent to the security threats posed by religious extremism, instability, tyranny, and terrorism. Besides being in our national interest, promoting human rights and democratic institutions is also consistent with our national ideals and international agreements. The American tradition and universal human rights standards both recognize the intrinsic and inalienable dignity of the human person, and the rights and freedoms that stem from that dignity. It is the responsibility of governments to respect and secure those rights for their citizens. And it is the responsibility of democracies to promote the protection of these rights and freedoms wherever they may be threatened or violated.¹⁵⁸

Although there may be no ready-made formula of democracy promotion for all those areas that need such assistance, the ADVANCE Act provides a strategic approach to bettering the domestic governance for countless millions of people. Through cooperation and dialogue with those most affected by continuing forms of authoritarianism, the United States can and should develop action plans to ensure the global growth of freedom. This task has been begun, yet “as long as injustice, oppression and tyranny continue, [the United States’] work is not done.”¹⁵⁹ Nonetheless, it can be hoped that the Obama administration will continue this fight with all the tools at its disposal.

¹⁵⁸ *Promoting Democracy Through Diplomacy: Hearing Before the Committee on International Relations, House of Representatives*, 109th Cong. 18 (2005) (statement of Under Secretary of State for Global Affairs Paula Dobriansky).

¹⁵⁹ *Id.* at. 15.