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**THE CRISIS OF LEGITIMACY IN EL SALVADOR: THE TRIUMPH OF BUKELE
(2019-2024)**

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18R: *Barrio 18*

ARENA: *Alianza Republicana Nacionalista*

CECOT: *Centro de Confinamiento del Terrorismo.*

CICA: Central American Integration System

ERP: *El Ejército Revolucionario del Pueblo*

FARN: *Fuerzas Armadas de la Resistencia Nacional*

FMLN: *Frente Farabundo Martí para la Liberación Nacional*

FPL: *Fuerzas Populares de Liberación Farabundo Martí*

HRW: Human Rights Watch

ICC: International Criminal Court.

IDB: The Inter-American Development Bank

International IDEA: International Institute for Democracy and Electoral Assistance

MS13: *Mara Salvatrucha*

OAS: Organization of American States

ONUSAL: UN Mission in El Salvador

PCS: *Partido Comunista Salvadoreño.*

UNODC: United Nations Office on Drugs and Crime.

CHAPTER I: INTRODUCTION

El Salvador is the smallest state of the region while holding the highest population density in Central America¹. The raise into power of Nayib Bukele brought a mighty response to what for some has been considered a lost cause for most of the 21st century. The Peace Accords after the Civil War brought the state into a democratic start that has fallen behind its objectives, and, for the first time, society has achieved cohesion. Is the government proposed by this young leader legitimate and acceptable international democratic standards? Is it possible to recover a state eaten up by corruption at all levels?

The political environment of this state is subject to a shared regional narrative of violence and corruption. In fact, the biggest challenge in the recent history of Latin America has been the fight against organized crime. The rise of Nayib Bukele and the most mediated security policies of recent history has brought a spark of hope to some, to possibly find a solution to the endemic and never-ending fight against gang violence.

Back in 2013, the United Nations Office on Drugs and Crime's (UNODC) Global Study on Homicide set the American continent as the world's most violent region, setting Southern Africa and Central America as the sub-regions with the highest homicide rates. In the case of El Salvador, it is relevant to remark that violence stems from gangs, which normally clash due to territorial confrontations.

The unexpected turn of events from previous governments to the transition to Bukele has raised discussions among scholars and international actors all around the globe, in an attempt to assess the development of El Salvador and the consequences of its policies in the region. Democracy recession has generalized in the past few years, especially in South America, and, to some degree, these forms of government hold strong legitimation due to popular support.

In this paper we will analyse if the how and why El Salvador has experienced a democratic regression, following the requirements of democracies of Schmitter and Karl, and if the loss of democratic values can be tackled by international legal mechanisms. Specifically, the breaches of human rights law, and if it is possible to find a middle ground between strong and effective anti-violence policies and the insurance of freedom to the Salvadorian population.

1. Objectives

This research paper holds several objectives, all revolving around the analysis of the current government of El Salvador and, from a present perspective, the challenging position of the international community to promote human rights and the rule of law.

Firstly, it is a focus to study if an effective political role can recover a state submerged in violence and corruption. Secondly, and in relation to this, it would be under analysis to what extent El Salvador could be considered a democracy and establish its international liabilities and current position regionally and internationally.

A specific objective of this paper is to analyse Bukele's policies and how these could be considered unlawful, against the rule of law and democratic principles of the international

¹ International IDEA. "El Salvador | the Global State of Democracy," Global State of International Democracy, April 2024, <https://www.idea.int/democracytracker/country/el-salvador>.

community. Finally, extrapolate the current situation in El Salvador to the global crisis situation, and how this has attracted popular support for a possible strong but authoritarian-leaning leader.

The reason why I have chosen this perspective of the current political position of El Salvador is because, as an ongoing subject in the present day, I believe that the state is at a critical point of development. Nayib Bukele's controversial policies could either reach a permanent settlement of violence and become a role model for overcoming systemic violence in Latin America, or, as it is in fear of many, further grow into authoritarianism and repression in front of the eyes of the passive international community.

I personally chose this legal and democratic approach, considering the wide-ranging possible prospects for the study of El Salvador and its new government, because I have been struck from the beginning by the number of opinions I have heard, both from Salvadoran nationals and people from Spain, in favour of the radical policies of Nayib Bukele. I have held many discussions with family members about the need for strong and stern leadership to ensure civilian security in countries as wracked by violence as it is the case of El Salvador. Although most measures adopted by President Nayib Bukele violate basic principles of democracy and human rights, it is true that the country has seen violence reduced to historic levels, and regarding the eradication of gangs, progress has been highlighted in what could seem as justification to ignore, in extreme cases, the general norms that apply to states in the international community.

For all these reasons, I thought I would take as a point of reference everything that has happened to date under the Bukele government, now recently re-elected, and analyse whether these advances should be consented to from a legal and objective point of view for the future of the country, and overall, to achieve a conclusion of the responsibility of all international actors to intervene or negotiate for a proper and definitive solution to the war on gangs in Central America.

2. Methodology

The approach of this paper is mixed, and for the most part, the chapters are primarily theoretical. However, there is an assessment of legal conventions, and data collected is analysed, providing a structure of empirical observations.

To achieve the objectives of this paper, academic sources such as Jstor, Google Scholar, or Research Gate have been used, as well as news articles and official statements and interviews found on online platforms regarding specific events or statements related to the content of the chapters and the figure of Nayib Bukele.

To develop an analysis of policies and official data, there has been access to official governmental sites and issued reports from international organizations such as Human Rights Watch, International Institute for Democracy and Electoral Assistance (International IDEA), and the Wilson Center.

The paper is divided into five chapters, followed by the consulted bibliography. The first chapter is the introduction, which holds the overview of the topic, its contextualization, the justification of the choice of subject of study, and methodology.

Politics and Democracy in El Salvador: Bukele's government

The second chapter is the theoretical framework, which supports the ideas of Immanuel Kant applied to interventionism in modern politics, and Maslow's theories on the needs of a society and its priorities in times of crisis.

The third chapter addresses the democratic state of El Salvador. The first sections provide a historical contextualization of the Peace Accords after the Civil War and how international intervention shaped the democratic development of the country. There is an introduction to the origins of gangs and the lack of effective governance that would create the conditions to bring Nayib Bukele's electoral victory. The second section of the chapter analyses if El Salvador is a democracy or not, ever since the start of Bukele's office.

The fourth chapter analyses the breaches of international law and El Salvador's international liabilities after the implementation of policies and changes in legislation that have been reported by different international organizations.

The fifth chapter evaluates the causes of the rise of authoritarian leaders and the role of the international community and the responsibility of intervention in cases of necessity and breaches of fundamental international laws. Thus, there is an evaluation of the short-term consequences observed of giving legitimacy to non-democratic leaders, and Bukele's direct regional influence.

Finally, there is a conclusion on the hypothesis presented throughout the paper with some proposals to the current challenges to the international community.

CHAPTER II: THEORETICAL FRAMEWORK

1. Kant and Humanitarian Intervention

The present paper is based on a critical and reflective approach to Immanuel Kant's moral philosophy. His work *Toward Perpetual Peace* establishes points of discussion in relation to principles of humanitarian intervention and morality that have been translated into modern politics.

According to Kant's theories, sovereignty is a fundamental principle to maintaining harmony between foreign interference and preserving the notion of self-governance. However, this does not exclude intervention in all circumstances, as the right to live is a moral imperative and it must be preserved over the principle of independent self-governance. Within certain conditions, any foreign actor may intervene if it's done under an absolute value, which is the categorical imperative. The absolute value is completely independent to all conditions and consequences. However, there are mid-level principles of morality that are relevant as absolute principles are not completely unrelated to empirical evidence.

In essence, morality and practical considerations are considerable, although the latter only is justifiable under very specific circumstances. In the end, each state holds the responsibility to protect its own population, and most interventions cannot always be authorised by a global body due to ambiguous or conflictive jurisdictions. In most cases, foreign intervention would "infringe on the rights of an independent people struggling with its internal disease: hence it would itself be an offense and would render the autonomy of states insecure"².

In the context of humanitarian interventions, Immanuel Kant's principles would require an inclusion of all empirical evidence, case to case, to evaluate if intervention is necessary and justified under moral grounds. Thus, the will of the population Ethics do not preclude a presumption of humanitarian intervention as long as viable alternatives have been exhausted, the primary purpose is not punitive to the government or its leaders, and there is a respect of the rights of the citizens of said state, and it would not destabilize social order and lead to the harm of the population.

The interpretation of Thomas Hill of the theories of Immanuel Kant gives an insight of how these can be applied to modern international relations. Hill sets all states as a part of the international legal order, and develops a mostly non-interventionist perspective, as it is considered that an intervention should only be performed, as Kant proposed, under specific circumstances. It is fundamental to perform under a case-to-case interpretation³.

The dilemma of intervening into states due to human rights law violations may be contemplated under certain provisions of international legislation, if the proportionality of these breaches is sufficient. However, the lines for humanitarian interventions tend to be blurred by interpretation, and we will dive into El Salvador's different violations to assess whether the specific circumstances are met within the framework of international ruling.

² Heraclides, Alexis, and Ada Dialla. n.d. "Chapter Title: Intervention and Non-Intervention in International Political Theory Book Title: Humanitarian Intervention in the Long Nineteenth Century Book Subtitle: Setting the Precedent." https://www.jstor.org/stable/pdf/j.ctt1mf71b8.9.pdf?refreqid=fastly-default%3A6860d1c77d4d5c01cdebcc824948e3eeandab_segments=0%2Fbasic_search_gsv2%2Fcontrolandorig_in=andinitiator=andacceptTC=1.

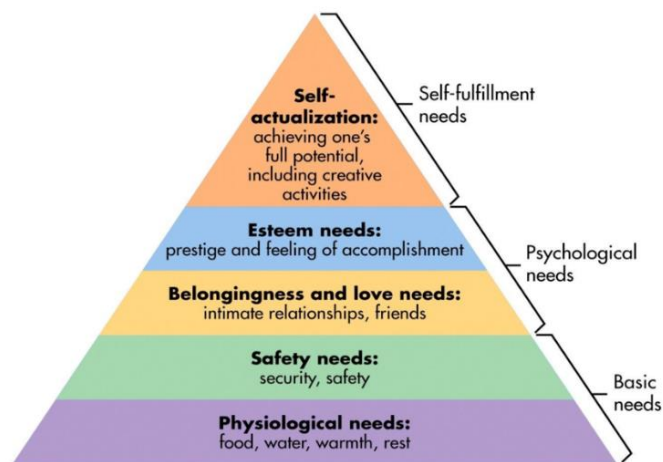
³³ Hill, Thomas. 2009. "Kant and Humanitarian Intervention." *Philosophical Perspectives* 23: 221–40. https://www.jstor.org/stable/pdf/40658401.pdf?ab_segments=

2. Maslow's Pyramid

Maslow's theory is a psychological theory that studies human needs and priorities and their effect on behaviour. However, it has been adapted to different fields of study such as business or political sciences, as it traces general behavioural patterns that play an important role when analysing the needs and challenges of a society. There are five levels of human needs in hierarchical order:

- a) Psychological needs are placed in the bottom of the pyramid, as these are basic elements of survival, and it includes access to food, water, or a shelter.
- b) Safety needs are also under the category of basic, as it is the immediate requirement after physiological needs are covered. These include stability and a sense of protection.
- c) Belongingness and love needs are the next step of well-being necessities, and it has an emotional and psychological dimension.
- d) Esteem needs are characterized by the position a person holds among others, and it is also considered a psychological need due to its nature. It includes a sense of respect, dignity, or self-confidence.
- e) Self-actualization needs are the last point in the pyramid as these arrive when all the previous needs have been addressed. It deals with more abstract concepts of each personal potential and goals, a sense of achievement, or contribution to the community⁴.

Figure 1 Maslow's Pyramid.⁵



Source: Maslow's Hierarchy of Needs, 2020.

The present theory offers a framework for understanding the relative prevalence of different societal needs. In order to achieve self-fulfilment and psychological well-being, it is essential to address these needs in a hierarchical order, with fundamental needs being the foundation upon which all other needs are built. So, to effectively exercise political power, there must be a consideration of the population's requirements.

⁴ Davies, James Chowning. "Maslow and Theory of Political Development: Getting to Fundamentals." *Political Psychology* 12, no. 3 (1991): 389–420. <https://doi.org/10.2307/3791750>.

⁵ Muscionico, Alessandro. 2020 Maslow's Hierarchy of Needs 2. Research Gate. https://www.researchgate.net/figure/Maslows-Hierarchy-of-Needs-2_fig2_360205705.

This theory, although it is not purely conceived as a political sciences theory, when applied to the current situation in El Salvador, provides a deeper understanding of the political motivations behind the growing support of civil society for a leader who has shown authoritarian tendencies.

Each type of system tends to address the needs of the pyramid differently. Thus, it provides an understanding of political engagement and how depending on the type of needs that are more required, citizens will aim for higher political engagement. The broad acceptance of a leader that has openly spoken against democratic procedures to end the fight against organized crime has established its political strategy directly targeting the immediate needs of the Salvadorian citizens. As the only government that has provided results, it will remain to be the preferred option by the full majority.

CHAPTER III: THE DEMOCRATIC STATE OF EL SALVADOR

1. El Salvador Before and After the 1992 Civil War: Understanding the Social and Political Framework of the first transitioning to democracy.

El Salvador political set up is tinted by authoritarianism and the struggle to uphold the strong criminal violence waves that have never seemed to reach an end. The Peace Accords after the Civil War (1980 to 1992)⁶ could be considered the first real step toward political stability and democratic transformation. However, it is of relevance to understand some generalities of how power was distributed before and after the war, and until the popular vote unquestionably opted for Bukele.

Elite rule and large social disadvantages were even clearer previous to the long bloody War. As Stewart W. Fisher developed back in his 1982 paper, the staleness of social strata had been the most evident during this time. The economy was majorly based on agriculture, and the small elite of landowners, mostly concentrated within a small group of wealthy families, held control over power in all aspects of society. Even military groups, with also great control and power, did not alter the oligarchic framework set for decades, subsiding in turn any attempts to modernize the industry at the same pace as it did in neighbouring states⁷.

For various reasons, El Salvador has been largely under the surveillance of the international community. The social tension that led to the outbreak of the conflict is due to several very clear reasons. General Carlos Romero's regime resorted in 1977 from questionably legitimate elections to the continuation of increasingly repressive methods against individual freedoms. Historically, times of violent suffocation mixed with low social support tend to develop social fragmentation and radicalization. Originally, most armed groups in Latin America tended to form as a reaction to a repressive force. Unfortunately, however, trends show that while they might seek for changes, these groups end up creating an armed struggle that blocks the possibilities for social change⁸. Political influences and the questionable profiting methods related to organized crime and trafficking have brought the seed of terrorism in almost every case.

The great grip elites had over the population together with the new influence waves of Marxism over insurgency groups set a violent and volatile environment that would later develop into a bloody civil war from 1980 until 1992. It only took two years for opposing military groups to push an attempt of *coup d'état*, in the aftermath of Archbishop Oscar Romero's assassination, a notorious critic of human rights abuses by government military forces.

1.1. The emergence of gangs

The role of the *Frente Farabundo Martí para la Liberación Nacional* (FMLN), the leftist political party of El Salvador and the executor of the failed *coup d'état* of 1980, is essential to understand the disruptive environment where most guerrilla groups emerged and their role in

⁶Mneesha Gellman, "The Democracy Crisis in El Salvador: An Overview (2019-2022)," Research Gate (Emerson College, USA: CeMeCA's REGIONAL EXPERT PAPER SERIES | No. 4, January 2022), https://www.researchgate.net/publication/372621719_The_Democracy_Crisis_in_El_Salvador_An_Overview."

⁷Fisher, Stewart W. 1982. "Human Rights in El Salvador and U. S. Foreign Policy." *Human Rights Quarterly* 4 (1): 1. <https://doi.org/10.2307/761988>.

⁸Larson, Judith. 1977. "La Guerrilla En América Latina, ¿Terrorismo O Guerra Popular?" *Papers: Revista de Sociología*, no. 7: 91–112. <https://dialnet.unirioja.es/servlet/articulo?codigo=5075158>.

the history of El Salvador. To face the increasing weight the latter were reaching, the elites also joined forces into a new political party, the *Alianza Republicana Nacionalista* (ARENA), and launched an anti-communism opposition campaign which also entailed the murder of civilians and other violent tactics⁹.

Overall, during the years preceding the conflict, most guerrillas grouped as a form of resistance against power. According to some scholars, the Salvadorian guerrillas lay their origins within fractioning among the *Partido Comunista Salvadoreño* (PCS). In 1969, Cayetano Carpio, one of the main figures of the party, left to create the *Fuerzas Populares de Liberación Farabundo Martí* (FPL), and then, a faction from the FLP consequently formed the *El Ejército Revolucionario del Pueblo* (ERP), influenced by Che Guevara's guerrilla warfare methods. Another split within the ERP led to the formation of the *Fuerzas Armadas de la Resistencia Nacional* (FARN). In the late 1970s, these groups engaged in terrorism, but by 1980, along with Cuban support, these Marxist armed groups united into a single military command headquartered in Managua, Nicaragua, to coordinate the impending armed conflict¹⁰.

The reason why there was such a high number of groups while they still acted in many cases in conjunction was due to a lack of substantial support from the population, and all guerrillas, while formally united under the FMLN, maintained their individual status¹¹.

However, the relevant actors throughout most of the 21st century are *Mara Salvatrucha* (MS13), *Barrio 18* (18R). These three share the common characteristic that while being as old as the aforementioned, these actually originated in the United States. Massive emigration movements of Salvadorians fleeing from war settled within different American cities. The presence of other criminal groups quickly set the division between what would later be the MS13 and existing gangs, distinguishing themselves with imagery and visible tattoos to invoke fear.

Because of massive deportation politics from the US government of Bill Clinton in the '90s, their criminal activities extended to Central American states. After the civil war, what was left of gangs went from fragmented and unmethodical groups to large and endemic, holding place for three generations and establishing direct links with Mexican drug trafficking organizations like Sinaloa or Zetas cartel. The region of Central America has largely been perceived as "transit corridor" for most of the trafficking directed to the United States¹². The *maras* have become more than just a state issue. It is an international criminal organization, found in more countries such as Honduras, and the US, and even extended to Italy or Spain¹³. Although it is highly unorganized, it has become a social problem.

In theory, criminal activity from all groups who rose against the government in the 70s got replaced by these new imported gangs who extended to the country. However, it has been proven by different sources, such as Insight Crime, how the FMLN kept on negotiating and

⁹ Rabasa, Angel, John Gordon, Peter Chalk, Audra K. Grant, K. Scott McMahon, Stephanie Pezard, Caroline Reilly, David Ucko, and S. Rebecca Zimmerman. From Insurgency to Stability: Volume II: Insights from Selected Case Studies. RAND Corporation, 2011. <http://www.jstor.org/stable/10.7249/mg1111-2osd>.

¹⁰ *Ibid.* 9

¹¹ *Ibid.* 7

¹² Wheeler, William. 2020. "How the US Helped Create El Salvador's Bloody Gang War." The Guardian, January 10, 2020, sec. News. <https://www.theguardian.com/news/2020/jan/10/how-the-us-helped-create-el-salvadors-bloody-gang-war>.

¹³ Romero, Fátima. 2023. "Las Maras de Centroamérica Se Extienden a España E Italia." Bloomberg Línea. March 20, 2023. <https://www.bloomberglinea.com/2023/03/20/las-maras-de-centroamerica-se-extienden-a-espana-e-italia/>.

being involved with the FMLN¹⁴. Nonetheless, corruption activities did not ease off during the governments of ARENA. The level of social unrest and spiking violence El Salvador has experienced during the last century due to the new configuration plummeted a commitment for Bukele's claims on the war on gangs, one of his strongest assets in the electoral process of 2019¹⁵.

1.2. The International Community and foreign intervention during the transition

It is no surprise to see how under the context of civilian massacres, assassination of business executives or government leaders, such as foreign affairs minister Mauricio Borgonovo, the UN would call for El Salvador's accountability for engaging in terrorist acts against its own citizens¹⁶.

North American involvement in the country during times of instability is almost categorical, considering the contention strategies that influenced every part of the globe during the Cold War¹⁷. Economic aid and military training tactics served the government of El Salvador as crucial for maintaining their position against insurgency.

Although foreign involvement was insufficient to avoid the conflict and face the loss of legitimacy ingrained internally in El Salvador, international and US involvement did play a crucial role in strengthening the democratic route during the last stages of the conflict. International support was bolstered during Duarte's leadership (1984-1989) and the latter democratic elections of 1989, initiating a favourable government under ARENA's office.

However, North American intervention has been regarded by academics as highly controversial. It went as far as intervening directly in the conflict in favour of the right-winged party, boosting their means throughout the war. The controversy arises in the involvement of human rights. The US served as a dividing screen for human rights law breaches during and after the conflict, with the implementation of the General Amnesty Law for the Consolidation of Peace. The ARENA party did not face any legal consequences for those crimes committed during the conflict, although there were attempts to redefine it later on without real success¹⁸.

The number of victims of the Civil War reached 75,000 casualties, and, according to the UN Truth Commission Report, 85% of these casualties were in the hands of government forces. However, as the US was highly involved in the military training provided to local forces, especially in the tactics employed, it is not far from the truth to establish a relationship in these illegal practices and foreign complicity.

In fact, war was crude, and there was a massive trend of Salvadorians fleeing the country to find refuge in the US. However, due to the progressive growth problem of these groups, the protection status was shifted to expiration through the "Illegal Immigration Reform and

¹⁴ Martínez, Juan José Martínez D'Aubuisson, Carlos. 2017. "Videos Muestran a Líderes Del FMNL Ofreciendo a Las Pandillas Un Programa de Créditos de US\$10 Millones." InSight Crime. March 28, 2017. https://insightcrime.org/es/noticias/analisis/video-muestra-lideres-fmnl-ofreciendo-pandillas-programa-creditos-10-millones/?_gl=1.

¹⁵ Maldonado, Carlos S. 2024. "The Collapse of the FMLN, the Former Salvadoran Guerrilla Movement Nayib Bukele Wants to Eliminate." EL PAÍS English. March 11, 2024. <https://english.elpais.com/international/2024-03-11/the-collapse-of-the-fmln-the-former-salvadoran-guerrilla-movement-nayib-bukele-wants-to-eliminate.html#>.

¹⁶ *Ibid.* 6

¹⁷ *Ibid.* 8

¹⁸ *Ibid.* 6

Immigrant Responsibility Act”, as mentioned previously, under Clinton. In most cases, the people that were sent back had been young men who abandoned previous involvement in the army or the revolutionary movement but ended up reassembling newly structured gangs¹⁹.

As introduced briefly, El Salvador’s slow transition toward democracy was marked by the Chapultepec Peace Accords in 1992, by the mediation of the UN, and the establishment of the two-party system that would last until the beginning of Nayib Bukele’s office in 2019²⁰. The accords were established between the government and the FMLN, turning the party into a peaceful political force that would oppose the latter and the ARENA party in rivalry for power²¹.

Regarding the role of the UN, it is relevant to mention that it was specifically the UN Mission in El Salvador (ONUSAL) the facilitator of these Peace Accords, mediating in the process, creating a new and refreshed police force and demilitarizing the government. Although objectives remained inconclusive, regionally speaking, these accords did serve as a model for peace processes, demonstrating the effectiveness of UN interventions for the cease-of-fire²².

Overall, interventionism after the Civil War has been reduced mainly to economic terms. The Inter-American Development Bank (IDB) and the Organization of American States (OAS) have been relevant actors for the funding of educative, social, and infrastructure projects, as well as holding the role of observers for democratic processes. As established recently, the OAS did send an observer mission for the elections of 2024, as it was performed under a state of emergency²³.

El Salvador is also a member state of the Central American Integration System (CICA), and while there have been attempts to address the problems of terrorism and drug trafficking. However, the role of this organization has been limited due to the complexity of the matter. It was not until the beginning of Nayib Bukele’s radical policies that a substantial change in numbers could be observed.

1.3. Ineffective governance and its consequences

Gang violence not only stems from criminal activity and acts of terrorism linked to trafficking but also, a great portion of the homicide rates arise from territorial rivalries between MS-13 and *Barrio 18*.

¹⁹ Bonner, Raymond. 2018. “America’s Role in El Salvador’s Deterioration.” *The Atlantic*. The Atlantic. January 20, 2018. <https://www.theatlantic.com/international/archive/2018/01/trump-and-el-salvador/550955/>.

²⁰ *Ibid.* 6

²¹ Perelló, Lucas, and Navia, Patricio 2022. “The Disruption of an Institutionalised and Polarised Party System: Discontent with Democracy and the Rise of Nayib Bukele in El Salvador.” *Politics* 42 (3): 026339572210771. <https://doi.org/10.1177/02633957221077181>.

²² Montgomery, Tommie Sue. 1995. “Getting to Peace in El Salvador: The Roles of the United Nations Secretariat and ONUSAL.” *Journal of Interamerican Studies and World Affairs* 37 (4): 139–72. <https://doi.org/10.2307/166249>.

²³ OAS, Press. 2024. Review of Preliminary Report of the OAS Electoral Observation Mission in El Salvador. OAS. <https://www.oas.org/fpdb/press/PRELIMINARY-REPORT---Preliminary-Report-OAS-Electoral-Observation-Mission-in-El-Salvador.pdf>.

There was an establishment of a truth commission to prosecute crimes committed from all sides of the conflict. However, the ruling party remained mostly unpunished due to amnesty laws, wrecking most attempts from the Peace Accords to rebuild the country democratically.²⁴

In order to understand why the government of El Salvador has, in many cases, been a perpetrator of criminal acts, we will review a series of policies that arguably sowed the seeds for violent relapses rather than progressively securing civil society.

The post-war period was characterized by the establishment of weak institutions that did not present the means to face the new challenges of imported gang violence. The first solid legislative measure addressed directly to lessen homicide rates was the *mano dura* and *Ley Antimaras* during the 2000s. Francisco Flores (1999-2004) and later Elías Antonio Saca (2004-2009) of the ARENA party launched a plan for mass incarcerations that was set up for failure²⁵. In only some months, incarcerations were duplicated to 8000. The execution of the plan and the overly crowded jails without proper control provoked a notable increase in recruitment as well as the gathering of leaders of all around the country, which favoured internal organization within gangs. The acquisition of a clear identity and stronger leadership strained relations between gangs, and crimes increasingly began to be orchestrated from within the prisons themselves²⁶. Overall, this measure implicated greater segregation of gangs among the state's main prisons that concentrated members distinctively.

The progressive growth of gangs and the development of territorialism in the different neighbourhoods of the country are directly linked to the government's misguided policies, as violence only rose, and gangs restructured their practices to create an even more entrenched way of terrorizing the population. The government of Saca was the first to contemplate some preventive measures such as *Programa Plan Mano Amiga* or reintegration *Programa Plan Mano Extendida*, but implementation was weak and it only served to set a precedent to continue trying to address other issues linked to the causes of aggravation of violence, not examined before²⁷. Also, these policies were mainly oriented to set blunt repression and pushed for further sophistication of crime methods.

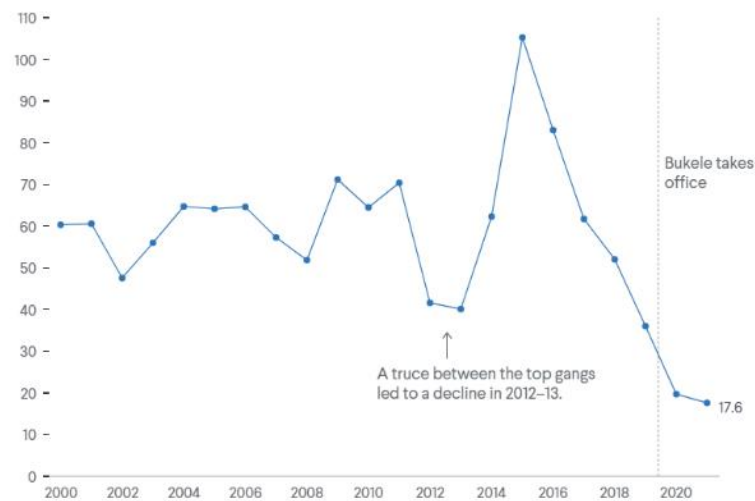
²⁴ "30 Years Later: El Salvador's Peace Accords," United States Institute of Peace, January 20, 2022, <https://www.usip.org/events/30-years-later-el-salvadors-peace-accords>.

²⁵ Hernandez-Roy, Christopher and Bledsoe, Ruby "Democracy Dies under Mano Dura: Anti-Crime Strategies in the Northern Triangle," CSIS, April 12, 2023, <https://www.csis.org/analysis/democracy-dies-under-mano-dura-anti-crime-strategies-northern-triangle>.

²⁶ Valencia, Roberto "El País Que Entregó Las Cárcelas a Sus Pandilleros," *salanegra.elfaro.net*, September 1, 2014, <http://www.salanegra.elfaro.net/es/201408/cronicas/15861/El-pa%C3%ADs-que-entreg%C3%B3-las-c%C3%A1rceles-a-sus-pandilleros.htm>.

²⁷ Molina, Noemy. 2017. Review of *La Respuesta Jurídica Ante El Fenómeno de Las Pandillas En El Salvador: Derecho Penal Del Enemigo versus Enfoque de Derechos Humanos (1992-2016)*. *Fesamericentral.org* Análisis No9/2017 (November). <https://library.fes.de/pdf-files/bueros/fesamcentral/13895.pdf>.

Figure 2. El Salvador's Homicide Rate Plummeted After 2015: Homicides per 100.000 people²⁸



Source: Why Has Gang Violence Spiked in El Salvador? El Salvador's Homicide Rate Plummeted After 2015. Council on Foreign Relations, 2022.

There was a second peak of violence in the early 2010s, increasing the homicide rate to 72 killings per 100 thousand people²⁹. This forced the government of Mauricio Funes, first leftist government of the history of El Salvador, to call for a Gang Truce. In this case, the government successfully eased the social conflict in the country by taking a different route. Repressive methods were reintroduced to withhold chaos in prisons, but also launched institutional reforms and policies for the rule of prevention and law enforcement.

However, a part of this decrease in violence had the results it had because of the pacts with gangs Funes government established secretly, negotiating a truce between the two main gangs in exchange for prison benefits and transfers. The Catholic Church was also involved during these negotiations, and it became highly controversial as participation was unilaterally driven by Bishop Fabio Colindres, and it caused diverse opinions doubting the effectiveness of these measures³⁰.

From a current perspective, it is unequivocal to analyse how while this truce did considerably scale down the emergency situation and drop violence rates as it was intended, there was never a mechanism set to withhold peace on a long-term basis. As the Church stated publicly after the divisions caused by Colindres, criminal activity did not vanish, and it only re-emerged stronger in 2014 as the issue of gangs was not tackled from bottom up³¹.

²⁸ Roy, Diana. 2022. "Why Has Gang Violence Spiked in El Salvador?" El Salvador's Homicide Rate Plummeted After 2015. Council on Foreign Relations. May 4, 2022. <https://www.cfr.org/in-brief/why-has-gang-violence-spiked-el-salvador-bukele>.

²⁹ *Ibid.* 27

³⁰ Dudley, Steven. 2017. "El Salvador Catholic Church: Pawn or Player in Gang Truce?" InSight Crime. March 27, 2017. <https://insightcrime.org/news/analysis/el-salvador-catholic-church-pawn-or-player-in-gang-truce/>.

³¹ Vukovic, Sinisa and Rahman, Eric "Negotiating with Gangs: Lessons from the 2012 Truce in El Salvador - the SAIS Review of International Affairs," saisreview.sais.jhu.edu, April 24, 2023, <https://saisreview.sais.jhu.edu/negotiating-gangs-el-salvador-truce/>.

Also, it is relevant to frame how security measures had been greatly militarized, although that went against to what was established by the Peace Accords. This was also unconstitutional, as national and public security were set as two distinct and separate organisms under Article 152 of the constitution of El Salvador. Any sort of military involvement was only allowed, as established by Article 212, to take over police corps after the exhaustion of all available resources. However, this is one of the best examples of how under the use of reservations, many objectives of the Peace Accords had not been complied with³².

1.4. The election of Nayib Bukele and the end of bipartidism

El Salvador has been submerged on a cycle of violence under gang activity as the development of gangs is deeply enrooted in the system. As introduced in previous points, the reason why the presence of gangs has been prevalent is due to a lack of response to population's needs, especially in terms of poverty and unequal opportunities. These patterns are not unique to El Salvador, as all gang development share these conditions regardless of the region and begin from politically driven movements³³.

No government throughout the 2000s successfully put El Salvador back on track towards a slow development, as intended through the Peace Accords in 1992, due to a political and arguably populist choice of repression. Both main parties focused on military presence, arrests and further confinements. However, the ARENA party has held a stronger grip on the Assembly, which pushed the FMLN to associate with smaller parties for larger representation, but the overall decision-making process has been split and paved the way for smaller parties' support.

Thus, all democratic governments have been proven to be ingrained in corruption. As presented by the 2017 Transparency International study, El Salvador ranked one of the highest cases of political accountability, with almost a 30% of bribery to access public services³⁴.

Salvador Sánchez Cerén, the preceding government to Nayib Bukele's elections, served as head of the state from 2014 to 2019, and faced the largest period of bloodshed in the country³⁵. The increasing discontent and severe levels of violence, and the image of a new and alternative political generation created a strong narrative to which Salvadorian society stood up for.

The electoral trajectory of Nayib Bukele and *Nuevas Ideas* party was gradual, supported on major mediated security policies such as a war against corruption and the war against gangs, and the devastating relation of the latter to the country's economy. His focus was the failed attempts from 2003 to 2019 to launch effective measures against *maras* and presenting

³² Krzywicka, Katarzyna Helena, and Llairó, María de Monserrat eds. 2021. Anuario Latinoamericano - Ciencias Políticas y Relaciones Internacionales - América Latina: desafíos y amenazas a la seguridad humana. Uniwersytet Marii Curie-Skłodowskiej w Lublinie, UMCS. <https://doi.org/10.17951/al.2021.12>.

³³ Blackman, Kate "Gangs and Development in El Salvador" (Thesis, 2014), https://library2.smu.ca/bitstream/handle/01/26276/Blackman_Kate_MASTERS_2014.pdf?isAllowed=yandsequence=1.

³⁴ International Crisis Group. "State and Crime in El Salvador." El Salvador's Politics of Perpetual Violence. International Crisis Group, 2017. <http://www.jstor.org/stable/resrep31473.6>.

³⁵ International Crisis Group, "Introduction," JSTOR, 2020, https://www.jstor.org/stable/resrep31423.4?searchText=causes+of+election+of+nayib+bukeleandsearchUri=%2Faction%2FdoBasicSearch%3FQuery%3Dcauses%2Bof%2Belection%2Bof%2Bnayib%2Bbukele%26so%3Drela%26ndab_segments=0%2Fbasic_search_gsv2%2Fcontrolandrefreqid=fastly-default%3Ab72a81ff5c8ccba59e33e290b3413adbandseq=2.

an independent image from traditional elites. The reason why it was gradual is because he went from major of the small town of Nuevo Cuscatlán and later to San Salvador, under the wing of the FMLN party, to end up in the presidency³⁶. The reason why the rise into power of Nayib Bukele can be considered a landmark in the country's history is very simple. The polarization that had characterized the state since the Peace Accords ended, and, for the first time, the country achieved a certain degree of union.

2. Democratic Diagnosis in El Salvador

The beginning of the 21st century of El Salvador was marked by a looming presence of authoritarianism. Within bipartidism, both alternatives did not provide opportunities for integral governments.

It could be said that the country has never been a democracy, as President Nayib Bukele has declared on different occasions as a response to allegations of authoritarianism. However, in most international official reports, El Salvador has always been classified as a democratic republic³⁷. After the Peace Accords, the state took the neoliberal path, where such policies weakened the growing institutions and doomed the general population into impoverished³⁸.

Nevertheless, according to Ricardo Zuniga at the Wilson Center, even senior government officials of El Salvador refer to their government as distinct and separate from the concept of democracy. In the words of the current vice president of the country, "To these people who say democracy is being dismantled, my answer is yes, we are not dismantling it, we are eliminating it, we are replacing it with something new"³⁹. Bukele himself has also declared on different occasions his controversial perspective which has raised alarms, especially for US observers.

The truth is that all claims from President Nayib Bukele for the most part stick to the defence of democracy and a state transformation from within, especially at the beginning of his mandate. The secret for the massive support from the population is the narrative of mending a system that has been corroded to all levels.

Regardless, at least on the records, the state of El Salvador has been officially considered a democracy since the Peace Accords⁴⁰ until 2024. The annual Democracy Report from Gothenburg University of Sweden rated El Salvador this year as an electoral autocracy due to the regression the state has experienced ever since 2019. However, the concept of democracy has been largely misused and perverted. Most of the states currently labelled as democratic regimes hold high rates of corruption and are far distant from defending the fundamental principles.

³⁶ *Ibid.* 32

³⁷ U.S. Department of State, "El Salvador (04/01)," U.S. Department of State (The Office of Website Management, Bureau of Public Affairs, January 20, 2017), <https://2009-2017.state.gov/outofdate/bgn/elsalvador/9352.htm>.

³⁸ *Ibid.* 32

³⁹ Zúniga, Ricardo "As Democracy Is 'Dismantled' in El Salvador, US Faces Hard Choices," Wilson Center, Latin American Program (blog), February 16, 2024, <https://www.wilsoncenter.org/blog-post/democracy-dismantled-el-salvador-us-faces-hard-choices>.

⁴⁰ Borgh, Chris van der. "The Politics of Neoliberalism in Postwar El Salvador." *International Journal of Political Economy* 30, no. 1 (2000): 36–54. <http://www.jstor.org/stable/40470765>.

3. Democracy Evaluation Criteria: civil liberties and political rights.

The father to today's definitions of democracy can be traced back to Robert Dahl and his notion of polyarchy. In 1956, in *Preface to Democratic Theory*, Dahl separated the concept of democracy from polyarchy, which implies “the government of many”, not of the people. The term democracy has lost its original meaning, as this system is more than just a set of institutions. Although the term that we continued to employ might not be the closest to the precise definitions, it started to raise newly established definitions for modern democracies.

Schmitter and Karl, based on the fundamental concept of democracy proposed by Dahl, established a set of minimum requirements to assess whether a state is a democracy or not. The provision of these parameters was considered acceptable within political science academics, and it has become the basic tool for measuring democracy in large organizations such as the EU, or other contemporary political actors.

To measure how and why a state can be classified under a democratic system. It must meet seven necessary conditions:

- a) Decision-making responsibilities rely on elected officials within the parameters of a representative democracy.
- b) There must be free, fair and frequent elections without any elements of coercion.
- c) Inclusive suffrage, which means that all adults must be allowed to exercise their right to vote.
- d) Inclusive citizenship, which implies the freedom of all adults to present candidacy.
- e) Freedom of expression, which means that all individuals hold the right to expression without any political restriction.
- f) Freedom of information, which refers to the creation of alternative sources of information alternatively to those attached to the state.
- g) Freedom of association, which preserves the right of reunion of individuals and organize within political groupings.

There are two additional conditions added by the authors. First, elected officials must be able to exercise their constitutional power without any invalidation or interference of non-elected officials. The last condition is related to self-governance, as democratic politics must be able to act independently from any constraints imposed from abroad, in the context of militias or neo-colonial powers⁴¹.

For this reason, the following analysis of the state of El Salvador will be based on the application of Schmitter and Karl's requirements to evaluate if the state of El Salvador could still be considered a democracy.

Firstly, El Salvador of Bukele is far from complying with representative democracy standards. The first and foremost reason to address is the recent re-election of Bukele. According to the Salvadorian constitution, enacted in 1983 and amended in 2003, presidential offices are held for a period of six years, and consecutive terms are banned in six different articles. Article 152 specifically establishes:

⁴¹ Schmitter, P. C., and Karl, T. L. (1991). What Democracy Is... and Is Not [Review of What Democracy Is... and Is Not]. *Journal of Democracy*, 2 (3), 75–88. Research Gate. https://www.researchgate.net/publication/236749392_What_Democracy_Is_and_Is_Not

[The following] shall not be candidates for the President of the Republic:

*He who has filled the Presidency of the Republic for more than six months, consecutive or not, during the period immediately prior to or within the last six months prior to the beginning of the presidential period; [...]*⁴²

The procedure in which Bukele tried to justify his campaign was through the reinterpretation of legal the obstacles for a possible re-election in 2021 and establishing an alternative procedure. For this reason, six months previous to the February 2024 elections, Nayib Bukele stepped back from his presidency to re-roll amongst the rest of the candidates⁴³.

The control over government decisions must be constitutionally vested in public officials, and while 2024 elections were fair and conveyed according to the rules, each step taken to the establishment of a new mandate has been questionable or even illegal, as it is the case of reinterpretation of the constitution. The presidential step down did not entail any compliance with formalities, as there was no appointment of delegates in accordance to the constitution's rulings. It was Bukele's private secretary Claudia Juana Rodriguez, the person selected for the position unilaterally.

Therefore, the point of free, fair, and frequent elections without coercion is debatable. Elections were free, as guaranteed by the OAS observers, but their character cannot be considered in accordance with democratic standards. The appointment of Nayib Bukele by his political party was already done under controversial reads of the constitutional articles. Moreover, the seat division within the Legislative Assembly is almost directed just by *Nuevas Ideas* deputies⁴⁴.

As exposed by Mark L. Schneider in his points about judicial independence at the Human Rights Commission in 2021, El Salvador is one of the greatest subjects under the threat of despotism in the region. At the start of his mandate, Nayib Bukele's parliament evicted five judges from the Supreme Court soon after the election. This act was justified as they allegedly neglected their duties during the COVID-19 crisis by Elisa Rosales, but it's just one of many actions that follow the route of war on corruption. The latter was declared from the very beginning of his presidency, and to an extent, it is the paradigm that seems to justify all actions that, from an international perspective, are considered acts of authoritarianism⁴⁵.

The 2021 legislative elections set out a clear victory for Bukele's party, but throughout a reform of March 2023 by *Acción Ciudadana* based on D'Hondt formula, the number of seats fractionated, and the new result would bring the 66.7% of the vote representation to 83.3%⁴⁶. The way this formula alters the proportion of seats brings the previous configuration of 84 positions to a total of 60, where 50 seats would correspond to *Nuevas Ideas*, 6 to party allies, and only 4 would correspond to the opposition. The methodology favours the representation of

⁴² Constitute, and Oxford University Press Inc. El Salvador 1983 (Rev. 2014). https://www.constituteproject.org/constitution/El_Salvador_2014.

⁴³ The Economist, "How Nayib Bukele Is Breaking Presidential Term Limits in El Salvador," The Economist, December 6, 2023, <https://www.economist.com/the-economist-explains/2023/12/06/how-nayib-bukele-is-breaking-presidential-term-limits-in-el-salvador>.

⁴⁴ Freedom House, "FREEDOM in the WORLD EL SALVADOR," Freedom House, 2024, <https://freedomhouse.org/country/el-salvador/freedom-world/2022>.

⁴⁵ Schneider, Mark L. 2021. "Judicial Independence in Central America." Presented at the Americas Program and Human Rights Initiative, CSIS, June 10. <https://www.csis.org/analysis/judicial-independence-central-america>.

⁴⁶ Magaña, Yolanda "Nuevas Ideas Tendría 50 de 60 Diputados Con Nuevas Reglas: 83 % de Asamblea Legislativa," Diario El Mundo, June 8, 2023, <https://diario.elmundo.sv/politica/nuevas-ideas-tendria-50-de-60-diputados-con-nuevas-reglas-83-de-asamblea-legislativa>.

electoral lists with higher votes, and limits the results of those with low support, ensuring majorities for effective ruling. This threshold system is widely adopted in Europe for Parliamentary elections⁴⁷. However, the decision to implement this formula at the time it was set, arguably as a precedent for 2024 elections, does serve as an interesting point of analysis as it clearly erases any sort of opposing forces in the legislative body of the country. If this new calculation had been called out and disregarded, the corresponding deputies for *Nuevas Ideas* would be 44, and would preserve actual disposition for pluralism of political parties. Also, it aggravates critical claims denouncing all these bad faith reforms that would have been strategically planned to ensure a second mandate of Bukele.

However, despite all the calls on authoritarian stances from the government ever since it established, the population of El Salvador seems to completely go along with all it takes a new opportunity of social equilibrium. Side by side with 2019 elections, the percentage of votes went from 53,10% to more than 85% as established in February 2024 re-election. It is not a surprise to observe how all weight of political decisions and public opinion only increased if New Ideas political party composes 54 out of the 60 deputies of the Legislative Assembly. The overrepresentation of the governing party not only increases unequal competition, but it also reduces inclusive citizenship and individual freedom to run for elections⁴⁸.

Coercive methods cannot be dismissed, as a great indicator of massive support can also be correlated to the imposed state of emergency since March 2022. While in theory there is a condition of inclusive suffrage, freedom of association, and expression, according to the freedom house analysis, most civil liberties were downsized for an extended period of time that has also opaqued the natural development of elections.

The argumentative shield of the state of emergency set the country to a 30-day case of exception, where in order to nip the new violence peak in 2022, prosecution took over basic rights such as right to assembly, freedom of communication, or any sort of exercise of political rights, alongside repression and unjustified incarcerations⁴⁹. Nevertheless, the state of emergency has become a disproportionate reality that has extended to this day, and it had an undisputed influence on the in the succession of events that has led to Bukele's re-election and the supposed unconditional support of the civilian population⁵⁰.

Following with freedom of association and political pluralism, it is also to be considered that opposition parties such as ARENA and FMLN have undergone political raids in which assets had been confiscated, and high representatives of the parties had been discharged and taken into custody for corruption allegations. A mediatised case is the arrest of Salvador Sánchez Cerén, ex-president of the country, or Ruben Zamora, one of the election candidates and critique of the regime. Because of the state of emergency, the legality of arrests performances has been blurred, as in most cases there has been a denial of informing the reason of charges or right to communicate with their lawyers.

⁴⁷ European Parliament Briefing, "Understanding the d'Hondt Method: Allocation of Parliamentary Seats and Leadership Positions | Think Tank | European Parliament," www.europarl.europa.eu, June 28, 2019, [https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2019\)637966](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2019)637966).

⁴⁸ *Ibid.* 43

⁴⁹ Human Rights Watch. (2022, December 7). "We Can Arrest Anyone We Want." Human Rights Watch. <https://www.hrw.org/report/2022/12/07/we-can-arrest-anyone-we-want/widespread-human-rights-violations-under-el>

⁵⁰ "The Institutionalization of Human Rights Violations in El Salvador." 2024. Amnesty International. March 27, 2024. <https://www.amnesty.org/en/latest/news/2024/03/el-salvador-two-years-emergency-rule/>.

Civil liberties are the most hindered aspect in terms of democratic backslide. Technically speaking, there is still an open pool for achieving power through elections and popular support, but the level of media representation does lower the voices of the already weakened opposition. Freedom of information has deteriorated due to physical attacks, intimidation and threats called out by journalists, and the number of aggressions has reached peaks in highlighted days such as during elections, driving many of them to flee the country and continue operating through online platforms. However, online surveillance and control, also justified under measures of the war on gangs, have put independent sources under control”⁵¹.

Reporters Without Borders have ranked El Salvador as the 115th country within its Index on Freedom of Press, indicating a tightened situation and far behind the global standard. It is broadly declared that El Salvador does no longer preserve freedom of press, and the grip over independent entities under the claims of spreading “fake news” has left the state with a reduced number of media newspapers. *El Faro* or *Gato Encerrado* are examples of outlets that continue to raise their voice on criticism and have reported the negotiations of Bukele with gangs. In turn, the government of El Salvador claimed to have found evidence of tax evasion, money laundering, and relation to gangs within their entity.⁵²

In terms of freedom of rule, which is the act to exercise constitutional powers without interference or invalidation, as well as the notion of self-governance can be considered as fulfilled, as there is no assessment of any sort of direct intervention of any foreign powers in the government since the Peace Accords of 1992⁵³.

Although the state of El Salvador is currently under a grey scale, and the democratic backslide has been undoubtedly observed in the present assessment of academic necessary conditions of classical political theories, the state of El Salvador could preserve the democratic status by altering its current trajectory⁵⁴, as shown by different expert’s analyses.

Figure 3. Factors of Democratic Performance Over Time: 2019

⁵¹ El País. 2023. “Undercover, Persecuted or in Exile: How Journalists Are Resisting in Central America.” EL PAÍS English. May 31, 2023. <https://english.elpais.com/international/2023-05-31/undercover-persecuted-or-in-exile-how-journalists-are-resisting-in-central-america.html>.

⁵² *Ibid.* 49

⁵³ *Ibid.* 42

⁵⁴ Camacho, Gabriela. 2022. “The Connections between Corruption, Autocracy and Human Rights in Latin America.” Jstor. Transparency International. https://www.jstor.org/stable/pdf/resrep39420.pdf?refreqid=fastly-default%3A6ba866ab73e4f0a7f0fdcdb139a0bc85andab_segments=0%2Fbasic_search_gsv2%2Fcontrolandorigin=andinitiator=andacceptTC=1.

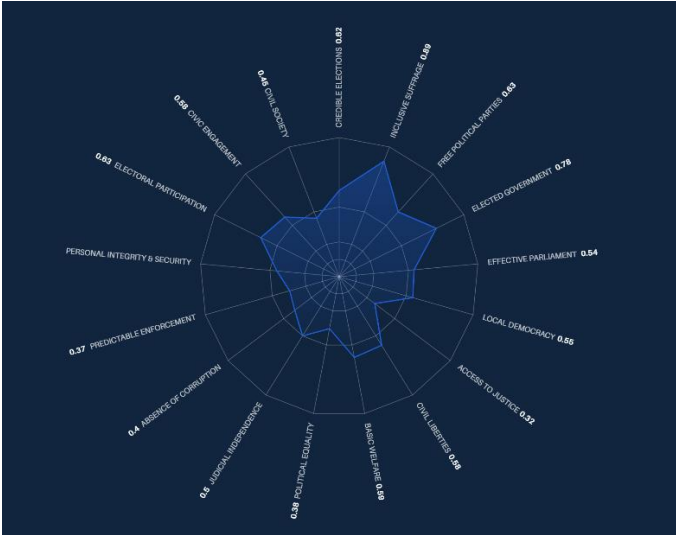


Figure 4. Factors of Democratic Performance Over Time: 2023



The source of both graphs is from Global State of Democracy Indices, International IDEA.

Showing side to side two representative graphs for 2019 and 2023, it is visible how rights and liberties have had an accelerated degradation. According to the Global State of Democracy Initiative and scaling several indices on a scale of 0 to 1, El Salvador ranks in the bottom 25% of all democratic countries.⁵⁵

Guillermo O’Donnell has proposed political theories on the idea of democratic consolidation. To understand the quality of a democratic system, there must be a deep understanding of the functioning of its institutions within the system. Clientelism or particularism are examples of practices that degrade de nature of accountability, which allows the formalization of a democracy after the process of transition has been completed.

O Donnell’s theory on vertical and horizontal accountability can bring a different light on why the political implementations of Bukele are doomed to provoke internal regression. On the one hand, vertical accountability refers to the mutual relation between power and civil society. The performance of legal elections creates vertical accountability from citizens to their elected public officials. As it has occurred in both election processes of 2019 and 2024,

⁵⁵ *Ibid.* 1

technically, electoral results did comply with the law, and this condition in a way implies the basic notion of democracy.

Horizontal accountability, on the other hand, refers to the functioning surveillance mechanisms between institutions, as it is the safety net to ensure internal control within a state to ensure transparency and legality of all actions taken by the Legislative, Judicial, and Executive powers. State agencies have the authority to see and control the actions of others, balancing a system of “checks and balances” that can investigate and punish illegalities performed by public officials⁵⁶.

These theories of Guillermo O’Donnell are especially interesting to apply in the context of El Salvador, as the author broadly referenced his theories to study democratic transitions in Latin America from authoritarian regimes or polyarchies. A fragile system of accountability is a symptom of the regression of liberalism, characteristic in some states after experiencing a transition.

This is also closely tied to the functioning of democracy and the commitment to the rule of law. The limitation and separation of political powers is what makes horizontal accountability possible, and further allows a separation of public and private interests. If there is no legal mechanism for accountability, democracy is in danger.

⁵⁶ O’Donnell, Guillermo. 1998. “Horizontal Accountability in New Democracies.” *Journal of Democracy* 9: 112–26. <https://www.democraziapura.it/wp-content/uploads/2015/10/1998-ODonnell.pdf>.

CHAPTER IV: BREACHING OF INTERNATIONAL LAWS

1. Legal Position of El Salvador: International Liabilities.

El Salvador is subject to international law and a series of conventions and bilateral treaties that the state has ratified throughout the last decades. In this part of the analysis, we will dive in the position El Salvador holds internationally, and we will proceed with the different breaches of international law that have taken place since the start of Bukele's mandate.

Firstly, El Salvador became a signatory state to the Rome Statute of the International Criminal Court (ICC) in 1998, but El Salvador did not become a state party until its ratification on the 3rd of March of 2016. The adherence of the state to such a convention is symbolically vital as a democratic developing country, although the implementation of its principles is understood as a long process of institutional reforms and jurisdictions, and, definitely, not an immediate framework reform⁵⁷.

Ever since the COVID-19 pandemic, the government of Nayib Bukele has been through accusations of breaching several articles of the Rome Statute. However, it is relevant to begin by mentioning the bilateral agreement of 2002 between the United States and El Salvador, in relation to Article 98 of the Rome Statute. The article "Cooperation with respect to waiver of immunity and consent to surrender"⁵⁸ outlines:

1. The Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity.

2. The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender.

This means that the international obligations of a state would be prevalent unless there is an established cooperation or a renounce of immunities. The bilateral agreement, still in force to this day and professed by both states before becoming signatory states of the Rome Statute, severely diminishes the scope of rule of the ICC to prosecute North American citizens for any crime committed within Salvadorian territory. The latter state would not compromise any of its citizens to international courts⁵⁹.

Nevertheless, this blow to the main international organ for justice was not exclusively engaged with El Salvador, as the United States also established similar agreements with 48

⁵⁷ "El Salvador | International Criminal Court." n.d. Asp.icc-Cpi.int. <https://asp.icc-cpi.int/states-parties/latin-american-and-caribbean-states/El-Salvador>.

⁵⁸ International Criminal Court. 2011. Rome Statute of the International Criminal Court. <https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>.

⁵⁹ INTERNATIONAL CRIMINAL COURT. 2002. Agreement between the Government of the United States of America and the Government of the Republic of El Salvador Regarding the Transfer of Persons to the International Criminal Court. Vol. TREATIES AND OTHER INTERNATIONAL ACTS SERIES 04-621. <https://www.state.gov/wp-content/uploads/2019/02/04-621-El-Salvador-ICC.pdf>.

countries, ensuring the immunity of US citizens over any crimes committed under arbitration of the International Criminal Court⁶⁰.

Due to recent diplomatic tensions between El Salvador of Bukele and the US as well as the controversial position of the former state, the international community has increased its criticisms for a lack of compliance with its international obligations, as Article 98 is not the only controversial point in terms of judicial compliance.

There are several articles of the Statute that cannot be directly assessed as violation, although there have been distinctive actions from the government of Bukele against the principles of the Rome Statute mostly under the grounds of the State of Emergency. Such principles are presumption of innocence or the right to fair trial during the mass imprisonment process. Under the framework of the state of emergency, there has been almost a 2% of the entire population of El Salvador under arrest⁶¹.

The inability of the ICC to rule over these cases generates a legal void where one of its member states can be acting against its principles, and yet, no international body can resort to prosecution. On the one hand, the state of El Salvador did not National jurisdiction attempted to rule over violations, specifically during COVID-19 pandemic arrests measures⁶², but internal legislation has proven to be incomplete and non-transparent, to the extent that Bukele publicly disregarded its own court's rulings.

Before developing the role of the OAS Charter in the dismissal of national jurisdiction, there are several articles to mention in the Rome Statute in regard to non-compliance with international standards. Although these cannot be listed as breached, some articles could be considered defied.

Article 15 bis lays out *the exercise of jurisdiction over aggression crimes on proprio motu of a Prosecutor, or as a referral investigation*.

On the other hand, the aforementioned issue on the conviction of judges at the start of the mandate was conducted under no legal grounds, so it was considered as a breach of human rights law as there was no basis for misconduct or incompetence. The main critics immediately came from the opposition, but also from the US Secretary of State and Vice-President Kamala Harris.

The appointment of judges corresponded to a direct selection of President Bukele's party members, which directly provoked an official statement from the UN Secretary-General to "restore the rule of law and comply with their legal obligations". The remarked statement was nothing else than Article 3 of the Inter-American Democratic Charter which declares the separation and independence of government divisions.

⁶⁰ *Ibid.* 57

⁶¹ Zielonka, Meredith. 2024. "CIVIL LIBERTIES in EL SALVADOR." Harvard Model Congress. https://static1.squarespace.com/static/5cb7e5637d0c9145fa68863e/t/65496fc107134325f9218fb2/1699311554029/HMC2024_Senate_ForeignRelations_1.pdf.

⁶² Lachapelle, Jean, Palina Kolvani, Martin Lundstedt, and Amanda B. Edgell. 2021. "Pandemic Backsliding: A Year of Violations and Advances in Response to Covid-19." V-Dem Institute. University of Gothenburg: Department of Political Science. https://homepage.ntu.edu.tw/~hanstung/Home_files/pb_32.pdf.

However, this narrative of legally questionable decisions is relatively extensive, and we will develop an exposition and analysis of the weight of these actions and how far they should be accepted and validated from abroad⁶³.

Contrary to what one might expect, Bukele's popularity is sky-high. The looming shadow of authoritarianism has been present through the great majority of periods in Central and South America, as the establishment and crash of corrupted elites is not new, and that in most cases share direct links with cartels or armed groups that terrorize the population.

2. Breaches of Human Rights

Human Rights violations have been the forefront of El Salvador's image all around the globe. The news that has generated the most impact, and also, the most criticism, has been related to Nayib Bukele's government's harsh measures against gang terrorism. As a result, numerous official reports from international organisations such as the International IDEA or Human Rights Watch have been established, which directly address the measures adopted by the current government and classify the country as "Partly Free" and under concern.

The most significant policy launched by Nayib Bukele was its "war on gangs". To conduct such an ambitious quest, El Salvador has been confined into a state of exception since March 2022. The promising anti-gang strategy during campaigns and the outburst of violence at the start of the year sent the country to a restrictive package of measures to stabilize public order⁶⁴.

In terms of Human Rights, public opinion has remained incisive about the emergency framework as it "temporarily" suspended freedom of assembly, freedom of movement, right to fair trial, and the right to privacy of communications. The suspension of these constitutional rights specifically attempts against the following articles:

Article 12.2: The detained person shall be immediately and clearly informed of his rights and of the reasons for his detention and cannot be compelled to make a declaration. The detained is guaranteed the assistance of a defense lawyer (defensor) during the proceedings of the auxiliary organs of the administration of justice and in judicial proceedings, in the terms established by the law.

Article 13.2: Administrative detention shall not exceed seventy-two hours, within which the detained must be consigned to the order of a competent judge, with the diligences that he may have practiced.

Article 24: Correspondence of every kind is inviolable; if intercepted, it shall not be given credence nor accepted as evidence in any legal action, except in cases of insolvency proceedings and bankruptcy. The interference in and intervention of telephone conversations is prohibited⁶⁵.

⁶³ *Ibid.* 43

⁶⁴ Breda, Tiziano. 2023. Review of Why El Salvador's Anti-Crime Measures Cannot (and Should Not) Be Exported. Global Actors Programme at the Istituto Affari Internazionali (IAI), March. <https://www.iai.it/sites/default/files/iaicom2316.pdf>.

⁶⁵ *Ibid.* 39

However, this extraordinary circumstance has been extended in different terms to articulate the period for more than two years, despite statements to its suspension from official bodies such as The Inter-American Commission on Human Rights (IACHR). Although the court did allow the adoption of a state of exception under original basis of temporary nature given by Bukele, in a way acknowledging the relentless circumstances of gang violence, the severeness of these actions are considered disproportionate as it does not fulfil its international human rights liabilities⁶⁶.

In fact, Article 27.1 of the American Convention of Human Rights (ACHR) does provide a provision for suspension *during time of war, public danger, or other emergency that threatens the independence or security of a State Party* as long as it is temporary, and it is adopted according to the “requirements of the situation”.

On a different note, other measures implemented under this war on gangs has been the aggravation of penalties for any sort of involvement in gangs. For example, there was an increase to 30 years' minimum of imprisonment for membership alone. The Legislative Assembly legalized the imprisonment of underage children from age 12 and has launched a high number of reforms that duplicates or triplicates the previous rulings. The reform to Article 345 increased gang leader imprisonment from 9 to 45 years.⁶⁷

The legal position of El Salvador has proven to be pushing the limits of what is generally accepted, and there is a constant discussion over the risk of supporting such a leader. However, social media and popular opinion in many cases praise the president's labour and fast results. Whether Nayib Bukele is a dictator or not, his public speeches and claims follow the same line of placing as focus of importance citizen's freedom to exist without the fear of being assaulted or killed. The “priority” is to protect the population, and criminal rights should not stand first, which, in words of Bukele, that is the approach of International Organisations.

3. International concerns: what measures have become a reality?

In the words of Nayib Bukele, the entirety of the process of launching their “war against gangs” was based on a traced plan that followed steps to make changes in the country gradually. One of the phases contemplated, for example, a strengthening and enlargement of police corps and military forces. However, the peak of violence of 2022 cracked the development of said strategic plan and demanded the deployment of all measures to face the burst of criminality. The government's response was so sturdy that in some weeks, the gangs were under a massive process of arrest, and the country of El Salvador was already in historical levels of safety⁶⁸.

⁶⁶ IACHR Press Office. (2023). IACHR Calls on El Salvador to Reestablish Rights and Guarantees Suspended a Year Ago Under the State of Emergency [Review of IACHR Calls on El Salvador to Reestablish Rights and Guarantees Suspended a Year Ago Under the State of Emergency]. No. 058/23. Inter-American Commission on Human Rights. https://www.oas.org/en/iachr/jsForm/?File=%2Fen%2Fiachr%2Fmedia_center%2Fpreleases%2F2023%2F058.asp

⁶⁷ “Una Reforma Penal Aumenta Las Condenas Contra Las Maras En El Salvador.” 2022. France 24. April 1, 2022. <https://www.france24.com/es/am%C3%A9rica-latina/20220401-maras-salvador-bukele-reforma-penal>.

⁶⁸ Bukele, Nayib. 2024. Review of Presidente Nayib Bukele: Buscando La Sabiduría de Dios, Derribando La MS-13, Y Su Consejo a Trump Interview by Tucker Carlson. YouTube. <https://www.youtube.com/watch?v=U5n8R9lq8SI&dt=344s>.

As it has been acknowledged by Bukele, the government did secretly negotiate with the gangs for decreased levels of violence in 2020. Nevertheless, it is said to be a part of the strategy. A main focus of the process was achieving peace, as it is the vital element to achieve any other sort of progress. Economic development, welfare, education or any right cannot be obtained if there is no state of peace. In theory, the administration did not conceive committing the same mistake of previous mandates to fight gangs to an end.

The phenomenon was well received by the population in the form of massive support. In the end, the government achieved what was promised in campaigns and governance. However, the methods employed to do so were quickly acknowledged and justified by its president⁶⁹.

In general, there has been an outreach from the government as there is evidence of abuses during detention, as well as torture and mistreatment, reaching 235 deaths in custody, 327 cases of enforced disappearances, and a general overcrowd in prisons as for March 2024. The massive arbitrary arrests did not abstain the imprisonment of underage people under the claims of suspicion of belonging to the main gangs⁷⁰.

Human Rights Watch (HRW) has issued a continuity of reports and requested informative collaboration to the Salvadorian government. In relation to the data of the people detained and their respective crimes, this information has always been denied as "classified" or even as not registered. The evident advice from the HRW throughout the extended state of exception has been the assessment of investigation case by case, reinsertion mechanisms for those detainees without criminal charges, or accountability for security forces abuses⁷¹.

To the already mediatised series of political choices of Nayib Bukele there is a last big project that has immersed journalists from all around the world to visit and disseminate it in their media. This is the *Centro de Confinamiento del Terrorismo* (CECOT), a large prison system opened the 31st of January 2023, and has been established as the largest prison in Latin America and one of the biggest in the world. The capacity is over 40.000, but as stated by multiple reporters, inmates face dire conditions of space and treatment received, overstepping the line of what is understood to be basic rights. There has been a spread of diseases and lack of food or medication for all the detainees⁷². Beds are bare metal, lights are always working, there is almost no time outside of the cells per day, and security and control is patrolled by a deployment of personnel spread over 19 watchtowers. In the words of the Salvadorian president, the structure of this prison was to end the headquartering of gangs from within national jails and prevent criminal activity⁷³.

However, and as a seemingly positive project, one of the many statements of Bukele throughout time was his whim to create a new international body. In Nayib Bukele's words, this process had already begun by negotiations within the OAS and the UN⁷⁴, and agreements

⁶⁹ *Ibid.* 68

⁷⁰ Amnesty international. 2024. "The Institutionalization of Human Rights Violations in El Salvador." Amnesty International. March 27, 2024. <https://www.amnesty.org/en/latest/news/2024/03/el-salvador-two-years-emergency-rule/>.

⁷¹ *Ibid.* 47

⁷² B. B. C. Mundo, and World Service. 2023. "El Salvador's Secretive Mega-Jail - Latin America & Caribbean." BBC News. July 14, 2023. <https://www.bbc.co.uk/news/resources/idx-81749d7c-d0a0-48d0-bb11-eaab6f1e6556>.

⁷³ Ventas, Leire. 2024. "Coming Face to Face with Inmates in El Salvador's Mega-Jail." Wwww.bbc.com, February 15, 2024. <https://www.bbc.com/news/world-latin-america-68244963>.

⁷⁴ Bukele, Nayib. 2019. Review of El Salvador's Nayib Bukele on Gang Violence, Corruption and China Interview by Al Jazeera. YouTube. <https://www.youtube.com/watch?v=sYxgaAys32M>.

had been made. It was envisioned to work as a system to judicialize and cover cases that would have been assigned to corrupt officials instead. The idea was that this new commission would be backed by external international organizations, and free of corrupted elites, where subjects of investigation would extend up to Bukele himself. Nevertheless, agreements began in 2019 but dissolved in 2021⁷⁵.

This prosecution would now be only entitled from the government, seeking to launch their secondary plan of war on corruption. Definitely, El Salvador is not willing to accept any sort of external intervention to alter the trajectory of the state.

Also, one of the most relevant elements for fight against crime has been the process of creating, for the first time in its history, a forensic lab with an updated system for DNA persecution. This was possible because of the Howard G. Buffet Foundation⁷⁶. Investments in security have been the matters that have taken the largest portion of government funding, as the military also enjoyed a provision of technologically advanced material and equipment, increasing the investment from \$145.1 million to \$261.4 million, the highest budget in the nation's history⁷⁷.

One of the main accusations and labels to president Bukele has been populist claims and policies to ensure popular legitimacy. As it was assessed in the previous democratic analysis, the state did develop into a process of authorization, and there have been measures of antipluralism and focus on the expulsion of traditional elites from power, which is usually related to populist slogans and strategies. Other factors such as the use of social media, or the personalized image of the party do also gather populist characteristics that seek public legitimacy⁷⁸.

Although corruption has been a focus point of policy-making, international organisms and even the US government proved via prosecution some corrupted practices from Bukele's government during the COVID-19 pandemic. Such acts include the establishment of contracts behind the law, or the suppression of all evidence on detentions for violating the state of lockdown⁷⁹.

Furthermore, public debt has reached the highest records in history, while poverty levels and inequalities only grew higher⁸⁰. There has been a lack of public funds distribution. Although El Salvador already had a legacy of poverty and economic deficiency, policies have been mostly directed to tackle security. Poverty index has only aggravated from 2019 to 2021 from 4.5% to 7,8%, and public investments directed to healthcare and education also suffered a regression.

⁷⁵ "El Salvador Leaves Anti-Corruption Accord with the OAS." June 2021. [Www.occrp.org. https://www.occrp.org/en/daily/14578-el-salvador-leaves-anti-corruption-accord-with-the-oas.](https://www.occrp.org/en/daily/14578-el-salvador-leaves-anti-corruption-accord-with-the-oas)

⁷⁶ *Ibid.* 73

⁷⁷ Williams, Lachlan. "Bukele's Unprecedented Military Funding in El Salvador." *The Rio Times*, February 1, 2024. <https://www.riotimesonline.com/bukeles-unprecedented-military-funding-in-el-salvador/>.

⁷⁸ Lemus, Jonatán. 2024. "Bukele's Electoral Hegemony in El Salvador and Its Implications for Democracy | Illiberalism.org." *Illiberalism Studies Program*. March 1, 2024. <https://www.illiberalism.org/bukeles-electoral-hegemony-in-el-salvador-and-its-implications-for-democracy/>.

⁷⁹ Nilsson, Martín. "Nayib Bukele: Populism and Autocratization, or a Very Popular Democratically Elected President?," *Research Gate*, August 2022, 16–26, <https://doi.org/10.26881/jpgs.2022.2.03>.

⁸⁰ Alemán, Uveli, and Magaña, Yolanda. "Los Desafíos Económicos Del Segundo Gobierno de Bukele: ¿Qué Le Recomiendan Los Expertos?" *Diario El Mundo*, June 3, 2024. <https://diario.elmundo.sv/politica/los-desafios-economicos-del-segundo-gobierno-de-bukele-que-le-recomiendan-los-expertos>.

As a result, not only have civil liberties been curtailed, but the fundamental rights of the population have also taken a step backwards⁸¹.

Given the disposal of public investments have been made at the state level according to political expediency and not so much to the needs of the population, it could be said that Bukele's discourse had and still has populist tints⁸². However, the cause of Bukele's great popularity is based on the great achievements in the fight against gangs, and in theory, it was the first and foremost matter to address in the government objectives. The second mandate could bring a chance for the establishment of a different policy package that tackles economic inequalities, which has had a clear involvement to violent opposition movements.

⁸¹ *Ibid.* 79

⁸² *Ibid.* 79

CHAPTER V: LEGITIMACY AND THE INTERNATIONAL COMMUNITY

1. Legitimacy crisis and strong leadership

Social cohesion and popular support are probably the passive assets that can critically determine the functioning of a society. Social cohesion, which seems unattainable in our current times, is closely related to low levels of inequality, and good economic performance. According to Mark Suchman, legitimacy is “generalized perception or assumption that the actions of an entity are desirable, proper, appropriate within some socially constructed system of norms, values, beliefs, and definitions”⁸³.

It is generally believed that democracies preserve higher levels of legitimacy than any other kind of regime, and, to a theoretical extent, it would justify the durability of Western systems and the successful spread around the globe during the last century. Democracy as a system is understood to be more successful addressing the fundamental needs of a population, in terms of security and political rights and liberties. Accountability favours decisions that bring progress and collective contempt, and separation of powers remains vital to avoid excessive concentrations of power within a small group through “checks and balances” by other holders of power. Power is distributed by choice of governance, and it gives the means for the achievement of different outcomes⁸⁴.

There are approaches that set legitimation at the heart of democracy. If the population autonomously believes in the endeavour of the government, authoritarianism is indirectly weakened as opposition assembles and there is a demand for a change. It is the notion of a “rightful rule”. Nevertheless, there are other approaches that do not take legitimacy in consideration as a main point of change but a transitional characteristic.

Ever since the 1960s, the term “legitimacy crisis” emerged in the West to refer to the first global economic setback experienced and conceived as a lack of proper governance. However, the term has been broadly used all around the world, and not necessarily under the standard we are referring to. Some governments are considered illegitimate, but they hold high levels of popular support. For these reasons, the seek for legitimation has been sought by most power structures throughout history⁸⁵.

Under these definitions, El Salvador has been under legitimacy crisis throughout most of its democratic period. The imperative need for change pushed by the high rates of homicide put the state of El Salvador into an urgent need for solutions and change.

El Salvador is not the first state to fall into the hands of a promising leader that digresses liberties under the premise of a revolutionary change. As it has been assessed by Salvadorian nationals in the recent elections, more than half of the population in Latin America, according to *Latinobarómetro* Institute, do not prioritize whether their government is authoritarian or

⁸³ Reus-Smit, Christian. 2007. “International Crises of Legitimacy.” *International Politics* 44 (2-3): 157–74. <https://doi.org/10.1057/palgrave.ip.8800182>.

⁸⁴ Gilley, Bruce. 2009. *The Right to Rule: How States Win and Lose Legitimacy*. Google Books. Columbia University Press. https://books.google.es/books?hl=esandlr=andid=3XyXnSaz27Ycandoi=fndandpg=PR9anddq=legitimacy+crisis+el+salvadorandots=PgR12SR_tvandsig=Bc8WjpvfYylJaVk3Z0AnZzSIUGYandredir_esc=y#v=onepageandqandf=true.

⁸⁵ Redondo, Mónica and Proto, Lucas, “¿Quiere Usted La Receta Bukele Para Su País? Sin Estos Cinco Ingredientes, No Es Posible,” *elconfidencial.com*, February 6, 2024, https://www.elconfidencial.com/mundo/2024-02-06/receta-bukele-salvador-ingredientes_3824595/.

democratic as long as it addresses their economic and social issues effectively⁸⁶. In the words of Nayib Bukele, there was a need for strong leadership, and there cannot be politics or development without peace.

2. International Intervention

Ever since the end of World War I, there has been a discussion over promoting collective security to prevent the escalation of large-scale conflicts. The birth of the UN in 1945 as an international body served as a conducive thread to the establishment of a common objectives as the world grew interconnected, and, within limitations, developing the notions of humanitarian intervention to regulate criminal activity and the actions of international actors.

The UN Charter has been signed by all member states, so technically speaking, the Security Council has international legitimacy. However, it is not legally binding, and the role of these organizations has been criticised as it relies greatly on the decisions of the main superpowers and the general cooperation of states. The veto power in the United Nations Security Council (UNSC) has prompted the blockage of interventionist resolutions for purely political and ideological matters, even if those cases did require the action of the UN security forces. This was the case of all failed attempts since 1989 to pass resolutions for the involvement of the Israel-Palestinian conflict, by veto of the US, or the inability to stop the Darfur genocide due to China and Russia veto power⁸⁷.

Thus, the world's major powers continually break conventions and opt out of treaties for political expediency. In many cases, treaties are established to prevent the use of force, in which the exit of these countries at the moment of greatest risk defeats the entire purpose of what the treaty was trying to regulate in the first place. In other words, credibility of international treaties and organisms is being continuously challenged. For example, as it was the case not so long ago, the United States withdrew from the Intermediate-Range Nuclear Forces (INF) Treaty pact in 2019⁸⁸.

Nevertheless, the UNSC did intervene to end the Rwandan Civil War after passing the 872 resolution in 1993 and initiate the peaceful settlement of violence. This intervention was also controversial as it did not prevent or stop the genocide of 1994, and this was also the case for the Bosnian massacre of 1995⁸⁹. It is clear that the principle of sovereignty creates a strong barrier to any kind of relative attempt of humanitarian intervention if it is not specifically ruled case by case. Domestic jurisdiction holds precedence in every case.

The rulings over any sort of humanitarian intervention relies on international bodies such as the UN Charter, the Rome Statute of the ICC and Security Council resolutions.

⁸⁶ Weiss, Sandra. "El Salvador's Self-Proclaimed Saviour," www.ips-journal.eu, February 6, 2024, <https://www.ips-journal.eu/topics/democracy-and-society/el-salvadors-self-proclaimed-saviour-7295/>.

⁸⁷ Trent, John, and Laura Schnurr. "Peace and Security: Fixing the Security Council." In *A United Nations Renaissance: What the UN Is, and What It Could Be*, 1st ed., 56–70. Verlag Barbara Budrich, 2018. <https://doi.org/10.2307/j.ctvdf03xp.7>.

⁸⁸ Lopez, C. Todd. 2019. "U.S. Withdraws from Intermediate-Range Nuclear Forces Treaty." U.S. Department of Defense. August 2, 2019. <https://www.defense.gov/News/News-Stories/Article/Article/1924779/us-withdraws-from-intermediate-range-nuclear-forces-treaty/>.

⁸⁹ Bajoria, Jayshree, and Robert McMahon. "The Dilemma of Humanitarian Intervention." Council on Foreign Relations, June 12, 2013. <https://www.cfr.org/backgrounder/dilemma-humanitarian-intervention>.

Under the rule of Chapter VII of the UN Charter, there is an authorisation to *the use of force to maintain or restore international peace and security*. However, this chapter focuses the regulation of rights of self-defence, as it is contemplated within Article 51, or the intercession of the Security Council to take action. Article 7 refers to the *serious violation of an individual right and in the plural to large-scale violations of one or more than one right*⁹⁰.

Although international legal mechanisms have great limitations, to what extent should the international community get involved to mediate with a ‘democratic’ state to safeguard human rights and avoid the rise of authoritarianism?

In the case of El Salvador, there is no condition of humanitarian crisis, but there have been a great amount breaches of international human rights law. Generally speaking, the gravest crimes against humanity usually refer to war crimes, genocide or ethnic cleansing among others. However, according to the University of Genova study on what can be considered a serious violation of international human rights law, arbitrary arrests and detentions, torture or any sort of degrading treatment, or the disproportionate use of force by national security forces do fall into the definition of severe violations. In addition, the suspension of freedom of expression and association, as it has been the case in the recent years in the Central American state, could be interpreted as a situation of seriousness.

The nature of the scope of these treaties tends to hold a supervisory role rather than an intervention. As it occurred in the forementioned cases of UNSC intercession, resolutions must be passed in order to exert a direct involvement.

Having said that, the International Law Commission’s readings on Article 40 establishes:

1. *This chapter applies to the international responsibility which is entailed by a serious breach by a State of an obligation arising under a peremptory norm of general international law.*
2. *A breach of such an obligation is serious if it involves a gross or systematic failure by the responsible State to fulfil the obligation.*⁹¹

As Bukele’s administration violations have proven to be systematic, they could fall into criteria due to the nature of these breaches. Given the commentaries of the Article, the scope and number of incarcerations have been labelled as massive and arbitrary, there was a clear intent to carry out all the arrests without considering the official procedures, and the impact on the victims have involved deaths in custody, and degrading or torturous treatment to all detainees that did not hold a right to fair trial.

Therefore, if international bodies employ other international bodies of law, the legal claims may sum enough to bring the state of El Salvador to courts under the claim of breaches of its international liabilities. Because of the great support Bukele’s regime has held regionally and internationally, there might be a resort to economic and diplomatic sanctions, which also might seem unlikely in the short-term due to the effective re-election of the executive.

⁹⁰ Geneva Academy of International Humanitarian Law and Human Rights, “What amounts to ‘a serious violation of international human rights law’?,” www.geneva-academy.ch (Geneva Academy, August 2014), https://www.geneva-academy.ch/joomlatools-files/docman-files/Publications/Academy%20Briefings/Briefing%206%20What%20is%20a%20serious%20violation%20of%20human%20rights%20law_Academy%20Briefing%20No%206.pdf.

⁹¹ *Ibid.* 90

3. What are the international implications of giving sovereignty to a leader of these characteristics?

Bukele's political journey has affected the state's position in international relations. In terms of foreign affairs, El Salvador has redefined its diplomatic position, and has gained a stronger presence.

The Bukele formula has had a great influence regionally for the past few years. Although it has not been successfully mimicked, some countries such as "the Ecuador" of Noboa, Honduras or Philippines have attempted to replicate this model as his policies are analysed as the true solution. No state has achieved any remote results yet, as not all violence of Latin America falls within the same standards, nor the sociopolitical context. Ecuador or Colombia's source of criminal activity is tied to transnational cartels and the uncoordinated action of a state would have a lower effectiveness rate than for territorial gangs.

However, the replication of his "model of transition" is closer everyday as other states have also expressed their support and consideration for similar policies even with considerably lower criminal rates, which is the case of Argentina or Uruguay. This is no surprise as the figure of Bukele has been ranked as the highest since the beginning of transitions of the region⁹².

There are other states such as Brazil, Mexico or Colombia that have adopted less uptight measures that focus on reducing crime within a democratic framework. These approaches focus on a gradual, long-term strategy, investing in preventive projects on rehabilitation, education, and economic opportunities. While development may be slower, this maintains transparency and accountability, in contrast to the more heavy-handed, authoritarian measures seen in the Bukele model.⁹³

International Organization's condemnns have not had any persuasive power to reduce at least a little the intensity of restrictions. As it has been made clear in different statements, Bukele has admitted publicly that he will not bend to external pressures. The critiques were also directed to the Spanish press, but also bigger entities such as the UN or the OAS.

The diplomatic strategy has involved neutrality toward EU concerns, the strengthening economic partnership with China, and the balancing an understanding of the US perspective⁹⁴. The idea has been to maintain relationship ties with the US, particularly in terms of migration control, while acknowledging the big role of China in international economics.

Bukele has openly expressed China's importance as an international actor since the beginning of this mandate, and how it cannot just be put aside⁹⁵. For this reason, in 2017, El Salvador stepped back on its recognition of Taiwan as a state, and in exchange, the state has received millions of dollars in investments for development. Also, a Free Trade Agreement

⁹² Pappier, Juan. "Latin America Urgently Needs an Alternative to Bukele's Security Plans | Human Rights Watch," Human Rights Watch, August 7, 2023, <https://www.hrw.org/news/2023/08/07/latin-america-urgently-needs-alternative-bukeles-security-plans>.

⁹³ Flores-Macías, Gustavo. 2024. "The Costs of El Salvador's Crime Crackdown." Foreign Affairs. March 20, 2024. https://www.foreignaffairs.com/central-america/bukele-costs-salvadors-crime-crackdown?check_logged_in=1andutm_medium=promo_emailandutm_source=lo_flowsandutm_campaign=article_linkandutm_term=article_emailandutm_content=20240615.

⁹⁴ *Ibid.* 85

⁹⁵ *Ibid.* 74

between the two states was announced in 2022. For the population, this alliance is part of the country's modernization and hope for improvement. There are several construction megaprojects, such as the National Library or the National Stadium⁹⁶.

On the other hand, the Biden administration has distanced itself from the immigration policy alignment held during Donald Trump's mandate. The US has been one of the biggest critics of Salvadorian democratic backslide. There have been ongoing tensions due to all reforms launched by the Salvadorian government in its judicial branch, as well as the suspension of liberties, or even the adoption of Bitcoin as official currency. The diplomatic distancing between the two states has been notable, as the US has launched sanctions to Salvadorian mandararies under suspicion of corruption. The states did not hold any official visits until the recent re-election early this year, where some State Department officials attended Bukele's inauguration. This could mean, as ex-diplomat Ricardo Zuniga has stated publicly, a step back to normalize relations with Bukele's administration to a seemingly extended ruling projection⁹⁷.

Other Heads of State such as the Spanish King Felipe VI have also held official meetings after the inauguration of Bukele's second mandate, showing a closer diplomatic acknowledgment and mutual respect⁹⁸.

Regardless of all, El Salvador did obtain in a very short time a new role in international relations, which even if it will not be a decisive player in a global scale, it clearly holds a plan with clear objectives to support the narrative of development presented by Bukele in all his official statements.

⁹⁶ Piña, Carlos Eduardo "China Ties Work to Bukele's Advantage in El Salvador's Upcoming Election," [thediplomat.com](https://thediplomat.com/2024/01/china-ties-work-to-bukeles-advantage-in-el-salvadors-upcoming-election/), January 31, 2024, <https://thediplomat.com/2024/01/china-ties-work-to-bukeles-advantage-in-el-salvadors-upcoming-election/>.

⁹⁷ A. B. C. News n.d. "US Dampens Criticism of El Salvador's President as Migration Overtakes Democracy Concerns." ABC News. <https://abcnews.go.com/International/wireStory/us-dampens-criticism-el-salvadors-president-migration-overtakes-110742972>.

⁹⁸ El Salvador News, "President-Elect Bukele Meets with King Felipe vi ahead of Inauguration.," El Salvador in English, June 1, 2024, <https://elsalvadorinenglish.com/2024/05/31/president-elect-bukele-meets-with-king-felipe-vi-ahead-of-inauguration/>.

CONCLUSIONS

For what we have analysed in this paper, we can observe that El Salvador is no longer a democracy. The eight conditions proposed by Schmitter and Karl are not fulfilled, especially the freedom of association and freedom of press, which have been two main points that have suffered a backslide under the imposed state of emergency. The notion of representation is also no longer met, mainly due to the reforms that have made possible a re-election of Nayib Bukele.

All policies launched by Bukele's administration have suspended the rule of law and the separation of powers, all under the claims of cleaning a deeply corrupted system and the end of the traditional elite. However, this is a never-ending cycle. Are all these actions justified? Should we look away if the development of the country in many aspects is unquestionable? Yes, results for homicides and violence have been robust, but the exclusive representation of a single party will conform a new political elite. In definition, history has proven that elites tend to degrade and corrupt, regardless of the ideology or political aims.

No international actor has the power to determine what type of system is absolute and more appropriate to every historical context and political necessities, but it is clear that El Salvador is no longer a democracy, and there is no transition to democracy intended. So, the hypothesis that raised the question if it's possible to fix a failed state submerged in corruption by strong leadership and governance, has been proven possible. However, the employment of disproportionate measures and breaches of international law have driven the state toward an authoritarian route.

It is observable that the case of El Salvador is just a symptom of an international society where democratic and liberal discourse has lost its strength. The great democratic powers have gone through different crisis processes that have weakened them, in addition to the emergence of new problems that go hand in hand with development.

In the end, it is very difficult to draw the line on intervention because of the way the international system is set up. It is never completely clear when it is right and proper to intervene and when it is not. There is a variety of cases that, due to principles, require immediate intervention, but it is not performed due of lack of jurisdiction and legal voids. In other cases, intervention mechanisms take too long to address the necessity of the situation. The example of El Salvador is very interesting focus of study as, even if breaches are more than evident, there is a great breach in public opinion and whether these acts shall not be stopped as they are aimed toward the common good.

My proposal, based on the given theories of intervention and empirical information from the current case of El Salvador, is to ensure the suspension on the state of emergency. It is the fundamental and minimum point that all parts agree as vital as it is disproportionate and is no longer needed. The gang issue was successfully addressed, and after two long years of exception, civil society must regain basic freedoms.

In addition, to conciliate the state with human rights principles, international organisms should begin negotiation, even on the basis of financial support, to sets limits on the treatment of detainees and prisoners. It is essential to grant basic rights, including the rights of underage people that have not been considered in distinction.

To conclude, it is understandable to an extent that certain practices have been permitted given the complicated situation in El Salvador. However, the question as to how far to raise

one's hand must be raised, so that the state can stabilize within a new reality and aim for progress and development in every other context.

The situation of El Salvador and Bukele will surely continue to be in the eye of international relations as a before and after in the fight against organized crime. The unique methods and short-term results of Bukele's policies maintains a broad popular support that could break with the legitimacy crisis process the state experienced during most of its democratic period. In the current global wave of democratic regression, El Salvador's development and an entrenched authoritarian leader could bring, once more, unexpected consequences and new political debate.

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