

Richard Burchill, ***Democracy and International Law***. Aldershot, Hampshire: Ashgate Publishing, 2006. Pp. 632. \$275. ISBN-10: 0754624226, ISBN-13: 978-0754624226

The debate among international lawyers on the significance of democracy is a recent occurrence. Only after the Cold War did international law dare to address the question of democracy; it had previously generally been considered to be a 'domestic' issue and thus not subject to international scrutiny.

The events of 1989–1991 led to the embrace of democracy in many countries, primarily in Eastern Europe. The beginning of the legal debate over democracy can thus be traced to that time. The 'Third Wave of Democratization', to use Samuel Huntington's expression, led many scholars to think about the idea of democracy as a legal principle or, as Thomas Franck put it, in terms of the 'right to democratic governance'.

Over the past two decades many books and articles have been written on the subject of democracy, primarily from a political, philosophical or historical perspective. In comparison, legal writings have been scarce. The book under review, *Democracy and International Law*, is the most recent volume in The Library of Essays in International Law series. Its stated aim is to bring together the core articles written on the developing body of international law regarding democracy. It can serve both as an introduction and as a comprehensive overview of the legal issues and arguments involved. The book is edited by Richard Burchill, senior lecturer at the University of Hull Law School.

The volume contains 19 essays, divided into five parts: Democracy and International Law, Definition(s) of Democracy in International Law, Democracy and the International System, International Institutions and the Promotion and Protection of Democracy, and Critical/Sceptical Voices on Democracy and International Law. This review does not intend to comment on the content but rather to evaluate the selection of articles, bearing in mind the purposes of the The Library of Essays in International Law series.

In 2000, Gregory H. Fox and Brad R. Roth published *Democratic Governance and International Law*,¹ which made a very significant contribution to the literature on the international law of democracy. The importance of this publication rendered Burchill's task of selecting appropriate articles considerably more challenging because of the need to avoid duplicating that edited collection. But seven years after Fox' and Roth's book, it seems that few major developments have taken place with regard to the law of democracy. Burchill thus opted to include several of the same articles (including those written by Susan Marks, Thomas Franck, James Crawford and Gregory Fox and Brad Roth, which are revised versions of the articles published in Fox and Roth's earlier volume).

The added value of Burchill's book is that while the selection of articles elaborates on similar themes it does so from different perspectives, thereby making a useful contribution to the debate. This is illustrated by comparing Burchill's article 'The Promotion and Protection of Democracies by Regional Organizations: The Case of Austria' with 'Intolerant Democracies' by Fox and Nolte. Both address the same question, namely how a democracy should react to the presence of anti-democratic actors in its midst. Fox and Nolte examine the legal relationship between a state and a non-democratic political party. They conclude that states are under no legal obligation to tolerate anti-democratic actors and may, according to a set of well-defined procedures, act to exclude them from the political process. The question whether a state is obliged to ban non-democratic political parties as a result of the international human rights obligations they have assumed is discussed by Burchill. He examines the ability of three international organizations (European Union, Council of Europe and the Organization for Security and Cooperation in Europe) to 'enforce', through legal means, a principle of democracy upon which membership in each of the organizations is based. The

enforcement mechanisms discussed include the suspension of membership rights (Article 7 of the EU Treaty and Article 309 of the EC Treaty) and the possibility of judicial review by the European Court of Justice and the European Court of Human Rights.

Burchill's writings make it clear that he wanted to 'remedy' what he identified as shortcomings of the book by Fox and Roth.² For example, the article by Susan Marks discusses and refers in great detail to two other articles, one written by Fernando Tesón and the other by Anne-Marie Slaughter. Burchill rightly decided to include these two articles (whereas Fox and Roth did not). Another example is the fact that Burchill (correctly) asserts that the greatest weakness of the majority of approaches to democracy as an international legal principle is the belief in a limited view of democracy as consisting essentially of the need for free elections.³ This is illustrated by selecting three articles that define democracy in much broader terms, while at the same time excluding Fox's article 'The Right to Political Participation in International Law', which, along with Franck's article ('The Emerging Right to Democratic Governance') is considered by many to be the basis of the theory of the 'right to democratic governance'. Finally, the editor chose not to devote a section of the book to the controversial debate over whether a lack of democracy can justify humanitarian intervention (conducted individually or collectively with or without Security Council authorization).⁴ Some authors consider this to be part of the right to democratic governance.⁵ Although

² Burchill, 'The Developing International Law of Democracy', 64 *Mod. L. Rev.* (2001) 123.

³ *Ibid.*, at 125.

⁴ Examples are Schachter, 'The Legality of Pro-Democratic Invasion', 78 *AJIL* (1984) 645; D'Amato, 'The Invasion of Panama was a Lawful Response to Tyranny', 84 *AJIL* (1990) 516; Reisman, 'Humanitarian Intervention and Fledgling Democracies', 18 *Fordham Int'l LJ* (1995) 794.

⁵ Eckert, 'Free Determination or the Determination to be Free? Self-determination and the Democratic Entitlement', 4 *UCLA J. Int'l L. & Foreign Aff.* (1999–2000) 55.

¹ G. H. Fox and B. R. Roth (eds), *Democratic Governance and International Law* (2000).

he does not justify his choice in the Introduction, an explanation can be found in the above-mentioned review written by Burchill.⁶ There he stresses that the activities of international organizations and the support they give to democracy constitute a major force behind the development of an international law of democracy. He also points out that the most worrying aspect of arguments that favour the use of force to protect or promote democracy is the division of the world into ‘Us and Them’.⁷ By including a whole section on ‘International Institutions and the Promotion and Protection of Democracy’ he probably wanted to illustrate that alternative means to promote democracy exist and that they should be explored in more detail.

The reader might not find the structure of the book and the ordering of the articles to be entirely logical. For instance, the three articles by Tesón, Slaughter and Marks refer extensively to each other and form a coherent set of arguments, and therefore would have been better placed together in the same section. Also, the distinction, in terms of content, between Part I (‘Democracy and International Law’) and Part II (‘Definition(s) of Democracy in International Law’) is not especially clear, since both parts deal with the definition of

democracy. It might have been preferable to start off with a section on the meaning of democracy in order to try to answer the question: What ‘kind’ of democracy is required by a right to democracy? The second section could then have focused on a technical analysis of the existence and elements of such a right.

The general tone of the book is that there exists a right to democracy, but that we should expand the scope of the term beyond the need for free and fair elections. Burchill believes that democracy is about debate and solving differences through non-violent means, about pluralism, open-mindedness and tolerance.⁸ He therefore supports the need for more complex and sophisticated means by which to defend and promote democracy and endorses the approaches generally put forward by international institutions. The book ends on a critical note by asking whether international law’s promotion and protection of democracy lives up to the emancipatory ideals that underlie the term or instead works only to solidify and legitimize the unequal power arrangements that already exist.⁹

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⁶ Burchill, ‘The Developing International Law of Democracy’, 64 *Mod. L. Rev.* (2001) 123, at 131 and 133.

⁷ *Ibid.*

⁸ *Ibid.*, at 129.

⁹ See Introduction.