Democracy and the United Nations

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Abstract

Dame Rosalyn Higgins DBE QC delivered the Keynote Address at the Cambridge Journal of International and Comparative Law Fourth Annual Conference, 'Developing Democracy: Conversations on Democratic Governance in International, European and Comparative Law', on Friday 8 May at the Divinity School of St John's College at the University of Cambridge. This address examines the place of democracy in international law, focusing on instruments from the Charter of the United Nations to the Montevideo Convention on the Rights and Duties of States. These instruments illustrate that democracy has never been a critical element for recognition of statehood. Rather, the promotion of democracy as a significant value is evident in human rights instruments which suggest that democracy, rather than being a free-standing legal concept, is intertwined with concepts of human rights and the rule of law. The address concludes by reflecting on the most recent trajectory of democracy as a concept amongst the international law community.

Keywords

Democracy, Human Rights, Rule of Law, Council of Europe, Van Dijk Report, International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Interdependence of Concepts, Democracy as a Freestanding Legal Obligation/Entitlement, Democracy under Threat

1 Introduction

In what I have to say this morning it will become apparent that 'democracy' cannot—either legally or politically—be usefully talked about without also talking about *human rights* and the *rule of law*. As we will see, these are unavoidably related, so I will have to wander down some other highways and byways. Indeed, we will need to see if we should really think of 'democracy' as a legal right at all; and also briefly take a look at its state of health at the present time.

So let's make a start by looking for the sources of international law which might suggest this concept of democracy. The United Nations (UN) Charter itself makes no mention of the word 'democracy'. Some say that the idea of democracy is to be read into

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the opening words of the Charter, ie, 'We the Peoples (...)'.¹ There is something to this important reference to the entitlement and desires of '[w]e the peoples', especially as the membership of the UN has always been one of states. The point of departure has been article 4 of the UN Charter, which as you know provides:

1. Membership in the United Nations is open to all other² peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.
2. The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

There is absolutely no reference in these words to a state needing, to qualify for membership, to be democratic.

More generally, the Montevideo Convention on the Rights and Duties of States, still regarded as the classical statement on the subject, stipulates that 'the State as a person in international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other States'.³ The emphasis is thus on realism, on effective control. This immediately feeds into the question of recognition—which is beyond the scope of my talk today. As you will know, there are those who say that the recognition of a state must depend upon criteria of statehood being met. And there are those who say that recognition by others is itself a prerequisite of statehood. There is some truth in both perceptions.

But the essential point for us today is that none of this debate is about democracy. Democracy is not in international law a requirement for statehood, nor indeed for recognition of statehood. And it could not have been otherwise. The whole point of the UN was for it to be an inclusive organisation, where the problems of the world could be addressed. And at the time of the inception of the UN, the vast majority of its membership was made up of states that were not democracies. What do I mean by that? The will of its people was not reflected in the acts of those who governed.

Of course, the meaning of 'state' has indeed somewhat varied over the years. Its definition has been contextual. The UN Charter itself mentions the term 'state' no fewer than 31 times. These mentions obviously do not all relate to admission for membership. The term is also used in the context of claims to appear before specific organs of the UN, to participate in certain specialised agencies, to bring matters affecting peace and security to the notice of the UN, and to be a party to the Statute of the International Court of Justice (ICJ).⁴

¹ Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS 16.

² The reference to 'other states' is in distinction to 'original Members,' as mentioned in *ibid* art 3.

³ Montevideo Convention on the Rights and Duties of States (adopted 26 December 1933, entered into force 26 December 1934) 165 LNTS 19, art 1.

⁴ Statute of the International Court of Justice (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS 16.

So it has been possible to say that what the UN treats as a state is more rigorous than the functional answers of certain specialised agencies. And mechanisms have been found over the years for non-state entities to appear before bodies where their presence (normally reserved to states) has been thought desirable. Even the ICJ, appearance before which is limited in its Statute to states,⁵ has found ways to hear, in particular cases, Palestine and Kosovo. But none of this—none of these developments—has related to democracy. That has been a different question altogether. Even in the fraught problem of Kosovo—whether its Declaration of Independence was in accordance with international law—democracy was not the key.

* * *

So if statehood and democracy have no direct relationship, and the UN Charter has rather little to say on democracy, where has the great push underlying the promotion of democracy come from? Well, democracy is indeed mentioned as a value of great significance in other important organisations. The Preamble to the Statute of the Council of Europe refers to freedom and the rule of law as forming ‘the basis of all genuine democracy.’⁶ Interestingly, the preamble to the European Convention on Human Rights refers to the common heritage of the European governments,⁷ and makes mention of ‘freedom and the rule of law’—but not democracy.

The Basic Document of the Organization for Security and Co-operation in Europe (OSCE) states, ‘Democracy is an inherent element of the Rule of Law.’⁸ The Organisation for Economic Co-operation and Development, referring to the rule of law, identifies various key elements and adds that ‘the law can be changed by an established process that is itself transparent, accountable and democratic.’⁹ The way in which several concepts are intertwined is evidenced in article 2 of the Treaty of the European Union (EU), which provides, ‘The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.’¹⁰ So it is clear that we will need to say something about human rights and also about the rule of law if we are to examine further the idea of democracy.

⁵ *ibid* art 34(1).

⁶ Statute of the Council of Europe (adopted 5 May 1949, entered into force 3 August 1949) 8 UNTS 103, preamble.

⁷ European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 September 1953) ETS No 5, preamble.

⁸ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen (29 June 1990), art I(3).

⁹ Equal Access to Justice and the Rule of Law, OECD Development Assistance Committee, ‘Mainstreaming Conflict Prevention’ (2005) quoted in European Commission for Democracy through Law (Venice Commission), ‘Report on the Rule of Law’ (Study No 512/ 2009) para 27.

¹⁰ Consolidated Version of the Treaty on European Union [2012] OJ C 326/13, art 2.

2 Human rights and democracy

We have seen how democracy, human rights and the rule of law are intertwined concepts, each depending on the other two for its realisation. The relevant human rights are those concerning self-determination in its broadest sense. The Universal Declaration of Human Rights—imprecise in the formulation of its terms, technically non-binding, but widely invoked—projects the concept of democracy by stating that ‘the will of the people shall be the basis of the authority of government.’¹¹ And it lays out the rights that are the bedrock of effective political participation.

As with the term ‘democracy’, the UN Charter contains few references to self-determination. The references in articles 1(2) and 55, which couple ‘equal rights and self-determination of peoples’ suggest (as I have had occasion to write elsewhere)¹² that it was equal rights among states that was being referred to, not equal rights of individuals. So self-determination was a concept cautiously drafted in the UN Charter. In due course, the relationship between self-determination and decolonisation came to the fore—though for some years the colonial powers insisted that self-determination was a political aspiration rather than a legal right. By 1971 the ICJ determined that the principle of self-determination was applicable to all non-self-governing territories.¹³ And it was not to be understood as a right to independence. It was a right for peoples to choose their own destiny: including, at the moment of independence, joining another country.¹⁴ While the concept of self-determination had its origins in colonialism, it gradually was realised to be applicable as a human right.

In 1966, the texts of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) provided:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.¹⁵

The famous Helsinki Final Act of the early seventies makes it absolutely clear that

all peoples always have the right (...) to determine, when and as they wish, their internal and external political status, without external interference, and to pursue as they wish their political, economic, social and cultural development.¹⁶

¹¹ Universal Declaration of Human Rights (adopted 10 December 1948, entered into force 16 December 1949) UNGA Res 217 A(III), art 21(3).

¹² Rosalyn Higgins, *Problems and Processes: International Law and How We Use It* (OUP 1994) 112.

¹³ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) Notwithstanding Security Council Resolution 276* (Advisory Opinion) [1971] ICJ Rep 16, 31.

¹⁴ UNGA Res 1514 (XV) (14 December 1960).

¹⁵ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, art 1(1); International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, art 1(1).

¹⁶ Final Act of the Conference on Security and Cooperation in Europe (Helsinki Accord) (1 August 1975), reproduced in (1975) 14 ILM 1292, art VIII.

Nor does the African Charter on Human and Peoples' Rights limit the right that all peoples have to self-determination to situations of decolonisation.¹⁷ The Human Rights Committee (interpreting the ICCPR) has consistently told states appearing before it for examination of their periodic reports that the right to self-determination requires that a free choice be afforded to peoples on a continuing basis.¹⁸ It has also made clear that this is virtually impossible in a one-party state.¹⁹ Even in one-party systems that allow some form of participatory democracy, outcomes are predetermined.

It hardly needs saying that minorities have minority rights under article 27 of the ICCPR—but that does not give that minority a so-called 'right to self-determination' and still less, a 'right to secession'. These legal issues, somewhat beyond the scope of this lecture, are dealt with in depth in the *Reference re Secession of Quebec* case.²⁰ Article 1 of the two Covenants speaks of self-determination. And article 25 of the ICCPR is concerned with the detail of how democratic free choice is to be achieved—by periodic elections, on the basis of universal suffrage. It deals with the entitlement of participation without discrimination in the public life of one's country—whether as a politician, civil servant or voter. None of this is to say that democracy—the essential bedrock of continuing self-determination and the right to participate in the public life of the country—comes only in one form. But within various possibilities there are essential elements that must be there.

3 Rule of law

Let us then take a closer look at the other concept so closely related to democracy. I have said earlier that democracy is closely intertwined with the rule of law. And in the last decade that concept has attracted much attention. What does 'the rule of law' mean to an international lawyer? It is not a term of international law, as such, so let us begin by looking at what the term means to a domestic lawyer, and see where we go from there.

Dicey famously identified three principles which together establish the rule of law:

- (1) the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power;
- (2) equality before the law or the equal subjection of all classes to the ordinary law of the land administered by the ordinary Law Courts; and

¹⁷ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc CAB/LEG/67/3 Rev 5, art 20(1).

¹⁸ See, for example, UNGA 'Report of the Human Rights Committee' (1997) 51st Session vol I Supp No 40 UN Doc A/51/40, annex V, para 2. See also Higgins (n 12) 120.

¹⁹ See, for example, UNGA 'Report of the Human Rights Committee' (2000) 55th Session vol II Supp No 40 UN Doc A/55/40, para 291.

²⁰ *Reference re Secession of Quebec* (1998) Supreme Court of Canada 2 SCR 217, 37 ILM, 1340.

(3) the law of the constitution is a consequence of the rights of individuals as defined and enforced by the courts.²¹

These ideas, still valid, have been fleshed out by much work done on the rule of law, including the so-called Venice Commission and of course Lord Bingham's book, *The Rule of Law*.²²

Very detailed specifications are offered by the van Dijk report adopted by the Venice Commission in 2009.²³ The annex to the 2011 Venice Commission on the Rule of Law offers a checklist for evaluating the status of the rule of law within states.

1. Legality (supremacy of the law)
 - a) Does the State act on the basis of, and in accordance with the law?
 - b) Is the process for enacting law transparent, accountable and democratic?
 - c) Is the exercise of power authorised by law?
 - d) To what extent is the law applied and enforced?
 - e) To what extent does the government operate without using law?
 - f) To what extent does the government use incidental measures instead of general rules?
 - g) Are there exception clauses in the law of the State, allowing for special measures?
 - h) Are there internal rules ensuring that the state abides by international law?
 - i) Does the *nulla poena sine lege* system apply?
2. Legal certainty
 - a) Are all the laws published?
 - b) If there is any unwritten law, is it accessible?
 - c) Are there limits to the legal discretion granted to the executive?
 - d) Are there many exception clauses in the laws?
 - e) Are the laws written in an intelligible language?
 - f) Is retroactivity of laws prohibited?
 - g) Is there a duty to maintain the law?
 - h) Are final judgments by domestic courts called into question?
 - i) Is the case-law of the courts coherent?
 - j) Is legislation generally implementable and implemented?
 - k) Are laws foreseeable as to their effects?
 - l) Is legislative evaluation practiced on a regular basis?
3. Prohibition of arbitrariness
 - a) Are there specific rules prohibiting arbitrariness?
 - b) Are there limits to discretionary power?
 - c) Is there a system of full publicity of government information?
 - d) Are reasons required for decisions?

²¹ AV Dicey, *The Law of the Constitution* (8th ed, Macmillan and Co 1915) 198–99.

²² Thomas Henry Bingham, *The Rule of Law* (Allen Lane 2010).

²³ Venice Commission (n 9).

4. Access to Justice before independent and impartial courts

- a) Is the judiciary independent?
- b) Is the department of public prosecution to some degree autonomous from the state apparatus? Does it act on the basis of the law and not of political expediency?
- c) Are single judges subject to political influence or manipulation?
- d) Is the judiciary impartial? What provisions ensure its impartiality on a case-by-case basis?
- e) Do citizens have effective access to the judiciary, also for judicial review of governmental action?
- f) Does the judiciary have sufficient remedial powers?
- g) Is there a recognised, organised and independent legal profession?
- h) Are judgments implemented?
- i) Is respect of *res iudicata* ensured?

5. Respect for human rights

Are the following rights guaranteed (in practice)?

- a) The right of access to justice: Do citizens have effective access to the judiciary?
- b) The right to a legally competent judge
- c) The right to be heard
- d) *Ne bis in idem*²⁴

The rule of law, within countries, is undoubtedly making progress. And many of the elements I have mentioned can be recognised as human rights under the European Convention on Human Rights and the ICCPR. But it is much, much harder to see where the Dicey idea of the rule of law fits into the international system. There is manifestly no world government system into which the model could most easily fit. The UN General Assembly is indeed representative of the international community, with each state having one vote. But the 'executive' of the UN consists of 15 members, five of whom are 'permanent' and hold a veto, and ten of whom are broadly representative of the membership as a whole. These latter serve a rotating two-year term. Kofi Annan, among others, had pushed for a restructuring of the Security Council (for broadly 'rule of law' reasons) during his tenure as Secretary-General, but the many difficulties in achieving this are not yet resolved.

If we continue to work our way through Dicey's rule of law prerequisites, we next come to the principle of 'equality before the law or the equal subjection of all classes to the ordinary law of the land administered by the ordinary courts'. The realities of power, coupled with the promotion of their own interests and the protection of other favoured states, mean that the decisions of the Security Council, while striving for a principled application based on UN Charter requirements, are subject to 'the achievement of the possible'. That in turn means that Security Council decision-making is not always regarded as 'applicable equally to all'. Arguments about lack of consistency in the application of international sanctions make the point.

²⁴ *ibid*, annex, 15–16.

There has at the UN been much activity, many reports on the rule of law. There have also been resolutions on the topic, such as UNGA Resolution 61/39.²⁵ This Resolution requested, *inter alia*, that the Secretary-General submit a report identifying ways to provide capacity-building to states in order to assist with the promotion of the rule of law at national and international levels. There has certainly been no lack of drive to breathe life into this idea. This is not the occasion, I think, for me to take you, step by step, through all that has been happening at the UN on this subject. Despite a flood of official reports, we still do not have a clear definition of what is meant by 'the rule of law at the international level'. Speaking during the debate in the Sixth Committee of the General Assembly in October 2006, the representative of India observed:

The rule of law was often advanced as a solution to the abuse of government power, economic stagnation and corruption. It was considered essential to the promotion of democracy, human rights, free and fair markets and to the battle against international crimes and terrorism. It was also seen as an indispensable component for promoting peace in post-conflict societies. The rule of law might therefore have a different meaning and content depending on the objective assigned to it.²⁶

We get a sense of the enormity of the scope of the concept of the international rule of law when reading the 2005 World Summit Outcome Document.²⁷ This document is essentially a statement on everything on which the representatives of the international community can agree. In that light, it is rather impressive. It covers topics as broad-ranging as domestic resource mobilisation, debt, education, HIV/AIDS, migration, terrorism, refugee protection, and reform of the UN Secretariat. There is a specific section on the rule of law in which the Heads of State and Government recognise the need for universal adherence to, and implementation of, the rule of law at both the national and international levels.

4 Is democracy a rule of international law?

As you will know, the Council of Europe regards itself as the continent's leading human rights organisation. It has 47 member states (28 of which are members of the European Union). All Council of Europe members are required to sign and ratify the European Convention on Human Rights. The Council has three so-called 'pillars': the Rule of Law, Democracy, and Human Rights. As I have already suggested, these concepts are intertwined and somewhat difficult to separate. It is hard to conceive that, in the absence of democracy, rule of law can exist. And it is equally difficult to imagine that a country can have the full panoply of human rights if there is no democracy.

²⁵ UNGA Res 61/39 (2006) GAOR 61st Session.

²⁶ UNGA 'Report of the Sixth Committee: The Rule of Law at National and International Levels' (17 October 2006) 61st Session UN Doc A/61/142 (India), para 74.

²⁷ UNGA Res 60/1 (2005) GAOR 8th Plenary Meeting.

That these concepts are intertwined is self-evident. But there are questions, the answers to which are not so apparent. Is the concept of democracy really a right in the sense understood in international law? And although human rights are legal rights, is the rule of law really a legal right? What is the common understanding of a legal right? It is surely a right the fulfillment of which can be claimed as law. I don't think that either an individual, or a state, would be successful in bringing a claim against a state that democracy is lacking. It is much more likely that the claim would be articulated in a national court as a violation—perhaps by reasons of lack of democracy—of a human right. And in an interstate case, before an international tribunal, it is likely to be advanced as a claim that there is no real self-determination, and people do not have the opportunity to choose their own government and to determine their own government.

As I have suggested earlier, it would not be surprising if democracy is not really a legal right. When the UN Charter—notably silent on democracy—was drawn up, the majority of original members and the vast majority of those who later became members, were not democracies. So the UN Charter had to be drawn up to meet the reality of that situation. If legal claims could be brought against them on the grounds that they were not democracies, the UN membership would have been in a state of chaos.

What is very interesting, however, given that reality, is to wonder how the great push for democracy came about. There is no doubt this has happened. Member states of the UN today, in very many resolutions, are willing to condemn a military coup as contrary to democracy. States do this because it is easier for them to insist that, while governments come in many forms, their government is actually democratic. It came to power through the ballot and has the ongoing support of the people. Of course, such claims may be made when ballots are rigged, when membership of the legislature, and indeed of the superior courts, are controlled by governments. We can think of examples. And of course, if a government controls the press and television, then it can remain popular—especially when it engages in military action overseas and presents its acts as a defence against aggression and the ill will of others.

Fair voting for a government, or a President, is crucial. That is why so much has been invested in the monitoring of elections worldwide. That monitoring—by the OSCE, the EU, even occasionally by the UN itself—can of course be resisted. But that itself puts the government or President concerned in a doubtful light. For those interested, there is now a wonderful and large literature on this. Some, like Binder, writing in *European Public Law*, see this as related to the human right of participation rather than to democracy.²⁸ I have already commented on the impossibility of separating the concepts operationally. Tom Franck, whose writings on the right to democratic governance have attracted recent generations of students, is grounded in human rights.²⁹ Some have claimed that monitoring reflects double standards, because there are regional or international electoral

²⁸ Christina Binder, 'International Election Observation by the OSCE and the Human Right to Political Participation' (2007) 13 EPL 133.

²⁹ Thomas M Franck, 'The Emerging Right to Democratic Governance' (1992) 86 AJIL 46.

monitors to oversee whether elections are democratic, whereas long established states (such as China) are virtually everywhere regarded as legitimate, even if not democratic.

4.1 A further uncomfortable question: Is democracy going backwards? The close relationship of democracy with freedom for the nationals of that country

In 2014, it was reported (by Freedom House) that of the 195 states in the world today, 88 are free (45 per cent), 59 are partially free (30 per cent) and 48 countries sadly cannot be classified as free (25 per cent—a quarter of the world).³⁰ When James Crawford gave his inaugural lecture at the University of Cambridge, he was cautiously optimistic, seeing evidence of growing democracy worldwide, and strikingly, in the continent of Africa. He stated that between 1986 and 1993 (the date of his lecture), ‘the proportion of states with democratic systems, however fragile or tentative, has increased sharply.’³¹ He saw this process as having begun in Southern Europe, then extending to Latin America and Eastern Europe, the Soviet Union, and many of its former republics, and even to East Asia.

Various groups and publications today suggest that today we are seeing a year-by-year decline in what they sometimes term human rights. Some have, in recent years, suggested that things are going backwards so far as democracy is concerned. It is true that fewer and fewer states insist that democracy is a western value, which should not be imposed on the countries of Africa and Asia. Rather, states (the worst offenders) remain silent on the matter; and all too many others insist that theirs *is* a country of democracy, in that they hold periodic elections. But, as we know, the elections are often held in an atmosphere of intimidation. The opposition is so certain that the electoral process is a sham that it tells its supporters not to vote at all. The government thus wins—even if the turnout is remarkably low. In April 2015, the President of the Sudan, wanted by the International Criminal Court on genocide charges, was re-elected after 26 years in power, on a 25 per cent turnout. It is all too easy to think of countries purporting to be democracies engaging in elections that are not truly free and fair: I do not need to name them.

5 Regression or progress in achieving democracy?

While more and more countries are willing to support resolutions at the UN calling for democracy in a particular country going through turmoil, and/or to call for the return of an elected but ousted leader, there are reasons for not being too sanguine. We have seen—for example in Egypt—reversals in hard-won democracy following a military

³⁰ Freedom House, ‘Freedom in the World 2014’, 6 <www.freedomhouse.org/report/freedom-world/freedom-world-2014> accessed 19 August 2015.

³¹ James Crawford, ‘Democracy in International Law: Inaugural Lecture’ (delivered 5 March 1993, CUP 1994) 14.

coup. Such reversals are legitimised by the holding of elections with intimidation and fear in evidence, and the legitimacy of the electoral process open to question. The data in recent years suggests elected leaders often rely on modern authoritarianism. We have seen domination of not only the executive and legislative branches, but also the media, the judiciary, civil society, the economy and security forces. Certain regions have, as regards democracy, been volatile, while others have been stable. And, for example, within sub-Saharan Africa, there have been considerable improvements in the achievement of democracy—but also slides into authoritarianism. Many countries are in the grip of corruption, and corruption and democracy do not sit well together.

There have, in the legal journals, been interesting exchanges between academics over whether 1989–2010 in fact marked the high point of the principle of democratic legitimacy. These developments were traced, for example, by Susan Marks in *The Riddle of All Constitutions*.³² She focuses in considerable detail on the idea of regulating domestic democracy by reference to international law. While agreeing with her conclusions, Professor d'Aspremont of Amsterdam asserts that many facets of democracy (in which he includes human rights instruments) were enshrined in international law even before the end of the Cold War. They were strengthened by 'a new democratic rule'.³³

And of course both American and European scholars have addressed the idea that democracy plays a crucial role in the international legal order. There is now a huge and interesting literature on all facets of the matter—including the difficult question of whether force may ever be used to restore democracy. Nowrot and Schebackers, in their article on the international legal consequences of the intervention in Sierra Leone by the Economic Community of West African States, note that some missions to restore democracy have been led by non-democratic states.³⁴ And we all watch the Saudi-led military intervention in Yemen with interest and anxiety.

6 Conclusion

Tomorrow this conference is going to pay honour to James Crawford—for long years your Whewell Professor of International Law, and now a Judge at the ICJ. He has written so much, and his inaugural lecture, 'Democracy in International Law', has really stood the test of time. It showed that Cambridge had selected as Whewell Professor a man who thought deeply and perceptively, looking to the future as much as to the past. The lecture contained hope and hard-headedness in equal measure. Now it is the turn of the ICJ to benefit from his considerable knowledge and thinking.

³² Susan Marks, *The Riddle of All Constitutions: International Law, Democracy, and the Critique of Ideology* (OUP 2003).

³³ Jean d'Aspremont, 'The Rise and Fall of Democracy Governance in International Law: A Reply to Susan Marks' (2011) 22 EJIL 549, 551.

³⁴ Karste Nowrot and Emily W Schabacker, 'The Use of Force to Restore Democracy: International Legal Implications of the ECOWAS Intervention in Sierra Leone' (1998) 14 Am U Intl L Rev 321.