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## Book Reviews

L. Ali Khan. *A Theory of Universal Democracy: Beyond the End of History*. The Hague: Kluwer Law International. 2003. Pp 274. €82, ISBN 9041120033.

Jude I. Ibegbu. *Right to Democracy in International Law*. Lewiston: Edwin Mellen Press. 2003. Pp 551. £84.95, ISBN 0773468528.

One of the most notable trends in international relations and international law since the end of the Cold War has been the increasing degree to which the democratic ideal has gained importance both as a political *leitmotif* and as a legal principle. To many international legal commentators, especially among the Anglo-American academic community, this trend has found its major expression in the growing acceptance of an international responsibility of states to respect democratic principles within the realm of their domestic constitutional order and the corresponding affirmation of a legal entitlement of societies to be governed democratically.<sup>1</sup> While earlier studies on the subject were mainly concerned with the normative foundations of an emerging 'right to democratic governance' and its appropriate place in the body of international law,<sup>2</sup> later works have

focused more on the specific effects of the democratic norm thesis on inter-state relations and the post World War II international order.<sup>3</sup> One of the most heavily contested issues of the debate refers, not surprisingly, to the normative content of the democratic entitlement. Which concept of democratic governance does the emerging norm entail, and is this concept or, for that matter, any concept of democracy amenable to universal application on the basis of contemporary international law? Most scholars, when approaching these issues, argue that, as it stands, the international legal order embraces, at best, a minimum standard of democratic governance, essentially in the form of periodic multi-party elections. Others, however, have attempted to reconstruct the democratic norm thesis for progressive purposes and advocate a more 'cosmopolitan' or 'inclusionary' view of democracy, one that includes broader means of popular participation, accountability and equality, at least as a guiding principle in the interpretation and application of international law.<sup>4</sup> The books under review reflect these different approaches to democratic governance as an international legal principle. Regrettably, however, their authors have largely missed the opportunity to put their ideas into the context of the ongoing debate and the more recent literature on the democratic entitlement.

<sup>1</sup> For an anthology of the 'democratic entitlement' debate and a useful account of the major legal and policy issues involved see G. H. Fox and B. R. Roth (eds), *Democratic Governance and International Law* (2000). The volume contains some of the most important previously published articles on the subject in partly updated versions.

<sup>2</sup> See, especially, the groundbreaking contributions by Franck, 'The Emerging Right to Democratic Governance', 86 *AJIL* (1992) 46, and Fox, 'The Right to Political Participation in International Law', 17 *Yale Int'l L.J.* (1992) 539.

<sup>3</sup> See, for example, Slaughter, 'International Law in a World of Liberal States', 6 *EJIL* (1995) 503, and, for a more sceptical view, B. R. Roth, *Governmental Illegitimacy in International Law* (1999).

<sup>4</sup> See D. Held and D. Archibugi (eds), *Cosmopolitan Democracy: An Agenda for a New World Order* (1995), and S. Marks, *The Riddle of All Constitutions: International Law, Democracy, and the Critique of Ideology* (2000).

L. Ali Khan defines his *A Theory of Universal Democracy* at various points as a 'descriptive theory', an 'epistemic theory', a 'legal theory' and a 'theory of optimal choices'. Most appropriately, however, his book might be described as an ambitious, highly abstract theory of government, in which the author passionately sets out the parameters of what he believes could and should be a universal concept of democratic governance. In doing so, he frequently touches on fundamental questions of international legal doctrine, but avoids, almost without exception, any serious investigation as to whether or to what extent his theoretical conception is supported by international law and practice. This is not to say that one could not make a legal case for many of his arguments, but it is to say that, apart from some vague indications, the author has apparently not found it necessary to do so. In fact, he expressly acknowledges in the book's introduction that he would rather 'leave it to other scholars and commentators to further explore the rooting of Universal Democracy' (at 9). That, as such, does not render his approach illegitimate or the book's analysis irrelevant. It is, however, somewhat surprising, given the author's professional background (he teaches law, including international law, at Washburn University), and may leave readers with a special interest in international legal affairs rather disappointed.

*A Theory of Universal Democracy* is built upon several political and 'constitutional' principles, derived, as the author sees it, from universal values that define 'the common core of human civilization' (at 81). In line with many proponents of the democratic entitlement thesis (though without referring to any of their writings) he identifies the right to vote at periodic and genuine elections, based on universal and equal suffrage, as a universal principle and a minimal procedural requirement 'without which no conception of democracy is tenable' (at 93). This observation, however, only serves as the starting point for Kahn's broader conceptualization of universal democracy, which involves a number of constitutive and mutually reinforcing elements. Some of these elements refer, though not

expressly, to classical civil and political rights, for instance the freedom to establish political parties and the right to engage in civic associations. At the core of his theory, however, is a group of what may be called *collective political rights*, particularly the 'right to platform' (understood, first, as a right of political parties to present and promote their programme and, secondly, as a contract with the electorate under which the winning party is obligated to keep its election promises) and the 'right to recall' (conceived as empowering people not only to recall ruling parties and elected officials, but also to change forms of government, state structures and official ideologies).

Although one has to get used to the predictive tone of his work, Kahn's analysis of the building blocks of his theory is fairly detailed and, in parts, clearly innovative. However, even if one leaves the questions of legal grounding and political realization aside, some of his arguments seem to lack coherence. He opposes, for instance, any constitutional constraints on party platforms and favours the admittance of all parties to the political process, even if they openly promote political or religious extremism and the abolishment of the democratic order. Thus, he rejects constitutional self-protection clauses in the form of Article 21 of Germany's Basic Law (which enables the Federal Constitutional Court, upon request by the German Government, to order the banning of anti-democratic parties) or Article 69 of the Constitution of Turkey (which empowers the Turkish Constitutional Court to dissolve political parties whose activities are incompatible with the democratic and secular structure of the state) as 'guises to establish one ideology to the exclusion of others' (at 199). On other occasions, however, he holds that the right to political competition 'should not be exercised without ethical constraints' (at 169) and that 'the people cannot choose a form of government under which they will lose their right to recall the ruling party' (at 221). If the banning of groups whose political aim is to put an end to free elections and democratic rights is not an option, how then, the reader might ask,

would Kahn ensure that the right to recall is effectively protected? There are certainly no easy answers to the question of how tolerant democracies should be in relation to political groups whose goals are detrimental to the democratic system. However, as has been shown in a widely noticed study by Gregory Fox and Georg Nolte, states are under no international legal obligation to tolerate anti-democratic actors and may, under appropriate circumstances and within certain limits derived from international human rights jurisprudence, exclude such actors from electoral processes.<sup>5</sup>

Linked to this discussion is the fundamental question of whether the separation of state and religion, one of the cornerstones of political liberalism, is a requirement encompassed by the democratic entitlement norm. Pointing to countervailing practices in large parts of the Muslim world, Kahn answers this question in the negative. Secularism, he argues, is not a universal value, as no consensus can be reached at the global level 'without the consent of Islamic states, that is, more than a billion people' (at 106). The author certainly has a point here. His conclusion, however, that constitutional orders founded on the principles of Sharia are fully compatible with democracy, provided that religious minorities are protected and the incumbent Islamic leadership remains committed to the right to recall, is built on premises which hardly bear any resemblance with the political reality in most Islamic states. While constitutional arrangements to ensure that political authority is exercised within the boundaries of Sharia vary greatly among those nations,<sup>6</sup> most existing models of political Islam have so far grossly failed to accept any meaningful

political competition of the kind that Kahn himself has identified as essential for even a limited conception of democracy. It is interesting to note here that the Constitutional Court of Turkey — a country whose population is overwhelmingly Muslim — has unequivocally declared, in a judgment of January 1998, which resulted in the dissolution of the Islamic Welfare Party, that the separation of state and religion was an indispensable condition of democracy and that the rules of Sharia were incompatible with a democratic regime. This view was shared by the European Court of Human Rights, which, in upholding the judgment of the Turkish Constitutional Court, noted that 'it is difficult to declare one's respect for democracy and human rights while at the same time supporting a regime based on Sharia', not least because 'principles such as pluralism in the political sphere or the constant evolution of public freedoms have no place in it . . .'.<sup>7</sup> Kahn regards such verdicts as an expression of purely national or regional preferences. At the same time, he maintains that the 'right to recall' — which, according to his own definition, presupposes political pluralism — is a universal value and that 'each electorate should be free to reconsider, retain and change past values and practices' (at 8).

It is not until the end of his book that the author addresses this apparent contradiction by presenting an eclectic set of legal principles, applicable to situations in which a repressive platform, after attaining power, withholds the right to recall from the electorate. It ranges from an 'obligation' of opposition parties to challenge the ruling party's revocation of democratic rights (through public protest, in domestic courts or before 'regional or global judicial tribunals') to the 'obligation' of the international community to pressure the rulers to relinquish power and to make way for

<sup>5</sup> See Fox and Nolte, 'Intolerant Democracies', 35 *Harvard ILJ* (1995) 1. See also the responses by M. Koskeniemi and B.R. Roth as well as the rejoinder by Fox and Nolte in 37 *Harvard ILJ* (1995) 231.

<sup>6</sup> See, generally, Brown, 'Islamic Constitutionalism in Theory and Practice', in E. Cotran and A. O. Sherif (eds), *Democracy, the Rule of Law and Islam* (1999) 491.

<sup>7</sup> *Refah Partisi (The Welfare Party) and Others v. Turkey* (13 February 2003), para. 123. See also Sottiaux, 'La Cour Européenne des Droits de l'Homme et les Organisations Antidémocratiques', 13 *Revue Trimestrielle des Droits de l'Homme* (2002) 1008.

democracy. It also includes, in the final Chapter of the book, an elaboration of the people's right to dismantle political monopolies through revolutions, combined with a duty of the revolutionaries to establish or restore a democratic form of government. In keeping with his theoretical approach, Kahn does not explain where all these rights and obligations stem from, other than by generally referring to 'global treaties' and 'customary values'. As he has also quite effectively lived up to his announcement, made in the introduction, to 'refrain from extensive citations of scholarly works' (an odd form of academic self-restraint that is extended to the bibliography, which is missing altogether), the reader is finally left with a book that raises by far more questions than it answers. Academics with a special interest in international law, in particular, will have to turn to other sources to understand better the fundamental legal issues involved in the progressive idea of democracy as a universal entitlement.

On its face, Jude I. Ibegbu's *Right to Democracy in International Law* appears to be well-suited to serve that purpose. The book is a comprehensive study on the normative meaning of democracy as a human right, written from a theological perspective (the author is a Catholic Priest in Nigeria), but with a staunch focus on the legal issues at stake. Ibegbu's main concern is to establish the right to democracy as a cardinal virtue in the canon of international law and to prove that a serious violation of this right amounts to a breach of an obligation owed by domestic governments not only to its people but also to the international community as a whole. The author's approach to these issues is equally informed by liberal theory as it is by theological reasoning, and his legal analysis is clearly influenced by the writings of Thomas Franck and other defenders of the right to democracy. His assessment of democracy's international legal status, however, is so affirmative, upbeat and supposedly self-evident that one starts to wonder how the democratic entitlement thesis could have ever been the subject of one of the past decade's most controversial academic debates.

According to Ibegbu, the right to democratic governance is not only a treaty norm embodied in major human rights instruments, but has, meanwhile, also developed into a general principle of law recognized by civilized nations as well as a rule of customary international law. There is certainly much to say about the 'developing international law of democracy',<sup>8</sup> particularly in view of the recent multifaceted efforts by states and international organizations to promote and protect representative forms of government, and Ibegbu's claims are, as such, not necessarily utopian. However, reading his book, one quickly gets the impression that the author has arrived at his far-reaching conclusions on the basis of an overly simplistic interpretation of the norm-creating process in international law. Thus, the right to democracy is characterized as a general principle of law solely because affirmations to democratic governance are reflected in the constitutions of a large number of countries in different parts of the world. Emphasizing that Article 38(1)(c) of the Statute of the International Court of Justice (ICJ) does not refer to universal but to 'general' principles of law as a possible source of international obligations, the author deems it sufficient for the right to democracy to reflect such a principle when it is recognized by a majority of states in their domestic legal systems. Not afraid to reveal a certain sense of liberal Messianism, he adds that the concept of 'civilized nations' still serves as 'a valid criterion for determining the existence of a genuine general principle of law' (at 107). A similar logic is applied in respect of the right to democracy as a principle of customary international law. A brief survey of about one hundred national constitutions leads Ibegbu to declare that 'most States stipulate that they have adopted a democratic system of government, thus the criterion of generality of practice with regard to democratic governance is satisfied' (at 195). This practice, he further concludes, can also be seen as an expression of

<sup>8</sup> The term is borrowed from Burchill, 'The Developing International Law of Democracy', *Modern L. Rev.* 64 (2001) 123.

*opinio juris*, as states have consented to a number of universal and regional instruments which directly or indirectly protect the right to democracy.

The domestic and international legal developments cited by the author are certainly evidence of a worldwide trend to prefer democratic forms of government over any other type of regime. Ibegbu's analysis is nevertheless open to several points of criticism. First, while general principles and custom have gained growing importance in international human rights law,<sup>9</sup> it presumably needs more to accept the right to democracy as a general principle of law or a rule of customary international law than to point to the legal self-characterization of an unspecified majority of states as 'democratic'. True, almost all of the constitutions examined by the author refer in one way or another to the establishment of a 'democratic state' or a 'democratic republic', but this, quite obviously, tells us little about whether the constitutional promise of democracy is actually borne out in the political practice of the state concerned (one suspects that something is wrong with the author's argument when the constitutions of countries such as Libya, Kuwait, Iraq, Sudan, Syria and Togo are cited as evidence that the right to democracy has developed into a general principle of law). Secondly, his thesis that a rule has to be seen as a general norm of customary international law if it is recognized by a majority of states within their national legal systems and, in addition, echoed in international agreements and resolutions of intergovernmental organizations, is, in its generality, questionable. The 'persistent objector' doctrine, for example, might be too easily set aside, when the number of states which have ratified the Covenant on Civil and Political Rights (150 states as of October 2003, but Ibegbu refers to an older and, hence, even

lower number) is said to be sufficient 'to satisfy the generality of State practice necessary for the formation of [a] customary international law of [the] right to democracy' (at 159). Moreover, it is difficult to get a clear picture of the position Ibegbu takes on the normative scope of the right to democracy. His ethical and political justifications of the right, which, as he sees it, is rooted in the 'sovereignty of natural law', seem to point to a broader, more substantive understanding of democracy. In the 'operative' parts of his study, however, the author's almost exclusive reliance on the participatory rights embodied in global and regional human rights treaties,<sup>10</sup> rather suggests a procedural approach to the democratic norm, limited, it seems, to the right to take part in periodic and genuine elections.

The final parts of the book deal with the implications of the right to democracy — or, for that matter, human rights in general — for the principle of non-intervention, as well as with available remedies in case of a military coup against a democratically elected government or its self-induced transformation into a dictatorial, authoritarian or otherwise undemocratic regime. These parts of the book, which are based on Ibegbu's earlier observations on the status of the right to democracy in international law, are rather unspectacular. Since it is regarded by the author as a general principle of law, creating obligations *erga omnes*, it comes as no surprise when he concludes that 'the right to democracy is now . . . essentially within international jurisdiction' (at 464). In respect of remedies against violations of the democratic entitlement norm, he basically offers a general account of possible reactions by individuals, states and international organizations against serious human rights violations, starting with an explanation of the Commission on Human Rights' '1503 Procedure' and ending with collective interventions by or on behalf of the

<sup>9</sup> See Simma and Alston, 'The Sources of Human Rights Law: Custom, *Ius Cogens* and General Principles', 12 *Australian YB Int'l L.* (1992) 82; Lillich, 'The Growing Importance of Customary International Human Rights Law', 25 *Ga. J Int'l & Comp. L.* (1995/96) 1.

<sup>10</sup> Ibegbu repeatedly refers to Art. 21 UDHR, Art. 25 ICCPR, Art. 23 ACHR, Art. 3 ECHR AP I, and Art. 13 ACHPR as the main legal bases of the 'right to democracy'.

United Nations, including military enforcement measures authorized by the Security Council. The controversial issue of (unilateral) ‘humanitarian interventions’ to restore democracy without an explicit Security Council mandate — raised, for instance, by the 1989 US intervention in Panama or the 1997 ECOWAS intervention in Sierra Leone<sup>11</sup> — is briefly mentioned, but not further elaborated.

In terms of ambition and originality the final chapters can certainly not compete with the earlier parts of the book. Chances are, however, that the reader will have already given up on *Right to Democracy in International Law* at a much earlier stage. This assumption is not based on the author’s approach or his (partly) intriguing legal analysis; it is solely based on the book’s striking flaws in terms of style and scholarly accuracy. The text is abound with mistakes in writing and typing; whole paragraphs, sometimes even pages, are repeated up to three or more times at different places; and many footnotes are so overloaded with lengthy and repeatedly used literal quotations that to call their reading arduous is almost an understatement. It seems as if the book has not been edited or even read by anyone (including the author) before it went into print. Moreover, the most recent literature to be found dates back to 1996, which is surprising, given the fact that the book was published in 2003.

The last word has certainly not yet been said on the emerging international law of democracy, a difficult and inherently controversial research area that requires a particular degree of subtlety and academic circumspection. The books under review here represent a further attempt to grapple with the manifold theoretical and legal challenges posed by the global trend towards popular sovereignty and democratic governance. Both are a testament to the ambitious approach of their authors in their quest to analyse — or at least to come closer to — the meaning and norma-

tive implications of ‘universal democracy’. For the reasons stated above, however, both books should not be the first choice for scholars, practitioners and students of international law who want to have recourse to a profound and up-to-date treatment of the fundamental issues involved in the debate on democracy as an international legal principle.

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Thomas Jaye. *Issues of Sovereignty, Strategy and Security in the Economic Community of West African States (ECOWAS): Intervention in the Liberian Civil War*. Lewiston, New York: Edwin Mellen Press, 2003. 360pp. £74.95 ISBN: 0773468064; Adekeye Adebajo. *Liberia’s Civil War: Nigeria, ECOMOG, and Regional Security in West Africa*. Boulder: Lynne Rienner, 2002. 300pp. \$55, £46.50 ISBN: 1588260526; Adekeye Adebajo. *Building Peace in West Africa: Liberia, Sierra Leone, and Guinea-Bissau*. Boulder: Lynne Rienner, 2002. 150pp. \$12.95, £10.95 ISBN: 1588260771

If Western media reports are to be believed, the African political landscape is perennially littered with recurrent human savagery and intractable internecine wars.<sup>1</sup> In this saga of anomie, Africa has become a byword for political instability and brutal civil wars. The rest of the world seems to be weary of African misery or, perhaps, it would seem that the

<sup>11</sup> See S. Chesterman, *Just War or Just Peace? Humanitarian Intervention and International Law* (2001), at 88.

<sup>1</sup> For a recent review of the historical distortion of the African imagery in the Western media, see for example, Milton Allimadi, *The Hearts of Darkness: How White Writers Created the Racist Image of Africa* (2003).