

ALISON DUXBURY

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The Participation of States in International Organisations

The Role of Human Rights and Democracy



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FOREWORD

It is a pleasant task to be asked to write a foreword to this work, which is a comprehensive yet critical appraisal of the role of human rights, legitimacy and democracy in the practice of international organisations. It is the product of a doctoral research, departing from the 1995 suspension of Nigeria's Commonwealth membership after a coup d'état put in question respect for human rights and democratic government in the country and ending with the 2009 suspension of Fiji's rights as a member. A feature of the work is that it puts the legally significant events into a broader political and historical perspective, thus establishing links between international law and international relations, the two interacting in the day-to-day operation of intergovernmental organisations. It is also a remarkably thorough account of membership practice.

The study is structured in six chapters. Chapter 1 sets out the institutional framework in light of the human rights movement and the concept of legitimacy. Chapter 2 addresses the developing principle of universality in the League of Nations and the United Nations, and the tension between universality and other goals, including the promotion of democracy and human rights. Chapters 3 and 4 cover a broad range of regional organisations, addressing the respective differences in their membership criteria and practice in Europe (Chapter 3) and in 'closed' organisations such as ASEAN, the Commonwealth and the CSCE (Chapter 4). Professor Duxbury concludes that suspension or exclusion from membership in cases such as Zimbabwe and Fiji have had little effect 'at least in the short term'; the proviso is important. Chapter 5 tackles the complex interaction between the human rights aspirations of specialised organisations (the WTO, regional economic communities and the UN specialised agencies) and the functional limitations of their mandates as set out in the constituent instruments. Finally, Chapter 6 draws some conclusions on the practical implications of upholding democracy and human rights as membership criteria both for concerned states and for the international organisations in question.

Discussion of the role of global values and of that vague notion of 'legitimacy' in the operation of international institutions is important, given the continued expansion of the roles intergovernmental organisations play, from managing sanctions programmes to governing territory. Among many other things, international organisations have become a platform for coordinated responses to undemocratic and oppressive governments. However, as Duxbury rightly observes, whether applying 'democratisation from above' through membership criteria or exclusion mechanisms could help solve the democratic deficit within international organisations themselves is at best an open question.

Last but not least, it is a particular pleasure to note the author's comment that 'much of the work was undertaken while resident at Cambridge', in the Lauterpacht Centre for International Law. For twenty-five years the Centre has been a forum for discussion of responses to the various challenges at the international level, and to the role of law in meeting those challenges. I am sure the present work will foster further exchanges on the institutional aspects of the promotion of democracy and respect for human rights.

James Crawford
Whewell Professor of International Law
Director, Lauterpacht Centre for International Law
University of Cambridge
16 May 2010

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In 1995 the Commonwealth suspended Nigeria from membership following the installation of military rule in that country and, consequently, the violation of one of the organisation's constitutional documents, the Harare Declaration. The decision to suspend Nigeria provided the basis for my interest in the role of human rights and democracy in determining the participation of states in international organisations and led me to investigate the practice of other institutions. Given the starting point for this research, it is appropriate that one of the most recent examples discussed in this book is the Commonwealth's decision to suspend Fiji on 1 September 2009.

Many people have assisted me with my interest in this topic over the years. This book is based on my doctoral thesis, submitted to the University of Melbourne in 2008. Importantly, I would like to thank my two supervisors, Professors Tim McCormack and Gerry Simpson. Their invaluable advice and constructive criticism enabled me to retain my enthusiasm for this research throughout the life of the original thesis. The two examiners, Professors Nigel White and Robert McCorquodale, made a number of very useful suggestions for converting the thesis into a book. My colleagues at the University of Melbourne, John Tobin, Bruce Oswald and David Brennan, generously agreed to read parts of the manuscript at various stages in its formation. Professor Brad Roth also provided helpful comments on a number of chapters.

I benefited enormously from two periods of research and writing at the Lauterpacht Centre for International Law at the University of Cambridge in 2004 and 2006. The Lauterpacht Centre provides a unique environment for international law research and much of this work was undertaken while resident in Cambridge.

My thanks are extended to Finola O'Sullivan, Nienke van Schaverbeke and Richard Woodham at Cambridge University Press for their assistance with publication. I would also like to thank Rebecca Hughes and

Sara Dehm for their work on formatting the manuscript and compiling the bibliography. Librarians in a number of international organisations and research institutions provided access to the necessary documents.

Aspects of this book have previously been published as 'Bigger or Better? The Role of Human Rights and Democracy in Determining Membership of the European Institutions' (2004) 73 *Nordic Journal of International Law* 421. I have examined the Commonwealth's membership practice in 'Rejuvenating the Commonwealth: The Human Rights Remedy' (1997) 46 *Int'l & Comp. L.Q.* 344; and 'Reviewing the Commonwealth's Rights Record: From Recognition to Realisation' (2003) 19 *South African Journal on Human Rights* 636 (published by Juta and Co Ltd). Material on Austria and the European Union appears in 'Austria and the European Union – The Report of the "Three Wise Men"' (2000) 1 *Melbourne Journal of International Law* 169. The Pacific Islands Forum has previously been discussed in 'Moving Towards or Turning Away from Institutions? The Future of International Organizations in Asia and the Pacific' (2007) 11 *Sing. Y.B. Int'l L.* 177. I am grateful to the editors and publishers of these journals for allowing me to reproduce parts of these articles.

This book is dedicated to my parents.

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LIST OF ABBREVIATIONS

AEC	African Economic Community
<i>Afr. Sec. R.</i>	<i>African Security Review</i>
AHSG	Assembly of Heads of State and Government (of the Organization of African Unity)
<i>Akron L.R.</i>	<i>Akron Law Review</i>
<i>Am. J. Int'l L.</i>	<i>American Journal of International Law</i>
<i>Am. J. Pol. Sci.</i>	<i>American Journal of Political Science</i>
APRM	African Peer Review Mechanism
ASEAN	Association of Southeast Asian Nations
<i>ASIL Insights</i>	<i>American Society of International Law Insights</i>
ATS	Australian Treaty Series
AU	African Union
<i>Aust. Y.B. Int'l L.</i>	<i>Australian Yearbook of International Law</i>
<i>Austrian J. Pub. & Int'l L.</i>	<i>Austrian Journal of Public and International Law</i>
<i>Austrian Rev. Int'l & Eur. L.</i>	<i>Austrian Review of International and European Law</i>
<i>Baltic Y.B. Int'l L.</i>	<i>Baltic Yearbook of International Law</i>
<i>Boston Coll. Int'l & Comp. L.R.</i>	<i>Boston College International and Comparative Law Review</i>
<i>Brit. Y.B. Int'l L.</i>	<i>British Yearbook of International Law</i>
<i>Cal. W. Int'l L.J.</i>	<i>California Western International Law Journal</i>
CAN	Comunidad Andina/Andean Community
CARICOM	Caribbean Community
<i>Case W. Res. J. Int'l L.</i>	<i>Case Western Reserve Journal of International Law</i>
CHOGM	Commonwealth Heads of Government Meeting
CMAG	Commonwealth Ministerial Action Group
<i>Colum. L.R.</i>	<i>Columbia Law Review</i>
<i>Common Mkt. L.R.</i>	<i>Common Market Law Review</i>
<i>Comp. & Int'l L.J. Sth Af.</i>	<i>Comparative and International Law Journal of Southern Africa</i>
CSCE	Conference on Security and Co-operation in Europe
CSO	Committee of Senior Officials of the Conference on Security and Co-operation in Europe

<i>Duke L.J.</i>	<i>Duke Law Journal</i>
EC	European Community
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECJ	European Court of Justice
ECOMOG	Economic Community of West African States Monitoring Group
ECOSOC	Economic and Social Council of the United Nations
ECOWAS	Economic Community of West African States
EEC	European Economic Community
EU	European Union
<i>Eur. J. Int'l L.</i>	<i>European Journal of International Law</i>
FAO	Food and Agricultural Organization
<i>Far East. Eco. R.</i>	<i>Far Eastern Economic Review</i>
FRY	Federal Republic of Yugoslavia
<i>G.W. Int'l L.R.</i>	<i>George Washington International Law Review</i>
GAOR	General Assembly Official Records
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
<i>Glob. Gov.</i>	<i>Global Governance</i>
<i>Harv. Asian-Pac. R.</i>	<i>Harvard Asian Pacific Review</i>
<i>Harv. Int'l L.J.</i>	<i>Harvard International Law Journal</i>
<i>Hast. Con. L.Q.</i>	<i>Hastings Constitutional Law Quarterly</i>
<i>Hum. Rts. L.J.</i>	<i>Human Rights Law Journal</i>
IAEA	International Atomic Energy Agency
IAIILS	Inter-American Institute of International Legal Studies
IBRD	International Bank for Reconstruction and Development
ICAO	International Civil Aviation Organization
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ILA	International Law Association
ILM	International Legal Materials
ILO	International Labour Organization
ILR	International Law Reports
IMF	International Monetary Fund
<i>Ind. Int'l & Comp. L.R.</i>	<i>Indiana International and Comparative Law Review</i>
<i>Int. Org.</i>	<i>International Organization</i>

<i>Int'l Org. L.R.</i>	<i>International Organizations Law Review</i>
<i>Int'l & Comp. L.Q.</i>	<i>International and Comparative Law Quarterly</i>
<i>Int'l Concil.</i>	<i>International Conciliation</i>
<i>Int'l Sec.</i>	<i>International Security</i>
<i>Int'l Soc. Sci. J.</i>	<i>International Social Science Journal</i>
<i>Israel Y.B. Hum. Rts</i>	<i>Israel Yearbook on Human Rights</i>
ITU	International Telecommunication Union
<i>J. Common Mkt Stud.</i>	<i>Journal of Common Market Studies</i>
<i>J. Dem.</i>	<i>Journal of Democracy</i>
<i>J. Hist. Int'l L.</i>	<i>Journal of the History of International Law</i>
<i>J. Int'l Eco. L.</i>	<i>Journal of International Economic Law</i>
<i>J. World Trade L.</i>	<i>Journal of World Trade Law</i>
<i>John Marsh. L.R.</i>	<i>John Marshall Law Review</i>
<i>Latin Am. Pol. & Soc.</i>	<i>Latin American Politics and Society</i>
<i>L.N. Off. J.</i>	<i>League of Nations Official Journal</i>
<i>Leiden J. Int'l L.</i>	<i>Leiden Journal of International Law</i>
<i>Liv. L.R.</i>	<i>Liverpool Law Review</i>
<i>Loyola LA Int'l & Comp. L.J.</i>	<i>Loyola LA International and Comparative Law Journal</i>
MAP	Membership Action Plan (of NATO)
<i>Melb. U. L.R.</i>	<i>Melbourne University Law Review</i>
MERCOSUR	Mercado Común del Sur/Southern Cone Common Market
MFN	Most-favoured nation
<i>Mil. L.R.</i>	<i>Military Law Review</i>
<i>Mod. L.R.</i>	<i>Modern Law Review</i>
<i>N.Y. J. Int'l L. & Pol.</i>	<i>New York Journal of International Law and Politics</i>
<i>N.Z. Int'l R</i>	<i>New Zealand International Review</i>
NATO	North Atlantic Treaty Organization
NEPAD	New Partnership for African Development
<i>New Eng. L.R.</i>	<i>New England Law Review</i>
OAS	Organization of American States
OAU	Organization of African Unity
OSCE	Organization for Security and Co-operation in Europe
<i>Phil. Pub. Aff.</i>	<i>Philosophy and Public Affairs</i>
PNTR	Permanent Normal Trade Relations
PRC	People's Republic of China
PSC	Peace and Security Council of the African Union
PTA	Preferential Trade Agreement
REC	Regional Economic Community

SADC	Southern African Development Community
SCOR	Security Council Official Records
<i>Sec. Dialogue</i>	<i>Security Dialogue</i>
SFRY	Socialist Federal Republic of Yugoslavia
<i>Sing. Y.B. Int'l L</i>	<i>Singapore Yearbook of International Law</i>
SLORC	State Law and Order Restoration Council (of Burma)
SPDC	State Peace and Development Council (of Burma)
SPF	South Pacific Forum
<i>Stan. J. Int'l L.</i>	<i>Stanford Journal of International Law</i>
TEU	Treaty on European Union
<i>Transnat'l L. & Contemp. Probs.</i>	<i>Transnational Law and Contemporary Problems</i>
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
<i>U. Miami Inter-Am. L.R.</i>	<i>University of Miami Inter-American Law Review</i>
<i>U.N. Jurid. Y.B.</i>	<i>United Nations Juridical Yearbook</i>
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNCIO	United Nations Conference on International Organization
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNTS	United Nations Treaty Series
UPU	Universal Postal Union
USA	United States of America
USSR	Union of Soviet Socialist Republics
VCLT	Vienna Convention on the Law of Treaties
WEOG	Western European and Others Group (of the United Nations)
WHO	World Health Organization
<i>Wis. L.R.</i>	<i>Wisconsin Law Review</i>
WIPO	World Intellectual Property Organization
WMO	World Meteorological Organization
WTO	World Trade Organization
<i>Y.B. Eur. Conv. Hum. Rts.</i>	<i>Yearbook of the European Convention on Human Rights</i>
<i>Y.B. Int'l L. Comm</i>	<i>Yearbook of the International Law Commission</i>
<i>Y.B. Int'l Orgs.</i>	<i>Yearbook of International Organizations</i>
<i>Y.B.U.N</i>	<i>Yearbook of the United Nations</i>
<i>Yale J. Int'l L.</i>	<i>Yale Journal of International Law</i>