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978-0-521-19200-2 - The Participation of States in International Organisations: The Role of Human Rights and Democracy

Alison Duxbury

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## Introduction

International organisations are increasingly promoting human rights and democratic governance as principles relevant in deciding applications for admission by non-member states. In the 1990s the importance of these standards was underlined by suggestions that a state's membership of institutions such as the United Nations and its involvement in regional security measures should be based on adherence to certain fundamental values, including democracy.<sup>1</sup> Not only have human rights and democracy norms been utilised in determining the admission of a potential member to an international organisation, but they have also been taken into account in resolving the question of whether existing members, or their representatives, should be excluded from an organisation's processes. Such determinations have been made in the Commonwealth, the Organization of American States and in decisions to deny accreditation to delegations in the General Assembly of the United Nations. When organisations have ignored these principles in their membership policies, their choices have been criticised – as was the case when the Association of Southeast Asian Nations admitted Burma in 1997.<sup>2</sup>

In listing these examples, the impression may be given that the practice of requiring potential applicants, as well as existing members of an organisation, to fulfil certain human rights and democracy criteria is a recent development. However, it would be a mistake to regard this practice as a phenomenon of the last decade of the twentieth century and the first decade of this century exclusively. Significant debates at the Commission on the League of Nations dealt with the question of whether future members of the League should be endowed with democratic or representative institutions.

<sup>1</sup> Thomas Franck, 'The Emerging Right to Democratic Governance' (1992) 86 *Am. J. Int'l L.* 46 at 91; Gregory Fox, 'The Right to Political Participation in International Law' (1992) 17 *Yale J. Int'l L.* 539 at 603; Fernando Tesón, 'The Kantian Theory of International Law' (1992) 92 *Colum. L.R.* 53 at 100.

<sup>2</sup> Mark Baker, 'Welcome to the Authoritarian Club', *The Age* (Melbourne, Australia), 3 June 1997, p. 15.

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The Council of Europe, the first European institution to be established following the Second World War, included human rights and fundamental freedoms in its admission criteria.<sup>3</sup> In 1962 the Organization of American States (OAS) excluded Cuba on the basis that the policies of the Castro government were incompatible with the principles and objectives of the inter-American system, including respect for human rights and democracy.<sup>4</sup> Thus, it would appear that international organisations have embraced the notion that a state's democratic and human rights record should determine its participation, whether that organisation's purpose is the maintenance of peace and security, the promotion of human rights or economic integration.

Many welcome this explicit link between admission to international organisations and human rights and democracy. Kant's proposal for a permanent alliance of 'republican' states in order to prevent war and stop the spread of 'unjust and inhuman passions'<sup>5</sup> in *Perpetual Peace* has been revived to support the idea that only democratic states should be accepted as new members of the United Nations (UN).<sup>6</sup> In these accounts the adjective 'republican' is replaced with either 'liberal'<sup>7</sup> or 'democratic' or both.<sup>8</sup> The process for accreditation of representatives to the General Assembly of the UN has been linked positively to the results of monitored elections.<sup>9</sup> A number of commentators have tested recent admissions to the Council of Europe against the membership criteria located in the organisation's Statute to determine whether its practice has lived up to established standards.<sup>10</sup> The Commonwealth's policy of suspending members subjected to an unconstitutional change of government illustrates that organisation's stance towards military coups. Other commentators have suggested the creation of a new global body, the 'Concert of

<sup>3</sup> Statute of the Council of Europe, opened for signature 5 May 1949, 87 UNTS 103 (entered into force 3 August 1949), Arts. 3–4.

<sup>4</sup> 'Final Act', Eighth Meeting of Consultation of Ministers of Foreign Affairs, Punta del Este, Uruguay, 22–31 January 1962, OEA/Ser.C/II.8 at 'Resolution VI – Exclusion of the Present Government of Cuba from Participation in the Inter-American System'.

<sup>5</sup> Immanuel Kant, *Perpetual Peace: A Philosophical Sketch* (1795), in Nicholas Murray Butler [prefaced], *Perpetual Peace* (Los Angeles: US Library Association, 1932), p. 35.

<sup>6</sup> Tesón, 'Kantian Theory' at 100.

<sup>7</sup> Anne-Marie Burley, 'Toward an Age of Liberal Nations' (1992) 33 *Harv. Int'l L.J.* 393 at 398.

<sup>8</sup> Tesón, 'Kantian Theory' at 61. <sup>9</sup> Fox, 'Right to Political Participation' at 597–604.

<sup>10</sup> Peter Leuprecht, 'Innovations in the European System of Human Rights Protection: Is Enlargement Compatible with Reinforcement?' (1998) 8 *Transnat'l L. & Contemp. Probs.* 313 at 329; Manfred Nowak, 'Is Bosnia and Herzegovina Ready for Membership of the Council of Europe?' (1999) 20 *Hum. Rts. L.J.* 285.

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Democracies', to strengthen cooperation amongst liberal democratic states.<sup>11</sup>

Consequently, both commentators and the practice of organisations when admitting and excluding states appear to support the trend towards what Simpson has termed 'liberal anti-pluralism' – the idea that a state's internal characteristics should determine its status in the world, including its membership of an international organisation.<sup>12</sup> But, despite writers' 'hopes',<sup>13</sup> for a future international order dependent upon democracy, there are doubters and critics. In envisaging alternatives to the contemporary state system, Bull imagined a system of 'ideological homogeneity' characterised by a 'determination to uphold a single kind of political, social and economic system'.<sup>14</sup> While acknowledging the possible advantages of this approach, Bull concluded that any endeavour to 'remould a states [sic] system on principles of ideological fixity and uniformity' is more likely to be a source of disorder than order.<sup>15</sup> Attempts to impose such uniformity on states within international organisations have been criticised in the past as reviving the idea of an 'ill-fated Holy Alliance'.<sup>16</sup> In the same vein, the promotion of any one version of democracy or human rights in an organisation's membership policy could result in charges of a new form of imperialism.<sup>17</sup> The exclusion of states from universal organisations such

<sup>11</sup> G. John Ikenberry and Anne-Marie Slaughter, 'Forging a World of Liberty under Law – US National Security in the 21st Century – Final Report of the Princeton Project on National Security', Report, 2006, p. 25. The US led the creation of the 'Community of Democracies', an informal group of states that have met biannually since 2000. The group formed the democracy caucus at the UN. However, the group has been criticised due to the inclusion of a number of undemocratic countries: see Tod Lindberg, 'The Treaty of the Democratic Peace: What the World Needs Now' (2007) 12(21) *The Weekly Standard*.

<sup>12</sup> Gerry Simpson, 'Two Liberalisms' (2001) 12 *Eur. J. Int'l L.* 537; Gerry Simpson, *Great Powers and Outlaw States – Unequal Sovereigns in the International Legal Order* (Cambridge University Press, 2004), pp. 76–83.

<sup>13</sup> Burley, 'Toward an Age of Liberal Nations' at 403. See also 'Final Report of the Phillimore Committee', reproduced in Florence Wilson, *The Origins of the League Covenant – Documentary History of its Drafting* (London: Leonard and Virginia Woolf, 1928), pp. 137–8.

<sup>14</sup> Hedley Bull, *The Anarchical Society – A Study of Order in World Politics* (New York: Columbia University Press, 1977), p. 247. See also Martin Wight, 'Western Values in International Relations', in Herbert Butterfield and Martin Wight (eds.), *Diplomatic Investigations – Essays in the Theory of International Politics* (London: Allen & Unwin, 1966), p. 89.

<sup>15</sup> Bull, *The Anarchical Society*, p. 248.

<sup>16</sup> David Mitrany, *The Progress of International Government* (New Haven, CT: Yale University Press, 1933), p. 131.

<sup>17</sup> Martti Koskeniemi, '"Intolerant Democracies": A Reaction' (1996) 37 *Harv. Int'l L.J.* 231.

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as the UN for failing to meet certain standards might be regarded as ‘a retrograde step’ by newly independent countries.<sup>18</sup>

This book examines the role of human rights and democracy in determining the participation of states in international organisations against the backdrop of the fundamental principles and purposes espoused by different organisations, such as universality, regional integration and sovereignty. This exploration of the membership practice is not only concerned with the results of membership decisions (that is, whether a state is admitted to or excluded from an organisation), but also with the discussions and processes leading to particular outcomes. The central argument revolves around the concept of legitimacy and has a number of elements. First, it is argued that a range of international organisations have utilised human rights and democracy in their membership policies for a variety of different reasons. Second, it is suggested that the practice may be questioned when viewed in the light of three indicia of legitimacy: an organisation’s functions, the provisions of its constitutional instrument, and the clarity and coherence of the criteria applied. Third, this book contends that the practice raises questions as to the way in which democracy is incorporated into the procedures of international organisations, in particular their procedures for determining membership.

These arguments give rise to a number of associated issues. The terms ‘human rights’ and ‘democracy’ are notoriously difficult to define and translate in the international legal sphere. Given possible differences in definition and approach to these principles, it would appear desirable to allow a degree of latitude in determining whether states have fulfilled the necessary criteria. But if the membership conditions are too flexible, then states falling short of the required standards could be admitted. If the criteria are too rigid, then they will fail to take into account the special circumstances faced by new democracies. The use of human rights and democracy as membership criteria may be a method of promoting the purposes and functions of an international organisation or, as Claude suggested, it may be seen simply as an inappropriate ‘moralization of the membership question’.<sup>19</sup> The relationship between the aspirations and functions of an organisation and the role of human rights and democracy as membership criteria

<sup>18</sup> Gerry Simpson, ‘Imagined Consent: Democratic Liberalism and International Legal Theory’ (1994) 15 *Aust. Y.B. Int’l L.* 103 at 121.

<sup>19</sup> Inis L. Claude, *Swords into Plowshares – The Problems and Progress of International Organization*, 4th edn (New York: Random House, 1971), p. 95.

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will be an underlying theme in this study. In exploring these issues, this work reveals a number of tensions with the practice of including human rights and democracy criteria in admission and exclusion decisions, but nevertheless concludes that, in most cases, the practice can be regarded as a legitimate use of an organisation's membership policies.

### Scope and methodology

This work explores these issues in the context of the membership practice and processes of a number of international organisations at both the admission and exclusion stages. It is based on the premise that the membership criteria of international organisations are important as they not only inform us about the extent of membership, but also the organisation's aspirations.<sup>20</sup> The importance of membership criteria in international institutional law is underlined by Claude's suggestion that if students seeking to understand the UN had to choose between scanning the list of members and reading the Charter, they would be better served by undertaking the former task.<sup>21</sup> Fundamentally, membership criteria are not only about establishing the values of an organisation and the commonality amongst state parties, but are also about putting in place conditions in order to ensure that members can participate in the organisation's activities and fulfil its purposes.<sup>22</sup> Thus, '[s]tates should be accepted, or excluded, sought after as members, or left alone, on the basis of judgment as to whether their participation is essential to, or incompatible with, the realization of the aims of the organization'.<sup>23</sup> The organisations studied in this book display a diverse range of aims and functions, while at the same time adopting remarkably similar membership policies.

Sohn has described the 'science of international organizations' as a branch of political science with an increasing element of international constitutional law.<sup>24</sup> As with any study concerning the activities of

<sup>20</sup> Clive Archer, *International Organizations*, 3rd edn (New York: Routledge, 2001), p. 45.

<sup>21</sup> Claude, *Swords into Plowshares*, p. 100.

<sup>22</sup> See comments by Cremona in the context of the EU's admission criteria: Marise Cremona, 'Regional Integration and the Rule of Law: Some Issues and Options', in Robert Devlin and Antoni Esteveadeordal (eds.), *Bridges for Development: Policies and Institutions for Trade and Integration* (Washington, D.C.: Inter-American Development Bank, 2003), p. 152.

<sup>23</sup> Claude, *Swords into Plowshares*, p. 86.

<sup>24</sup> Louis B. Sohn, 'The Growth of the Science of International Organizations', in Karl Deutsch and Stanley Hoffman (eds.), *The Relevance of International Law - Essays in Honor of Leo Gross* (Cambridge, MA: Schenkman Publishing, 1968), p. 251.

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international organisations, the difficulty in separating the legal and political aspects of the membership process is acknowledged. It has been stated that '[t]he interplay between law, politics and ideology appears to be more in evidence in admission to international organizations than in any other area of international law'.<sup>25</sup> The relationship between political and legal criteria is examined more fully in Chapter 1. At this stage it should be noted that this study supports the view, articulated in the International Court of Justice (ICJ), that decisions regarding membership are part of the international legal process.<sup>26</sup> As Henkin has stated in the context of recognition issues, '[l]aw does not determine the policy of the governments on these issues, but it directs whatever actions might be taken and limits the choices available to governments'.<sup>27</sup> Consequently, this book is essentially a study of international law or, more precisely, of international institutional law. Law matters, as the range of decisions available is ultimately subject to an international treaty – an organisation's constituent instrument.

Given the number of international institutions operating in the world today, it is important to define the scope of this work. The starting point is the membership criteria located in the constituent instruments of the international organisations chosen for study. As recognised by Sohn, the constitutions of such organisations are only the beginning: '[t]here is no easy substitute for the tremendous job of investigating the actual practice of international organizations in applying these constitutions, and for the grimy task of sifting through thousands of volumes of official records of a great variety of international organizations'.<sup>28</sup> In selecting the organisations for study, two issues have been kept in mind. First, as this book is concerned with the role of human rights and democracy as membership criteria, only those organisations where such principles have produced an impact on admission and exclusion are included. It is recognised that this work is self-selecting in terms of the organisations studied, although the diversity of the organisations engaging in the

<sup>25</sup> Ebere Osieke, 'Admission to Membership in International Organizations: The Case of Namibia' (1980) 51 *Brit. Y.B. Int'l L.* 189.

<sup>26</sup> *Conditions of Admission of a State to Membership in the United Nations (Advisory Opinion)* [1948] ICJ Rep. 57 ('First Admissions Case'). See also Konstantinos Magliveras, *Exclusion from Participation in International Organisations – The Law and Practice behind Member States' Expulsion and Suspension of Membership* (The Hague: Kluwer Law International, 1999), p. 2.

<sup>27</sup> Louis Henkin, *How Nations Behave*, 2nd edn (Columbia University Press, 1979), p. 16.

<sup>28</sup> Sohn, 'Growth of the Science', p. 267.

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practice suggests that more general conclusions can be drawn. Second, in choosing amongst these organisations, attention has been paid to the major methods of classifying international organisations. International institutional law distinguishes between organisations based on their purpose or function, their membership or their powers.<sup>29</sup> Classification is not simply a method of labelling institutions, as it may indicate fundamental differences. This study adopts a classification based on two broad distinctions: universal versus closed organisations (organisations seeking to have all states as members, as distinct from those that are closed to a particular, usually regional, group) and general versus specialised organisations (organisations with general political functions as distinct from organisations established to perform a specific task). It is recognised that in some sense these divisions are artificial – no organisation has achieved complete universality, just as it is sometimes difficult to distinguish between broader political roles and more technical functions.

Taking into account this method of classification, this book explores the membership practice of the two most significant universal organisations, the League of Nations and the UN, the major regional organisations in Europe, the Americas, Asia, Africa and the Pacific, and two other entities with broad political functions: the Commonwealth and the Organization for Security and Co-operation in Europe (OSCE). In choosing amongst the many specialised organisations operating in the world, this work concentrates on the specialised agencies of the UN as a distinct group of organisations with both technical functions and aspirations to universal membership. It also examines the practice of another group of specialised bodies where human rights issues have increasingly been found to have a role to play: global and regional free trade organisations. By arranging the material on the basis of the distinction between universal, closed and specialised organisations, one of the aims is to determine the extent to which these differences are important in determining the role played by human rights and democracy in membership policies. Furthermore, although this system of classification has been adopted, in a sense this book is also an historical study, as events in the

<sup>29</sup> Michel Virally, 'Definition and Classification: A Legal Approach' (1977) 29 *Int'l Soc. Sci. J.* 58 at 64–5. See also Abdullah El-Erian, 'Relations between States and Inter-Governmental Organizations' [1963] 2 *Y.B Int'l L. Comm.* 159 at 167–9; Henry G. Schermers and Niels M. Blokker, *International Institutional Law: Unity within Diversity*, 4th edn (Boston: Brill Academic Publishers, 2003) at paras. 48–63; Archer, *International Organizations*, Chapter 2.



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League of Nations paved the way for the UN, and the establishment of the European institutions preceded similar developments in Africa, Asia and the Americas.

Chapter 1 examines two developments in international law since 1945 of fundamental significance to this book: the rise of institutions and the expansion of international human rights law. It explains the growth of international institutional law and sets out the way in which membership of an organisation may be gained or lost. Additionally, it outlines the range of definitions of human rights and democracy adopted in international instruments and the problems that may be encountered in using these criteria in membership decisions. Most significantly, Chapter 1 introduces the framework for exploring the role of human rights and democracy in determining the membership of organisations: the concept of legitimacy. The term 'legitimacy' has been subject to a number of different meanings in political and legal theory in relation to both national and international society. In this work three aspects of legitimacy are adopted as a lens through which to view the membership policies and practice of international organisations: the compatibility of the practice of attaching conditions with the constituent instrument, the consistency of the criteria with the organisation's functions, and the clarity and coherence of the human rights and democracy criteria employed.

In accordance with the approach to classification outlined above, Chapter 2 explores the membership practice of two universal organisations: the League of Nations and the UN. Both organisations were established following world wars with the stated aim of securing peace. To varying degrees they have used their membership criteria as a method of legitimising a state's place in the international community, while at the same time moving towards the goal of universal membership. The chapter begins by reviewing the relationship between the principles of peace, democracy and universality. It examines the drafting of the admission provisions in the Covenant of the League of Nations and the relevance of human rights and democratic principles to the interpretation of those provisions during the life of the League. The analysis then moves to the UN and its admission decisions in three key periods: in the early years, when a number of applications were stalled due to the East-West divide; in the 1960s and 1970s during the period of decolonisation; and, most recently, when admitting states from the Soviet Union and the former Yugoslavia. Subsequently, the relevance of human rights and democratic principles to the practice of excluding members from the



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League of Nations and United Nations is examined. The analysis in this chapter focuses on the way in which the two organisations have reconciled their restrictive membership criteria with the goal of universality and their primary function of securing international peace.

Outside the universal organisations, some of the most significant developments in international institutional law have occurred in regional organisations. Chapter 3 commences the study of regional bodies by concentrating on the membership practice of three European organisations established after the Second World War: the European Communities/European Union (EU), the Council of Europe and the North Atlantic Treaty Organization (NATO). All three organisations were established to pursue the task of regional integration, albeit with different functions. As part of the ongoing project to integrate Europe, the European institutions have introduced increasingly detailed human rights and democracy conditions into their admission criteria. The discussion of the membership practice focuses mainly on admission and is divided into three periods: pre-1990s, early 1990s, and late 1990s to 2004. The chapter assesses the appropriateness of using rights as a method of integrating Europe, taking into account the way in which the criteria have been applied within individual organisations and across the three organisations, as well as the functions fulfilled by each organisation.

In Chapter 4 attention is turned to the practice of other international organisations with a restricted membership. The organisations examined in this chapter include regional organisations with broad-ranging political functions established in the Americas, Africa, Asia and the Pacific, as well as forums of cooperation such as the Commonwealth and the OSCE. Whereas the discussion of human rights and democracy conditions in the membership practice of the European institutions is for the most part concerned with the admission of new members, in these organisations the issue has arisen at the other end of the process – when suspending an existing member. The organisations have pursued this practice despite the fact that their constitutional instruments share a common concern with upholding sovereignty and non-intervention in the affairs of member states. The chapter concludes by defining the democratic principles given precedence in decisions to exclude states from membership, and evaluating the suitability and efficacy of suspension as a sanction for violating an organisation's principles.

Chapter 5 moves away from the discussion of international organisations designed to perform general political functions to examine the membership practice of organisations with specialised or technical goals.

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These organisations are divided into the specialised agencies of the UN and international trade organisations. First, the analysis centres on the practice of the specialised agencies in excluding states from membership for breaches of democratic or human rights principles in apparent contradiction to the principle of universality, the agencies' technical mandates and, perhaps most importantly, the absence of a provision allowing for suspension or expulsion. The chapter then discusses the admission practice of the World Trade Organization (WTO) and the exclusion provisions of the regional economic communities to determine the way in which the linkage between the economic and trading purposes of an organisation and the promotion of human rights and democracy standards has been tackled in membership criteria.

Chapter 6 draws together a number of threads regarding legitimacy, democracy and membership, focusing on the different roles played by human rights and democracy criteria in determining participation in international organisations and the problems with the practice that may undermine its legitimacy. One key issue dominating recent discussion of international institutions is the potential 'democratic deficit' in their practices and procedures. In light of this criticism, it will be argued that changes need to be made to the process for determining membership in a number of organisations to increase accountability and transparency. Finally, although it is not the purpose of this work to examine whether membership conditionality results in improvements to a state's internal situation, this book will provide some comments on the consequences of the practice from the perspective of the promotion and protection of human rights and democracy.

Before commencing this study of the membership provisions and practice of international organisations, it is important to recognise that this book does not purport to deal with all aspects of participation in international organisations and their organs. This work is concerned with the participation of states in international organisations through membership, rather than other types of association. Although the various institutions discussed acknowledge different forms of participation, for example, associate membership or observer status,<sup>30</sup> the focus here will be on the means of acquiring full membership through admission, and the termination of membership, notably by suspension or expulsion.

<sup>30</sup> For a description of other forms of membership, see Schermers and Blokker, *International Institutional Law* at paras. 166–79.