DIOGENES

Diogenes 220: 33–43
ISSN 0392-1921

International Law and Democracy

Kathia Martin-Chenut

This contribution intends to examine the role of democracy in the evolution of international law, and equally the role of the latter in the advancement of democracy, or, one might say, in its 'reinvention'.

1. The role of democracy in the evolution of international law

Two aspects of this extremely broad theme will be succinctly addressed: firstly, the influence of processes of democratization at the level of the individual nation on the evolution of international law (1.1), and secondly the extent of penetration of democracy and democratic mechanisms within the processes of creation and application of international law (1.2).

1.1 The influence of national processes of democratization on the evolution of international law

In the United Nations Millennium Declaration, adopted in New York in September 2000, is found the affirmation:

> We will spare no effort *to promote democracy and strengthen the rule of law*, as well as respect for all internationally recognized human rights and fundamental freedoms, including the right to development. (§ 24 A/55/L.2, 8 September 2000)

In consequence of which, it was decided:

> – To strengthen the capacity of all our countries to implement the principles and practices of democracy and respect for human rights, including minority rights [. . .]
> – To work collectively for more inclusive political processes, allowing genuine participation by all citizens in all our countries. (§ 25)

Copyright © UNESCO 2008
SAGE: Los Angeles, London, New Delhi and Singapore, http://dio.sagepub.com
DOI: 10.1177/0392192108096827

https://doi.org/10.1177/0392192108096827 Published online by Cambridge University Press

This solemn commitment embodies a significant transformation that had emerged in the international domain, notably from the beginning of the 1990s following the fall of the Berlin Wall.

A study presented at a 2001 Colloquium in Aix-en-Provence around the theme of 'The Contribution of the United Nations to State Democratisation' (Sicilianos, 2002) points out that the position taken by the United Nations with regard to the type of regime adopted by the various member states had undergone significant evolution. Up until the end of the 1980s, the UN had maintained a strictly neutral attitude, apart from a few rare exceptions, such as its position towards the apartheid regime of South Africa.

This study showed up a significant contradiction between this earlier position of the UN and the whole body of normative human rights charters developed over the years within the organization. This attitude was even characterized as being 'schizophrenic' (Sicilianos, 2002): on the one hand there was the UN's neutral stand with regard to states' choice of political regime, but on the other there existed, in relation to international human rights protection, a body of thought critical of the arbitrariness of authoritarian regimes and the consequences of this for human rights. Internationally speaking, this body of thought was developed in the 1970s within the Sub-commission on Prevention of Discrimination and the Protection of Minorities. The Commission became concerned about the application of legislations of exception in certain countries.[1] This extensive consideration gave rise to the report drawn up by Nicole Questiaux in 1982,[2] a work taken up and further developed in the 1990s by Leandro Despouy.[3] It should be noted that such matters are still applicable today. One need only observe the changes in the criminal policies of certain states post 9/11. These UN reports should be read in the context of ever more extensive application of policies of exception by various countries, but in the absence of a proclamation of a state of exception,[4] thus confirming the assertion of Giorgio Agamben (2003: 12) on the tendency for states of exception to be presented as 'the dominant government paradigm in the contemporary political situation'.

Returning to the issue of the UN's adoption of a position of neutrality, it was based on the near-absolute freedom enjoyed by states as to the choice of their own system of government, by virtue of the interpretation of article 2, § 7 of the UN Charter (principle of non-intervention). This position has been reconfirmed on various occasions by resolutions of the General Assembly[5] or again by the jurisprudence of the International Court of Justice (ICJ).[6]

The overriding freedom of states to choose their own political system arose as a consequence of the principles of sovereignty and non-intervention. As already mentioned, exceptions to this hands-off attitude involved extreme cases such as the Nazi or Fascist regimes – and notably the role exercised by the UN in the eradication of the racist apartheid regime.

The change of attitude by the UN took place only at the end of the 1980s, characterized by a shift from basing recognition on the criterion of effective exercise of power (or equivalence of political regimes) to that of democratic legitimacy (or the preponderance of pluralist democracy).

In 1988 the General Assembly included in its agenda an item on *Enhancing the effectiveness of the principle of regular, periodic and genuine elections*. As the first resolu-

https://doi.org/10.1177/0392192108096827 Published online by Cambridge University Press

tions from this period began to emerge, recourse was again made to Article 21, § 3 of the Universal Declaration of Human Rights (UDHR). It prescribes that 'the will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage [. . .]'. This change of stance by the UN was not unassociated with the increasing surge of democratization returning to southern Europe (Portugal, Greece, Spain) in the mid-1970s, and then, from the 1980s on, to Central and South America.[7]

We have thus observed a progressive shift from a position of neutrality as to the choice of political regime to one of recognizing the intrinsic link between democracy and human rights. The Vienna Declaration, which was the outcome of the World Conference on Human Rights in 1993, established an express link between *democracy*, development and human rights, insisting that these are interdependent and mutually reinforcing. According to this declaration 'democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives. In the context of the above, the promotion and protection of human rights and fundamental freedoms at the national and international levels should be universal and conducted without conditions attached. The international community should support the strengthening and promoting of democracy, development and respect for human rights and freedoms in the entire world.'[8]

Still on the world scale, various resolutions of the General Assembly and of the former UN Human Rights Commission[9] have favoured the emergence of a right to democracy[10] and of a right to be governed democratically. The democratic legitimacy enshrined in the text of the Universal Declaration of Human Rights is reaffirmed, and the people are given renewed status in contrast to the State, with emphasis on the rights of citizens.

We can thus advance the idea of the existence of a *virtuous circle* linking democratization on the national level with a strengthened international law. An acceleration in the growth of international law, notably relating to human rights, has been observable in parallel with the moves towards democratization. The collapse of the authoritarian regimes and the subsequent democratization of the countries concerned have contributed to the opening up of internal legal systems to international law, encouraging the adoption of international treaties by these states and the acceptance of international jurisdiction over the respect for human rights on the national level.

In relation to opening up internal legal systems to international law, the wave of constitutional reforms which swept through Latin America at the end of the 1980s and the beginning of the 1990s is instructive. Various countries in the region reformed their constitutions and embedded in them access to international law, even granting a privileged status, in the normative hierarchy, to treaties relating to human rights.[11]

Adhesions of states to treaties (global or regional) relating to human rights and acceptance of international jurisdiction have multiplied. As well as the progressive extention of international monitoring carried out by the United Nations Human Rights Committee (the control body for the International Covenant on Civil and Political Rights), with more and more nations signing up to the American Human Rights Convention (AHRC) and the recognition of the competence of the Inter-

https://doi.org/10.1177/0392192108096827 Published online by Cambridge University Press

American Court by an ever increasing number of countries, the inter-American system for the protection of human rights has been able to develop its jurisprudence, both quantitatively and qualitatively. This has in itself promoted the cause of democracy through the dissemination and impact of its decisions on member states. The aforementioned *virtuous circle* can in short be characterized in the following manner: democracy reinforces the authority of the international judicial bodies and the jurisprudence generated by these bodies defends and upholds the democratic model.

Within the inter-American system for the protection of human rights, even if several official documents make reference to democracy or the issue of democracy,[12] and this since the establishment of the Organization of American States (OAS),[13] the defence of the democratic model is effected more and more through the control exercised by the Inter-American Commission for Human Rights (IACHR) and by the Inter-American Court for Human Rights (IACtHR). This monitoring has taken a considerable leap forward since the demise of several authoritarian regimes in the region. The inter-American system views democracy as the only political system allowing the effective application of human rights.[14] The two control bodies regard as inviolable the rights that are necessary for the protection of democracy.[15] Regarding political rights, the IACHR has expressed its opposition to privileges such as the appointment to a position of Senator for life of General Augusto Pinochet.[16] Further in relation to political rights, the Court found Nicaragua guilty of violating article 23 of the Convention for having prevented members of an indigenous community (an ethnic minority) from participating in municipal elections. In the Court's view, demanding that all candidates should be members of a political party was contrary to the Convention, especially when such a requirement failed to respect the political culture of the indigenous community concerned.[17]

In another regional system for the protection of human rights, that of Europe, the equivalent European Court has repeatedly insisted on the central role played by democracy. It (democracy) is 'without doubt a fundamental element of the European public order'.[18] In the view of the Court, 'freedom of political debate is at the very core of a democratic society which prevails throughout the Convention'.[19] As part of a decision in respect of the dissolution of a political party by the Turkish Constitutional Court, the European Court asserted that democracy was the only political model compatible with the European Convention on Human Rights.[20]

Neither can one neglect the possibility of defending the democratic model through the exercise of regional integration law. By way of illustration can be mentioned the present debate over the entry of Venezuela into MERCOSUR and the existence of the 'democracy clause' in the Ushuaia Protocol, which lays down *democracy* as being a fundamental criterion for membership in the regional grouping.

A further aspect of the initial issue addressed in this discussion, that is, the role played by democracy in the evolution of international law, is represented by the penetration of democracy into the processes of creation and application of international law, especially through the emergence of new actors in the field. In the words of Maurice Bourquin (1950: 24), 'the law of the people no longer presents as an esoteric discipline quite detached from human experience. It speaks now to the common man. It takes notice of the sufferings of humanity and reflects the hopes of humankind. It has come down from Olympus to mingle with the crowd.'

https://doi.org/10.1177/0392192108096827 Published online by Cambridge University Press

1.2. The penetration of democracy or democratic mechanisms within processes for the creation and application of international law

Traditionally the active parties in the domain of international law have been states and international organizations, that is to say agencies of the public sphere. But now we are witnessing an incredible opening up of international law to the participation of agencies from private domains and from civil society. This latter grouping is, however, not a homogeneous category. Granted, NGOs have come to adopt a distinctive role, but we are also witnessing the involvement of private actors from the economic sphere, such as corporations and, as well, experts of various kinds, who are exercising a more and more important function in the environmental or health fields, for example (Delmas-Marty, 2007). Today, it is impossible to imagine international law operating without the participation of these private agencies. They represent a third force alongside states and international organizations.

The involvement of the civil society, for its part, can be observed from the very moment that international law began to develop, starting from when the treaties were negotiated, right up to the agitation for adapting internal legal systems to international norms or the monitoring of the effective application of those internal systems once they had been adapted to the international norms. Should a particular state fall short in its adaptation or application of the international norms, its civilian body is able to bring actions before the international control bodies, through the lodging of complaints or the drawing up of reports, or again through the function of an *amicus curiae* (depositions presented by the friends of the Court).

Several examples of this participatory phenomenon can be adduced. The case of the *International Convention on the Rights of the Child* (ICRC) is particularly instructive. During the treaty adoption process, the ad hoc working group created in 1979 by the UN Human Rights Commission was opened up to the involvement of NGOs. From 1983, a special NGO group bringing together around fifty organizations was put together in Geneva for the purpose of participating in the Convention development process. This group was empowered to put forward proposals to the ad hoc working group. This active participation by NGOs in the process undoubtedly contributed to the insertion of article 45 into the text of the treaty. This article enshrines the right of private agencies to participate in the activities of the Committee on the Rights of the Child, which was to be the monitoring body of the ICRC. These private agencies participate in the role of experts and are frequently consulted by the Committee when the latter is exercising its competence in the matter of providing technical assistance to states. It is also worth noting the important role played by the 'alternative reports' drawn up by coalitions of NGOs and presented to the Committee.

Another significant example is that of the Statute of Rome which set up the International Criminal Court. Around 1,200 NGOs took part in the drawing up of the Statute and in the work of the associated diplomatic Conference (Bourdon, 1999: 92). Other than civil society's participation in the elaboration of the treaty, its role in the adaptation of national legal systems to the Rome Statute has also been noteworthy. Equally, it has a recognized right to take part in the international judicial process, whether at the moment an international criminal action is initiated (submission of an information to the Prosecutor[21]), or when the action is in the process of being under-

https://doi.org/10.1177/0392192108096827 Published online by Cambridge University Press

taken (pursuit of suspects, presentation of depositions from the standpoint of an *amicus curiae*, defence of persons caught up in the case). A new status has been accorded to victims,[22] with their being permitted to participate even at the enquiry stage of the case.[23]

Finally, it is interesting to note the existence of a form of civil society participation which intervenes at a stage prior to the elaboration of international law. It is what Pierre-Marie Dupuy (1986) calls the 'implicit initiative'. It relates to an action whose goal is to promote the necessity for adopting a new international norm. An example of the outcome of such a form of participation is the Convention on the Protection and Promotion of Diversity of Cultural Expression.

Civil society participation occurred especially at the stage when the Convention advance-project was being drawn up and even prior to the point where the idea of a legal instrument had been approved: in several different parts of the world civil society agencies have stimulated the awareness of public authorities on certain issues and have led them into taking a stand (Mattelart, 2005). The same thing took place during the process of adoption of the Ottawa Treaty on the prohibition of anti-personnel mines. Without the international campaign undertaken against these mines by the NGO *Handicap International*, it is difficult to see how such a legal instrument would have been adopted.

Civil society thus contributes to the penetration of democracy into international law, even without taking into account its role in the establishment, strengthening and perpetuating of democratic regimes. Nevertheless, despite this opening up of the sphere of international law to the participation of the civilian body, there remain significant criticisms as to the relative lack of democracy pertaining within the international system (Boutros-Ghali, 2003: 22–24). By way of example one may cite the inadequacies of the UN Security Council: a very restricted membership with a significant lack of representativity, an excessive use of the right of veto, procedures that lack transparency, etc. As for the new United Nations Human Rights Council, the civilian sphere has seen its participation reduced when compared with what it enjoyed previously before the former Human Rights Commission (Tardu, 2007: 969, 975).

Having addressed the issue of the influence of democratization processes on the evolution of international law, we can now devote the second part of this study to the role played by international law in the fostering of democracy.

2. The role of international law and of international organizations in the promotion or 'reinvention' of democracy

There are a variety of actions which have been accomplished both on a global and on regional scales. Mention can be made of initiatives aimed at establishing or restoring democracy that have been undertaken by the UN or by regional bodies (e.g. assistance with the conduct of elections), as well as others intended to consolidate the implantation of democracy (e.g. international assistance in the restructuring of national institutions). Attempts have thus been made to foster the spread of a democratic culture through the enforcement of the rule of law.[24] However, at the same time as attempting to spread a democratic culture, multiple difficulties must be faced up to.

https://doi.org/10.1177/0392192108096827 Published online by Cambridge University Press

2.1 Obstacles to the spread of a democratic culture

Globalization and the process of the internationalization of law can encourage the spread of a democratic culture and the fostering of democracy, but is also capable of reinforcing *social disparities* or even further, of imposing a hegemonic model derived from the strongest State (*hegemonic law unification*). Various investigations, especially those of Mireille Delmas-Marty (1994, 1998, 2004, 2006, 2007) over the last decade and a half have highlighted the dissymmetry existing between the internationalization of human rights and that of trade and market law. There are obvious variations in the speed of internationalization and in its intensity and the extent of its effectiveness. The internationalization of the 'law of globalization', whose goal is above all economic, is much swifter and more functionally effective than the internationalization of law driven by human rights issues. There is variety even in the very processes of internationalization themselves: whether they be towards a unification or a harmonization of national legal systems.

As examples of this dissymmetry there can be cited the establishment of a World Trade Court in conjunction with the WTO (Appellate body) as against the absence of a World Court for the Protection of Human Rights. To be sure, there are regional courts, but on the world scale there exist only monitoring bodies lacking the status of effective jurisdiction (for example, the Committee on Human Rights or the new UN Council of Human Rights). It appears that mutual suspicions are 'too deeply embedded to allow for many years a quantum leap towards a Universal Court of Human Rights' (Tardu, 2007: 986). Furthermore, when states sign up to the WTO, they are not required to demonstrate that they have a respect for human rights. Authoritarian regimes can thus feel more at ease with this 'globalized law' than with the 'universalization' of law under the impulse of the quest to protect human rights.

For democracy to be 'reinvented', and I believe this to be an ongoing process, and in order that international law should contribute to this 'reinvention', a *balance* must be found between *market values* (founded principally on competition) and the *values underpinning human rights* (founded on the spirit of human solidarity). As well as this search for an equilibrium between these different values, awareness must be taken of the fact that *democracy presents in different forms* and that it is vital to *work with multiplicity*. The multicultural character of democracy was highlighted by the former UN Secretary-General Boutros Boutros-Ghali, during his opening address at the Vienna Conference of 1993: ' [. . .] democracy is the private domain of no one. It can and ought to be assimilated by all cultures. It can take many forms in order to accommodate local realities more effectively. Democracy is not a model to copy from certain states, but a goal to be achieved by all peoples! It is the political expression of our common heritage.'[25]

An example of the failure of a democratic model imposed from the outside by the international powers without due regard to the 'receiving' State's capacity to adopt or functionally manage it is the case of Pakistan. The declaration of a state of emergency in November 2007 (followed by the installation of a 'new provisional constitutional order' which allowed for dissident judges to be suspended from the Supreme Court) and the dramatic events which followed showed how artificial was the functioning of the democratic model imposed by the leading Western powers,

https://doi.org/10.1177/0392192108096827 Published online by Cambridge University Press

which, following the September 11 attacks of 2001, converted a dictator whose regime had previously been shunned by the international community into a privileged partner. General Pervez Musharraf, when he stepped down from the armed forces and entered upon his term as 'civilian President' while a state of exception was still in force, attacked, during his inauguration address, the 'unrealistic obsession with the West with its particular form of democracy, human rights and civil liberties'. He declared that he was in favour of democracy and human rights, but they would be obtained under his terms, because he understood his environment better than the West (Chipaux, 2007).

In the 'reinvention of democracy', the essential components are *creativity* and *flexibility*. One of the paths towards reaching this objective may be the proposition of Mireille Delmas-Marty for the construction of a pluralist world order.

2.2 A pathway forward: the construction of a pluralist world order

But how might such a shared order be constructed on the world scale while still respecting cultural diversity? How can the universalism of the Universal Declaration of Human Rights of 1948[26] be reconciled with the relativism underlying the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions?

It must not be ignored that cultural diversity may be instrumentalized so as to serve as an alibi for regimes which violate human rights. Boutros Boutros-Ghali, one of the greatest advocates of the links between peace, democracy and development, denounced authoritarian rule that sheltered under the cloak of cultural exception.[27] Admittedly, the text proper of the 2005 Convention allays this criticism in laying down the principle of the respect for human rights and fundamental liberties (art. 2, § 1): '[. . .] No one may invoke the provisions of this Convention in order to infringe human rights and fundamental freedoms as enshrined in the Universal Declaration of Human Rights or guaranteed by international law, or to limit the scope thereof.' A similar disposition may be observed in the Resolution of the former Human Rights Commission of the United Nations on the fostering of a democratic and equitable international order. And the same time as it declares that a democratic international order demands a respect for cultural diversity and cultural rights (art. 4.1) and reaffirms the necessity of taking cognizance of the importance of national and regional distinctiveness, as well as of the variety of historical, cultural and religious contexts, this Resolution insists that states have a duty, independently of their own political, economic and cultural systems, to promote and protect the whole corpus of human rights and fundamental freedoms (art. 6[28]).

In his composite report on the interaction between democracy and development, Boutros Boutros-Ghali (2003: 8) makes it clear that ' [. . .] the recognition of universal values does not mean that a veil should be drawn over the specific historical, religious and cultural characteristics that make up the genius peculiar to each nation State. For the general principles of democracy can be embodied in different ways, depending on the context. Thus, while democracy is the system in which "sovereign power lies with the people", the method with which it can be exercised can vary

https://doi.org/10.1177/0392192108096827 Published online by Cambridge University Press

depending on the social system and economic development peculiar to each country. Those methods also tend to change depending on political, demographic, economic and social change.'

We must therefore learn to work with the *multiple* and the *evolutionary*. To build a pluralist common law which attempts to reconcile both universalism and cultural diversity, appeal will need to be made, in Mireille Delmas-Marty's terms (2004, 2006, 2007) to the '*law's powers of imagination*' by which oppositions may be transformed into complementarity.

Some examples of legal flexibility and imagination can already be perceived in the contemporary legal order. The Rome Statute of 1998 which created the International Criminal Court for passing judgment on those crimes considered as the most serious already foresaw the principle of complementarity. The Court's competence only pertains when the individual State is unable or unwilling to bring before its own courts the international crimes that are projected in the Statute of Rome (genocide, crimes against humanity, war crimes). It is first and foremost the responsibility of the State and its national judicial system (with the participation of the victim and witnesses from that nation) to endeavour to ensure that perpetrators do not escape justice in the matter of crimes which represent serious human rights violations. A margin for manoeuvre is thus granted to the State and to its nationals. European human rights jurisprudence has also developed, for its part, a technique called the 'national margin of appreciation'. Thanks to this technique, national differences can be taken into consideration when a case comes before the European Court. Other legal techniques which diverge from the logic of binary systems and which encourage a conciliation of the universal with the plural stake a sound claim to be developed. But the jurist must adapt to the complexity of the present system, to be sufficiently flexible to be satisfied with non-absolute outcomes, something which is extremely complex given the value generally accorded to legal safety.

Perhaps I have been excessively swayed by the optimism of Mireille Delmas-Marty, but I believe that the construction of a world order based on an 'ordered pluralism', in other words, neither a pluralism of juxtaposed systems nor an absolute unification, but the outline of a common legal space arrived at through progressive adaptations which preserves diversity through flexible harmonizations and validates differences, is indeed possible and deserves to be tried.

Kathia Martin-Chenut
Collège de France, Paris
Translated from the French by Colin Anderson

Notes

1. See Res. 10 (XXX) of 31 August 1977.
2. N. Questiaux, 'Étude sur les conséquences pour les droits de l'homme des développements récents concernant les situations dites d'État de siège ou d'exception' [*Study on the consequences for human rights of recent developments concerning the situations proclaimed as states of siege or states of exception*]. E/CN4/Sub.2/1982/15.

https://doi.org/10.1177/0392192108096827 Published online by Cambridge University Press

3. 'Informe del relator especial Leandro Despouy sobre los derechos humanos y los estados de excepción' [*Report of the special rapporteur Leandro Despouy on human rights and states of exception*], E/CN4/Sub.2/1997/19.
4. Under cover of the war on terrorism, the setting up of penal systems outside the normal rule of law can be observed in certain otherwise democratic countries; see Martin-Chenut (in press).
5. For example, A/Res. 36/103 of 9 December 1981 on the inadmissibility of intervention and interference in the internal affairs of states.
6. Nicaragua v. United States of America, 27 June 1986, ICJ Rec 1986. In paragraph 258 of this judgment we read 'A state's domestic policy falls within its exclusive jurisdiction, provided of course that it does not violate any obligation of international law. Every state possesses a fundamental right to choose and implement its own political, economic and social systems.'
7. This surge of democratization also reached certain Asian countries and spread through Central and Eastern Europe with the end of the Cold War. It has also spread to certain countries in Africa. See for exampled Karl & Schmitter (1992).
8. A/CONF.157/23, § 8, 12 July 1993.
9. See for example Res. 2001/36 of 23 April 2001 and Res. 2005/57 of 20 April 2005, both emerging from the former Human Rights Commission of the UN.
10. This right is explicitly recognized within the inter-American system through the Inter-American Democratic Charter of 11 September 2001, article 1: 'The peoples of the Americas have a right to democracy and their governments have an obligation to promote and defend it'.
11. For example, the Constitutions of Argentina of 1994 (article 75), of Brazil of 1988 (articles 4 & 5, §§ 1 and 2,) of Colombia of 1991 (article 93), of Nicaragua (1987, amended in 1995, article 46) and of Paraguay (1992, articles 142, 143–3 and 145).
12. The American Declaration of the Rights and Duties of Man (ADRDM) anticipates, in its article 28, that 'the rights of man are limited by the rights of others, by the security of all, and by the just demands of the general welfare and the advancement of democracy'. For its part, in its preamble, the American Convention on Human Rights (ACHR) reaffirms the intention of the signatory states to 'consolidate in this hemisphere, within the framework of democratic institutions, a system of personal liberty and social justice based on respect for the essential rights of man'. Reference should also be made to the Inter-American Democratic Charter, adopted in Lima on 11 September 2001.
13. The Charter of the OAS prescribes among the essential objectives of the Organization: 'To promote and consolidate representative democracy, with due respect for the principle of non-intervention' (art. 2, b), and asserts that 'the solidarity of the American States and the high aims which are sought through it require the political organization of those States on the basis of the effective exercise of representative democracy' (art. 3, d).
14. See Gros Espielll (1989); IACtHR, Case of the Constitutional Tribunal v. Peru, 31 January 2001, Series C, n° 71, §§ 111–112.
15. See IACHR Annual Report 1990–1991, p. 530; IACtHR, Yatama v. Nicaragua, 23 June 2005, Series C, n° 127, § 191.
16. IACHR, Matter 11.863 (Andrés Aylwin Azócar and others v. Chile), 27 December 1999, report n° 137/99, Annual Report 1999, §§ 45 ff.
17. IACtHR, Yatama v. Nicaragua, 23 June 2005, Series C, n° 127, § 214.
18. ECHR, *Refah Partisi* v. Turkey, 13 February 2003, § 86.
19. ECHR, Lingens v. Austria, 8 July 1986, § 42.
20. ECHR, United Communist Party of Turkey and others v. Turkey, 30 January 1998, § 45.
21. Cf. art. 15, § 2 of the Rome Statute.
22. Rules 89 to 93 of the Rules of Procedure.
23. Cf. *Situation in the Democratic Republic of the Congo*. Decision on the requests for participation in the procedure by parties VPRS1, VPRS2, VPRS3, VPRS4, VPRS5 and VPRS6 (Pre-Trial Chamber I, 17 Jan. 2006, n° ICC-01/04–01
24. There are a plethora of examples of restructuring judicial institutions, or the training of personnel for upholding the law during peace-keeping operations, for example.

https://doi.org/10.1177/0392192108096827 Published online by Cambridge University Press

25. Text available at http://www.unhchr.ch/html/menu5/d/statement/secgen.htm, p. 8
26. According to art. 28 of the UDHR, 'Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.'
27. See A/51/761, 17 January 1997, § 4
28. Res. 2005/57 of 20 April 2005. Cf. § 5 of the Vienna Declaration.

References

Agamben, G. (2003) *État d'exception*, trans Joël Gaynaud. Paris: Seuil.

Bourdon, W. (1999) 'Rôle de la société civile et des ONG', in *La Cour pénale internationale*. Paris: La documentation française, p. 89–95.

Bourquin, M. (1950) 'L'humanisation du droit des gens', in *La technique et les principes du droit public. Études en l'honneur de Georges Scelle*. Paris: LGDJ, vol. II.

Boutros-Ghali, B. (2003) 'The Interaction between Democracy and Development', Report of the International Panel on Democracy and Development. Paris: UNESCO.

Chipaux, F. (2007) 'M. Musharraf inaugure son mandat de "président civil" du Pakistan', *Le Monde*, 30 novembre.

Delmas-Marty, M. (1994) *Pour un droit commun*. Paris: Seuil.

Delmas-Marty, M. (1998) *Trois défis pour un ordre mondial*. Paris: Seuil.

Delmas-Marty, M. (2004) *Les forces imaginantes du droit*, I: *Le relatif et l'universel*. Paris: Seuil.

Delmas-Marty, M. (2006) *Les forces imaginantes du droit*, II: *Le pluralisme ordonné*. Paris: Seuil.

Delmas-Marty, M. (2007) *Les forces imaginantes du droit*, III: *La refondation des pouvoirs*. Paris: Seuil.

Dupuy, Pierre-Marie (1986) 'Conclusions', in P.-M. Dupuy & M. Bettati (eds), *Les ONG et le droit international*. Paris: Economica.

Gros Espielll, H. (1989) 'La Convention américaine et la Convention européenne des droits de l'homme. Analyse comparative', *RCADI*, VI (218): 190–191.

Karl, T. L. and Schmitter, P. C. (1992) 'Modes of transition in Latin America, Southern Europe and Eastern Europe', *ISSJ* 43: 269–284.

Martin-Chenut, Kathia (under press) 'O sistema penal de exceção instaurado durante a ditadura militar brasileira confrontado com as exigências do direito internacional dos direitos humanos', in C. MacDowell Santos, E. L. de Almeida Teles & J. de Almeida Teles (eds), *Desarquivando a ditadura: memória e justiça no Brasil*. São Paulo: UCITEC.

Mattelart, A. (2005) 'Quem tem medo da diversidade cultural?', *Le monde diplomatique* (Brazilian edition), octobre.

Sicilianos, Linos-Alexandre (2002) 'Les Nations Unies et la démocratisation de l'État. Nouvelles tendances', in R. Mehdi (ed.) *La contribution des Nations Unies à la démocratisation de l'État*. Paris: Pedone.

Tardu, M. (2007) 'Le nouveau Conseil des droits de l'homme aux Nations Unies: Décadence ou résurrection?', *Revue trim. des dr. de l'homme* 72: 967–992.

https://doi.org/10.1177/0392192108096827 Published online by Cambridge University Press