

**BEING NON-DEMOCRATIC IN THE AGE OF DEMOCRACY:
THE LOT OF NON-DEMOCRATIC STATES IN CONTEMPORARY INTERNATIONAL LAW**

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Abstract:

The demise of communist regimes put an end to the ideological division that had rived the world for nearly 50 years. This has unmistakably caused sweeping changes in the international society. One of the most noteworthy of them is the acceptance that democracy is the only acceptable regime from a political standpoint. The body of rules regulating the international society could hardly stay aloof from such a dramatic upheaval. This promptly led legal scholars to acknowledge that the political monopoly of the democratic model had gripped the international legal order. The extent of these transformations is still a bone of contention among them. It is not the aim of this study to hark back to these debates and to reconsider, for instance, Franck & Fox's famous "democratic entitlement" theory¹ (though it will be alluded to); nor is it intending to depict what International Law would be in the sense of A.-M. Slaughter's liberal theory² if all States were democratic. The sole purpose of this study is to examine the lot of Non-Democratic States in contemporary International Law, an issue which, as a whole, does not seem to have been grappled with³. This study dwells upon the question of democracy through the lens of the State and is conducted in a very practical and empirical way. This is not to say that the conclusions inferred from the practice do not ignite remarkable theoretical questions. It is rather that the starting point is the practice not the theory, should the former steer the analysis back to the latter at the ultimate stage. Leaving aside the everlasting search for a consensus on the accurate meaning of democracy⁴, the study comes to terms with the inter-subjective character of this notion and falls back on a common understanding of what democracy is not. Building on the practice, it then

¹ G. H. Fox, 'The Right to Political Participation in International Law', 17 *Yale J. Int'l L.* (1992) and T. Franck, 'The Emerging Right to Democratic Governance', 86 *Am. J. Int'l L.* (1992).

² A.-M Slaughter, 'International Law in a World of Liberal States', 6 *EJIL* (1995) 503, or M. Beutz, 'Functional Democracy: Responding to Failures of Accountability', 44 *Harv. Int'l L.J.* (2003) 387.

³ The question is, to a limited extent, touched by B. R. Roth, *Governmental Illegitimacy in International Law*, 1999 (with a focus on recognition and representativity) or by G. Simpson, *Great Powers and Outlaw States, Unequal Sovereigns in the International Legal Order*, 2004 (though his perspective is broader than the mere infringement of the democratic principle)

⁴ See the comments of S. Marks, *The Riddle of All Constitution* (2000) and M. Koskenniemi, 'Whose Intolerance, which democracy?', *Democratic Governance and International Law* (2000).

demonstrates that a distinction can be drawn between two types of undemocratic States: those whose undemocratic character stems from an illegitimate *exercise* of power and those labeled as undemocratic because of the undemocratic *origin* of their authority. In other words, it is submitted here that the international contemporary practice betrays two types of democratic illegitimacy: the illegitimacy of *origin* and the illegitimacy of *exercise*. Each of them spawns a different reaction in the international arena.