THE SEARCH FOR AN INTERNATIONAL LEGAL CONCEPT OF DEMOCRACY: LESSONS FROM THE POST-CONFLICT RECONSTRUCTION OF SIERRA LEONE

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This article explores the treatment of democracy in the formulation of United Nations resolutions, peace agreements and external aid agreements related to the post-conflict reconstruction of Sierra Leone. It seeks to contribute towards a fuller understanding of the relevance of the practice of post-conflict reconstruction for the debate on democracy in international law. The analysis takes account of not only whether democracy was treated as an international legal concept, but also how the approach taken to the definition of democracy relates to the effectiveness of the reconstruction process. A central argument is that internationally facilitated post-conflict reconstruction can appear to be conducive to the articulation, by states, of democracy in international legal terms. However, it is also contended that the willingness of states to take this step can be seen as dependent on the existence of an appropriate forum. On this basis, it is concluded that the significance, from an international legal perspective, of the reluctance of states to take various opportunities to raise democracy in international legal terms during the reconstruction of Sierra Leone should not be overstated.

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I INTRODUCTION

The debate about the existence of an international legal concept of democracy is now a long standing part of the discourse on international law. 1 This article identifies the practice of post-conflict reconstruction as an aspect of international affairs that one might expect to include instances of states being forthcoming on how they view democracy in international legal terms. This premise is based upon a number of considerations, including the high level of commonality in the way that democracy has been approached across all of the prominent examples of internationally facilitated post-conflict reconstruction from the last twenty years. 2 Such commonality helps to explain why attention has already been given to the practice from the perspective of an emerging right to democracy. 3 But this literature has not addressed in a sustained manner whether or not democracy has in fact been articulated in international legal terms during the processes surrounding post-conflict reconstruction.

In the interest of developing a fuller understanding of the relevance of the practice of post-conflict reconstruction for the debate on democracy in international law, this article explores the treatment of democracy during the formulation of United Nations resolutions, peace agreements, and external aid agreements related to the post-conflict reconstruction of Sierra Leone. The analysis takes account of not only whether democracy was treated as an international legal concept, but also how the approach taken to the definition of democracy relates to the effectiveness of the reconstruction process. This latter aspect of the analysis is intended to bring the significance of any absence of comment by states on the nature of democracy as an international legal concept into a clearer focus. It does so by helping to clarify whether an absence of comment is more likely to stem from the way a state views the position of democracy in international law or from considerations external to international law.

Research for this article began before the recent events in Libya, where an established dictatorship was overthrown by a rebel movement. Such circumstances are somewhat different to those found in the recent past of Sierra Leone where there was only a very short passage of time between the election of a government in 1996 and its removal from authority by a rebel movement, followed by extensive international involvement in support of the elected

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government. Nonetheless, the research findings presented in this article have relevance for the debates surrounding the approach to post-conflict reconstruction in Libya and elsewhere. Although the analysis is focused on Sierra Leone, the arguments relate to the strength and extent of a general international legal obligation for governments to be constituted and to act in a democratic manner.

The article proceeds with an outline of the debate on the nature and meaning of democracy in international law, with particular reference to the approach that has been taken by states to the depiction of democracy in international legal terms. This is followed by an account of the position of democracy in the practice of post-conflict reconstruction, including why this aspect of international affairs can appear to be promising in terms of states publicising their views on the meaning of democracy in international law. Next, to help explain why it has been chosen as a case study and to provide a reference point for subsequent analysis, an overview of events leading up to and during the internationally facilitated post-conflict reconstruction of Sierra Leone during 1998–2005 is provided. The rest of the article will focus on how democracy was treated by international actors in relation to three key elements of the reconstruction process in Sierra Leone: UN resolutions, peace agreements and aid agreements. A central argument is that internationally facilitated post-conflict reconstruction can appear to be conducive to the articulation, by states, of democracy in international legal terms. However, it is also contended that the willingness of states to take this step can be seen as dependent on the existence of an appropriate forum. On this basis, it is concluded that the significance, from an international legal perspective, of the reluctance of states to take various opportunities to raise democracy in international legal terms during the reconstruction of Sierra Leone should not be overstated.

II DEMOCRACY AND INTERNATIONAL LAW

In 1992, Franck set out his now famous argument that there is evidence that a right to democratic governance is emerging in international law.4 The foundation for this argument was the observation of three developments in international affairs; specifically, the continued support amongst states for the principle of self-determination, the level of protection that has come to be afforded free political expression in key international instruments and the more recent turn by a majority of states to the practice of periodic free and fair elections.5 Scholars of international law have since conceptualised the right to democracy in a number of different ways. Some scholars have concentrated on the identification of particular provisions of international human rights law — in particular, arts 19 (freedom of expression), 21 (freedom of assembly), 22 (freedom of association) and 25 (right to political participation) of the International Covenant on Civil and Political Rights6 — as providing a basic framework for democratic

5 See generally ibid. See also Marks, ‘What Has Become of the Emerging Right to Democratic Governance?’, above n 1, 509; Pippan, above n 1, 32.
governance. Others have sought to identify a right to democracy as part of the right to self-determination. Another approach has been to suggest that there is a stand-alone customary law right to democratic governance centred on the procedures for elections. Attention has also been given to the implications that could flow from the articulation of democracy in legal terms for other aspects of international law. This has been in terms of governmental status, but suggestions have also been made in relation to the legality of forcible intervention.

In light of the frequency with which the idea of a right to democracy has been highlighted by scholars of international law over the last 20 years, it is striking that relatively little attention has been given to the question of whether, and to what extent, states have explicitly acknowledged the existence of any form of an international legal concept of democracy. This issue can be seen as central to the accuracy of the depictions of democracy in international legal terms by scholars; it offers a means of gauging the strength of the claim that states operate on the basis that there is an international legal obligation to provide democratic government. In particular, if states do not take clear opportunities to publicise democracy in international legal terms, this must weaken the argument that it has emerged or is emerging as an aspect of the *lex lata*.

In this respect, it is important to note that scholars of international law have identified some occasions where states have articulated what can be read as an international legal concept of democracy. For instance, it has been highlighted

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that a General Assembly Resolution on *Enhancing the Role of Regional, Subregional and Other Organizations and Arrangements in Promoting and Consolidating Democracy*,\(^{13}\) includes the declaration that:

the essential elements of democracy include respect for human rights and fundamental freedoms, inter alia, freedom of association and peaceful assembly and of expression and opinion, and the right to take part in the conduct of public affairs, directly or through freely chosen representatives, to vote and to be elected at genuine periodic free elections by universal and equal suffrage and by secret ballot guaranteeing the free expression of the will of the people, as well as a pluralistic system of political parties and organizations, respect for the rule of law, the separation of powers, the independence of the judiciary, transparency and accountability in public administration, and free, independent and pluralistic media \(^{14}\).

However, the value of statements like these for clarifying the existence of an international legal concept of democracy is reduced by the lack of clarity on whether they are intended to reflect ‘*lex lata*, *de lege ferenda* or mere political aspirations’.\(^{15}\) In addition, the level of generality can be seen as reducing the potential for the concept of democracy that is encompassed in these statements to be implemented in any meaningful way as part of international law.\(^{16}\) Such statements therefore struggle in terms of evidence that there is support amongst states for the more precise legal renderings of democracy that scholars of international law have proffered. But might the approach taken by states on these occasions reflect that there is actually no support amongst states for a more precise international legal conception of democracy?

It is not difficult to think of factors that can help to explain why states might not be in favour of a more precise international legal definition of democracy. One of these could stem from the fact that there remains considerable scope for debate about the meaning of democracy as a political concept. In this respect, it is possible to identify a spectrum with a procedural definition of democracy (emphasis on identification of leaders) at one end and a substantive definition (conduct of the government of equal importance to how it is identified) at the other end.\(^{17}\) If a state prefers a more substantive definition of democracy for the purposes of political discourse, then the chances of it endorsing a more precise international legal conception, which on the basis of existing international legal doctrine can be expected to be more in line with a procedural understanding of

\(^{13}\) *Enhancing the Role of Regional, Subregional and Other Organizations and Arrangements in Promoting and Consolidating Democracy*, CHR Res 59/201, UN GAOR, 59\(^{th}\) sess, 74\(^{th}\) plen mtg, Agenda Item 105(b), UN Doc A/RES/59/201 (20 December 2004).


\(^{16}\) Ibid [35]. See also Marks, ‘What Has Become of the Emerging Right to Democratic Governance?’, above n 1, 511.

\(^{17}\) Fox, ‘Democracy, Right to, International Protection’, above n 15, [10]–[11].
democracy, must be reduced. However, to endorse a more precise international legal conception would not be incompatible with subscribing to a broader notion of democracy in relation to political discourse. Rather, the international legal conception could be seen as the minimum requirements for a government to be classed as democratic for the purposes of international law.

Another possible cause for reluctance on behalf of states, when it comes to embracing the scholarly approaches to an international legal conception of democracy, is that the acceptance of a precise legal conception of democracy could provide a stronger basis for the authority of noncompliant governments to be challenged. It is worth noting that Fox and Roth have identified amongst some states voting on resolutions in international organisations related to democracy an unwillingness to repudiate either discrete participatory rights or democracy in the abstract, yet on the other hand, a deep concern about the implications of characterizing an entire and specific form of government as legally mandated.

This supports the idea that at least some states are conscious of, and concerned about, the potential for an international legal conception of democracy to impact on governmental authority. However, as Franck noted back in 1992, many states do now subscribe to at least a basic democratic model of governance. Consequently, it is reasonable to suggest that if the conception of democracy remained basic, most governments would have little to be concerned about in terms of challenges to their authority.

On the basis of this reasoning, even in the light of the apparent preference for democracy to be formulated in broad terms in resolutions at the UN on democracy as general matter, it remains feasible to suggest that at least some states might subscribe to the existence of a more precise conception of democracy in international law. Whether post-conflict reconstruction could be the sort of environment that would motivate any such states to make known their views will now be considered.

III POST-CONFLICT SITUATIONS AND THE ARTICULATION OF AN INTERNATIONAL LEGAL CONCEPT OF DEMOCRACY

No standard definition of a post-conflict situation exists. This article acknowledges that in most situations there will not be a clear demarcation between conflict and post-conflict. Nonetheless, it uses the term 'post-conflict' to describe the period when the main hostilities have ended but no domestic government is able to assert independent effective control (in the sense of an ability to preserve public order) over its territory. Such a setting will often necessitate large-scale international involvement, if progress with the reconstruction process is to be achieved. This progress is central to the

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18 For a critical discussion of the approach that scholars of international law have taken to the definition of democracy in international legal terms, see Susan Marks, The Riddle of All Constitutions: International Law, Democracy, and the Critique of Ideology (Oxford University Press, 2003).

19 Fox and Roth, above n 12, 346.

realisation of long-term independence and stability of the state. From a review of practice, it is possible to identify two models for international engagement in post-conflict reconstruction. The first model is direct international territorial administration, which involves international actors assuming direct responsibility for governance. Prominent examples of this approach can be found in the recent past of Cambodia, Bosnia and Herzegovina, Kosovo and East Timor. The second model has been referred to as the assistance model, as well as between trusteeship and partnership, on the basis that formal authority remains with domestic actors but governance is dependent on international actors. Key instances are found in the recent past of Haiti (in 1994 and then in 2004), Sierra Leone, Liberia, Afghanistan and Iraq.

The international facilitation of post-conflict reconstruction creates a context which could be more conducive than the normal run of things to the articulation by states of an international legal conception of democracy. One possible motivation for such a step being taken would be as a means of helping to justify the international influence over the affairs of an independent political community. This is in the sense that it would support the view that the international involvement was directed towards helping the people to realise an existing entitlement, rather than the imposition of the political preferences of the international actors. Another possible motivation for states to articulate democracy in international legal terms that is not present to the same extent in the normal run of things is to do with moral responsibility. If a post-conflict government is dependent on international actors for its authority, the international actors that keep it in authority must assume some responsibility for its conduct. In this respect, the identification of an international legal concept of democracy could be helpful, as it would offer a basis for influence to be exerted over a government that started to prioritise its own interests over those of the population in terms of its approach to governance.

The idea that states might have acted on considerations such as those just set out is strengthened by the fact that all of the examples of practice of internationally facilitated post-conflict reconstruction from the last twenty years have included the introduction and/or development of democratic governance as an overarching objective of the process of reconstruction. This could just be a result of political preference. It has been noted, for instance, that democratic institutions and processes are a means of limiting the risk that conflict will re-erupt, as they channel competing interests into discourse and encourage

24 The idea that a post-conflict government that is dependent on international actors is more likely to disregard the interests of the population has been explored elsewhere: see Michael Barnett and Christoph Zürcher, ‘The Peacebuilder’s Contract: How External Statebuilding Reinforces Weak Statehood’ in Roland Paris and Timothy D Sisk (eds), The Dilemmas of Statebuilding: Confronting the Contradictions of Postwar Peace Operations (Routledge, 2009) 23, 31–5.
25 See references at above n 2.
compromise. In addition, the holding of free and fair elections has been identified as an authoritative means of reconciling the differences between warring factions. However, the level of commonality in the approaches taken to democracy provides a reason to think that the practice might have a connection to a belief on the behalf of states in the existence of an international legal conception of democracy amongst states.

The commonality in the pursuit of democracy can help to explain why the practice of post-conflict reconstruction has attracted the attention of scholars that are interested in the relationship between international law and democracy. This literature includes scholars who have drawn attention to the possibility for democracy in situations of post-conflict reconstruction helping to strengthen the argument that there is a right to democracy in international law. For instance, d’Aspremont has suggested that a major contribution of the practice of post-conflict international administration, found in places such as Kosovo and East Timor, is that it has ‘increase[d] the number of democratic states in the international arena, thereby enhancing the customary obligation to be democratic’. In a similar vein, in an account of the issues of legal significance in Security Council Resolution 1483, which contributed to the legal framework for the reconstruction of Iraq, Kirgis noted that in several places the resolution refers to the establishment of representative governance in Iraq and suggests that this can be seen as a contribution to the emergence of a right to democracy.

The key resolutions on Kosovo, East Timor and Iraq, have not included the explicit articulation of democracy as an international concept. However, if commentators have made the link between the pursuit of democracy in these instances and the debate on democracy in international law, it is not irrational to think that this link could also have been made in the debates leading to the resolutions or at some point in relation to the other recent instances of internationally enabled reconstruction in the aftermath of war.

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26 Boutros Boutros-Ghali, Letter Dated 96/12/17 from the Secretary General Addressed to the President of the General Assembly, UN GAOR, 51st sess, Agenda Item 4, UN Doc A/51/761 (20 December 1996) [3], [17]; United Communist Party of Turkey v Turkey (1998) I Eur Court HR 1, 21 [45].


29 Ibid. See also Thürer and Burri, above n 8; Michaela Salamun, Democratic Governance in International Territorial Administration (Nomos, 2005) 59; Leopold von Carlowitz, ‘UNMIK Lawmaking between Effective Peace Support and Internal Self-Determination’ (2003) 41 Archiv des Völkerrechts 336, 360–4.

30 SC Res 1483, UN SCOR, 58th sess, 4761st mtg, UN Doc S/RES/1483 (22 May 2003).


International lawyers have also given attention to the merits of the similarity between the model of democracy that has been prioritised in post-conflict situations and ideas about democracy as an international legal concept. For instance, Fox, in an examination of the success of UN efforts to foster democracy in the aftermath of war as a general matter, has drawn upon theories about the nature of compliance in international law to argue that the appropriateness of the law that he identifies as constituting the democratic norm (centred on the requirement of and procedure for free and fair elections) for post-conflict reconstruction should be assessed in the long term not the short term. Elsewhere, Cogen and de Brabandere have posited a definition of democracy in international legal terms that is centred on the extant international human rights law requirements of free and fair elections, freedom of association and freedom of expression, and then explored the post-conflict settings of Iraq, Afghanistan, East Timor and Kosovo to determine the relevance of this law. The argument of Cogen and de Brabandere is that all three aspects can be found in the noted reconstruction processes and that even though the respective post-conflict settings have made it particularly difficult to implement freedom of expression and freedom of association, there has still been a general level of success in establishing democracy, when judged from this perspective. This body of work provides support for the potential relevance for post-conflict situations of the contents that could be expected to be included in the concept of democracy. In so doing, it lends weight to the idea that democracy might have been articulated at some stage in one of the internationally facilitated reconstruction processes from the last twenty years in international legal terms.

Still, the question of whether or not states have actually been prompted by the circumstances surrounding post-conflict reconstruction to articulate democracy in international legal terms remains under-explored. It is important to give attention to this issue because it can be seen as central to the relevance of the practice of post-conflict reconstruction for the debate on democracy in international law. In particular, if states are found to have articulated democracy in international legal terms, this must strengthen the argument that the practice supports the existence of an international legal conception of democracy. At the same time, however, a lack of states taking the opportunity (given the apparently conducive nature of the context) could be a reason to doubt the value of the practice. Indeed, one might read the failure of a state to articulate democracy in international legal terms when the circumstances appear conducive as a strong indicator that it does not subscribe to the existence of such a concept.

This latter implication should, however, only be drawn subject to consideration of additional factors away from the view on the position of

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34 Cogen and de Brabandere, above n 3, 693.


36 For reasons to query the relevance of concepts such as free and fair elections in post-conflict situations, see Timothy D Sisk, ‘Pathways of the Political’ in Roland Paris and Timothy D Sisk (eds), *The Dilemmas of Statebuilding. Confronting the Contradictions of Postwar Peace Operations* (Routledge, 2009) 196, 202.
democracy in international law that might have deterred states from raising this issue. In this respect, it is worth noting that Bowden and Charlesworth have highlighted that there is a risk that providing a specific definition of democracy for post-conflict situations will ‘promote a checklist approach to the relationship of individuals to government, without providing space for the more organic and chaotic development of self-rule between an equal citizenry’. This would be one reason for states to remain quiet on democracy as an international legal concept in the post-conflict setting. However, it is reasonable to think that this consequence is likely to be more significant in some situations than others depending on the context. As such, it need not be seen as a decisive factor. Another significant, and potentially more decisive factor, would be if there was not a suitable forum for the issue of democracy as an international legal concept to be raised.

Post-conflict reconstruction situations create a number of opportunities for states to publicise an international legal understanding of democracy. There are, in particular, numerous forums at the UN where the specific post-conflict situation will be addressed, as well as opportunities for democracy to be negotiated into aid agreements, and there is also scope for international actors to make their views known during the formulation of peace agreements. The reasons set out above about motivations for democracy to be articulated in international legal terms have relevance for each of these forums. However, it can hardly be assumed that states will judge any of these forums as appropriate for the issue to be raised. A key factor in this respect must be the potential for raising the issue to have an overall negative impact on the effectiveness of the reconstruction process in question, in the sense of hindering, rather than facilitating, the transition from instability to long-term, independent stability. That this risk is likely to vary from forum to forum is supported by the fact that there are different actors involved and different interests at stake in each one.

With these thoughts in mind, the rest of this article explores the treatment of democracy in a number of forums related to the post-conflict reconstruction of Sierra Leone during 1998–2005. First, though, it is useful to provide an overview of the Sierra Leone context; this brief account of events leading up to and during international involvement can help to explain why Sierra Leone has been chosen as a case study, while also providing a reference point for subsequent analysis.

IV THE SIERRA LEONE CONTEXT

Sierra Leone is located on the west coast of Africa. It has a population of approximately 6 million. At the start of the 1990s, governmental authority in Sierra Leone was undermined by an armed insurgency led by the Revolutionary

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37 Brett Bowden and Hilary Charlesworth, ‘Defining Democracy in International Institutions’ in Brett Bowden, Hilary Charlesworth and Jeremy Farrall (eds), The Role of International Law in Rebuilding Societies after Conflict: Great Expectations (Cambridge University Press, 2009) 90, 110. See also Jan Klabbers, ‘Redemption Song? Human Rights versus Community-Building in East Timor’ (2003) 16 Leiden Journal of International Law 367, 372. Klabbers highlights the potential for an emphasis on human rights law to take the attention of lead actors away from substantial efforts at community building.

United Front (‘RUF’). The extent of the lack of public order that the RUF’s attacks against the government helped to create is reflected in the fact that at one point in 1995 only the capital, Freetown, was under governmental control. The situation was improved somewhat by the government’s hiring of the private security firm Executive Outcomes. This group of mercenaries, along with an uprising of civilian defence forces, Kamajors, managed to push the RUF away from the capital, back to enclaves along the border. As a consequence, it was possible for presidential and parliamentary elections to be conducted in February 1996.

At the elections, the Sierra Leone People’s Party was the most popular party. It gained 36.1 per cent of the seats in the legislature, with 35.8 per cent of the presidential votes going to its candidate, Alhaji Ahmad Tejan Kabbah. As a 55 per cent share was required for a presidential candidate, there was a run-off on 15 March 1996, at which Kabbah gained 59 per cent of the votes to beat his closest rival Dr John Karefa-Smart. However, in spite of this popular endorsement, President Kabbah’s initial period in office was short-lived. In May 1997, President Kabbah’s government could do little to resist the military coup by soldiers of the Armed Forces Revolutionary Council, led by Major Johnny Paul Koroma, who ‘were joined with suspicious speed by the RUF rebels that they had ostensibly been fighting for the previous six years’. As a consequence, Kabbah went into exile in Guinea. An Economic Community of West African States Monitoring Group (‘ECOMOG’) military presence meant that it was possible for President Kabbah to return to office in March 1998. However, ongoing hostilities with the rebels meant that it was not possible for full governmental authority to be restored. In addition, what authority the government did have was maintained through reliance on some 13 000, mainly Nigerian, ill-equipped ECOMOG peacekeepers.

In 1998, the UN presence was limited to an observer mission. This was established in July 1998, with some 40 observers. It was only when Nigeria started to withdraw its ECOMOG troops from Sierra Leone that the Security Council could agree upon more direct military intervention. The UN Mission in

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41 See US Department of State, above n 40; Adebajo and Keen, above n 39, 248–9.


43 Adebajo and Keen, above n 39, 249.

44 See Commonwealth Secretariat, above n 42, 6.

45 Adebajo and Keen, above n 39, 255.


Sierra Leone (‘UNAMSIL’) was created by Security Council Resolution 1270 and authorised the deployment of 6000 troops with a mandate that was centred on monitoring a tentative ceasefire arrangement agreed in May 1999. The UN troops began to be deployed from November 1999. However, the deployment of the troops was slow and proved to be an ineffectual replacement for the Nigerian forces. In February 2000, the Security Council agreed to an increase in the number of troops and a broader mandate for UNAMSIL centred on the provision of security. But a security vacuum still existed and the rebels advanced on Freetown in May 2000, killing and kidnapping UNAMSIL forces.

A number of factors have been identified for what eventually broke the resolve of the rebels and meant that they became willing to accept the ceasefire that was agreed to in Abuja in November 2000. These include increased international pressure in the regulation of Sierra Leone’s diamond industry which had provided a source of finance for the rebels; the role of Guinea and fighters based there attacking the rebels; and the fact that the UN force had been authorised to rise to 20,000. The initially tentative nature of the peace is reflected in the fact that President Kabbah did not declare the war officially over until 2002. That it developed into a relatively strong peace is reflected in the fact that, following a gradual drawing down, the last UN troops had left by 2005.

A key factor in the relative success of the transitional period must have been the willingness of the rebels to, eventually, respect the ceasefire. Also important,
though, must have been the level of international support that was received by
the government, including but also stretching beyond an extensive military
presence. In terms of wider support, the World Bank was central amongst
efforts by development partners to support the government’s efforts to
rehabilitate community schools, health clinics, markets and roads. It was also
crucial in creating a financial package that enabled private contractors to resume
work on a hydroelectric dam crucial to meeting the electricity needs of Sierra
Leone. There have also been a number of major bilateral contributors. The
United Kingdom, for example, has a long term commitment to Sierra Leone,
which has involved it facilitating the reform of the civil service, the security
sector, the judiciary and stimulating the private sector.

Taken holistically, the international involvement in Sierra Leone enabled the
government to make a host of significant changes to the state and civil
infrastructure, including the reorganisation of the diamond industry and moves
towards the devolution of political authority aimed at reactivating absent local
government. While the military presence operated on the basis of a UN
Security Council Chapter VII authorisation, wider international support was
called for in Security Council resolutions, but its legal justification was located

57 For a detailed account of the various actors involved and the nature of the involvement, see
Government of Sierra Leone, Development Assistance Coordination Office, Development
58 International Development Association, Sierra Leone: Recovering from Years of Conflict
60 See Foreign & Commonwealth Office, Country Profile: Sierra Leone (18 November 2011)
-africa/sierra-leone>. The UK has had a major involvement in the reconstruction process and
has a memorandum of understanding dating from November 2002, which outlines
conditional support of an annual £40 million until 2012: see Department of International
Development, Sierra Leone (5 April 2012) UK Aid <http://www.dfid.gov.uk/where-we
-work/africa-west–central/sierra-leone/>.
61 See, eg, Partnership Africa Canada and the Network Movement for Justice and Development,
62 See International Bank for Development and Reconstruction, ‘Sierra Leone: The Role of the
Rapid Results Approach in Decentralization and Strengthening Local Governance’
(Findings Report No 261, April 2006); Alhaji Ahmad Tejan Kabbah, ‘Statement by His
Excellency Alhaji Ahmad Tejan Kabbah at the Special United Nations Conference on Sierra
Leone’ (Speech delivered at the Special United Nations Conference on Sierra Leone,
New York, 30 July 1998). For some of the legal reform that was entered into, including the
agreement for the Special Court, see United Nations Integrated Peacebuilding Office, ‘Joint
Vision for Sierra Leone of the United Nations’ Family’ (United Nations Joint Venture, 30
May 2009) <http://www.sl.undp.org/1_Doc/joint_un_vision_sl_final.pdf>; see also Chandra
Lekha Sriram, '(Re)building the Rule of Law in Sierra Leone: Beyond the Formal Sector?’
in Chandra Lekha Sriram, Olga Martin-Ortega and Johanna Herman (eds), Peacebuilding
and Rule of Law in Africa: Just Peace? (Routledge, 2011) 127.
63 See, eg, SC Res 1436, UN SCOR, 57th sess, 4615th mtg, UN Doc S/RES/1436 (24
September 2002) para 7 (emphasis altered):
only in the consent of the government. This helps to bring into focus the centrality of the government to the legitimacy of the whole reconstruction process. Yet the government’s own legitimacy was not beyond doubt.

In this respect, it is important to note that there were periods during 1998–2005 when the government was nearly totally dependent on international actors. Such dependency has been captured by Brooks, who wrote in 2003 that in Sierra Leone, the fragile indigenous government relies heavily on UN administrators and peacekeeping troops to preserve the still-tenuous peace and help with everything from education, health care, and food aid to legal and judicial reform.

The legitimacy of a government is open to be queried when it is unable to control its territory independently, as this is the traditional indicator in international law that a government represents the will of the people. But control is no longer, if it ever was, the only indicator of legitimacy at the international level. Democracy is now also an important consideration.

Democracy was clearly central to President Kabbah’s legitimacy. Yet, on the basis that assessments of a government’s claim to be democratic should take into account not only the origin of its authority but also the exercise of its authority, there were also reasons to doubt President Kabbah’s legitimacy from a democratic perspective. President Kabbah had origin legitimacy, in the sense that he became President through a process the Commonwealth Observer Group described as including Sierra Leone’s ‘first truly democratic elections in nearly...
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30 years’. However, he had not yet governed for a sufficient length of time to substantiate his claim to be committed to governance in a democratic manner, as such, he lacked exercise legitimacy. One way to try and compensate for the lack of President Kabbah’s exercise legitimacy would be for the actors that supported the government on the basis of a commitment to democracy to publicise a workable conception of democracy in international legal terms. By providing international legal criteria for measuring the democratic nature of the approach taken to governance, the international actors would signal intent to ensure realisation of the purported commitment to democracy. This could, in line with what was set out above, help to strengthen the justification for enabling the government to lead the reconstruction of the state.

Similar reasoning can be applied to other instances of post-conflict reconstruction that have been dependent on international actors. One aspect that makes Sierra Leone particularly notable is the centrality of the democracy justification for the involvement. In some other post-conflict situations, such as Afghanistan, the introduction and/or development of democratic government has been more of a side-product of interventions that have been driven by security concerns. In Sierra Leone, democracy was used repeatedly by President Kabbah to rally international support and to distinguish his government from the attempts by the rebels to establish a government. For instance, the exiled President Kabbah appealed at the UN General Assembly for international military assistance and wider long-term assistance on the basis that

[only the speedy restoration of the democratically elected Government of Sierra Leone can provide a lasting solution to the crisis and enable the country to return to normalcy and to resume its place as a responsible member of the community of nations. This is no self-serving statement. To insist on the restoration of my Government is no more than to insist that the Government which the people of Sierra Leone freely and openly elected in the most closely invigilated election in the post-independence history of the country be restored to them.

The centrality of democracy to the justification and the readiness of President Kabbah to raise the issue is encouragement for the view that democracy will

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70 This is supported by the idea that the language of international law provides more legitimacy than the language of politics: see generally Dino Kritsiotis, ‘The Power of International Law as Language’ (1998) 34 California Western Law Review 397.

71 Evidence of the rhetorical strength of the term democracy is found in a couple of cases at the Special Court for Sierra Leone; a court which was established by agreement between President Kabbah and the UN Secretary-General in 2002, to bring to justice those who bear the greatest responsibility for grave crimes committed since November 1996. In the cases of two pro-government Civil Defence Force leaders, Fofana and Kondewa, the Trial Chamber of the Court accepted the fact of a motive in support of democracy as reason for leniency in sentencing for war crimes: Prosecutor v Fofana (Sentencing Judgment) (Special Court for Sierra Leone, Trial Chamber I, Case No SCSL-04-14-T, 2 October 2007) [91], [94]. The Appeals Chamber, on the basis that international humanitarian law excludes considerations of political motivations as relevant for breaches of the law, rightly overturned this approach: Prosecutor v Fofana (Appeal Judgment) (Special Court for Sierra Leone, Appeals Chamber, Case No SCSL-04-14-A, 28 May 2008) [530]–[535].

72 UN GAOR, 52nd sess, 19th plen mtg, Agenda Item 9, UN Doc A/52/PV.19 (1 October 1997) 8.
have been raised at some stage in the reconstruction process as an international legal concept.

Another reason that Sierra Leone stands out for present purposes is in terms of the practice of democracy during the reconstruction process. Although the government delayed holding national elections, reports from human rights monitors suggest that President Kabbah’s government generally demonstrated a commitment to matters such as freedom of expression, association and assembly, during the period 1998–2005 when international involvement was at its heaviest. Such democratic conduct was clearly facilitated by the fact that, as the 1991 constitution indicates, the infrastructure of Sierra Leone had already been established on the basis of a democratic model. In addition, it could just be a reflection that President Kabbah was genuinely committed to democratic governance. But in the light of the fact that some other post-conflict governments that have promised democracy have hardly gone on to deliver, one might speculate that the democratic approach to governance in Sierra Leone might also have been a consequence of international actors exerting more of an influence on the conduct of governance than they had in previous instances. The articulation of democracy as an international legal concept would have provided a basis for such influence.

In sum, there are reasons to believe that the post-conflict reconstruction of Sierra Leone was one of the most likely for democracy to have come up as an international legal concept in the debates and negotiations surrounding the reconstruction process. The treatment of the democracy issues within three key forums related to the construction process will now be considered.

V DEBATING DEMOCRACY AT THE UN

A number of organs at the UN provide opportunities for debates amongst states that are recorded and then made available to the public. Key forums where issues about post-conflict reconstruction have been debated are the General Assembly and Security Council. It has been noted elsewhere how, ‘international institutions, such as the UN, rarely, if ever, consult affected populations when

75 Constitution of the Republic of Sierra Leone (Sierra Leone) Act No 6 of 1991. Chapter II indicates the policies that Parliament should pursue when making laws and provides that ‘[t]he Republic of Sierra Leone shall be a State based on the principles of Freedom, Democracy and Justice’: s 5(1). Nowhere in the Constitution is the concept of democracy given an explicit definition. Rather the meaning of democracy is left to be implied from subsequent provisions. In this respect, s 5(2)(c) provides that ‘the participation of the people in the governance of the State shall be ensured in accordance with the provisions of this Constitution’. Chapter IV, on ‘The Representation of the People’, then provides for a multi-party democracy with elections at regular intervals, while Chapter V provides for the regular election of the President with no more than two terms of office. Moreover, Chapter III details how fundamental human rights are to be secured, and this includes non-discrimination, freedom of expression, association and assembly.
formulating policies aimed at rebuilding post-war societies’. This places the emphasis on the government of a state, in terms of a source of information about what the people want the international intervention and the reconstruction that it facilitates to look like. In addition, it provides an explanation for why it is not uncommon for matters of governmental legitimacy to be raised in debates related to conflict and post-conflict situations. The situation in Sierra Leone generated a host of debates at the UN, both during and after the conflict, about the nature of international involvement. As such, there were plenty of opportunities for the legitimacy of the Government of Sierra Leone to be questioned and for explanations as to why it was appropriate to support this government to be provided. Did these debates lead to the issue of democracy as an international legal concept being raised?

The centrality of democracy to the justification for international involvement in Sierra Leone helps to explain why there were scholarly investigations around the time of the initial intervention in Sierra Leone to determine whether it might provide evidence of a fledgling, free standing right to pro-democratic intervention. The general view was that it did not. However, proposing a right to intervention on the basis of democracy is something different from outlining an international legal conception of democracy. One reason for states to have adopted the language of international law to define democracy in this forum could have been to increase the authority of a particular stance. Yet a review of relevant resolutions from the Security Council reveals no mention of democracy as an international legal concept. Instead, democracy is simply posited, without definition, as the reason for the military junta to step aside and make way for the return of President Kabbah’s government. This does not preclude the possibility that democracy might have been more thoroughly addressed in the debates at the UN. An example is the speech given by President Kabbah (after he had been returned to authority) at the Security Council, prior to a UN Special Conference for Sierra Leone to gain pledges of international involvement to keep him in power and to facilitate the reconstruction of the state. However, a review of this debate, and others like it, reveals no mention of democracy as an

79 See Brad R Roth, ‘Secessions, Coups and the International Rule of Law: Assessing the Decline of the Effective Control Doctrine’ (2010) 11 Melbourne Journal of International Law 393. For the view that the international intervention in Haiti in 1994 in support of President Aristide had already signalled the emergence of a right to democratic intervention, see Fernando R Tesón, ‘Collective Humanitarian Intervention’ (1996) 17 Michigan Journal of International Law 323.
80 For an example of proposing intervention on the basis of democracy, see, eg, UN SCOR, 52nd sess, 3822nd mtg, S/PV.3822 (8 October 1997).
81 See Kritsiotis, above n 70.
82 See, eg, SC Res 1132, UN SCOR, 52nd sess, 3822nd mtg, UN Doc S/RES/1132 (8 October 1997) para 1.
international legal concept. Instead, democracy is simply put forward as an important consideration.83

A reason for states to have remained silent on the definition of democracy as an international legal concept at the UN can be gleaned from consideration of a debate at the Security Council prior to a resolution which required that the military junta make way for the return of President Kabbah’s government and introduced sanctions prohibiting the sale and supply of petroleum and petroleum products and arms and related matériel of all types to Sierra Leone.84 The common message from the delegates in the debate was that the return of President Kabbah’s government was important for democracy and peace in Sierra Leone. For instance, South Korea noted that ‘in the interests of peace and democracy in their own country, they [military junta] should agree immediately to the restoration of the legitimate Government’.85 However, in China’s remarks, it avoided reference to democracy. Instead, China emphasised its regret at the suffering of the Sierra Leonean people and voted for the sanctions out of respect for the African countries’ desire to have an early settlement.86 The avoidance of the term democracy by China in this debate might be seen as a sign that they wanted to emphasise the importance of peace over democracy. However, given that democracy is often associated with peace,87 it can also be seen as a reflection of the fact that, in spite of the considerable shifts in the nature of international affairs since the end of the Cold War, there is still not universal agreement amongst the governments of the world that democracy is the only acceptable model of governance.88

The fact that China does not endorse democracy as the only model for domestic governance is of major significance in terms of the appropriateness of the UN, especially the Security Council, as a forum for states to raise democracy as an international legal concept during post-conflict reconstruction. A key reason for this is that China is one of the five permanent members of the Council and thereby holds a veto, which, if exercised, can preclude the passage of a resolution perhaps intended to contribute to a reconstruction process.89 Consequently, China must agree with a resolution before it will be passed. As has been set out above, Security Council resolutions played a central role in the reconstruction of Sierra Leone, not least because they were utilised as a means to

83 For instance, the UK commended the Government of Sierra Leone on its efforts to ‘to re-establish effective administration and to reinforce democratic institutions and the rule of law’, but gave little indication as to the specific meaning of these concepts: UN SCOR, 53rd sess, 3902nd mtg, UN Doc S/PV.3902 (13 July 1998) 4.
84 SC Res 1132, UN SCOR, 52nd sess, 3822nd mtg, UN Doc S/RES/1132 (8 October 1997) paras 1, 6.
85 Ibid para 9.
86 Ibid para 14.
87 See Boutros Boutros-Ghali, UN Secretary-General, Letter Dated 17 December 1996 from the Secretary-General Addressed to the President of the General Assembly, UN GAOR, 51st sess, Agenda Item 41, UN Doc A/51/761 (20 December 1996) annex (‘Supplement to Reports on Democratization’).
encourage wider international assistance. This indicates that China clearly did not object enough to democracy being raised as an important value in the debates to prevent the passage of key resolutions. However, it is apparent that if debates about the meaning of democracy had arisen, particularly its existence as an international legal concept, this could have at least complicated the passage of important resolutions. As such, one can understand why any states that subscribe to an international legal concept of democracy might have remained silent on the issue when democracy was raised at the UN in relation to the reconstruction of Sierra Leone.

Importantly, the approach taken at the UN does not remove the possibility that international actors involved in the Sierra Leone situation might have still articulated democracy in international legal terms in other forums related to the reconstruction process. One opportunity, where to raise the issue would not have been so sensitive from a global perspective, comes in the form of the international facilitation of the peace agreements.

VI DEMOCRACY IN SIERRA LEONE'S PEACE AGREEMENTS

In an attempt to capture the legal nature of peace agreements, Bell has conceptualised a three-way border, ‘the border between law and politics; the border between international and domestic law; and the border between public law and private law’.

There are a number of common features of peace agreements which undergird this depiction, including: the fact that the main signatories are usually representatives of domestic warring factions that are claiming the authority to be the government and thereby purport to have the authority to change constitutional arrangements; that the reaching of agreement is often facilitated by international actors, who will often sign the agreement as witnesses; and that as well as more specific, detailed provisions, the agreements are also likely to include looser political aspirations. As such, it is evident that the negotiation of peace agreements provides a forum within which ideas about an international legal concept of democracy could be introduced and debated by both the international actors that facilitate the process and the participants in the conflict. These negotiations are not recorded and publicised in the same way as the UN debates addressed above. Nevertheless, a focus on the terms of agreements, in light of the personal accounts of those involved, can still provide an indication of the way in which key concepts have been dealt with by the participants.


Negotiated peace agreements are often of dubious legal status. While reading as legal documents, and using the language of obligation captured in treaty-like language and conventions, the mix of state and non-state actors — many of whom cannot be argued to be subjects of international law — who typically sign peace agreements mean that their international and domestic legal status is questionable.

91 Although records of negotiations can on occasion be made publically available. For a useful resource in this respect, see Transitional Justice Institute, The Transitional Justice Peace Agreements Database, University of Ulster <http://www-transitionaljustice.ulster.ac.uk/peace_agreements_database.html>.
In the course of trying to bring peace to Sierra Leone, international facilitation helped with the formulation of a number of peace agreements in which matters of governance were addressed. Specifically, there was the **Abidjan Agreement** which was entered into in 1996 before the exile of President Kabbah; closer to the time of President Kabbah’s return, in October 1997, there was the **Conakry Accord** when, even with the support of thousands of ECOMOG troops, the government’s effectiveness could still not hold, another agreement was accepted, this was the July 1999 **Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone** (**Lomé Agreement**); the **Abuja Ceasefire Agreement** of 10 November 2000, provided the basis for the peace that held. Perhaps the most likely of the negotiations to have prompted participants to raise an understanding of democracy in international legal terms were those that led to the **Lomé Agreement**. This idea

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92 Letter Dated 11 December 1996 from the Permanent Representative of Sierra Leone to the United Nations Addressed to the Secretary-General, UN SCOR, 51st sess, UN Doc S/1997/1034 (11 December 1996) annex (‘Peace Agreement between the Government of the Republic of Sierra Leone and the Revolutionary United Front of Sierra Leone’) (‘Abidjan Agreement’). The Preamble stresses that the parties are 

[c]ommitted to promoting popular participation in governance and full respect for human rights and humanitarian laws; [d]edicated to the advancement of democratic development and to the maintenance of a socio-political order free of inequality, nepotism and corruption.

The main body referred to the need for civil and political rights of the people, including the rights ‘freedom of conscience, expression and association, and the right to take part in the governance of one’s country’ to be guaranteed and promoted.

93 Letter Dated 28 October 1997 from the Permanent Representative of Nigeria to the United Nations Addressed to the President of the Security Council, UN SCOR, 52nd sess, UN Doc S/1997/824 (28 October 1997) annex I (‘Communiqué Issued at Conakry on 23 October 1997 at the Conclusion of the Meeting between the Ministers of Foreign Affairs of the Committee of Five on Sierra Leone of the Economic Community of West African States and the Delegation Representing Major Johnny Paul Koromah’) (‘Conakry Accord’): the Conakry Accord included no mention of democracy, rather it was the terminology of the return of ‘constitutional governance’ that was adopted.

94 Peace Agreement between the Government of Sierra Leone and the Revolutionary United Front of Sierra Leone (signed and entered into force 7 July 1999) <http://www.unhcr.org> (‘Lomé Agreement’). This agreement, in its preamble, emphasised ‘the conviction that sovereignty belongs to the people, and that Government derives all its powers, authority and legitimacy from the people’. A commitment to democracy and human rights was stressed.


96 Priscilla Hayner, ‘Negotiating Peace in Sierra Leone: Confronting the Justice Challenge’ (Report, Centre for Humanitarian Dialogue, December 2007) 10:

There was wide national and international participation in the Lomé talks. Official delegations were of course present for the Sierra Leone government and the RUF (which officially included the AFRC [Armed Forces Revolutionary Council], although it became clear to international participants that the AFRC was not well represented in the delegation). Internationals present for part or all of the proceedings included representatives from the UN (representing the UN Observer Mission in Sierra Leone and the Office of the High Commissioner for Human Rights), the Organization of African Unity, the Commonwealth, Ghana, Liberia, Libya, Mali, Nigeria, the United Kingdom and the United States.
rests on the fact that although all the agreements addressed matters of government in some way, at the time of the Lomé Agreement the position of the government was particularly vulnerable. This is in the sense that the support of thousands of ECOMOG troops, which had been helping to keep the government in office, was expected to end, but it was not yet clear that this would be replaced. In such a setting, reference to an international legal concept of democracy could have been drawn upon as a means to try and strengthen the position of President Kabbah’s elected government against the unelected rebel movement.

In this respect, it is important to note the comments of one of the facilitators of the process, the United States Ambassador to Sierra Leone, Joseph Melrose Jr, that

\[\text{[t]he RUF was reminded that the fact that the current Sierra Leonean government had been elected, even if under less than perfect circumstance, and enjoyed international recognition was important to remember in terms of the availability of future assistance.}\]97

This comment reflects that the international facilitators were conscious of the value of democracy, in terms of the negotiating position of the government. However, there is no suggestion in the US Ambassador’s account that the idea of democracy as an international legal concept was raised. Nor did the actual Lomé Agreement include reference to an international legal concept of democracy.98 In fact, the Lomé Agreement included a power sharing arrangement. Prominent features of the governance arrangement included provision for the appointment of Corporal Foday Sankoh, leader of the RUF in Sierra Leone, as Vice President and appointment of members of the RUF to a broad-based Cabinet.99 This arrangement never came into existence. A key factor in this respect was the abduction by the rebels of a large number of UN staff in May 2000, which contributed towards greater and more effective UN involvement.100 Still, facilitation of an arrangement that gives an unelected representative a prominent role in government hardly seems consistent with a belief in an international legal conception of democracy.101 Can the apparent failure of the facilitators to raise an international legal concept of democracy at Lomé be taken as evidence of a lack of a belief in such a concept on behalf of the states that they represent?


98 On the human rights provisions that were included and the role of the human rights community that participated in the negotiations at Lomé, see O’Flaherty, above n 96, 108.
99 Lomé Agreement pt 2 art V.
100 See O’Flaherty, above n 96, 93.
101 The human rights community that participated in the negotiations is reported to have explicitly objected to power sharing before elections: Andrea Bartoli and Thomas Bundschuh, ‘Working Together for Sustainable Peace: Conflict Resolvers and Human Rights Advocates in Sierra Leone’ in Eileen F Babbitt and Ellen L Lutz (eds), Human Rights & Conflict Resolution in Context: Columbia, Sierra Leone, & Northern Ireland (Syracuse University Press, 2009) 154, 161.
In the debate at the Security Council that followed the Lomé Agreement, the representative for Sierra Leone called on the ‘international community to support the people of Sierra Leone in their search for peace and not to do anything that would undermine the Peace Agreement which about six weeks was delicately negotiated by the parties in Lomé’. Such a call might be seen as a concern that, perhaps because of the governance arrangements it introduced and the amnesties it granted, some international actors might not welcome the Lomé Agreement. In fact, though, the meeting included calls such as that of the UK for ‘a full United Nations peacekeeping operation to assist in the implementation of the Peace Agreement and to help create a climate of confidence’. This highlights the willingness of states that were involved as facilitators in the negotiation process at Lomé to support a departure from principle in the interests of the effectiveness of the reconstruction process. On this basis, it is possible to understand why, even if a state subscribed to an international legal concept of democracy, it might have preferred that this not be raised during peace negotiations. By raising the issue, the facilitators might have led to the negotiations becoming sidetracked by the question of whether there is such a concept, its contents, and the extent to which departure from it might be permissible.

Nonetheless, democracy might still have been raised in international legal terms by some states following the Lomé Agreement, in the interests of a basis for influencing the approach taken by the power sharing arrangement to governance. This idea is supported by comments made by Argentina, in debate at the UN after the Lomé Agreement, which stress that ‘[t]he implementation of the Agreement will require a clear commitment to the values of democracy, liberty and the rule of law’, and those of Namibia:

Sierra Leonean leaders need to continue to make a conscious effort to inculcate democratic values and belief in the worth and dignity of the human person and to diligently dispel temptations to take recourse to politics of revenge.

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102 UN SCOR, 54th sess, 4035th mtg, UN Doc S/PV.4035 (20 August 1999).
103 Ibid.
104 See Melrose, above n 97 129–30:

A large part of the logic under which the facilitating group operated was the need to not throw the situation in Sierra Leone into an even greater state of chaos or create an atmosphere in which it would be considerably more difficult to obtain the very necessary financial assistance from both institutional and bi-lateral donors that Sierra Leone desperately needed.

See also Fen Osler Hampson, ‘Making Peace Agreements Work: The Implementation and Enforcement of Peace Agreements between Sovereigns and Intermediate Sovereigns’ (1997) 30 Cornell International Law Journal 701, 702: ‘our expectations about what peacebuilders can do to promote democratic governance should be modest and based on a realistic appreciation of the difficulties of bringing about social, economic, and political change in war-torn societies’.

105 On the relationship between human rights and peace agreements, see Bell, ‘Peace Agreements and Human Rights’, above n 90, 243 (citations omitted):

As regards ‘human rights’, the notion of negotiating human rights raises immediate concerns as to the extent to which human rights have normative requirements, and the extent to which ‘the interpretation and application of human rights and justice are negotiable in the context of political settlement’.

106 UN SCOR, 54th sess, 4035th mtg, UN Doc S/PV.4035 (20 August 1999).
However, highlighting an international legal concept of democracy at this stage could have drawn attention to the extent of the divergence of what was proposed in terms of governance at Lomé from standard ideas about democracy, and thereby potentially undermined the legitimacy of the proposed governance arrangement. On this basis, one can also appreciate why any states that subscribe to the existence of an international concept of democracy might not have wanted to raise the matter following the conclusion of the Lomé Agreement.

In addition, the likelihood of finding an international legal concept of democracy in any peace agreements must be reduced by the fact that it would be, in a sense, a government inviting international scrutiny of their own conduct. This is something that most governments are not likely to find desirable. Certainly, there are good reasons to think that President Kabbah would not have favoured any device for additional scrutiny. For instance, at the UN, President Kabbah expressed a dislike for conditionality. Moreover, at the (now defunct) Human Rights Commission, Mr Rowe, speaking for Sierra Leone in 2003, diplomatically discouraged assessment of human rights in Sierra Leone. Mr Rowe specified that '[h]is government did not need to be reminded of its human rights obligations. What it needed was the capacity to promote those rights', which required increased international cooperation, technical assistance and support. This comment was made in the context of Sierra Leone being removed from Agenda Item 9 (which indicated that the human rights situation was one of concern). Nonetheless, it serves to indicate the sensitive nature of the human rights upon which an international concept of democracy could be expected to be based, even in a situation where a government is dependent on international actors for its ability to lead a reconstruction process.

In sum, the Sierra Leone example suggests that, as a result of the complexity of the main issues at stake and the potential interests that the parties have in not creating a stronger basis for their approach to governance to be held to account by external actors, peace agreement negotiations are unlikely to be a forum in which one will find states raising democracy as an international legal concept. The external aid agreement dynamic is considerably different. In particular, a failure to agree on terms would not have such significant implications for the stability of a situation. Moreover, the aid agreements are likely to come only once the peace is relatively secure, so specifying an international legal concept of democracy at this stage would be unlikely to have any impact on the negotiation of peace agreements. This article will now consider how democracy has been treated in the aid agreements related to Sierra Leone.

107 Alhaji Ahmad Tejan Kabbah, ‘Address by the President of the Republic of Sierra Leone’ (Speech delivered at the Millennium Summit of the United Nations, New York, 7 September 2000).


109 Ibid.

110 Ibid.
VII DEMOCRACY AND AID AGREEMENTS

Post-conflict reconstruction is heavily dependent on external assistance in the form of financial, administrative and technical assistance. Major donors will tend to agree on a long-term framework for the assistance with the recipient government. Such agreements will set out what the government can expect from the donor as well as what the donor expects from the government. The legal nature of the agreements which set out these arrangements is often nebulous with both parties identifying obligations to the other but generally in loose terms. Still, in terms of the inclusion of targets for the domestic government, it would be feasible for a donor to insist that, in return for the promised support, the government agrees to comply with an international legal concept of democracy. That the donor might be interested in doing this, rather than formulating its own ad hoc concept of democracy, is supported by two reasons. One is that it would reduce the need for greater clarity on the legal status of the agreement, as it would be relying on pre-existing international legal obligations. The other is that, in grounding the concept of democracy in international law, the scope for the conception of democracy that is detailed being resisted on the basis that it represents interference in the affairs of the state could be reduced, as it would be an appeal to a supposed universal standard.

In relation to Sierra Leone, it is reported that by 2005 official development assistance, in the sense of aid from other governments, either direct or channelled through other institutions, was equivalent to 30 per cent of gross national income. Major donors have been the European Union, the UK, the World Bank and the African Development Bank. Since the end of the war, annual Consultative Group Meetings have provided a forum for interaction between the donors and the government. These meetings have also helped with co-ordination of aid activity and have provided an opportunity for donor input into the government’s interim and then full Poverty Reduction Strategy Papers (‘PRSP’). These documents set out Sierra Leone’s ‘macroeconomic, structural, and social policies and programs to promote growth and reduce poverty, as well as associated external financing needs’. The contents of the framework agreements that have been negotiated with each of the main donors have mapped onto the PRSPs. As to the likelihood of inclusion of an international legal concept of democracy in one of the framework agreements, the chances of this being found in agreements with the World Bank or African Development Bank must be severely limited by provisions in each of the their


respective charters. More specifically, the *Articles of Agreement of the World Bank*\textsuperscript{115} and the *Agreement Establishing the African Development Bank*\textsuperscript{116} both indicate that the respective institution shall not interfere in political affairs or be influenced by the political character of target countries. Neither the UK nor the EU is restrained in this way. In fact, both have been major promoters of democracy around the world.\textsuperscript{117}

The *Cotonou Agreement* of 2000 provides the overarching legal framework for aid from the EU to African, Caribbean and Pacific countries (‘ACP’).\textsuperscript{118} This agreement identifies the aim of EU aid as to support efforts of ACP states ‘to reduce and eventually eradicate poverty in ways which are consistent with sustainable development and the gradual integration of ACP countries into the world economy’.\textsuperscript{119} Both parties, the EU and ACP, commit to taking all appropriate measures to facilitate the attainment of the objectives of the agreement and to refrain from any measures likely to hinder these objectives.\textsuperscript{120}

In this respect, human rights, rule of law and democracy, are identified as ‘essential elements’ of the partnership which can lead to the suspension of cooperation activities.\textsuperscript{121} These concepts are, however, left as undefined political principles.\textsuperscript{122} The nature of the specific aid relationship between the EU and Sierra Leone during the time when the Sierra Leone Government was dependent on an international military presence for control of the territory was set out in the ‘Strategy Paper and National Indicative Programme for the Period 2003–2007’.\textsuperscript{123} This document was the result of negotiations between representatives of the Government of Sierra Leone and the European Commission. It allocated over €200 million and technical support to assist with progress in three key target sectors:\textsuperscript{124} ‘rehabilitation of priority infrastructure’;\textsuperscript{125} ‘good governance and institutional support’;\textsuperscript{126} and ‘macro


\textsuperscript{116} *Agreement Establishing the African Development Bank*, opened for signature 4 August 1963, 510 UNTS 3 (entered into force 7 May 1982).

\textsuperscript{117} For a discussion of democracy promotion by the European Union, see Peter Burnell, ‘From Evaluating Democracy Assistance to Appraising Democracy Promotion’ (2008) 56 Political Studies 414, 416–20.

\textsuperscript{118} *Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States of the One Part, and the European Community and Its Member States, of the Other Part* [2000] OJ L 317/03 (‘Cotonou Agreement’).

\textsuperscript{119} Ibid pt I title I art I.

\textsuperscript{120} Ibid art 3.

\textsuperscript{121} Ibid art 9.

\textsuperscript{122} See also Rich, above n 12, 29.


\textsuperscript{125} Ibid 23: ‘Two main areas are to be targeted by the program: Road transport infrastructure and social sectors, namely health and education’.

\textsuperscript{126} Ibid 24: ‘[this] will include support to the restoration of civil authority throughout the country, to the improvement of public finance management including auditing, and support to Sierra Leone’s policy of decentralisation of administration and local governance’.
economic support’.\textsuperscript{127} One of the purposes of the intervention in the second focal point was identified as ‘[r]estoration of civil authority, consolidation of democracy and establishment of a participatory, transparent and accountable system of governance’.\textsuperscript{128} This was to be verified on the basis of assessment reports by the EU, International Monetary Fund and Department for International Development (‘DfID’).\textsuperscript{129} It is with this aspect of the agreement that one might expect an international legal concept to be outlined. However, the meaning of democracy, even as a political concept, was left largely undefined.\textsuperscript{130}

The UK has been the biggest bilateral donor to Sierra Leone.\textsuperscript{131} The UK has a memorandum of understanding with the Government of Sierra Leone, agreed to in November 2002, and titled a ‘Poverty Reduction Framework Arrangement’.\textsuperscript{132} This agreement sets out the terms for ‘a substantial direct development program to Sierra Leone’.\textsuperscript{133} The substance and terms are based on

\begin{quote}
[t]he legacy of mismanagement by successive governments in Sierra Leone and civil war has undermined much of the country’s social fabric, and prevented the development of its human resource base, institutional capacity and social and economic infrastructure.\textsuperscript{134}
\end{quote}

This context helps to explain the long-term commitment that the UK makes to budget assistance, as well as the promise to assist with the development of governmental capacity, with the training of the military, and with support for the cause of Sierra Leone in international forums, such as the World Bank and the EC. In return, one of the things the Government of Sierra Leone must commit to is ‘Improving Standards of Governance and Combating Corruption’, which includes that ‘[t]he Government of Sierra Leone will work towards making progress on broad-based inclusive political agenda, grass root democracy and

\textsuperscript{127} Ibid: ‘The main objective of this measure is to contribute to poverty reduction by enabling the Government, via corresponding budget allocations, to deliver basic social services such as education and health to the poor segments of the population’.

\textsuperscript{128} Ibid 32.

\textsuperscript{129} Ibid.

\textsuperscript{130} But see ibid Appendices, 27, which identifies the Government of Sierra Leone’s ‘Strategy for Good Governance and Public Sector Reform’ of 1997 as a key reference point with regard to attempts to create a functioning democratic and accountable system of governance. The 1997 document is reported to address issues such as ‘the constitution, the executive, the judiciary, Parliament, political parties, civil service reform, electoral reform, civil society, police, prison, media, [and] anti-corruption/accountability’.

\textsuperscript{131} See Department for International Development, \textit{Sierra Leone} (5 April 2012) UK Aid <http://www.dfid.gov.uk/where-we-work/africa-west--central/sierra-leone/>. The UK is Sierra Leone’s largest bilateral development partner. The Department for International Development (‘DfID’) provided £104.5 million in aid in the 3 years from 2000–01 (£35 million, £37.1 million, £32.4 million). DfID has undertaken to provide £120 million in aid over 3 years (2003–06), as well as a ‘substantial direct development programme’ over the next 10 years (starting from September 2005).


\textsuperscript{133} Ibid.

\textsuperscript{134} Ibid [2.1].
popular participation in decision making'. Again, though, no attempt is made to expand further on the meaning of the concept of democracy.

One can identify from these aid agreements not only the theme of a significant external influence over the direction that the state will take being offset through a desire to see efforts towards democracy by the government, but also the preference for democracy to be kept largely undefined. Can this be read as a sign that the states involved do not subscribe to democracy as an international legal concept?

By leaving the definition of democracy in loose political terms, the external actors retain flexibility in how they respond to the government’s conduct. That is, although a commitment to democracy is stressed as important, if the government were to neglect this promise, the donor could still continue to provide support. To illustrate, even if there were fundamentally unfair elections, there would be little to stop the donor from continuing to provide financial support. If democracy had been defined with more precision and in legal terms, the onus on the donor to take action, in the sense of at least suspending funding, would be much more compelling. One might argue that if there had been a manifest disregard for a central component of democratic governance, funding should be stopped regardless of the context in the interests of justice. However, a break in funding and aid can have a massive impact on the stability of a situation which has grown dependent upon it. As such, it is possible to see an advantage in leaving looseness in the definition of democracy. Still, one might argue that had a legal concept of democracy been articulated in the agreement, the donor would have had a stronger footing for evaluating the conduct of governance from the outset thereby offsetting the risk of an abandonment of the provisions in the first place.

It is apparent, then, that the case for states not making known their views on the legal nature of democracy in aid agreements is perhaps not as clear-cut as it has been suggested to be in the UN and peace agreement contexts. Yet, the case for democracy to have been raised as an international legal concept is still far from compelling. Thus, it is also difficult to impute significance to the silence of states on this matter in the aid agreement context.

VIII CONCLUSION

Scholars of international law have identified and ascribed content to an international legal concept of democracy. This has been on the basis of the observation of state practice. But it has also, on occasion, involved granting the heading of democracy to a group of existing provisions of international human rights law. This article has proceeded on the basis that instances of internationally facilitated post-conflict reconstruction can appear conducive to states raising democracy in international legal terms. To test this premise, the treatment of democracy in key forums related to the reconstruction of Sierra Leone has been explored.

It has been found that in none of the UN debates, peace agreements or aid agreements did states seek to articulate democracy as an international legal

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135 Ibid [4].
136 See Social Development Direct and Oxford Policy Management, above n 111, 3.
concept. Instead, democracy has consistently been posited as a political value. This could be seen as a sign against the thesis that there is support amongst states for an international legal concept of democracy, especially as in relation to each opportunity it has been suggested that there could have been particular benefits from raising the issue. Yet, in relation to each opportunity, it has also been shown that if a state had raised democracy as an international legal concept it could have impacted in a potentially negative way on the effectiveness of the reconstruction process. Raising democracy in international legal terms in the debates related to the reconstruction of Sierra Leone at the UN could have caused a distracting discussion amongst members that might have delayed, or prevented, the passage of key resolutions. In relation to the numerous peace agreements, it could have sidetracked negotiations or drawn unwanted attention to the inconsistency of power sharing arrangements with the ideals of democracy. The aid agreement context has been highlighted as the most likely for states to have raised democracy as an international legal concept. In particular, this is because of the often bilateral nature of the negotiations and the fact that peace was already established. Still, it has also been suggested that the case here was also far from compelling, as states are likely to value the flexibility that arises, in terms of how they deal with questions of governance in the target situation, when democracy is left in loose political terms.

It is apparent, then, that the practice of post-conflict reconstruction in Sierra Leone does not provide the level of support for the existence of an international legal concept that one might have expected, given the commonality in the approach to democracy across a host of examples of internationally facilitated reconstruction. But by highlighting that there was a lack of suitable forums for the issue to be raised, this article has shown that it would be unreasonable to conclude from the absence of any mention of an international concept of democracy that there is no support amongst states for the idea that there is an international legal concept along one of the lines that has been proposed by scholars.

In addition, it has been suggested that the Sierra Leone situation appeared to be one of the most conducive, out of the examples of post-conflict reconstruction from the last twenty years, to states articulating democracy in international legal terms. The fact and potential reasons for why the opportunity was not taken here are not without broader significance. In particular, the approach taken in Sierra Leone provides a basis for assuming that states will also not have addressed democracy in explicit international legal terms in any of the other noted examples of practice. Accordingly, the article can be seen as a reason for scholars interested in finding states discussing democracy in international legal terms not to be too expectant with regard to the practice of post-conflict reconstruction. Indeed, given that post-conflict reconstruction was identified as potentially one of the most likely aspects of international affairs for democracy to be articulated as an international legal concept, this article can also be seen as a reason to re-evaluate whether at the present level of development there is much likelihood of finding states being explicit on this matter in any aspect of international affairs. As such, this article can be seen as a call for future work on the topic of democracy in international law to explore the possibility of a fuller investigation into the policymaking of states, so as to help to develop a stronger
sense of what the position of a state is on the existence and contents of a right to democracy.

Finally, the findings of this article also have relevance for actors involved in the future practice of post-conflict reconstruction. In one respect, the failure to identify a mention of democracy as an international legal concept in the practice of post-conflict reconstruction in Sierra Leone lends support to the idea that there is not yet a fully concretised notion of democracy in international law to guide matters of governance in the aftermath of war. In another respect, the apparent absence of a suitable forum for the matter to be raised suggests that any states that do subscribe to an international legal concept of democracy should perhaps resist the temptation to raise the matter in forums related to post-conflict reconstruction. This might hinder the emergence of an international legal norm of democracy, but it can be expected to have benefits for the post-conflict situation in question.