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Democracy and Statehood

Veronika Fikfak *

Abstract

*This Essay addresses the relationship between democracy and statehood. The two concepts have been linked since the 1990s, when new entities claiming statehood were expected to have constituted themselves on a democratic basis and to have put in place democratic government structures to be recognized by the international community. Yet, as Professor Tom Ginsburg's book *Democracies and International Law* reveals, the rise of autocracies and a general backlash against democracy in the last three decades have led to changes in countries' behavior. This Essay argues that today, the requirement of democratic process and institutions for international recognition is less stringent. Even more, it posits that if autocracies team up to recognize other similarly non-democratic entities, democracy might play no role in the formation of new states in the long run. In this regard, *Democracies and International Law* may signal an end to the 1990s European approach to recognition and be an indication of a new reality in the area of statehood.*

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Table of Contents

I. Introduction	105
II. Democracy as a Condition of Statehood?	106
III. Democracy and the Right to Remedial Secession	110
IV. Revisiting the Democracy and Statehood Link	112
V. Conclusion	115

I. INTRODUCTION

In his new book, *Democracies and International Law*,¹ Professor Tom Ginsburg asks, “What is the relationship between democracy and international law?” His book demonstrates—through an incredibly careful and rich empirical analysis—whether, how, and why democracies *behave* differently than non-democracies in their use of international legal institutions. Ginsburg reveals that democracies are the driving force behind international lawmaking, in that they use international law as a mechanism of cooperation much more than do countries with other forms of government, such as autocracies.² In particular, he notes that democracies accept more precise treaty obligations,³ are more likely to become members of international organizations,⁴ and are less likely to include dispute resolution clauses in bilateral agreements.⁵

Ginsburg then reverses his initial question and asks whether international law can be used to *protect* democracy.⁶ Noting the developments after the Cold War, when international institutions like the European Court of Human Rights and the European Court of Justice helped to promote the development of democratic institutions within their member states by offering guidance and individual protections via their adjudicatory systems, Ginsburg notes that international law can reinforce democracy. Nonetheless, he also finds that the international environment is quite different today than it was at the end of the Cold War. Important developments have taken place in the last thirty years, and the contention that international institutions can successfully intervene to confront democratic backsliding is now in question. As Ginsburg highlights, the record on this is a mixed bag.⁷

This Essay will examine an aspect of the relationship between democracy and international law that is (intentionally)⁸ not addressed in Ginsburg’s book: that of the relationship between democracy and statehood. This question deserves attention, as the two concepts have been inextricably linked since the 1990s, when new entities claiming statehood were expected to have constituted themselves on a democratic basis and to have put in place democratic government structures.⁹

¹ TOM GINSBURG, *DEMOCRACIES AND INTERNATIONAL LAW* (2021).

² *See id.* at 62–68.

³ *See id.* at 67.

⁴ *See id.*

⁵ *See id.*

⁶ *See id.* at ch. 3, 4.

⁷ *See id.* at 7.

⁸ *See id.* at 16.

⁹ *See* Declaration on the “Guidelines on Recognition of New States in Eastern Europe and in the Soviet Union” at 4 ¶ 3, U.N. Doc. S/23293 (Dec. 17, 1991) [hereinafter E.C. Guidelines].

At that time, in order for an emerging entity to be considered a state and to receive recognition from other states, it had to show its democratic credentials. In this regard, democracy was linked to international law in relation to the foremost question of international law: the birth of new states.

But as Ginsburg shows, enthusiasm for democracy has waned since the 1990s, and autocracies are ever more prevalent and more present on the international plane. This rise of autocracies threatens to spoil the current status quo, in which international law and democracy go hand in hand and mutually reinforce each other. Authoritarian regimes use international law to actively cooperate with each other in ways that help them remain in power, including through intervention in other jurisdictions to preserve authoritarian rule.¹⁰ From the perspective of potential new entities making claims for statehood, this means that recognition by democracies (presumably conditioned on the new entity's democratic character) is no longer essential for their survival. If autocracies step in and provide new entities with recognition and a viable chance to survive by fostering diplomatic and economic relationships with them, then the democratic requirements that appeared to be the *sine qua non* for new entities desiring recognition may no longer hold.

This Essay proceeds in the following manner. Section II introduces the expectation that new entities claiming statehood in the 1990s needed to be democratic and constitute themselves on a democratic basis. Section III describes perhaps the clearest link between democracy and statehood, the example of remedial secession. Section IV then asks whether the requirement of a democratic process is still a relevant condition for statehood today. Specifically, it discusses whether entities are still required to show democratic credentials before being recognized. It also looks to the latest caselaw of international organizations, especially in Europe, to consider what is required of states once they become members of international organizations and how this might be relevant for statehood. Section V concludes.

II. DEMOCRACY AS A CONDITION OF STATEHOOD?

At the end of the Cold War, with the dissolution of the Soviet Union and the Socialist Federal Republic of Yugoslavia (SFRY), the communist social and political economic order had come to an end, and a number of new states emerged. This “entanglement of post-Cold War political developments and the emergence of new states led to the idea that democracy should be brought into international law as a normative framework in relation to both existing and

¹⁰ See *id.* at 186–237.

emerging states.”¹¹ At the time, some international legal scholars argued that democracy “had become a normative entitlement of all individuals.”¹² In this context, the European Community (E.C.) member states adopted a number of documents that explicitly expressed their willingness to grant recognition only to those new states which had constituted themselves on a *democratic basis*.¹³

Prior to 1990, there had been no similar requirements. The law of statehood had previously revolved around the Montevideo Convention criteria (defined territory, permanent population, existence of a representative government, capacity to enter into relations with other states)¹⁴ and around concepts such as recognition, secession, and dissolution. As a rule, states had not judged the type of government or electoral process an entity adopted, nor had they conditioned recognition upon it. The democratic character of any new entity’s constitution or institutions was not determinative of successful state creation.¹⁵

After the end of the Cold War, however, this perception changed. In response to the events in the former SFRY and the Soviet Union, and the subsequent dissolution of Czechoslovakia, the E.C. issued a set of guidelines for recognition of new states emerging in these two territories, which stated:

Member States affirm their readiness to recognize those new States which, following the historic changes in the region, have constituted themselves on a democratic basis, have accepted the appropriate international obligations and have committed themselves in good faith to a peaceful process and to negotiations.¹⁶

The language of democracy therefore entered any discussion of the birth of a new state. To be recognized, a new entity had to have two basic things: (1) “democratic procedure” (alteration of its legal status in accordance with the will

¹¹ JURE VIDMAR, *DEMOCRATIC STATEHOOD IN INTERNATIONAL LAW: THE EMERGENCE OF NEW STATES IN POST-COLD WAR PRACTICE* 1 (2013).

¹² See generally Thomas Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT’L L. 46 (1992); Thomas Franck, *Democracy as a Human Right*, in *HUMAN RIGHTS: AN AGENDA FOR THE NEXT CENTURY* (L. Henkin & J. Hargrove eds., 1994); Thomas Franck, *Legitimacy and the Democratic Entitlement*, in *DEMOCRATIC GOVERNANCE AND INTERNATIONAL LAW* (Gregory H. Fox & Brad R. Roth eds., 2001); Fernando Téson, *The Kantian Theory of International Law*, 92 COLUM. L. REV. 53 (1992); FERNANDO TÉSON, *A PHILOSOPHY OF INTERNATIONAL LAW* (1998); Anne-Marie Slaughter, *International Law in a World of Liberal States*, 6 EUR. J. INT’L L. 503 (1995); Anne-Marie Slaughter, *The Real New World Order*, 76 FOREIGN AFFS. 183 (1997).

¹³ See E.C. Guidelines, *supra* note 9, at 4 ¶ 3.

¹⁴ See Convention on the Rights and Duties of States (Montevideo Convention), Dec. 26, 1933, 165 L.N.T.S. 19, <https://perma.cc/98UX-BZ8F>.

¹⁵ See generally J.E.S. Fawcett, *Security Council Resolution on Rhodesia*, 41 BRIT. Y.B. INT’L L. 104, 112 (1965–66); D.J. Devine, *The Requirements of Statehood Re-examined*, 34 MODERN L. REV. 410, 410–17 (1971) (including a description of Fawcett’s response); Eur. Council, Declaration on Yugoslavia and on the Guidelines on the Recognition of New States (Extraordinary EPC Ministerial Meeting, Brussels, Dec. 16, 1991), quoted in 1992 I.L.M. 1485, 1485.

¹⁶ E.C. Guidelines, *supra* note 9, at 4 ¶ 3.

of the people) and (2) “democratic government structures” (adherence to a particular political system).¹⁷ The E.U. adopted this approach for entities in Europe, including Montenegro and Kosovo, as well as outside of Europe, like Eritrea, Ethiopia, East Timor, and South Sudan.¹⁸

In his seminal study, *Democratic Statehood in International Law*, Jure Vidmar shows that most of the states that emerged in the period following the Cold War were created with the overwhelming support of the will of the people, expressed in independence referenda.¹⁹ They sought international recognition and membership in international institutions, and they created democratic institutions within their own borders. But, as Vidmar says, it was unclear whether the new language of democracy “being used in the discourse of state creation [wa]s still that of international law.”²⁰ In other words, did international law *require* democratic character to accord an entity statehood?

Following the E.C.’s guidelines for recognition of new states, most of the discussion has revolved around the idea that the requirement for states to constitute themselves on a democratic basis should be regarded as a recognition requirement and not a statehood criterion.²¹ This means that while democratic procedure was important for the *granting of recognition* by other states, it was not crucial for the entity to *exist* as a state.

This distinction is crucial. While fulfilling the criteria of statehood is essential for an entity to become a new state, recognition is not necessarily crucial for its emergence. This is because in international law, there are two theories of the role recognition plays in relation to statehood. The “declaratory theory” of recognition, on the one hand, posits that recognition is merely a political act accepting and recognizing a pre-existing state of affairs²²—welcoming an entity into the international community and showing a willingness to engage with it. In this context, recognition is merely indicative of the fact that an entity already exists. The “constitutive theory” of recognition, on the other hand, perceives recognition as “a necessary act before the recognized entity can enjoy an

¹⁷ JURE VIDMAR, *supra* note 11, at 2.

¹⁸ *See id.* at 1.

¹⁹ *See id.* at 2.

²⁰ *Id.* at 3.

²¹ *See* RICHARD CAPLAN, EUROPE AND THE RECOGNITION OF NEW STATES IN YUGOSLAVIA (2005); *see also* STEVE TERRETT, THE DISSOLUTION OF YUGOSLAVIA AND THE BADINTER ARBITRATION COMMISSION: A CONTEXTUAL STUDY OF PEACE-MAKING EFFORTS IN THE POST-COLD WAR WORLD (2000).

²² *See* MARTIN DIXON, ROBERT MCCORQUODALE & SARAH WILLIAMS, CASES AND MATERIALS IN INTERNATIONAL LAW 158 (2011).

international personality.”²³ From this perspective, international recognition is a necessary condition for the emergence of new states. In this regard, if democracy were accepted as a condition of recognition, “a territorial entity which did not come about in a democratic procedure and which does not seek to establish democratic government structures would not qualify as a state.”²⁴

Most writers have adopted the declaratory view of recognition.²⁵ They therefore believe that a “state may exist without being recognized, and if it does exist, in fact, then whether or not it has been formally recognized by other states, it has a right to be treated by them as a state.”²⁶ But this view is not straightforward because, as Vaughan Lowe argues, states depend on other states for their survival:

Recognition is undoubtedly a political instrument. When would-be states emerge in a non-consensual way from the territory of existing states, whether it be by attempted secession or by the break-up of the former state, there is always a time during which it is unclear whether the attempt to establish the new state will succeed . . . During this period the attitude of third States is enormously important. If, say, the EU or the USA or Russia announces that it recognizes the new entity as a state and will give it economic or other assistance, it is much more likely to survive than if they all say that they will have nothing to do with it.²⁷

Recognition by others, and the economic and diplomatic relationships that come out of that political act, therefore carries with it a great deal of promise for new entities. As scholars have shown, although “it is often difficult to discern the precise impact that recognition has upon emergent statehood,” the correlation between recognition and the survival of a new entity is clear: “nascent political communities that receive international recognition during their attempts to secede *seem* more likely to become independent states than those that do not.”²⁸ How important recognition is can be seen from the example of unsuccessful attempts at secession—situations in which recognition did not occur. Consider the attempted separation of Kantanga from the Democratic Republic of Congo,²⁹ of

²³ THOMAS D. GRANT, *THE RECOGNITION OF STATES: LAW AND PRACTICE IN DEBATE AND EVOLUTION* (1999); Hersch Lauterpacht, *Recognition of States in International Law*, 53 *YALE L.J.* 385, 386 (1944).

²⁴ Anne Peters, *Statehood after 1989: “Effectivités” between Legality and Virtuality*, in *SELECT PROCEEDINGS OF THE EUROPEAN SOCIETY OF INTERNATIONAL LAW* 171 (James Crawford & Sarah Nouwen eds., 2012).

²⁵ See D.J. HARRIS, *CASES AND MATERIALS ON INTERNATIONAL LAW* 131 (2010).

²⁶ J.L. BRIERLY, *THE LAW OF NATIONS* 138 (1963).

²⁷ VAUGHAN LOWE, *INTERNATIONAL LAW* 163 (2007).

²⁸ Alex Green, *Successful Secession and the Value of International Recognition*, in *RESEARCH HANDBOOK ON SECESSION* 3 (Lea Raible, Jure Vidmar & Sarah McGibbon eds., 2022).

²⁹ This attempted separation was not recognized by a single state on the international plane. See JAMES CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW* 405 (2006). See generally *Certain Expenses of the United Nations* (Article 17, paragraph 2, of the Charter), Advisory Opinion, 1962 *I.C.J.* 151 (Jul. 20).

Republika Srpska from Bosnia-Herzegovina,³⁰ and of the Republic of Somaliland from the Federal Republic of Somalia,³¹ all of which were situations “where the emergence of independent statehood was universally denied, and no new state arose.”³²

Given how important recognition is to an entity’s survival, conditioning the act of recognition on democratic credentials cannot easily be ignored. The next Section turns to an area where the link between the democratic requirement and the creation of a new state is perhaps most clearly seen: the theory of remedial secession.

III. DEMOCRACY AND THE RIGHT TO REMEDIAL SECESSION

In 1998, the Supreme Court of Canada was asked whether a right to unilateral secession existed in international law in the case *Secession of Quebec*.³³ The Court held that no such right existed, but it went further, outlining clearly for the first time the idea of remedial secession:

The recognized sources of international law establish that the right to self-determination of a people is normally fulfilled through internal self-determination – a people’s pursuit of its political, economic, social and cultural development within a framework of an existing state. A right to external self-determination (which in this case potentially takes the form of the assertion of a right to unilateral secession) arises in only the most extreme of cases and, even then, under carefully defined circumstances.³⁴

The Court went on to explain that such “‘most extreme cases’ were intended not only for peoples under a colonial rule, but also ‘where a people is subject to alien subjugation, domination or exploitation outside a colonial context.’”³⁵ In this context, the Court underlined that a number of commentators had asserted the right to self-determination may also exist “when a people is blocked from the meaningful exercise of its right to self-determination internally.”³⁶ In such a circumstance, as a last resort, it is entitled to exercise self-determination by secession.

³⁰ This attempted separation was also not recognized by any states on the international plane. The territory that attempted to separate is now one of two constitutive entities of Bosnia-Herzegovina. See USTAV BOSNE I HERCEGOVINE [CONSTITUTION OF BOSNIA AND HERZEGOVINA], Dec. 14, 1995, art. 1(3).

³¹ See European Court of Auditors, “Special Report No 4/2000 on rehabilitation actions for ACP countries as an instrument to prepare for normal development aid, accompanied by the Commission’s replies,” 2000 O.J. (C 113) 14 ¶ 83.

³² Green, *supra* note 28, at 2.

³³ Reference re Secession of Quebec [1998] 2 SCR 217 (Can.).

³⁴ *Id.* ¶ 126.

³⁵ *Id.* ¶ 133.

³⁶ *Id.* ¶ 134.

In referring to “internal self-determination,” the Canadian Supreme Court underlined the duty of every state to represent “the whole people belonging to the territory without distinction of any kind.”³⁷ If, for example, definable groups are blocked from accessing government to pursue their political, economic, social, and cultural development, this could potentially give rise to a right of secession.³⁸ A group that is persistently denied the ability to exert internally its right to self-determination “may be acknowledged by the international community to have a claim-right to repudiate the authority of the state and to attempt to establish its own independent political unit.”³⁹ In essence, the group may (possibly) be entitled to a right to external self-determination.⁴⁰

In the *Quebec* case, the exceptional circumstances were, of course, not applicable. The Court underlined that the Quebec people were not an oppressed people, nor victims of attacks on their physical existence or integrity. They were also not denied access to democratic institutions or representation in government. Rather, residents of the province were freely able to make political choices and pursue economic, social, and cultural development within Quebec, across Canada, and throughout the world. They were able to take part in a referendum and make democratic choices about their province.

This position taken by the Supreme Court of Canada suggests that: (1) the success of a unilateral secession depends on international recognition, and (2) the conduct of the parent state toward the independence-seeking entity will be considered very important when states decide on granting recognition. In this context, the recognizing state will carefully consider whether the independence-seeking entity enjoys sufficient and appropriate opportunities for self-government and whether it has access to democratic institutions in a manner that can shape political decisions. The judgment thus ties the idea of recognition again with democracy, suggesting that the absence of democratic processes and institutions can lead to remedial secession, which is given effect through international recognition of the new entity.⁴¹

³⁷ *Id.* ¶ 136.

³⁸ *See id.* ¶ 138.

³⁹ JURE VIDMAR, *supra* note 11, at 335 (citing ALLEN BUCHANAN, JUSTICE, LEGITIMACY, AND SELF-DETERMINATION (2004)).

⁴⁰ In literature, support for such a remedial right is very tentative, with terms like “possible” or “perhaps” regularly attached to the claim. *See* JAMES SUMMERS, PEOPLES AND INTERNATIONAL LAW: HOW NATIONALISM AND SELF-DETERMINATION SHAPE A CONTEMPORARY LAW OF NATIONS 347 (2007).

⁴¹ *See* JURE VIDMAR, *supra* note 11, at 161.

IV. REVISITING THE DEMOCRACY AND STATEHOOD LINK

The E.C. guidelines for recognition and the *Quebec* opinion from the Supreme Court of Canada essentially represent how things stood with respect to recognition (at least in the E.U.) in the 1990s.⁴² In light of Ginsburg’s analysis of changes that have taken place in the last thirty years, however, the question arises whether the same democratic expectations remain valid for new entities wishing to become states. Do we have the same expectations of new entities today as we did in the 1990s?

Scholar Alex Green has, for example, argued that we can no longer expect new entities to be constituted in a democratic manner, nor indeed insist that they have democratic institutions, in situations where we make no similar demands of already existing states.⁴³ Green singles out the fact that the United Nations (U.N.), the international organization in which membership is most coveted by new entities, does not require the presence of democratic institutions in an applicant entity.⁴⁴ Looking even more closely, states that have no such institutions in their territory are active members of the U.N. and enjoy universal recognition.⁴⁵ For Green, if we accept that U.N. membership is indicative of widespread recognition, “the presence or absence of democracy in the applicant community is not determinative of its equal status under international law.”⁴⁶ Green’s point is that since the U.N. does not discriminate on the basis of democratic character, states more broadly are also unlikely to draw such distinctions when deciding whether to recognize new entities. Although scholars may favor conditioning recognition

⁴² It is important to emphasize that the European approach is not representative of the global view. The African Union, for example, also influences the recognition practices of its members, but it did not adopt a similar position during the 1990s. In addition, the inclusion of the democratic requirement in the E.C. guidelines was not universally accepted, and several states actively opposed it. Thanks to Alex Green for flagging this. See JAMES CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW* 150–55 (2006).

⁴³ See Green, *supra* note 28, at 8.

⁴⁴ See *id.*

⁴⁵ See Sean Murphy, *Democratic Legitimacy and the Recognition of States and Governments*, 48 INT’L & COMPAR. L.Q. 545, 556 (1999); Gregory Fox & Bradley Roth, *Democracy and International Law*, 27 REV. INT’L STUD. 327, 337 (2001).

⁴⁶ While the U.N. Charter frequently uses the word “state” in an idiosyncratic manner—and therefore sometimes may not entail much for the equal status of the “states” it references—membership decisions pursuant to Article 4(1) broadly reflect the notion that members must be states under international law. See ROSALYN HIGGINS, *THE DEVELOPMENT OF INTERNATIONAL LAW THROUGH THE POLITICAL ORGANS OF THE UNITED NATIONS* 11–57 (1963). Note, however, that Jure Vidmar finds that membership in the U.N. does not always overlap with, and is broader than, statehood status under general international law. See Jure Vidmar, *UN Membership and the Statehood Requirement: Does ‘State’ Always Imply ‘Statehood’?*, in 24 MAX PLANCK Y.B. U.N. L. 201–46 (Erika de Wet, Kathrin Maria Scherr & Rüdiger Wolfrum eds., 2021).

on democratic credentials, such a rule—according to Green—is currently merely “emerging”⁴⁷ and does not fit the reality of international relations.

Green’s conclusion is supported by the classic statement of the International Court of Justice in *Military and Paramilitary Activities in and against Nicaragua*, which held that:

adherence by a State to any particular [political] doctrine does not constitute a violation of customary international law; to hold otherwise would make nonsense of the fundamental principle of State sovereignty on which the whole of international law rests, and the freedom of choice of the political, social, economic and cultural system of a State.⁴⁸

Based on the above considerations, he concludes that “it seems that any attempt to defend our current practices of international recognition with an appeal to democracy would be misguided: the putative justification simply does not fit.”⁴⁹

Green’s hesitance about the democratic nature of statehood may be reflective of states’ pushback against making various types of demands on new entities and the dangers of a slippery slope (e.g., if we ask for democracy today, we shall demand human rights protections tomorrow). But he makes an interesting point: he argues that in the name of equality, the expectations of new members should be the same as those demanded of existing members, and not more. But this also does not reflect reality. When new states joined the Council of Europe (amongst them Hungary and Poland) in the 1990s and the E.U. in the 2000s, specific demands were made of these entities, including the protection of human rights consistent with the European Convention on Human Rights, the harmonization of domestic legislation in accordance with E.U. law, and, above all, the establishment of democratic institutions, including independent courts and tribunals. In effect, membership in these organizations was conditional on the adoption of certain democratic and rule of law standards.

Yet now, more than twenty years later, when the backlash against the rule of law in Hungary and Poland is clear,⁵⁰ E.U. institutions remain hesitant to respond to or sanction these states.⁵¹ Even though rule of law and democratic processes

⁴⁷ Green, *supra* note 28, at 8. See also Thomas Franck, *The Emerging Right to Democratic Governance*, 86 AM. J. INT’L L. 46, 50 (1992); Fox & Roth, *supra* note 43, at 337. Even this modest claim is undermined by the apparent halt of global democratization. Susan Marks, *What Has Become of the Emerging Right to Democratic Governance?*, 22 EUR. J. INT’L L. 507 (2011).

⁴⁸ *Military and Paramilitary Activities in and against Nicaragua* (Nicar. v. U.S.), Judgment, 1988 I.C.J. Rep. 14, ¶ 263 (Nov. 26).

⁴⁹ Green, *supra* note 28, at 8.

⁵⁰ See generally Aleksandra Dziegielewska, *A Mimicry of International Law Compliance: How the Abusive Interpretation of International Norms Serves Poland’s Illiberal Regime*, 23 CHI. J. INT’L L. 89 (2022).

⁵¹ Though indeed, the Court of Justice of the E.U. has sanctioned Poland to €1,000,000 per day for not suspending the application of the provisions of national legislation relating, in particular, to the areas of jurisdiction of the Disciplinary Chamber of the Supreme Court, in violation of the rule of

were a condition of membership but are now—at least to a certain extent—no longer fulfilled, Hungary and Poland remain members of both the Council of Europe and the E.U. and enjoy a role as active members.⁵² There appears to be a distinction, therefore, between how we treat potential new members and how we treat existing ones. Looking more closely, it is only Russia that has been first suspended and then later expelled from the Council of Europe: in response to its 2022 invasion of Ukraine, the Committee of Ministers drew a red line that when use of force is in question, other member states cannot stand by quietly and accept such behavior.⁵³

What this suggests is that unjustified use of force is the only situation in which membership may be withdrawn from an existing member state, while decline of rule of law and democratic principles—at least for the moment—still remain debatable criteria for withdrawal. A recent judgment of the Court of Justice of the E.U. confirms this: it found that when it comes to use of the E.U.’s budget, member states can condition the use of such funds on protection of the rule of law and democratic principles in the user state—but any such measure must be strictly limited to the use of E.U. funds and must be strictly proportionate to the aim pursued. The Court did not find that such a requirement applied outside of the use of E.U. funds, suggesting that international institutions may be limited in terms of demands they can or wish to make of their member states.⁵⁴

What does all of this mean for our case of recognition? It is very hard to say whether the international community should treat membership in an international institution as an indication of how states would act when they recognize new members. Looking at past practice, it is clear that recognition demands more of new entities wishing to claim statehood than it demands of states who are already members of the international institution.

The more important question is what the attitude of states around the world is toward recognition of non-democratic entities. Which entities states recognize is ultimately a political act and one about which they themselves decide. It is on this point that Ginsburg’s book is very important. If autocracies are on the rise, and if they are making use of international law to assist each other, then it could be expected that in situations where an authoritarian leader wishes to form a new entity without democratic process or democratic institutions, other authoritarian

law requirements. Case C-204/21, *Press and Information Commission v Poland*, ECLI:EU:C:2021:834 (Oct. 6, 2021). The monies owed—already into the €100,000,000 mark—remain unpaid.

⁵² Their compliance with judgments has been drastically affected, though.

⁵³ See *Council of Europe Suspends Russia’s Rights of Representation*, COUNCIL EUR. (Feb. 25, 2022), <https://perma.cc/4FTB-BWKN>; *The Russian Federation Is Excluded from the Council of Europe*, COUNCIL EUR. (Mar. 16, 2022), <https://perma.cc/N276-BPNK>.

⁵⁴ See C-156/21, *Hungary v. Parliament and Council*, ECLI:EU:C:2022:97 (Feb. 16, 2022); C-157/21, *Poland v. Parliament and Council*, ECLI:EU:C:2022:98 (Feb. 16, 2022).

regimes would step in to provide the entity with the recognition it needs for survival.⁵⁵ Although the act of recognition may only be an acknowledgment of the existence of the state (under the declaratory theory), the reality is that the international community must observe *who* states recognize in the future to understand what the rules are. In order to know what the conditions of recognition will be, it will therefore be necessary to wait and see what happens and how democratic and non-democratic states react.

V. CONCLUSION

By mapping out the changes in how democracies and autocracies behave and how international law is used either to induce change or perpetuate the status quo, Ginsburg's *Democracies and International Law* reveals how countries' tolerance or preferences have changed during the last thirty years. In this context, Ginsburg's book may also signal new developments in the area of statehood. Implicitly, his book suggests the direction in which the law of statehood (and, more specifically, the practice of international recognition) is likely to turn. It seems to indicate that if the European approach to recognition in the 1990s was to expect a democratic process toward statehood and establishment of democratic institutions, today, such a requirement could be subject to strong backlash. Even more, autocracies might assist each other and use international recognition to recognize other similarly non-democratic entities. In this context, in the long run, democracy might play a lesser role in the future than it has in the past. Of course, to know what will actually happen in the law of statehood and recognition, the international community will probably need to wait another thirty years.

⁵⁵ See Ginsburg, *supra* note 1, at 186–237.