15

Conclusions

Olivier de Frouville

15.1 INTRODUCTION

We should warmly thank Samantha Besson for choosing the theme of 'good representation in international law' as the subject of her 2023 annual course at the College of France. And then for having decided that 'Democratic Representation in and by International Organizations' would be the subject of her annual conference. The responses that will be given in the coming years to the questions asked by Samantha Besson may have a major influence on the future of Humanity. This is about the present and future of democracy which might well be an existential issue at the global level. There are many signs in the current state of the world that the idea of democracy is under attack, and that existing democracies are deeply fragilized. Alternative authoritarian models represented by States like Russia and China are gaining ground. This also goes with an alternative model of international law to the one that emerged after the Second World War, based on the prohibition of the use of force in international relations and the respect for human rights. This model is no longer self-evident, it needs to be justified and defended.[1] Even more so as the States that originally promoted it are betraying its promises, caught in the trap of their double standards.

I was asked not to 'summarize or close the debate' but instead to try to enable to revert to the main issues addressed during the conference and maybe identify further issues for research. So, the 'conclusions' are not meant to close the discussion, but rather, to some extent, to re-open the discussion and to leave it open until next time . . . In listening to the participants (and in reading

[1] Olivier de Frouville, 'Justifying International Law, Defending Cosmopolitanism', in Olivier de Frouville, *From Cosmopolitanism to Human Rights* (Oxford: Hart Publishing, 2021), pp. 106–125.

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thoroughly their contributions), I identified four questions that could serve as an outline for these conclusions.

The first question is: Why should we be discussing democratic representation in and by international organizations (IOs) in the first place (Section 15.2)? Although objections could be conceived, all participants developed convincing reasons to show that this discussion not only made sense but was important. This, in turn, raised the question of whether we need the concept of 'representation' when discussing the democratization of IOs (Section 15.3)? And assuming the response is 'yes', what is meant by 'representation', considering the various meanings that this word took in political science and in law (Section 15.4)? And the final question was: what are the main models or projects proposed when speaking about democracy in and by IOs (Section 15.5)?

15.2 WHY DISCUSSING DEMOCRACY AND REPRESENTATION IN AND BY INTERNATIONAL ORGANIZATIONS?

Democracy on an international or global scale has for long been a subject of reflection for specialists in international relations and philosophy, in the line of perpetual peace projects and in particular Emmanuel Kant's cosmopolitanism. It has not been such a popular topic for international lawyers. Although the discussion was 'invigorated by the "turn to governance"', "democracy" may have never reached the limelight in the first place, perhaps because it is not easy to translate the vocabulary of democracy into the reality of the international legal (governance) system', as very well explained by the organizers of a recent EJIL Symposium issue.[2] Most international lawyers would still hold that democratic theory is limited to the borders of the State and is hardly applicable to the 'international sphere', with the exception maybe of the European Union.[3] The classical view on 'democracy in international organizations' is that one can only speak of 'democracy' is a very loose sense, that is: (1) IOs are a 'democracy of States', because most of those organizations, including the United Nations (UN), rely on the principle 'one State, one vote', even though there are notable exceptions such as the UN Security

[2] Jan Klabbers, Doreen Lustig, André Nollkaemper, Sarah Nouwem, Michal Saliternik, and Joseph H. H. Weiler, 'International Law and Democracy Revisited: Introduction to the Symposium' (2021) 32(1) *European Journal of International Law* 9–15, at 10–11.

[3] See especially Édouard Dubout, *Droit constitutionnel de l'Union européenne* (Brussels: Bruylant, 2021); Stefan Oeter, 'Federalism and Democracy', in Armin von Bogdandy and Jürgen Bast (eds.), *Principles of European Constitutional Law*, 2nd ed. (Oxford: Hart Publishing, 2009), pp. 55–82, p. 55.

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Council or the financial institutions; (2) even if one is to adopt a more demanding conception of democratic theory that says that not only States but also peoples should participate to decision-making, such a classical view would respond that this is already the case: based on an *indirect representation* system, if States represent their peoples, and IOs are made of States, then IOs are at least *indirectly* representing peoples. But the two arguments are misleading. Against the first one, Anne Peters for instance recalls that '[t]he reference point of democracy should be natural persons (human beings), not States'.[4] And against the second, Samantha Besson explains that 'States are far from being perfect democratic representatives of the peoples they institute as public',[5] because of mainly two reasons (1) some States are undemocratic; (2) even in democratic States, peoples are generally not associated with decisions on international and global affairs, including through their representatives. Add to this that the Westphalian principle of 'one State one vote' cannot account for the democratic principle of equal participation by all peoples and individuals, since the size of the population varies considerably from one State to another.[6] Under a more specific angle, Marie-Clotilde Runavot shows the very ambiguous status of members of domestic parliaments in IOs and the fact that parliamentarians have no real democratic representation functions in IOs, but can only enjoy, at best, a slightly more privileged status than civil society organizations.[7]

The consequence of that could be that the topic is not worth spending much scientific energy, except in the context of a purely speculative theory, something that the lawyers should leave for the philosophers. However, a minority of international lawyers have argued that a serious discussion on democracy in IOs is not only possible but also of major importance, for mainly two sets of reasons.

[4] Anne Peters, 'Constitutional Theories of International Organisations: Beyond the West' (2021) 20(4) *Chinese Journal of International Law* 649–698. In 1963, René-Jean Dupuy already articulated the same type of refutation, René-Jean Dupuy, 'Démocratie et société internationale', in René-Jean Dupuy, *Dialectique du droit international* (Paris: Pedone, 1999), pp. 71–86, p. 71.

[5] Besson and Martí, Chapter 12 in this volume. The authors also state: 'More specifically, the interests of representative organs within those States, such as governments or parliaments, and especially those of the elected or non-elected officials holding those representative positions might differ from the interests of the people they claim to represent.'

[6] This was very well explained by Michel Virally in 1961, see Michel Virally, *L'ONU d'hier à demain* (Paris: Seuil, 1961), pp. 114–115.

[7] Runavot, Chapter 6 in this volume.

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The first set relates to *normative reasons*. These lawyers, including the ones participating in the conference, could agree that democratization is necessary because:

(1) In contemporary politics, peoples may think that they are unable to decide anymore on important questions that affect their lives because these questions are decided 'above' in IOs, without their participation. This 'democratic deficit' creates frustration and in turn a rise of populism, which puts in danger national democracy.[8] In other words, not democratizing IOs would be a serious risk upon existing democracies at the domestic level.

(2) There are more and more global issues that affect the daily lives of peoples in the States – like climate change, migration, population . . . – and IOs regulate those global issues, so peoples should be able to participate in their decision-making procedures.[9] Moreover, and according to a cosmopolitan perspective, moral obligations of justice as well as legal obligations under international law, especially international human rights law,[10] extend beyond borders, which calls not only to reconceive modern States as 'cosmopolitan States'[11] but also to establish effective global institutions with democratic legitimacy.

(3) Following this cosmopolitan perspective, the human right to participation in public affairs, under Article 25 of the International Covenant on

[8] See among others the analysis by Steven Wheatley, *The Democratic Legitimacy of International Law* (Oxford: Hart Publishing, 2010) chapter 1. It should be noted that Évelyne Lagrange somehow dissents with this view of the majority of contributors. See Lagrange, Chapter 14 in this volume.

[9] David Held speaks of the 'paradox of our times': 'the inconsistency between the global nature of many of our pressing problems (from climate change to nuclear proliferation and global poverty) and contemporary forms of governance rooted in the nation state'. David Held, *Cosmopolitanism. Ideals and Realities* (Cambridge: Polity Press, 2010), p. 23.

[10] Referring here to the literature linking global justice to international human rights extraterritorial obligation as well as extraterritorial criminal jurisdiction, conceived as 'cosmopolitan obligations': among others Malcolm Langford, Wouter Vandenhole and Martin Scheinin (eds.), *Global Justice, State Duties. The Extraterritorial Scope of Economic, Social and Cultural Rights in International Law* (Cambridge: Cambridge University Press, 2013); Danielle Ireland-Piper, 'Extraterritorial Criminal Jurisdiction and the Cosmopolitan: A Double-Edged Sword', in Richard Beardsworth, Garrett Wallace Brown and Richard Shapcott (eds.), *The State and Cosmopolitan Responsibilities* (Oxford: Oxford University Press, 2019), pp. 147–169; H. Patrick Glenn, *The Cosmopolitan State* (Oxford: Oxford University Press, 2013), pp. 147–169.

[11] By that I mean a non-solipsist State, that is a State that is able to think of itself at the same time as a national and a global institution, and that does include that thinking into its legal and constitutional arrangements, allowing itself to exercise domestic as well as global competences. See also for other but approaching concepts of that notion Beardsworth *et al.*, fn. 10.

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> Civil and Political Rights,[12] is to be understood to extend not only domestic public affairs but also international public affairs.[13] And this right to participate is a good legal basis for a multi-level or cosmopolitan democracy that includes cosmopolitan States and global institutions, as well as other levels of public authorities (cities, regions . . .) and other actors, including private actors.

The second set of reasons relates to what can be scientifically observed. In fact, participation of actors others than States *does* effectively take place on the international plane. And not only does it take place as a fact, but this participation is more and more accepted and more officially and legally recognized not only by IOs secretariats but also by States themselves. This is of course not to say that participation of non-State actors is new: the International Labour Organization (ILO) for instance has been cited several times, and the case of the International Organization of Employers (IOE) was also mentioned, among other examples. But in the last thirty years participation of non-State actors has grown in an unprecedented manner in history. And it's obviously not only a quantitative change, but also a qualitative change: more actors are participating in a more substantive way. IOs themselves have recently shifted their models of relations with non-State actors, from a consultative instrumental model to more participatory models – where civil society organizations (CSOs) are invited to participate as 'stakeholders' or 'partners'.[14] This growing participation can be verified in all functions fulfilled by IOs: standard-setting, litigation, and operations. Évelyne Lagrange has noted more generally:

> [U]niversal IOs are already marked by the strong presence of [non-State actors]. It was enough for Member States to support or tolerate the opening-up of universal IOs to entities other than themselves for multiparty 'representation' or participation to take root.[15]

[12] International Covenant on Civil and Political Rights, 999 UNTS 171 (adopted 16 December 1966, entered into force 23 March 1976).

[13] Olivier de Frouville, 'Vers une démocratie continue à l'échelle globale? Nouvelles perspectives sur le droit de participer aux affaires publiques', in *Mélanges en l'honneur du professeur Dominique Rousseau. Constitution, justice, démocratie* (Paris: LGDJ, 2020), pp. 395–408; Claire Callejon, 'Les études de l'ONU sur le droit à la participation publique et la participation de la société civile', in Olivier de Frouville and Dominique Rousseau (eds.), *Démocratiser l'espace-monde* (Le Kremlin-Bicêtre: Mare & Martin 2024), pp. 93–106.

[14] Olivier de Frouville, 'Civil Society's Role in International Organizations. Theori(es) and Practice(s)', in de Frouville, *From Cosmopolitanism to Human Rights*, fn. 1, pp. 175–189; Jonas Tallberg and Anders Uhlin, 'Civil Society and Global Democracy', in Daniele Archibugi, Mathias Koenig-Archibugi and Raffaele Marchetti (eds.), *Global Democracy. Normative and Empirical Perspectives* (Cambridge: Cambridge University Press, 2011), pp. 210–232.

[15] Lagrange, Chapter 14 in this volume.

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Although she expresses doubts about whether this has to do with 'democracy' as such, she agrees that at least this raises new questions about the structuring of the exercise of power within IOs, beyond the presupposition of the representation of peoples by States.

Not only a discussion on democracy and representation in and by IOs cannot be said to be purely speculative or theoretical, but it seems necessary today, in a situation where effective participation of non-State actors in IOs is taking place. I think all contributors to this volume agree with that conclusion. It is when delving deeper into the issue that the controversies appear. And first and foremost, when asking the question on whether the concept of representation is necessary to understanding and theorizing participation and democracy in IOs.

15.3 DO WE NEED THE CONCEPT OF REPRESENTATION?

Samantha Besson and José Luis Martí's response to that question in their chapter is a clear 'yes'.[16] And the main reason they are putting forward is that 'the relationship between the concepts of democracy and representation is not instrumental and contingent ... but intrinsic and constitutive'.[17] And this is because, according to them, only representation can 'guarantee political equality and ... organize equal participation all along'.[18] The thesis is therefore that there cannot be democracy without representation. Although for Besson and Martí, representation alone is not democracy, because they submit democratic legitimacy should be assessed by reference to four basic principles, namely:

- The principle of ultimate, effective popular control;
- The principle of political equality;
- The principle of deliberative contestability, and;
- The principle of human rights protection.

In other words, even if representation is not the main ingredient to democratic legitimacy, it is an indispensable ingredient. Besson and Martí oppose the idea that deliberation or participation could come 'in lieu' of representation.

The question of the link between democracy and representation is almost as old as the theory of democracy. There has been and there is still, to some extent, a debate on whether representation is even compatible with

[16] Besson and Martí, Chapter 12 in this volume.
[17] Ibid.
[18] Ibid.

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democracy.[19] In the *General Theory of Law and the State*, Hans Kelsen is affirmative that strictly speaking representation without imperative mandate is non-democratic and that representation has never been a democratic principle but is rather drawn from a particular conception of the division of labour in the society based on the idea that some people are to exercise power, while most of the others are not.[20] Although Kelsen accepts that representation became part of the democratic theory in the eighteenth century, with John Stuart Mill or l'Abbé Siéyès, he remains reluctant to put an equal sign between representation and democracy, without further refinement. Bernard Manin, in his landmark study on representation, describes representation as a compromise, a sort of mix between 'democratic elements' and 'oligarchic elements'.[21] Other authors consider not only that representation is not intrinsically linked with democracy, but that democracy can exist without representation. In his contribution to the present volume, Philip Pettit writes:

> Peoples may exercise democratic control over an organization in a variety of ways that do not directly involve representation: for example, by constitutionally or otherwise requiring that it operate under certain constraints, that appointments be made according to strict procedures, that it offers broadly public-interest reasons for its decisions, and that it be subject to monitoring and auditing by an independent body.[22]

And from a completely different standpoint, one of the promoters of the theory of global administrative law, Sabino Cassese, wrote:

> There is no representative democracy and there are no periodic elections at the global level; but deliberative democracy can work as a surrogate, granting participation in the decision-making processes.[23]

This quote gets to the heart of the argument, opposing a cosmopolitan deliberative model of democracy and a model based on representation. A deliberative cosmopolitan theory would argue, as Sabino Cassese does in this quotation, that representative democracy is non-existent and cannot practically be put in place at the international level. However, that does not prevent democratization of international law, which can occur through the putting in place of 'deliberative systems' as conceived by authors like Jane

[19] Nadia Urbinati, *Representative Democracy: Principles and Genealogy* (Chicago: University of Chicago Press, 2006).
[20] Hans Kelsen, *General Theory of Law and State* (Cambridge, MA: Harvard University Press, 1945), p. 289 about the 'fiction of representation'.
[21] Bernard Manin, *Principes du gouvernement représentatif* (Paris: Flammarion, 1996), p. 306.
[22] Pettit, Chapter 3 in this volume.
[23] Sabino Cassese, *A World Government?* (Sevilla: Global Law Press, 2018), p. 16.

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Mansbridge and others[24] and applied by John Dryzek to global law in several contributions.[25]

This discussion leaves however open the question of whether, as a project of reform, we could have both systems at the international plane, side by side, and seconding each other's, so to say, like we have in domestic systems. And, again, Besson and Martí's proposal does not exclude deliberative systems, but say they cannot be dissociated from representative systems.[26] And this leads us to the next question which is: if we consider that representation is needed in IOs, what is the concept of representation we would be using?

15.4 WHAT CONCEPT OF REPRESENTATION SHOULD WE USE?

In the context of their mixed concept of democratic legitimacy, Besson and Martí give a very strict definition of what we could be called 'the representation principle', that is 'ultimate, effective popular control':

> [T]he assessment of the democratic legitimacy of institutions of international lawmaking crucially depends on whether those institutions, and IOs in particular, can be said to have been conferred their powers by the peoples subjected to the decisions to be made (the so-called 'authorization') and, even more importantly, on whether the peoples may access effective mechanisms of ultimate control over their representatives and over the decision-making system as a whole (the so-called 'control'). . . . Many modern views of political representation, starting with Thomas Hobbes', have indeed made the latter dependent on formal acts of authorization, whether *ex ante* or *ex post*. . . . [W]hat authorization rules out, first, is the self-appointment of the representative, including in the form of self-representation by mimetism or statistical reproduction. The requirement of authorization also excludes the random

[24] Jane Mansbridge and John Parkinson (eds.), *Deliberative Systems: Deliberative Democracy at the Large Scale* (Cambridge: Cambridge University Press, 2012).

[25] John S. Dryzek, *Foundations and Frontiers of Deliberative Governance* (Oxford: Oxford University Press, 2010), pp. 10–14; Hayley Stevenson and John S. Dryzek, *Democratizing Global Climate Change* (Cambridge: Cambridge University Press, 2014), pp. 12–36.

[26] Besson and Martí, Chapter 12 in this volume. The link between representation and deliberation in fact goes back to the origins of the concept of representation. For instance, Manin shows that Siéyès did not conceive representation separate from discussion – the two were linked and only from discussion between representative could come up an appropriate conception of general interest (which is never pre-given), Manin, fn. 21, pp. 240–241. He concludes: '*Le principe du gouvernement représentatif doit donc être formulé de la façon suivante: une mesure quelconque ne peut acquérir une valeur de décision que si elle a emporté le consentement de la majorité à l'issue d'une discussion. Le consentement de la majorité, et non la discussion elle-même, constitue ainsi la procédure de décision*', ibid., pp. 242–243. See also James Bohman, 'Representation in the Deliberative System', in Mansbridge and Parkinson, fn. 24, pp. 72–94.

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selection of representatives by a third party (e.g. by lot) unless there has been some form of *ex ante* authorization to that random selection. Second, control implies that the represented disposes of ultimate, effective means of supervision over the activity of the representative. The mere 'claim' to represent is not enough to respect the equal autonomy of the represented citizens, therefore.[27]

Other authors – including some contributors to this volume – have defended more flexible conceptions of 'representation', which do not necessarily imply authorization nor control, belonging more to the sort of what Pitkin called 'descriptive representation'.[28] Édouard Dubout and Dominique Ritleng in their contribution have focused on the Conference on the Future of Europe Citizens' Assembly and on the participation of citizens that were drawn by lot. In the authors' opinion those participants constitute 'mini-publics' and their members are 'a new type of representatives ... without a mandate or popular responsibility [because] their democratic legitimacy depends above all on the transparency and quality of the deliberative process in which they participate'.[29]

In the same line of thinking, in Jacob Katz Cogan's fourth 'mode of representation', civil society representatives or most affected persons in the boards of the Global Fund to Fight AIDS, Tuberculosis, and Malaria and of the Gavi – the Vaccine alliance, are not 'representative' in the strict sense, that is they have not been elected or nominated by their constituencies but rather because they are active in the field (for CSOs) or because they are part of a larger group of affected peoples.[30]

Near to that conception but more on the side of 'epistemic' representation, Anne Peters speaks about 'self-appointed representatives' for those who are considered to represent a 'cause', like the World Wildlife Fund (WWF) or People for the Ethical Treatment of Animals (PETA) who 'have not been elected'. Neither were they selected, mandated, or nominated by the people they are representing by speaking on their behalf or by reporting on their situations.[31]

[27] Besson and Martí, Chapter 12 in this volume.

[28] Hanna F. Pitkin, *The Concept of Representation* (Berkeley: University of California Press, 1967), pp. 60ff. For a criticism of the too narrow conception of 'descriptive representation' based on experiences of deliberative democracy: Yves Sintomer, 'Le sens de la représentation politique: Usages et mésusages du débat contemporain' (2013) 50 *Raisons politiques* 13–34.

[29] Dubout and Ritleng, Chapter 13 in this volume.

[30] Cogan, Chapter 4 in this volume.

[31] Peters, Chapter 9 in this volume.

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Jochen von Bernstorff also mentioned the case of the 'most affected persons' groups and the striking example of an Indian farmer who, when speaking before IOs about his/her experience is also somehow claiming to 'represent' the common experience of one billion of other farmers in India.[32] I would personally add to this another example: take a mother of a person who was forcibly disappeared in a particular country and who gives her personal testimony to and participates in the legislative work of the UN. She only 'represents' herself, she does not even belong to an association, but still is 'representative' of a group of people who share the same horrendous experience of searching for their loved ones in the very same context, because the enforced disappearance is part of a pattern.[33] In that, she has some legitimacy in participating as a 'representative' in a democratic process – for instance in the drafting of norms related to enforced disappearances.[34]

Another interesting perspective was introduced by Melissa J. Durkee who supported the view that representation should be understood as 'a claim', that is a 'discursive practice' that operates and produces effects when a particular institution values that representation discourse.[35] In other words, democratic participation is granted to whoever 'claims' to be representative and is recognized as such by a given institution.

Finally, Anne Peters introduced the topic of democratic representation of those who cannot speak for themselves, by focusing on the case of animals, but recognizing that the problem extends the representation of other non-present or non-speaking entities such as elements of the biosphere and future generations. She proposes various procedures to appoint animals' representatives with the view to 'bringing animals to bear in the decision-making of IOs'.[36] She admits that this would be speaking of political representation 'only in a loose sense', taking the examples, in liberal democracies, of small children and disabled persons. Although it could be objected that these cases are mostly concerned with legal, but not political representation, and that as far as disabled persons are concerned, the legal argument has evolved and tends to deny or at least reduce to the minimum possible legal representation for the

[32] von Bernstorff, Chapter 10 in this volume.

[33] Olivier de Frouville, 'La Convention des Nations Unies pour la protection de toutes les personnes contre les disparitions forcées: les enjeux juridiques d'une négociation exemplaire' (2006) 6 *Droits fondamentaux* 1–92.

[34] We will come back in Section 15.5 on forms of democratic legitimacy.

[35] Durkee, Chapter 8 in this volume.

[36] Peters, Chapter 9 in this volume. See also Anne Peters, 'Animals in International Law' (Volume 410) *Collected Courses of the Hague Academy of International Law*, 2020, pp. 95–544, pp. 509ff.

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purpose of political agency/participation.[37] As far as animals are concerned, Peters finally comes to the conclusion that the 'physical limits of human-animal communication not only foreclose representation through elections, but also other, looser forms of responsiveness and accountability to the animals themselves', and that is thus preferable to speak of 'animal consideration rather than animal representation in (democratic) political processes'.[38]

It appears clearly that none of these use or concepts or definitions of 'representation' would achieve the functions assigned by Besson and Martí to 'democratic representation', that is guaranteeing political equality and organizing equal participation.[39] But then it seems that the question boils down to what our definition of 'democracy' or 'democratic institutions' means. Should we hold that an institution is 'democratic' only if a set of preconditions is fulfilled? Or that 'democracy' is rather a continuum allowing to find a given institution 'more or less' democratic? In other words, 'democracy' as an ideal-type, rather than a series of strict conditions and thresholds?

Kelsen's concept of democracy is based on the principle of *autonomy*, leading him to reduce the classical typology of political regimes to two ideal-types: autocracy and democracy. Autocracy, according to Kelsen, is a political regime based on the principle of heteronomy (subjects are 'excluded from the creation of the legal order');[40] whereas democracy is defined as a political regime founded on the principle of autonomy (where the 'subject of a legal order . . . participates in the creation of that order').[41] Every constitution – and thus every institution, including IOs – lies somewhere between these two poles: according to Kelsen, there can never be a 'pure' autocracy (i.e. a constitution based entirely on the principle of heteronomy) or a 'pure' democracy (based entirely on the principle of autonomy). The point, then, is not to establish a kind of dualism, but rather to highlight the complexity of constitutional experiences, which each combine and associate, in various

[37] See Marie Baudel, 'Droit international et santé mentale', PhD thesis, Nantes Université, 2021, especially pp. 279ff. More specifically and in relation to Art. 12 of the Convention on the Rights of Persons with Disabilities, 2515 UNTS 44910 (adopted 13 December 2006, entered into force 3 May 2008) and corresponding General Comment no. 1 of the Committee, see Faraaz Mahomed, Michael Ashley Stein, Vikram Patel and Charlene Sunkel, 'A "Paradigm Shift" in Mental Health Care', in Michael Ashley Stein, Faraaz Mahomed, Vikram Patel and Charlene Sunkel (eds.), *Mental Health, Legal Capacity and Human Rights* (Cambridge: Cambridge University Press, 2021), pp. 1–16.

[38] Peters, Chapter 9 in this volume.

[39] Besson and Martí, Chapter 12 in this volume.

[40] Kelsen, fn. 20, p. 333.

[41] Ibid.

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proportions and configurations, legal procedures that, in some cases, tend towards autonomy and, in others, towards heteronomy.

It may well be that there are in fact two distinct projects: the first consisting of turning IOs into democratic institutions, and the second aiming more modestly to 'democratize' IOs – in other words, to bring these institutions into a (never-ending?) process towards a more *inclusive participation* in their decision-making process, so that the 'subject of a legal order . . . participates in the creation of that order'.[42] It is true though that Besson and Martí's strict representation concept as ultimate and effective popular control is conceived as 'scalar' and thus subject to progressive realization[43] and balanced with other principles and practices such as deliberation between the represented and their representatives, and respect for human rights without discrimination. At the same time, posing an intrinsic link between democracy and such a strict concept of representation is a feature that clearly distinguishes this theory from others, such as a deliberative theory, which may conceive democracy *without* representation based on authorization and control, or going along and in parallel with more flexible concepts of representation.[44]

The question that was then raised by the contributors was: what the best model would be, if any, so as to push forward the agenda of democratic representation and/or democratization of IOs (which all, as said in Section 15.2, accepted as being not only desirable, but also necessary)?

15.5 WHAT MODELS TO PUSH FORWARD THE DEMOCRATIZATION OF IOS AGENDA?

All contributions in the volume are converging in trying to shape 'non-ideal' models of democracy in IOs. Accordingly, options are discussed not only through a theoretical lens, but also through a practical lens: what models could be said to be both theoretically consistent and sufficiently in adequation with the existing practice, and able to produce practically feasible proposals? In that spirit, several contributions address the challenges met by a 'democratic representation' in and by IOs based on a strict representation concept. At the same time, alternative sources of legitimacies are also discussed, as well as existing processes of democratization of IOs.

[42] Ibid.

[43] Samantha Besson and José Luis Martí, 'Legitimate Actors of International Law-making: Towards a Theory of International Democratic Representation' (2018) 9(3) *Jurisprudence* 504–540.

[44] For instance, see Iris Marion Young, *Inclusion and Democracy* (Oxford: Oxford University Press, 2002).

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15.5.1 *Challenges of Democratic Representation in and by IOs*

Contributors are raising a number of questions in relation to democratic representation in and by IOs. Some of them are quite specific, others have a broader scope and mean to go to the core of the argument. Without the ambition of being exhaustive, I am mentioning four of these challenges below.

15.5.1.1 How Does Representation Work If Not Through Elections?

Samantha Besson and José Luis Martí speak of 'consent' from the represented to the representatives but do not make explicit which mechanisms may be used to ensure that consent is given, by other means than elections.[45] This is of particular concern when it comes to reflecting upon how CSOs should be 'organized' or 'authorized',[46] with conditions put upon their formation and structure, so as to ensure their 'representativity' might and in fact will not be used by States to exclude the most efficient and very often the most 'representative' (in the loose sense) non-governmental organizations (NGOs) from participation in the work of IOs. We will come back to this in the final part of these conclusions.

15.5.1.2 Does Representation in IOs Means Giving Automatic Primacy to State Representation in All Cases?

In the 'multiple international representation system' (the 'MIRS') proposed by Samantha Besson and José Luis Martí, 'States should still be considered as the most effective institutions to ensure the democratic representation of the peoples of the world' and should thus 'play a primary role in the democratic representation of their peoples in their IOs' organs'.[47] The authors admit however that there are important deficits of States' representation: (1) 'many States are not democratic'; (2) 'even in democratic States, existing domestic mechanisms of ultimate, effective popular control over the external policy of States might prove to be insufficient for their peoples to control their international decisions'; (3) 'even when State officials are effectively accountable domestically for their international decisions, there might still be important

[45] Besson and Martí, Chapter 12 in this volume; see also Samantha Besson and José Luis Martí, 'From Equal State Consent to Equal Public Participation in International Organizations: Institutionalizing Multiple International Representation', in Samantha Besson (ed.), *Consenting to International Law* (Cambridge: Cambridge University Press, 2023), pp. 314–346.

[46] For concrete proposals in this regard, see Besson and Martí, 'Legitimate Actors of International Law-Making', fn. 43.

[47] Besson and Martí, Chapter 12 in this volume.

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democratic concerns with respect to the representation of stateless peoples (e.g. refugees) or even of certain peoples within States (e.g. indigenous peoples or regional minorities)'.

The response to this concern is to have other institutions helping to 'correct those deficits in State-based democratic representation of peoples in IOs', such as other public institutions like 'regions or cities, but also of private organizations, such as non-governmental organizations, transnational corporations, religious organizations or trade unions that are increasingly involved, in various participatory or deliberative capacities, in IOs' lawmaking processes'.[48] Even these complements and corrections are not enough in the opinion of the authors, because 'none of these other public institutions or private organizations is free from deficits as democratic representatives'.[49] This would justify going even further, by creating 'further mechanisms of ultimate, effective popular control *over* IOs themselves'.[50] Still, in the meantime, States should have a sort of precedence, and 'public institutions' (such as cities or regions) should themselves be given a 'priority' over 'private organizations' (such as CSOs).

The idea of the precedence of the State versus other actors and of the public versus the private can also be found in other proposals put forward by some contributors, although from very different points of view. Philip Pettit proposes a model which gives precedence to the State in the sense that non-State actors should generally be allowed to represent their constituencies, *unless* the State objects or puts its veto to their decisions.[51] Francis Cheneval gives another version of this 'republican' position by proposing that '[t]owards each other, the Peoples are adequately represented and held accountable only via the systemic interaction of all the different types of highest governmental institutions'.[52] But he makes clear that this proposal for a '*demoi*cracy' may be applicable only to the relations among 'democratic peoples'.[53]

Évelyne Lagrange challenges this precedence/primacy given to the State as the 'main' or privileged representatives in IOs because, she argues, 'States and their representatives are not in a position on their own to identify objects that transcend their interests and go beyond their borders'.[54]

[48] Ibid.
[49] Ibid.
[50] Ibid.
[51] Pettit, Chapter 3 in this volume.
[52] Cheneval, Chapter 5 in this volume.
[53] Ibid.
[54] Lagrange, Chapter 14 in this volume.

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It is true that assumption of the precedence of the State has become questionable in an age when, as Jürgen Habermas rightly said, the State has lost its presumption of innocence, namely the presumption of innocence that sovereignty granted it.[55] We have good reasons not to trust excessively the State, nor to think of sovereignty as a 'benevolent power'. The 'last word' or 'veto' proposed by Philip Pettit and the '*demoi*cracy' of Francis Cheneval therefore only seem reasonable when applied to fully democratic States … which unfortunately are not so many. Conversely, a veto recognized to authoritarian or totalitarian States is a green light to oppression of their peoples. The MIRS, on the other hand, offers the considerable advantage of trying to articulate the representativeness of various institutions – which all have their deficits – so that in the end, by complementing each other's, it would make the IO 'more' representative than it would be if it were only State-based. But the question is whether giving systemic and automatic precedence to the State and to 'public institutions' necessarily provides more democratic legitimacy in all cases. There might be hard cases, especially when thinking of peoples without States or oppressed minorities. What institution is the best representative, for instance, of the Tibetan people? Would it be China as the territorial and sovereign State? The Dharamsala government, which qualifies as a simple 'non-State actor'? CSOs that might be in close contact and get information from Tibetans living in Tibet and convey their message to the world? Or is it impossible to say which one is the best? And should all institutions be part of the MIRS? But then how to reconcile their radically divergent perspectives and figure out what the Tibetan people want, or what is in their best interest?

15.5.1.3 Are Representative Institutions a Guarantee for a Qualitative Democratic Process or Procedure?

Another challenge raised is that representative institutions may not always work very well in effectively representing the people they are supposed to represent, whereas non-representative institutions may achieve excellent results in this regard. In other words, organizations may have *input legitimacy* based, for instance, on elections but very poor *output legitimacy* because they don't effectively deliver results, either because the elected are incompetent, or because the representative body is inefficient. Also, the represented may want

[55] Jürgen Habermas, 'Kant's Idea of Perpetual Peace with the Benefit of Two Hundred Years' Insight', in James Bohman and Matthias Lutz-Bachmann (eds.), *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal* (Cambridge, MA: MIT Press, 1997), pp. 113–154.

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to speak for themselves. Besson and Martí are assuming that 'democratic representation [is] a relation that institutes, authorizes and holds power accountable and hence contributes to the justification of political authority, including of lawmaking authority'.[56]

But precisely this assumption is challenged in many ways including in modern States democracies where many represented don't trust their representatives anymore and are willing to speak *for themselves*.[57] In his chapter, Pierre Rosanvallon recalls that even though:

> [r]epresentation remains essential in societies, but perhaps in a different sense than in the past, it appears to be gradually taking a figurative meaning: it is becoming representation in the sense of the need to explain and shed light on a complex world, a world in which, for example, the question is not simply to represent social classes, but to try to understand a whole world of social invisibility.[58]

Among other signs in domestic arenas, he sees '[t]he way of assessing the "democratic performance" of European institutions [as a] shift from an "input legitimacy" (representativeness) to an "output legitimacy" (the nature of the decisions taken)'.[59]

It is difficult to transpose the same conclusions to IOs, where no representative democracy exists. Still, the question of representativity and of its 'efficiency' and the alternatives have been posed in certain contexts. One example is the representation of national NGOs in IOs. At the UN in particular, national NGOs used to be 'represented' by international NGOs and rarely had access and were able to speak for themselves before the various bodies such as the UN General Assembly or the Economic and Social Council (ECOSOC). This was challenged in the beginning of the 1990s in the wake of 'democratic transitions' in the Global South and in Eastern European countries, which saw an unprecedented development of CSOs.[60] Among others, it resulted in the revision of the consultative status of NGOs with the ECOSOC, to make it accessible to national NGOs and put an end to what was then perceived as the 'privilege' of representation of international NGOs (mainly based in Western countries). Similarly, the Conference of NGOs (CONGOs) which was and still is supposed to be a duly elected representative

[56] Besson and Martí, Chapter 12 in this volume.
[57] See Dominique Rousseau, *Radicaliser la démocratie. Propositions pour une refondation* (Paris: Seuil, 2015).
[58] Rosanvallon, Chapter 2 in this volume.
[59] Ibid.
[60] de Frouville, 'Civil Society's Role in International Organizations', fn. 14.

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organ of NGOs in consultative status came under heavy criticism, showing that proper elections did not offer sufficient legitimacy in this regard.

15.5.1.4 How to Avoid the Traditional Exclusionary Bias of Representation?

Pierre Rosanvallon spoke in his chapter of a new function of representation – a narrative function of representation that is shedding light on a complex world and on the world of social invisibility, the world of the forgotten and those left-behind.[61]

Can a multiple system of representation address that, and how – from the moment it is based on a *strict* conception of representation which, even if not based on election by a majority, may at least have an effect of putting forward the mainstream part of the population or of the opinions formed in a given society. By definition, minorities and even more marginalized minorities and peoples are not *representative* (in the statistic and sociologic sense) and their democratic representation is generally conditioned on positive and temporary measures of promotion to establish an effective right to participation and overcome discrimination.

15.5.2 *Alternative Sources of Democratic Legitimacy of IOs?*

Several contributors have put forward the idea that representation may not be the sole source of legitimacy in IOs. 'Representation' itself, as we have seen above, may be interpreted in a looser sense of 'representativity', with the concepts of 'descriptive', 'mimetic', 'statistic', or even 'altruistic' representation. Besson and Martí observe in this regard that these forms of representation 'purport to represent pre-identified traits or interests to be promoted (functional output) or, at least, knowledge or expertise in how to do so (functional input)'.[62] But in any case, they cannot be an equivalent or constitute 'democratic representation' in the strict sense, that implies 'ultimate and effective popular control'. Still, in the practice of IOs, this loose sense of representation is often considered as a superior value when it comes to participation of private actors than 'democratic representation'.

In his chapter, Pierre Rosanvallon made eloquently the point that the most important social movements today are *not* representative movements, in the strict sense.[63] Marie-Clotilde Runavot on her part showed that what was

[61] Rosanvallon, Chapter 2 in this volume.
[62] Besson and Martí, Chapter 12 in this volume.
[63] Rosanvallon, Chapter 2 in this volume.

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valued in the participation of domestic parliamentarians in IOs (with the Inter-Parliamentary Union) was not so much their representative status, but rather their substantive contributions.[64] And Évelyne Lagrange made the point that linking democracy to representation (strictly conceived) does not give a clear basis for the participation of actors that are not 'representative' but are nonetheless legitimate participants. And she argues that 'decisions by IOs (even if not unanimous) can be considered legitimate through the combination of the legitimacy derived from the State's initial consent, from the IO's metafunction (deliberation) and specific functions, from the respect for its particular mandate (subject to evolving interpretation), and ultimately from the fairness of the deliberative process'.[65]

Indeed, there are other forms of legitimacies of power than 'democratic legitimacy' in the strict sense of a representative democracy:

Legitimacy based on knowledge, that is *epistemic legitimacy* or what Évelyne Lagrange called 'epistocratic' legitimacy,[66] is taking a growing part in the work of IOs, with experts, including scientific experts, or even specialized NGOs, that bring to an IO knowledge and information that it cannot acquire by itself.

Legitimacy based on influence and/or financial impact: one just has to think of the role played by the Bill & Melinda Gates foundation in the World Health Organization (WHO) and more generally in global health issues.[67]

Watchdog legitimacy, that is the legitimacy of those who are holding powers to account, like investigative journalists, human rights defenders, and whistleblowers … that is very often persons who do not represent anybody but themselves but whose legitimacy is based on the fact that they 'speak truth to power'.

One may wonder however whether these types of legitimacies have something to do with 'democratic legitimacies'. Here Melissa J. Durkee makes the point that the question of participation of private actors in IOs reveals a tension between what she calls 'a logic of representation' and a 'logic of expedience'. Legitimacy in the first logic is based on the representativity of the private actors, whereas in the second logic, the additional value these actors can bring to realize the goal of the IOs is a primary consideration. She sees the first logic as flowing from a 'deontological perspective rather than a consequentialist or teleological one. That is, democratic self-determination and interest representation are inherent

[64] Runavot, Chapter 6 in this volume.
[65] Lagrange, Chapter 14 in this volume.
[66] Ibid.
[67] Durkee, Chapter 8 in this volume; Sophie Albert, 'La participation des acteurs non étatiques à la gouvernance de la santé mondiale: du plaidoyer à la mise en œuvre des actions', in de Frouville and Rousseau, fn. 13, pp. 181–198.

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goods. Decisions made, rules developed, and actions taken through a legitimate process are right and correct because they are products of that process'.[68] Conversely, '[t]he *logic of expedience* is defined by its embrace of consequentialist and teleological reasoning. An outcome is right and correct when it advances the mission of an organization. This position values efficiency, problem solving, and progress on accomplishing public goals, whether they be public health, climate stabilization, sustainable development, etc.'[69]

The point here is that it seems that in some instances those logics seem irreconcilable: IOs would have to choose between the two logics. Either having democratic representatives, or choosing the participants for other sorts of legitimacies such as 'epistocratic', 'watchdog' or influence.

Lagrange tends to relativize this opposition in arguing that democracy is, after all, legitimizing the exercise of power and that, to this end, representation may not be the exclusive or even the best source of legitimacy. Representation, she submits:

> needlessly complicates the search for an adequate justification (by reference to a people) for mechanisms that give voice to transnational human collectivities with a community of interests but not necessarily of destiny, to collectives that do not operate on the model of democratic representation (think of colleges of experts) or to natural (or non-human) entities.[70]

In other words, she argues that democratic representation should not be seen as the sole basis for democratic legitimation, quite the contrary: 'epistocratic' legitimacy should be considered as one of the main bases of legitimization, from the moment that it is placed in a pluralist environment, and that it is linked and combined with other principles of legitimacy, including democratic representation.[71] I would add to this that the justification for participation is very often a question of point of view: IOs may see participation of actors through a logic of expedience, whereas these actors may understand their role as participating to a logic of representation and, beyond, of democratization of IOs.

15.5.3 *Current Processes and Models of Global Governance*

Besson and Martí are proposing a MIRS in a 'systematic and ordered approach', rather than a 'radically pluralistic' one.[72] Even though the authors

[68] Durkee, Chapter 8 in this volume.
[69] Ibid.
[70] Lagrange, Chapter 14 in this volume.
[71] Ibid.
[72] Besson and Martí, Chapter 12 in this volume.

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are certainly right in pointing out that current systems of participation are not in line with a strict conception of democratic representation, several contributions suggest that they are not so disorganized. In fact, most of participatory or consultative arrangements in IOs, for actors other than States, are following similar principles. These maybe more akin to a logic of expedience than a logic of participation, but at the same time we have seen above that the two are not necessarily incompatible and that, rather, IOs are combining the two to give way to a combination of legitimacies, which, in the end, may give an appropriate foundation to the exercise of power.

Yves Sintomer has suggested during the conference that the concept of 'governance' may be looked at when trying to understand and describe those types of processes. For sure, 'governance' is a word saturated with controversies. Although Jacques Chevallier,[73] but also André-Jean Arnaud[74] have tried to overcome this confusion and get the most of a concept which, after all, may well be extremely useful to advance knowledge about how power is exercised not only in domestic societies but also at the international or global level.

Chevallier points out that the State in the post-modern age is faced with problems of 'governability', insofar as it has to deal with 'demanding citizens who are no longer satisfied with the principle of delegation inherent in the representative system but want to have a say in collective choices' – which leads to a search for 'new methods, different from traditional government techniques'.[75] These 'new methods' are generally subsumed under the term 'governance'.

Chevallier continues:

> Acknowledging the complexity of the problems to be solved and the existence of multiple powers, it is a matter of favouring flexible formulas for cooperation, aimed at involving the various players concerned in decision-making; collective action thus tends to become the product of negotiations between a very diverse set of players, both public and private, who will find themselves involved in one way or another in its development. . . . These methods imply a new style of government . . . the traditional model based on unilaterality and constraint gives way to a pluralist and interactive model.[76]

Even though not all contributors have used the word 'governance', much of what they describe fits with Chevallier's account of the concept.

[73] Jacques Chevallier, *L'État post-moderne* (Paris: LGDJ, 2003), p. 209.
[74] André-Jean Arnaud, *Critique de la raison juridique, Tome 2, Gouvernants sans frontières, entre mondialisation et post-mondialisation* (Paris: LGDJ, 2003), pp. 379ff.
[75] Chevallier, fn. 73 (our translation).
[76] Ibid., p. 211.

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Global governance means that authority is dispersed between different players, at different levels and in multiple 'sites', which tend to form a 'deliberative system' through interaction between these 'interested parties'. This is not about a right to command, in the classical sense of sovereignty of the State: 'governing the globe'[77] is not of the essence of *imperium* but more of *auctoritas*. Niko Krisch uses the idea of 'liquid authority' to explain that type of power that circulates among actors, and is neither founded on force or persuasion, but rather on its capacity to create deference on the side of other actors.[78] In that, governance is different from government. More often, it is not even much about making legal norms, but rather public policies that are action-oriented. Such governance processes can be observed when IOs are entrusted or assume the responsibility of defining global public policies on global issues (such as sustainable development) involving multiple partners beyond the States at multiple levels – international but also national, regional, or local.

Participation in governance in this regard means participation in the exercise of public authority; it is a way in which 'legitimate' actors participate in the exercise of 'fluid' public authority jointly with the State and IOs. Increasingly used in IOs and governance processes, the notion of 'partnership' reflects this idea of shared power.[79] And this sharing takes place not because of a decision taken by an original exclusive holder of power, but because the actors involved – the stakeholders – are themselves originally custodians of a significant portion of a circulating power – a 'liquid' power that cannot be completely 'concentrated', 'solidified' to be concentrated in a single subject.

In this context, following Rosanvallon, 'representativeness can even come to be perceived as a burden, an insoluble constraint'.[80] This is very well illustrated in Marieke Louis' chapter, about 'classical' representative organizations like IOE being much less at ease than the International Chamber of Commerce in the context of post-2008 financial crisis economic negotiations.[81]

Another key concept to understand governance is the concept of 'orchestration', as demonstrated in Terry Macdonald's chapter on the Global Compact on Refugees. What Macdonald shows is that 'orchestration' may have the effect of putting some groups in contact and inciting them to coordinate their action and/or to act through a loose network organization based on the sense of

[77] Deborah D. Avant, Martha Finnemore and Susan K. Sell (eds.), *Who Governs the Globe?* (Cambridge: Cambridge University Press, 2010).
[78] Nico Krisch, 'Liquid Authority in Global Governance' (2017) 9(2) *International Theory* 237–260.
[79] See in particular UNGA Res. 55/215, 'Towards global partnerships' (21 December 2000).
[80] Rosanvallon, Chapter 2 in this volume.
[81] Louis, Chapter 7 in this volume.

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community or shared experience. As Macdonald points out, '[t]hrough so doing, IO orchestration activities can potentially support not only the functional efficacy of global governance practices, but also their democratic legitimacy'.[82] By 'orchestrating', that is *convening*, *endorsing*, but also *assisting*, IOs may encourage 'mimetic' or 'statistic' representatives to constitute themselves in groups that may pretend to represent their constituencies. Aspirational democratic representatives would in general take the shape of coalitions of associations, rather than a unique and unified organization. And that is because most of the constituencies – unless maybe very limited ones or localized ones – would in general produce a number of would-be representative organizations, corresponding to various groups within them, as fragmented as they are along political, social, cultural, ideological, or other lines. This pluralism within constituencies is in fact itself consubstantial with democracy. Far from being undemocratic, this scattered and multiple representation by various non-representative (in the strict sense) actors may in fact enhance democracy in IOs.

15.6 CONCLUSION

As mentioned before, all contributors have tried their best to maintain their work and proposals within 'non-ideal' theories. This is not to say that they intended to disqualify any ideal. And in fact, all admitted explicitly or implicitly that speaking of democracy in IOs and more generally at the international or global level somewhat relies to an 'ideal', the one of universal and equal autonomy of all human persons and maybe, beyond that, of non-human beings and parts of the biosphere, and of the biosphere itself. 'Non-ideal' theories, in this context, does not mean placing oneself within the strict confines of current 'realities' – if something of that sort does exist – but rather adopting a critical stance to existing institutions, laws, and moral ideas and in particular to existing structures of power. How is power distributed and allocated, and finally exercised is the question that every non-idealistic thinker would address in considering the question of democracy. And this keeping in mind that ideals of today often occurred in history to become the realities of tomorrow. So, the question is more what we can realistically do *now* in the light of an ideal – in other words it is what Antonio Cassese called 'realist utopia'[83] (which is not the expression of an unsolved problem, but more a methodological roadmap).

[82] Macdonald, Chapter 11 in this volume.

[83] Antonio Cassese (ed.), *Realizing Utopia: The Future of International Law* (Oxford: Oxford University Press, 2012), Introduction.

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The suggestion that comes out of the volume is that there are already some complex processes of governance on going, through participatory modalities which are more akin to 'systems of deliberation' than representative institutions. But systems of deliberation also need a proper theory of representation because this is not intended that each and every person may directly participate in deliberations.

Deliberative theory as applied to global institutions has already had a powerful effect: that of giving a theoretical basis to the – not only informal, but legally founded – participation of actors other than States. In a model of international law and institutions based on sovereignty, it was plainly impossible to establish the legitimacy of actors other than the State. In the context of deliberative model, the legitimacy of an actor to participate in political processes is no longer based on sovereignty. The question is therefore no longer whether such groups should or should not participate in IOs alongside States. The question is instead *which actors* can legitimately claim to participate in *what types of activity* and, in each instance, *under what arrangements*.

At least we can be satisfied that, in the current state of things, in most IOs, the 'sovereignty' model is no longer dominant or exclusive, and the participation of non-State actors is not anymore only tolerated or admitted on a purely 'consultative' or 'instrumental' basis, but in recognition of the power of legitimization that their participation may produce. On business participation, for instance, Marieke Louis made the point that what was perceived as problematic was not business participation per se, but rather the modalities of participation and representation of those business companies.[84] Similarly, Melissa J. Durkee insisted on the need to create a separate track of participation for businesses – on the model of what some IOs have already done.[85]

Answering precisely the question of the role and function of each actor in each of the IO's activities is of major importance not only theoretically but also practically, because without proper conceptualization of what this means to participate and based on which legitimacy for each activity, this is impossible to conceive proper rules that may apply in IOs. And the risk unfolding from the absence of rule is not only poor practice and distorted results of governance processes, but also risks of instrumentalization by States, including authoritarian States, and other powerful actors like multinational companies who may use a 'democratization' of IOs discourse to promote their own interests. The

[84] Louis, Chapter 7 in this volume.
[85] Durkee, Chapter 8 in this volume.

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so-called 'capture'[86] of IOs may not only be a goal pursued by private actors, but also by hegemonic States who are willing to take control of international institutions to strengthen their influence on world affairs.

As things currently stand, this is clear that such conceptualization of democratic participation and representation in or by IOs does not exist. A multiple system of representation, based on authorization and control, stands as serious proposal, but although non-ideal, seems extremely far-fetched. Re-instituting multiple publics would need radical reforming of IOs. 'Reforming' is by itself a challenge in the realm of interstate negotiations, especially when it comes to institutional arrangements. States form a cast of privileged 'subjects' of international law, and access of non-State actors (public or private) to IOs has been the result of piecemeal strategies, slowly developed and surreptitiously introduced through practice – and not law – at the initiative of non-State actors themselves, with the complicity of some States and of integrated organs (secretariats). Until now, all major reforms of IOs have failed. The issue of participation of civil society has once been part of the reformist agenda pushed by former UN Secretary-General Kofi Annan, on the occasion of the fiftieth anniversary of the organization in 2005. Annan appointed a 'group of eminent persons representing a variety of perspectives to review past and current practices and recommend improvements for the future in order to make the interaction between civil society and the United Nations more meaningful'.[87] The Group handed its report in June 2004, with groundbreaking proposals, none of which have been concretized since then. The main defect of the existing system, namely the ECOSOC 'Committee on NGOs', a group of elected States having the mandate to decide on attributing, suspending, or withdrawing consultative status to NGOs, has remained unchanged and continues up until today to impede access of independent NGOs and on the other side to promote Governmental NGOs (the 'GONGOs') or simply incompetent organizations so that they can use space and time to the detriment of independent, competent, and 'representative' (in the loose meanings identified above) organizations.[88] Despite all the strong lobby from hundreds of organizations throughout the world for reforms to be

[86] Ayelet Berman, 'Between Participation and Capture in International Rule-Making: The WHO Framework of Engagement with Non-State Actors' (2021) 32(1) *European Journal of International Law* 227–254.

[87] UNGA Res. 57/387 (9 September 2002), para. 141.

[88] Olivier de Frouville, 'Domesticating Civil Society at the United Nations', in Pierre-Marie Dupuy and Luisa Vierucci (eds.), *NGOs in International Law: Efficiency in Flexibility?* (Cheltenham: Edward Elgar, 2008), pp. 71–115.

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adopted in the perspective of the 'Summit of the Future' there seems to be no concrete prospect for positive steps or actions in this regard.[89]

Quite the opposite, the last years have seen a powerful movement towards 'shrinking space' for civil society.[90] Authoritarian States are openly attacking independent CSOs domestically and internationally. The space that had been conquered since the 1990s is eroded, whereas in sectors traditionally not opened to participation, like climate negotiations, States are keeping the door closed for CSOs. This is even more striking that the presence of business companies, especially fossil fuel companies, is pervasive in these negotiations with high economic stakes.

Then, in these conditions, what would be our 'realistic utopia'? Democratization of IOs must be conceived as a bottom-up process much more than a top-down one. The initiatives and push towards more participation rarely came from the States themselves but rather from transnational movements and CSOs. This means putting a priority on strengthening transnational networks of actors who have the same understanding of democracy as autonomy: networks of cosmopolitan citizens and institutions, who may counterbalance the influence of the most sovereigntist States and harness the potential for change of transnational business actors. Action towards a growing access and participation to global arenas happen if grassroots movements and CSOs are able to find enough allies among States and other actors including businesses to form such multipartite transnational cosmopolitan coalitions. And this in turn can only take place through a piecemeal, step-by-step approach, in each conference, in each specific body, in each negotiation, with various and modular coalitions to be reinvented again and again, depending on the subject matter, on the institutional configuration and on the balance of power. This needs a clear vision of the goal to be achieved, a strategic vision and tactical intelligence.

Democracy in IOs may not be, as it used to be in the classical cosmopolitan idea, an 'extension' of the democratic ideal to international affairs: it may well be the ultimate guarantee for the preservation of democracies where they exist

[89] See among others 'A Call for UN Charter Reform' a letter signed by eminent personalities including twenty Nobel laureates and the report *Imagining a Renewed United Nations* 2023/2024 issued by the Global Governance Forum. However UNGA Res. 76/307 falls short of these ambitions notably by deciding 'that the Summit of the Future has an important role to play in reaffirming the Charter of the United Nations', UNGA Res. 76/307, 'Modalities for the Summit of the Future' (12 September 2022). No mention is made of a revised structure that would allow enhanced participation by other actors, as suggested by civil society movements.

[90] See among many others the report of the UN High Commissioner for Human Rights, 'Civil Society space: engagement with international and regional organizations' (20 April 2020), A/HRC/44/25.

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at the domestic levels. Interdependence of States and global challenges such as the climate emergency are inevitably leading to more transfer of powers to global institutions. And two ways are open for the evolution of the organization of global power: a democratic and federal evolution; or an autocratic and imperial one.[91]

Finding the best theories and actions to push for the democratic and federal agenda is the common goal of all contributors to this volume. Beyond theories, we now urgently need to propose practical and realistically feasible solutions . . .

[91] Olivier de Frouville, 'Repenser le concept de constitution', in de Frouville and Rousseau, fn. 13, pp. 73–91.

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