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## Democracy and representation beyond the nation state

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## 11 Democracy and representation beyond the nation state

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*Michael Zürn and Gregor Walter-Drop*

### **Introduction**

If the EU were to apply for membership of the EU, it would not qualify because of the inadequate democratic content of its constitution. At the same time, a significant proportion of legislative activity in its member states is driven by decisions made in the opaque labyrinth of institutions in far-away Brussels.<sup>1</sup> So, are the member states democratically governed?

The picture is similar with respect to other international institutions in the OECD world. The WTO system of agreements, for instance, comprises almost 10,000 pages and is the result of marathon negotiations, lasting over a decade, involving over 150 states and thousands of experts. These agreements contain far-reaching implications for employees in crisis-prone industrial sectors, and in agriculture. To be sure, it was the democratically elected governments that participated in the negotiations. But did citizens really exercise recognisable influence over the decisions?

The problem behind these questions is clear. Although security and social welfare, two central aims of governance, can be better achieved with international institutions than without them, the mere existence of international institutions is no guarantee of good governance. Moreover, international institutions now truly exercise power. The rise of dispute settlement bodies, majority decisions rules, improved monitoring schemes, the role of transnational groups in ‘enforcing’ rules via naming and shaming, and, of course, a body of *ius cogens* in international law has led to an undermining of the consensus principle

<sup>1</sup> Majone (1996: 59) estimated this ‘legislative Europeanisation’ for France to be around 50 per cent. For Germany, von Beyme (1998) focused on key issues and arrived at smaller, but still significant percentages (cf. Tömmel 2006). König and Mäder (2008) critically re-evaluated the hypothesis but still arrived at figures showing between a quarter and a third of all legislative activity in Germany to be driven by EU impulses.

of international politics (Zürn *et al.* 2007). At least sometimes some national governments need to do things which they would not want to do without such international institutions. And if international institutions exercise power, they need to have legitimacy. Apart from producing effective solutions, governance must also fulfil certain procedural requirements in order to be rated as good. From the point of view of democratic theory, however, international institutions have very shaky foundations. The 'chain of representation' running from citizens to an international institution is very long and, at the same time, the possibilities of democratic control are obscure and do not follow a clear design. Against this background, Robert Dahl (1994) pointed almost paradigmatically to a fundamental dilemma of politics in the age of globalisation: the contradiction between 'system effectiveness and citizen participation'.

This chapter aims at questioning the notion of a contradiction – to use the terms of Fritz Scharpf (1997) – between *output legitimacy* (the acceptance of a political system created by system effectiveness) and *input legitimacy* (acceptance created by democratic procedures). We shall argue in the first section that viewing this issue as a choice between effective problem solving through international institutions and democratic political processes is already in normative terms a false approach. International institutions not only increase system effectiveness or output-legitimacy; they are also a normatively sensible response to the problems that are posed for democracy by globalisation. At the same time, it is indisputable that the actual functioning of these international institutions does not meet the democratic standards of representative democracy. In the second section of this chapter, we analyse the sceptical argument that insists that most deficits in the working of international institutions cannot easily be remedied, since democratic majority decisions in representative institutions depend – *in descriptive terms* – on a political community that is (among other things) based on trust and solidarity. For sceptics, the lack of a transnational *demos* poses a problem that cannot easily be overcome. Sceptics therefore see a structural dilemma: while international institutions may be necessary for effective policies, they are structurally undemocratic.

We consider this thesis to be too unsophisticated. In the third section of our chapter we challenge the sceptical argument by analysing the effect of globalisation on the formation of a *demos* and by disaggregating the *demos* itself into its elements. Based on this approach, we find, on the international level at least, a mixed picture. A short overview indicates that the willingness to form *associations* among *demos* members and to select representatives who are involved in decision making

are of special interest. In modern territorial states this willingness to form associations constitutes the central mechanism by which a *demos* acquires the capacity to function as a democracy. Interest groups and elected representatives organised in parties together form the backbone of interest representation in modern nation states. In the fourth section we thus focus on associations and illustrate the different modes of representation underlying them. In modern democracies, all these modes of representation usually exist in a more or less balanced state. In the international sphere, however, the pattern deviates strongly from the familiar. This insight paves the way for some concluding remarks in the fifth section on how the democratisation of international institutions can proceed.

### Denationalisation and democracy

In order to show how societal denationalisation – in our opinion a more precise term than globalisation – affects democracy, the terms ‘democracy’ and ‘societal denationalisation’ must first be clarified. The mechanism through which the latter affects the former will then be explained.

‘Persons ... should be free and equal in the determination of the conditions of their own lives, so long as they do not deploy this framework to negate the rights of others’ (Held 1995: 147). On the basis of this principle of autonomy, democracy, in very general terms, is a process of public will formation and decision making in which everybody affected by a decision has the same opportunity to participate actively and exert influence. Moreover, democracy – as understood here – is a “condition of possibility” of normatively justifiable solutions. Such a concept of democracy rejects purely procedural interpretations that reduce democracy to a decision-making system regardless of the content of decisions. At the same time, it challenges purely liberal or constitutionalist definitions which regard individual political rights as pre-politically given, and seek to protect them from the outcomes of the democratic process. This concept of democracy is reflective in the sense that the fundamental normative requirements of the democratic process, such as autonomous individuals with freedom of opinion and information, as well as the democratic process itself, are both seen as mutually reinforcing. Democracy consists of two components: a *democratic principle* – everyone affected by a decision should have a chance to participate – and a *deliberative principle* – any decision should be backed by arguments committed to values of rationality and impartiality (Habermas 1994; Elster 1998: 8; Schmalz-Bruns 1995). Whereas most theorists of democracy

would agree on the first principle, the second is more contested. In order to show how globalisation is causing problems for national democracies, we will refer to the democratic principle. In order to show that the social conditions for democracy beyond the nation state are not impossible to fulfil, we shall also consider the deliberative principle, thus harnessing a more ambitious conception of democracy.

Instead of globalisation, we use the term denationalisation. Cross-referring to the classic works of Karl W. Deutsch (1969) and Eric Hobsbawm (1992) on nationalism, it sees a nation as a political community sustained by intensive interactions that stand in a mutually constitutive relationship to the nation state. Patterns of interaction, nation and nation state thus together form a national constellation (Habermas). Consequently, denationalisation is an indication of the weakening link between territorial states and their corresponding national societies, that is, a transformation of the contextual condition that made the national constellation possible.

Denationalisation can be defined as the extension of social spaces which are constituted by dense transactions that stretch beyond national borders without necessarily being global in scope. The degree of denationalisation can be measured by the extent of cross-border transactions relative to transactions taking place within national borders. Social transactions take place whenever goods, services and capital (economics), threats (security), pollutants (environment), signs (communication) or persons (mobility) are internationally exchanged or commonly produced. An empirical investigation carried out using this conceptualisation shows that denationalisation is not uniform, but rather a jagged process that differs markedly between issue areas and countries, and over time.<sup>2</sup> Denationalisation, defined in terms of the growing significance of cross-border transactions, has been taking place in mild forms since the 1950s. Accelerated denationalisation first occurred in the 1960s, with the massive deployment of nuclear weapons in the issue area of security. From the 1970s onward, the growth of cross-border exchanges accelerated in the fields of goods production and capital flows, information, travel, migration and regional environmental risks. Surprisingly, the growth of some of these exchange processes leveled off for a few years during the 1980s. Veritable denationalisation thrusts, however, occurred in a number of specific issue areas just as the growth of cross-border exchanges slowed down. The most notable

<sup>2</sup> In a research project funded by the German Research Association, we have developed seventy-two indicators to determine the extent of denationalisation in different issue areas and different OECD countries (Beisheim *et al.* 1999). For a similar undertaking with similar results, see Held *et al.* (1999).

developments took place in global financial markets, the growth of global environmental dangers, the Internet and organised crime. The common feature of all these more recent developments is that they concern the *integrated production* of goods and bads, rather than the mere *exchange* of goods and bads across national borders.

How does this process affect representative democracy? A logical corollary of the democratic principle is the congruence between social and political spaces (Scharpf 1993: 165–185; Held 1995: 16), which was for a long time not treated as a fundamental problem in modern democratic theory. The notion of a nation state consisting of a more or less circumscribed national society, a clearly demarcated territory and an administrative apparatus constituted to provide services for this society and territory, led theorists to treat congruence as a given. The notion of a territorially defined nation state was thus used as a shortcut to ensure the spatial congruence between rulers (the nation *state*) and subjects (the national *society*). This notion becomes problematic as soon as the nature of the relevant community is contested, as has happened in the course of societal denationalisation. Couched in different terms: the increase in cross-border transactions infringes on the normative dignity of political borders (Schmalz-Bruns 1998: 372; Held 1998).

From the standpoint of democracy, spatial congruence is necessary in two critical ways: first, between the people who are affected by a decision and their representatives in the decision-making system (input congruence); and, second, between the space in which regulations are valid and the space in which the social interactions to which the decision refers take place (output congruence). If there is no *input congruence*, then a group that is affected by a decision but does not participate in its making (either directly or through representatives) can be considered to have been determined by others, instead of being self-determined. As early as 1945, E. H. Carr saw the moral deficits in exclusive political communities whose privileges were established on the basis of exporting harm abroad (Carr 1945). What was true then is much truer today: in the age of denationalisation: the extension of the moral and political community that encompasses the interests of all those affected by decisions made within that community is a normative democratic requirement.

The congruence of the space for which regulations are valid and the boundaries of the relevant social transactions – *output incongruence* – is also significant for democratic legitimacy. According to Alexy (1985: 458) ‘*de jure* freedom, that is the legal authorisation to do or refrain from doing something, is worth nothing without *de facto* freedom, that is factual freedom of choice’. In a denationalised world ruled

by a system of formally independent nation states, there is a danger that political communities cannot attain their desired goals due to conditions outside their jurisdiction. In this case, their political systems are unable to act on behalf of the collective.

Thus, the choice between the alternative of effective problem solving through international institutions and democratic political processes is not a particularly fruitful exercise. In democratic terms, international institutions are a sensible response to the problems facing democracy in times of denationalisation, especially because they help to redress the imbalance between social and political spaces. Theoretically, the 'emergence of denationalised governance structures' (Joerges 1996) helps to bring all those who are affected by a political decision into the decision-making system, thus observing the principle of 'no taxation without representation'. What is more, international institutions help to increase the real freedom of political communities because they allow for the implementation of policies that each state alone could not meaningfully pursue. Governance beyond the nation state can therefore improve both social welfare *and* representative democracy in the face of societal denationalisation. In this sense, international institutions are not the problem, but part of the solution to the problems of modern representative democracy in the age of denationalisation. The current major problem for modern democracy is not political integration, but societal denationalisation which undermines the normative dignity of political borders by increasing political externalities in integrated social spaces (due to input incongruence), and by reducing the autonomy of nation states (due to output incongruence).

### **The social prerequisites for democracy**

Although, in principle, international institutions may compensate for democratic deficits brought about by input and output incongruence, they create at the same time new patterns of representation and new democratic deficits. And the greater the significance of international institutions, the greater the need for democratic legitimacy of their decisions. At the moment – on this point analysts are almost unanimous – this legitimacy is clearly inadequate.

There are two strands of thought to be found among those who identify a deficit in the way international institutions work; they differ mainly with respect to the question of whether in principle the democratic deficits of international institutions can be remedied. While some critics point to institutional deficits in the EU and other international institutions, they maintain that democratic reforms are possible, provided

there is the appropriate political will. On the other hand, there are sceptics who consider these suggestions naïve, and question the very *possibility* of processes of democratic representation beyond the nation state. They argue that the EU and other international institutions cannot be democratically reformed because they do not meet the *social prerequisites* of democracy. We wish to introduce a third possibility, one that accepts the sceptics' focus on social prerequisites, but shows that the empirical complexity of these prerequisites reveals a much more varied picture than the sceptics suggest, a picture that has the potential to guide consideration of the social prerequisites of effective democratic governance beyond the nation state.

According to the sceptics, although democratic legitimacy may not be limited to ethnic communities it is only possible within the framework of a *demos*; or, in the words of Emerich Francis (1965: 77), a community which considers itself to be the 'legitimate bearer of political will'. We do not endeavour at this point to delve deeper into democratic theory; we use the term *demos* mainly to highlight the social, cultural and structural prerequisites of a functioning democracy. Beyond the nation state – so the sceptics' argument runs – these prerequisites are missing. Peter Graf Kielmannsegg (1994: 27) has eloquently summarised this point of view with respect to Europe:

Collective identities develop, become stable and are passed into tradition in communities of communication, of experiences and of memories. Europe, even within the narrower scope of Western Europe, has no communication community, hardly any common memories and only limited common experiences.

Seen in this way, the connection between nation and democracy is not an historical coincidence, but is systematic and indissoluble. Some have pushed this argument so far as to claim, for example, that direct elections to the European Parliament are a mistake because they are geared to the formation of a supranational *demos* – which is an impossible and counterproductive endeavour (Lepsius 1986). This is a strong argument that merits closer inspection. In which sense is a coherent *demos* necessary for the functioning of democratic institutions? It seems that without any form of *demos* international institutions will necessarily have deficits in legitimacy and efficiency. Without the appropriate social prerequisites majoritarian decision making is hardly achievable beyond the national level, and even negotiation systems based on argumentative consensus building will only work if they can at least build on a weak form of collective identity and some common values. It thus seems warranted to undertake a closer examination of the chances of forming a *demos* above the level of the nation state.



### **The *demos* beyond the nation state**

In a first step, the broad rejection of a *demos* above the nation can be challenged from both an historical and a contemporary perspective. The challenge shows that there is no *a priori* reason not to believe that at least some elements of a *demos* are possible in the international sphere. Therefore, in a second step, we disaggregate the all-embracing term *demos* to establish which of its elements are required for what component of democracy, so enabling us to evaluate the current status of these components of the *demos* in international relations.

In the first place, it should be pointed out that a *demos* is never externally given, but always the result of political institutions and intensified transactions. The importance of political institutions is best exemplified by a look at modern European history. Historically, classic examples of the European nation state, such as France or Britain, illustrate that it was primarily the state that acquired a symbolic framework at an early stage of its history, and that this facilitated the development of an imagined community (Anderson 1991) marked by a strong national identity. It was this identity out of which the *demoi* eventually emerged, in the shape of political communities with the potential for democratic self-governance. In other words, political institutions fostered the emergence of an identity that paved the way to the formation of a *demos*, which in turn led to a democratisation of these institutions. Other cases in central Europe seem to suggest that community building preceded state building. However, in countries such as Germany or Italy, Poland and Czechoslovakia, national unity or independence were projects of relatively small elites that were supplemented by various measures of identity formation in the mass public once these elites had successfully taken over or established the respective national political institutions. Thus, even in these cases national collective identity achieved its ubiquity and paramount importance only *after* the respective institutions had been established, and because of activities initiated or fostered by these institutions.

The sceptics are right to point out that only when political communities have been established can the democratisation of the state institutions take place. Yet, state institutions in the national constellation typically have the power to shape the borders of areas of dense social transactions, and thus the limits of common communication, experience and memory. Consider examples such as the language policies of the emerging centralist France (Hobsbawm 1992), the unification of measurement units, currencies and time in the emerging Wilhelminian Empire (Hallerberg and Weber 2002) or the state-supported fabrication of national myths in Victorian Britain (Snyder 1993). The implication

is that the borders of the communities themselves, and the process of identity formation, are strongly influenced by political institutions. These can of course be subject to change – provided there is the appropriate political will.

Against this background, it becomes obvious that any analysis of the state of transnational *demos* involves the analysis of a moving target. The above-mentioned process of denationalisation suggests that trans-action patterns have begun to change – not least because of the role of political institutions. In the field of communication, for instance, a number of indicators show significant tendencies of denationalisation. The tremendous facilitation of cross-border communication by the Internet is only one example. Equivalent developments can be seen in more traditional media, whether audio-visual, recorded or printed. A recent study of global book translations, for instance, shows a 50 per cent growth over the last three decades coupled with a significant increase in the diversity of languages subject to translation (Sapiro 2008). This development runs parallel to the spread of languages themselves, and in particular of English as a kind of ‘lingua franca’ of the denationalised world. According to Eurobarometer data, in 2006 more than 50 per cent of the population of the twenty-five European Union member states either spoke English as a native language or were able to hold a conversation in English. At the same time, 28 per cent identified themselves as having a working knowledge of at least two foreign languages (European Commission 2006). Cross-border communication within (and beyond) Europe has significantly increased and there are no signs of a reversal of this trend. Likewise, it is not far-fetched to assume that not only the denationalisation in communication and culture, but also denationalisation of trade, travel and even environmental problems, are leading to a convergence in the experiences of citizens inside the social spaces of dense social transactions. Without further empirical illustration it seems plausible to assume that this process is particularly strong within the European Union because of intensive patterns of denationalisation in this region.

In sum, the categorical distinction between the existence of such a community on the national level and the absence of such a community on a level beyond the nation state is becoming increasingly blurred. Even in the matter of common memories, which are among the core elements of national identity, it is interesting to note that there are projects such as the development of common French-German and Polish-German history textbooks for use in high schools on both sides of the border. Both cases are particularly noteworthy because for a long time collective memories in these countries were dominated by

the traumatic experiences of multiple wars and were explicitly defined in contradistinction to their respective neighbours. Such examples suggest that even in difficult cases changes in the community of memory are not impossible.

It thus seems justified to conclude that the collective identity required for the formation of a *demos* is subject to change depending on (a) the political institutions fostering it and (b) the patterns of social transaction it reflects. Given current levels of political and social denationalisation there is no *a priori* reason for rejecting the possibility of forming a *demos* beyond the nation state.

### *Rights*

It is helpful, at this point, to take a closer look at the term *demos* itself, to disaggregate it into its different components. A *demos* comprises at least six central elements that serve as the social prerequisites for democracy: rights, trust, public spirit, public discourse, solidarity and association.

*The members of a demos acknowledge each other as autonomous individuals, each with a right to personal self-fulfilment.* In this sense, civil liberty rights, including the right to physical integrity and the right to participate in will formation and decision-making processes, are constitutionally embodied in any democratic political community. However, at least within the OECD world, to some extent democracy also involves a transnational concern for such rights, in the form of support for human rights. Increasingly, civil society actors sue for human rights and protection from arbitrary violence on a transnational scale, and people organise themselves transnationally to prevent infringements of human rights 'abroad'. Societal denationalisation seems to have heightened the significance of these transnational monitoring activities. In Europe, individually actionable human rights are guaranteed in legally binding form by the European Human Rights Commission, and there are as well some indications of similar developments outside of Europe (Donnelly 1993; Evans 1997). In addition, if rights problems with clear transboundary implications arise, it is more or less accepted that all the affected countries are fully entitled to have their say, as long as they are represented by democratically elected politicians. This principle of cross-border representation is fostered by the transnational mutual acknowledgement of the importance of participation in decision-making processes at the national level. The steady increase in election monitoring, for example, shows that political rights, including those of people in other countries, are increasingly

being defended on a transnational scale (Rosenau 1997: 259; Keane, Chapter 9). Some fundamental principles of a democratic political community thus seem to have begun to form across national borders in denationalised societies.

### *Trust*

The members of a *demos* accept that once an obligation has been entered into, it must be complied with, and they believe that all other members should accept this as well. Again, it is possible to argue that this aspect of a democratic political community also appears to be relatively well established on the international level. According to the principle of *pacta sunt servanda* ('agreements must be kept'), it is generally accepted that international obligations should be fulfilled. Most western states do indeed comply with international contractual obligations (Henkin 1968; Chayes and Chayes 1995). The origins of this principle can be seen in the mutual obligation that arose in a society of states and may thus be construed as a sense of duty formed at the state (rather than the individual) level (Bull 1977). However, compliance is sometimes even demanded by national populations against executives who want to breach obligations; this 'compliance pull' of international regulations is strongest when obligations are politically, judicially and socially internalised (Zürn and Joerges 2005). It is thus safe to assume that a mutual obligation to follow rules once they have been agreed upon has developed in the OECD world beyond the level of governments. On this basis one may argue, against the sceptics, that political trust is today not restricted to the national and the inter-governmental sphere, but has also entered the transnational sphere.

### *Public spirit*

Members of a fully developed *demos* show a sense of collective identity if their preferences as individuals include a concern for the well-being (or the suffering) of the collective. In its weak form, such a sense of collective identity (*Gemeinsinn*, or public spirit) is a precondition of public deliberations about the right solution for the community as a whole. Where there is no such public spirit, there is no reference point for arguing and, therefore, little transnational public debate on the 'right' policies for the whole. It seems nevertheless possible to argue that there are signs of public spirit developing in the OECD world. One can begin by referring to transnational sectoral publics and 'sectoral *demos*' (Abromeit and Schmidt 1998) that roughly speaking hold deliberations

about appropriate policies. Given this development, it comes as no surprise that in analyses of democratic legitimacy the focus has shifted to international political processes in which decision making is dominated by deliberative components that give priority to arguing over bargaining. Consider, for instance, the research on deliberation in the hundreds of European Union committees active in the implementation of Council decisions (cf. Joerges and Neyer 1997). Particularly within the field of environmental politics, similar developments can even be observed at the international level. After the admission of transnational non-governmental organisations (NGOs), international negotiations received an impetus that clearly distinguished them from conventional inter-governmental negotiations. The regime for the protection of the ozone layer as well as climate change politics illustrate that the inclusion of NGOs has elevated the status of epistemic communities (Adler and Haas 1992; Princen and Finger 1994), which in turn has helped strengthen deliberative elements at the expense of simple bargaining elements, and has also contributed to the relativisation of particular interests in favour of public interests (cf. Gehring 1995). To be sure, whenever fragmented national public opinions dominate national decision makers, as happened for instance in the various rounds of the BSE negotiations, deliberation at levels beyond the nation state dissolves (Neyer 2005). These developments can nevertheless be taken as an indicator of the presence of a weak form of collective identity outlined above, which is necessary for transforming inter-governmental bargaining into transnational negotiations, so enhancing their democratic quality.

#### *Public discourse*

Public spirit can be transformed into public discourse if most of the members affected by a decision have a capacity to communicate publicly. The participation of expert communities and the direct addressees of regulations in deliberative issue networks becomes possible because they are public spirited and possess the capacities and resources to communicate with each other in arenas beyond the nation state. Transnational sectoral publics (Eder *et al.* 1998) rest on social differentiation and stratification and evolve as issue networks around specific issue areas. These sectoral publics are dense communication networks with permeable borders, and they facilitate a more active participation than the broader public discourse. However, sectoral publics are always in danger of becoming captive to particular interests by developing rent-seeking behaviour, neglecting the public interests and detaching themselves from other

issue networks (Zürn and Joerges 2005). However, in contrast to sectoral publics, the institutionalisation of a broader public discourse is dependent on a common language and media as well as a party system. While there are significant changes in the context of the denationalisation of communication and culture as outlined above, the infrastructure for a broader public discourse is still quite weak at the European level and hardly developed at all beyond that region.

### *Solidarity*

In its stronger form, a sense of collective identity provides the basis for (re)distributive processes within a political community. Solidarity is the willingness of individuals to give up things they value for the sake of the collectivity, and the acceptance of redistributive policies is the best indicator of this. Although the EU's Regional and Structural Funds reflect some awareness of redistributive obligations at the European level, a recognisable sense of transnational social obligations is barely perceptible. While redistributive programmes to deal with catastrophes exist, they have an ad hoc character and are mainly aimed at rescuing people (Radtke 2007). Humanitarian activities of this sort are more accurately interpreted as evidence of support for the notion of a transnational concern for human rights. On the other hand, it is not clear whether a strong sense of collective identity, as suggested by the acceptance of redistributive measures, is necessary for democracy. National democracies differ widely in their use of redistributive policies, and even within individual nation states acceptance of such measures varies from one region to another.

### *Association*

Based on mutual trust, solidarity and public spirit, members of a *demos* display a willingness to form associations to enter public discourse and to exercise their rights. They thus accept the principle of representation, which stipulates that other individuals or organisations can act on their behalf, or in the general interest. Associations take very different forms, ranging from 'big tent' or 'catch-all' political parties to highly specialised interest groups. The election of parliamentarians and the formation of different territorial levels of government in a federal system are also based on the principle of association and representation. Parliamentarians act on behalf of their constituencies while local or regional governments constitute a form of general territorial representation. In fact, the mechanisms of association and representation are

central to any democratic territorial state because in large and functionally complex societies they are a necessary prerequisite for the aggregation, selection and formulation of interests – be they public or private (special) interests. It is interesting to note that as a political right the freedom of association is not only part of most Western constitutions but is also incorporated in such central human rights documents as the Universal Declaration of Human Rights and the European Convention on Human Rights. Cross-border consensus on certain intra-state norms, however, is clearly something else than the existence of elements of the *demos* on the international level itself.

The preceding analysis shows that the very strong claim that there is no *demos* beyond national borders needs differentiation. A *demos* consists of a number of analytically separable components that exist on the international level, albeit to varying degrees. For instance, the acceptance that all those affected by a denationalised issue must be represented in the process of international policy formulation seems relatively well developed. Mutual political rights and congruence are thus acknowledged as transnational normative criteria. Certain elements of a transnational political community with supervisory functions can also be identified in the monitoring of national governments' implementation of international policies, and in the cross-border recognition of individual human rights. These observations in no way suggest that the democratic legitimacy of governance beyond the nation state has already reached adequate levels. However, it does indicate that democratic processes beyond the nation state must not be ruled out as an unalterable matter of principle until all aspects of a *demos* are fully developed. Equally, there is no reason to assume that the appearance of a *demos* depends on a high degree of cultural homogeneity, and that it is thus feasible only within a national context. It seems much more practical to establish what kind of democratic processes can be generated on the basis of (partially) given components of a *demos*. To this end, more systematic research should focus on the question of which aspects of a transnational *demos* already exist and can be further developed within a democratic framework.

At the same time, the disaggregation of the term *demos* suggests that solidarity, public discourse and imbalances among different forms of representation are the weakest features of an emergent *demos* beyond the nation state. With respect to public discourse, it can reasonably be argued that this is not due to a lack of transnational public spirit, but rather to infrastructural difficulties that are vital for public discourse. The existence of transnational issue networks with deliberative elements nevertheless indicates that a lack of cultural homogeneity does

not appear to be the major reason for the absence of a broader public discourse.

Cultural heterogeneity seems to be most relevant with respect to the development of a sense of solidarity. For many sceptics, democracy beyond the nation state is unthinkable because the central element of their notion of democracy is social rights. In their view, individual acts of solidarity depend on cultural integration (Streeck 1998). Solidarity, however, also implies the exclusion of others (Linklater 1998: 113). It can reasonably be assumed that here the sceptics confuse citizenship rights, which were 'extremely exclusive from the very origination of the concept' (Preuss 1998: 20) with democracy, which is an all-inclusive concept. The sceptics' argument and their tendency to over-generalise is driven by the fear of 'a liberal bias of intergovernmental and non-state political arenas' (Streeck 1998: 15). Even if there is no strong sense of collective identity in terms of solidarity and willingness to make sacrifices, this does not mean that the social prerequisites for democracy are completely lacking.

### **Representation in and above the nation state**

We have argued above that one of the core elements of a *demos* is the willingness to form associations that represent citizens' interests through the democratic political process. In order to compare the different forms of representation in and above the nation state, it is helpful to introduce two categorical distinctions: one pertaining to the constitutive processes of a democracy, while the other is related to the type of organisation in which the members of a *demos* are willing to associate. We have already noted earlier that in addition to aggregation the democratic process also comprises deliberative elements, subject to the existence of certain social preconditions. While in aggregative processes participants try to assert their interests unconditionally, in deliberative processes participants have to justify their concerns as a matter of public interest: they argue instead of bargain with each other.

Turning to the second distinction, it can be argued that association and representation can be either issue-specific and, thus, functional, or they can happen on the basis of territorial structures that cut across the issue-specific networks. When both types of distinctions are acknowledged, four modes of representation can be identified, as in Table 11.1.

Interest groups can be distinguished from NGOs in that they are pursuing goals compatible with the short-term (economic) interests of their members while for NGOs normally no such compatibility exists.



Table 11.1. *Modes of representation*

	Aggregation of Interests	Deliberation
Functional organisation	Interest groups	NGOs
Territorial organisation	Regional political entities	Parliamentarians

Thus, interest groups might engage in debate and they will routinely cloak their interests as matters of public concern, but it is not their function to deliberate in the substantial sense introduced above. At the same time, NGOs will engage in interest-politics but they will do so normally for matters of public concern beyond the self-interest of their members. In a similar vein, it is the chief function of regional political entities to aggregate the interests of the units below them or within them and to represent them *vis-à-vis* the 'outside' while the parliament is *the* institution for the deliberation of public affairs above and beyond individual, institutional or group-specific self-interest.

Within a nation state, the four different modes of representation sketched above coexist in a more or less balanced relationship. To be sure, the exact balance that provides both legitimate and efficient governance is historically and geographically contingent, but in modern democracies all modes do exist to a certain degree. This is chiefly due to the fact, as argued above, that only aggregation and deliberation together make for a democracy that is more than just a set of procedures. At the same time, functional representation is best suited to problem solving, while territorial representation caters for the needs of maintaining collective identity and serves as a counterbalance to the dis-association of sectoral politics, which otherwise might lack coordination and overlook interests that are functionally difficult to organise.

Turning to the international level, it becomes apparent that representation does exist but that the four modes are not equally present. Broadly speaking, at levels beyond the nation state, bargaining trumps arguing and functional organisations are more important than broad institutions that build bridges between different sectors.

To clarify this point, it is helpful to distinguish between the European Union and functional international regimes. The former is marked by the fact that there are close political and institutional inter-linkages among diverse issue areas that are processed by a single institution covering the same territory. In functional international regimes, these same structures are lacking. On a more abstract level, the European Union can be called an 'omnibus institution', while functional international

regimes are 'specialised institutions'. Let us turn first to these specialised institutions.

When considering the above table, there is no doubt that the dominant mode of interest representation in the development of specialised international institutions that formulate policies is both aggregative and territorial. In other words, it is the bargaining of states within limited issue areas that forms the core of political processes on the international level. For very good reasons, these institutions are often labelled *inter-governmental* regimes. International institutions are most often designed by states. They quite often need the consent of all states for any kind of activity; and they also need the resources of nation states to implement any of their policies.

To be sure, some international institutions have moved beyond the mere aggregation of interests. For instance, the number of international institutions with dispute settlement bodies and with some form of majority decision rules has grown over time. In this way, the dominance of the consensus principle has been undermined to some extent (Zürn *et al.* 2007). Majority decisions, for instance, can be found in the International Monetary Fund, the World Bank and many international environmental regimes. Examples of strong dispute-settlement bodies include the International Criminal Court, the World Trade Organization's 'Dispute Settlement Body', Mercosur's *Tribunal Permanente de Revisión* and, in a certain sense, even the UN Security Council.

NGOs also play a significant role in international politics. They incorporate a deliberative element as well. There are good reasons to suppose that this kind of transnationalisation has gained considerable quantitative momentum in recent decades. Today, the number of INGOs has surged to over 6,500 (Karns and Mingst 2004, 17); the change is not merely quantitative. In environmental matters alone, the number of transnational policy networks increased from two in 1953 to ninety in 1993 (Keck and Sikkink 1998, 10). With the increasing demand for privately-supplied knowledge and expertise, the number of accredited NGOs in the United Nations Economic and Social Council (ECOSOC) has continued to rise. In 1948, 50 NGOs were accredited; by 1996, their number had increased to 1041, and by 2005 to 2719. A similar trend can be observed in the field of humanitarian assistance. In the 1960s, the United Nations High Commissioner for Refugees (UNHCR) cooperated with between ten and twenty NGOs. By the 1990s the number of NGOs working with UNHCR had increased to several hundred. Moreover, NGOs that operate in the area of humanitarian relief dispose of more financial resources and take on far more complex tasks (Macrae

2002, 15). It thus seems safe to conclude that the influence of non-governmental organisations has significantly increased.

In addition, interest groups of different kinds also play a role in international politics. There are for instance a number of genuinely international interest organisations, such as the International Chamber of Commerce, or the multinational corporations which have significantly gained in number (the current count standing at an impressive 60,000) as well as political influence (Karns and Mingst 2004: 17). Even nationally constituted interest groups have begun to internationalise their activities in the context of denationalisation. A study of the political responses of such groups in highly denationalised issue areas, such as the Internet, migration and climate change politics, has shown that many of these groups not only demand international political action by states, but they themselves have begun to move beyond the nation state as the exclusive domain for political action (cf. Zürn and Walter 2005: 270 f.). This pattern becomes particularly visible wherever there exists a political opportunity structure that enables these groups to connect to pre-existing institutions. In other words, once policy-making processes have been initiated at levels beyond the nation state, even nationally constituted interest groups tend to follow the respective states to this level of activity.

Largely absent from the international level, however, is the parliamentary mode of representation. To be sure, institutions such as the Council of Europe, NATO and the Organization for Security and Co-operation in Europe (OSCE) do have parliamentary assemblies. But without exception they are rather limited in their influence and they represent only parts of the national *demos* on the international level, rather than operating as genuinely transnational bodies. This implies that the equalising effect of the principle of 'one person, one vote' is entirely missing from the field of international politics.

In spite of the changes described above, territorial representation remains (a) overwhelmingly in the hands of states (with only marginal forms of parliamentary representation) and (b) largely dominated by functional forms of representation. In international institutions, the dominant mode of representation on the international level still functions via territorial states. Moreover, to the extent that deliberative aspects of decision making have gained some influence in sectorally limited institutions, the lack of regulation of clashes among different specialised international institutions is obvious. If it takes place at all, such regulation is left to inter-governmental conferences, again dominated by bargaining states. A public discourse that could serve as an instrument for balancing different sectoral regulations is largely absent.

Finally, it also has to be noted that in no small measure because of the absence of parliaments almost all modes of representation are heavily skewed towards powerful Western interests, even though the OECD countries represent less than a fifth of the world's population.

The situation differs to some extent when it comes to the European Union. It remains true that the member states, operating as the region's political entities, dominate the political process. The territorial mode of representation is still dominant – despite the existence of a coherent institutional setting that allows for (and fosters) functional organisations. But there are at least three structural differences between the EU and specialised international institutions. First, organisations that specialise in the functional mode of representation are relatively more powerful within the EU than beyond. There is a highly differentiated landscape of powerful interest groups and a significant number of financially well-supported NGOs. Second, within the EU the functional influence of NGOs is somewhat weaker than in specialised international institutions. A potential explanation lies in the fact that in the international realm NGOs offer unique possibilities to specialised institutions to overcome their governance deficits, and that they thus find themselves much more on a par with interest groups than is the case within the EU (Kellow 2002). Third, the European Parliament more closely resembles a transnational form of parliamentary representation than any other equivalent institution. There are no European parties and there is thus no truly European voting, but the MEPs are directly elected to serve at the European level. Coupled with the increasing influence of the European Parliament following the adoption of the Lisbon Treaty, this significantly adds to a more balanced picture of how the EU provides different modes of representation.

### **Summary and conclusions**

In this chapter we have tried to analyse some familiar criticisms of the democratic deficit of international institutions. We have argued that in times of denationalisation, with regard to both the democratic legitimacy and efficiency of governance, international institutions are part of the solution rather than part of the problem. At the same time, we agree with the critics of international institutions that they indeed exhibit significant democratic weaknesses – specifically in the field of what Dahl has called 'citizen participation' (Dahl 1994). Sceptics maintain that these weaknesses are structural because of the absence of the social prerequisites for democracy on the international level. They draw the conclusion that efforts to democratise these institutions are in

vain – ultimately because there cannot be a *demos* on the international level that could be the subject of any form of democratisation. We have claimed, however, that historically speaking, *demoi* have emerged in close proximity to political institutions that have fostered them and, in addition, that these *demoi* reflect areas of dense social transactions, of the kind that denationalisation is spreading beyond national borders. There is thus no *a priori* reason to reject the possibility of the formation of a *demos* beyond the nation state. In fact, a disaggregated analysis of the elements of a *demos* on the international level has shown that some components of a *demos*, such as the mutual acknowledgement of certain rights or the mutual trust in compliance, are already relatively well established. A sense of solidarity and a strong infrastructure of public discourse are still clearly deficient. In addition, the different forms of interest representation deviate from the national constellation. While all modes of interest aggregation clearly exist at the international level, the blend of these modes differs significantly from what we are accustomed to at the national level. In specialised international institutions there is a very strong dominance of states as territorial representative units functioning in a bargaining mode, with interests groups and NGOs slowly growing in importance and parliamentary representation almost completely absent. In the case of the European Union, this dominance of the member states is muted. Functional modes of representation are stronger and there is a Parliament that, although still not on a par with national parliaments, nevertheless constitutes a significant improvement compared to the existing situation in specialised international institutions.

Based on these considerations, our analysis leads us to make certain suggestions about how the democratisation of international institutions could happen. At the European as well as at the international level, fostering transborder communication and discourse could go a long way toward strengthening the elements of a transnational *demos* that are still largely absent. Such discourse is not only a core component of the *demos* itself; it is also a necessary prerequisite for an increase in transnational solidarity that can only be based on common norms established through such discourse. While denationalisation in communications is already laying the ground for this, improvements of the necessary infrastructure would be a worthy political endeavour.

Core problems admittedly still exist concerning the different modes of representation. Strong state dominance in specialised international institutions is a severe impediment to the further democratisation of these institutions. It is thus centrally important to curb this dominance. While a strengthening of the parliamentary mode of representation

seems attractive but unlikely in the near future, there is reason to hope that the rise of transnational NGOs can counterbalance the dominance of states. International institutions should thus systematically permit NGO participation above and beyond the now common levels of recognition of these groups. What is missing, however, are mechanisms through which different sectoral subsystems can be coordinated with each other. It is here that the lack of a broad public debate extending across national and sectoral borders is most strongly felt. Our advice to international institutions is that they need actively to foster such debates by means of outreach programmes, public fora and other measures.

For the European Union, it has to be noted that while it may be true that it is a quite special and particularly powerful ‘beast’ among the international institutions, and that its legitimation requirements are therefore particularly challenging, it is also true that it fares much better in terms of balancing the different modes of representation than its international counterparts, and that it suffers much less from the dominance of a few states. Still, the Union could do much better in balancing NGOs versus interest groups; and it could certainly further strengthen the Parliament. This does not necessarily have to take the form of further enlarging its legislative powers, a move which in the past has not led to higher levels of popular support for the project of European unification (König and Mäder 2008: 445). Rather, the priority is to transform the European Parliament into a truly transnational institution based on transnational parties, truly transnational elections and cross-border political discourse (Lepsius 1986: 758). If that happened, even the Union might eventually become eligible for membership in the Union.

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