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Global Participatory Democracy through a UN World Citizens' Initiative? Mapping the Theoretical and Institutional Terrain

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Abstract

The burgeoning literature on the democratic deficit of international organizations, and the United Nations in particular, has, for the most part, inherited a pervasive state-centrism commonly associated with conventional approaches to international law more generally. While this approach is understandable, it appears incompatible with a holistic account of democracy, especially accounts that seek to situate the locus of power within the *individual*. Drawing on attempts to empower individual citizens to influence global governance decision-making in other contexts—especially the experience of the European Citizens' Initiative—this Article considers a bold idea: The establishment of a “World Citizens' Initiative,” through which individuals could directly influence the agenda of the primary organs of the United Nations. This Article critically analyzes the legal feasibility of such an initiative and the challenges of implementation. In doing so, it offers both a theoretical and institutional contribution to the debate about the normative case for the democratization of global governance through effective citizen participation.

Keywords: Global participatory democracy; World Citizens' Initiative; European Citizens' Initiative; United Nations

A. Introduction

Since “the participatory democracy turn” in the 1960s and 1970s, the idea of direct citizen participation in democratic decision-making has developed as an increasingly important focus for legitimizing political bodies through popular control at the state and sub-state levels.¹ The same impetus has not traditionally been applied systematically beyond the state, but there is some evidence that the tide might be turning. In recent times, we have witnessed the emergence of a nascent discourse on the possibility and plausibility of a move towards “global participatory democracy.”²

¹See generally Laurence Bherer, Pascale Dufour, & Françoise Montambeault, *The Participatory Democracy Turn: An Introduction*, 12 J. CIV. SOC'Y 231 (2016). For examples of foundational theoretical texts on participatory democracy, see BENJAMIN R. BARBER, *STRONG DEMOCRACY: PARTICIPATORY POLITICS FOR A NEW AGE* (1984); CAROLE PATEMAN, *PARTICIPATION AND DEMOCRATIC THEORY* (1970). More recently, for a detailed genealogy of participatory democracy, see ANTONIO FLORIDIA, *FROM PARTICIPATION TO DELIBERATION: A CRITICAL GENEALOGY OF DELIBERATIVE DEMOCRACY* (2017).

²We might attribute the emergence of “global participatory democracy” discourse to then UN Secretary General Boutros Boutros-Ghali. See U.N. Secretary-General, *An Agenda for Democratization*, paras. 61–63, U.N. Doc. A/51/761 (Dec. 20, 1996). In a provocative statement for the time, Boutros-Ghali suggested that the “participation of new actors on the international scene is an acknowledged fact; providing them with agreed means of participation in the formal system, heretofore primarily the province of States, is a new task of our time.” (emphasis added). However, the academic discourse was slow to take off. As Archibugi notes, there has been something of a revived focus on “new institutional channels that will allow

Indicative of this move is the fact that, over a decade ago, the Human Rights Council established a mandate for an independent expert on the promotion of a democratic and equitable international order. The founding resolution reaffirmed that “everyone is entitled to a democratic and equitable international order,” which requires, inter alia, the “right to equitable participation of all, without any discrimination, in domestic and global decision-making.”³ However, when it comes to citizen participation in global institutions, there is a significant chasm between theory and practice. Despite the Human Rights Council’s lofty ambitions, no formal mechanism for citizen participation in global governance decision-making has yet been institutionalized.

In January 2020, UN Secretary General António Guterres launched the “UN75 Initiative” with the following words:

In this 75th anniversary year, I want to provide as many people as possible the chance to have a conversation with the United Nations. To share their hopes and fears. To learn from their experiences. To spark ideas for building the future we want and the United Nations we need.⁴

Through surveys and dialogues with more than 1.5 million people, representing all 193 UN member states, the Secretary General sought to identify the issues that citizens perceived as the most pressing and to foster a conversation about how the United Nations could work collaboratively with all actors to address global challenges. The establishment of the UN75 Initiative represents an important step towards recognizing the value of citizen participation at the international level, albeit through using an informal, top-down mechanism with no clarity of the impact that the participation will have on policy.

From a democratic perspective, the importance of formal, bottom-up citizen participation should not be underestimated. As Tully observes, “democratization from below is qualitatively different from the dominant top-down and coercive modes of global democratization and conflict resolution that are a major cause of the gridlock crisis we face today.”⁵ Effective citizen participation, therefore, carries the potential of genuine emancipatory change.⁶ In an important development in January 2021, the final report of the Office of the UN75 Initiative went one step further: It recommended the establishment of a “citizen proposal initiative . . . or other permanent consultation tool.”⁷

From this point of departure, this Article analyzes the democratic value and the legal and institutional feasibility of embedding one such tool for effective citizen participation within the institutional architecture of the United Nations: “A World Citizens’ Initiative.”⁸ In doing so, this

popular participation and the political control over global choices to be increased.” See DANIELE ARCHIBUGI, *THE GLOBAL COMMONWEALTH OF CITIZENS: TOWARDS COSMOPOLITAN DEMOCRACY* xvi (2008). That said, there is a long way to go. On the challenges that continue, see Fonna Forman, *Unwalling Citizenship*, in *DEMOCRATIC MULTIPLICITY: PERCEIVING, ENACTING, AND INTEGRATING DEMOCRATIC DIVERSITY* 127 (James Tully, Keith Cherry, Fonna Forman, Jeanne Morefield, Joshua Nichols, Pablo Ouziel, David Owen, & Oliver Schmidtko eds., 2022).

³See Human Rights Council Res. 18/6, U.N. Doc A/18/6, at 1, 4 (Oct. 13, 2011). See also Human Rights Council Res. 45/4, U.N. Doc A/45/4 (Oct. 6, 2020) (illustrating an instance where the Council reiterated this commitment and renewed the mandate for a further three years).

⁴António Guterres, *Remarks to the General Assembly on the Secretary General’s Priorities for 2020*, UNITED NATIONS (Jan. 22, 2020), <https://www.un.org/sg/en/content/sg/speeches/2020-01-22/remarks-general-assembly-priorities-for-2020>.

⁵James Tully, *The Pluriverse of Democracies*, in *DEMOCRATIC MULTIPLICITY: PERCEIVING, ENACTING, AND INTEGRATING DEMOCRATIC DIVERSITY* 1, 7 (James Tully, Keith Cherry, Fonna Forman, Jeanne Morefield, Joshua Nichols, Pablo Ouziel, David Owen & Oliver Schmidtko eds., 2022).

⁶See *infra* C. **Effective Citizen Participation at a Global Level** on the meaning of “effective citizen participation” and how it is used in this Article.

⁷UN75 OFFICE, *SHAPING OUR FUTURES TOGETHER: LISTENING TO PEOPLE’S PRIORITIES FOR THE FUTURE AND THEIR IDEAS FOR ACTION* (2021), https://www.un.org/sites/un2.un.org/files/2021/01/un75_final_report_shapingourfuturetogether.pdf.

⁸Indeed, the Secretary-General’s recognition of the potential of participatory democracy arguably represents an implicit endorsement of the campaign for a World Citizens’ Initiative (WCI), which was launched formally in New York in November 2019 to improve the democratic legitimacy of the United Nations. See JAMES ORGAN & BEN L. MURPHY, *A VOICE FOR GLOBAL CITIZENS: A UN WORLD CITIZENS’ INITIATIVE* (2019), https://www.worldcitizensinitiative.org/files/unwci_study.pdf.

Article makes two principal contributions to existing literature. First, by focusing on participatory modes of governance, we broaden the scope of debates in democratic theory relating to the potential for the democratic legitimization of public authority at the international level. This broader theoretical perspective should be viewed as a complement to the existing representative and deliberative proposals for democratizing global governance.⁹ Second, the themes of the Article also contribute to separate, ongoing debates relating to the precarious role of the individual in international law.¹⁰ In analyzing these two debates side by side, we respond to Clapham's call to move the debate on the individual in international law "from general theory to particular contexts."¹¹ We do this by moving from general democratic theory to the particular context of an instrument of global participatory democracy—a World Citizens' Initiative (WCI)—thus contributing empirical and institutional analysis to a hitherto predominately theoretical debate.

The Article proceeds as follows: In Section B, we contextualize and problematize the lack of citizen empowerment in global governance and explore the potential for effective citizen participation in United Nations decision-making. Section C conceptualizes the idea of "effective citizen participation," which serves as the conceptual framework for the Article. Section D introduces the model of citizen's initiatives. Citizens' initiatives are traditionally explored within the nation-state context,¹² but the European Union is a notable exception in this regard as it implemented the European Citizens' Initiative (ECI) in 2012.¹³ We identify the ways in which the WCI can draw inspiration from the EU's experience of implementing the ECI over the last decade.¹⁴ Section E turns to application and questions of legal and institutional feasibility. We consider three main issues: The admissible subject matter, the criteria for an initiative to be submitted to the relevant political body, and the legal and institutional response to a "successful" WCI. Having analyzed key design decisions, Section F considers how the WCI could integrate into the existing UN institutional structure to influence decision-making.

We argue that a WCI is legally feasible. However, legal feasibility and practical implementation are, of course, two different beasts.¹⁵ The implementation of global participatory democracy will face major legal and political challenges, and its impact will need careful further research. We conclude that these challenges are not insurmountable but necessitate a significant shift in conceptual thinking about international organizations. Specifically, global participatory

⁹See, e.g., JO LEINEN & ANDREAS BUMMEL, *A WORLD PARLIAMENT: GOVERNANCE AND DEMOCRACY IN THE 21ST CENTURY* (2018); JOHN S. DRYZEK & ANA TANASOCA, *DEMOCRATIZING GLOBAL JUSTICE: DELIBERATING GLOBAL GOALS* (2021); John S. Dryzek, André Bächtiger & Karolina Milewicz, *Toward a Deliberative Global Citizens' Assembly*, 2 *GLOB. POL'Y* 33 (2011).

¹⁰KATE PARLETT, *THE INDIVIDUAL IN THE INTERNATIONAL LEGAL SYSTEM: CONTINUITY AND CHANGE IN INTERNATIONAL LAW* (2011); ROBERT MCCORQUODALE, *THE INDIVIDUAL AND THE INTERNATIONAL LEGAL SYSTEM IN INTERNATIONAL LAW* 259 (Malcolm Evans ed., 5th ed. 2018); Andrew Clapham, *The Role of the Individual in International Law*, 21 *EUR. J. INT'L L.* 25 (2010); Rosalyn Higgins, *Conceptual Thinking About the Individual in International Law*, 4 *BRIT. J. INT'L STUD.* 1 (1978).

¹¹See Clapham, *supra* note 10, at 26.

¹²See the examples cited in FERNANDO MENDEZ, MARIO MENDEZ & VASILIKI TRIGO, *REFERENDUMS AND THE EUROPEAN UNION: A COMPARATIVE INQUIRY* (2014); CITIZENS' INITIATIVES IN EUROPE: PROCEDURES AND CONSEQUENCES OF AGENDA-SETTING BY CITIZENS (Maija Setälä & Theo Schiller eds., 2012).

¹³See CITIZEN PARTICIPATION IN DEMOCRATIC EUROPE: WHAT NEXT FOR THE EU? (Alberto Alemanno & James Organ eds., 2021); Justin Greenwood, *The European Citizens' Initiative: Bringing the EU Closer to its Citizens?*, 17 *COMPAR. EUR. POL.* 940 (2019); Nikos Vogiatzis, *Between Discretion and Control: Reflections on the Institutional Position of the Commission Within the European Citizens' Initiative Process*, 23 *EUR. L. J.* 250 (2017); Luis Bouza Garcia & Susana Del Río Villar, *The ECI as a Democratic Innovation: Analysing its Ability to Promote Inclusion, Empowerment and Responsiveness in European Civil Society*, 13 *PERSPECTIVE ON EUR. POL. & SOC'Y* 312 (2012). For a skeptical perspective, see Erik Longo, *The European Citizens' Initiative: Too Much Democracy for EU Polity?*, 20 *GERMAN L.J.* 181 (2019).

¹⁴See Armin von Bogdandy, *General Principles of International Public Authority: Sketching a Research Field*, 9 *GERMAN L.J.* 1909, 1916 (2008) (describing the European Union as "the most important application of public law principles beyond the nation state"). Therefore, the ECI experience offers an obvious and productive framework for comparative analysis.

¹⁵For a fuller analysis of feasibility as a concept applied to global democracy, see Eva Erman & Jonathan W. Kuyper, *Global Democracy and Feasibility*, 23 *CRITICAL REV. INT'L SOC. & POL. PHIL.* 311 (2020).

democracy necessitates reimagining the individual as an agent from which power emanates and the individual, rather than states, as the locus of democratic legitimacy for global governance.

B. The Individual and Global Democratization

It is now well-established in the literature that the concept of “global governance” prompts important concerns relating to democracy beyond the state.¹⁶ The democratization of international law and global governance has been categorized as “one of the central questions—perhaps *the* central question—in contemporary world politics,”¹⁷ and “the challenge of globalization to democracy . . . the most important challenge to democratic theory.”¹⁸

The true democratic deficit of global governance lies in the fact that, as more and more power is delegated to international organizations, individuals have never been more distanced from decisions that, in a very real way, affect their everyday lives. This impact manifests in the context of affirmative decisions: For example, the impact on civilians resulting from Security Council-authorized enforcement measures, or when the organization is directly involved in the administration of territory,¹⁹ or obliges member states to enact counter-terrorism legislation.²⁰ Equally importantly, individuals feel this impact when the United Nations fails to take action when empowered to do so, whether in relation to climate change, the global pandemic, or the inability to avert humanitarian crises. At both ends of the action/omission spectrum, the common dominator is the same: The very individuals that are affected by decisions lack any direct input into or influence over international organizational decision-making.

If the lack of citizen participation is the root of the problem of the democratic deficit in global governance, paradoxically, it is not always at the center of proposed solutions. By adopting existing tools as opposed to suggesting new ones, scholarly proposals for the democratization of global governance have largely relied on a pervasive state-centrism commonly associated with conventional methodological approaches in international law more generally.²¹ On the one hand, this state-centrism is understandable given that international organizations sit within an international legal system that maintains sovereign, territorially-defined states as its key players. Even as its reach has been “extended beyond the traditional parameters of inter-state relations” by incorporating international organizations, “the way international law works has remained

¹⁶This dilemma finds an illustrative leitmotif in the idea of “governance without government.” See GOVERNANCE WITHOUT GOVERNMENT: ORDER AND CHANGE IN WORLD POLITICS (James N. Rosenau & Ernst-Otto Czempiel eds., 1992). For a formative and influential attempt to trace this dilemma, see, for example, David W. Kennedy, *The Move to Institutions*, 8 CARDOZO L. REV. 841 (1986). For an overview of the scholarly positions in relation to the impact of globalization on democracy, and vice versa, see Armin von Bogdandy, *Globalization and Europe: How to Square Democracy, Globalization, and International Law*, 15 EUR. J. INT’L L. 885 (2004); Jonathan W. Kuyper, *Global Democratization and International Regime Complexity*, 20 EUR. J. INT’L RELS. 620 (2014).

¹⁷Andrew Moravcsik, *Is There a “Democratic Deficit” in World Politics? A Framework for Analysis*, 39 GOV’T & OPPOSITION 336, 336 (2004).

¹⁸Bogdandy, *supra* note 16, at 905.

¹⁹See, e.g., S.C. Res. 1483, para. 4 (May 22, 2003).

²⁰S.C. Res. 1373 (Sept. 28, 2011).

²¹See Adrian Little & Kate Macdonald, *Pathways to Global Democracy? Escaping the Statist Imaginary*, 39 REV. INT’L STUDS. 789 (2013); Grainne de Burca, *Developing Democracy Beyond the State*, 46 COLUM. J. TRANSNAT’L L. 221 (2007); Susan Marks, *State-Centrism, International Law, and the Anxieties of Influence*, 19 LEIDEN J. INT’L L. 339 (2006). Marks observes a modern tendency to use “state-centrism” in a pejorative way. It is important to stress that this is not the intention of the present authors. For the purposes of this Article, we are agnostic both to the normative merits of state-centrism and to the value and feasibility of innovative proposals to reconceive the nature of the international legal order. Instead, we stress the pervasiveness of the state-centric approach not as a criticism, but in simple acknowledgement that it will be impossible to assess the empirical feasibility and theoretical value of any instrument of global participatory democracy without recognizing it and taking it seriously.

essentially unchanged.”²² The traditional approach remains rooted in an orthodox Westphalian conception that holds states to be the primary—or only—actors in international law.²³

On the other hand, the state-centric orthodoxy has three main implications that provide hurdles to effective participatory democracy. The first implication relates to the way in which individuals are conceptualized in the international legal order. State-centrism encourages a conceptualization of individuals as “object[s] on which to bestow or recognize rights, not as agents from whom emanates the power to do such bestowing . . . as an object or, at best, as a consumer of outcomes, but not as an agent of processes.”²⁴ Individuals may be objects of international law, in the sense that rules are often made with the wellbeing and interests of individuals in mind. They may even be subjects of international law, in the sense that individuals have rights and obligations. However, to the extent that individuals acquire rights and obligations, it is through a passive process, directed almost exclusively by states, who act as a conduit between the individual and the organization.²⁵ In a system based on the consent and mutual reciprocity of sovereign states, there is no formal role for the individual in the law-making process. Individuals cannot directly conclude or influence the content of treaties,²⁶ and their behavior does not constitute relevant practice that could lead to the formation of customary international law.²⁷ Thus, the way in which individuals may participate and exercise functions in the international legal system operates as a kind of dependency: It only occurs at the instigation and with the consent of states, who control access to the international legal system.²⁸

To circumvent this conundrum, recourse might be made to a broad interpretation of the right to political participation as guaranteed in Article 25 ICCPR, whereby “[e]very citizen shall have the right and the opportunity . . . without unreasonable restrictions . . . [t]o take part in the conduct of public affairs.”²⁹ The logical legal consequence of the citizens’ right to political participation in global governance is that individuals are upgraded from mere passive international legal subjects—as holders of rights and bearers of obligations—to active international legal subjects. The legally relevant difference is that passive subjects are only capable of having rights, whereas active legal subjects can contribute to law creation.³⁰ Unless and until this happens, however, individuals remain subordinated in the international system, “suspended between object and independent or autonomous subject.”³¹

Second, state-centrism stresses the intergovernmental nature of international organizations. International organizations come into existence through a founding treaty. Through the instrument of the treaty, member states establish their membership of the organization and define

²²PARLETT, *supra* note 10, at 367.

²³The most famous exposition of this approach remains that of Oppenheim. See LASSA FRANCIS OPPENHEIM, *INTERNATIONAL LAW: A TREATISE* 19 (2d ed., 1912) (“Since the law of nations is based on the common consent of individual States, States solely and exclusively are subjects of international law.”). See also *In re S.S. Lotus (Fr. v. Turk.)*, Judgment, 1927 P.C.I.J. (ser. A) No. 10, at 18 (Sept. 7) (“International law governs relations between independent States.”). According to this orthodoxy, states fulfill a unique, dual function (*dédoublement fonctionnel*), as both the authors and the subjects of international law. See Antonio Cassese, *Remarks on Scelle’s Theory of “Role Splitting” (dédoublement fonctionnel) in International Law*, 1 EUR. J. INT’L L. 210 (1990).

²⁴J.H.H. Weiler, *The Geology of International Law—Governance, Democracy and Legitimacy*, 64 ZAÖRV 547, 558 (2004).

²⁵PARLETT, *supra* note 10, at 352.

²⁶The requirement to hold referendums in some EU Member States that give citizens a direct say over the ratification of EU treaties is an exception.

²⁷See generally, U.N. Charter art. 38, para. 1 (establishing the Statute of the International Court of Justice). See also International Law Commission, *Draft Conclusions on Identification of Customary International Law, with Commentaries*, [2018] Int’l L. Comm’n, U.N. Doc A/73/10, Conclusion 4(3) (and relevant commentary supporting this proposition).

²⁸PARLETT, *supra* note 10, at 367.

²⁹International Covenant on Civil and Political Rights art. 25, Dec. 16, 1966, TIAS No. 92-908, 999 U.N.T.S. 171.

³⁰Anne Peters, *Membership in the Global Constitutional Community*, in *THE CONSTITUTIONALIZATION OF INTERNATIONAL LAW* 153, 161 (Jan Klabbers, Anne Peters, & Geir Ulfstein eds., 2009).

³¹PARLETT, *supra* note 10, at 359–60.

important characteristics of the organization itself, including, inter alia, the scope of its mandate, voting procedures, and whether organizational decisions will be binding on member states. As such, from this founding moment and thereon, international organizations are said to exercise a form of delegated authority; power is entrusted to the organization, but it derives from the state.³²

This conception stresses the intergovernmental nature of international organizations and has traditionally curtailed any residual space for other actors or other modes of democratic legitimization. Individual citizens are absent from the democratic story beyond their state-confined, indirect participation through voting—when they are able to—for an executive body that negotiates on their behalf, and their ability to influence parliamentary ratification when it is required. Indeed, notwithstanding the idealistic opening words of the UN Charter—“We the Peoples”—it is true to say that international organizations are not established to give a direct voice to individuals as such. Their voice is traditionally perceived to be channeled through the vehicle of their state representatives.

Third, and as a direct consequence of the “organizations as vehicles” metaphor, state-centrism, and its related blind spot towards individuals, leads to an emphasis on representative forms of democratic legitimization beyond the state. Some would argue that a degree of democratic legitimacy—however superficially—is provided by the idea of the “sovereign equality of states” in international law.³³ Indeed, to the extent that democracy is defined in juxtaposition to domination, sovereign equality is an enduring idea.³⁴ It ensures that, formally at least, each state has an equal opportunity to make and shape international legal rules. Within the plenary organ of the General Assembly, for example, each UN member state is represented and decision-making operates through a system of “one state one vote.”³⁵ The composition and voting procedures of the Security Council are trickier to justify through the lens of sovereign equality, considering the veto power afforded to the permanent members,³⁶ but non-permanent members are at least elected in a formal process by the General Assembly,³⁷ in accordance with the strict application of the principle of equitable geographical representation.³⁸ This provides a perception of *representative* democracy at the international level, albeit indirectly through an intergovernmental mechanism, rather than the direct election of state representatives to the UN, through a parliamentary assembly,³⁹ or, as analyzed here, an instrument of participatory democracy.

There remains no formal role for non-governmental actors of any kind in the work of the UN’s primary organs. The only minor exception to the above is Article 71 of the UN Charter,⁴⁰ which at least acknowledges the possibility of entities other than states enjoying a formally recognized status in the UN. This provides a springboard to consider whether this might be possible in the context of individual citizens rather than organizations through the WCI. Article 71 though is very limited in scope. It grants the Economic and Social Council (ECOSOC) the competence to “make suitable arrangements for consultation with non-governmental organizations.”⁴¹ As a result, many NGOs enjoy “consultative status” on the ECOSOC. NGOs

³²See, e.g., DAN SAROOSHI, *INTERNATIONAL ORGANIZATIONS AND THEIR EXERCISE OF SOVEREIGN POWERS* (2005).

³³See U.N. Charter art. 2, para. 1. See also Hans Kelsen, *The Principle of Sovereign Equality of States as a Basis for International Organization*, 53 *YALE L.J.* 202 (1944).

³⁴IAN SHIPIRO, *POLITICS AGAINST DOMINATION* (2016). For an alternative, critical perspective, see GERRY SIMPSON, *GREAT POWERS AND OUTLAW STATES: UNEQUAL SOVEREIGNS IN THE INTERNATIONAL LEGAL ORDER* (2004).

³⁵U.N. Charter art. 18, para. 1.

³⁶U.N. Charter art. 27, para. 3.

³⁷U.N. Charter art. 23, para. 1.

³⁸G.A. Res. 1991 (XVIII) (Dec. 17, 1963).

³⁹LEINEN & BUMMEL, *supra* note 9.

⁴⁰See Stephan Hobe, *Article 71, in THE CHARTER OF THE UNITED NATIONS: A COMMENTARY* (Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, & Andreas Pulus eds., 3d ed. 2012); Chadwick Alger, *The Emerging Roles of NGOs in the UN System: From Article 71 to a People’s Millennium Assembly*, in *INTERNATIONAL ORGANIZATION* (John J. Kirton ed., 2009).

⁴¹U.N. Charter art. 71.

may propose items for the Council's provisional agenda,⁴² their representatives may attend public meetings of the ECOSOC Commission and its subsidiary organs as observers,⁴³ and they may submit written statements.⁴⁴ It is important to note, however, that even under this regime, NGOs do not enjoy equal standing with states. Participation is directed toward assisting ECOSOC to fulfill its mandate,⁴⁵ confined to the areas of competence covered by ECOSOC's mandate, and is merely a right of consultation, not an effective opportunity to influence UN decision-making.

These three overlapping implications all point in the same direction: Mainstream approaches to global democratization are incompatible with a holistic account of democracy, especially accounts of participatory democracy that focus on the idea of self-government and seek to situate the locus of power within the *individual*. As such, some argue that to the extent that there is, or could be, something called “democracy” at the global level, it is purely “nominal.”⁴⁶ It superficially meets some democratic credentials on the surface and embodies the rhetoric of democracy, but it lacks the essential attributes of “genuine democracy”: Classed as a form of self-government that entails being “responsive to the preferences of real human beings.”⁴⁷ We argue that the implementation of participatory democracy can help to realize this ambition, but that citizen participation must be “effective” if it is to be a genuine form of democratic legitimization.

C. Effective Citizen Participation at a Global Level

We analyze the institutional feasibility of implementing a WCI to enhance self-government at a global level, using the principle of “effective participation” as our analytical framework. The indirect influence provided through voting—at least for some UN members—is not democratically sufficient even at the state level, and even less so at the international level, when decision-making moves away from elected state institutions to organizations that do not have representative assemblies, and have members whose constitutional arrangements are not considered democratic. To have direct influence over decisions, individuals need opportunities for “effective participation” in the policy process. Drawing on and broadening Dahl's use of the same term, we understand effective participation to incorporate three fundamental elements of democratic legitimacy: “[E]xternal inclusion,” addressing the question of *who* participates; “internal inclusion,” relating to *how* citizens participate; and “impact,” which considers *what* happens after citizens participate.⁴⁸ The question of impact is central to our understanding of effective participation and the focus of analysis in this Article.⁴⁹ As Florida has stated, “[R]eal participation—participation that is ‘truly effective’—is tied to the decision-making nature of the participatory process.”⁵⁰ Even if a mechanism is fully inclusive, it must lead to influence over the policy-making agenda and its outcomes; effective citizen influence necessarily restricts the discretion of existing institutional decision-makers.

⁴²Economic and Social Council Res. 1996/31, para. 34 (July 25, 1996).

⁴³*Id.* at para. 35.

⁴⁴*Id.* at para. 36.

⁴⁵*Id.* at para. 18.

⁴⁶Robert O. Keohane, *Nominal Democracy? Prospects for Democratic Global Governance*, 13 *ICON* 343 (2015).

⁴⁷*Id.* at 344. Also, on the importance of development, “a participatory interpretation of deliberative democracy on the basis of an ecumenical interpretation of the democratic ideal of self-government.” See CRISTINA LAFONT, *DEMOCRACY WITHOUT SHORTCUTS: A PARTICIPATORY CONCEPTION OF DELIBERATIVE DEMOCRACY* 17–34 (2020).

⁴⁸See generally ROBERT A. DAHL, *ON DEMOCRACY* (2000); ROBERT A. DAHL, *DEMOCRACY AND ITS CRITICS* (1989). For an excellent study that also uses Dahl's typology as its point of departure, see Beate Kohler-Koch & Christine Quittkat, *De-Mystification of Participatory Democracy: EU-Governance and Civil Society* (2013).

⁴⁹This is not to say that impact is more important than the inclusion criteria. We focus on impact as it is central to the institutional approach we take in this Article. Inclusion, both externally and internally, not only depends on the specific design of the democratic instrument but also social factors, which are outside the scope of this Article. Below, we discuss inclusion to the extent that the design of the WCI influences it. We do not analyze the broader concept of inclusion.

⁵⁰FLORIDA, *supra* note 1.

1. Challenges of Global Scale

It is important to pre-empt several potential challenges to the implementation of effective citizen participation at the global level. Traditionally, democratic theory has been skeptical of the possibility of large-scale democracy. As Dahl put it, the concern is that as the scale of democracy increases, “the opportunities available to the ordinary citizen to participate effectively in the decisions of a world government would diminish to vanishing point.”⁵¹ With a constituency of some 7.95 billion people in 2022, this view of the direct impact of an individual citizen on policy agendas or decision-making is accurate in a literal sense, when taken in isolation. Furthermore, as an individual, your ability to exert political influence may approach a “vanishing point” when compared to the size of the political body of which you are a member.

However, effective participation is not dependent on the size of the constituency, nor is it tied to representative democracy alone. However small an individual unit of participation may be in comparison to the size of the constituency, it has validity and should be recognized and given the opportunity to influence policy-making when appropriate. Building communities of people with similar policy preferences, although a challenge as the size of the polity grows, is an important means of enabling this to happen. Citizens do not need to engage in every policy decision, and not all decisions need to be decided on a purely majoritarian basis. If we accept this premise, then once a level of support that has been formally agreed upon as sufficient to provide legitimacy to the specific policy proposal is reached, following a legally established participatory process, a response from the relevant political body, in an agreed form, can be justified. Attention should focus on the individual perspective as the starting point for citizen participation, rather than on the size of the polity, and then mitigate counter-majoritarian issues that might arise through other means in other parts of the democratic system.

A second challenge for a large-scale, non-state-based democratic process to legitimize international organizations derives from the perceived need for a single *demos*.⁵² An important strand within the literature on this topic is the “demoicracy” approach developed by Nicolaidis.⁵³ This specifically counters the challenge that a political body without a single, identifiable *demos* cannot be democratically legitimate. The argument is that legitimacy can be derived from multiple *demoi* that together provide a composite source of legitimization on which democratic instruments, such as the ECI and WCI, can rely. The WCI *demos* would be bound by the UN membership and would face similar challenges in terms of democratic theory to those faced in the EU context. Addressing this theoretical debate, however, is outside the scope of this Article, which presumes that the almost universal membership of the UN, and the plurality of state *demoi* that this provides, can provide the basis for a democratically legitimate polity.⁵⁴

D. The European Citizens’ Initiative as a Template for Global Participatory Democracy

The European Union has moved further than any other international organization to legitimize its decision-making through supranational representative and participatory democracy.⁵⁵

⁵¹Robert A. Dahl, *Can International Organizations Be Democratic? A Skeptic’s View*, in DEMOCRACY’S EDGES 19, 22 (Ian Shapiro & Casiano Cacer-Cordon eds., 1999).

⁵²DEMOCRATIC LEGITIMACY IN THE EUROPEAN UNION AND GLOBAL GOVERNANCE: BUILDING A EUROPEAN DEMOS (Beatriz Pérez de las Heras ed., 2017); Christian List & Mathias Koenig-Archibugi, *Can There Be a Global Demos? An Agency-Based Approach*, 38 PHIL. & PUB. AFFS. 76 (2010).

⁵³Kalypso Nicolaidis, *The Idea of European Demoicracy*, in PHILOSOPHICAL FOUNDATIONS OF EUROPEAN UNION LAW 247 (Julie Dickson & Pavlos Eleftheriadis eds., 2012).

⁵⁴It is interesting here to return to who observes a tendency to speak of state-centrism in a pejorative manner. Here the tendency is flipped on its head. State-centrism becomes, perhaps counter-intuitively, a positive feature of global participatory democracy.

⁵⁵For an excellent overview, see JOANA MENDES, PARTICIPATION IN EU RULE-MAKING: A RIGHTS-BASED APPROACH (2011).

The establishment of the European Citizens' Initiative (ECI), which is the world's first supranational instrument of its kind, is an important example of these developments. We use the ECI to inform the theoretical and empirical analysis of the proposed WCI as it has specifically demonstrated the feasibility and challenges in legal and practical terms of designing and using participatory instruments at a supranational level.

A citizens' initiative enables individuals to place an issue on the political agenda by triggering an institutional response, once a defined level of support has been reached.⁵⁶ Broadly speaking, there are two categories of citizens' initiatives. Full-scale citizens' initiatives impose a legal obligation on a political institution to implement the proposal that the initiative makes, or to initiate a binding public vote on the matter. The more common agenda-setting citizens' initiatives place an issue on the agenda of a political body but limit the discretion of this body to a much lesser degree. This reduces the extent to which it can be considered a form of effective participation. These initiatives can impose an obligation to deliberate and consider the implementation of the proposal and a duty to give reasons for their response, but ultimately it is still at the political institution's discretion how they respond, in terms of policy or legislation, to the proposal that people have legitimized through supporting a citizen's initiative.

The expectation is that the WCI would be an agenda-setting initiative only because of the non-binding nature of the decisions of the UN General Assembly.⁵⁷ Some commentators have expressed skepticism toward the classification of such agenda-setting initiatives as direct democracy.⁵⁸ However, while "agenda-setting can be constrained by the division of labor across political institutions,"⁵⁹ we should not downplay the importance of citizens influencing the agenda of global institutions as a first step towards global participatory democracy.

The ECI is also an agenda-setting initiative with a very limited legal obligation imposed on the European Commission as the receiving institution.⁶⁰ Per Article 11(4) of the Treaty on European Union:

Not less than one million citizens who are nationals of a significant number of member states may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.⁶¹

This provision lays out the three key legal characteristics of the ECI: A successful ECI needs support from one million citizens with a quorate number from a minimum of a quarter of EU Member States; it can invite but not oblige the Commission to implement a legal act; and an ECI proposal can relate to any EU competence where citizens think reform is needed. This lack of legal obligation to initiate a legal process or take a policy position means that discretion remains almost entirely in the hands of the Commission. However, citizens can use the ECI to exert some influence on political decision-making through the generation of institutional and wider public debate. Although this means that the ECI provides a limited opportunity for effective

⁵⁶See, e.g., CITIZENS' INITIATIVES IN EUROPE, *supra* note 12; JOHANNES W. PICHLER & BRUNO KAUFMANN, THE EUROPEAN CITIZENS' INITIATIVE: INTO NEW DEMOCRATIC TERRITORY (2010).

⁵⁷The non-binding, hortatory nature of General Assembly resolutions is reflected in the repetition of the word recommendation in arts. 10, 11, 12, 13 and 14 of the U.N. Charter and has been confirmed by the I.C.J. in *South West Africa (Eth./Liber. v. S. Afr.)*, Judgment, 1966 I.C.J. Rep. 6, para. 98 (July 18).

⁵⁸GRAHAM SMITH, DEMOCRATIC INNOVATIONS: DESIGNING INSTITUTIONS FOR CITIZEN PARTICIPATION 23 (2009).

⁵⁹*Id.*

⁶⁰On the specific type of democratic instrument that the ECI represents, see Andres Auer, *European Citizens' Initiative*, 1 EUR. CONST. L. REV. 79 (2005). See also KATRIN BÖTTGER, BRIDGING THE GAP? OPPORTUNITIES AND CONSTRAINTS OF THE EUROPEAN CITIZENS INITIATIVE (Katrin Böttger, Maximilian Conrad, & Annette Knaut eds., 2016).

⁶¹Consolidated Version of the Treaty on European Union and the Treaty Establishing the European Community, art. 11, Dec. 13, 2007, 2007 O.J. (C 306) (2007).

participation, the “expansion of the range of discourses that are represented in decision-making processes” can still significantly enhance the degree of democracy in the political system,⁶² at least regarding the internal inclusivity of that system.

Despite its limitations, the potential significance of the ECI for the democratic legitimacy of the European Union is widely recognized.⁶³ Upon its inception, the European Commission believed that it would be “a significant step forward in the democratic life of the Union” and add a “whole new dimension of participatory democracy.”⁶⁴ These high expectations of the ECI have only been partly met, and there have been several challenges to overcome. For example, the European Commission restricted the admissibility of ECI proposals,⁶⁵ administrative and practical barriers to participation needed to be resolved,⁶⁶ and there was a disconnect between the expectations of campaigners and the actual impact of successful ECIs.⁶⁷ On the plus side, however, the dozens of ECIs launched have mobilized millions of citizens and generated transnational debate about EU policy. Additionally, ECI proposals have had some, albeit limited, influence on the EU policy agenda and decision-making,⁶⁸ such as the influence of the Right2Water ECI on the drinking water directive,⁶⁹ and the influence of the Stop Glyphosate ECI on the licensing of Glyphosate.⁷⁰ As such, the ECI experience offers a particularly illustrative lens through which to assess the legal and practical feasibility of implementing a similar instrument at the UN level.

E. Implementing a World Citizens’ Initiative

This section turns to the question of WCI implementation to facilitate effective citizen participation. It analyzes key legal, substantive questions for the regulatory design of an international WCI process considering the theoretical need for effective participation. It focuses on four design issues in particular: The admissible subject matter, the criteria for an initiative to be submitted to the relevant political body, the legal and institutional response to a “successful” WCI, and how the WCI could integrate into the existing UN institutional structure.

I. Admissibility and Scope

A WCI admissibility check, which has procedural and substantive components, provides validation of the WCI proposal for campaigners and supporters of the proposal. In terms of procedure, there is a need to check that an organizing committee is formed as expected and that the WCI proposal is presented in the defined form and manner.⁷¹ The form the proposal takes

⁶²Jonathan W. Kuyper & John S. Dryzek, *Real, Not Nominal, Global Democracy: A Reply to Robert Keohane*, 14 *ICON* 930, 936 (2016).

⁶³See, e.g., Alex Warleigh, *On the Path to Legitimacy? A Critical Deliberativist Perspective on the Right to the Citizens’ Initiative*, in *GOVERNANCE AND CIVIL SOCIETY IN THE EUROPEAN UNION: NORMATIVE PERSPECTIVES* 55 (Carlo Ruzza & Vincent Della Sella eds., 2007).

⁶⁴MARCOS SEFCOVIC, *THE LISBON TREATY: ENHANCING DEMOCRACY* (2010).

⁶⁵James Organ, *Decommissioning Direct Democracy? A Critical Analysis of Commission Decision-Making on the Legal Admissibility of European Citizens Initiative Proposals*, 10 *EUR. CONST. L. REV.* 422 (2014).

⁶⁶*AN ECI THAT WORKS: LEARNING FROM THE FIRST TWO YEARS OF THE EUROPEAN CITIZENS’ INITIATIVE* (Carsten Berg & Janice Thomson eds., 2014).

⁶⁷Anastasia Karatzia, *The European Citizens’ Initiative and the EU Institutional Balance: On Realism and the Possibilities of Affecting EU Lawmaking*, 54 *COMMON MKT. L. REV.* 177 (2017).

⁶⁸Vogiatzis, *supra* note 13.

⁶⁹Directive 2020/2184, of the European Parliament and of the Council of 16 December 2020 on the Quality of Water Intended for Human Consumption, 2020 O.J. (L 435).

⁷⁰Details of the Commission’s response to the ECI are available at *Answer of the European Commission*, EUROPEAN CITIZENS’ INITIATIVE (DEC. 12, 2017), https://europa.eu/citizens-initiative/initiatives/details/2017/000002_en.

⁷¹For details of the ECI procedural requirements for registration, see, for example, Commission Regulation 2019/788, 2019 O.J. (L 130/55), 5, 6.

must be clear but not such an excessively complex process that its drafting would act as a barrier to participation. The initiative proposal, for example, could, at one extreme, be required to be a detailed legal proposal, such as a draft General Assembly or Security Council resolution. However, this is likely to require legal advice not readily available to all grassroots campaigners. Alternatively, a WCI could take a *de minimis* approach, as the ECI did, and only require a proposal title and brief explanation of its subject matter and aims, whilst allowing for more detail if the organizers wanted to include it. This approach would increase the ease with which campaigners can start a campaign and enhance the inclusivity of the WCI.

A citizens' initiative cannot ascribe to an institution a power that it does not already have, so the substantive check on the admissibility of the subject matter of a proposal is an important legal question. The ECI framework offers a useful touchstone in terms of the substantive criteria for admissibility. An ECI proposal must not be manifestly outside the powers of the European Commission; not manifestly abusive, frivolous, or vexatious; and not manifestly contrary to the values of the Union.⁷² The first criterion for ECI registration has been the most controversial. The Commission was over-zealous in refusing ECI registration in the early years of the ECI, usually on the basis that proposals were manifestly outside their powers.⁷³ As a result, several ECI organizers have reviewed the Commission's registration decisions in the CJEU, with some success, arguing that the Commission's institutional discretion has been too narrowly exercised at the cost of effective citizen participation.⁷⁴

Comparatively speaking, the requirement for a proposal to fall within the competencies of the organization is likely to be less of an issue for the UN. To maximize participation and debate, proposals could be welcomed on all issues that are within the competence of the UN General Assembly. The competence of the UN Security Council is more delimited. In accordance with Article 24(1), the Council's mandate does not extend beyond the realm of international peace and security. Considering the Council enjoys "primary responsibility" in this area, there should be an expectation that matters that fall within the scope of its power are addressed to the Council. However, the International Court of Justice has suggested that the Council's responsibility for international peace and security is "primary, not exclusive."⁷⁵ Furthermore, pursuant to Article 10 of the UN Charter, the General Assembly "may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter."⁷⁶ Therefore, if, due to the use of a permanent member veto,⁷⁷ the initiative is unable to influence the agenda of the Security Council, there is no reason why the matter cannot be addressed by the General Assembly.⁷⁸

The other ECI registration criteria have not led to any registration refusals, and are not expected to raise any issues for a WCI. The question of whether a proposal is manifestly malicious, frivolous or vexatious, or contrary to UN values—which is a justifiable limitation on the inclusivity of a citizens' initiative to avoid its use for extremist purposes—is only likely to arise on very rare occasions.⁷⁹ The purposes of the UN Charter as stated in Article 1 would be an obvious

⁷²*Id.* at 6.

⁷³Organ, *supra* note 65.

⁷⁴For an overview of the relevant case law, see, for example, Vogiatzis, *supra* note 13; Marco Inglese, *Recent Trends in European Citizens' Initiatives: The General Court Case Law and the Commission's Practice*, 24 EUR. PUB. L. 355, 360–61 (2018).

⁷⁵Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion, 1962 I.C.J. Rep. 151, 163 (July 20).

⁷⁶U.N. Charter art. 10.

⁷⁷U.N. Charter art. 27, para. 3.

⁷⁸See *infra* Part E.III on the type of obligation that can be imposed on the General Assembly or Security Council respectively.

⁷⁹One example of an ECI that triggered vigorous political debate and may have come close to being rejected is *Mum, Dad & Kids—European Citizens' Initiative to Protect Marriage and Family*, EUROPEAN CITIZENS' INITIATIVE (Aug. 16, 2017), https://europa.eu/citizens-initiative/initiatives/details/2015/000006_en. This initiative proposed that marriage should be defined as a union between a man and a woman, and that "family" should be understood as being based on marriage and/or descent only.

basis for a judgment as to whether a proposal is appropriate. As such, the registration criteria can mirror the founding purposes of the organization that will receive the proposal. If an initiative can show that its objective is to further one or more of the purposes of the UN, for example, “to maintain international peace and security”,⁸⁰ “to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples”,⁸¹ or “to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights”,⁸² then it will be valid. The final purpose of the UN is “to be a centre for harmonizing the actions of nations in the attainment of these common ends.”⁸³ For the purposes of admissibility, if the aim is to facilitate as broad a scope for the WCI as possible to maximize its likelihood of generating debate, this could serve as a more general backstop, if the more specific purposes are not applicable.⁸⁴

A final, important question concerns the scope of proposals: Can a WCI advance UN reform proposals or Charter changes? This is not resolved for the ECI. The Commission interprets the phrase “for the purpose of implementing the treaties” in Article 11(4) TEU to mean that an ECI cannot require or request a treaty change, but this position has been challenged.⁸⁵ The principal objection is that legitimization of the treaties is an intergovernmental, member-state process, not a supranational right for citizens. If this decision to exclude proposals that require or ask for treaty change is copied for the WCI, it would exclude many of the most important political issues from its scope and substantially limit the effectiveness of a WCI in terms of citizen participation.

We propose that WCIs should be entitled to suggest amendments to the UN Charter or, at least, are not rendered automatically inadmissible if they do. This does not prejudice the extreme difficulty that any such proposal would face substantively. According to Article 108 of the Charter, amendments only come into force when “adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council.”⁸⁶ This is an extremely high bar to overcome and highlights the interplay between the impact and the scope of a citizens’ initiative. The greater the legal obligation imposed by a citizens’ initiative, the closer the examination of proposals at registration, and the greater the justification to restrict the scope of proposals to some degree because of the potential for distorting the fundamental basis of the international organization in question. Given the process that Charter amendments need to go through, a WCI could only recommend a change and cannot impose an obligation on UN institutions or member states. Therefore, the scope of the WCI can be broad and include Charter change proposals. This increases the potential for popular influence, whilst at the same time maintaining checks in the system to avoid sudden, dramatic, or extreme changes to the international legal order, which in any event would need to be accepted by member states.

This initiative prompted important questions relating to whether there should be any limits as to the subject matter of proposals, and who should decide what is permissible and what is not. See generally THE LEGAL LIMITS OF DIRECT DEMOCRACY: A COMPARATIVE ANALYSIS OF REFERENDUMS AND INITIATIVES ACROSS EUROPE 4 (Daniel Moeckli, Anna Forgács, & Henri Ibi eds., 2021).

⁸⁰U.N. Charter art. 1, para. 1.

⁸¹U.N. Charter art. 1, para. 2.

⁸²U.N. Charter art. 1, para. 3.

⁸³U.N. Charter art. 1, para. 4.

⁸⁴Of course, a U.N. organ will need to be identified that can decide on the lawfulness of the admissibility of a WCI proposal on the rare occasions that one contravenes U.N. values or purposes. See *supra* Part F.II, on issues relating to institutional integration.

⁸⁵See Case T-450/12, *Anagnostakis v. Commission*, ECLI:EU:T:2015:739 (Sept. 30, 2015), <https://curia.europa.eu/juris/liste.js?num=T-450/12>. See generally Organ, *supra* note 65; Michael Dougan, *What Are We to Make of the Citizens’ Initiative?*, 48 COMMON MKT. L. REV. 6 (2011).

⁸⁶U.N. Charter art. 108.

III. Submission Criteria and Support Threshold

There is a reciprocal correlation between the threshold level of support for an initiative proposal to be submitted to decision-makers and the degree of obligation that a citizens' initiative design can impose. On the one hand, the higher the level of support required, the more legitimate impact is perceived to be, and there is a greater chance, in general, that political actors will respond to a successful proposal submitted to them. On the other hand, the higher the threshold, the less likely a proposal will ever be submitted, and the more likely it will act as a barrier to effective citizen participation. In general, the stronger the obligation that a citizens' initiative imposes, the higher the threshold for support. For example, in Hungary, there are three levels at which an initiative obliges action: An agenda initiative needs 50,000 signatures; at 100,000 signatures Parliament must decide whether a binding or an advisory referendum is held; and 200,000 signatures are required for the obligatory initiation of a binding referendum.⁸⁷ Again, as the WCI is a form of agenda-setting initiative, its support threshold for submission to the UN General Assembly could be set relatively low. Furthermore, the complexity of collecting support on a global scale during a WCI campaign means that it is impractical to set a high threshold for success.

The threshold requirements should reflect the sources of legitimacy for the political institution that a proposal is seeking to influence, but they should also reflect the position of the individual as the ultimate source of democratic legitimacy. Within a sovereign state, an absolute number of citizens is likely to be an appropriate threshold, without any regional thresholds. Although it is theoretically possible for the WCI threshold for success to be only an absolute number of global citizens, the UN is not a sovereign state. It would also risk the concentration of support for a WCI proposal in a limited geographical area.

The ECI reflects the EU's hybrid intergovernmental/supranational legitimacy by combining supranational legitimacy, derived from requiring support from one million EU citizens from across the EU and member state legitimacy, derived from requiring support for the proposal from a quarter of member states. A similar, hybrid approach would be appropriate for a WCI. Within this approach, it is imperative to stress the importance of a minimum threshold number of individual citizens as a source of the legitimacy of a WCI proposal. This use of an absolute number of global citizens as part of the WCI threshold for success would reflect the core premise of participatory conceptions of democracy—that individuals are the locus of constituent power. This—partial—shift of the locus of UN power towards the individual is central to the normative argument in this Article.⁸⁸

The above notwithstanding, it is also important to acknowledge and respect the intergovernmental and international nature of UN decision-making. As such, as with the ECI, ensuring that a wide range of member states support an initiative proposal can provide a supplementary source of legitimacy. However, while requiring a quarter of UN members—that is, forty-eight UN member states—would give the WCI a genuinely international platform and provide a strong element of intergovernmental legitimacy, it is likely to be an almost unattainable threshold in practice. A lower number of states would need to be agreed upon: High enough to indicate that the WCI reflects the interests of a significant global audience but without an excessive burden for campaigners. Departing from the ECI framework, as the General Assembly and the Security Council operate on a “one state, one vote” process, the number of signatories required per state for the state to be quorate could be calculated simply as a pro rata representation of the population of that state.⁸⁹

⁸⁷CITIZENS' INITIATIVES IN EUROPE, *supra* note 12, at 8.

⁸⁸We would like to thank the anonymous reviewer for encouraging us to emphasize this important point.

⁸⁹For a state to be considered quorate for the purposes of an ECI proposal, the initiative must have a minimum threshold of signatories from within that state. The thresholds correspond to the number of the members of the European Parliament elected in each member state, multiplied by the total number of members of the European Parliament.

In any event, considering the WCI's global scale, equitable regional representation is perhaps of equal if not more importance than the number of states involved. Whatever the absolute number of individuals and UN member states needed to legitimize a WCI proposal, the principle of "equitable geographical distribution" set out in Article 23(1) of the UN Charter should be reflected in the WCI support threshold. This principle requires a specific geographical "pattern," as set out in General Assembly Resolution 1991 (XVIII), adopted in 1963: Five African and Asian States, one Eastern European State, two Latin American States, and two Western European and Other States.⁹⁰ This pattern is used, for example, to apportion non-permanent seats on the Security Council.⁹¹ Some minor changes to this pattern may be needed. For example, three Asian and two African states could be required to acknowledge the considerably larger population of Asian states compared to African states.

The hybrid approach proposed for the WCI thresholds brings together three elements: A minimum number of individuals, a minimum number of member states, and an equitable regional representation of those states. This recognizes that, as the UN is at heart an international and intergovernmental organization; it is ultimately member states that will respond to the initiative, so it is important that the proposal has already received the support of an equitable representation of those states. However, importantly, it also reflects the position of the individual as the ultimate source of democratic legitimacy.

IV. Obligations Imposed by a Successful Proposal

The potential for impact on policy decisions, which is fundamental to the value of participation,⁹² is often missing from the design of democratic instruments.⁹³ Influence over the agenda is valuable in terms of popular control, but without subsequent impact on policies the democratic instrument has limited ability to challenge pre-existing policy preferences or introduce new policy ideas,⁹⁴ and its democratic value is limited as a result.⁹⁵ Leaving discretion in the hands of established political actors limits the important anti-hegemonic role of participatory democracy.⁹⁶ Effective participation requires citizen influence over the policy agenda, and the policy and legal decisions taken as a result must be able to challenge established policy preferences. This means that a citizens' initiative needs to be able to lead to a tangible impact on policy decision-making. Therefore, there is a difficult balance to strike in terms of institutional discretion and citizen empowerment.

On the one hand, if a citizens' initiative is to provide an opportunity for effective participation, it should impose some obligation on a political body; otherwise, it is merely a consultation exercise or petition. The degree and type of obligation vary significantly. In Finland, a successful citizens' initiative obliges the Finnish Parliament to debate a proposal and make a legislative recommendation. In Switzerland, a citizens' initiative can oblige holding a referendum. On the other hand, the ECI merely obliges the Commission to explain its decision to propose a legal act or not. However, the UN need to strike a difficult balance between strongly responding to global

⁹⁰See G.A. Res. 1991 (XVIII) (Dec. 17, 1963).

⁹¹While far from perfect, the principle of equitable geographical representation has been used successfully in other contexts. See G.A. Res. 60/251, para. 7 (Apr. 3, 2006) (regarding the formal allocation of seats on the Human Rights Council); *Equitable Geographical Distribution of the Membership of the Executive Board*, WORLD HEALTH ORGANIZATION (2008), <https://apps.who.int/iris/handle/10665/103087>; Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13, art. 17 (regarding the composition of the Committee on the Elimination of Discrimination Against Women).

⁹²Kohler-Koch & Quitkat, *supra* note 48, at 4.

⁹³SMITH, *supra* note 58.

⁹⁴Ricardo Blaug, *Engineering Democracy*, 50 POL. STUDS. 102 (2002).

⁹⁵*Id.*

⁹⁶MATT QVORTRUP, *THE REFERENDUM AND OTHER ESSAYS ON CONSTITUTIONAL POLITICS* (2019).

citizens, so that they value the WCI process and are incentivized to use it, whilst respecting the compromise inherent in the UN legal structure and the political wishes of its member states, and recognizing the degree of legitimacy that a WCI proposal has through being supported by a high number, but a relatively small percentage of global citizens.

If the underlying rationale is to influence the political agenda and to encourage states to support a proposal, the General Assembly is the most appropriate forum to discuss a WCI proposal for all matters other than international peace and security.⁹⁷ The UN General Assembly has the power to pass resolutions that member states are expected to respond to, but are not legally binding. The General Assembly is itself a form of agenda-setting body, and not a legislative or executive body. The Assembly is “essentially a debating chamber, a forum for the exchange of ideas and the discussion of a wide-ranging category of problems.”⁹⁸ However, the General Assembly can launch intergovernmental negotiations under the auspices of the UN on new treaties or put questions in front of the International Law Commission for further consideration, to name two relevant ways of taking action.

There are three main options for placing a WCI proposal on the General Assembly agenda. First, the WCI may be added to the agenda to be discussed at the initial general debate of each annual session, while heads of state and government are present. This would require the organizing committee to meet the required timescales and to comply with the procedures of the General Committee—the body responsible for setting the agenda. Second, a WCI initiative might trigger a “special session” of the General Assembly, which can be called by the Secretary General at the request of the Security Council or a majority of Member States.⁹⁹ Third, it may be that instead of a plenary debate, it would be preferable for the WCI proposal to be discussed in one of the six main committees: Disarmament and international security; economic and financial; social, humanitarian, and cultural; special political and decolonization; administrative and budgetary; and legal matters.

If the subject matter of the initiative relates to the maintenance of international peace and security, the proposal would be submitted to the UN Security Council. The Security Council has “primary responsibility for the maintenance of international peace and security.”¹⁰⁰ In carrying out this responsibility, member states agree that the Council “acts on their behalf.”¹⁰¹ The potential value in submitting the proposal to the Security Council would be that decisions of the Council are, contrary to recommendations of the General Assembly, binding on all states in the international community.¹⁰²

The potential challenge, however, is that the capacity to impose binding enforcement measures is predicated on a determination by the Council that the situation in question constitutes either a “threat to the peace, breach of the peace or an act of aggression.”¹⁰³ It is commonly accepted that the determination that one of the above situations has occurred is a judgment based on factual findings and the weighing of political considerations which are not easily measured by legal criteria.¹⁰⁴ It is also accepted that it is the Security Council, and the Council only, that is competent to make this decision. To make the case for an Article 39 finding, representatives of the WCI could participate in the Security Council debates preceding this decision, but they would not be permitted voting rights. The Council’s rules of procedure already allow for the participation of

⁹⁷See *supra* Part E.I.

⁹⁸MALCOLM N. SHAW, *INTERNATIONAL LAW* 930 (8th ed., 2017).

⁹⁹U.N. Charter art. 20.

¹⁰⁰U.N. Charter art. 24, para. 1.

¹⁰¹*Id.*

¹⁰²*Id.* at arts. 25, 103.

¹⁰³*Id.* at art. 39.

¹⁰⁴See, e.g., *Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie* (Libyan Arab Jamahiriya v. U.K.), Provisional Measures, 1992 I.C.J. Rep. 114, para. 176 (Feb. 27) (separate Opinion of Weeramantry, J.).

“specially affected” non-Council member states.¹⁰⁵ An analogy can be drawn here with Article 70 of the Charter. The WCI organizing committee might, in this light, be seen as a “specialized agency” along the lines of the relationship between non-governmental organizations and the Economic and Social Council. Article 70 provides the “arrangements for representatives of the specialized agencies to participate, without vote, in its deliberations.”¹⁰⁶ In short, a successful WCI might oblige the Security Council to discuss its proposal, but it would not translate into an obligation to take definitive action. If the Council determines that a WCI does not fall into its purview, it may automatically be submitted to the General Assembly instead.

The ultimate vote on whether a resolution that flows from a successful WCI proposal should be adopted will be made by member states. It would not be prudent to suggest a fundamental restructuring of the voting system of the General Assembly or Security Council. One option is to oblige states to publish an “explanation of the vote” to provide transparency to the WCI organizing committee and increase accountability for the response to a successful WCI. Whatever the obligation imposed, the WCI is just one part of the process toward a policy decision and not an end in itself. To focus solely on the support for a proposal is only a partial view of the legitimacy of a policy decision that may ultimately stem from a citizens’ initiative proposal. No democratic instrument will provide enough democratic legitimacy for a policy decision on its own, but each can make a greater or lesser contribution to the democratic decision-making process. One way to enhance effective participation, and the deliberative quality of subsequent debate, is to include citizens and/or civil society organizations in the decision-making process that follows the successful submission of a WCI proposal. There are also further proposals that could complement the contribution of a WCI to the UN’s system of democratic legitimacy: A World Parliamentary Assembly and a global citizens’ assembly.¹⁰⁷

F. The WCI and Institutional Integration

Having analyzed key design decisions for the WCI in the previous sections, it is important to consider how the WCI could integrate into the existing UN institutional architecture.

I. Campaign Administration

An organizing committee will be required to lead the WCI campaign and engage with the relevant UN organ during the different stages of the WCI process, as is the case for the ECI,¹⁰⁸ with a lead person nominated “[f]or the sake of transparency and smooth and efficient communication.”¹⁰⁹ The committee also has legal responsibilities, such as those relating to data security. This could be problematic for a WCI committee that operates across many different legal jurisdictions. The UN may need to follow the lead of the European Commission and take on responsibility for cross-jurisdictional issues, as far as possible. It could accomplish this goal, for example, by providing the IT infrastructure for storing information and agreeing on a legal jurisdiction under which this is held.

Consideration needs to be given to whether committee members can be formal representatives of civil society organizations (CSO) or whether, as for the ECI, they are “natural persons”—not CSO representatives or politicians—to increase the citizen, rather than the organizational, focus of the instrument. On the one hand, without a requirement for committee members to be “natural

¹⁰⁵U.N. Charter art. 31. See also S.C. Prov. R. of Proc. 37, U.N. Doc. S/96/Rev. 7 (Dec. 21, 1982).

¹⁰⁶U.N. Charter art. 70.

¹⁰⁷Dryzek et al., *supra* note 9.

¹⁰⁸Regulation 2019/788, of the European Parliament and of the Council of 17 April 2019 on the European Citizens Initiative, 2019 O.J. (L 130) 55, art. 5, para. 1.

¹⁰⁹Regulation 211/2011, of the European Parliament and of the Council of 16 February 2011 on the European Citizens Initiative, 2019 O.J. (L 65) 1.

persons,” the inclusivity of the instrument could be compromised, as it will tend to be organizations and lobby groups that lead WCI campaigns to the exclusion of ordinary citizens. On the other hand, it may be impractical to expect a global citizens initiative campaign to be run by a group of ordinary citizens without the backing of a civil society organization. The WCI may be more akin to a vehicle for citizen representation through CSOs, rather than for direct citizen participation.¹¹⁰

II. WCI Administrative Board

As well as the administrative committee for the WCI campaign, the WCI will require a UN organ to have administrative oversight of the process. This is to ensure, inter alia, regulatory compliance of WCI campaigners, to confirm that the registration or support criteria have been met, and to liaise with and support WCI campaigns. Support could include translation services and a WCI helpdesk, as happens for the ECI.

The administrative board could be established through a range of different avenues. One option is through a treaty between UN member states to establish such an administrative board and set out an explicit institutional relationship with the primary organs of the UN. Alternatively, the General Committee of the General Assembly could administer the process. The General Committee is made up of the President of the General Assembly, its twenty-one Vice Presidents, and the chairpersons of each of the six main committees. Extending the supervisory function of the General Committee is an option as it is already responsible for organizing the work, scheduling, and handling each item on the agenda of the upcoming session.

However, a third option appears particularly compelling. The WCI Administrative Board might instead be established as a new subsidiary organ of the UN, with sole competency in this area. Article 7(2) of the Charter generally provides for the establishment of subsidiary organs by the principal organs of the United Nations.¹¹¹ Under Article 22 of the UN Charter, “the General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions.”¹¹² The decision to establish a subsidiary organ may be viewed as an “important decision,” per Article 18(2).¹¹³ If this was the case, it would require a two-thirds majority rather than a simple majority. However, it is debatable whether this would be required. In most cases, the General Assembly requires consensus, and a roll-call vote does not tend to be taken. That said, the democratic pedigree of the WCI Administrative Board would be better served if its original founding enjoyed this more minimal requirement of democratic legitimacy.

In the ECI context, the fact that the Commission decides on the admissibility of ECI proposals and the political outcome of successful campaigns is a matter of controversy.¹¹⁴ It is important that the WCI Administrative Board would enjoy some autonomy and not simply serve as a mouthpiece for the receiving institution. It is important to note, however, that UN subsidiary organs are essentially characterized by three features, which speak to only a limited autonomy: Subsidiary organs are created by a principal organ of the UN; the membership, structure, and terms of the subsidiary organ are determined and modified by the principal organ; and subsidiary organs may be terminated or suspended by a principal organ.¹¹⁵ However, the subsidiary organ would

¹¹⁰For a discussion in the issues pertaining to the ECI in regards to CSOs and citizens participation, see LUIS BOUZA GARCIA, PARTICIPATORY DEMOCRACY AND CIVIL SOCIETY IN THE EU: AGENDA-SETTING AND INSTITUTIONALISATION 1–19 (2015).

¹¹¹U.N. Charter art. 7, para. 2.

¹¹²U.N. Charter art. 22.

¹¹³U.N. Charter art. 18, para. 2.

¹¹⁴James Organ & Nikos Vogiatzis, *The Role of the European Economic and Social Committee in Improving EU Citizen Participation*, in *THE CHANGING ROLE OF CITIZENS IN EU DEMOCRATIC GOVERNANCE* (Davor Jancic ed., forthcoming 2023).

¹¹⁵Meinhard Hilf & Daniel-Erasmus Khan, *Article 22*, in *THE CHARTER OF THE UNITED NATIONS: A COMMENTARY* 423 (Bruno Simma, Daniel-Erasmus Khan, Georg Nolte, Andreas Paulus, & Nikolai Wessendorf eds., 3d ed., 2012).

necessarily possess a certain degree of independence because otherwise, the entity would simply be a part of the principal organ.¹¹⁶ In this light, Szasz identifies a category of “quasi-autonomous bodies.”¹¹⁷ The WCI Administrative Board might be best viewed in this light as the Board must maintain a degree of independence from the very institution that WCI’s will be established to influence.

The WCI Administrative Board will need to decide whether a WCI proposal meets the registration criteria,¹¹⁸ and later the submission criteria. The main task at the point of submission is to verify the support for a WCI proposal to make sure that the WCI meets the thresholds discussed above. A common means of identifying and verifying the signatories to a global proposal could be a major administrative burden. Excessive identity requirements will have an exclusionary impact. This was the case for the ECI and has led to a simplification of the identification requirements focused on residency rather than identity. The administrative burden of the verification process could be streamlined by only checking a random sample of statements of support to validate signatories. The WCI process will also need proper digital safeguards, such as tools to ensure that robots and multiple registrations cannot corrupt the collection of support. The UN will also need to decide whether verification is carried out by each state, where citizens that support a proposal are residents, or whether they centralize the verification of support into a UN body.

III. Review of Administrative Decisions?

Considering the ramifications of WCI Administrative Board decisions, there is a reasonable argument that they should be subject to review of some kind. Judicial review of ECI registration and submission decisions, and of the Commission’s response to successful ECI proposals, go to the CJEU.¹¹⁹ However, where the constitutional history of the EU points to a hierarchical relationship between the CJEU and the EU institutions, no such relationship exists within the UN. Although the International Court of Justice is the “principal judicial organ” of the UN,¹²⁰ hinting at the potential for verticalization, states and only states can be a party to a dispute in contentious cases before the court. Furthermore, decisions of the ICJ will not bind the Council or the General Assembly itself, even if its members are parties to the dispute.¹²¹ In its *Namibia* Advisory Opinion, the ICJ confirmed that, prima facie, it is not a constitutional court and “does not possess powers of judicial review or appeal in respect of the decisions taken by the United Nations organs concerned.”¹²² Similarly, in the *Northern Cameroons* case, the Court acknowledged that decisions of the UN political organs “could not be reversed by the judgment of the Court.”¹²³ Notwithstanding decades of scholarly debate on the question of whether the ICJ has the competence to judicially review decisions of the primary organs of the UN, the relationship is instead conventionally understood to be horizontal in nature.¹²⁴

An independent adjudicatory process would therefore need to be set up. One possibility is to establish an independent Ombudsperson office, like the UN Office of the Ombudsperson, which

¹¹⁶Dan Sarooshi, *The Legal Framework Governing United Nations Subsidiary Organs*, 67 BRIT. Y.B. INT’L L. 413, 416 (1996).

¹¹⁷Paul C. Szasz, *The Complexification of the United Nations System*, 3 MAX PLANCK Y.B. UNITED NATIONS L. 1, 3 (1999).

¹¹⁸See *supra* Part D.

¹¹⁹The first of these was Case C-589/15, *Alexios Anagnostakis v. European Commission*, ECLI:EU:C:2017:663 (Sept. 12, 2017), <http://curia.europa.eu/juris/liste.jsf?num=C-589/15>.

¹²⁰U.N. Charter art. 92.

¹²¹Statute of the International Court of Justice, arts. 34, 59.

¹²²Legal Consequences for States of the Continued Presence of South Africa in Namibia, Advisory Opinion, 1971 I.C.J. Rep. 16, para. 89 (June 21).

¹²³Case Concerning the Northern Cameroons (Cameroon v. U.K.), Preliminary Objections, 1963 I.C.J. Rep. 15, at 33 (June 27).

¹²⁴See, e.g., Ian Brownlie, *The Decisions of Political Organs of the United Nations and the Rule of Law*, in *ESSAYS IN HONOUR OF WANG TIEYA* 91 (Ronald St. John Macdonald ed., 1994); Thomas M. Franck, *The “Powers of Appreciation”: Who is the Ultimate Guardian of UN Legality?*, 86 AM. J. INT’L L. 519 (1992).

was established in 2009 to mitigate unfairness to individuals in UN Security Council sanctions decision-making.¹²⁵ The Ombudsperson is not an adjudicator but instead fulfills a fact-finding inquisitorial role that examines maladministration. Upon receipt of a request for delisting, the Ombudsperson engages in a four-month period of information gathering. At the end of this process, the Ombudsperson prepares a report outlining the information she has received and lays out the main arguments relating to the request. If the Ombudsperson recommends delisting, the individual will be removed from the list, unless, within sixty days, the Sanctions Committee decides to maintain the listing. The Committee is obliged to give reasons for rejecting the request.¹²⁶ A similar process could be followed in relation to appeals against WCI registration decisions and the institutional response to successful WCIs. These seem appropriate for resolving administrative issues such as the duty to give reasons, which has been the focus of decisions in the CJEU. However, resolving substantive issues relating to the lawfulness of admissibility and institutional response through this process is likely to be more controversial.

G. Conclusion: Towards a World Citizens' Initiative?

It is no longer a question of can, or should, global governance be democratically legitimate. The question is how to achieve stronger democratic legitimacy for international organizations that make decisions that have a very real impact on people's lives. But no model of democracy—representative, participatory, or otherwise—can simply be transposed from the national domain. When designing or reforming global governance practices, the aim should be to translate the core values of democracy into a realizable institutional form. In this light, De Burca has proposed a “democratic striving approach,” which takes as its initial building block the principle of fullest possible participation by and representation of all those concerned with a commitment to ensuring the public-regarding nature of the process.¹²⁷

Importantly, as the term “striving” implies, the development of democracy at the global level should be viewed as a piecemeal process of gradual, iterative evolution. As Kuyper and Dryzek have suggested, “the project of global democratization should be conceptualized not in terms of adoption of an overarching and predefined model . . . but rather as multiple moves that can increase the degree of democracy in the system.”¹²⁸ This Article has analyzed the legal feasibility of a potential move towards the democratization of global governance through a World Citizens' Initiative that offers a means of effective participation in UN decision-making. It is important to acknowledge that a WCI will not resolve the UN's democratic legitimacy deficit on its own. Neither did the ECI in the EU. However, it could be an important step toward a new system of democratic legitimization of international organizations that places greater emphasis on the individual as the locus of power and moves global democracy towards a form of self-government. This will only happen if a WCI provides *effective* participation that has a tangible impact on UN decision-making. Without this, it could instead be just a democratic veneer that damages, rather than strengthens, UN legitimacy.

In reaching this conclusion that a WCI can feasibly be included in UN governance structures and has the potential to reduce the global democratic deficit, we do not downplay the significant challenges that would need to be overcome. We have highlighted the global scale, the UN institutional structure, and the state-focused nature of international law, but other legal, political, and practical issues will inevitably arise during the design and operation of a WCI. It may be a very difficult process that faces demanding conceptual, theoretical, and administrative challenges, but these are not absolute obstacles. In other words, global participatory democracy is “not a pipe

¹²⁵See S.C. Res. 1904 (Dec. 17, 2009).

¹²⁶See S.C. Res. 2161 (June 17, 2014); S.C. Res. 2083 (Dec. 17, 2012).

¹²⁷de Burca, *supra* note 21, at 129–37.

¹²⁸Kuyper & Dryzek, *supra* note 62, at 936.

dream but just a difficult journey.”¹²⁹ The implementation of a World Citizens’ Initiative is a potential first step on this journey.

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¹²⁹Grainne de Burca, *Nominal Democracy? A Reply to Robert Keohane*, 14 *ICON* 925, 925 (2016).

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