

# Democratic Representation in, through, and by International Organizations: An Introduction

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## 1.1 INTRODUCTION

Many contemporary international organizations (IOs) are empowered to adopt international law that claims to bind their Member States and, as a result, those States' peoples. Certain IOs have also become members of other IOs or, at least, active participants in international lawmaking processes that claim to bind those IOs and their Member States (and, by extension, the latter's peoples). Generally speaking, IOs play a central role in contemporary international lawmaking: they institutionalize most of the processes through which international law is adopted today, be it through international lawmaking conferences, international courts, or as IO secondary law.

From the perspective of the democratic legitimacy of international law, this raises the question of the conditions under which those IOs may be regarded as democratic representatives of their Member States' peoples and, accordingly, under which the international law they have the right or discretion to adopt inside and outside of IO organs and processes may claim to bind those peoples legitimately.

When one knows how powerful and even dominating certain IOs and certain States and their governments (usually not the most democratic ones) within those IOs have become politically,<sup>1</sup> the stakes of those IOs' democratic

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<sup>1</sup> See Athena D. Efrain, *Sovereign (In)equality in International Organizations* (Leiden: Martinus Nijhoff, 2000); Andrew Hurrell, 'Power, Institutions, and the Production of Inequality', in Michael Barnett and Raymond Duvall (eds.), *Power in Global Governance* (Cambridge: Cambridge University Press, 2004), pp. 33–58; Andrew Hurrell and Nicholas Lees, 'International Organizations and the Idea of Equality', in Bob Reinalda (ed.), *Routledge Handbook of International Organization* (London: Routledge, 2013), pp. 106–118; Lora A. Viola, Duncan Snidal and Michael Zürn, 'Sovereign (In)equality in the Evolution of the International System', in Stefan Leibfried, Evelyne Huber, Matthew Lange, Jonah D. Levy and

representativeness are extremely high. One should also mention, of course, and it is related to the concentration of oligarchic power by and in IOs, the increasing ‘capture’ of IOs’ organs, funding, and lawmaking processes by private organizations, be it multinational corporations, philanthropists, or non-governmental organizations (NGOs).<sup>2</sup> Ironically, the private capture of IOs sometimes even proceeds in the name of the greater ‘inclusion’ or ‘participation’ of ‘stakeholders’ in those IOs,<sup>3</sup> stakeholders who are deemed as self-representing or, at least, self-authorized.

As a matter of fact, the stakes of the democratic representativeness of IOs are not only international. As we know by now, the deficit in democratic representation in and/or by IOs has also fuelled the so-called ‘crisis’ of democratic representation domestically. This is the case of the populist critique of both governments and parliaments<sup>4</sup> and of the new alternative claims of constructivist, statistic, altruistic, or epistemic<sup>5</sup> representation that critique has given

John D. Stephens (eds.), *The Oxford Handbook of Transformations of the State* (Oxford: Oxford University Press, 2015), pp. 221–236; Lora A. Viola, *The Closure of the International System: How Institutions Create Political Equalities and Hierarchies* (Cambridge: Cambridge University Press, 2020); Samantha Besson, ‘L’égalité des États membres de l’Union européenne: un nouveau départ en droit international de l’organisation des États?’, in Édouard Dubout (ed.), *L’égalité des États membres de l’Union européenne* (Brussels: Bruylant, 2022), pp. 261–298.

<sup>2</sup> See Samantha Besson, ‘What makes International Organizations “Public”? A Plea for a Public International Law of Organisation’ (2026) *Leiden Journal of International Law* in press; Samantha Besson, ‘What can Public international Law do against Privatization?’ (2024) 15(3) *Transnational Legal Theory* 341–369; Samantha Besson, ‘The International Public: A Farewell to Functions in International Law’ (2021) 115 *American Journal of International Law Unbound* 307–311; Samantha Besson, ‘COVID-19 and the WHO’s Political Moment’ (2020) *EJIL:Talk!* [www.ejiltalk.org/covid-19-and-the-whos-political-moment/](http://www.ejiltalk.org/covid-19-and-the-whos-political-moment/), last accessed 2 August 2023. On private capture of IOs, see Melissa J. Durkee, ‘Industry Lobbying and “Interest Blind” Access Norms at International Organizations’ (2017) 111 *American Journal of International Law Unbound* 119–124; Ayelet Berman, ‘Between Participation and Capture in International Rule-Making: The WHO Framework of Engagement with Non-State Actors’ (2021) 32(1) *European Journal of International Law* 227–254; Olga Kovarzina and Martino Maggetti, ‘Stakeholder Participation Reforms in Global Finance Governance’, in Joost Pauwelyn, Martino Maggetti, Tim Büthe and Ayelet Berman (eds.), *Rethinking Participation in Global Governance: Voice and Influence after Stakeholder Reforms in Global Finance and Health* (Oxford: Oxford University Press, 2022), pp. 91–110.

<sup>3</sup> See e.g. Pauwelyn *et al.*, fn. 2.

<sup>4</sup> See Nadia Urbinati, *Me the People: How Populism Transforms Democracy* (Cambridge, MA: Harvard University Press, 2019); Joachim Blatter and Johannes Schulz, ‘Intergovernmentalism and the Crisis of Representative Democracy: The Case for Creating a System of Horizontally Expanded and Overlapping National Democracies’ (2022) 28(3) *European Journal of International Relations* 722–747; Kilian Spandler and Fredrik Söderbaum, ‘Populist (De) Legitimation of International Organizations’ (2023) 99(3) *International Affairs* 1023–1041.

<sup>5</sup> On those different categories of alternative political representation, see Besson and Martí, Chapter 12 in this volume.

rise to domestically.<sup>6</sup> The future of domestic representation is therefore bound to that of international representation, and vice versa.<sup>7</sup>

Curiously given those important international and domestic stakes, however, the democratic representativeness of IOs does not seem to be much of a concern of IOs and their Member States, at least if one refers to the international law of IOs. Even more curiously, while the question of democratic representation in and by IOs is straightforward enough from a democratic legitimacy perspective, it has only rarely been addressed as such in scholarly debates pertaining to the democratic legitimacy of international law. It is this gap not only in the practice of democratic representation by IOs, but also in the literature, that the present volume purports to fill.

This introduction sets the stage for the book's argument: first, it unpacks the reasons that led to putting this collection together and introduces the main issues it addresses (Section 1.2); second, it identifies the specificities of the volume and explains what it hopes to achieve (Section 1.3); third, it provides some information about how the book is structured and its different parts articulated (Section 1.4); and, finally, it sketches out the contents of its successive chapters (Section 1.5).

## 1.2 THE BACKGROUND TO THE VOLUME

The question of democratic representation (by [the representatives of] Member States and/or [the representatives of] other public or private institutions involved in their lawmaking and decision-making processes, such as

<sup>6</sup> See e.g. Lisa Disch, 'Introduction: The End of Representative Politics', in Lisa Disch, Mathijs van de Sande and Nadia Urbinati (eds.), *The Constructivist Turn in Political Representation* (Edinburgh: Edinburgh University Press, 2019), pp. 1–18; Jonathan W. Kuyper, 'Systemic Representation: Democracy, Deliberation, and Nonelectoral Representatives' (2016) 110(2) *American Political Science Review* 308–324; Michael Saward, *The Representative Claim* (Oxford: Oxford University Press, 2010). For a critique, see Sofia Näsström, 'Where is the Representative Turn Going?' (2011) 10(4) *European Journal of Political Theory* 501–510; Nadia Urbinati, 'Representative Democracy and its Critics', in Sonia Alonso, John Keane and Wolfgang Merkel (eds.), *The Future of Representative Democracy* (Cambridge: Cambridge University Press, 2011), pp. 23–49; Nadia Urbinati and Mark Warren, 'The Concept of Representation in Contemporary Democratic Theory' (2008) 11 *Annual Review of Political Science* 387–412; Nadia Urbinati, 'Representative Constructivism's Conundrum', in Disch *et al.*, fn. 6., pp. 182–202.

<sup>7</sup> On the continuity between domestic and international democracy, see Samantha Besson, 'The Authority of International Law: Lifting the State Veil' (2009) 31(3) *Sydney Law Review* 343–380; Samantha Besson, 'Theorizing the Sources of International Law', in Samantha Besson and John Tasioulas (eds.), *The Philosophy of International Law* (Oxford: Oxford University Press, 2010), pp. 163–185; Samantha Besson, 'Investment Citizenship and Democracy in a Global Age: Towards a Democratic Interpretation of International Nationality Law' (2019) 29(4) *Swiss Review of International and European Law* 525–547; Samantha Besson, *Reconstructing the International Institutional Order* (Paris: OpenEdition Books/College of France, 2021).

cities, regions, indigenous peoples, NGOs, multinational corporations, employer's associations, trade unions, or patients' associations) in IOs, but also by IOs in and of themselves has not always been that moot. After all, the issue of equal representation and its modalities were hotly debated at the United Nations (UN) from the 1940s to the 1960s.<sup>8</sup> Even today, the neglect of the issue does not affect all IOs equally. Thus, the discussion is much more advanced in and regarding the International Labour Organization (ILO)<sup>9</sup> or the European Union (EU)<sup>10</sup> where (democratic) representation in and/or by the IO is a requirement of the respective IOs' constitutive treaty, than it is in and with respect to the World Health Organization (WHO)<sup>11</sup> or the International Organization for Migration (IOM).<sup>12</sup>

There are many reasons one may venture for the contemporary sidelining of the question of democratic representation *by* and *in* IOs in the law of international organizations and its practice.

<sup>8</sup> On those debates, see e.g. Boutros Boutros-Ghali, 'Le principe d'égalité des États et les organisations internationales' (Volume 100) *Collected Courses of the Hague Academy of International Law*, 1960, pp. 3–73; Ulrich K. Preuss, 'Equality of States: Its Meaning in a Constitutionalized Global Order' (2008) 9(1) *Chicago Journal of International Law* 17–49.

<sup>9</sup> See e.g. Francis Maupain, *The Future of the International Labour Organization in the Global Economy* (Oxford: Hart, 2013); Marieke Louis, *Qu'est-ce qu'une bonne représentation? L'Organisation internationale du travail de 1919 à nos jours* (Paris: Dalloz, 2016); Marieke Louis, 'Who Decides? Representation and Decision-Making at the International Labour Organization' (2019) 11 *International Development Policy* 40–58.

<sup>10</sup> See e.g. Christopher Lord, 'Externalities and Representation beyond the State: Lessons from the European Union', in Dario Castiglione and Johannes Pollak (eds.), *Creating Political Presence: The New Politics of Democratic Representation* (Chicago: Chicago University Press, 2018), pp. 254–275; Richard Bellamy, 'Representing the Peoples of Europe: Addressing the Democratic Disconnect', in Richard Bellamy, *A Republican Europe of States: Cosmopolitanism, Intergovernmentalism and Democracy in the EU* (Cambridge: Cambridge University Press, 2019), pp. 97–130.

<sup>11</sup> See e.g. Lukasz Gruszczynski and Margherita Melillo, 'The Uneasy Coexistence of Expertise and Politics in the World Health Organization: Learning from the Experience of the Early Response to the covid-19 Pandemic' (2022) 19(2) *International Organizations Law Review* 301–331. For an exception, see Besson, 'COVID-19 and the WHO's Political Moment', fn. 2; Samantha Besson, 'Pour une représentation démocratique multiple au sein de l'Organisation mondiale de la Santé', in Olivier de Frouville and Dominique Rousseau (eds.), *Démocratiser l'Espace-Monde* (Le Kremlin Bicêtre: Mare & Martin, 2024), pp. 199–218; Samantha Besson and José Luis Martí, 'From Equal State Consent to Equal Public Participation in International Organizations: Institutionalizing Multiple International Representation', in Samantha Besson (ed.), *Consenting to International Law* (Cambridge: Cambridge University Press, 2023), pp. 314–346; Samantha Besson, 'We the Peoples of the United Nations: From Single Separate Constituent Powers to Multiple Nested Instituted Publics', in Peter Niesen, Marcus Patberg and Lucia Robinelli (eds.), *The Oxford Handbook of Constituent Power* (Oxford: Oxford University Press, 2026), pp. 531–544.

<sup>12</sup> See e.g. Jan Klabbers, 'Notes on the Ideology of International Organizations Law: The International Organization for Migration, State-Making, and the Market for Migration' (2019) 32(3) *Leiden Journal of International Law* 383–400.

One of the main reasons for the neglect of democratic representation by IOs is that their capacity to represent has mostly been approached as ‘non-political’ in international law.<sup>13</sup> Representation by IOs is indeed often organized so as to follow a ‘functional’ approach to legitimacy, that is, an approach to legitimacy by output only: representation by IOs should ensure the implementation of delegated States’ functions and hence the protection of their Member States’ interests. When it is exceptionally framed by reference to input legitimacy, representation by IOs remains functional, however. It relies on IOs’ integrated or independent organs’ expertise, for instance, in implementing States’ functions and protecting their interests.

Moreover, to the extent that IO Member States, but also other public and private institutions participate in IO procedures and hence are to be represented in IO organs according to IO law, it is usually as such, and not necessarily as representatives of their respective constituencies.<sup>14</sup> In the increasing number of cases where their representativeness in IOs is required, it is mostly functional and measured by reference to certain characteristics of States or civil society organizations (CSOs) that may be of instrumental relevance for the IO. One may think here of the economic, financial, military, or technoscientific power of some of its Member States (usually a few of them) in the IO’s interstate organs, on the one hand, and of the expertise and financial resources of some CSOs (usually just a few as well), on the other.<sup>15</sup> For the rest, the emphasis has been on ‘participation’ and ‘inclusion’ in IOs,<sup>16</sup> for instance of the so-called ‘affected persons’ and other ‘stakeholders’.<sup>17</sup> This is

<sup>13</sup> See also Marieke Louis and Lucile Maertens, *Why International Organizations Hate Politics: Depoliticizing the World* (London: Routledge, 2021).

<sup>14</sup> There are exceptions, of course, such as the ILO’s representative tripartism (see Louis, *Qu’est-ce qu’une bonne représentation?*, fn. 9 and Louis, ‘Who Decides?’, fn. 9) but they are rare.

<sup>15</sup> This is the case, for instance, in the WHO, ‘Framework of Engagement with Non-State Actors’ (FENSA) (28 May 2016), WHA69.10 (see Besson, ‘Pour une représentation démocratique multiple au sein de l’Organisation mondiale de la Santé’, fn. 11).

<sup>16</sup> See Angelo Golia and Anne Peters, ‘The Concept of International Organization’, in Jan Klabbers (ed.), *The Cambridge Companion to International Organizations Law* (Cambridge: Cambridge University Press, 2022), pp. 25–49; Klaus Dingwerth and Patrizia Nanz, ‘Participation’, in Jacob Katz Cogan, Ian Hurd and Ian Johnstone (eds.), *The Oxford Handbook of International Organizations* (Oxford: Oxford University Press, 2016), pp. 1126–1145.

<sup>17</sup> See Terry Macdonald, ‘Citizens or Stakeholders? Exclusion, Equality and Legitimacy in Global Stakeholder Democracy’, in Daniele Archibugi, Mathias Koenig-Archibugi and Raffaele Marchetti (eds.), *Global Democracy: Normative and Empirical Perspectives* (Cambridge: Cambridge University Press, 2011), pp. 47–68; Coline Ruwet, ‘Que représentent les stakeholders?: Le cas de l’élaboration d’ISO 26000’ (2010) 60(6) *Revue Française de Science Politique* 1115–1135; Jochen von Bernstorff, ‘New Responses to the Legitimacy Crisis of International Institutions: The Role of “Civil Society” and the Rise of the Principle of

usually done without reference to the representative credentials of those participants in IO processes except as self-representing or as self-appointed representatives, however, and without any concern about their impact on the concurrent representation of the very same people(s) by States within those IOs.

Even more curiously, while the question of democratic representation in and by IOs is straightforward enough from a democratic legitimacy perspective, it has only rarely been addressed as such in debates pertaining to the democratic legitimacy of international law. This is true in global or international (both terms being used interchangeably in this introduction) democratic theory as much as in international democracy law.

Starting with democratic theory, first, the so-called representative ‘turn’ or ‘renaissance’ of the last fifteen years or so<sup>18</sup> has not included international representation so far. This is most probably because there has rarely been an overlap of expertise in the same persons between international democracy theorists and democratic representation theorists.<sup>19</sup> When there has been such

Participation of the “Most Affected” in International Institutional Law’ (2021) 32(1) *European Journal of International Law* 125–157, at 141ff.

<sup>18</sup> See e.g. Hanna F. Pitkin, *The Concept of Representation* (Berkeley: University of California Press, 1972); Bernard Manin, *The Principles of Representative Government* (Cambridge: Cambridge University Press, 1997); Anne Phillips, *The Politics of Presence* (Oxford: Oxford University Press, 1998); Pierre Rosanvallon, *Le peuple introuvable: Histoire de la représentation démocratique en France* (Paris: Gallimard, 1998); Jane Mansbridge, ‘Rethinking Representation’ (2003) 97(4) *American Political Review* 515–528; Nadia Urbinati, *Representative Democracy: Principles and Genealogy* (Chicago: University of Chicago Press, 2006); Urbinati and Warren, fn. 6; Saward, fn. 6; Jane Mansbridge, ‘Clarifying the Concept of Representation’ (2011) 105(3) *American Political Science Review* 621–630; Näsström, fn. 6; Alonso *et al.*, fn. 6; Yves Sintomer, ‘Le sens de la représentation politique: Usages et mésusages du débat contemporain’ (2013) 50 *Raisons politiques* 13–34; Samuel Hayat and Yves Sintomer, ‘Repenser la représentation politique’ (2013) 50 *Raisons politiques* 5–11; Dario Castiglione and Mark E. Warren, ‘Rethinking Democratic Representation: Eight Theoretical Issues’, in Disch *et al.*, fn. 6, pp. 21–47; Castiglione and Pollak, fn. 10; Disch *et al.*, fn. 6; Samuel Hayat, Corinne Péneau and Yves Sintomer, *La représentation avant le gouvernement représentatif* (Rennes: Presses Universitaires de Rennes, 2020); Felipe Rey, ‘The Representative System’ (2023) 26(6) *Critical Review of International Social and Political Philosophy* 831–854; Manuela Albertone and Michel Troper, ‘Penser la représentation’, in Manuela Albertone and Michel Troper (eds.), *La représentation politique. Anthologie* (Paris: Classiques Garnier, 2021), pp. 7–32; Lisa Disch, *Making Constituencies: Representation as Mobilization in Mass Democracy* (Chicago: University of Chicago Press, 2021); Felipe Rey, *El sistema representativo: Las representaciones políticas y la transformación de la democracia parlamentaria* (Barcelona: Gedisa, 2023).

<sup>19</sup> There have been exceptions, of course, see e.g. Andrew Kuper, *Democracy Beyond Border: Justice and Representation in Global Institutions* (Oxford: Oxford University Press, 2004); Terry Macdonald, *Global Stakeholder Democracy: Power and Representation Beyond Liberal*

an overlap, moreover, the democratic representation by IOs has not been the centre of attention, except in discussions of the EU<sup>20</sup> or the ILO.<sup>21</sup>

In a nutshell, international democracy theorists have divided into two groups over the years. The first and original group of so-called ideal international democracy theorists whose writings date back to the 1990s was actually concerned with international democratic representation. However, its focus was mostly cosmopolitan, for example on a world parliamentary assembly, and monistic, for example on a world State-like public institution, at the expense of the plurality of States and of other representative institutions active in international lawmaking.<sup>22</sup> At the turn of the millennium, and in reaction, a second group of theorists turned to non-ideal international democratic theory, defending both non-cosmopolitan and pluralist accounts of international democracy. However,

*States* (Oxford: Oxford University Press, 2008); Philip Pettit, 'Legitimate International Institutions: A Neorepublican Perspective', in Besson and Tasioulas, fn. 7, pp. 139–161; Philip Pettit, 'A Republican Law of Peoples' (2010) 9(1) *European Journal of Political Theory* 70–94; Richard Bellamy, '"An Ever Closer Union Among the Peoples of Europe": Republican Intergovernmentalism and Democratic Representation within the EU' (2013) 35(5) *Journal of European Integration* 499–516; Bellamy, 'Representing the Peoples of Europe', fn. 10; Bellamy, *A Republican Europe of States*, fn. 10; Kuyper, fn. 6; Samantha Besson and José Luis Martí, 'Legitimate Actors of International Law-Making: Towards a Theory of International Democratic Representation' (2018) 9(3) *Jurisprudence* 504–540; Eva Erman, 'Political Legitimacy of Global Governance and the Proper Role of Society Actors' (2018) 24 *Res Publica* 133–155; Eva Erman and Jonathan W. Kuyper, 'Open Access: Global Democracy and Feasibility' (2020) 23(3) *Critical Review of International Social and Political Philosophy* 311–331; Samantha Besson and José Luis Martí, 'Cities as Democratic Representatives in International Law-Making', in Helmut P. Aust and Janne E. Nijman (eds.), *Research Handbook on International Law and Cities* (London: Edward Elgar, 2021), pp. 341–353; Besson, 'L'égalité des États membres de l'Union européenne', fn. 1; Samantha Besson, 'Democratic Representation within International Organizations: From International Good Governance to International Good Government' (2022) 19(3) *International Organizations Law Review* 489–527; Besson and Martí, 'From Equal State Consent to Equal Public Participation in International Organizations', fn. 11; Besson, 'Pour une représentation démocratique multiple au sein de l'Organisation mondiale de la Santé', fn. 11; Samantha Besson, 'The Politics of Regional International Organizations: A New Dawn for the Political Legitimacy of International Law' (2024) 21(1) *International Organizations Law Review* 87–114; Besson, 'We the Peoples of the United Nations', fn. 11.

<sup>20</sup> See Lord, fn. 10; Bellamy, '"An Ever Closer Union Among the Peoples of Europe"', fn. 19; Bellamy, 'Representing the Peoples of Europe', fn. 10.

<sup>21</sup> See Louis, *Qu'est-ce qu'une bonne représentation?*, fn. 9; Louis, 'Who Decides?', fn. 9.

<sup>22</sup> See Robert A. Dahl, 'Can International Organizations Be Democratic? A Skeptic's View', in Ian Shapiro and Casiano Hacker-Cordón (eds.), *Democracy's Edges* (Cambridge: Cambridge University Press, 1999), pp. 19–36; Richard Falk and Andrew Strauss, 'Toward Global Parliament' (2001) 80(1) *Foreign Affairs* 212–220; David Held, 'Restructuring Global Governance: Cosmopolitanism, Democracy and the Global Order' (2009) 37(3) *Millennium Journal of International Studies* 535–547; Daniele Archibugi, 'Cosmopolitan Democracy: A Restatement' (2012) 42(1) *Cambridge Journal of Education* 9–20; Luis Cabrera (ed.), *Institutional Cosmopolitanism* (Oxford: Oxford University Press, 2018).

falling prey to the (common but mistaken) reduction of democratic representation to electoral representation<sup>23</sup> and hence to the latter's perceived lack of feasibility on an international scale, most authors in that vein have focused instead on issues of democratic deliberation, participation, accountability, and/or stakeholderism in international relations.<sup>24</sup> And this has been at the expense of a discussion of international democratic representation itself, of its inherent, complementary, and mutual relations with international democratic participation and deliberation and, more generally, of its conceptual relationship to international democratic legitimacy itself.

Turning to international democracy law and its literature, second, the issue of international democratic representation has generally been obliterated<sup>25</sup> by a similar and almost exclusive focus on democratic inclusion, participation and/or deliberation,<sup>26</sup> except for discussions of international parliamentary assemblies (wrongly) regarded again as the sole form of international democratic representation.<sup>27</sup> To that extent, the literature has fallen prey to the same

<sup>23</sup> For this critique, see Nadia Urbinati, 'Representative Democracy and Its Critics', in Alonso *et al.*, fn. 18, pp. 23–49. See also Besson and Martí, Chapter 12 in this volume.

<sup>24</sup> See Jens Steffek, 'The Legitimation of International Governance: A Discourse Approach' (2003) 9(2) *European Journal of International Relations* 249–275; James Bohman, *Democracy Across Borders: From Dêmos to Dêmoi* (Cambridge, MA: MIT Press, 2007); John S. Dryzek, 'Transnational Democracy in an Insecure World' (2006) 27(2) *International Political Science Review* 101–119; Macdonald, *Global Stakeholder Democracy*, fn. 19; Eva Erman, 'In Search of Democratic Agency in Deliberative Governance' (2013) 19(4) *European Journal of International Relations* 847–868; Erman and Kuypers, fn. 19; Thomas Hale and Mathias Koenig-Archibugi, 'Are Europeans Ready for a More Democratic European Union? New Evidence on Preference Heterogeneity, Polarisation, and Crosscuttingness' (2016) 55(2) *European Journal of Political Research* 225–245; Dominik Zaum, 'Legitimacy', in Cogan *et al.*, fn. 16, pp. 1107–1125; John S. Dryzek and Ana Tanasoca, *Democratizing Global Justice: Deliberating Global Goals* (Cambridge: Cambridge University Press, 2021).

<sup>25</sup> There has been more literature on (non-democratic) representation in international law in general, albeit not much by comparison to domestic law. See e.g. Angelo Piero Sereni, 'La représentation en droit international' (Volume 73) *Collected Courses of The Hague Academy of International Law*, 1948, pp. 69–166; Riad Daoudi, *La représentation en droit international public* (Paris: LGDJ, 1980); Jean Salmon, 'Representatives of States in International Relations', in Rüdiger Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (Oxford: Oxford University Press, 2007).

<sup>26</sup> See Anne Peters, 'Dual Democracy', in Jan Klabbers, Anne Peters and Geir Ulfstein (eds.), *The Constitutionalization of International Law* (Oxford: Oxford University Press, 2009), pp. 263–341; Steven Wheatley, *The Democratic Legitimacy of International Law* (Oxford: Hart, 2010); Olivier de Frouville, *From Cosmopolitanism to Human Rights* (Oxford: Hart, 2022); Pauwelyn *et al.*, fn. 2; Ian Johnstone, 'Deliberation', in Klabbers, fn. 16, pp. 173–198; Bhupinder S. Chimni, 'Inclusion and Exclusion in International Organizations', in Klabbers, fn. 16, pp. 76–97. For a critique, see Besson and Martí, Chapter 12 in this volume.

<sup>27</sup> See Laurence Dubin and Marie-Clotilde Runavot, 'Représentativité, efficacité, légitimité: Des organisations internationales en crise?', in Évelyne Lagrange and Jean-Marc Sorel (eds.), *Droit des organisations internationales* (Paris: LGDJ, 2013), pp. 77–103; Bjørn Høyland,

conflation between democratic representation and electoral representation, on the one hand, and hence to the related separation and sterile alternative opposition between (electoral) representation and (non-electoral) participation and deliberation, on the other.

Moreover, IOs have not been central to those discussions<sup>28</sup> and when they have, it has mostly been as institutional fora of democratic participation by CSOs, and not as representatives in and of themselves.<sup>29</sup> This focus may be explained by the compensatory approach that has long dominated international democracy law and the relevant literature: its aim has been to compensate for the insufficient democratic legitimacy of States in international lawmaking by the inclusion and participation of CSOs. And this, without any attempt at articulating those CSOs' 'participation' with the State-based representation of the same peoples and, hence, without addressing the risks of over-representation or under-representation of those peoples by those CSOs, and actually assuming their democratic representativeness.

It is this gap not only in the practice of representation by and in IOs, but also in the literature in international democratic theory and international democracy law, that the present volume purports to fill. More specifically, the volume is organized around three sets of issues: representation *in, through,* and *by* IOs.<sup>30</sup>

'Parliaments', in Cogan *et al.*, fn. 16, pp. 782–801; Marie-Clotilde Runavot (ed.), *La démocratie appliquée au droit international: de quoi parle-t-on?* (Paris: Pedone, 2018). See also Runavot, Chapter 6 in this volume; Lagrange, Chapter 14 in this volume. For a critique, see Besson and Martí, Chapter 12 in this volume.

<sup>28</sup> On (mostly non-democratic) representation in and by IOs, see e.g. Éveline Lagrange, *La représentation institutionnelle dans l'ordre international: Une contribution à la théorie de la personnalité morale des organisations internationales* (The Hague: Kluwer Law International, 2002); Jacob Katz Cogan, 'Representation and Power in International Organization: The Operational Constitution and its Critics' (2009) 103(2) *American Journal of International Law* 209–263; Dubin and Runavot, fn. 27; Louis, *Qu'est-ce qu'une bonne représentation?*, fn. 9; David P. Rapkin, Jonathan R. Strand and Michael W. Trevathan, 'Representation and Governance in International Organizations' (2016) 4(3) *Politics and Governance* 77–89; Louis, 'Who Decides?', fn. 9; Damien Bouvier, *La représentation internationale de l'Union européenne* (Brussels: Bruylant, 2020); Stephen Mathias and Stadler Trengove, 'Membership and Representation', in Cogan *et al.*, fn. 16, pp. 962–984. See also Cogan, Chapter 4 in this volume.

<sup>29</sup> See Anne Peters, 'International Organizations and International Law', in Cogan *et al.*, fn. 16, pp. 33–59; Martin Krajewski, 'International Organizations or Institutions, Democratic Legitimacy', in Rüdiger Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (Oxford: Oxford University Press, 2019); Anne Peters, 'Constitutional Theories of International Organisations: Beyond the West' (2021) 20(4) *Chinese Journal of International Law* 649–698; Chimni, fn. 26. For a recent exception, see von Bernstorff, fn. 17.

<sup>30</sup> On this distinction and those three issues, see my previous work, as a single author or with José Luis Martí: Besson and Martí, 'Legitimate Actors of International Law-Making', fn. 19; Besson, 'COVID-19 and the WHO's Political Moment', fn. 2; Besson and Martí, 'Cities as Democratic

First of all, democratic representation *in* IOs. To the extent that IOs include Member States in their interstate organs and also increasingly allow for the participation of other public and private institutions in their deliberation and/or decision-making processes, the issue of the democratic representation by those institutions inside IOs arises.

Their democratic representativeness is already required by certain IOs' constitutive treaties,<sup>31</sup> but also, arguably, by international democracy law or, at least, by international human rights law.<sup>32</sup> One may think here of the democratic credentials required of State representatives in a given IO, for example at the time of accreditation of those representatives in the UN General Assembly<sup>33</sup> or

Representatives in International Law-Making', fn. 19; Besson, 'L'égalité des États membres de l'Union européenne', fn. 1; Besson, 'Democratic Representation within International Organizations', fn. 19; Besson and Martí, 'From Equal State Consent to Equal Public Participation in International Organizations', fn. 11; Besson, 'Pour une représentation démocratique multiple au sein de l'Organisation mondiale de la Santé', fn. 11; Samantha Besson and José Luis Martí, 'Republican Sovereignty', in Mortimer Sellers and Frank Lovett (eds.), *The Oxford Handbook of Republicanism* (Oxford: Oxford University Press, in press, 2027) (online edn, Oxford Academic, 23 January 2024, <https://doi.org/10.1093/oxfordhb/9780197754115.013.35>, last accessed 16 January 2026); Besson, 'We the Peoples of the United Nations', fn. 11. See also Besson and Martí, Chapter 12 in this volume.

<sup>31</sup> See e.g. Articles 3(1) and 5 of the ILO Constitution on the representativeness of the Members' 'delegates', be they representative of 'governments', 'employers', or 'workpeople', in the General Conference of representatives, see International Labour Organization Constitution. [www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62\\_LIST\\_ENTRIE\\_ID:2453907:NO](http://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO), last accessed 8 November 2023; Art. 10 of the Treaty on the European Union (hereafter TEU) on the representation of 'citizens' and 'States' by their 'representatives', 'governments', or 'heads of government', in the EU Parliament, Council, or European Council, see Consolidated Version of the Treaty on the European Union, OJ 2012 No. C326, 26 October 2012, p. 13. See also Louis, *Qu'est-ce qu'une bonne représentation?*, fn. 9.

<sup>32</sup> See e.g. UN Human Rights Committee (UNHRC), 'CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), The Right to Participate in Public Affairs and the Right of Equal Access to Public Service' (12 July 1996), CCPR/C/21/Rev.1/Add.7, para. 5; UNGA Res. 75/178 (16 December 2020), paras. 6(g), 6(h), 6(i). See also Nahuel Maisely, 'The International Right of Rights? Article 25(a) of the ICCPR as a Human Right to Take Part in International Law-Making' (2017) 28(1) *European Journal of International Law* 89–113; Hilary Charlesworth, 'International Legal Encounters with Democracy' (2017) 8(S6) *Global Policy* 34–43.

<sup>33</sup> See Jean d'Aspremont, 'Legitimacy of Governments in the Age of Democracy' (2006) 38(4) *New York University Journal of International Law and Politics* 877–917; Jean d'Aspremont, 'The Rise and Fall of Democratic Governance in International Law: A Reply to Susan Marks' (2011) 22(2) *European Journal of International Law* 549–570; Hilary Charlesworth, 'Democracy and International Law' (Volume 371) *Collected Courses of the Hague Academy of International Law*, 2015, pp. 43–152; Charlesworth, fn. 32. For a recent discussion, see Catherine Armirfar, Romain Zamour and Duncan Pickard, 'Representation of Member States at the United Nations: Recent Challenges' (2022) 26(6) *ASIL Insights*. [www.asil.org/insights/volume/26/issue/6](http://www.asil.org/insights/volume/26/issue/6), last accessed 3 August 2023. See also Runavot, Chapter 6 in this volume; Cogan, Chapter 4 in this volume.

of the democratic regime conditions for State membership in a given IO, for instance at the time of accession to or suspension from the UN.<sup>34</sup> Those democratic credentials are also sometimes required of representatives of CSOs such as, for example, trade unions and organizations of employers in the interstate organs of the ILO<sup>35</sup> and, arguably, of accredited NGOs in most UN organs and agencies.<sup>36</sup>

Second, democratic representation *through* IOs. The next issue the volume addresses pertains to the additional legal and institutional requirements IOs could and, one may argue, should pose to the democratic representativeness of States and of other public and private institutions, and of their respective representatives, inside IOs' lawmaking organs and processes. Indeed, it is precisely because IOs organize competing forms of public and private representation separately *in* the IOs' organs, as I have just explained, that they could also be deemed to be in a position to correct those other representatives' respective democratic deficits when they arise.<sup>37</sup> Furthermore, IOs could and, one may argue, should also contribute to articulate those multiple forms of public and private representation in such a way as to ensure their complementarity. This could circumvent the risks of under- and over-representation of the same peoples, and thereby contribute to turn IOs themselves into genuine 'systems of multiple international representation'<sup>38</sup> in the future.

After all, many IOs are general organizations (at least insofar as they guarantee the equality of their Member States) and are public ones (at least insofar as they have public institutions, the States, as members) or, at any rate, have the capacity to be. As such, IOs are ideally placed to organize or orchestrate international democratic representation in their midst from a general and public point of view. They already have to some extent, but, as explained before, this is not a general feature yet and it is arguably one that should be developed. Worse, certain IOs have even contributed to undermine the democratic representation of or by some of their Member States, for instance through privatization requirements or through orchestrating inegalitarian representation in

<sup>34</sup> See Alison Duxbury, *The Participation of States in International Organisations: The Role of Human Rights and Democracy* (Cambridge: Cambridge University Press, 2011); Mathias and Trengove, fn. 28.

<sup>35</sup> See Louis, *Qu'est-ce qu'une bonne représentation?*, fn. 9; Louis, 'Who Decides?', fn. 9.

<sup>36</sup> See von Bernstorff, fn. 17.

<sup>37</sup> See Besson and Martí, 'Legitimate Actors of International Law-Making', fn. 19; Besson, 'Democratic Representation within International Organizations', fn. 19. See also Besson and Martí, Chapter 12 in this volume.

<sup>38</sup> On that system, see Besson and Martí, 'Legitimate Actors of International Law-Making', fn. 19; Besson, 'Democratic Representation within International Organizations', fn. 19. See also Besson and Martí, Chapter 12 in this volume.

integrated IO organs or secretariats.<sup>39</sup> And the same may be said of the often selected number of NGOs that are given functional precedence in their involvement in certain IOs.<sup>40</sup>

As examples of the enhancement of democratic representation through IOs, one may think of the legal constitution of transnational CSOs by IOs in order to enhance the international representation of national ones in their midst. This may be illustrated by the constitution of the International Organization of Employers (IOE) in the framework of the ILO.<sup>41</sup> Another example of the contribution of IOs to the enhancement of the democratic representativeness of other private or public institutions they include as representatives in their lawmaking processes may be the consolidation of an international private or public law status of those institutions and their international institution or re-institution as a result,<sup>42</sup> as it has been the case for small organizations of farmers by the Food and Agriculture Organization<sup>43</sup> (FAO) or for refugee organizations by the UN High Commissioner for Refugees<sup>44</sup> (UNHCR).

Third, democratic representation *by* IOs. Besides organizing the democratic representation by Member States and other public and private institutions they include in or associate to their respective decision-making procedures and besides articulating those multiples forms of democratic representation in their midst, and actually in order to do so democratically, IOs themselves could and should be regarded as democratic representatives.<sup>45</sup> This is the case both internally inside IO lawmaking procedures and externally when IOs engage in international lawmaking with third States and others IOs. This is the most difficult of all three questions and the one where most work is still needed, both on a theoretical and on a practical plane. In turn, this raises the further issue of the democratic representation *of* IOs, that is, the democratic representativeness of the ‘public organs’ (as opposed to mere ‘agents’ or ‘diplomats’) representing IOs themselves,<sup>46</sup> and not only their Member States

<sup>39</sup> See Viola, fn. 1.

<sup>40</sup> See Dingwerth and Nanz, fn. 16.

<sup>41</sup> See Louis, Chapter 7 in this volume.

<sup>42</sup> On the WHO and the missed opportunity of FENSA, see Besson, ‘Pour une représentation démocratique multiple au sein de l’Organisation mondiale de la Santé’, fn. 11; Besson, ‘We the Peoples of the United Nations’, fn. 11. See also Durkee, Chapter 8 in this volume; Peters, Chapter 9 in this volume.

<sup>43</sup> See von Bernstorff, fn. 17; von Bernstorff, Chapter 10 in this volume.

<sup>44</sup> See Macdonald, Chapter 11 in this volume.

<sup>45</sup> See Besson and Martí, Chapter 12 in this volume.

<sup>46</sup> On the separation of powers in IOs, see Joana Mendes and Ingo Venzke (eds.), *Allocating Authority: Who Should Do What in European and International Law?* (Oxford: Hart, 2018); Miriam Cullen, ‘Separation of Powers in the United Nations System? Institutional Structure and the Rule of Law’ (2020) 17(3) *International Organizations Law Review* 492–530.

and/or other public and private institutions inside those IOs as discussed under the first set of issues.

As examples of democratic representation by IOs, one may think here of the debates surrounding the ways to ensure the dual democratic representation of States' peoples and EU citizens by the European Parliament in the EU.<sup>47</sup> Another more recent example is that of the democratic representation by the Council of the EU in the negotiation of international agreements by the EU or by the European External Action Service in other IOs.<sup>48</sup>

### 1.3 THE AIMS OF THE VOLUME

In light of the important current international and domestic stakes of the topic of democratic representation in, through, and by IOs in international law, both in practice and in theory, and the many issues it raises, there are at least two contributions of the discussion proposed in this volume.

First, and as I explained before, representation in, through, and by IOs has only been addressed in the form of a handful of articles and chapters to date, and without a focus on democratic representation itself in any case.<sup>49</sup> There have been, quite surprisingly for such a central topic in international IO law and in global democratic theory, no monograph and no edited volume dedicated to the issue of democratic representation in, through, or by IOs in English. In response to this identified gap in the literature, the best specialists of representation in both IO law and in democratic theory have been invited to contribute to this volume. They have been asked to explore the issues identified earlier and many others they deem pressing and interesting. They do so from the dual interdisciplinary perspective of international law and global democratic theory.

Second, and precisely on this last point, this volume is the first to open a dialogue, and hopefully a fruitful one, between international lawyers and global democratic theorists on the topic of democratic representation in, through, and by IOs specifically. Such issues are not usually addressed together and in all their philosophical complexity by existing accounts of the international law of representation. Those accounts tend indeed to oppose

<sup>47</sup> See Bellamy, 'Representing the Peoples of Europe', fn. 10; Jürgen Habermas, 'European Citizens and European Peoples: The Problem of Transnationalizing Democracy', in Jürgen Habermas, *The Lure of Technocracy*, translated by Ciaran Cronin (Malden, MA: Polity Press, 2015), pp. 29–45. See also Dubout and Ritleng, Chapter 13 in this volume.

<sup>48</sup> See Bouvier, fn. 28.

<sup>49</sup> See the references in fn. 19 and fn. 28. See for my own publications on the topic, the references in fn. 30.

democratic participation (and deliberation) to democratic representation and to reduce democratic representation to electoral representation and, generally, are not attuned to the latest debates on representation in democratic theory. Those issues cannot, conversely, be solved in an informed way by democratic theorists alone either. The latter often tend to overgeneralize and fail to grasp the sheer institutional complexity of IOs and international law-making in their midst. As a result, the volume should be of interest to both international lawyers and democratic theorists, but also well beyond and especially in international relations theory circles where most discussions of the legitimacy of IOs have actually taken place to date. More generally, it could also be a valuable resource to all international lawyers working on IOs and the ways to make them more legitimate, on the one hand, and to all political theorists interested in international democratic legitimacy, on the other.

In light of those two contributions to the debate, the volume has three aims. Its primary aim is, of course, to discuss the three issues identified in the previous section. Those three issues give the volume its tripartite structure. True, those issues often overlap, and actually should overlap to ensure full democratic representation by IOs.<sup>50</sup> They are only identified and distinguished here to help understand the many layers of the problem and, eventually, of the institutional reforms that could help address it more effectively.

So-doing, the volume's second aim is to contribute to the more general debate about the concepts and conceptions of representation in contemporary democratic theory, by extending that debate to the international plane. It purports to explore what 'representation' itself, and especially 'political' and 'democratic representation' should amount to and how they differ from 'legal' or other forms of non-democratic representation.<sup>51</sup> This includes clarifying, for instance, what should be the exact relationship between democratic legitimacy and democratic representation,<sup>52</sup> on the one hand, and what should be democratic representation's subjects,<sup>53</sup> objects,<sup>54</sup> relations,<sup>55</sup> and characteristics, on the other.

<sup>50</sup> See Besson and Martí, Chapter 12 in this volume.

<sup>51</sup> See Peters, Chapter 9 in this volume; Cogan, Chapter 4 in this volume.

<sup>52</sup> See Macdonald, Chapter 11 in this volume; Besson and Martí, Chapter 12 in this volume; Rosanvallon, Chapter 2 in this volume; von Bernstorff, Chapter 10 in this volume.

<sup>53</sup> See Pettit, Chapter 3 in this volume; Cheneval, Chapter 5 in this volume; Besson and Martí, Chapter 12 in this volume; Dubout and Ritleng, Chapter 13 in this volume; Peters, Chapter 9 in this volume.

<sup>54</sup> See Peters, Chapter 9 in this volume.

<sup>55</sup> See Besson and Martí, Chapter 12 in this volume; Macdonald, Chapter 11 in this volume; Peters, Chapter 9 in this volume; Runavot, Chapter 6 in this volume.

For this essential discussion in a volume on democratic theory to take place and to extend fully and freely to the international plane, I have deliberately refrained from imposing not only a single conception of democracy and democratic legitimacy, but also a single conception of representation in general and of democratic representation in particular (such as the ones presented in my chapter in this volume).<sup>56</sup> The various contributions therefore exhibit different understandings of international democratic representation which they have been asked to explain at the outset of their argument and justify by reference to or by opposition to others, including other accounts of democratic representation at work in the volume. This also implies for them to draw delineations from related widespread concepts in international law that are often used interchangeably and not sufficiently rigorously, such as, for instance, ‘participation’, and ‘deliberation’,<sup>57</sup> but also from ‘expertise’ and ‘lobbying’ in IOs.<sup>58</sup>

This should actually be done in light of the continuum between domestic and international public law and institutions and between comparative foreign relations law and the international law of representation,<sup>59</sup> and hence, more generally, between domestic and international democracy.<sup>60</sup> To the extent that the conference took place at the College of France, the volume features many French-speaking specialists. Given the importance of French-speaking discussions of representation in democratic theory, both past and recent,<sup>61</sup> and their questioning of the influence of Hanna Pitkin’s theory of

<sup>56</sup> See Besson and Martí, Chapter 12 in this volume.

<sup>57</sup> See Lagrange, Chapter 14 in this volume; Dubout and Ritleng, Chapter 13 in this volume; Runavot, Chapter 6 in this volume; de Frouville, Chapter 15 in this volume.

<sup>58</sup> See Durkee, Chapter 8 in this volume; Louis, Chapter 7 in this volume.

<sup>59</sup> On the latter and the international democratic representation by States, see Jenny S. Martinez, ‘The Constitutional Allocation of Executive and Legislative Power over Foreign Relations’, in Curtis A. Bradley (ed.), *The Oxford Handbook of Comparative Foreign Relations Law* (Oxford: Oxford University Press, 2019), pp. 97–114; Edward T. Swaine, ‘International Foreign Relations Law: Executive Authority in Entering and Exiting Treaties’, in Helmut P. Aust and Thomas Kleinlein (eds.), *Encounters between Foreign Relations Law and International Law: Bridges and Boundaries* (Cambridge: Cambridge University Press, 2021), pp. 46–59; Helmut P. Aust, ‘The Democratic Challenge to Foreign Relations Law in Transatlantic Perspective’, in Jacco Bomhoff, David Dyzenhaus and Thomas Poole (eds.), *The Double-Facing Constitution* (Cambridge: Cambridge University Press, 2020), pp. 345–375.

<sup>60</sup> See Besson, ‘Democratic Representation within International Organizations’, fn. 19.

<sup>61</sup> See e.g. Pierre Bourdieu, ‘La représentation politique: Éléments pour une théorie du champ politique’ (1981) 36–37 *Actes de la Recherche en Sciences Sociales* 3–24; Roger Chartier, ‘Le monde comme représentation’ (1989) 44(6) *Annales. Économies, sociétés, civilisations* 1505–1520; Marcel Gauchet, *La révolution des pouvoirs: La souveraineté, le peuple et la représentation* (Paris: Gallimard, 1995); Manin, fn. 18; Pierre Brunet, *Vouloir pour la nation: le concept de représentation et la théorie de l’État* (Paris: LGDJ, 2004); Rosanvallon, fn. 18;

representation<sup>62</sup> in Anglo-American circles,<sup>63</sup> their inclusion may contribute to diversify some of the recent discussions in global democratic theory, but also, by extension, in the philosophy of international law. Of course, for that theory to be truly global, such comparisons should be pursued beyond the boundaries of European and Western political and democratic theory. One may actually hope that international democracy law and especially the international law of democratic representation discussed in this volume will contribute to launching such comparative discussions in the future.

The volume's third and broader, albeit more distant, goal is to examine how IOs could be re-designed and re-organized under international law so as to ensure sufficient democratic representation of all those they claim to bind legally, either directly or through their Member States.

While the organizational diversity of IOs may be in the way of institutional design and amounts to part of the problem in this respect, it is this volume's premise that diversity has to be part of our debates about potential solutions. To that extent, the exploration of democratic representation in, through, and by IOs should also contribute to the larger discussion pertaining to a common international public status of those organizations and about their re-institution under public international law.<sup>64</sup> Again, I have deliberately refrained from imposing to all contributors a single and unified understanding of IOs (such as the one presented in my chapter in this volume).<sup>65</sup> The various contributions therefore exhibit different understandings of IOs which they have been asked to spell out and defend as part of their argument.

#### 1.4 THE STRUCTURE OF THE VOLUME

The volume is divided into three parts that correspond to the three sets of issues identified earlier and that are addressed in the respective chapters: democratic representation *in*, *through*, and *by* IOs.

Louis Marin, *Politiques de la représentation* (Paris: Kimé, 2005); Claude Lefort, 'Démocratie et représentation', in Claude Lefort, *Le temps présent: Écrits 1945–2005* (Paris: Belin, 2007), pp. 611–624; Sintomer, 'Le sens de la représentation politique', fn. 18; Samuel Hayat, 'La représentation inclusive' (2013) 50 *Raisons Politiques* 115–135; Hayat and Sintomer, 'Repenser la représentation politique', fn. 18; Myriam Revault d'Allonnes, *Le miroir et la scène: Ce que peut la représentation politique* (Paris: Seuil, 2016); Hayat *et al.*, fn. 18; Albertone and Troper, fn. 18.

<sup>62</sup> Pitkin, fn. 18.

<sup>63</sup> See Sintomer, 'Le sens de la représentation politique', fn. 18.

<sup>64</sup> See Besson, 'Democratic Representation within International Organizations', fn. 19. See also Besson and Martí, Chapter 12 in this volume; Lagrange, Chapter 14 in this volume.

<sup>65</sup> See Besson and Martí, Chapter 12 in this volume.

Each of those three parts comprises four chapters. In each part, both international lawyers and democratic theorists (some authors qualify, and consider themselves, as both) have been asked to address what they take to be the most interesting questions raised by democratic representation in, through, and by IOs. This mixed authorship in each part avoids a common but fake opposition between the ‘theory’ and ‘practice’ of international law, and makes the exchanges more fluid between the two groups of authors.

Coming back to the tripartite structure of the volume, there may be overlaps between some of the issues discussed in the chapters in each part and some of those discussed in the other two parts, as it is often the case when addressing complex democratic theory principles. This is also how it should be. As mentioned before, indeed, it is difficult to classify any given argument about representation as pertaining only to representation in, through, or by IOs as the former two are necessary to the latter. Importantly, moreover, those overlaps have been addressed in the relevant chapters. The idea has not been to ask contributors in the later parts of the volume to endorse what was said in earlier ones, but to ask them to refer to the relevant arguments provided their own argument requires them to do so and to explain how they agree or disagree with what was said earlier in the volume. Finally, the concluding chapter does not only close the volume by drawing the main conclusions of the overlapping claims made therein, but it also identifies remaining open questions and some directions for future research and, of course, for future reforms of IOs and their international law. To that extent, it should also be read as a self-standing chapter.

Last but not least: while certain contributions in the volume have opted for a theoretical, either general or comparative approach to the topic, others have chosen to focus on specific types of representative institutions only (such as States, cities, NGOs, Affected Peoples’ Organizations [APOs], refugees’ associations, trade unions, employers’ associations, business associations, the International Chamber of Commerce [ICC], the Interparliamentary Union [IPU], or the IOE); on particular types of represented subjects only (such as individuals, peoples including indigenous peoples, populaces, publics, polities, citizenries, public institutions, refugees, civil society, ‘affected peoples’, business entities, or animals and other non-human living beings); and in and by specific IOs only (such as the EU, the ILO, the UN, the WHO, the FAO, the UNHCR, international financial institutions [IFIs], or the World Organization for Animal Health [WOAH]).

The volume does not, therefore, aim to provide an exhaustive coverage of IOs, of the multiple representative public and private institutions in their midst (including of all the different types of CSOs), or of the multiple subjects

to represent therein. Nor does the structure of the volume aim at reflecting that multiplicity in any systematic way. This would go beyond the scope of what is, as I explained earlier, a first foray into the topic of democratic representation in, through, and by IOs. Conducting a more exhaustive and systematic study would certainly be worthwhile and this will hopefully be done by other researchers in the future.

### 1.5 THE CONTENTS OF THE VOLUME

The volume is divided in three parts: the first part pertains to democratic representation *in* IOs; the second part to democratic representation *through* IOs; and the third part to democratic representation *by* IOs. It starts with a general opening chapter on the state of discussions of representation in democratic theory in general and their relevance for international representation, and closes with a concluding chapter that also maps directions for future research.

In the opening Chapter 2, ‘The Dawn or Dusk of Democratic Representation’, Pierre Rosanvallon argues that, historically, democratic progress has been widely understood as correlated to the representative quality of institutions. Representativeness has been seen as essential for the social appropriation of institutions in societies analysed as having a class structure. In the national political order, parties were intended to represent the different social interests, and in the particular context of labour, the recognition of trade unions played this role. It is in this spirit that the ILO included trade unions in its various bodies when it was created a century ago, and, since then, the ILO has served as a reference point for representation at the international level. While this conception of representativeness remains relevant, the author argues that the scope of its application has become more limited. A growing number of essential issues, such as the conservation of the environment or the protection of privacy, are, in fact, directly political: they structure our common world. In this context, authority and legitimacy carry weight in the public debate. Representativeness, by which we can ‘measure’ the social weight of a speaker, is only secondary. ‘Public voices’ have come to have greater relevance, due to their ability to resonate with, and thereby focus and shape, public opinion. These ‘public voices’ are expressed by expert groups with specific subject-area knowledge, or by individuals who have benefited from the haphazard nature of media coverage. As a result, their integration into international life can no longer be institutionalized in the ‘old fashioned’ way.

The first part of the book is comprised of four chapters and pertains to democratic representation *in* IOs. Those chapters discuss different aspects of

the question. The first and third chapters address the identity of the subjects represented in IOs, be they a populace or sum of individuals, a State or public institution, or a people or citizenry, and reflect on whether there should be a single subject represented or many of those. The second and fourth chapters take a closer look at the different modes of representation in IOs, some being more democratic than others and, among the latter, some being clearly parliamentary, albeit in different shades of parliamentary representation.

In Chapter 3, ‘International Representation by State-Independent Bodies’, Philip Pettit discusses what might entitle agents or agencies that are not sponsored by the State, only by some other social group or organization, to represent their people in an international forum. A State-centred approach would deny that they ever have a title to such a role, while an individual-centred approach would hold that they have as good a title as the State. Both approaches have problems and the chapter presents a third, more satisfying alternative. On this approach, such bodies may claim to represent their people insofar as the State enjoys standby control over their proposals, being able to oppose them, should it wish to do so, with a radical veto or a moderate refusal to be bound. Ideally, however, the State with such standby control will be required to allow the proposals to be publicized domestically and to provide reasons for opposing them, if that is what it chooses to do. Under the arrangement proposed, State-independent representatives will be able to explore innovative ideas collaboratively with their counterparts from elsewhere, to identify imaginative solutions to common problems, and to have the opportunity to persuade their own States, under domestic pressure, to fall in line.

In Chapter 4, ‘The Four Modes of Representation in International Organizations and the Challenge of Democratic Legitimacy’, Jacob Katz Cogan describes four modes of representation in IOs – formal, operational, aspirational, and alternative. They are separate yet intertwined; they contend with yet depend on each other. Together they form the international system of representation. This is not simply descriptively true. The resort to, and the use of, the four modes is also optimal, under current conditions. All four are necessary, as for any successful system to evolve and maintain equilibrium there needs to be a variety of mechanisms available that allow for the balancing of competing values and the reconciliation of formal rules with the actualities of power and expectations of legitimacy, as the alignment will never be perfect. Importantly, the four modes allow a range of entry points for democratic legitimacy in the representative practices of IOs, creating the possibility of change going forward and meeting that challenge. The international representational system of the four modes is thus second best.

Yet second best is better than any of the possible alternatives while the process of change slowly proceeds.

In Chapter 5, '*Demoicratic Representation in and by International Organizations*', Francis Cheneval proposes that we approach *demoicratic* representation as a subtype of representation in international organizational practice. The chapter develops a social ontology of the People and theory of representation which underpins the thesis that the People is represented only by all the different types of representative persons who act within different types of governmental institutions and procedures of the People. A further important tenet of the chapter is that democratic Peoples are accountable to each other as Peoples and to each other's citizens. In a union of Peoples whose representatives act under any decision rule there is a possible second-order consent deficit about the decision rule. Consequently, in *demoicratic* representation, IOs ought to embody all the representative institutions of the People in their organization or be part of a system of mutual accountability and thereby assure *demoicratic* representation by IOs. *Demoicratic* representation ought not to be understood as working exclusively under the principle of consent. Rather it is the representational space in which the consent deficit about the decision rule of inter-People relations is addressed and calibration sought.

In Chapter 6, '*Democratic Representation and Parliamentarization of International Organizations: Between False Friends and False Pretences*', Marie-Clotilde Runavot argues that IOs are instances of international governance, that is, places where international (normative) power is exercised. As such, they are subject to requirements for democratization, among which is the need for democratic representation. The meaning of democratic representation varies. When applied to IOs in the context of globalization, democratic representation is understood as the set of mechanisms and techniques that make individuals present in their functioning, particularly in the making of international norms, including soft law. Among these mechanisms and techniques, parliamentarization is supposed to involve national parliaments to a greater extent, either as such, through their members, or through the institutions that bring them together: the international parliamentary institutions. Notwithstanding their diversity, these institutions appear to be the preferred vehicle for the parliamentarization of IOs because they institutionalize international parliamentary representation. Yet, the extent to which this parliamentarization effectively serves democratic representation in IOs is open to discussion. First, representation *within* international parliamentary institutions reveals that the parliamentary representative can be a false friend of IOs as democratic representatives. Moreover, representation *by* international parliamentary institutions or their members is often a false pretence

of democratic representation within IOs, despite clear democratic virtues for their functioning.

The second part of the book is comprised of four chapters and pertains to democratic representation *through* IOs. Those chapters address different aspects of the question. They focus either on specific representatives within IOs or on specific IOs. The first two chapters focus on the democratic credentials of the representation of and by business entities in IOs and how IOs contribute to making those entities more democratically representative, while a fourth chapter addresses the democratic representativeness of APOs and their status in IOs. A third chapter looks at a specific IO's contribution to the democratic representation of animals, that is, the WOA. H.

In Chapter 7, 'Differentiated Representation and Cross-Legitimization of Business in International Organizations: Comparing the International Organization of Employers with the International Chamber of Commerce', Marieke Louis proposes a socio-historical and comparative contribution to the controversy arousing around business participation and the democratization of global governance through a comparison between the ICC and the IOE in the twentieth and twenty-first centuries. While these two organizations have claimed to represent business and private enterprises at the global level, and have benefited from the legitimization of intergovernmental organizations themselves (the ILO and the UN) for more than a century now, they have done so in a quite differentiated way, both in their external relationships with intergovernmental organizations as in the definition of their internal representativeness. This chapter first delves into the process of institutionalization of the representation of the ICC and IOE. It then reveals the logic of their internal organization, particularly in their relations with their members, employers' associations, and multinational corporations. It insists on their selection process and the way they have built a collective entity that is now referred to as 'business'. By doing so, the chapter distinguishes the representation of the ICC and the IOE within IOs from the representation of business within and by the ICC and the IOE, insisting on the need for a more differentiated and historically grounded perspective on business actors in global governance institutions.

In Chapter 8, 'The Ambivalent Logics of Business Representation in International Organizations', Melissa J. Durkee begins by observing that the UN and its bodies have 'opened up' to a broad range of non-State actors over the last three decades, including for-profit actors and their representatives. The shift is reflected in the UN's Sustainable Development Goals and the Global Compact, emphasizing public-private partnerships; in greater participation of corporations at treaty conferences; in trade group roles as observers at

organizations; and in multi-stakeholder projects. Yet, IOs have generally not developed robust responses to legitimacy concerns about businesses becoming closely involved in lawmaking and governance projects. These concerns focus on interest group capture, entrenchment of Western economic elites, creeping privatization, and erasure of public deliberation. Indeed, the participation of for-profit actors and their representatives has largely been a ‘silent revolution’: under-heralded and under-examined. This chapter argues that responses to for-profit roles in the work of IOs tend to express one of two logics, not yet reconciled. The logic of ‘representation’ values public authority, interest representation, transparency, and accountability. The logic of ‘expedience’ values pragmatic problem-solving, efficiency, knowledge, and progress. Each has different priorities and blind spots, encompasses an array of theoretical approaches, and would push the international system in a different direction.

In Chapter 9, ‘Representation and Consideration of Animals in International Organizations’, Anne Peters starts by observing that decisions by IOs typically neglect the interests of non-human animals. The chapter investigates whether and how animal interests can and should be brought to bear on the decision-making of IOs. It works through cognate concepts ranging from animal citizenship over animal representation to animal consideration and animal deliberation. The physical limits of human-animal communication foreclose responsiveness and accountability to the animals themselves. The chapter therefore prefers the term animal ‘consideration’ rather than animal ‘representation’. After this groundwork, the chapter briefly canvasses some proposals for bringing animal interests to bear in democratic political processes. With due modifications, some schemes could be applied to the work of IOs. These range from animal ombudspersons, strengthening the voice of pro-animal CSOs through compulsory notice-and-comment procedures and extended speaking rights in the organizations, mandatory animal welfare impact assessment, and more. All attempts at upgrading the existing rudimentary schemes in the direction of a better and stronger consideration of animal interests in human politics, including in IOs, will require deep cultural and social change, including some which are to a large extent beyond the purview of existing law.

In Chapter 10, ‘Democratic Representation in International Institutions: From Great Power Hegemony to Rebellions by the Most Affected’, Jochen von Bernstorff observes that within and through international institutions, public and private, international, transnational, and national actors have reacted to recent crisis-phenomena in the field of international health, nuclear disarmament, and climate change by launching new political and legal initiatives. Broad coalitions of small and middle-sized States, including

CSOs are currently pushing for major institutional reforms in and outside certain international institutions such as IOs through complementary treaties reacting rather creatively to a perceived institutional stand-still often caused by great powers defending the legal and political status quo. The new treaty projects claim a specific legitimacy due to a stronger focus on those actors who are negatively affected by the existing regimes and their perceived deficiencies. The contribution describes these recent initiatives as a form of ‘rebellious treaty-making’ promoted by coalitions of ‘the most affected’ analysing their legal and theoretical repercussions in the context of broader legitimization-narratives in the law of IOs.

The third and final part of the book is comprised of four chapters and pertains to democratic representation *by* IOs. Those chapters discuss various dimensions of the question. The first two chapters address the institutional or constitutive dimension of democratic representation by IOs that contributes to the international re-institution of the world’s peoples. They do so in the specific context of the constitution of a new refugee constituency through representation by the UN in the first chapter, or more generally by questioning the a-political private law analogies prevalent in the international law of incorporation-based or agency-based representation by IOs in the second chapter. The third chapter takes a fresh look at the democratic representation of European peoples and citizens by the EU, while the fourth chapter explores the role of subsidiary organs and of deliberation in their midst as an alternative to the democratic representativeness of IOs in general.

In Chapter 11, ‘International Organizations as Orchestrators of Represented Constituencies: The Case of the Global Compact on Refugees’, Terry Macdonald examines how IOs can contribute to the development of representative practices that strengthen global institutional legitimacy. More specifically, the chapter argues that global representative practice can contribute to democratic legitimacy through a distinct set of constitutive representative activities, which function to cultivate – within socially and institutionally emergent groups holding democratic representative claims – those ties of political recognition, integration, and commitment required to constitute them as active and legitimizing democratic constituencies. IOs can engage in this constitutive representation through the orchestration of represented constituencies: intervening in relationships among representatives and their emergent constituents in ways that cultivate their collective legitimating qualities of political recognition, integration, and commitment. These claims are illustrated through an examination of the roles of the UNHCR and the UN General Assembly (UNGA) as orchestrators of a transnational represented constituency of refugees, via their work in supporting a range of democratic

commitments within the Global Compact on Refugees. Overall, this analysis shows how concepts of representation can be brought into closer alignment with the functional demands of democratic legitimation in the complex and dynamic political circumstances of contemporary global politics.

In Chapter 12, 'No International Democratic Representation without Institution: Lifting the Democratic Veil of Functionalist, Incorporation, and Agency Theories of Representation by International Organizations', Samantha Besson and José Luis Martí build upon their previous work on international democratic representation *in* and *through* IOs, and bring their argument in favour of IOs as 'multiple international representation systems' one step further to democratic representation *by* IOs. Their argument is three-pronged. The first section sets the conceptual framework for the argument by presenting what is meant by international 'democratic legitimacy' and 'representation' in the chapter. The second section specifies the subjects of democratic representation by IOs. It argues against an approach, now common both in international democratic theory and in the international law of IOs, that considers States to be the subjects of international representation as opposed to peoples, on the one hand, and to be States' peoples only as opposed to the multiple publics which those peoples, but also others, are re-instituted into by different public institutions now involved in international lawmaking, on the other. In the third and final section, the chapter turns to the relation of democratic representation by IOs. It criticizes three existing accounts of that relation, prevalent in theory and practice, for their lack of democratic legitimacy: functionalism, incorporation, and agency.

In Chapter 13, 'Democratic Representation in the European Union: Democratizing Democracy?', Édouard Dubout and Dominique Ritleng question the reality and possibility of the claim that the EU is founded on 'representative democracy'. In the absence of a European *demos*, three consecutive difficulties are analysed: the question of the unity of the represented, the representation of citizens as EU citizens, and, finally, the quest for representativeness of the European society. The reflection's conclusion points towards the complementarity and inseparability of the representative and participatory forms of democracy in a transnational context, with the participatory forms adding a transnational dimension to European representative democracy.

In Chapter 14, 'Extending the Sphere of Deliberation in Universal International Organizations: An Alternative to the Elusive Democratic Representation in/by International Organizations', Évelyne Lagrange argues that 'democratic representation' seems to have no explanatory power for the current structure and operation of universal IOs and a weak justificatory value

for upcoming political reforms of these IOs. However, under the benefit of a renewed approach to universal IOs' functions and deliberation, which is one of their meta-functions, the creation of new subsidiary bodies designed to accommodate delegates from non-State actors and enable, or even compel, intergovernmental bodies to take into account other interests and perspectives appears to be both necessary and feasible, without any reference to contentious criteria of representativeness based on a fragile principle of democratic legitimacy in international law. The alternative to 'democratic representation' consists in amplifying diffuse attempts to redesign the institutional architecture of universal IOs and harnessing the potential of international institutional law, implied powers and privileges and immunities regimes for the sake of a genuinely international, transnational, and transgenerational deliberation. Concretely, people speaking for sub-State communities (for example from the Global South), future generations or natural entities for instance should be given an institutional role within consultative subsidiary bodies, in combination with State representatives or scientific experts, or not – depending on what is necessary for the fulfilment of the IOs' functions. The current context of exacerbated competition between more and less democratic States, some of them obviously being authoritarian, also pleads for a modest approach to IOs political reform leaving the concept of democracy unaltered.

In Chapter 15, 'Conclusions', Olivier de Frouville does not intend to summarize and even less to close the debate launched by the volume, but instead to revert to the main issues addressed therein so as to identify further issues for research. All contributors agree that not only a discussion on democracy and representation in and by IOs is not purely speculative or theoretical, but that it seems necessary today. Still, contributors are not all in agreement on the need to use the concept of representation when addressing the democratization of IOs. Some question the link between democracy and representation, or whether developing representative systems is even feasible in IOs. This, in turn, leads to various definitions of the concept of representation. The multiple international representation system (MIRS) as proposed by Besson and Marti is based on a strict concept of democratic representation and contrasts with other more flexible concepts such as 'descriptive' or 'mimetic' representation. In the end, the various chapters in the volume address the merits of various concepts of representation, including those used in existing processes of global governance, when further democratizing IOs.