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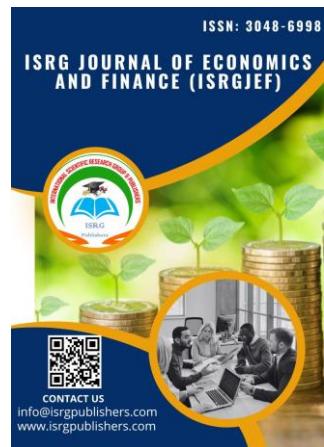
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An overview of the international legal system, the place and necessity of democratization

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Abstract

At the beginning of the third millennium, humanity is faced with a multitude of complex problems that challenge its freedom and autonomy.

In today's globalized and interconnected society, addressing and managing these issues, some of which were previously controllable by states, is beyond the reach of unilateral action by states and requires global response and management.

International law, as the legal order governing the international arena, has not been very successful in managing and mastering these problems; this is partly due to the nature and characteristics of the international community and, more importantly, is a result of the structural weaknesses and shortcomings of international law and its lack of objectivity and impartiality.

Based on an interdisciplinary methodology, the present paper considers the answer to the necessity of democratizing the international legal order as the central question of the present paper, as overcoming these problems and moving away from the existing situation, which can be achieved gradually and step by step.

From the point of view of the present author, the aforementioned process, by overcoming the shortcomings of international law, can help strengthen it to act as a global law that can help establish the rule of law at the global level.

Keywords: individual self-determination, democracy, global democracy, democratic shortcomings of international law, democratization of the international legal order

Introduction

Mankind begins the third millennium with a set of problems such as poverty, unemployment, infectious diseases, growing inequality within and between states, the proliferation of weapons, war and militarism, terrorism and fundamentalism, financial and environmental crises, asylum and migration, identity issues, violations of human rights and democracy, discrimination along lines such as sex/gender, ethnicity and race, widespread violence and states Undemocratic hands and feet soften.¹

What is important in this regard is to understand the causal connection of these problems with each other and with the system based on power, injustice and organized inequality that dominates the world. The above problems can be considered as the product of a system based on relations of authority and power at various levels, including the authority of individuals over individuals, individuals over nature, the state over individuals, the state over the state, a group of individuals over another group, and a group of states over some others, which in the final analysis create limitations on the realization of individual autonomy. Importantly, the globalization of problems has limited the ability of individual states to address them effectively, such that addressing these problems requires a global, non-state-based approach, in the form of an international or global legal order that is capable of effectively constraining states and other non-state actors active in the international arena.

It is not possible to address, control, and overcome these problems except through a set of regulations and norms of global scope, but international law, as a face of the legal system governing the widest social arena, has not been very successful in achieving this important goal.²

¹ See e.g. United nations, “Global Issues”, available at: <https://www.un.org/en/global-issues>, Last Visit 31/03/2024

² Of course, this varies according to the differences in the functions and goals envisaged for international law within the framework of different approaches. Brierley reminds us in stating such relativity that, as long as the goal of international law is to facilitate international relations, to create predictability and a degree of stability, international law has not only failed to achieve such goals, but has succeeded well in doing so. But if this role of international law is not satisfactory and there is a belief that international law, like national laws, can and should be used as an instrument To promote public welfare and even to appear as a powerful tool for preventing conflict, it must be admitted that it has so far failed. Both during the dominance of the natural law school and the positivist school, international law sought to regulate relations and coexistence between states, and based on the formalist universalism that reached its peak in the late 19th century, it was indifferent to the internal order of states. However, with the liberation of international law from metaphysical foundations and the dominance of positivism, the connection between law and its social foundations was completely severed. Monique Chamille Jeanroux, *Humanity and Sovereignty in International Law*, translated by Morteza Kalantrian, Tehran: Agha Publishing House, 2003, 109:109. Andrew Clapham, *Brierly's Law of Nations, An Introduction to the Role of International Law in International Relations*, Seventh Edition (Oxford: Oxford University Press, 2012), 85. With the exposure of the weaknesses of positivist formalism from the mid-twentieth century, modern approaches have placed law in its social context and emphasized

The limited success of international law in this regard is, on the one hand, rooted in the nature and characteristics of the international community, and on the other hand, it is the result of structural weaknesses and shortcomings in international law.

The lack of objectivity and impartiality of international law is also³ another factor in this matter. The lack of definition of international law⁴ and its ideological and political orientation make international law part of the problem, but this does not negate the solution of international law.

In other words, the recognition of the role of politics in international law and its lack of objectivity and impartiality does not mean the lack of independence of international law from politics in general and the denial of the rule of international law.

International law, in its relationship with power, is distinct from it, and as experience has proven, has played and continues to play a significant role in controlling and restraining power and in applying limitations to it in the field of international relations.

Therefore, while international law is part of the problem, it is also part of the solution.

Studies in response to the necessity of democratizing the international legal order, as the central question of the present paper, have progressed mainly in two directions in political theory and international law. In political theory, the main focus is generally on the fundamental values of democracy, whose realization by globalization has challenged the framework of classical political societies, and the reform and democratization of international law is presented as a pragmatic option to overcome these challenges.

the consideration of social problems and the advancement of social goals in the discourse of international law; however, since then, despite the inclusion of the problems of the international community in the agenda of international law, success in overcoming these problems has been limited. Antony Anghie, *Imperialism, Sovereignty and the Making of International Law*, (Cambridge: Cambridge University Press, 2004), 127-131

³New or postmodern international law jurists have raised and highlighted these issues. Criticism of international law within the framework of new current approaches, as Wheeler and Andreas Paulus have stated, has taken on a remarkable simplification, consisting of two streams of internal criticism and external criticism, whereby internal criticism exposes the internal inconsistencies of international law, the mainstream, and external criticism reveals the ideological and political bias of legal rules. See: Andreas L. Paulus, “International Law After Postmodernism: Towards Renewal or Decline of International Law?”, *Leiden Journal of International Law* 14, 4 (2001): 731-734 & J. H. H. Weiler; Andreas L Paulus, “The Structure of Change in International Law or Is There a Hierarchy of Norms in International Law?”, *European Journal of International Law* 8, (1997): 551-552.

⁴ Indeterminacy: According to a common definition in legal literature, the indeterminacy or vagueness of law means the lack of a single correct answer to legal questions or how the law applies to facts.

For example, cf.: Timothy A. O. Endicott, *Vagueness in Law*, (New York: Oxford University Press, 2000), 9 and Ken Kres, “Legal Indeterminacy”, *California Law Review* 77, 2 (1989): 283.

On the other hand, in international legal studies, usually assuming democracy as the desired way of governing, the main focus is on a set of democratic institutional requirements, and the need to democratize international law is a consequence of the shortcomings of these mechanisms. In an attempt to answer the aforementioned question, the present author has started from the concept of autonomy as a non-instrumental and central value of democracy. By avoiding a formal or visionary approach to the democratization of the international legal order, the necessity of this is seen as arising from the challenges of realizing autonomy in the state-centered perception of it in the present era.

Furthermore, the analysis of the issue from the perspective of international law shows how this process helps to overcome the shortcomings and obstacles to the functioning of international law as a determining force in the world order.

By adopting a critical approach and emphasizing the relationship between law and politics and the need to analyze law in its social context on the one hand, and emphasizing the structure, logic, and internal dynamics of law on the other, the present paper benefits from an interdisciplinary methodology and applies the analytical tools of social sciences to study, criticize, and reconstruct international law. While emphasizing the normative nature of law, it utilizes international law research methods such as analytical and descriptive methods in areas requiring research.

From the perspective of the present paper, overcoming the aforementioned problems that generally limit the autonomy of individuals,

goes through the path of reforming and democratizing the existing international legal order, and emphasizes that democratizing the international legal order with the value of autonomy as its center, can help overcome the intersecting structures of oppression and power, as well as challenge objectivism and subjectivism, and increase the legitimacy and compliance with international law, and in As a result, it helps to strengthen the rule of international law.

In proving this claim, an attempt is first made to clarify the concept of democracy and self-determination as its central values, and to explain the position of democracy in the international legal order.

Then, the reasons for the need to bring democracy to the global stage and then democratize the international legal order based on the value of self-determination are presented. Finally, some aspects of how the democratization of the international legal order can help strengthen the position of international law are addressed.

1. The concept of democracy and self-government

The concept of democracy has existed for centuries before Christ and has evolved over time and has undergone many changes.

However, the central idea of this concept, as is clear from its literal translation, is the government of the people. Democracy, when it matured enough to be described by the term democracy, was based on the rule of the people and their direct participation in the power and authority of the government.⁵

The idea of self-determination is therefore central to the concept of democracy.

Indeed, the promotion and increase of self-determination, both for individuals as citizens and for the collective, is the basis for the justification of democracy.⁶

Personal autonomy in its broadest sense, according to its etymology, means living according to one's own rules.⁷

The goal of personal autonomy is for individuals to have some control over their own destiny and shape it through continuous decision-making throughout their lives, and to put it simply, to be the architects of their own lives.⁸

It is clear that freely determining and guiding the course of one's life requires freedom from the authority and interference of others. The guarantee of self-determination of a group of interconnected individuals requires the existence of a general legal order and is inconceivable without it.⁹ But this order cannot be considered a natural reality or a historical necessity that does not require further legitimacy.¹⁰

When personal autonomy means that the individual is the architect of his own life, this includes both the private and public spheres, and in the public sphere it means the co-authorship of collective life, which is as valuable in itself as personal autonomy.¹¹

Therefore, the public order that can guarantee the autonomy of citizens is one that all act together as fellow citizens;¹² Therefore,

⁶ David Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Stanford, California: Stanford University Press, 1995), 145-146. Autonomy is a familiar term in philosophical, political, and legal literature that has been used throughout its rich and varied history, both in its collective and individual sense. Autonomy has its roots in the Greek word *autoxovouia*, which is a combination of the two words auto and law, and means freedom to use one's own laws. Henry George Liddell and Robert Scott, *A Greek-English Lexicon*, the Eighth Edition (New York: Harper & Brothers, Franklin Square, 1897), 253. It is said that the term autonomy most likely appeared in the mid-fifth century, following Athens' intervention in the internal affairs of the allies, to depict a specific need and a partial aspect of the concept of polis freedom. Kurt Raaflaub, *The Discovery of Freedom in Ancient Greece*, 157-160. It is clear that this term was created in connection with collective institutions and is often used in this context, because some argue that the concept of autonomy in these periods was not purely collective and intergovernmental, and its personal account, despite being rare, was by no means a concept far from the mind. Lucas Swaine, "The Origins of Autonomy", *History of Political Thought* 37, 2 (2016): 216-237. In any case, it can be said that Athenian democracy, given that it was based on the equal participation of citizens in government, embodied the concept of autonomy in its individual and collective dimensions.

⁷ Liddell and Scott, *A Greek-English Lexicon*, 253.

⁸ Joseph Raz, *The Morality of Freedom* (Oxford: Clarendon Press, 1988), 369.

⁹ Christian F. Rostbøll "The Non-instrumental Value of Democracy: The Freedom Argument", *Constellations* 22, 2 (2015): 268.

¹⁰ Ibid.

¹¹ Adam Lovett, "Democratic Autonomy and the Shortcomings of Citizens", *Journal of Moral Philosophy* 18, 4 (2020): 14

¹² Rostbøll "The Non-instrumental Value of Democracy: The Freedom Argument", 268.

⁵ Kurt Raaflaub, *The Discovery of Freedom in Ancient Greece*, Revised and Updated Edition (Chicago: University of Chicago Press, 2004), 262-263.

the two ideas of popular sovereignty and state sovereignty had to be reconciled.

The combination of the two ideas mentioned above takes place within the framework of a concept that David Held refers to as the principle of self-determination or democratic autonomy, which in fact includes the two principles of self-determination and limited government, and according to which, “individuals should have equal rights and, accordingly, equal obligations in determining the political framework that creates and limits the opportunities available to them; That is, as long as they do not use this framework to deny the rights of others, they are free and equal in the processes of consultation regarding and determining the conditions of their lives.”¹³

“The aforementioned principle requires the equal participation of self-governing individuals in creating a common structure of political action that guarantees the necessary conditions and capacities for self-determination in the form of certain fundamental rights and freedoms.

Held, by way of a thought experiment, examines the conditions necessary for the realization of democratic self-determination and correctly concludes that, beyond extreme forms of inequality such as apartheid, the unsystematic inequality of life chances¹⁴ is at odds with the principle of self-determination.¹⁵ He calls the asymmetry of the production and distribution of life chances organized by power relations, which leads to the limitation and erosion of the possibility¹⁶ of political participation and the creation of a common structure of political action, the neo-autonomic situation.¹⁷

The creation of a neo-autonomic situation and the limitation of the realization of autonomy can occur in different areas and by different forces.

In order for autonomy to be transformed from a formality into an effective one, it is necessary to protect autonomy in every domain that affects the individual's capacity for political participation. Held refers in this regard to the seven sites of power, including the body, well-being, culture or cultural life, civil society, the economy, the organization of violence and coercive relations, and the domain of regulatory and legal institutions that can function as neo-autonomic structures, and to guarantee the autonomy of the individual in relation to each of them. These neo-economic structures require a set of rights known as enabling rights¹⁸ or entitlements¹⁹, including health, social, cultural, civil, peace and political rights, which should be formally recognized and protected by democratic law.²⁰

Next, before examining the obstacles to the realization of democracy at the level of nation-states, it is necessary to consider the increasing complexity and interdependence of the global community. The status of democracy in the international legal system will be briefly examined.

2. International Law and the Crisis of Democracy

Despite its emergence and development as a form of government among real individuals within separate territorial units, democracy is not limited to this level and, as a method of collective decision-making based on equality and collective control, is applicable at any level, including in the international sphere.²¹ However, democracy in the international arena, given the differences between domestic societies and the international sphere, is It has different players, including real and legal persons, and multiple levels of power and decision-making at the national, regional and global levels, and will vary with the national arena.

Accordingly, in examining the place of democracy in international law, a distinction should be made between democracy in relations between states (horizontal level) and citizen participation in decision-making at the national and international levels (vertical level).

Regardless of whether international law is the product of a democratic process or not, the international legal order suffers from democratic deficiencies in both vertical and horizontal dimensions, which ultimately conflict with the autonomy of individuals.

On the other hand, the application or concept of democracy in a system based on cooperation between states as the constituent units of the international legal order requires mutual respect for each other's sovereignty and an equal share of states in decision-making in various fields of cooperation and collective action. However, even in such a state-centric conception of democracy that is indifferent to non-state entities such as minorities, including indigenous peoples and stateless nations, international law, despite the manifestation of the concept of democracy in its principles and doctrines, including the doctrine of sovereignty, the doctrine of the equality of states, the principle of equal rights and self-determination of peoples, and the principle of distributive justice²² in practice in various areas of decision-making in political, economic, and military matters, It is undemocratic; it leads to the production and reproduction of inequality between states.

Despite the democratic principle of equality of members, international organizations often operate in their public bodies, while effective decisions are usually taken in non-public executive bodies in which not all states are represented²³, and the decision-making process in them favors the interests of a minority of powerful states over the majority.

¹³ David Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance*, 147

¹⁴ Life chances in this context are “the chances of an individual to share in the benefits, rewards, and opportunities created socially in their society, whether economic, cultural, or political.”. *ibid.*

¹⁵ See: *ibid.*, 160-172.

¹⁶ Nautonomic

¹⁷ *Ibid.*, 171. For example, the economy in a capitalist system or the culture in multinational states based on the dominance of one ethnic group over others, given the unequal distribution of life chances, impose limitations on the creation of a common structure of political action and, consequently, autonomy.

¹⁸ Empowering Rights

¹⁹ Entitlement Capacities

²⁰ See: *ibid.*, 176-200.

²¹ David Beetham, “Conditions for Democratic Consolidation”, *Review of African Political Economy* 21, 60 (1994): 159.

²² M.C.W. Pinto, “Democratization of International Relations and its Implication for Development and Application of International law”, *Asian Yearbook of International Law* 5, (1995): 113-115.

²³ Jan Wouters, Bart De Meester, and Cedric Ryngaert, “Democracy and International Law”, *Netherlands Yearbook of International Law* XXXIV, (2003): 180.

This is clearly and primarily evident in the United Nations Security Council and also in organizations active in the economic arena, including the World Trade Organization, the International Monetary Fund, and the World Bank.

At the vertical level, too, in the shift from the perception of the majority's direct participation of all citizens in the international arena to the perception that individuals, through indirect participation, are considered the ultimate source of the international legal order, it must be said that the international legal order has a significant democratic deficit in this dimension.

With the optimistic and unrealistic assumption that states are considered representatives of all individuals living within their territory in the international arena, it can be said that inequality at the horizontal level and between states leads to the violation of the autonomy of citizens of states that tolerate inequality in decision-making in the international arena; However, the assumption of representation of citizens by their respective states in the international arena is questionable because international law does not require the democratic legitimacy of state representatives in international organizations or in the law-making process, and states are represented in this arena primarily by their executive powers, which do not necessarily represent the citizens of these states and do not have democratic legitimacy.²⁴

Regarding democracy at the national level, it should also be said that international law established after the establishment of the United Nations, given its fundamental centrality such as the equality of independent states and the organization's non-interference in matters that fall within the internal jurisdiction of states, was essentially neutral with respect to the internal order and form of government of states²⁵ and did not concern itself with intra-state democracy. However, since the late 1980s, democracy at the national level has been placed on the international agenda, and cooperation in the international arena in promoting democratic discourse has emerged in various forms, leading to the penetration of democratic principles into international theory and practice, from assistance in the transition to democracy by international organizations to the recognition of democracy as a condition for membership in international organizations, recognition of states and governments, Foreign aid has been provided.²⁶

In such a space, some jurists have advocated an emerging norm under the title of democratic entitlement, right to democratic governance, or right to democracy.²⁷

²⁴ See e.g. *ibid.*, 177-180 and Curtis A. Bradley & Jack L. Goldsmith, "Presidential Control over International Law", *Harvard Law Review* 131, 5 (2018).

²⁵ Military and Paramilitary Activities in and Against Nicaragua (Nicar. V. U.S.) Judgment, 1986 I.C.J. Rep 14.

²⁶ See e.g. Wouters, Meester and Ryngaert, "Democracy and International Law", 142-177; Gregory H. Fox & Brad R. Roth, "Democracy and international law", *Review of International Studies* 27, (2001): 327-335.

²⁷ Thomas M. Franck, "The Emerging Right to Democratic Governance", *American Journal of International Law* 86, (1992); Thomas M. Franck, "Democracy as a Human Right", in *Human Rights: An Agenda for the Next Century*, edited by Louis Henkin and John Hargrove (Washington: American Society of International Law, 1994); Jude Ibegbu, *Right to Democracy in International Law*, (Lewiston: Edwin Mellen Press,

But it is clear that a binding norm in this regard has not yet emerged in the international legal order.

3. Democratizing the International Legal Order as a Way to Overcome the Crisis of Democracy

3.1 The Necessity of Practicing Democracy on the World Stage

Historically, the guarantee of individual autonomy has taken place within the framework of separate territorial units.

The realization of the need to protect the autonomy of citizens vis-à-vis States through international law gradually led, after World War II, to a shift from formalist intergovernmental law based on sovereign equality and non-interference in the internal affairs of States to a system under which substantive norms have developed, largely within the framework of international human rights discourse, with this aim in mind.

Also, as mentioned, with the collapse of the Eastern Bloc in the late 1980s, the promotion of democracy at the national level became prominent in international law discourse and was reflected in legal theory and practice. Despite the need for the aforementioned advances in protecting the autonomy of individuals vis-à-vis states, the world under the influence of globalization is witnessing an interconnected and complex economic, social, and political order under which the autonomy of nation-states is limited and the fate of citizens is influenced by processes that transcend national borders; therefore, the possibility of realizing their autonomy at the level of national democracies has been challenged.

Globalization, in addition to creating limitations on the sovereignty and autonomy of states, has reduced their ability to act to guarantee the autonomy of their citizens.

In particular, the rapid growth of transnational networks has created new forms of decision-making involving various actors, including states, international organizations, and a wide range of transnational pressure groups that have limited the autonomy and sovereignty of states.²⁸

In addition, globalization under the logic of the market has led to the emergence of new exchanges, relations, and centers of power beyond states, which are beyond the control of states, narrowing the scope of state activity, and limiting their ability to make independent decisions.²⁹

In addition, globalization has led to an increase in transboundary problems such as climate change, transnational organized crime,

2003); Fox & Roth, "Democracy and international law" & Susan Marks, "International Law, Democracy and the End of History", in *Democratic Governance and International Law*, Edited by Gregory H. Fox & Brad R. Roth, (Cambridge: Cambridge University Press, 2000).

²⁸ See: Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance*, 107-113

²⁹ Kalos Müller, *Sovereignty, Democracy and World Politics in the Age of Globalization*, translated by Lotfa Ali Semino (Tehran: Akhtaran, 2005).

international terrorism, and human trafficking, which are beyond the control and response of individual states.³⁰

Furthermore, the global security system, with the increase in weapons of mass destruction and military technologies, imposes more constraints on the defense and foreign policies of states than ever before.³¹

Michael Mann summarizes four main mechanisms proposed to weaken the nation-state:

First, current capitalism, which is global, transnational, industrial, informational, consumerist, neoliberal, and reorganized, weakens the nation-state (its macroeconomic planning, its citizens' sense of collective identity, and so on); second, global constraints, especially environmental and demographic threats, by Nation-states are not manageable alone; third, identity politics and new social movements increase the salience of supranational and supranational identities at the expense of national identities and the classes governed by the nation-state; and fourth, post-modern geopolitics leads to a weakening of state sovereignty and a hardening of geopolitics.³²

On the other hand, globalization has increasingly interconnected different societies around the world. It is, as decisions taken in one part of the world have consequences for citizens of all states.³³

In fact, in the current global environment, the living conditions of citizens are not determined solely within the framework of the states in which they live, but are also influenced by events and processes beyond the national borders of their respective states, such as the decisions and actions of other states, international organizations, and actors. Non-state and market economy are considered to be those in which citizens, as those affected by them, have no role or influence in shaping them.

Therefore, in the current globalized society, the realization of individual autonomy at the level of national political societies becomes practically impossible in view of the weakening of state autonomy and the challenge of traditional political societies.³⁴

³⁰ Jens-Uwe Wunderlich and David J. Bailey (Editors), *The European Union and Global Governance: A Handbook* (London, Routledge, 2011), Introduction.

³¹ See: Held, Democracy and the Global Order: From the Modern State to Cosmopolitan Governance, 113-120, Daniele Archibugi, "Principles of Cosmopolitan Democracy", in *Re-imagining Political Community: Studies in Cosmopolitan Democracy*, (Stanford, CA: Stanford University Press, 1998), 203-204.

³² Michael Mann, "Has Globalization Ended the Rise and Fall of the Nation-State?", *Review of International Political Economy* 4, 3 (1997): 473-474

³³ Archibugi, "Principles of Cosmopolitan Democracy", 204-205.

³⁴ Held, Democracy and the Global Order: From the Modern State to Cosmopolitan Governance; Daniele Archibugi, *The Global Commonwealth of Citizens, Toward Cosmopolitan Democracy* (Princeton & Oxford: Princeton University Press, 2008); Jürgen Habermas, *The Postnational Constellation Political Essays*, Translated by Max Pensky (Cambridge & Massachusetts: The MIT Press, 2001); John S. Dryzek, *Deliberative Global Politics Discourse and Democracy in a Divided World (Key Concepts)* (Cambridge & Malden: Polity, 2006); Heikki Patomaki and Teivo Teivainen, *A Possible World: Democratic Transformation of Global Institutions* (London & New York: Zed Books, 2004); Richard Falk, *On Humane Governance* (University Park, Penn.: Penn State University Press, 1995); Anthony G. McGrew, "Democracy beyond Borders?: Globalization and the Reconstruction of Democratic Theory and Politics", in *The Transformation of Democracy? Globalization and Territorial Democracy* (Cambridge: Polity Press, 1997). Daniele Archibugi and David Held, "Cosmopolitan Democracy: Paths and Agents", *Ethics and International Affairs* 25, 4 (2011): 438-440 and Daniel Bray and Steven Slaughter, *Global Democratic Theory: A Critical Introduction*. (Cambridge and Malden: Polity Press, 2015)

Due to the centrality of the concept of autonomy in democracy and the importance of the adaptation of decision-makers Political and those affected by these decisions In this process, the realization of the autonomy of citizens in a globalized society, regardless of its feasibility, considering the realities existing in the world order and at the ideal level, requires their self-regulation in all public decisions, the consequences of which extend beyond borders and direct and influence their lives. In other words, the realization of autonomy and government Democratic law in a political society in conditions of global integration, protecting it from threats emanating from other political societies and also from networks of interaction beyond the boundaries of societies and governments, requires democratic law at these levels, which is a requirement of democratic law in the global arena.³⁵

3.2 Possible Forms of Democracy on the World Stage in Contemporary Times

In the simplest and most ideal case, regardless of the realities prevailing on the international stage, democratic law on the world stage is conceivable within the framework of a centralized world state that, by addressing all the neo-economic structures that affect the autonomy of global citizens, creates the conditions and capacities necessary for the realization of their autonomy for participation. It would provide an equal opportunity to create a common structure for global political action; however, the idea of a centralized global state is neither possible nor even desirable, given the multiple levels of power and decision-making in the global community.³⁶

It should be noted that while the shift away from traditional sovereignty and the erosion of the unlimited power of nation-states in the age of global capitalism cannot be denied, neither can the path of the Agras be taken in this matter and these developments be attributed to the end of the age of nation-states.

In this regard, by highlighting the relations of political power in the context of the institutions that have been proposed to weaken the state, we propose two political institutions:

First, state institutions still maintain their practical effectiveness because they still provide the necessary conditions for social existence, and second, given the differences between nation-states on the world level, the aforementioned processes have a different impact on different states in different regions. They do so in different ways.³⁷

Despite these issues, the desirability of the idea of a world government has also been challenged on the grounds that it would

Penn State University Press, 1995); Anthony G. McGrew, "Democracy beyond Borders?: Globalization and the Reconstruction of Democratic Theory and Politics", in *The Transformation of Democracy? Globalization and Territorial Democracy* (Cambridge: Polity Press, 1997). Daniele Archibugi and David Held, "Cosmopolitan Democracy: Paths and Agents", *Ethics and International Affairs* 25, 4 (2011): 438-440 and Daniel Bray and Steven Slaughter, *Global Democratic Theory: A Critical Introduction*. (Cambridge and Malden: Polity Press, 2015)

³⁵ Held, Democracy and the Global Order: From the Modern State to Cosmopolitan Governance, 226-227

³⁶ Catherine Lu, "World Government", in *The Stanford Encyclopedia of Philosophy* (2006), Available at: <https://plato.stanford.edu/entries/world-government/>

³⁷ Michael Mann, "Has Globalization Ended the Rise and Fall of the Nation-State?", p. 474.

open up the possibility of escape to political societies, lead to tyranny, lead to world war or at least civil war, end politics and democracy, lead to the loss of real political identity, and also homogenization.³⁸

However, avoiding a centralized global state should not lead to the rejection of any idea of supranational power.

To overcome the shortcomings of the global state, global democracy must simultaneously preserve decentralization and centralization, while ensuring the necessary conditions for the political participation of citizens at the global level through multiple levels of power and decision-making, including national levels.

Some proposed models of global democracy, such as global democracy and, in particular, global federalism, have specifically implemented such an arrangement.³⁹

According to these models, and especially the model of global federalism, such a system for guaranteeing the autonomy of individuals at the global level requires a democratic federation of nation-states around a global democratic law, a global parliament consisting of elected representatives of the people, and the necessary courts to protect this law and resolve and settle disputes in this regard.

In this framework, the principle of self-determination, in multiple centers of power, is implemented based on the principle of complementarity⁴⁰, citizens will be subject to both national and supranational powers, and global democratic law, in order to ensure the realization of citizens' self-determination, sets specific limits and standards for behavior at different levels, including states, international organizations, the economy, and civil society.⁴¹

Although global democracy with the above requirements theoretically contains the necessary conditions for the realization of individual autonomy on a global scale, its feasibility in the context of the political and social realities prevailing on the international

stage is highly questionable. In fact, in the current conditions of the international community and for the foreseeable future, the possibility of forming a global democracy, containing the above institutional requirements, is far from reality; Therefore, the only option available at present is international law, which, although it has democratic flaws and has failed to function as an effective global law as it should, is an undeniable manifestation of democratic discourse in its literature and even policies.

Democratization of the international legal order, as a gradual and multi-level process with the aim of guaranteeing the autonomy of all individuals at the global level, should begin with the existing international legal institutions and structures, centered on the United Nations system, and by examining its shortcomings in the manifestation and guarantee of autonomy as a central value of democracy, it should strive to implement as many reforms as possible at each stage to manifest democratic values and guarantee the autonomy of individuals at the global level. The world has come into being. This is due to the democratic shortcomings of the international legal order, which requires reforms to ensure democracy at various levels, including at the national, international and supranational levels, including the obligation to guarantee the autonomy of citizens by states and the strengthening of the relationship of representation between states and their citizens in international forums, increasing the accountability of non-state actors, including the economy and supranational corporations, and the obligation of international legal commitments to They are: strengthening the voice and role of civil society organizations in international decision-making centers, with an emphasis on reflecting the voices of individuals and groups that are voiceless and silenced; increasing equality among states in decision-making in various political, economic and social fields; increasing accountability, transparency and public participation in international institutions; and helping them to promote democracy and express the autonomy of individuals at the global level.

It is worth mentioning that, in addition to the need to ensure the necessary conditions for the realization of individual autonomy through strengthening respect for international human rights by various state and non-state actors, it is necessary to control important spaces of power such as the body, economy and culture, which, despite the production and reproduction of inequality at different levels along lines such as class, gender, race, ethnicity and geography, receive less attention in the discourse of international human rights. They have decided that greater efforts should be made to enhance respect for, protect and fulfill all generations of human rights, beyond civil and political rights, including economic, social and cultural rights, collective rights and also group rights, in order to protect national and sub-national identities and minorities.

4. Democratizing the International Legal Order and Helping to Strengthen the Position of International Law

In addition to the above reasoning process that solely justifies the need to bring democracy to the world stage, from the perspective of international law, the process of democratizing the international legal order can help overcome the shortcomings that have hindered the success of international law in carrying out the specific tasks of international law. Indeed, although the establishment of the rule of law is a requirement of the global democratic order, the process of

³⁸ . William E. Scheuerman, *The Realist Case for Global Reform* (Cambridge & Malden: Polity Press, 2011), 149-168.

³⁹ Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance*; Daniele Archibugi and David Held (Editors), *Cosmopolitan democracy: An agenda for a new world order* (Cambridge: Polity Press, 1995); Archibugi, *The Global Commonwealth of Citizens. Toward Cosmopolitan Democracy*; Raffaele Marchetti, "Global Governance or World Federalism? A Cosmopolitan Dispute on Institutional Models", *Global Society* 20, 3 (2006); Raffaele Marchetti, *Global Democracy, For and Against: Ethical Theory, Institutional Design, and Social Struggles* (Abingdon Oxon & New York: Routledge, 2008); Raffaele Marchetti, "Models of Global Democracy: In Defence of Cosmo-Federalism", in *Global Democracy: Normative and Empirical Perspectives*, Edited by Daniele Archibugi, Mathias Koenig-Archibugi and Raffaele Marchetti (New York: Cambridge University Press, 2012).

⁴⁰ . Subsidiarity

⁴¹ . See e.g. Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance*; Marchetti, "Global Governance or World Federalism? A Cosmopolitan Dispute on Institutional Models"; Marchetti, *Global Democracy, For and Against: Ethical Theory, Institutional Design, and Social Struggles* and Marchetti, "Models of Global Democracy: In Defence of Cosmo-Federalism".

democratization of the international legal order itself leads to the strengthening of the rule of international law. Among the obstacles to the establishment of the rule of international law, one can point to the lack of objectivity and impartiality of international law, which, in addition to creating discrimination and inequality at various levels, has had and continues to have a negative impact on the ability of international law to effectively limit arbitrary power, in view of the challenges to justice and universality and, as a result, the legitimacy of international law and compliance with it.⁴⁵

The existing world order is the product of multiple and intersecting power structures and relations such as capitalism, imperialism, racism, and heteropatriarchy⁴² (or heterosexual patriarchy) that have shaped it into its current form over the course of centuries. International law, as the legal system governing the international arena, has also, since its inception, acted as a tool to legitimize these structures, and along with the aforementioned structures, it has been instrumental in creating an unjust system. Throughout history, under seemingly objective and neutral rules, oriented along categories such as culture, race, and gender, international law has gradually created, expelled, and suppressed marginalized groups such as the Third World and women.⁴³

International law emerged as a state-centered body of law and has continued to do so.⁴⁴

In other words, despite the fundamental departure of international law from its Westphalian model, it is still largely an interpreter of the desires, values, and interests of states, which do not necessarily align with the interests of individuals.

Despite the gradual protection of individuals by international law after World War II, which in itself is considered a positive step towards limiting state sovereignty and humanizing international law, given the lack of change in the aforementioned foundations, there is a wide gap in practice between the recognition of these rights and their observance and respect.

Related to this feature, geopolitical power and competition have been a determining force in determining the content and functioning of international law. Powerful states have always

viewed international law as a tool for exercising power over weaker states and have sought to use it to assert and consolidate their authority over other states.⁴⁵

Moreover, capitalism, as the dominant economic system in the world since the sixteenth century, has been one of the important forces in determining the form and content of international law, and international law has provided the necessary legal foundations for the functioning of capital in the historical stages of the development of this system.⁴⁶

International law, throughout its history, has also, in the face of Western hegemony, presented a divide between European (Western) and non-European (Eastern) peoples, the former generally civilized and the latter uncivilized, and has subsequently presented doctrines such as sovereignty to overcome such a divide, i.e., to bring uncivilized/abnormal/violent individuals into the realm of civilization.⁴⁷

International law cannot be defined as an objective system devoid of sex/gender and sexual orientation. The orientation based on these categories is observable not only in the masculine composition of international law in the institutional arena and the differential impact of its rules on individuals based on these categories, including with regard to the focus of international law on the public sphere, but also in the basic concepts and structures of the international legal order, which are manifestations of a masculine and heterosexual mentality⁴⁸ and values.⁴⁹

Contradictions and indeterminacy in the internal structure of international law also act as a source of injustice and injustice within the international legal order, preventing definitive conclusions from being reached through legal reasoning and analysis and providing the basis for different interpretations.⁵⁰

It is worth noting that the relationship between international law and power structures is not a matter of reducing international law to a mere tool for the interests of the ruling classes, because international law, as one of the determining forces in the world

⁴⁵ Wilhelm G Grewe, *The Epochs of International Law*, Translated and revised by Michael Byers, (Berlin & New York: de Gruyter, 2000)

⁴⁶ B. S. Chimmi, *International Law and World Order: A Critique of Contemporary Approaches*, Second Edition, (New York: Cambridge University Press, 2017), 477-515

⁴⁷ Antony Anghie, "The Evolution of International Law: colonial and postcolonial realities", *Third World Quarterly* 27, 5 (2006): 741-742.

⁴⁸ . Subjectivity

⁴⁹ . See e. g. Hilary Charlesworth, Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester: Manchester University Press, 2000); Dianne Otto, "Taking a Break from Normal: Thinking Queer in the Context of International Law", *American Society of International Law Proceedings* 101, (2007).

⁵⁰ See: Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument*, (New York: Cambridge University Press, 2005); David Kennedy, "A New Stream of International Law Scholarship", *Wisconsin International Law Journal* 7, 1 (1988); Deborah Z. Cass, "Navigating the Newstream: Recent Critical Scholarship in International Law", *Nordic Journal of International Law* 65, (1996); Anthony Carty, "Critical International Law: Recent Trends in the Theory of International Law", *European Journal of International Law* 2, 1 (1991).

order, has a degree of independence from power structures and has, throughout history, in an ascending process, supported the interests of the oppressed, including weak states. It will be further noted that the democratization of the international legal order, including by overcoming existing inequalities and increasing the objectivity of international law, which in turn leads to an increase in the legitimacy of international law and the compliance of states with its rules, helps to strengthen the rule of international law.

4.1 Overcoming the Challenge of Objectivity and Mentality

By challenging the objectivity and neutrality of international law, by highlighting the role of mentality in the formation and functioning of international law, as well as the discrimination and authority based on it, which gives different individuals and identities different positions in the hierarchy of power, the necessity of overcoming the existing inequalities and the reflection of various mentalities in international law is raised. However, on the other hand, given the diversity and interdependence of the aforementioned structures, it is necessary to find a practical way to deal with all of these structures simultaneously, without neglecting any of them. On the other hand, the aforementioned relativism, which has been put forward in opposition to the claimed objectivity of international law, has in fact, by denying and concealing the mentality, in practice leading to the exclusion of specific mentalities as objective and universal at the cost of suppressing all other mentalities, and itself entails the risk of losing the objectivity and universality of international law, which is required for international law to function effectively as global law. Therefore, the manifestation of diverse mentalities in international law must be ensured in a way that does not jeopardize the universality of international law.

Therefore, it was necessary to avoid both of the aforementioned extremes, namely relativism and absolute mentality or objectivism in the guise of power, and to find a way that would allow for the diversity of mentalities in the discourse of international law without threatening its objectivity and universality, in other words, to achieve objectivity without expelling, suppressing, and sacrificing diverse mentalities.

It seems that the only possible way to avoid these two extremes and achieve such a compromise is the consensus of diverse mentalities in the pursuit of objectivity.

This consensus in any field can be achieved through rational debate and argument. Achieving this in the field of international law requires understanding international law from an interdisciplinary perspective in the sense of the participation of different mentalities in the search for legal objectivity.⁵¹

In fact, international law itself can act as a bedrock for this process.

As Emmanuel Jovane puts it, international law, as part of the problem and the solution, in addition to concealing the hegemonic goals of the most powerful players, "can be considered as a paradigmatic space⁵² within which non-conscious processes of negotiation and consultation on the interpretation and application

of values, principles and rules, whether at the level of specialized or general institutions, can be developed in the framework of judicial decisions or debates. Diplomacy flourishes.⁵³

However, as mentioned, in addition to the inequality between states at different levels of decision-making in the international arena, states are not necessarily representatives of their citizens and are present at the level of specialized or general international institutions as structures that are often the result of an incomplete process of state-nation building and as patriarchal structures based on national interests and also as protectors of the interests of special classes. Therefore It cannot be expected to be willing or even able to reflect the interests, values, and experiences of all marginalized individuals and groups, such as women, sexual and gender minorities, ethnic minorities, stateless nations, and disenfranchised identities; so long as international law continues to be state-centered and undemocratic, it cannot provide a suitable platform for advancing this process. The democratization of the international legal order, based on the central value of self-determination, requires the flourishing and actualization of this potential in international law.

This process, in fact, is the only way available for the participation of diverse mentalities at the global level, in the process of reaching an international consensus and objectivity in international law; Because the democratization of the international legal order, with a focus on autonomy, is carried out with the aim of transforming the international legal order into a common structure of political action in which citizens at the global level, with their diverse mentalities and identities, participate and are represented.

Moreover, the protection of autonomy as an essential value of democracy requires its protection against all power centers that could act as neo-autonomous structures.

Similarly, the gradual democratization of the international legal order is an effort to protect the autonomy of individuals worldwide, against all neo-economic structures such as capitalism, geopolitics, racism, and heteropatriarchy that have led to inequality among states, sexual/gender inequality, class inequality, racial and ethnic inequality, and in the international legal order. Therefore, the aforementioned process can be viewed as a pragmatic approach to simultaneously overcoming all existing inequalities in the international legal system without prioritizing one over the others.

4.2. Enhancing the Legitimacy of International Law and Compliance with It

The rules of international law, like domestic legal systems, require social acceptance, or in other words, legitimacy.

In fact, the internality of the rules, or in other words, the sense of commitment of the subjects of a legal system to its rules, is one of the conditions for the existence of that legal system.⁵⁴

The lack of objectivity and impartiality of international law and its connection to intersecting axes of discrimination and inequality have challenged such acceptance and a sense of global commitment, which in turn has been cited as one of the reasons for

⁵¹ Henrique Marcos & Nizamuddin Ahmad Siddiqui, "The Mainstream and the Intersubjective in International Law: From Objectivity to Imagination", In *Direito Internacional em Expansão*, Edited by Wagner Menezes, (Belo Horizonte, Arraes Editores, 2022).

⁵² Paradigmatic Space

⁵³ Emmanuelle Jouannet, "Universalism and Imperialism: The True-False Paradox of International Law?", *The European Journal of International Law* 18, 3 (2007): 397.

⁵⁴ Herbert Hart, *The Concept of Law*, translated by Mohammad Rasek (2011) and Shamilieh Genaro, *Humanity and Sovereignty: A Course in International Law*, 76-79. Tehran: Nay Publishing House,

the violation and non-compliance with the rules of international law.

In this regard, jurists have shown that states respect the rules of international law for a variety of reasons;⁵⁵ reasons that cannot be reduced to the existence of coercion.

One approach in this regard is to root compliance in the legitimacy and justice of international law.

Thomas Frank, in response to the question “Why do states, especially powerful states, obey international law?”⁵⁶, appeals to the legitimacy and fairness of international law,⁵⁷ and states that “if a decision is made with a combination of legitimacy and fairness, it is more likely to be implemented and less likely to be disobeyed.⁵⁸”

He considers the equal application of the rules to subjects as one of the components of legitimacy. The rules of international law are binding.⁵⁹

Accordingly, the existence of inequality and ideological and political orientation of international law that places different individuals and identities in different positions in the hierarchy of power, with a view to challenging the universality of international law, has a negative relationship with social acceptance, legitimacy and compliance with international law, and prevents the establishment of the rule of international law and the effective functioning of international law; In the same way, overcoming the inequalities existing in the international legal order and breaking international law from specific mentalities and reflecting multiple mentalities at the global level can bring true objectivity to international law.

This will cause international law to gradually become a mirror in which not only all states but also all individuals and groups with diverse identities around the world can see themselves in it, not feel alienated from it, and consequently speak its language.

Therefore, including the values, concerns, interests and distinctive experiences of all global citizens, which the current international legal process does not adequately reflect, can enhance the credibility of the universality of international law, its legitimacy and, consequently, its compliance, and thus contribute to the institutionalization of the international community and the strengthening of the position of international law.

As Boutros Ghali reminds us, while referring to the role of power and politics in the discourse of international law, given that the absence of a formal institution is a consequence, not a cause, of a lack of collective awareness beyond borders, the use of international law as a common language can help create this

awareness and the growing institutionalization of the international community.⁶⁰

Conclusion

As the present author has shown, the basis of the justification for democracy lies in the concept of autonomy, according to which individuals should be the authors and architects of their own lives and shape them through their own choices and decisions.

The realization of autonomy therefore requires the rejection of power relations at all conceivable levels.

In today's globalized society, overcoming the forces and structures that threaten individual autonomy can no longer be guaranteed within the framework of traditional political societies, and its preservation requires extending democracy to the supranational or global arena, where citizens around the world can participate in all decisions that affect their lives. The realization of global democracy does not necessarily require a centralized world state, and conceivable forms for it range from a world state or government to less centralized models such as global democracy. International law, if reformulated, could also lead to a global democratic order. Indeed, the undesirability and even impossibility of the idea of a world state and of less centralized models, given contemporary international political and social realities, presents international law as the only available option for establishing a global democratic order.

This requires the democratization of the international legal order around the UN system as a gradual and multidimensional process, building on the democratic shortcomings of the existing system and implementing changes at various levels to reflect democratic values and ensure self-determination.

The aforementioned process, in view of the democratic shortcomings of the international legal order, requires ensuring the strengthening of the voice of individuals at the global level in all centers of international decision-making and policy-making, directly and indirectly, increasing the transparency, participation and accountability of international institutions and their contribution to the promotion of democracy and, in other words, the autonomy of individuals at the global level.

The democratization of the international legal order offers international law an opportunity to overcome its structural shortcomings. By reflecting diverse voices and perspectives, this process can help international law function as a space in which a collective mind-set can be built to achieve objectivity.

Democratizing the international legal order to guarantee the autonomy of citizens is also a pragmatic approach to simultaneously overcoming multiple and intersecting structures of power and inequality in order to avoid focusing on a particular axis.

Strengthening objectivity and overcoming existing inequalities through the above channels will ultimately lead to increased objectivity and universality of international law and, as a result, increased legitimacy and compliance with the rules of international law, strengthening its position as effective global law or international order.

⁵⁵ See: Harold Hongju Koh, “Why do Nations Obey International Law?”, *Yale Law Journal* 106, (1996– 97)

⁵⁶ Thomas M. Franck, *The Power of Legitimacy among Nations*, (New York: Oxford University Press, 1990), 3.

⁵⁷ . See: ibid and Thomas M. Franck, *Fairness in International Law and Institutions*, (Oxford: Clarendon Press, 1995).

⁵⁸ Thomas M. Franck, “Fairness in Fairness Discourse”, *Proceedings of the American Society of International Law* 95, (2001): 167-172.

⁵⁹ Thomas M. Franck, “Legitimacy in the International System”, *The American Journal of International Law* 82, 4 (1988): 735-751

⁶⁰ Boutros Boutros-Ghali, “Discours de Clôture du Secrétaire Général de l’Organisation des Nations Unies”, in *International Law As A Language For International Relations*, (The Netherlands: Kluwer Law International, 1996): 594-595

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