

White Paper 5

democracy

international law
in support of democracy
and the rule of law

ADI/ILA **150** ANS-YEARS



2023 PARIS

coordinators

Pablo DE GREIFF

(New York University) – until July 2022

Papia SENGUPTA

(Jawaharlal Nehru University) – from August 2022

Arthur GIANNATTASIO

(University of São Paulo)

steering committee

(in alphabetical order)

Cora CHAN

(University of Hong Kong)

Claudio GROSSMAN

(American University)

Samuel ISSACHAROFF

(New York University)

Tarun KHAITAN

(University of Oxford)

Yvonne MOKGORO

(Former Justice - Constitutional Court of South Africa)

Willy MUTUNGA

(Former Chief Justice and President - Supreme Court of Kenya)

Cheryl SAUNDERS

(University of Melbourne)

introduction _____ page 6

**1. state of the art: the relationship between
the rule of law and democracy** _____ page 11

- 1.1 Panoramas of the Current Situation
of Democracy at the Global Level: Erosion of Democratic
Standards and the Rise of Autocratic Trends
- 1.2 The Support of Democracy in Contemporary International Law

**2. challenges for the rule of law
to support democracy** _____ page 61

- 2.1 The Ideological Challenges:
Democracy and its Political Selectivity
- 2.2 The Conceptual Challenges:
Democracy as an Indeterminate Word
- 2.3 The Practical Challenges:
Democratic Governance at the International Level

3. questions to move the discussion forward _____ page 79

- 3.1 "The Mea Culpa from International Community":
Taming the Selectivity of the Rule of International Law
- 3.2 "Democracy beyond the West":
The Multicultural Concept of Democracy
- 3.3 "Getting Rid of the State":
Non-State Participation from Utopia to Legality

annexes _____ page 95

Introduction

This White Paper (WP) on the support of Democracy by the rule of law and by international law is being prepared on the occasion of the 150th anniversary of the International Law Association (ILA).

This WP is divided in three main parts. The first part (1) presents the current status of the relationship between the rule of law and Democracy. The second part (2) discusses the challenges identified in academic and non-academic circles for a deeper intertwinement between (international) law and Democracy. The third part (3) lists the questions that arise from the comparison between the present situation and the challenges. They will be discussed in 2023.

The importance of preserving, protecting, and promoting democratic institutions at national and international levels by the rule of law is not only related to the manifold social consequences arisen from the inability of some countries to properly address issues related to the ongoing pandemics of Covid-19 – whose legal, political, social, and economic consequences are still being measured (VENTURA & BUENO, 2021; SENGUPTA, 2022). Rather, the revival of this discussion is justified because Democracy

itself is directly under threat mainly due to the global rise, persistence and rooting of authoritarian public opinions and governments (ANDRADE, 2018; DRINÓCZI & BIEŃ-KACAŁA, 2021; MICHELS, 2017; SENGUPTA, 2021; WEIZENMANN, 2019), and by recent outrageous uses of force - including the threat of using nuclear warfare - in an explicit disregard of the legal limits established by international law (WASIELEWSKI, JONES & BERMUDEZ JR., 2022). One could argue that there would be no novelty in discussing in this WP the role of the rule of law **to protect, preserve and promote Democracy**. Indeed, as one of the many political ideologies and regimes invented throughout history (VERNANT, 2002, p. 41-107), it is an already known diagnosis that it is always being challenged and threatened - **demanding a constant active effort to be permanently desired as a political ideology and regime to be kept, to be taken care of and to be re-invented** (LEFORT, 1983, 1991; MAQUIAVEL, 2010). Consequently, it is already clear that Democracy is under a constant threat of being overthrown by authoritarian regimes and autocracies in accordance with a foreseeable cyclical movement (ROUSSEAU, 2008).

However, the question here is not about novelty. Rather, this WP is conscious that it is just one of the many similar efforts in the past trying to remember its own generation that Democra-

cy is fragile. More than an alarming truism, it is a call for current generations to not lose energy in the struggle for Democracy as an ideology and as a never-ending source of new political regimes and recognition policies. Bearing in mind that contemporary Democracy is a legacy from the past, this WP assumes that **Democracy** is an always imperfect heritage from tradition: something given, but never fully accomplished (UNGER, 2004). Defended and implemented only in singular moments in political history (VERNANT, 2002), it **might disappear if proper attention and initiatives are not taken to hinder backslidings towards autocratic ideologies, regimes, and policies** (LEFORT, 2007).

In this sense, as a political ideology – which is also a source of political regimes and of recognition initiatives, Democracy is always being challenged. And, at the end of the day, is always under threat (FARIA, 1984; LEFORT, 1991). Thus, this WP invites current generations to welcome this legacy from recent past, but also to face it critically: by learning from its past prudence, it is possible to identify and overcome its limits – but never losing Democracy of the sight.

A brief final note of materials and methods is necessary for this WP, for which information was gathered and systematized by the authors of this document after consulting three different sources.

The first source is their own previous academic and non-academic experiences on the subject - which, although present in this entire WP, had a main influence in this Introduction and Parts 1 and 2. The second source was three diachronic group discussions with members from a Steering Committee (StC) – whose representativeness sought to be as broad as possible. They contributed to develop questions for interviews and to revise drafts of this WP. The third one was one-to-one semi-structured interviews with selected individuals - whose representativeness in terms of gender, race, geography, culture and legal culture, educational backgrounds, and professional activities sought to be as broad as possible.

1.

state of the art:
the relationship between
the rule of law
and Democracy

As a valuable outcome of efforts from previous generations, the use of the rule of law to protect, preserve and promote Democracy worldwide is a complex and entangled legal toolbox. Indeed, a Democratic political experience is characterized for being (i) legally framed to institute (ii) a permanent source of political disagreements, (iii) open to a continuous invention of its legal institutions and concepts, and (iv) authorized to enlarge or constrain individual and collective freedoms (LEFORT, 1983) due to the adoption or refusal of recognition policies (FRASER, 2006; HONNETH, 2009; MOREIRA, 2017).

The standards provided by such a legal toolbox provides thus a three-folded condition of possibility for a democratic political experience (COUTO & ARANTES, 2006): Democratic ideology (politics), Democratic regime (polity), and Democratic recognition measures (policy).

As a political ideology for open, diverse, and indeterminate power struggles (politics), Democracy assumes that legal tools are the proper mechanism to organize an institutional framework (polity) capable of welcoming and addressing permanently political contestations – either via vertical accountability mechanisms (political participation of individual and collective stakeholders), or via horizontal accountability mechanisms (checks and balances). Within this perspective, a regular institutional design

is necessary to peacefully absorb – not eliminate! - political conflicts and, by doing that, to reinvent strategies to make and take new decisions (policies) for the enlargement of collective expectations and individual capabilities towards emancipation and happiness (CHAUÍ, 1983; COUTO & ARANTES, 2006; FARIA, 1984; LEFORT, 1991; SEN, 2016).

Democracy as a political ideology

a legal tool

to organize an institutional framework (polity) capable of welcoming and addressing permanently political contestations.

accountability

Mechanisms (political participation of individual and collective stakeholders), or via horizontal accountability mechanisms (checks and balances).

inclusive institutional design

To reinvent strategies to make and take new decisions (policies) for the enlargement off collective expectations and individual capabilities towards emancipation and hapiness.

However, even during periods in which Democracy was regarded as the shared standard of political comprehension, and even in societies in which Democracy is traditionally perceived as an undisputed clause (ADORNO, 1964, p. 607-8; ARENDT, 2017; LEFORT, 1979) **non-democratic discourses** - originated from whatever ideology (West v. East, North v. South, National v. Global, among others) - **always lie beneath democratic institutional environment as acceptable and viable political alternatives** (BRUNETEAU, 2014; LEFORT, 1991). They often present themselves as “non/a-political”, “mythical”, “saviors” counter-discourses (CHAUÍ, 2004) capable of providing safe standards to understand life (BRUNETEAU, 2014, p. 297) in a “cold, alienated, and largely un-understandable world” (ADORNO, 1964, p. 608).

The modus operandi of non-democratic ideologies is largely known and debated. By affirming their aptitude of rescuing societies from risks and inconveniences derived from the indeterminacy of “radical” democratic political experiences (FARIA, 1984), non-democratic ideologies can break out via recognized democratic institutions and, by doing that, can impair Democracy as whole (LEFORT, 1991) - and this, without any clear or explicit collective aversion to such a process.

While propagating know-it-all narratives allegedly capable of explaining the totality of relations in accordance with a single

dimension (FARIA, 1984; LEFORT, 1991; MARCUSE, 1968), non-democratic ideologies offer attractive ready-made solutions for “dormant” authoritarian personalities widely scattered throughout different individuals (ADORNO, 1964). These narratives are based on the affirmation – and on symbolic, psychological, and physical imposition – of the absence of disagreement or social divisions. They also resort to explicit hostility to imagined – yet variable – “common enemies” (ADORNO, 1964, p. 612-8), who are regarded as impairing the imagined social homogeneity presupposed by such ideologies (BRUNETEAU, 2014, p. 45; KYMLICKA, 2009; LEFORT, 2007, p. 890-1; MARTINIELLO, 2011).

By a broad and gradual “effortless adherence” of individuals to stereotyped information and orientations (ADORNO, 1964, p. 608 and 618), a collective “submi[ssion] [...] to power and authority” (HORKHEIMER, 1964, p. ix) makes room for a general – and sometimes peaceful – acceptance of dismantling (i) Democracy as politics (ideology), and, as a consequence, (ii) Democratic policies (recognition measures), and (iii) Democratic polity (legal framework).

In other words, **non-democratic ideologies undermine inclusive democratic policies** towards religious-, nationality-, ethnicity-, race-, and gender-based **minorities** (BUTLER, 1999, 2011; CASELLA & ALAMINO, 2018; FRASER, 2006; HONNETH, 2009).

Such authoritarian discourses mobilize **excluding/hate speeches** which are capable of **encouraging symbolic, psychological, and physical violence towards these minorities** – probably leading to genocide processes against the same minorities (BRUNETEAU, 2004; CARNEIRO & YEGHIAZARYAN, 2021; PEREIRA, 2018, p. 118), **and even usurping legal terms traditionally used in recognition initiatives of minorities** by abusing and misusing their meanings in order to (i) reverse the aggressor-victim relationship, (ii) sustain fallacious discourses based on deliberate misinterpretation of legal concepts, in order to (iii) affirm a so-called “right of majorities” to be protected from a supposed threat from – the “invasion”/“existence”/“presence” of – minorities in a shared public sphere (STALLERT, 2004, p. 59-66, 2022).

But not only that: **non-democratic ideologies can weaken Democratic polity**. Indeed, (i) **misuses** of consolidated rule of law institutions, (ii) weakening of public trust towards the same institutions – such as Human Rights (ARENDR, 2012, 2017), vertical and horizontal accountability mechanisms (LEFORT, 1992), legal reasoning (ALEXY, 2020; FERRAZ JR., 1997), (iii) misuses of acknowledged means and sources of information – such as scientific findings and media broadcast, **and** (iv) **weakening of public trust** towards the same means and sources (ALLCOTT & GENTZKOW, 2017; FARIA, 1984; GALHARDI et al., 2020; GOMES,

PENNA & ARROIO, 2020; GUIMARÃES & SILVA, 2021; JENSEN, 2018; MATOS, 2006) are at the basis of the **mitigation process of the social adherence to (a) legal procedures** designed for a stable and balanced political environment prone to welcome and address peacefully manifold disagreements (CARDOSO, 2004; UNGER, 2004; TEUBNER, 1993) **and (b) valuable, accessible and reliable information** which is ethically-committed to the collective good (LYOTARD, 1979).

More than that, **non-democratic ideologies threat democratic politics, as stereotyped information and orientations** (ADORNO, 1964, p. 608 and 618) **reject** the two unavoidable and intertwined facts of everyday political life: (i) there are always **social divisions and**, thus, (ii) there are always **political disagreements** (LEFORT, 2007, p. 890-1). Such approach **seeks to justify (a) the reduction (and even elimination) of (1) political (free and fair) competition for power, (2) the participation in decision-making and decision-taking processes, (3) political transparency and control** (BRUNETEAU, 2014, p. 45; COUTO & ARANTES, 2006; FARIA, 1984); and **(b) the decrease of the collective engagement** towards (1) the maintenance of politics as a place belonging to no-one, and (2) the acceptance of resorting to rule of law to create and to preserve politics as an “empty place” regularly open for contestation (LEFORT, 1991).

Democracy as a complex and wide political experience, thus often faces challenge and threat by authoritarian political parties and autocracies – either by a broad ideological contestation, or by means of misuses and abuses of established legal standards against democratic political regime or against democratic recognition initiatives. Nowadays, democratic experience is being pushed to its threshold globally - and even in so-called “settled democracies”. (FH, 2022, p. 6-12; IIDEA, 2021, p. vii and 1-2; V-DEM, 2022, p. 19, 31 and 36-7).

That is the reason why the authors of this WP understand that the question is not about an alleged novelty on discussing the relationship between the rule of law and the support for Democracy. The conditions of possibility for a democratic political experience provided by the available legal toolbox still hold positive aspects and well-intended initiatives. However, it seems that they might be somehow limited or that they have met a certain exhaustion.

Thus, **the question is about finding proper mechanisms to remind current generations that Democracy is always fragile**. More than that, the question is about **making us/them aware that it is our/their turn to take this warning seriously and to propose/adopt critical perspectives to reinvent today the conditions of possibility to preserve democratic political experience world-**

wide. Our/their own legacy for future generations is to seriously assume now the role of taking this never-ending effort of rearranging the available legal toolbox for a Democratic political experience. A proper legal toolbox made for (i) dealing with the spread of rising of non-democratic ideologies, and (ii) minimizing the effects of the social and institutional attacks inspired by such ideologies.

1.1 Panoramas of the Current Situation of Democracy at the Global Level: Erosion of Democratic Standards and the Rise of Autocratic Trends

“[D]emocratic erosion [...] has never been as high as in the last decade” (IIDEA, 2021, p. vii): concrete institutional changes in political regimes and recognition policies were identified in several countries **in the last decades**, promoting a progressive weakening of democratic standards worldwide. Distinct societies are experiencing varied degree or **a gradual dismantlement of**

democratic principles as a valid political ideology. Overall, there is a broad decrease of the “level of commitment to democratic institutions [...] by political decision-makers.” (BS, 2022, p. 6).

The World Justice Project (WJP) recognized in 2021 that “more countries declined than improved in overall rule of law performance for the fourth consecutive year[... a] trend [...] more widespread over the last three years” (WJP, 2021, p. 2). According to the same institution, between 2020-2021, “74.2% of [the 139] countries covered by the Index experienced declines in rule of law performance” (WJP, 2021, p. 2) – being one of the main sources the reduction of checks over Government Powers (Executive, Legislative and Judiciary). This trend is “most prevalent in South Asia, the Middle East and North Africa, and EU, EFTA, and North America” (WJP, 2021, p. 3), but also has been resonating in countries from Central and South America in the last 10 years (IIDEA, 2021, p. 6).

The decline of Democracy **cannot be regarded simply as a recent trend derived from the pandemic** - as some have tried to argue (EUI, 2021, p. 3-8). Indeed, while “travel restrictions, the use of emergency powers [...], and the failure to mitigate the disproportionate impact of the virus on minorities and marginalized groups have expanded the scope of democratic deterioration” (IIDEA, 2021, p. 6), these decisions only “exacerbated [already

existing] threats.” (IIDEA, 2021, p. vii) and “represent a continuation of long-standing global trends.” (BS, 2022, p. 2).

In this sense, the last report from the Freedom House (FH) argues that the worldwide decrease of Democratic standards derives from “16 consecutive years of decline in global freedom” (FH, 2022, p. 1) - reducing democratic political environment in 60 countries (out of a 210 countries and territories) in 2021 (FH, 2022, p. 1). Following the same perception, the International Institute for Democracy and Electoral Assistance (IIDEA) found that “for the fifth consecutive year, the number of countries moving towards authoritarianism is approximately three times as high as the number moving towards Democracy.” (IIDEA, 2021, p. 3).

Some countries have been dealing with Democratic backsliding in the last 10 years (IIDEA, 2021, p. 6-8), but “this is the first time since 1975 [...] that the world has seen five consecutive years of this negative trend” (IIDEA, 2021, p. 3). Focusing in 137 developing countries, Bertelsmann Stiftung (BS) concludes that nowadays there are “67 democratic governments and 70 autocratic regimes, a clear reversal of the ratio seen in the [previous index] (74-to-63).” (BS, 2022, p. 4). In other words, in the last 10 years, the “last 30 years of democratic advances are now eradicated” (V-DEM, 2022, p. 6), as almost 70% of world population

live in autocracies (V-DEM, 2022, p. 6) – an amount similar to the one raised by the IIDEA (2021, p. vii).

There is a “jeopardiz[ation of] the consensus that Democracy is the only viable path to prosperity and security” (FH, 2022, p. 1) and a “weakening of [shared values among democracies] on the international stage” (FH, 2022, p. 2). This condition has different causes: (i) **endogenous forces**, that is, acceptance of hate speeches, abuse of power, misinformation, violation of Human Rights, defection of checks mechanisms, manipulation and cooptation of norms and institutions, persecution of political opponents (BS, 2022, p. 3; FH, 2022, p. 1-2; IIDEA, 2021, p. 6-9); and, (ii) **exogenous forces**, that is, a cross economic and political support of non-democratic governments by other governments with similar political features (BS, 2022, p. 11; FH, 2022, p. 1-2; IIDEA, 2021, p. 11).

Indeed, many of the “autocratizing countries tend to be influential regional and global powers -[, this] group includ[ing] major G20 countries” (V-DEM, 2022, p. 18-9). Such countries are still characterized by **enduring supremacist discourses based on conservative approaches of religious, national, ethnic, racial and gender identities** (ADORNO, 1964; CARNEIRO, 2007, p. 16-7; GUIMARÃES & SILVA, 2021; MOREIRA, 2017; PEREIRA, 2018, p. 119-21; STALLAERT, 1998, p. 19-69, 2004, 2022; WILLIAMS, 1994,

p. 19-25). For this reason, one cannot ignore their geopolitical prominence, which can induce not negligible effects for the consolidation of autocratic regimes in their respective zones of influence (BS, 2022, p. 11; IIDEA, 2021, p. 1).

Be as it may, the erosion of Democratic standards is being led at the national levels by policies and polity changes driven by anti-pluralist parties in which authoritarian agendas - based on ethnonationalist strategies (and even in religious- and gender-based strategies) - extract legitimacy from different sources. Just to mention a few: (i) popular mobilization pro authoritarian politics, (ii) misinformation, (iii) misuse or distrust of available legal, political, economic, sanitary and scientific information, (iv) undue political polarization, (v) threats to independent electoral management bodies, (vi) harassment of journalists, academics, and political opposition, and (vii) repression of civil society organizations (BS, 2022, p. 10-1; IIDEA, 2021, p. vii, 1 and 8-9; V-DEM, 2022, p. 7-16).

Thus, the capability of the rule of law to support Democracy has been decreasing globally in last decades. But such failure cannot be attributed solely to defective, fragile, or ineffective national rules of law: international legal framework has also played a role in this process of mitigating Democratic political experiences worldwide.

1.2 The Support of Democracy in Contemporary International Law

Written in the eve of the end of World War II, Hans Kelsen's Preface to *Peace through Law* stated in 1944 that a major issue at that time for legal scholars was to build proper international legal institutions to preserve and promote peace worldwide. He argued that the establishment of an international court with compulsory jurisdiction was the only viable solution to promote international peace through the technical and neutral solution provided by international law – an issue which was, according to his own perspective, as important as dealing with other two pressing political oppositions at that time: (i) Democracy *versus* autocracy, and (ii) capitalism *versus* socialism (KELSEN, 2010).

Hans Kelsen was not alone in this position: the legality of an international/external evaluation of a country's decision over its political statute (Democracy *versus* autocracy) or its economic statute (capitalism *versus* socialism) was under dispute at that time. This discussion arose among European legal scholars, but also among legal and political initiatives in American continent – being Carlos Tobar (Ecuador, 1907) and Genaro Estrada

(Mexico, 1930) maybe the most known names in this discussion (JESSUP, 1931; STANSIFER, 1967).

Be as it may, almost 25 years before Hans Kelsen's Preface, two other authors wrote world-renowned texts regarding a similar issue – but, at their time, right after the end of World War I.

Paul Valéry presented in 1919 his *La crise de l'esprit* and, despite acknowledging the “peril of extinction lurking around European civilization”, he argued for the specificity (and superiority) of a so-called European *ethos* – according to his perspective, somehow brilliantly inherited by the US - which would enable Europe enduring and overcoming such threat (VALÉRY, 1930). In 1923 Richard Coudenhove-Kalergi published his *Pan-Europa*, a text in which he argued that, in order to deal with the different weaknesses found in League of Nations' institutions, Pan-Americanism – led by the US, a “daughter of Europe”, in his own words (KALERGI, 2010, p. 87) – could be a source of inspiration for future regional legal arrangements towards the political engagement of European countries and all regional groups in the world.

Other texts and authors could be of interest and properly be mentioned here. However, the three above suffice for the sake of the core argument of this WP. **International law has indeed**

changed since then: following these broad proposals, in the past 100-120 years, new norms and actors arose with a significant role at the international relations. However, if the dawn of 20th century arose with a crisis haunting the European spirit - which was also threatened with death, **these changes were responsible for casting out, not the spirit but the crisis.**

1.2.1 The Tribunalization of International Order

The proliferation of judicial and quasi-judicial mechanisms to settle disputes in legal basis is one of the main features of **current international order**. The establishment of independent and impartial international courts is positively evaluated within traditional perspectives as a symbol of progress (TRINDADE, 2013, p. 9-15). Of course, **the willingness of a State to recognize the compulsory jurisdiction of international Courts has been since then a permanent issue in international relations** (FERNANDES, 1924, p. 8, KELSEN, 1964, p. 516-34) - an issue which has never been properly solved (ONUMA, 2016, p. 150-65), even regarding the International Court of Justice (ICJ)¹.

Note 1 To date (2022), only 73 countries (out of 193) recognize the compulsory jurisdiction of the ICJ.

Be as it may, the movement towards the tribunalization of international legal order was proposed in beginning of 20th century as a convenient strategy to resort to instruments regarded at that time as neutral tools - the legal discourse and the judiciary - for cooling down political tensions at the international level (KELSEN, 2010). Even though nowadays many criticisms contest such assumptions around international courts (CLARKE, 2010; SKOUTERIS, 2010), the central claim of this proposal was – as it still is - that resorting to the rule of law to settle international disputes would ensure stability, foreseeability, and peaceful international relations (FERNANDES, 1924, 1925; MORRIS, 2021). The basic assumption of this argument is that a judgement is a decision derived from a detailed analysis (judicial or quasi-judicial prudence) of independent legal experts, not a unilateral coercive or economic imposition from a hegemonic power (KELSEN, 1964, 2010).

To some extent, the “tribunalization of international law” can also be regarded as a tool of the rule of law to support Democracy worldwide.

Indeed, at the national level, providing a permanent and regular access to justice (polity) is one of the core functions of the rule of law to preserve and promote a Democratic political experience (SADEK, 2004). To put it simply, the legal mandate

of the judicial power within a Democratic country is to preserve not only the national political regime (polity), but also the enjoyment of recognition initiatives (policies) taken at the national level. In a certain way, the same narrative occurs at the international level: by resorting to traditional concepts and institutions of international legal discourse, such as international courts, it is also possible to deal with sensitive issues in international order and, by doing that, to impede the erosion of recognized Democratic standards (policies and polity) at the national level.

Two main initiatives can be mentioned as concurring to preserve a Democratic political experience within countries by means of international Courts: (i) the creation of an International Criminal Court (ICC) to exercise jurisdiction over persons indicted to have committed “the most serious crimes of international concern” (art. 1, Rome Statute), and (ii) the creation of an International Constitutional Court (ICoC) to decide upon fraudulent elections, *coups d'états* and the establishment of authoritarian states.

Raised in 2012, the last proposal has neither developed, nor called much attention (GIANNATTASIO et al., 2018; GIANNATTASIO, DREZZA & WEHBY, 2021). However, the former one is a typical outcome of this movement towards the tribunalization of international law in 20th century which, by its turn, is specifically dedicated to support Democratic standards worldwide.

The establishment of the ICC by the [Rome Statute \(1998\)](#) is the outcome of almost 80 years of cumulative efforts at the international level. From post-World War I initiatives (1919-1945) to the *ad hoc* tribunals for the former Yugoslavia (1993) and Rwanda (1994) - passing through the Nuremberg and Tokyo Trials (1945-1947), there was a progressive attempt to institutionalize international criminal courts, to make feasible the prosecution and punishment of individuals for committing international crimes (CASSESE & GAETA, 2013, p. 253-63).

The establishment of an international court with such a legal mandate is one of the many initiatives of resorting to international legal discourse to preserve Democratic political experience at the distinct national levels.

During the [United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court \(June-July 1998\)](#) there was a shared conviction that the adoption of the ICC would help, in the words of the then Representative of the United Nations High Commissioner for Human Rights, “fight[ing] impunity and [...] make it clear that all [...] individuals, regardless of official rank, were legally bound to refrain from committing genocide, war crimes and crimes against humanity.” (UN, 2002, p. 70). In other words, the legal mandate of the ICC was largely discussed also to discourage the commit-

ment of these crimes – even though there was a certain hesitation in deciding (i) which crimes would lie within the jurisdiction of the, and (ii) the elements of some of these crimes.

Be as it may, there was a “broad agreement on the definition of genocide” (Australia representative in Conference apud UN, 2002, p. 65). This “new word to define an ancient crime” (STALLAERT, 2006, p. 70) sought to impede, from that time on, the legal and political acceptance/connivance from the international order of violent processes and practices within countries - largely referred in history as “massacres” -perpetrated by former empires and monarchies before the 20th century and in its first decades (CARNEIRO & YEGHIAZARYAN, 2021; KYMLICKA, 2009; PEREIRA, 2018, p. 67-77; STALLAERT, 2006, p. 73-5 and 79-87; ZAGNI, 2013, p. 212).

Legally defined as acts practiced “with [the] intent to destroy, in whole or in part, a national, ethnical, racial or religious group” (art. 6, [Rome Statute](#)), genocide is a crime which goes beyond the destruction of life (of individuals or of a group). Indeed, according to the legal provision, genocide aims to destroy the symbolic dimension of the way of life represented by the individual identified as belonging to a group. To put it simply, it is an action seeking the annihilation of the cultural dimension to which a group associates itself - or to which it is associated - due

to certain patterns of recognized national, ethnical, racial, or religious identities (PEREIRA, 2018, p. 69-73 and 80-92; STALLAERT, 2006, p. 78).

Establishing at the international level a legal concept of genocide and a specialized institutions (international courts) to make individuals (Rome Statute, 1998) and states (Convention on the Prevention and Punishment of the Crime of Genocide, 1948) accountable for committing this crime or for not preventing it is a clear decision of using the rule of law to promote or preserve within countries a certain degree of Democratic political experience.

Indeed, the general acceptance that some (religious, national, ethnic, race and gender-based) groups are disposable minorities means more than simply asserting that individuals of these groups are not equal (FRASER, 2006; HONNETH, 2009). Rather, it is a narrative which, based on a rising social acceptance several degrees of material and immaterial disrespects of individuals regarded as members of marginalized groups, politically excludes these collectivities from present and future Democratic policies (recognition initiatives) and from possible political participation in decision making decision-taking processes duly provided by a Democratic policy (political regime).

Thus, using international law - concepts and institutions related to the ICC - to deal with the rise and the spread of genocide processes at the different national levels (BRUNETEAU, 2004; CARNEIRO & YEGHIAZARYAN, 2021; PEREIRA, 2018, p. 118-9) can be understood as one of the many tools of the present situation to resort to the rule of law to impede the erosion of at least two layers of recognized Democratic standards: recognition initiatives (policies) and political regime (polity).

1.2.2 International Organizations and National Democratic Standards

Modern international organizations (IO) achieved great levels of political, economic, and legal recognition and relevance during the second half of the 20th century (BOGDANDY, GOLDMANN & VENZKE, 2017). They were successfully organized throughout time within broader criteria than those imagined by Richard Coudenhove-Kalergi (KELSEN, 1964, p. 319-28; WOLFRUM, 2006) - such as material proximity (universal, neighbor, and non-neighbor countries) and immaterial proximity (common interests, identities, religion, languages, history, humankind, among others).

Nowadays, IOs focus on different subjects: from seals, fisheries, and polar regions to human rights, international trade, intellec-

tual property, education, health, labor, climate change, among many others (YOUNG, 1980; WOLFRUM, 2011). In this sense, one cannot ignore that these multilateral institutions were also driven during 20th century to build peace by dealing with the interplay between the two other pressing political issues raised by Hans Kelsen in 1944: (i) Democracy *versus* autocracy, and (ii) capitalism *versus* socialism. The establishment of such legal mandates at the international level for IOs reveals thus other strategies adopted by the rule of law to preserve Democratic political experiences worldwide.

1.2.2.1 Controlling National Democratic Standards via Universal IOs

There are several initiatives focusing on the development of international institutions to support Democracy via the legal discourse at the universal level. If the discussion concerning the establishment of an ICoC lost its strength in the past decade, one cannot ignore that since the beginning of the 20th century different initiatives were proposed, created, and developed – even though with different degrees of acceptance and success.

Among the many initiatives undertaken by the United Nations (UN) during the second half of the 20th century, different docu-

ments established an entangled approach between Democracy, Human Rights and Development since 1960 ([A/RES/1710 \(XVI\)](#), [A/RES/2626 \(XXV\)](#), [A/RES/35/56](#)). The 2000 United Nations Millennium Declaration ([A/RES/55/2](#)) and the 2015-2030 Agenda for Sustainable Development ([A/RES/70/1](#)) are the most recent initiatives following this agenda which established a relationship between the legal discourse at the international level and the preservation of Democracy (as a preferable political regime as opposed to autocracy) by dealing at the same time with economic issues (a remnant of the dispute between capitalism and socialism throughout the 20th century).

Within this overarching concept of development (SEN, 2000, 2016), **Democracy is related**, not only **to the legal recognition, affirmation and protection of (i) civil and political dimensions of life** (equal access to justice, transparent and participate decision-making and decision-taking procedures, rule of law, freedom of expression, among others), but also (ii) **economic, social and cultural aspects** (eradication of poverty and hunger, gender equality, reduction of inequalities, among others), and (iii) **biological and environmental factors** (fight climate change, preservation of ecosystems, foster sustainable production, among others).

An example within the UN itself (among others) is the UN Commission on Human Rights – after 2006 (A/RES/60/251), the Human Rights Council (HRC). This organ adopted several resolutions to support Democracy via the rule of law and the provision and the protection of Human Rights (Resolutions 2000/38, 2000/40, 2000/47, 2002/37, 2002/39, 2002/40, 2002/43, 2002/46, 2002/72, 2002/75, 2003/35, 2003/36, 2005/30, 2005/32, 2005/36, 2005/57, 2005/68, A/HRC/RES/19/36, A/HRC/RES/24/54, A/HRC/RES/28/14).

While affirming that “there is no one model of Democracy”, or even that “[there is no] export [of] any particular model of Democracy”, the UN HRC understands that “all democracies share common features”. The organ also recognizes that Democracy is a fragile political experience and that it requires a joint work - mediated by legal discourse - of Government (Executive, Legislative and Judiciary), civil society and private entities to preserve and promote Democratic standards. Roughly speaking, these Resolutions affirm that the rule of law is required to support Democracy as:

(i) a valid political ideology (politics) by:

(a) promoting: “pluralism”, “a pluralistic system of political parties and organizations”, the right to express “grievances or aspira-

tions in a peaceful manner, including through public protests, without fear of being injured, beaten, arbitrarily arrested and detained, tortured, killed or subjected to enforced disappearance”, and the “exchange of lessons learned and best practices for promoting and consolidating Democracy”;

(b) fighting: extreme-right and other “violent nationalist ideologies based on racial or national prejudice”, “racism, racial discrimination, xenophobia and related intolerance”, “religious intolerance” and “persecution and harassment [... of] persons who exercise the right to freedom of opinion and expression”;

(ii) an open and legitimate political regime (polity) by:

(a) promoting: “a pluralistic system of political parties and organizations”, “universal and equal [right to] suffrage [...] by secret ballot” in an “an electoral system that ensures periodic, free and fair elections”, the “participation of individuals in decision-making”, the “right to a fair trial”, the uphold of the “separation of powers” and the related “development of competent and public institutions, including an independent judiciary, effective and accountable legislature and public service”, “transparent and accountable governance”;

(b) fighting: attempts from “individual[s] or public or private institution[s to stay] above the law”, “persecution and harass-

ment [... of] persons who exercise the right to freedom of opinion and expression", and "corruption";

(iii) a source for deeper and larger inclusive political measures (policies) by:

(a) promoting: "pluralism", "education [a]s an integral component of the full and effective participation of persons in a free society", "effective international cooperation, [...] equitable economic relations and a favourable economic environment at the international level", "social cohesion and solidarity", "gender equality", "the right to [sustainable] development", "exchange of lessons learned and best practices for promoting and consolidating Democracy"; and

(b) fighting: extreme-right and other "violent nationalist ideologies based on racial or national prejudice", "racism, racial discrimination, xenophobia and related intolerance", "religious intolerance", "high rates of illiteracy", "extreme poverty" and "the elimination of obstacles to development".

Other initiatives outside the main UN bodies at the universal level can also be mentioned as examples of endeavors from the international community to resort to the rule of law to support Democracy. While some initiatives were adopted within

the broad UN system, others were developed outside the organization itself. For the purposes of this text, only two examples will be indicated.

Older than the UN, but later integrated into the UN system after World War II (1946), the **International Labor Organization (ILO)** was established in 1919 to develop international peace by promoting technical cooperation among countries against social injustice and misery (CASELLA, 2007). The legal mandate of this IO is to **regulate labor activities and social security systems to provide universal material well-being and dignity**. The basic assumption was - as it still is - to discourage new international conflicts by resorting to international legal instruments responsible for defining minimum economic and social standards to all countries (GIANNATTASIO & BANNWART, 2019, p. 159-61).

But there is more: **establishing such an international regulation for social progress and economic growth is not far away from the idea to support of Democracy via the rule of law** (HABERMAS, 2004, p. 202-3). Indeed, **as also recognized by the UN HRC Resolutions** above indicated, the preservation of Democratic political experience within countries and worldwide is also related to the regular provision of inclusive political measures by means of international legal discourse. In other words: **there is a strict**

connection between the reduction of social inequalities and the preservation of Democratic standards – a condition clearly stated by two documents adopted within the ILO itself.

The [Declaration of Philadelphia \(1944\)](#) and the [ILO Declaration on Fundamental Principles and Rights at Work \(1998\)](#) affirm that the regulation of decent labor standards and social security benefits by “strong social policies [for] the equality of opportunity[, for a] fair share of the wealth” and also via the “eradication of poverty” are directly related to the maintenance of democratic institutions. Although it is not the direct outcome of a causal relationship (ADORNO, 1964, p. 5-7), [the decrease of welfare standards](#) and of access to wealth can be regarded as social factors which [might trigger individuals and collectivities to adhere to authoritarian discourses against inclusive political measures](#) (policies) [or open political regimes](#) (polity) regarded as favorable to imagined “common foes” (ADORNO, 1964, p. 608 and 618).

Moreover, the same documents affirm that [it is of particular significance to ensure full and effective “freedom\[s\] of expression and of association” of workers and unions](#). Indeed, those collective rights provided within the legal field of labor law are associated with some of [the most typical collective political](#)

[freedoms \(expression and association\) which characterize a Democratic ideology \(politics\) and a Democratic political regime \(polity\)](#) (BORGES, 2017, p. 143-50 and 180).

That is the reason why [authoritarian governments](#) - and governments tending to reduce their own democratic standards - [usually propose legal reforms](#) within the field of labor law to [reduce the possibility to enjoy such collective rights](#) (ZANIN & SOTO, p. 255-62). By either fragilizing such institutions (diminishment of public trust and of funding, among others), or by directly abolishing them, such attempts are clear threats to the enjoyment, not only of collective labor rights, but mainly of Democratic political experience itself (BONAVIDES & ANDRADE, 1991, p. 472-5).

Chapter VII of the [UN Charter \(1945\)](#) established around the Security Council a centralized legal regime to (i) declare a situation as a threat or a breach to the peace, and (ii) decide upon the use or not of coercive measures to deal with such situations (arts. 39 to 50 [UN Charter](#)). The organ has also the duty to decide whether or not the use of force by a state or a by collective action of states under the pretext of self-defence is legally authorized (art. 51 [UN Charter](#)), but this last situation is not related to this WP.

The UN excluded from its explicit legal mandate the responsibility for resorting to coercive means to deal with states (whether or not members of the organization) failing to comply (whether or not on purpose) with recognized Democratic standards. Indeed, in 1946 the erosion of Democratic standards at the national level was not regarded by the institution as a possible threat/breach to peace capable of justifying the use of force by decision of the Security Council ([S/RES/4](#), [S/75](#) and [S/PV.47, 49](#)). Other elements – such as a breakup of state, cross-border effects, and genocide - would be later added as requirements for the organ to decide upon calling the international community (under the command of the Security Council) to use the force in order to deal with international spillovers derived from countries moving towards autocratic standards – but such decisions would be taken always to seek the restoration of conditions to preserve international peace ([S/RES/743](#) and [S/RES/929](#)).

This explains, for instance, why the UN was incapable of: (i) impeding the accession of new members which were explicit authoritarian regimes, or (ii) restricting rights or denying political positions in its internal organs to countries which were not democracies, or which explicitly ceased to be democracies. After all, the sole requirement to become a member-state and to enjoy rights before the UN is being a “peace-loving state” (art.

[4 UN Charter](#)) and not to “persistently violate the principles of the Charter” (art. 6 [UN Charter](#)).

In the end of 1990s, some legal scholars and also some countries tried to develop and defend publicly a legal basis to justify the use of force to enable humanitarian intervention by states in the territory of other countries. The basic idea is that, while states have the main responsibility “to protect their own citizens from avoidable catastrophe – from mass murder and rape, from starvation – [...] when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states” (ICISS, 2001, p. VIII).

Also known as responsibility to protect (R2P), the legal justification to resort to force for the sake of humanitarian intervention was developed in 2001 by the International Commission on Intervention and State Sovereignty (ICISS, 2001). Declared at the UN’s 2005 World Summit ([A/RES/60/1](#)), among other initiatives, as a mechanism “to create a more peaceful, prosperous and democratic world”, the discourse of R2P was adopted also by the Security Council in distinct Resolutions in following years (GCR2P, 2022) – from 2011 ([S/RES/1973](#)) to nowadays ([S/RES/2633](#)).

However, the moral character assumed by R2P operations (ORFORD, 2003, p. 203), as well as the selectivity (ESLAVA, OBREGÓN & URUEÑA, 2016, p. 64-7) and the instrumental uses (ANGHIE, 2004, p. 279-91) of R2P as a justification for some countries to intervene in other countries to change their political and economic systems to establish or maintain a dependent position towards the intervening powers (BACHAND, 2018, p. 217-31; HARDT & NEGRI, 2000, p. 13-21) mitigated the moral and political acceptance of this mechanism. R2P is critically evaluated as an attempt to resort to military intervention – either by an explicit mandate of the Security Council, or after a unilateral decision of one or more state – as an excuse to “bring human rights, Democracy and humanitarian principles to those in undemocratic, authoritarian or failed states” (ORFORD, 2003, p. 4), or even, to simply “address the problems of local dictators, tribalism, ethnic tension and religious fundamentalism thrown up in the post-Cold War era.” (ORFORD, 2003, p. 4).

Due to R2P misuses, some proposals have arisen to establish more specific and clear legal parameters for R2P, to be regarded and practiced within a responsibility-while-protecting (RwP) approach (A/66/551-S/2011/701). Be as it may, as one of the persons interviewed for this WP explicitly stated, “no one believes in R2P anymore”. That is the reason why other persons

interviewed simply rejected the idea itself of any international protection of Democracy at the domestic level.

One final and important aspect regarding R2P is that this mechanism is illegal. Indeed, the legality of current international law states that there is no legal basis – either in customary law, or in the UN Charter, or even in any other source of international law – to entitle any entity of the international community with a right or with a duty to use coercive measures to tackle the erosion of Democracy in any country (GRAY, 2008, p. 55-9). In other words, despite the moral and political efforts to build legal justification for R2P, the use of force to promote Democracy worldwide is not a legal tool authorized by current rule of (international) law.

1.2.2.2 The Protection of Democracy at the Regional Level

There are also some initiatives to support Democracy within states via regional arrangements - which of course must follow the general provisions of the universal system around the UN (art. 103, UN Charter).

It is not the purpose of this WP to exhaust the entire list of mechanisms within all regional agreements (IOs or other multilateral institutions) created during the second half of the 20th

century to support a Democratic political experience inside their member-states via the rule of law. The examples below suffice to illustrate differences among these regional initiatives: the African Union (AU) - also by means of the African System of Human Rights (ASHR), the Association of Southeast Asian Nations (ASEAN), the Council of Europe (CoE) - also by means of the European Court of Human Rights (ECHR), the Community of Portuguese Language Countries (CPLP, acronym in Portuguese), the Commonwealth (CW), the European Union (EU), Southern Common Market (Mercosur, acronym in Spanish), the Organization of American States (OAS) - also by means of the Inter-American System of Human Rights (IASHR), and the Organization of Islamic Cooperation (OIC).

Not all regional arrangements above have established an international judicial mechanism to settle their disputes. Indeed, some of them (ASEAN, CPLP, CW) did not even establish such a legal provision (*de iure* absence). Among the ones who have established a provision to create an international court at the regional level, one of them (OIC) has not yet constituted it (*de facto* absence), while others (AU, CoE, EU, Mercosur, OAS) have effectively organized such an institution. Yet, none of them has directly given a *ratione materiae* competence to its respective international judicial body to support Democracy in their

member-states. Rather, these international courts were created to deal with other legal issues - such as conflicts derived from the breach and the applicability of the respective legal instruments.

Of course, when these judicial bodies decide on cases related to the violation of certain Human Rights - such as freedom of conscience, of expression, of association and of assembly, right to privacy, to personal liberty, to a fair trial and to information (including truth), rights of minorities to take part in their countries' life, among others, these entities also contribute to the support of Democratic standards - in the examples, either diversity as a part of Democratic ideology (politics), either participation as a part of Democratic political regime (polity), or even Democratic recognition initiatives (policies). As one of the interviewees summarized: "There is Democracy when there is respect to Human Rights".

In this sense, these regional judicial bodies do cover the preservation of Democracy by means of the legal discourse - but they do that laterally. Even though their judgements are politically important and indeed hold material and symbolic social and legal effects concerning the reinforcement of Democratic standards, their respective legal mandates at the international level do not entitle them explicitly with powers to decide direc-

tly upon an explicit autocratisation of the political regime of their member-states.

Thus, there is no regional judicial body explicitly authorized to directly decide upon the erosion of Democratic standards at the national level. International Courts whose mandate is to solve disputes concerning the violation of Human Rights might exercise that role (AU, CoE and OAS), but on a lateral basis: after all, the safeguard of Democracy is not itself the explicit basis of their judicial powers. At the regional level, a direct legal mandate on this issue is eventually granted to organs operating, not at the legal or judicial levels, but at the political one – albeit discussing commonly agreed regional legal standards on the subject (AU, CW, EU, OAS, Mercosur).

Particularly, there is a certain consensus among the provisions of these regional arrangements around the basic elements characterizing Democracy as a political ideology and as a source for public policies. Roughly speaking, it seems that, for them, Democracy at the national level is: (i) the key to create and to maintain peaceful, safe, and stable relations at the international level, and (ii) both a material and immaterial outcome of a practical and entangled enjoyment of distinct layers of human rights (civil, political, economic, social, and cultural rights).

In these documents, a Democratic political experience seems thus related to basic political freedoms, which not only enable an individual well-being, but also social welfare and social justice, sustainable development, and collective self-determination. In this sense, for some regional agreements (ASEAN, OIC), the fulfillment of Democracy as an ideology by means of a practical intertwining of different layers of human rights needs to respect regional (historical, religious, or cultural) particularities. By the same token, even with exceptions, some regional arrangements relate Democratic standards explicitly to the fight of gender inequality, racism, and other forms of intolerance (AU, OAS, CPLP) and even to the preservation of a safe, healthy, and sustainable environment (ASEAN).

The point here is not to discuss the differences of legal provisions among each regional arrangement. Rather, it is important to perceive that Democracy is often associated in these initiatives as an ideology which nurtures its strength from (i) the discourse of human rights, (ii) the legitimacy of the public appeal around the vagueness and the large extent of such discourse, and (iii) the symbolic promise that recognition initiatives will be adopted at the national level via domestic public policies aiming to render concrete this ideology in practical terms.

However, for the purposes of this WP, it is important to focus only on institutional arrangements at the regional level concerned with a direct support of Democracy by means of international legal tools. And this for two reasons: (i) there is another WP² dealing specifically with the agenda of Human Rights; and (ii) among the five regional arrangements which have adopted judicial bodies to settle international disputes, four of them (AU, CoE, EU and OAS) resort to international courts to deal with the violation of Human Rights by their member-states – either with a specialized tribunal (CoE and OAS), or with a general one (AU and EU)

On the one hand, *not all regional agreements seemed to have adopted a “Democratic clause” – that is, a formal requirement of permanently fulfilling at the domestic level the Democratic standards provided in a regional treaty* (or in any other regional legal document) as a *conditio sine qua non* to acquire membership to the organization (CPLP) or to maintain a full-fledged membership to it (AU, Mercosur, OAS). On the other hand, *some of them have established specific procedures to evaluate: (i) whether there was an erosion of Democratic standards or of*

related political freedoms, and (ii) whether this breach would justify (legal, economic, or symbolic) penalties against the state responsible for deliberately disregarding or breaching the clause (AU, Mercosur, OAS).

Others do not resort to such a solution. Instead, while *respecting the independence, the sovereignty, and the non-interference in internal affairs and in national self-determination processes, they work together with civil servants of the member-states to give support to Democratic standards and related political freedoms at the national level.* Such activities vary: (i) preparing and organizing electoral observation missions (AU, CW, EU, OAS), (ii) providing technical expertise and technical support to evaluate the political situation within member-states and, based on this diagnosis, (iii) making recommendations to strengthen national institutions or train human resources (ASEAN, AU), (iv) fostering trade, economic, cultural, and social policies (CW, OIC), and (v) acknowledging good practices suggested by the regional organization or originated from other member-states (AU, CW).

^{Note 2} See, <https://www.ilaparis2023.org/en/white-paper/human-rights/>.

1.2.2.3 Concluding Remarks

These are just some examples of international legal framework created during the second half of 20th century to support Democracy worldwide. Other could have been raised and explored in this text. However, they suffice for the purposes of this WP. In spite of the opposition almost 100-120 years ago between the above indicated (and widely known) perspectives (Tobar *versus* Estrada), achieving **Democratic standards** at the domestic level **is not anymore an issue of exclusive national interest** – that is, which is only addressed by variable domestic provisions or carried out by unstable governmental ideologies.

This means that, even though UN's General Assembly resolutions on the right of self-determination of peoples state that "all peoples have the right freely to determine, without external reference, their political status and freely pursue their economic, social and cultural development" (A/RES/1514 and A/RES/2625), **distinct (universal and regional) international mechanisms present a clear preference for preserving and promoting Democratic political experience** – not only in strict civil and political terms, but also including economic, social and cultural aspects and even biological and other environmental factors. Some authors even argue that there is now a post-national source to (create and evaluate) the legitimacy of national governments:

the respect of democratic clauses by states as duly established in multilateral regimes to which they have adhered (PIZZOLO, 2014, 2021).

1.2.3 New State Actors, Non-State Actors, and the Respect of Democratic Standards

Alongside with the tribunalization of international law and with the creation of universal and regional regimes within multilateral institutions, **other actors and factors arose with a significant impact on the rule of law in supporting Democracy during the second half of the 20th century**. The related changes in the dynamics of international relations also affected the main issue of this WP.

First, **the decolonization processes** occurred mainly between 1955-1975 on African and Asian continents led to the construction of the so-called "spirit of [the Conference of] Bandung [1955]" (ESLAVA, FAKHRI & NESIAH, 2017). To put it simply: such spirit pointed to the expectation that the political emancipation of former colonies and protectorates **would be followed by the change** of some structures **of international order** via the introduction alternative legal experiences for international relations (ALEXANDROWICZ, 2017; GIANNATTASIO, 2021b).

Second, if *non-state actors (civil society, associations, corporations)* have always had an important role in shaping current international legal order – in preserving human dignity (MELZER, 2019, p. 37-9), promoting peace (FERNANDES, 1925; GUIEU, 2008) and regulating business activities (BRAITHWAITE & DRAHOS, 2000), it is undeniable that their role progressively increased in several fields during the last decades. Indeed, they *were responsible for* (i) *raising public awareness* or for checking the compliance with established rules, and (ii) *participating directly or indirectly* in (a) discussions concerning *the making and the adoption of these rules*, (b) *defining* the agenda and the terms of *these debates*, and even (c) taking upon themselves the duty to apply these rules or to behave in accordance with them (CLAPHAM, 2006, p. 197-270 and 310-6; FALKNER, 2016; ORSINI, 2013; RAJAGOPAL, 2003, p. 249-53).

Third, as extra-institutional agents, *social movements have also been responsible for introducing political demands related to collective identities at both national and international levels* (RAJAGOPAL, 2003, p. 240-5 and 253-66). The contestations of persistent forms of material and immaterial exclusions based on economic, national, ethnic, racial and gender characters revealed the relevance of unravelling manifold silenced structural struggles beneath the institutions responsible for establi-

shing and reproducing social organizations (GIANNATTASIO, 2018).

Altogether, these changes question established Western traditions (KOSKENNIEMI, 2011; ESLAVA, 2015) by claiming, both at the national and international levels, (i) *broader and more effective political representation in decision-making and decision-taking mechanisms (Democratic polity)*, and (ii) *a diversity-guided inspiration for recognition initiatives (Democratic policy)*.

Specifically at the international level, these changes helped to unravel permanent structural struggles which indicated that international law had “lost its innocence” (BADIN, MOROSINI & GIANNATTASIO, 2019, p. 31-2). In spite of the tribunalization of international law and of the creation of international organizations, *the remembrance of underlying structural struggles emphasized that international legal order still perpetrates material and immaterial exclusions (in biopolitical and geopolitical terms)* based on economic (BEDJAOU, 1979; PAHUJA, 2005), national (ONUMA, 2016), ethnic (OBREGÓN, 2006b; GIANNATTASIO, 2021a), racial (MUTUA, 2000) and gender (ORFORD, 2006; OTTO, 2016, 2018; SEUFFERT, 2018) characteristics. *Such limits can be regarded also as limits to the support of Democratic standards via the rule of law.*

Indeed, there is a clear perception that “international law has always been at the heart of the discourse about sovereignty and [... the] den[ial of] the rights of Third World peoples to assert their rights over their own territories” (RAJAGOPAL, 2003, p. 263). In this sense, while there is a political contestation from (old and new) state actors of the parameters to design a political regime in accordance with Western liberal Democracy (CHIMNI, 2006, p. 16-7; RAJAGOPAL, 2003, p. 241), non-state actors do not always adopt practical agendas at the national level to at least not harm Democracy as a political ideology (KARP, 2014, p. 17; SANDER, 2021) or Democracy as a source for inclusive policies (CARDIA, 2015; MOREIRA, 2019a, 2020). At the same time, the political regimes adopted by multilateral institutions are criticized for lacking space for Democratic participation in decision-making and decision-taking processes (CLAPHAM, 2003, p. 548; KLABBERS, 2005).

Despite (or rather, due to) the triumph of a state-centered approach in the international order during the second half of 20th century, persistent dilemmas related to statism cannot be ignored. Beyond claims for creating or recognizing new states (ONUMA, 2016), there are conscious criticisms unravelling permanent social, economic, and political national challenges to Democratic political experience derived from the multiseular

occupation of those territories by Western powers during their colonial expansion (MUTUA, 1995).

The inclusion of former colonized peoples in international order via the international legal framework of state institution is not regarded as being able to modify the center-periphery structure underlying the legal, political, and economic dynamics of international relations (CHIMNI, 2006; ONUMA, 2016; PAHUJA, 2005). As some of the interviewees argued, there is a shared perception that the “Western world is still not allowing Third World countries to develop their own theoretical and practical political experiences of Democracy”.

Even with the growing relevance of non-state actors in the support of Democracy, there are practical limitations concerning the actual representativeness of local demands by NGOs and social movements in decision-making and decision-taking processes (BADIN, 2007; ONUMA, 2016; RAJAGOPAL, 2003, p. 266-71). Others highlight the existence of distinct barriers for non-state actors – especially the ones based in Third World countries - in taking active participation without proper material and immaterial resources (GIANNATTASIO, DREZZA & WEHBY, 2021; ORSINI, 2013). As emphasized by some interviewees: “how could the UN or the EU ask for Democratic governance from national governments if their own international institutions and decision

processes are not Democratic?”, or, even, “international law has a clear preference for major Western powers and their agendas”.

In the same sense, there is also a shared perception that the participation of corporations in rule-making processes in international law encourage them to capture these fora and excluding other entities from these processes (AYELET, 2021; BRAITHWAITE & DRAHOS, 2000; FARIA, 2008). This was also highlighted by one of the interviewees: “just look where money is – and we shall see who is exercising governance and how s/he attempts to exclude others from it.”.

Finally, there is also the association of national and transnational corporations to practices sustaining the erosion of Democratic standards at the domestic level of different countries – and this, not only in past experiences, and not only in autocratic regimes (COSTA & SILVA, 2018; PAMPLONA, 2018; PAYNE, PEREIRA & BERNAL-BERMÚDEZ, 2018). While most of the interviewees did not deal explicitly with the role of corporations in this issue, some of them stressed that “capital does not feel uncomfortable to be associated with strong, centralized, and authoritarian governments. Rather, it benefits from them.”.

In this last aspect, one should not ignore that some leading figures of private entities have recently criticized autocratizing

movements from political leaders in different countries. By arguing that elections properly conducted must be respected when there is no evidence of fraud, they do present an important role of supporting Democratic political experience in their own countries (CARTA CAPITAL, 2022; RAPPERPORT, 2021). This is not a general position though: there are some countries equally facing statements from national corporations clearly supporting the erosion of Democratic standards and the disregard of electoral processes (G1, 2022). As one of the interviewees argued: “it is a historical moment: private power will not save Democracy, as it looks for its own power and money. But they can provide courage for political leaders to figure out the ways to limit private entities”.

2.

challenges
for the rule of law
to support Democracy

Even though international law has undergone manifold institutional innovations at the universal and regional levels in the 20th century to support Democracy worldwide, the initial enthusiasm concerning these innovations gave place to a certain distrust and disappointment towards them. As one of the interviewees stressed: "I am not only skeptical about the feasibility of entitling international community with rights or duties to support Democracy at domestic jurisdiction. Rather, I am convinced that international community should definitely do not have any role concerning this subject".

The adoption of international legal tools is usually regarded as a positive manner of ensuring political emancipation – a utopian perspective that cannot be, either disregarded or circumvented (KOSKENNIEMI, 2007, 2011). However, if one takes seriously the criticism to international law unraveled by the political contestations of its structures, one should not ignore that the continuous affirmation and imposition – even by international law – of the cultural parameters related to a certain Western tradition (GIANNATTASIO, 2021b) maintained through time a practical and theoretical path dependence to conceive, drive, and even modify it (ONUMA, 2016).

This leads this WP once again to the diagnosis of Paul Valéry raised 100 years ago - but in a different way. Indeed, despite

his warnings, international order is still legally and politically based on a Western consensus on the primacy of: (i) the political organization of state, (ii) the economic reproduction via capitalist standards, (iii) the rational exploitation of resources, whose science-based sustainability is both guided and measured by (iv) the instrumental purpose of humankind's survival, and (v) the clear divide between a center-periphery dynamics in economic and political terms. This cultural toolbox of legal solutions must be (re-)invented by humankind to deal with challenges to Democracy as a political ideology and as a source of distinct political regimes and recognition initiatives.

2.1 The Ideological Challenges: Democracy and its Political Selectivity

There is at first an ideological challenge, which reveals a distrust towards such initiatives. International order is regarded as being tributary, in many degrees, to Western³ tradition consolidated through time via hard, soft, and smart powers (NYE JR., 2004; LAÏDI, 2008; p. 261-6; ONUMA, 2016; ROBERTS, 2017). As one of the interviewees stated: “is Democracy a common project of humankind or a mission established by some old international powers? [...] Voices from the South are much marginalized and obscured in foreign affairs and in international organizations and their own problems and experiences [are not] properly taken into account.”.

^{Note 3} The recent status of the political and military tensions between the NATO, the EU, Russia and Ukraine in international affairs demands a proper clarification. We use here the word “West” to refer to the traditional divide between Western world *versus* non-Western world as developed by a critical literature in the second half of the 20th century which sought to denounce the manifold exclusions perpetrated by former colonial powers *vis-à-vis* their former colonies or *vis-à-vis* their former protectorates – among many examples, see Edward SAID (2007). Thus, we are not endorsing here the contemporary politization of the same pair of words, which has the sole purpose to try to justify nowadays acts of aggression – illegal unilateral acts, in accordance with the provisions of the UN Charter.

The announcement of new measures of resorting to international law to support Democracy is thus regarded with cynicism. These initiatives are seen, either as imbued with a dangerous “moral motivation” of globalizing Democracy via the use of force (COSTA, 2015; HOBBSAWM, 2007a) - backed by a long and well-known Western behavior towards non-Western world (ANGHIE, 2016; KOSKENNIEMI 2016; ORFORD, 2016)⁴, or even as a backslide to neo-colonial attempts from major Western powers (PAHUJA, 2005; RASULOV, 2021; ROTH, 2021).⁵

Indeed, it was not unusual for non-Western states which were not (anymore) under colonial occupation during 20th century to be subject to foreign control of their political, economic, and social activities via direct and indirect ruling from Western powers. More concerned in preserving a certain economic ideology worldwide than fostering effective democracies in the

^{Note 4} The song *Latinoamérica* (<https://www.youtube.com/watch?v=DkFJE8ZdeG8>), authored by the Puerto Rican group CALLE 13 in 2010, can be an interesting example of a shared cultural perception concerning such behavior.

^{Note 5} For another cultural reference, the famous (and controversial) 2012 EU advertisement on the enlargement of the Union (<https://www.youtube.com/watch?v=kKN67ImpO4k>) is just one of the many vestiges of this type of action. For more information, see, for instance, Nicholas WATT (2012).

countries under their respective area of influence, major Western powers countries led the international community throughout 20th century to get used to incoherent political agendas towards the reinforcement (or not) of Democratic standards.

Along with all the institutional efforts in 20th century to develop at the international level legal mechanisms to foster Democratic standards worldwide (tribunalization and universal or regional multilateral mechanisms), international order was legally and politically indulgent to:

- (i) *coups d'état organized by foreign powers* which, by co-opting local elites, sought to establish autocratic governments (HELAL, 2019; HOBBSWAM, 2007b; PRADO & PELLEGRINO, 2016, p 167-83),
- (ii) *plans (some of them successful) of foreign powers to assassinate or silence dissenting local political leaders* (OCTAVIANI, MEDEIROS & BRAGA, 2018; PRADO & PELLEGRINO, 2016, p 167-83; USAID-Brazil, 1963, p. ii-iii, 98-109 and 130-45),
- (iii) *the support or toleration by foreign powers of local coups d'état seeking to establish autocratic governments* because they would not harm foreign interests (FAUSTO & DEVOTO, 2004, p.

400-1; HOBBSWAM, 2007b; SCHWARCZ, , p. 7-23)⁶; and

(iv) due to geopolitical security concerns related to the great ideological divide after World War II, *a certain tolerance of pro-democratic international institutions with autocratic governments* (PINTO & TEIXEIRA, 2002; CASTAÑARES & JUSTE, 2002)⁷.

Several authors emphasize that this structure continues driving contemporary international relations in the name of Democracy (ANGHIE, 2004; BAXI, 2012; CHIMNI, 2006; HARDT & NEGRI, 2000; HELAL, 2019; NASSER, 2021; ORFORD, 2003, 2016).⁸ Skep-

Note 6 René Pérez JOGLAR (1978-), also known as Residente, is a Puerto Rican artist who recently launched the song *This is Not America* (<https://www.youtube.com/watch?v=Gk87AKIPyZY>) - a direct reference to the manifold abuses of power in 20th century - and ongoing in the dawn of 21st century - from Western powers *vis-à-vis* non-Western countries and the alignment of the former with elites of the latter.

Note 7 Francisco Buarque de HOLLANDA (1944-), also known as Chico Buarque, is also an important cultural reference for authoring many critical songs during Brazilian dictatorship (1964-1988), such as *O Malandro* (https://www.youtube.com/watch?v=_5iGWfguyY8&t=13s), which, despite dating from 1979, has a persistent adherence to contemporary issues for national and international political and economic relations towards non-Western countries.

Note 8 The Palestinian artist Farah CHAMMA (1994-) presents the poem *How Must I Believe* (<https://www.youtube.com/watch?v=Wodbli798w&t=217s>) as a signal of such broad dissatisfaction derived from the distrust of the effectiveness and the sincere political will of contemporary international order and its institu-

ticism towards the use of the rule of law to support Democracy derives from the perception that institutional modifications have not eradicated the long-established center-periphery dynamics from the core of international legal order (CARDOSO & FALETTO, 1975; COSTA, 2015; ESLAVA & PAHUJA, 2012; WALLERSTEIN, 1999).

To put it simply: due to the convenience of this center-periphery dynamics for traditional Western major powers, it seems that the erosion of economic and social living conditions and of acceptable Democratic standards in non-Western countries is also convenient. As one of the interviewees summarized: “international community usually acts thinking in their own national or regional agendas. If [bringing] Democracy [to third states] helps this agenda, it will certainly be promoted. Otherwise, international community will not try to handle such a problem.”.

Focusing on economic terms, a new version of the former colonial “international division of labor” (ESLAVA, 2018) operates under the widespread label of globalization (AMIN, 2001)⁹. This

tions concerning the support of Democracy and of Human Rights.

Note 9 Despite the comedic tone of *Aluga-se* (<https://www.youtube.com/watch?v=d3il-ktX->

new/old condition (i) maintains and reinforces at the local level the traditional social and economic exclusions (DENNY *et al.*, 2017; MOREIRA, 2017, 2019a; SILVA, 2020, 2021; SILVA, ROCHA & D’AVILA, 2020)¹⁰, (ii) reproduces globally the economic exploitation rationale which, even though science-based, is only sustainable – but not enough to preserve the environment and associated traditional ways of life (KOPENAWA & ALBERT, 2010)¹¹, and also (iii) does not seem to care enough with the effective maintenance of Democratic standards (ideology, regime and policies) in domestic political agendas (ANDRADE, 2018; COSTA, 2015).

2WI), Brazilian artist Raul Santos SEIXAS (1945-1989) criticized with this song - dating from 1980 - the deleterious consequences for domestic policies in non-Western countries derived from the permanence of the international economic dependence.

Note 10 The Brazilian indigenous artist from the Guajajara people, Kaê Guajajara (1993), denounced in the song *Mãos Vermelhas* (<https://www.youtube.com/watch?v=P9aAhuJLnt0>), launched in 2020, that the dependence of local elites with international economic division of labor has direct perfidious consequences for traditionally excluded peoples in non-Western countries.

Note 11 In 2020 the Brazilian group SEPULTURA presented the song *Guardians of the Earth* (<https://www.youtube.com/watch?v=4yNxUYIEkuA>) as a clear criticism to impacts of the economic exploitation of national commodities extracted for the international market, which is responsible for negative consequences, not only to the local environment, but to the associated traditional ways of living.

Distrust is also related to **lack of confidence of legal and political commitment of Western powers to international law**. This is permanent feature of international law (ONUMA, 2016): the long-debated problem of ensuring that they (i) will abide completely to the rule of law (FERNANDES, 1924, 1925; KELSEN, 1964, p. 516-34), and (ii) will not develop inventive excuses to diminish or erase the binding character of international law (FALKNER, 2016; PELLET, 1988; WEIL, 1983). As one of the interviewees argued: “double standards at the international level are not properly dealt; selectivity is not directly faced and it hinders the credibility and the effectiveness of Democracy [as common international goal].”

The establishment of an international legal framework to support the fulfillment of certain requirements of Democracy in every country is thus regarded with suspicion. After all, as many other institutional achievements at the international level, nothing warrants that it will not find difficulties in effectively binding traditional major Western powers to the rule of law when it disregards their own national agendas, promises and expectations (HOBBSWAM, 2007a, p. 116-8; ORFORD, 2003; PUTNAM,

2010; RASULOV, 2021; ROTH, 2021)¹².

2.2 The Conceptual Challenges: Democracy as an Indeterminate Word

Distrust towards the economic and political sincerity of initiatives resorting to the rule of law to support Democracy does not necessarily aim to a direct denial or refusal of Democracy itself. This situation presents a **second challenge** to the purposes of this WP: **dealing with the indeterminacy of Democracy as a concept** capable of guiding the practical design of feasible political regimes both for national and international levels.

One interesting aspect related to this conceptual challenge is that this contestation encompasses initiatives at the national

Note 12 The last cultural reference is *Ninguém regula a América* (<https://www.youtube.com/watch?v=FOcrMRMCFH4>) – a song launched in 2001 by the Brazilian group O RAPPÁ. Even though it was written to denounce the specific international position assumed by one Western country, it represents the conviction that international legal order was not yet capable of fully submitting the political entities from who the example of abiding to the rule of law is still long expected – as already highlighted by Raul FERNANDES (1924) and by Hans KELSEN (1964, p. 756-61).

level which do resort to Democracy as an ideological justification to claim for a sincere local and alternative political experiences for Democratic polities and policies (ONUMA, 2016; RIBEIRO, 2006; RIEGNER, 2012). As pointed by one of the interviewees: “Europe has achieved a model of Democracy which fits its own reality. The rest of the world must look for a model of Democracy of its own.”.

Such approach derives from an important and long-debated assumption: there is no single formula to achieve an appropriate political organization of society, as it depends on many local features related to cultural, economic, and political experiences through which a society has underwent in history (ROUSSEAU, 2019). Thus, *even though not denying the importance of Democracy as an inspirational idea to design proper political institutions to preserve diversity (FARIA, 1984) and to protect the place of power to keep it as an “empty space” (LEFORT, 1991), to adopt a single and universal concept of Democracy is to deny the social and historical complexities of the world (HOBBSWAM, 2007a, p. 118).*

The contestation of the appropriateness of a single concept of Democracy derives from the large debate concerning a “local turn” in international relations. Inspired by criticisms to peace-building processes in post-conflict societies (OLIVEIRA, SILVA &

KUHLMANN, 2021, p. 7-8), this narrative argues that a Western liberal concept of Democracy is as a top-down mechanism which is more prone to meet external moral, economic and political expectations, reliefs, and beliefs than to deal directly with local political and social dynamics. In other words, this criticism states that such a rigid formula of Democracy denies a “local ownership” of the process to establish peace and to build convenient and stable institutional conditions to support a Democratic political experience pertinent to local structures (DEMIR, 2017; LEONARDSSON & RUDD, 2015).

In this sense, *this political contestation targets, not Democracy itself, but a certain Democratic political regime, namely: an imposed Democratic order* whose institutional design (i) was not capable to absorb and deal with (a) local traditional conflicts and (b) persistent popular demands, (ii) preferred and included mainly local elites which were convenient to external powers, and (iii) created or preserved neocolonial or imperial relations *vis-à-vis* external powers (OLIVEIRA, SILVA & KUHLMANN, 2021, p. 7-8). *These contestations* of a specific idea of Democracy (state-based, market-based, elitist, imperial-guided) *reaffirm their compromise with Democracy as an ideology of diversity and defend alternative theoretical and practical concepts of (i)*

rule of law and related institutions (CLARKE, 2010; ONUMA, 2016; PEERENBOOM, 2005a, p. xiv-xv, 2005b, p. 1-14; UNGER, 2004), and (ii) law and legality (PEERENBOOM, 2005b, p. 36-42; SANTOS, 2006, 2010, 2018; SANTOS & GARAVITO, 2005; UNGER, 1986, 2018, p. 233-49).

To put it simply, in the name of Democracy (as an ideology), Western liberal Democracy (as a political regime and as a source for recognition initiatives) is refused alternative political practices (institutional design and public policies) closer to local structures (HELLMÜLLER, 2012). After all, if the basis of a Democratic regime is to design institutions capable of (i) preserving the place of power as an empty place which is owned by no-one (LEFORT, 1991) and (ii) enabling the discussion based on plurality of political agendas and ideologies (FARIA, 1984), this criticism argues that it cannot be a façade which deludes popular demands by submitting them continuously to the same domestic and foreign dominations (HOBBSAWM, 2007a, p. 119-20).

These arguments must be differentiated from (i) misuses and abuses in affirming Democracy as a rigid political regime with undisputed institutional standards to be brought to others (ANGHIE, 2004, p. 279-91; ESLAVA, OBREGÓN & URUEÑA, 2016, p. 64-7; ORFORD, 2003, p. 203), and (ii) misinterpretations which hypostatize Democracy as a pure ideology hiding/justifying neocolonial or

neo-imperialist attempts from Western powers. This is so because they touch the limits of Democracy as a valid political ideology by relying on a strict concept of the word Democracy - a state- and market-based political regime imbued with civilizational values usually associated to Western countries (liberal policies related to individuals). Democracy reveals thus to be a word hiding “a missionary-like effort to transplant Western laws, institutions, norms, and values” (PEERENBOOM, 2005a, p. xv).

2.3 The Practical Challenges: Democratic Governance at the International Level

Although the last criticism derives from a conceptual challenge to Democracy, it has concrete practical consequences for the purposes of this WP. Indeed, the withdrawal of countries from the ICC (DEZALAY, 2017; LABUDA, 2014), as well as the explicit legal, political, economic, and symbolic attacks of some heads of state from major state powers against the ICC (LAGASSÉ, 2004; STERIO, 2019; VINJAMURI, 2017, p. 276) and other multi-lateral institutions (DUPUY, 2020, p. 22-3; VENTURA & BUENO, 2021) are only some examples of deleterious actions derived

from the hypostatization of liberal Democracy as the sole concept of Democracy.

Problems related to the use of Democracy as a guiding-concept for designing a suitable political regime at the international level has also practical consequences. But, at least in this broad approach, it derives from the perception that it does not suffice to achieve Democracy at the national level to have an appropriate Democratic international order (HOBSBWAM, 2007a, p. 119).

The proliferation of new actors within international legal framework reveals that it is not enough to have representative governments within states: if Democracy is related to popular participation in the place of power – always an empty place capable of absorbing the diversity of ways of life (LEFORT, 1983, 1991), Democracy must also have the possibility to reach decision-making and decision-taking processes at the international level – which, by their turn, affect the everyday life both in national and international orders (BERNSTOFF, 2021; BOGDANDY, 2012; ESLAVA, 2015; FARIA, 2008; HABERMAS, 2001).

Participation of non-state actors in international law making is not new (BRAITHWAITE & DRAHOS, 2000). Via direct and indirect contact with national authorities and with international institu-

tions (ORSINI, 2013), and via extra-institutional actions (RAJAGOPAL, 2003), those actors are also largely responsible the development of international agenda. However, there is a certain hesitation of opening international environment to “noisy assemblies”.

If one bears in mind the rules of proceeding of these fora, public control is roughly speaking reduced to: (i) previously authorized non-state actors inside multilateral fora - who, by their turn, offer limited participation rights to non-state actors (time constraints, word-limit, participation only via written documents, previous authorization by a state, among others) and absolutely no voting rights (GIANNATTASIO, DREZZA & WEHBY, 2021), or (ii) legal standardization of procedures, judicial review of and transparency of decisions (BOGDANDY & GOLDMANN, 2009; BOGDANDY & VENZKE, 2012).

Besides their Democratic deficit, the legitimacy of universal and regional mechanisms is being challenged due to an alleged “inefficiency” of their bureaucracies and due to their “large budgets”. Without endorsing any of these criticisms, it is important to perceive that a part of the legitimacy contestations of those mechanisms could be properly addressed if proper and regular Democratic standards were adopted in the institutional design of the political regime for their decision-making and decision-taking procedures.

3.

questions
to move the discussion
forward

3.1 “The Mea Culpa from International Community”: Taming the Selectivity of the Rule of International Law

While new actors and factors arose in international order, the structure of international relations has not changed, even though old actors, states have persistently preserved their legal stratagems to exercise “opt-out” rights among other allegedly inherent rights, which are not directly related to the purposes of this WP.

Indeed, the legal capacity to deny the efficacy or the legality of international rules and their legal capability to not abide to decisions of international mechanisms give to sovereign states an inescapable weight in international law. Thus, despite all these changes, sovereign state is still a not-completely tamed actor at the international level (VASCONCELOS, 2016) in such an extent that it is still regarded as the basically desired political organization for engaging in such relations (ONUMA, 2016) which, at the same time, reproduce social exclusions and poli-

tical domination at the national level (GIANNATTASIO, 2021a). As one of the interviewees stated: in many cases, “nation-building is regarded as more important than preserving institutional constraints and protections - and [in these cases] Democracy [is] not [seen] as reliable and enough for these purposes”.

But there is more. The problem is not simply the persistence of “opt-out” rights for states: the idea of rule of law itself loses its strength when only few states are legally bound by the legal discourse. If one takes seriously the idea of rule of law in order to develop an international legal framework to support Democracy, international law cannot be regarded as an optional clause which is valid only for some states: “To say law is to say obligation, and that is really the beginning and end of the matter.” (FITZMAURICE, 1958, p. 40).

Thus, a necessary condition is to explicitly erect to the status of a peremptory norms of general international law (*ius cogens*) – in the terms of arts. 53, 64 and 71 of the Vienna Convention on the Law of Treaties (1969) - the legal commitment of states: (i) to promote Democratic standards at their national levels, and (ii) to not erode (but protect and preserve) these standards in their domestic political regimes and in the formulation of their own public policies. Just as occurred with the legal provisions of the Convention on the Prevention and Punishment of the

Crime of Genocide (Paris, 1948), proper international legal consensus around the *ius cogens* character of Democratic standards must be achieved.

Yet, this provision is not enough. The compulsory character of international legal tools to support Democracy worldwide must be fully reinforced for the states – and it is never a truism to say: for all states, in equal terms – by additional institutional innovations at the international level. After all, if “law is an inevitable condition of society – if it is a case of *ubi societas ibi jus* – then the *jus* must be *jus obligatus*. [...] If a rule is necessary condition of a certain state of affairs, the rule or system must also necessarily be binding, or it would not fulfil, or be able to fulfil its function” (FITZMAURICE, 1958, p. 38-9).

Thus, it does not suffice to recognize Democracy as the content of a non-derogable rule. When the discourse of the rule of law is invoked to support such an indeterminate word as Democracy, at least a shared legal commitment to protect, preserve and promote its ideology (diversity of ways of life and a permanent empty place of power) must be achieved and properly reinforced by additional international mechanisms, whose actions should not be targeted by self-serving political contestations from the states or populist leaders.

3.2 “Democracy beyond the West”: The Multicultural Concept of Democracy

Democracy should be understood in a broader sense: it is an ideology (politics), a political regime (polity) and a source for recognition initiatives (policies). Liberal Democracy is then only one of the many possibilities to frame a political regime (polity) and to adopt recognition initiatives (policies) in accordance with local values, institutions, and traditions – as long as the place of power remains permanently open as an “empty” place (polity), and as long as the diversity of ways of living are not eradicated (politics) (LEFORT, 1983, 1991).

Refusing Democratic standards to preserve local non-Western values must not end-up in “self-serving” strategies of “authoritarian regimes [...] to play] the cultural card to deny citizens their rights and then fend off foreign criticism.” (PEERENBOOM, 2005a, p. x). Indeed, the only acceptable political contestations to Democratic standards (as a political regime and as source of public policies) are the ones which do not abandon Democracy as an ideology and who seek to root it even deeper in the collective identity of a society.

This leads of course to a practical issue: framing the rule of law to be capable of identifying and checking authoritarian abuses and misuses of the many contestations to Democracy which might rise both at the national and the international levels. It must be capable of absorbing and fostering alternative concepts of Democracy to give place to such multicultural approach of Democracy. As highlighted by some interviewees, “Democracy has been unable to use legal tools to deal properly with authoritarian attacks to Democratic standards without being accused of being authoritarian itself”, or even, “sometimes national legal systems do not provide proper personal protection for the integrity of civil servants, for them to act independently”.

At the one hand, national legal orders must feel secure of being capable and authorized to develop their own Democratic polity and policies – and never harming Democracy as politics – without being potentially threatened by foreign or international interventions (by means of force or sanction) if they do not meet a specific state-based or market-based parameters. At the same time, national legal orders must be capable of regulating clearly and in details mechanisms to stop the political spread of authoritarian discourses at the national level, without being identified with censorship: as clearly stated by one of the inter-

viewees, “an immoderate [legal] protection [might] weaken the basis of Democracy itself.”.

Thus, a first criteria – and yet, vague for this moment - to measure such threats would lie on the evaluation of the capability of these actions to not allow the persistence of diversity of ways of life or of the emptiness of the place of power. Some of the raised practical solutions were:

- (i) not allowing non-democratic parties or political leaders to participate in elections;
- (ii) removing non-democratic parties and political leaders from Executive and Legislative powers if, after taking office in accordance with national election procedures, they assume a non-democratic discourse and/or resort to practical misuses and abuses of their institutional powers to subvert Democracy as an ideology of diversity and openness of the public sphere.

There might be some difficulties in defining appropriate criteria to recognize which leaders or parties do not meet anymore democratic standards or are “non-democratic”. However, direct and explicit threats against Democracy as an ideology (of diversity and openness), or even explicit or implicit abuses and misuses of power to dismantle Democratic political regimes (ver-

tical and horizontal accountability mechanisms, distrust of electoral bodies, among others) or to raise a public distrust towards recognition policies (spread of hate speeches, “common foe” discourses, among others) might help identifying a democratic backsliding regime.

At the same time, positive actions should be taken to the construction and the consolidation of Democracy as an accepted political ideology. At the national level, Democracy should be taken seriously as a practical guiding-concept by means of:

(i) providing material/tangible and symbolic/intangible support for every human group within their borders to develop their individual and collective capabilities to empower their voices at the domestic level – including the special relations which some groups might encompass with the environment and other species, and

(ii) dismantling the concept of Democracy as the political regime of the majority - who, due to their benevolence, charity, or political correctness, merely tolerate minorities and provide them fragile inclusive opportunities. Such approach derives from the hypostatization of Democracy as a political regime whose force is symbolically nurtured by the imagined force of the “biggest” number to the detriment of the imagined weakness of the

“lesser” number. However, this approach is the denial of Democracy as an ideology - whose strength derives from the diversity of ways of life and from the emptiness of the place of power. Tolerance of minorities – in everyday life and in political positions at the national level – cannot be regarded as an option. Neither the adoption of measures for their political, economic, social, and cultural inclusion. As highlighted by one of the interviewees: “Many people think that these are paradoxical issues - majority versus minority. But they are not. Democracy is for everyone - this is the corollary.”. That is the reason why the discourse on Democracy must be steered in order that it can be understood - both in conceptual and practical terms - as a word that truly embraces pluralism at the three levels (politics, polity and policies).

At the other hand, international mechanisms would need to refrain from dictating steps and formula to achieve or maintain Democratic standards (political regime and public policies): focus of international regulations should be the broad clause of requiring the preservation at the national levels of the diversity of ways of living and of the place of power as an empty place. But there is more: international mechanisms should be also legally empowered to deal with local threats to Democracy as an ideology – either by sharing legal expertise with national

governments, or by developing new multilateral mechanisms capable of reinforcing locally the persistence of Democracy as a valid political ideology. The idea of an International Constitutional Court (ICoC) could also be discussed anew – of course, bearing in mind the many limitations already pointed out in the academic debate for designing such an institution.

The guiding factor for the approach of the rule of law would be the focus on not allowing anymore states to simply “tolerate minorities”: diversity and emptiness of the place of power require more effective measures at the domestic level, which should be fostered by international mechanisms. Practical solutions could vary:

- (i) **giving international protection to threatened Democracy defenders at the national levels**, as many “organizations are not completely free to develop their activities and are not able to present their reports on what is happening in the country. Obstacles vary, from offices being closed to bank accounts being frozen, after overnight changes of laws and constitutional law”, as stressed by one of the interviewees;
- (ii) **providing direct material/tangible and symbolic/intangible support to minorities at the local level to enable their direct and empowered participation** in distinct decision-making and

decision-taking processes in their own states in equal terms (in terms of rights and constraints) – after all, as summarized in some interviews, “minorities must also be understood as the basis of the political regime of their respective countries”;

(iii) **developing international mechanisms (universal or regional) imbued with more concrete measures than imply warning of states that there might be local threats to Democracy as an ideology, such as commanding the state to adopt stricter measures against authoritarian leaders or parties and against genocide processes;**

(iv) **establishing permanent representatives of universal and regional organizations in each state**, with quotas in every national deliberative instance. This representative would (a) be entitled with immunities and other privileges, (b) be nominated in accordance with procedures entitling them to act with political independence in those places, (c) exercise powers, such as (1) consultation for legal advice, (2) supervision and production of periodical reports for national and international levels, and (3) speaking and voting rights in deliberative processes at the domestic level; and

(v) **rejecting the idea that reinforcing Democracy is a legal authorization to international community to resort to force or to**

any other direct sanction against a state for the existence of autocratizing groups inside their borders. As one of the interviewees summarized: “intervention should not be the main action of international community to promote Democracy, as installing Democracy is something very delicate and requires time.”.

3.3 “Getting Rid of the State”: Non-State Participation from Utopia to Legality

The solutions mentioned above are still directly related to the resilient state-based and nation-based structure of international relations. They focus on addressing situations in which a clear divide between national and international orders is assumed and replicated from a state-centered perspective, which also cares too much in preserving untouched the idea of sovereignty. But it is also important to develop theoretical and practical strategies to bypass this aporia.

There is no possibility to eradicate the state from international relations – otherwise the whole WP would sound unrealistically naive. More than a simply another utopian discourse seeking to revive the well-known accusation of the immoderate powers

given to the state by its sovereign rights, this final part calls the attention for the need to develop and to enhance non-state-based international institutions. The legal discourse should once again be activated to develop innovative frameworks to diminish the “inter-something”, the “state-based” and the “nation-based” features of international law and of Democracy.

The first idea related to this provocation is to remember that state is not the only form of political organization of societies. In spite of the success of this formula after the Westernization of international relations (GIANNATTASIO, 2021b; ONUMA, 2016), there are many other possibilities to organize peoples – that is, beyond the states and beyond the nation. As one of the interviewees suggested: “Democracy is not related to nation; rather, it is related to *demos*.”

This means that international community could develop additional representative mechanisms within its law-making procedures which take into consideration not only states and nations, but other political forms of political organizations – including, but not limited to the usual non-state actors, such as NGOs, social movements, indigenous peoples, among others.

The second idea related to the reduction of the weight of the state, of state perspectives and even of nation-based perspec-

tives in international institutions is to **extend the rule of law to these alternative forms of political organization outside the state**. This have at least three major consequences:

(i) to **remove from states special checking powers** – such as veto rights or similar legal provisions - **in deliberative processes**, or better distributing such legal provisions to other non-state-based and non-nation-based actors;

(ii) to **officially include non-state-based and non-nation-based actors in equal terms in the balance of the institutional design of international mechanisms** – that is, to entitle them with **equal rights of participation, equal voting rights, equal checking powers**, and giving them material support to attend those meetings and to empower them to engage actively in international networks; and

(iii) to also **submit non-state-based and non-nation-based actors to international procedures in which they can be held accountable for violating Democracy as an ideology or for supporting autocratising governments or authoritarian regimes** – after all, it is not unusual having non-state actors as the origin of actions towards the erosion of Democratic standards or even as supporters of autocratic regimes or of autocratisation processes, under the pretext that “too much Democracy sometimes dis-

turbs too much” or even “Democracy is detrimental to development” – as pointed by some interviewees.

Other practical decisions for proper institutional design should also be adopted to reduce the influence of states and nations in the construction of international legal mechanisms to support Democracy worldwide. However, for the purposes of this WP, it is an important first step to recognize and root deeply in international legal thought that, if the rule of law has everything to do with law, at the same time, it is not only about “inter-something” relations and about states or nations. Rather, its discourse is - for the time being - about the law that runs through humankind and its endless forms of political organizations and engagements – no matter how it is named.



annex 01

bibliography

- ADORNO, Theodor. *The Authoritarian Personality*. New York: Wiley, 1964.
- ALEXANDROWICZ, Charles. *The Law of Nations in Global History*. Oxford: Oxford University, 2017.
- ALEXY, Robert. *Teoria da Argumentação Jurídica*. 5 ed. Rio de Janeiro: Forense, 2020.
- ALLCOTT, Hunt & GENTZKOW, Matthew. Social Media and Fake News in the 2016 Election, *Journal of Economic Perspectives*, v. 31, n. 2, p. 211-35, 2017.
- AMIN, Samir. Capitalismo, Imperialismo y Mundialización. In: José SEOANE & Emilio TADDEI (Comp.). *Resistencias Mundiales*. Buenos Aires: Consejo Latinoamericano de Ciencias Sociales (CLACSO), p. 15-29, 2001.
- ANDRADE, Daniel. Neoliberalismo: Crise Econômica, Crise de Representatividade Democrática e Reforço de Governabilidade, *Novos Estudos CEBRAP*, v. 38, n. 1, p. 109-35, 2018.
- ANGHIE, Antony. *Imperialism, Sovereignty and the Making of International Law*. Cambridge: Cambridge University, 2004.
- _____. La Evolución del Derecho Internacional: Realidades Coloniales y Poscoloniales. In: Antony ANGHIE; Martti KOSKENNIEMI & Anne ORFORD. *Imperialismo y Derecho Internacional*. Bogotá: Siglo del Hombre/Universidad de los Andes/Pontificia Universidad Javeriana, p. 95-126, 2016.
- ARENDT, Hannah. *Origens do Totalitarismo*. São Paulo: Cia. de Bolso, 2012.
- _____. *Crises da República*. 3 ed. São Paulo: Perspectiva, 2017.
- BACHAND, Rémi. *Les Subalternes et le Droit International*. Paris : Pedone, 2018.
- BADIN, Michelle. Mudanças nos paradigmas de participação direta de atores não-estatais na OMC e sua influência na formulação da política comercial pelo Estado e sociedade brasileiros, *Revista Direito GV*, v. 3, p. 77-110, 2007.
- BADIN, Michelle; MOROSINI, Fábio & GIANNATTASIO, Arthur. Introdução. In: Michelle BADIN, Fábio MOROSINI & Arthur GIANNATTASIO (Org.). *Direito Internacional: Leituras Críticas*. São Paulo: Almedina, p. 23-32, 2019.
- BAXI, Upendra. Postcolonial Legality: A Postscript from India, *Verfassung und Recht in Übersee*, v. 45, n. 2, p. 178-94, 2012.

- BEDJAOUI, Mohammed. *Towards a New International Economic Order*. Paris: UNESCO, 1979.
- BERMAN, Ayelet. Between Participation and Capture in International Rule-Making: The WHO Framework of Engagement with Non-State Actors, *European Journal of International Law*, v. 32, n. 1, p. 227-54, 2021.
- BERNSTOFF, Jochen von. New Responses to the Legitimacy Crisis of International Institutions: The Role of 'Civil Society' and the Rise of the Principle of Participation of 'The Most Affected' in International Institutional Law, *European Journal of International Law*, v. 32, n. 1, p. 125-57, 2021.
- BERTELSMANN STIFTUNG (BS). *Bertelsmann Stiftung's Transformation Index 2022 – Global Findings*. BS: Gütersloh, 2022.
- BOGDANDY, Armin von. The European Lesson for International Democracy: The Significance of Articles 9–12 EU Treaty for International Organizations, *European Journal of International Law*, v. 23, n. 2, p. 315-34, 2012.
- BOGDANDY, Armin von & GOLDMANN, Matthias. Die Ausübung internationaler öffentlicher Gewalt durch Politikbewertung, *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, v. 69, 51-102, 2009.
- BOGDANDY, Armin von; GOLDMANN, Matthias & VENZKE, Ingo. From Public International to International Public Law: Translating World Public Opinion into International Public Authority, *European Journal of International Law*, v. 28, n. 1, p. 115-45, 2017.
- BOGDANDY, Armin von & VEZKE, Ingo. On the Democratic Legitimation of International Judicial Lawmaking. In: Armin von BOGDANDY & Ingo VENZKE (Eds.). *International Judicial Lawmaking*. Berlin/Heidelberg: Springer, 2012.
- BONAVIDES, Paulo; ANDRADE, Paes de. *História Constitucional do Brasil*. 3 ed. São Paulo: Paz e Terra, 1991.
- BORGES, Daniel. *A Aplicação das Convenções Internacionais sobre os Direitos Sociais relacionados à Saúde e ao Trabalho na Ordem Jurídica Brasileira: Contribuição ao Estudo do Impacto do Direito Internacional sobre as Políticas Sociais Brasileiras*. São Paulo: University of São Paulo (Dissertation in International Law), 2017.
- BRAITHWAITE, John & DRAHOS, Peter. *Global Business Regulation*. Cambridge: Cambridge University, 2000.
- BRUNETEAU, Bernard. *Le Siècle des Génocides : violences, massacres et processus génocidaires de l'Arménie au Rwanda*. Paris : A. Collin, 2004.

- _____. *Les Totalitarismes*. 2 ed. Paris : A. Collin, 2014.
- BUTLER, Judith. *Bodies that Matter*. Abingdon: Routledge, 2011.
- CARDIA, Ana. *Empresas, Direitos Humanos e Gênero*. Porto Alegre: Buqui, 2015.
- CARDOSO, Sérgio. Por que República? Notas sobre o Ideário Democrático e Republicano. In: Sérgio CARDOSO (Org.). *Retorno ao Republicanismo*. Belo Horizonte: UFMG, p. 45-66, 2004
- CARDOSO, Fernando & FALETTO, Enzo. *Dependência e Desenvolvimento na América Latina*. Rio de Janeiro: Zahar, 1975.
- CARNEIRO, Maria Luiza & YEGHIAZARYAN, Lusine. *Genocídio Armênio: Protótipo do Genocídio dos Tempos Modernos*. São Paulo: EDUSP, 2021.
- CARTA CAPITAL. Presidente da Fiesp rebate Bolsonaro e diz que manifesto pró-democracia defende valores 'de direita e de esquerda', *Carta Capital*, 5 August 2022.
- CASELLA, Paulo. *Tratado de Versalhes na História do Direito Internacional*. São Paulo: Quartier Latin, 2007.
- CASELLA, Paulo & ALAMINO, Felipe. Grupo de Estudos sobre a Proteção Internacional de Minorias da Faculdade de Direito da Universidade de São Paulo (GEPIM/USP), *Revista da Faculdade de Direito da Universidade de São Paulo*, v. 113, p. 563-4, 2018.
- CASSESE, Antonio & GAETA, Paola. *International Criminal Law*. 3rd ed. Oxford: Oxford University, 2013.
- CASTAÑARES, Juan & JUSTE, Antonio. Spain: In the Centre or on the Periphery of Europe? In: António PINTO & Nuno TEIXEIRA (Ed.). *Southern Europe and the Making of the European Union (1945-1980)*. New York: Columbia University, p. 41-80, 2002.
- CHAUI, Marilena. Apresentando o Livro de Lefort. In: Claude LEFORT. *A Invenção Democrática – Os Limites da Dominação Totalitária*. São Paulo: Brasiliense, p. 9-13, 1983.
- _____. O Retorno do Teológico-Político. In: Sérgio CARDOSO (Org.). *Retorno ao Republicanismo*. Belo Horizonte: UFMG, p. 93-134, 2004.
- CHIMNI, Bhupinder. Third World Approaches to International Law: A Manifesto, *International Community Law Review*, v. 8, n. 1, p. 3-27, 2006.

- CLAPHAM, Andrew. *Human Rights Obligations of Non-State Actors*. Oxford: Oxford University, 2006.
- CLARKE, Kamari. *Fictions of Justice*. Cambridge: Cambridge University, 2010.
- COSTA, Emília Viotti da. Reflexões sobre a Crise Mundial. In: Emília Viotti da COSTA. *Brasil – História, Textos e Contextos*. São Paulo: UNESP, p. 260-7, 2015.
- COSTA, Alessandra & SILVA, Marcelo. Empresas, violação dos direitos humanos e ditadura civil-militar brasileira: a perspectiva da Comissão Nacional da Verdade, *Organização & Sociedade*, v. 25, n. 84, p. 15-29, 2018.
- COUDENHOVE-KALERGI, Richard. *Pan-Europa*. Madrid: Encuentro, 2010.
- COUTO, Cláudio & ARANTES, Rogério. Constituição, Governo e Democracia no Brasil, *Revista Brasileira de Ciências Sociais*, v. 21, n. 61, p. 41-62, 2006.
- DELMAS-MARTY, Mireille. *Por um Direito Comum*. São Paulo: Martins Fontes, 2004.
- DEMIR, Ebru. The Right to Internal Self-Determination in Peacebuilding Processes: A Reinterpretation of the Concept of Local Ownership from a Legal Perspective, *The Age of Human Rights*, v. 8, p. 18-48, 2017.
- DENNY, Danielle; CASTRO, Douglas de; MACHADO FILHO, Alexandre & WITT, Gabrielle. Segurança Alimentar e a Governança Econômica Global, *Revista de Direito Internacional*, v. 14, n. 1, p. 125-41, 2017.
- DEZALAY, Sara. L'Afrique contre la Cour pénale internationale? Éléments de sociogénèse sur les possibles de la justice internationale, *Politique Africaine*, v. 2 n. 146, p. 165-82, 2017.
- DRINÓCZI, Tímea & BIEŃ-KACAŁA, Agnieszka. *Illiberal Constitutionalism in Poland and Hungary: The Deterioration of Democracy, Misuse of Human Rights and Abuse of the Rule of Law*. Abingdon: Routledge, 2021.
- DUPUY, Pierre-Marie. 2000-2020: twenty years later, where are we in terms of the unity of international law?, *Cambridge International Law Journal*, v. 9, n. 1, p. 6-23, 2020.
- ESLAVA, Luís. *Local Space, Global Life*. Cambridge: Cambridge University, 2015.
- _____. The Moving Location of Empire: Indirect Rule, International Law, and the Bantu Educational Kinema Experiment, *Leiden Journal of International Law*, v. 31, n. 43, p. 539-67, 2018.

- ESLAVA, Luís; FAKHRI, Michael & NESIAH, Vasuki. The Spirit of Bandung. In: ESLAVA, Luís; FAKHRI, Michael & NESIAH, Vasuki (Ed.). *Bandung, Global History, and International Law*. Cambridge: Cambridge University, p. 3-32, 2017.
- ESLAVA, Luís; OBREGÓN, Liliana & URUEÑA, René. Imperialismo(s) y Derecho(s) Internacional(es): Ayer y Hoy. In: Antony ANGHIE; Martti KOSKENNIEMI & Anne ORFORD. *Imperialismo y Derecho Internacional*. Bogotá: Siglo del Hombre/ Universidad de los Andes/Pontificia Universidad Javeriana, p. 11-94, 2016.
- ESLAVA, Luís & PAHUJA, Sundhya. Beyond the (Post)Colonial: TWAIL and the Everyday Life of International Law, *Verfassung und Recht in Übersee*, v. 45, n. 2, p. 195-221, 2012.
- FALKNER, Robert. The Paris Agreement and the New Logic of International Climate Politics, *International Affairs*, v. 92, n. 5, p. 1107-1125, 2016.
- FARIA, José. *Retórica Política e Ideologia Democrática*. Rio de Janeiro: Graal, 1984.
- _____. *Direito e Conjuntura*. São Paulo: Saraiva/DIREITO GV, 2008.
- FAUSTO, Boris & DEVOTO, Fernando. *Brasil e Argentina: Um Ensaio de História Comparada*. São Paulo: 34, 2004.
- FERNANDES, Raul. *The United States and the Permanent Court of International Justice*. New York: American Foundation, 1924.
- _____. *A Sociedade das Nações*. Rio de Janeiro: Imprensa Nacional, 1925.
- FERRAZ JR., Tercio. *Direito, Retórica e Comunicação*. São Paulo: Saraiva, 1997.
- FISCHER-LESCANO, Andreas & TEUBNER, Gunther. Regime-Collisions: The Vain Search for Legal Unity in the Fragmentation of Global Law, *Michigan Journal of International Law*, v. 25, n. 4, p. 999-1046, 2004.
- FITZMAURICE, Gerald. The General Principles of International Law Considered from the Standpoint of the Rule of Law, *Recueil des Cours/Collected courses of The Hague Academy of International Law*, v. 92, p. 1-227, 1958.
- FRASER, Nancy. Da Redistribuição ao Reconhecimento? Dilemas da Justiça numa Era “Pós-Socialista”, *Cadernos de Campo*, n. 14/15, p. 231-9, 2006.

- FREEDOM HOUSE (FH). *Freedom in the World – 2022*. Washington DC: FH, 2022.
- G1, Quem são os empresários que defenderam golpe de Estado em mensagens de WhatsApp e viraram alvos de mandados do STF, *G1*, 23 August 2022.
- GALHARDI, Cláudia, FREIRE, Neyson, MINAYO, Maria & FAGUNDES, Maria. Fact or Fake? An analysis of disinformation regarding the covid-19 pandemic in Brazil, *Ciência & Saúde Coletiva*, v. 25, n. 2, p. 4201-10, 2020.
- GIANNATTASIO, Arthur. Fundamentos de uma análise sociológica crítica das instituições jurídicas internacionais: negatividade e política na metodologia dos estudos em Direito Internacional no Brasil, *Revista Brasileira de Estudos Políticos*, v. 116, p. 113-158, 2018.
- _____. National Political Ideologies and International Legal Practices: Raul Fernandes (1877 - 1968). In: P. Sean MORRIS (Org.). *The League of Nations and the Development of International Law*. Abingdon: Routledge, p. 39-73, 2021a.
- _____. Crouching Scholars, Hidden Civilizations: Amerindian International Law and the Construction of the International Liberal Order in Early Twentieth Century. In: P. Sean MORRIS (Org.). *Transforming the Politics of International Law*. Abingdon: Routledge, p. 34-68, 2021b.
- GIANNATTASIO, Arthur & BANNWART, Elizabeth. Uma Coluna Ausente? O Ensino do Direito Internacional do Trabalho nos Cursos de Graduação em Direito no Brasil. In: Ana GOMES, Antônio FREITAS JÚNIOR & José SIQUEIRA NETO. *O Centenário da Organização Internacional do Trabalho no Brasil (1919-2019)*. Belo Horizonte: Virtualis, p. 159-80, 2019.
- GIANNATTASIO, Arthur, BEZERRA, Taina; BANNWART, Elizabeth; DREZZA, Débora, BUCHLER, Jéssica; CARDOSO, Giovanna & OLIVEIRA, Breno. International Constitutional Court: Rise and Fall of an International Debate, *Revista de Direito Internacional*, v. 16, p. 130-146, 2019.
- GIANNATTASIO, Arthur; DREZZA, Débora & WEHBY, Maria. In/on applied legal research: Pragmatic limits to the impact of peripheral international legal scholarship via policy paper, *Leiden Journal of International Law*, v. 34, p. 571-583, 2021.
- GLOBAL CENTRE FOR THE RESPONSIBILITY TO PROTECT (GCR2P). *UN Security Council Resolutions and Presidential Statements Referencing R2P*, 2 June 2022. Available at: <https://www.globalr2p.org/wp-content/uploads/2022/04/UN-SC-R2P-Resolutions-2-June-2022.pdf> . Access: 14.6.2022.

- GOLDMANN, Matthias. Inside Relative Normativity: From Sources to Standard Instruments for the Exercise of International Public Authority, *German Law Journal*, v. 9, p. 1865-1908, 2009.
- GOMES, Sheila, PENNA, Juliana & ARROIO, Agnaldo. Fake News Científica: Percepção, Persuasão e Letramento, *Ciência & Educação*, v. 26, p. 1-13, 2020.
- GRAY, Christine. *International Law and the Use of Force*. 3 ed. Oxford: Oxford University, 2008.
- GUIEU, Jean-Michel. *Le Rameau et la Glaive : Les Militants Français pour la Société des Nations*. Paris : SciencesPo, 2008.
- GUIMARÃES, Feliciano & SILVA, Irma. Far-Right Populism and Foreign Policy Identity: Jair Bolsonaro's Ultra-Conservatism and the New Politics of Alignment, *International Affairs*, n. 97, n. 2, p. 345-63, 2021.
- HABERMAS, Jürgen. A Constelação Pós-Nacional. In: Jürgen HABERMAS. *A Constelação Pós-Nacional*. São Paulo: Littera Mundi, p. 53-166, 2001.
- _____. A Idéia Kantiana de Paz Perpétua – À Distância Histórica de 200 Anos. In: Jürgen HABERMAS. *A Inclusão do Outro*. 2 ed. São Paulo: Loyuola, p. 193-235, 2004.
- HARDT, Michael & NEGRI, Antonio. *Empire*. Cambridge/London: Harvard Univeristy, 2000.
- HELAL, Mohamed. On Coercion in International Law, *New York University Journal of International Law & Politics*, v. 52, n. 1, p. 1-122, 2019.
- HELLMÜLLER, Sara. The Ambiguities of Local Ownership: Evidence from the Democratic Republic of Congo, *African Security*, v. 5, n. 3-4, p. 236-54, 2012.
- HOBBSAWM, Eric. A Disseminação da Democracia. In: Eric HOBBSWAM. *Globalização, Democracia e Terrorismo*. São Paulo: Cia. das Letras, p. 116-20, 2007a.
- _____. O Terror. In: Eric HOBBSWAM. *Globalização, Democracia e Terrorismo*. São Paulo: Cia. das Letras, p. 121-37, 2007a
- HORKHEIMER, Max. Preface. In: Theodor ADORNO. *The Authoritarian Personality*. New York: Wiley, p. ix-xii , 1964.

- HONNETH, Axel. *Luta por Reconhecimento*. 2 ed. São Paulo: 34, 2009.
- INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY (ICISS). *The Responsibility to Protect (Report)*. Ottawa: ICISS, 2001.
- INTERNATIONAL COURT OF JUSTICE (ICJ). Declarations recognizing the jurisdiction of the Court as Compulsory, s.d. Available at: <https://www.icj-cij.org/en/declarations>. Access: 1.6.2022.
- INTERNATIONAL INSTITUTE FOR Democracy AND ELECTORAL ASSISTANCE (IIDEA). *The Global State of Democracy 2021*. Stockholm: IIDEA, 2021.
- INTERNATIONAL LAW ASSOCIATION – FRENCH BRANCH (ILA France). *Ideas Lab – ILA 150 Years*, s.d. Available at: <https://www.ilaparis2023.org/en/ideas-lab/>. Access in: 28.4.2022.
- JENSEN, Michael. Russian Trolls and Fake News: Information or Identity Logics?, *Journal of International Affairs*, v. 71, n. 1.5, p. 115-24, 2018.
- JESSUP, Philip. The Estrada Doctrine, *American Journal of International Law*, v. 25, n. 4, p. 719-23, 1931.
- KARP, David. *Responsibly fir Human Rights: Transnational Corporations in Imperfect States*. Cambridge: Cambridge University, 2014.
- KELSEN, Hans. *The Law of the United Nations*. 4th ed. New York: Frederik Praeger, 1964.
- _____. *Paz pelo Direito*. São Paulo: Martins Fontes, 2011.
- KLABBERS, Jan. Two Concepts of International Organization, *International Organizations Law Review*, v. 2, n. 2, p. 277-93, 2005.
- KOPENAWA, Davi & ALBERT, Bruce. Paixão pela Mercadoria. In: Davi Kopenawa & Bruce ALBERT. *A Queda do Céu*. São Paulo: Cia. das Letras 2010.
- KOSKENNIEMI, Martti. The Fate of Public International Law: Between Technique and Politics, *Modern Law Review*, v. 70, n. 1, p. 1-30, 2007.
- _____. The Politics of International Law. In: Martti KOSKENNIEMI. *The Politics of International Law*. Oxford, Portland, Oregon: Hart, p. 35-62, 2011.
- _____. Imperio y Derecho Internacional: La Verdadera Contribución Española. In: Antony ANGHIE; Martti KOSKENNIEMI

- & Anne ORFORD. *Imperialismo y Derecho Internacional*. Bogotá: Siglo del Hombre/Universidad de los Andes/Pontificia Universidad Javeriana, p. 127-90, 2016.
- KYMLICKA, Will. *Multicultural Odysseys*. Oxford: Oxford University, 2009.
 - LABUDA, Patryk. The International Criminal Court and Perceptions of Sovereignty, Colonialism and Pan-African Solidarity, *African Yearbook of International Law*, v. 20, n. 1, p. 289-321, 2014.
 - LAGASSÉ, Philippe. The International Criminal Court and the Foreign Policies of the United States, *International Journal*, v. 59, n. 2, p. 429-443, 2004.
 - LAÏDI, Zaki. *La Norme sans la Force*. 2 ed. Paris : SciencesPo, 2008.
 - LEFORT, Claude. *Éléments d'une Critique de la Bureaucratie*. Paris : Gallimard, 1979.
 - _____. *A Invenção Democrática – Os Limites da Dominação Totalitária*. São Paulo: Brasiliense, 1983.
 - _____. Permanência do Teológico-Político. In: Claude LEFORT. *Pensando o Político*. Rio de Janeiro: Paz e Terra, p. 249-96, 1991.
 - _____. Foyers du républicanisme. In: Claude LEFORT. *Écrire – A l'épreuve du politique*. Paris: Calmann-Lévy, p. 181-208, 1992.
 - _____. Le concept de totalitarisme. In : Claude LEFORT. *Le temps présent*. Paris : Belin, p. 969-91, 2007.
 - LEONARDSSON, Hanna & RUDD, Gustav. The 'local turn' in peacebuilding: a literature review of effective and emancipatory local peacebuilding, *Third World Quarterly*, v. 36, n. 5, p. 825-39, 2015.
 - LORCA, Arnulf. Direito Internacional na América Latina ou Direito Internacional Latino-Americano? Ascensão, Queda e Recuperação de uma Tradição de Pensamento Jurídico e e Imaginação Política. In: Michelle BADIN, Adriane BRITO & Deisy VENTURA (Orgs.). *Direito Global e suas Alternativas Metodológicas*. São Paulo: FGV DIREITO SP, p. 31-66, 2016.
 - LYOTARD, Jean-François. *La Condition Postmoderne*. Paris : Minuit, 1979.
 - MAQUIAVEL, Nicolau. Discurso sobre as Formas de Governo de Florença. In : Helton ADVERSE (Org.). *Maquiavel : Diálogo sobre Nossa Língua e Discurso sobre as Formas de Governo de Florença*. Belo Horizonte: UFMG, p. 59-78, 2010.

- MARCUSE, Herbert. *L'Homme Unidimensionnel*. Paris: Minuit, 1968.
- MARTINIELLO, Marco. *La Démocratie Multiculturelle*. 2 ed. Paris: SciencesPo, 2011.
- MATOS, Olgária. Democracia Midiática e República Cultural. In: Olgária MATOS. *Discretas Esperanças*. São Paulo: Nova Alexandria, p. 7-34, 2006.
- MELZER, Nils. *Derecho Internacional Humanitario*. Ginebra: Comité Internacional de la Cruz Roja, 2019.
- MICHELS, Tony. Donald Trump and the Triumph of Antiliberalism, *Jewish Social Studies*, v.2, n. 3, p. 186-92, 2017.
- MOREIRA, Adilson. *Cidadania Sexual*. Belo Horizonte: Arraes, 2017.
- _____. *Racismo Recreativo*. 2. ed. São Paulo: Pólen Livros, 2019a.
- _____. *Pensando como um Negro: Ensaio de Hermenêutica Jurídica*. São Paulo: Contracorrente, 2019b.
- _____. *Tratado de Direito Antidiscriminatório*. São Paulo: Contracorrente, 2020.
- MORRIS, P. Sean (Org.). *The League of Nations and the Development of International Law: A New Intellectual History of the Advisory Committee of Jurists*. Abingdon: Routledge, 2021.
- MUTUA, Makau. Why Redraw the Map of Africa: A Moral and Legal Inquiry, *Michigan Journal of International Law*, v. 16, n. 4, p. 1113-76, 1995.
- _____. Critical Race Theory and International Law: The View of an Insider-Outsider, *Villanova Law Review*, v. 45, n. 5, p. 841-53, 2000.
- NASSER, Reginaldo. *A Luta contra o Terrorismo: os Estados Unidos e os Amigos Talibãs*. São Paulo: Contracorrente, 2021.
- NASSER, Salem. Direito Global em Pedacos: Fragmentação, Regimes e Pluralismo, *Revista de Direito Internacional*, v. 12, n. 2, p. 98-126, 2015.
- NYE JR., Joseph. *Soft Power: The Means to Success in World Politics*. New York: Public Affairs, 2004.
- OBREGÓN, Liliana. Between Civilisation and and Barbarism: Creole interventions in international law, *Third World Quarterly*, v. 27, n. 5, p. 815-32, 2006a.

- _____. Completing Civilization: Creole consciousness and international law in nineteenth-century Latin America. In: Anne ORFORD. *International Law and its Others*. Cambridge: Cambridge University, p. 247-64, 2006b.
- OCTAVIANI, Alessandro; MEDEIROS, Lea & BRAGA, Marco (Org.). *O Assassinato de JK pela Ditadura: Documentos Oficiais*. 2 ed. São Paulo: LiberArs, 2018.
- OLIVEIRA, Gilberto; SILVA, Luan & KUHLMANN, Paulo. A Confluência entre Virada Local e Virada Estética nos Estudos para a Paz: Uma Abordagem Heterodoxa para a Consolidação da Paz, *Carta Internacional*, v. 16, n. 1, p. 1-25, 2021.
- ONUMA, Yasuaki. *Direito Internacional em Perspectiva Transcivilizacional*. Belo Horizonte: Arraes, 2016.
- ORFORD, Anne. *Reading Humanitarian Intervention*. Cambridge: Cambridge University, 2003.
- _____. Trade, Human Rights and the Economy of Sacrifice. In: Anne ORFORD (Ed.). *International Law and its Others*. Cambridge: Cambridge University, p. 156-96, 2006.
- _____. ¿El Pasado como Derecho o como Historia? La Relevancia del Imperialismo para el Derecho Internacional Moderno. In: Antony ANGHIE; Martti KOSKENNIEMI & Anne ORFORD. *Imperialismo y Derecho Internacional*. Bogotá: Siglo del Hombre/Universidad de los Andes/Pontificia Universidad Javeriana, p. 191-227, 2016.
- ORSINI, Amandine. The role of non-state actors in the Nagoya Protocol negotiations. In: S. OBERHÜRT & Kristin ROSENDAL (eds.). *Global Governance of Genetic Resources*. London: Routledge, p. 60-78, 2013.
- OTTO, Diane. Feminist approaches to International Law. In: Anne ORFORD, Florian HOFFMANN & Martin CLARK (Ed.). *The Oxford Handbook of The Theory of International Law*. Oxford: Oxford University, p. 488-504, 2016.
- _____. *Queering International Law*. Abingdon/New York: Routledge, 2018.
- PAHUJA, Sundhya. The Postcoloniality of International Law, *Harvard International Law Journal*, v. 46, n. 2, p. 459-69, 2005.
- PAMPLONA, Danielle. Das Violações de Direitos Humanos e do Envolvimento das Grandes Corporações. In: Flávia PIOVESAN, Inês SOARES & Marcelo TORELLY (Orgs). *Empresas e Direitos Humanos*. Salvador: Juspodivm, p. 171-84, 2018.

- PAYNE, Leigh; PEREIRA, Gabriel & BERNAL-BERMÚDEZ, Laura. Justicia de Abajo Hacia Arriba: Protagonismo Latinoamericano em Complicidad Empresarial y Justicia Transicional In: Flávia PIOVESAN, Inês SOARES & Marcelo TORELLY (Orgs). *Empresas e Direitos Humanos*. Salvador: Juspodivm, p. 271-301, 2018.
- PEERENBOOM, Randall. Preface. In: Randall PEERENBOOM (Ed.). *Asian Discourses of Rule of Law*. London/New York: Routledge, p. x-xxii, 2005a.
- _____. Varieties of Rule of Law. In: Randall PEERENBOOM (Ed.). *Asian Discourses of Rule of Law*. London/New York: Routledge, p. 1-53, 2005b.
- PELLET, Alain. The Normative Dilemma: Will and Consent in International Law-Making, *Australian Yearbook of International Law*, v. 12, n. 1, p. 22-53, 1988.
- PEREIRA, Flávio. *Genocídio Indígena no Brasil*. Curitiba: Juruá, 2018.
- PINTO, António & TEIXEIRA, Nuno. From Africa to Europe: Portugal and European Integration. In: António PINTO & Nuno TEIXEIRA (Ed.). *Southern Europe and the Making of the European Union (1945-1980)*. New York: Columbia University, p. 3-40, 2002.
- PIZZOLO, Calogero. Soberanía, Estado y Globalización. In: Armin von BOGDANDY & José DE LA GARZA. (Org.). *Soberanía y Estado Abierto en América Latina y Europa*. Ciudad de México: UNAM, p. 283-309, 2014.
- _____. Convergencias entre los Procesos de Integración Regional y la Tutela Efectiva de los Derechos Humanos. In: Calogero PIZZOLO (Coord.). *Integración Regional y Derechos Humanos*. Buenos Aires: ASTREA, p. 1-102, 2021.
- PRADO, Maria & PELLEGRINO, Gabriela. *História da América Latina*. São Paulo: Contexto, 2016.
- PUTNAM, Robert. Diplomacia e Política Doméstica: A Lógica dos Jogos de Dois Níveis., *Revista de Sociologia Política*, v. 18, n. 36, p. 147-174, 2010.
- RAJAGOPAL, Balakrishnan. *International Law from Below*. Cambridge: Cambridge University, 2003.
- RAPPEPORT, Alan. Chamber of Commerce calls Trump's Conduct "Inexcusable" and Vows to Curb Certain Donations, *The New York Times*, 21 January 2021.

- RASULOV, Akbar. "From the Wells of Disappointment": The Curious Case of the International Law of Democracy and the Politics of International Legal Scholarship, *European Journal of International Law*, v. 31, n. 1, p. 17-47, 2021.
- RIBEIRO, Darcy. *O Povo Brasileiro*. São Paulo: Cia. das Letras, 2006.
- RIEGNER, Michael. How Universal are International Law and Development? Engaging with Postcolonial and Third World Scholarship from the Perspective of its Other, *Verfassung und Recht in Übersee*, v. 45, n. 2, p. 232-48, 2012.
- ROBERTS, Anthea. *Is International Law International?* Oxford: Oxford University, 2017.
- ROTH, Brad. The Trajectory of the Democratic Entitlement Thesis in International Legal Scholarship: A Reply to Akbar Rasulov, *European Journal of International Law*, v. 31, n. 1, p. 49-55, 2021.
- ROUSSEAU, Jean-Jacques. *Discurso sobre a Origem e os Fundamentos da Desigualdade entre os Homens*. Porto Alegre: L&PM, 2008.
- _____. *Do Contrato Social: Princípios do Direito Político*. São Paulo: Cia. das Letras, 2019.
- SADEK, Maria Teresa. Judiciário: Mudanças e Reformas. *Estudos Avançados*, v. 18, n. 51, p. 79-101, 2004.
- SAID, Edward. *Orientalismo*. São Paulo: Cia. das Letras, 2008.
- SANDER, Barrie. Democratic Disruption in the Age of Social Media: Between Marketized and Structural Conceptions of Human Rights Law, *European Journal of International Law*, v. 32, n. 1, p. 159-93, 2021.
- SANTOS, Boaventura. *Conocer desde el Sur*. Lima: Programa de Estudos sobre Democracia y Transformación Global/ Facultad de Ciencias Sociales, 2006.
- _____. *Para Descolonizar Occidente*. Buenos Aires: Consejo Latinoamericano de Ciencias Sociales (CLACSO)/Prometeo, 2010.
- _____. *The End of Cognitive Empire*. Durham: Duke University, 2018.
- SANTOS, Boaventura & GARAVITO, César. Law, Politics, and Subaltern in Counter-hegemonic Globalization. In: Boaventura SANTOS & César GARAVITO (Org.). *Law and Globalization from Below*. Cambridge: Cambridge University, p. 1-26, 2005.

- SCHWARCZ, Roberto. Cultura e Política, 1964-1969 – Alguns Esquemas. In: Roberto SCHWARCZ. *As Ideias Fora do Lugar*. São Paulo: Cia. das Letras, p. 7-46, 2014.
- SEN, Amartya. What is the role of legal and judicial reform in the development process?, *First World Bank conference on Comprehensive Legal and Judicial Development*, Washington D.C.: World Bank, 2000. [mimeographed conference notes].
- _____. *Desenvolvimento como Liberdade*. São Paulo: Cia. das Letras, 2016.
- SENGUPTA, Papia. Making (Ab)sense of Women’s Agency and Belonging in Citizenship Debates in India: Analysing the Shaheen Bagh Protests as ‘Acts(s) of Citizenship’, *Social Change*, v. 51, n. 4, p. 1-15, 2021.
- _____. Language, Communication, and the COVID-19 Pandemic: Criticality of Multi-lingual Education, *International Journal of Multilingualism*, p. 1-14, 2022.
- SEUFFERT, Nan. Queering International Law’s Stories of Origin - Hospitality and Homophobia. In: Diane OTTO. *Queering International Law*. Abingdon/New York: Routledge, p. 213-35, 2018.
- SILVA, Karine. “A Mão que Afaga é a mesma que Apedreja”: Direito, Imigração e a Perpetuação do Racismo Estrutural no Brasil, *Revista Mbote*, v. 1, n. 1, p. 20-41, 2020.
- _____. “Esse Silêncio me Atordoia” – A Surdez e a Cegueira Seletivas para as Dinâmicas Raciais nas Relações Internacionais, *Revista de Informação Legislativa*, v. 58, n. 229, p. 37-55, 2021.
- SILVA, Karine; ROCHA, Carolina & D’AVILA, Lucas. Invisibilizados na Ilha do Desterro: Os Novos Fluxos de Imigrantes e Refugiados em Florianópolis, *Revista Eletrônica do Curso de Direito da UFSM*, v. 15, n. 1, p. 1-23, 2020.
- SKOUTERIS, Thomas. International Law as Progress/Progress within International Law – The New Tribunalism. In: Thomas SKOUTERIS. *The Notion of Progress in International Law Discourse*. The Hague: TMC Asser, p. 159-216, 2010.
- STALLAERT, Christiane. *Etnogénesis y Etnicidad en España: Una Aproximación Histórico-Antropológica al Casticismo*. Barcelona: Proyecto a, 1998.
- _____. Bruselas, entre metrópole balcanizada y aldea global. In: Christiane STALLAERT. *Perpetuum mobile – Entre la Balcnicización y la Aldea Global*. Barcelona: Anthropos, 2004.

- _____ . Ni una Gota de Sangre Impura: La España Inquisitorial y la Alemania Nazi Cara a Cara. Barcelona: Galaxia Gutenberg, 2006.
- _____ . Subverter o discurso de ódio. *A Reconquista* no imaginário da direita populista europeia do século XXI, *Forum Permanente sobre Genocídio e Crimes contra a Humanidades – Ano III*. São Paulo: IRI-USP/FFLCH-USP/FD-USP/ESA-OAB-SP, 2022. [mimeographed conference notes].
- STANSIFER, Charles. Application of the Tobar Doctrine to Central America, *The Americas*, v. 23, n. 3, p. 251-72, 1967.
- STERIO, Milena. The Trump Administration and the International Criminal Court: A Misguided New Policy, *Case Western Reserve Journal of International Law*, v. 5, n. 1, p. 201-10, 2019.
- TARAZONA, Liliana. Regionalismo Construído: Uma Breve História do Direito Internacional Latino-Americano. In: Michelle BADIN, Adriane BRITO & Deisy VENTURA (Orgs.). *Direito Global e suas Alternativas Metodológicas*. São Paulo: FGV DIREITO SP, p. 97-118, 2016.
- TEUBNER, Gunther. "Man schritt auf allen Gebieten zur Verrechtlichung": rechtssoziologische Theorie im Werk Otto Kirchheimers. In: M. LUTTER, E. STIEFEL & M. HOEFL (Hrgs). *Der Einfluß deutschsprachiger Emigranten auf die Rechtsentwicklung in den USA und in Deutschland*. Tübingen: Mohr & Siebeck, p. 505-20, 1993.
- THE ECONOMIST INTELLIGENCE UNIT (EUI). *Democracy Index 2021*. London, 2021.
- TRINDADE, Antonio. *Os Tribunais Internacionais Contemporâneos*. Brasília: FUNAG, 2013.
- UNGER, Roberto. *The Critical Legal Studies Movement*. Cambridge: Harvard University, 1986.
- _____ . *O Direito e o Futuro da Democracia*. São Paulo: Boitempo, 2004.
- _____ . *Depois do Colonialismo Mental: Repensar e Reorganizar o Brasil*. São Paulo: Autonomia Literária, 2018.
- UNITED NATIONS. *Official Records - Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal*. v. II. New York: UN, 2002.
- UNITED STATES AGENCY FOR INTERNATIONAL DEVELOPMENT - BRAZIL (USAID-Brazil). *Special Northeast Study*. Rio de Janeiro/Recife: USAID-Brazil, 1963.

- VALÉRY, Paul. La crise de l'esprit. In: Paul VALÉRY. *Variété I et II*. Paris: Gallimard, p. 13-51, 1930.
- VARIETIES OF Democracy INSTITUTE (V-DEM). *Democracy Report 2022*. Gothenburg: V-Dem, 2022.
- VASCONCELOS, Raphael. *Teoria do Estado e a Unidade do Direito Internacional: Domesticando o Rinoceronte*. Belo Horizonte: Arraes, 2016.
- VENTURA, Deisy & BUENO, Flávia. De Líder a Paria de la Salud Global: Brasil como Laboratorio del "Neoliberalismo Epidemiológico" ante la COVID-19, *Foro Internacional*, v. 244, n. 2, p. 427-67, 2021.
- VERNANT, Jean-Pierre. *As Origens do Pensamento Grego*. Rio de Janeiro: DIFEL, 2002.
- VINJAMURI, Leslie. The International Criminal Court and the Paradox of Authority, *Law and Contemporary Problems*, v. 79, n. 1, p. 275-87, 2016.
- WALLERSTEIN, Immanuel. Análise dos Sistemas Mundiais. In: Anthony GIDDENS & Jonathan TURNER. *Teoria Social Hoje*. São Paulo: UNESP, p. 447-70, 1999.
- WASIELEWSKI, Philip, JONES, Seth & BERMUDEZ JR., Joseph. Russia's Gamble, *Center for Strategic and International Studies*, p. 1-16, 2022.
- WATT, Nicholas. European commission criticised for 'racist' ad, *The Guardian*, 6 March 2012. Available at: <https://www.theguardian.com/world/2012/mar/06/european-commission-criticised-racist-ad>. Access: 1.7.2022.
- WEIL, Prosper. Towards Relative Normativity in International Law?, *American Journal of International Law*, v. 77, n. 3, p. 413-42, 1983.
- WEIZENMANN, Pedro. "Tropical Trump"? Bolsonaro's Threat to Brazilian Democracy, *Harvard International Review*, v. 40, n. 1 p. 12-4, 2019.
- WILLIAMS, Eric. *Capitalism & Slavery*. Chapel Hill/London: University of North Carolina, 1994.
- WOLFRUM Rüdiger. Solidarity among States: An Emerging Structural Principle of International Law. In: Pierre-Marie DUPUY, Bardo FASSBENDER, Malcolm SHAW & Karl-Peter SOMMERMANN (Ed.). *Common Values in International Law*. Kehl/Strasbourg/Arlington: N. P. Engel, p. 1087-1101, 2006.
- _____. Common Interests in the Ocean. In: Paul BERKMAN, Michael LANG, David WALTON & Oran YOUNG (ed.). *Science*

Diplomacy. Washington DC: Smithsonian Institution, p. 281-5, 2011.

- WORLD JUSTICE PROJECT (WJP). *Rule of Law Index – 2021 Insights*. Washington DC: WJP, 2021.
- YOUNG, Oran. International Regimes: Problems of Concept Formation, *World Politics*, v. 32, n. 3, p. 331-56, 1980.
- ZAGNI, Rodrigo. A Aurora de uma Era da Catástrofe: Os Significados Históricos do Depoimento de Arnold Toynbee sobre as Atrocidades Turcas na Armênia, *Revista Brasileira de Estudos Estratégicos*, v. I, n. 5, p. 183-220, 2013.
- ZANIN, Henrique & SOTO, Luana. Violações à Liberdade Sindical nas Ditaduras Militares Sul-Americanas: Reflexões a partir da Organização Internacional do Trabalho – OIT. In: Ana GOMES, Antônio FREITAS JÚNIOR & José SIQUEIRA NETO. *O Centenário da Organização Internacional do Trabalho no Brasil (1919-2019)*. Belo Horizonte: Virtualis, p. 249-66, 2019.

Disclaimer

This White Paper is the result of a collective effort. While the Steering Committee gave inputs in the drafting process, the views expressed in the paper should not be attributed to individual members of the Steering Committee.

Persons interviewed

- **Salar Abbasi**, Professor, Law and International Legal Theory
- **Agnieszka Bień-Kacała**, Professor, Constitutional Law, Poland
- **Pedro Bohomoletz de Abreu Dallari**, Professor, Rapporteur and Coordinator of Brazilian National Truth Commission (2013-2014), President and Judge of IDB's Administrative Tribunal (2004-2008), Brazil
- **Samir Nakhle Khoury**, Psychologist and biologist, Businessman and Vice-Dean of São Paulo Trade Association, Brazil
- **Hanna Lerner**, Professor, Political Science and Comparative Constitutional Making, Israel
- **Felipe Loureiro**, Professor, Historian of International Rela-



annex 02

persons interviewed

tions, Brazil

- **Brusil Miranda Metou**, Professor, Public International Law, Cameroon
- **Daniel Munduruku**, Professor and Writer, indigenous literature, Brazil
- **Bertil Oder**, Professor, Constitutional Law, Turkey
- **Dinusha Panditaratne**, Adviser on Governance and Peace, Asia
- **Ibrahim Saïd**, Adjunct Professor, Land and Political Anthropologist, Switzerland
- **Dire Tladi**, Professor, Public International Law, UN ILC Special Rapporteur on *ius cogens*, South Africa

NB - The interviews were prepared in advance with the following questionnaire:

1. In your opinion, which are the main challenges faced by Democracy in your country and/or in

other countries in present times?

- a. What is your opinion about these challenges? Are they permanent and universal challenges, or are they a particular condition of the contemporary world or specific to some countries? Why?
- b. How do you perceive the impacts of those challenges in your field of work?
- c. Do you think that your professional activities might influence the preservation of Democracy? If yes, how?

2. In your opinion, which are the main pillars and goals of a Democratic regime?

- a. What do you think about the relationship between the legal protection of minorities and the preservation of Democracy?
- b. What is your opinion concerning the protection for political

opposition and freedom of speech and the preservation of Democracy?

c. Are there other issues, which you think might be considered for preserving Democracy? Explain.

3. How do you perceive the role of the international community in preserving Democracy?

a. How do you evaluate actions taken so far by these actors in dealing with the challenges you mentioned (in 1.)?

b. How do you evaluate actions taken so far by these actors in reinforcing the pillars and achieving the goals you mentioned (in 2.)?

c. In your opinion, do these actions taken weaken or strengthen Democratic regimes?

4. Do you think that the role of the international community in the preservation of Democracy should be modified?

a.1 If not, why? / a.2 If yes, which changes would you suggest and why?

b. How do you see the impact of this opinion (mentioned in 4.a) in your professional life?

IN THE SAME COLLECTION

Food / Agriculture

Anthropocene

Fight Against Corruption

Mass Crimes and Impunity

Law In Support of Democracy

Human Rights

Energy

Business and Human Rights

Outer Space

Civil Status

International Finance

Taxation

Global Governance / Multilateralism

International Investments

Migration

Digital Challenges for International Law

Ocean

Sdgs beyond 2030

Cultural Heritage

Intellectual Property

Dispute Resolution

Health

Labour

Cities in International Law

www.ilaparis2023.org/en

Public consultation from October 15 to December 31, 2022.

adi.ila2023.democratie@gmail.com

