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Global standards for national democracies?

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1. The global legal order and the rule of law

The global legal order is full of provisions subjecting national agencies to the rule of law[1].

Let me take two examples. According to the Rio Declaration, the Aarhus Convention recognizes that every affected person has the right to participate in decision-making proceedings on environmental matters. If a domestic legal order does not guarantee such a right, the affected person can ask a quasi-judicial body, the "Compliance Committee" (established by the Meeting of the Parties to the Convention), to evaluate the agency's decision and to make a declaration of non compliance (as occurred in the well known *Green Salvation – Kazatomprom*[2] case).

Under the World Bank "Operational Policies", borrowers must consult project-affected groups during environmental impact assessment processes (concerning the environmental aspects of the project in question) and take their views into account. If this does not occur, the affected person can request a quasi-judicial body, the Inspection Panel, to evaluate the situation and to make recommendations (as happened, for example, in the *Mumbai urban transport* case[3]).

In these cases, global rules provide procedural standards. These standards are binding on national administrative authorities. Private parties can activate a dispute settlement mechanism in case of non compliance.

[1] See *Global Administrative Law: Cases, Materials, Issues,* II ed., ed. by S. Cassese, B. Carotti, L. Casini, M. Macchia, E. MacDonald, M. Savino, Rome-New York (2008).
[2] Aarhus Convention – UNECE Compliance Committee, Findings and Recommendations, 18 February 2005.
[3] World Bank Inspection Panel, Report and Recommendations, 3 September 2004.

The law that provides for consultation is global. The implementing authority is national. The reviewing "court" is again global.

The rule of law, a set of institutional and procedural requirements developed within national governments (in Germany they refer to it with the expression "Rechtsstaat", the State under the law), is transplanted into the global arena (bottom-up) and the national rule of law is enhanced by the global standards (top-down).

The global legal order provides an additional set of rules in order to make national governments more accountable, on the basis of which private parties get one more opportunity to defend their rights.

2. The global legal order and democracy

Does a similar transplant occur for the second leg of modern "limited government", i.e. democracy?

More then fifteen years ago, Thomas Franck noticed that "the international system is moving toward a clearly designated democratic entitlement, with national governance validated by international standards and monitoring of compliance"[4] as "the community of states is empowered to compose and apply codes governing the comportment of governments toward their citizens"[5]. As a result of this development, " the legitimacy of each government someday will be measured definitively by international rules and processes"[6]. He added that "[t]he

[4] T. M. Franck, *The Emerging Right to Democratic Governance*, in "The American Journal of International Law", vol. 86, 1992, p. 91.
[5] T.M. Franck, cit., p. 78.
[6] T. M. Franck, cit., p. 50.

transformation of the democratic entitlement from moral prescription to international legal obligation has evolved gradually"[7]. The democratic entitlement had – according to Franck – three components: self-determination, freedom of expression and electoral rights.

But this point of view is not widely shared, with opinions on this issue instead polarized around two opposite perspectives. According to the first of these, globalization, by striking at State sovereignty, threatens popular rule within democracies[8]; "if the United States can be subject to the will of outside powers, it cannot be governed by the schemes ordained by the Constitution"[9]. The second point of view, however, maintains that "[…] as international bodies come into interaction with national centers of power, they can check abuses by those national centers or even sub-national centers [….] and force them into a better level of democratic performance"[10] .

In responding to the question of whether global standards of democracy are democracy-threatening or democracy-enhancing, I shall refer to five examples.

Firstly, consider the Organization for Security and Cooperation in Europe (OSCE), which is the World's largest regional security organization, with 56 participating States. Within the OSCE, the Office for Democratic Institutions and Human Rights (ODIHR), based in Warsaw, Poland, is active throughout the

[7] T. M. Franck, cit., p. 47.
[8] M. Goodhart, *Democracy as Human Rights: Freedom and Equality in the Age of Globalization*, New York, Routledge, 2005, p. 73 ff.
[9] J.A.Rabkin, *Law Without the Nations? Why Constitutional Government Requires Sovereign State*, Princeton Univ. Press, 2005, p. 266.
[10] R.O.Keohane, S. Macedo, A. Moravcsik, *Democracy-Enhancing Multilateralism*, JILJ Working Papers, Global Administrative Law Series, 2007/4, *http://iilj.org/publications/documents/2007-4.GAL.KMM.web.pdf*

OSCE area in the fields, inter alia, of democratic development, election observation, and non-discrimination.

Within the ODIHR there are many different departments, one of which is the Democratization Department, which focuses on rule of law, equal participation in political and public life, promoting democratic government, freedom of movement, and providing legislative support in these fields; another is the Election Department, engaged in election observation and in technical assistance projects, including the review of election-related legislation and the promotion of domestic observer groups throughout the OSCE region.

In its democratization activities, the ODIHR aims to develop the necessary institutional capacity for the consolidation of a democratic culture, and responds to requests for assistance with drafting legislation.

Concerning elections, the ODIHR deploys observation missions to OSCE participating States to assess the implementation of OSCE election-related commitments, and publishes different documents depending upon the type of observation mission that it is engaged in (e.g. needs assessment reports, which detail the type of mission to be deployed; interim reports, which provide insights into the issues confronting the mission in question prior to election day; preliminary statements, which are released the day after a mission and provide the ODIHR's preliminary conclusions as to the conduct of an election; and final reports, which are published after an in-depth analysis of the election observation and which also provide recommendations).

The Office also conducts technical assistance projects and legislative reviews. Some projects stem directly from recommendations made during observation missions, while others are the result of requests from participating States.

What can be learned from the activities of this organization? Firstly, that national democracy matters also at the global level. Secondly, that not only economic performance, but also political (democratic) performance can be subjected to independent rating. And thirdly, that the global legal order can promote and assist democratic institution-building.

My second example is that of the European Union enlargement process. The "Enlargement Strategy" is based on the "principles of consolidation of commitments": "the pace at which a candidate or potential candidate approaches the EU reflects the pace of its political and economic reforms as well as its capacity to fully assume the rights and obligations of membership"[11].

This strategy implies four important steps: the definition of benchmarks of democratic performance as condition for accession; the securing of commitments from the candidates; the oversight of the implementation of these on the basis of annual reports; and the provision of pre-accession assistance.

As an example of the last two of these steps, consider the case of Turkey. Turkey has been an EU associate since 1964, and applied to join in 1987. It was officially recognized as a candidate in 1999, and negotiations began in 2005. The Commission Staff Working Document entitled *Turkey 2006 Progress Report*[12]

[11] EU Commission, *Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and main Challenges 2007 – 2008*, 6.11.2007, p. 2
[12] 8. 11. 2006.

"analyses the situation in Turkey in terms of the political criteria for membership; analyses the situation in Turkey on the basis of the economic criteria for membership; [and] reviews Turkey's capacity to assume the obligations of membership, that is the *acquis* expressed in the Treaties, the secondary legislation, and the policies of the Union"[13]. The Report covers issues of democracy and the rule of law (including those relating to parliament, government, public administration, civil-military relations, the judicial system, and anti-corruption measures), and all forms of human rights (civil, political, economic, social, etc.) and the protection of minorities.[14].

The *Turkey 2007 Progress Report*[15], inter alia, "examines progress made by Turkey towards meeting the Copenhagen political criteria which require stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities"[16].

The *Commission decision on a Multi-annual Indicative Planning Document (MIPD) 2007-2009 for Turkey*, taken within the framework of the Instrument for Pre-Accession Assistance (IPA), provides that "[w]ithin the Institution Building component the focus of assistance in the area of the political criteria will be on the institutions that are directly concerned by the reforms: the judiciary and the law enforcement services. A second priority will be support for the continued development of civil society organisations. Among the issues to be addressed,

[13] P. 4, Para 1.1.
[14] The same subjects are examined by the EU Commission in the framework of the enlargement strategy for other countries as Croatia, Macedonia, Albania, Montenegro, Kosovo, Bosnia – Herzegovina.
[15] 6.11.2007.
[16] P. 6.

priority will be given to human rights and fundamental freedoms; gender issues; and the fight against corruption".

Here again the global legal order puts pressure on national institutions in order to improve their democratic performance, this time according to a set of benchmarks, and through monitoring developments and providing assistance. Notice that, involving itself in such issues, the European Union – like many other international organizations – goes beyond its jurisdiction. For example, responsibility for anti-corruption policies has not been transferred to the Union.

The third example that I want to refer to here is that of Article 11 of the European Convention on Human Rights, which provides: "Everyone has the right to freedom of peaceful assembly and to freedom of association […]. No restriction shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democracy in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights of freedom of others […]". The European Court of Human Rights can therefore decide whether, in one of the 47 countries which have ratified the Convention, the dissolution of a political party or the temporary forfeiture of certain political rights meets the tests prescribed by the Convention (i.e., that it has a basis in domestic law; that it pursues one or more of the legitimate aims prescribed by Article 11 of the Convention; that it is necessary in a democratic society, to meet a pressing social need; and that it is proportionate to the aims pursued). Such an evaluation was carried out, for instance, in the *Refah*

Partisi (The Welfare Party) v. Turkey case[17] . The Refah Party, founded in 1983, became, after the 1995 general elections, the largest political party in Turkey. A 1998 Constitutional Court judgement had dissolved Refah on the ground that it had become a "centre of activities contrary to the principle of secularism". The national Constitutional Court had declared that "sharia is the antithesis of democracy". The Strasburg Court, on the basis of a careful examination of decision of the national court in the light of the Convention, reached the conclusion that "there has been no violation of Article 11 of the Convention", as "Refah's dissolution may be regarded as 'necessary in a democratic society' within the meaning of Article 11"[18].

This case presents a much higher level of interference by global law with national law in the field of democracy, because the supra-national court has legitimized a repressive strategy adopted by national authorities, for the purpose of defending democracy.

A fourth example is that of Article 3 of Protocol No. 1 of the European Convention on Human Rights, which provides: "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under

[17] *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], no. 41340/98, 41342/98, 41343/98 and 41344/98, ECHR 2003-II.

[18] On this case, see D. Kugelmann, *Die streitbare Demokratie nach der EMRK*, in "Europäische Grundrechte Zeitschrift", 2003, Heft 17-20, pp. 553; M. Levinet, *Droit constitutionnel et Convention européenne des droits de l'homme. L'incompatibilité entre l'Etat théocratique et la Convention européenne des droits de l'homme. A' propos de l'arrêt rendu le 13 février 2003 par la Cour de Strasbourg dans l'affaire Refah Partisi et autres c/Turquie*, in "Revue française de droit constitutionnel", n. 57, 2004, p. 207; P. Harvey, *Militant democracy and the European Convention on Human Rights*, in "European Law Review", n. 29, June, 2004, p. 407; Y. Mersel, *The dissolution of political parties: the problem of internal democracy*, in "International Journal of Constitutional Law", vol. 4, no. 1, January 2006, p. 84; P. Macklem, *Militant democracy, legal pluralism, and the paradox of self-determination*, in "International Journal of Constitutional Law", vol. 4, no. 3, July 2006, p. 488; A. Nieuwenhuis, *The Concept of pluralism in the case-law of the European Court of Human Rights*, in "European Constitutional Law Review", no. 3, 2007, p. 367. On the "militant democracy", see also K. Loewenstein, *Militant democracy and fundamental rights, I*, in "The American Political Science Review", no. 3, June 1937, p. 417.

conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

A violation of this article was alleged in the case *Yumak and Sadak v. Turkey* (8 July 2008)[19] because, according to two Turkish nationals, "the imposition of an electoral threshold of 10% in parliamentary elections interfered with the free expression of the opinion of the people in the choice of the legislature". The Grand Chamber of the Strasbourg Court maintained that "[d]emocracy constitutes a fundamental element of the 'European public order', and the rights guaranteed under Article 3 of Protocol No. 1 are crucial to establishing and maintaining the foundations of an effective and meaningful democracy governed by the rule of law", and reached the conclusion that "in general a 10% electoral threshold appears excessive. In that connection, [the Court] concurs with the organs of the Council of Europe, which have stressed the threshold's exceptionally high level and recommended that it be lowered [….]. It compels political parties to make use of stratagems which do not contribute to the transparency of the electoral process. In the present case, however, the Court is not persuaded that, when assessed in the light of the specific political context of the elections in question, and attended as it is by correctives and other guarantees which have limited its effects in practice, the threshold has had the effect of impairing in their essence the rights secured to the applicants by Article 3 of Protocol No. 1. There has accordingly been no violation of that provision".

[19] *Yumak and Sadak v. Turkey* [GC], no. 10266/03.

Notice that the Court makes use of a supranational standards of legality to measure how democratic a national government is, and this standard is derived not by a global definition of national democracy, but by an internationally recognized human right (along the same lines, the Council of Europe established, in 1990, the European Commission for Democracy through Law – better known as the Venice Commission – with the purpose of upholding the three principles of Europe's constitutional heritage: democracy, human rights and the rule of law, in four key areas: constitutional assistance, elections and referendums, cooperation with constitutional courts, and transnational studies, reports and seminars).

The last example that I want to analyse here is provided by the history and processes of the Second Gulf War and of the Iraqi transition. On March 20, 2003, a Multinational Force of 49 Nations[20] invaded Iraq. Some countries supported the invasion in a non-military fashion; many others subsequently withdrew their troops. On April 21, 2003, the Coalition created a Coalition Provisional Authority (CPA) as a transitional government of Iraq, with executive, legislative and judicial authority. In May 2003, the Coalition pronounced "mission accomplished", signalling the end of major armed combat engagements. Saddam Hussein was captured in December 2003. On June 28, 2004, the CPA transferred the "sovereignty of Iraq" to the "Iraqi Transitional Government", which began the trial of Saddam Hussein and the process of moving towards open elections. On January 31, 2005, direct democratic elections were held electing members to the

[20] Coalition of the Willing: phrase first used in the late '80 to refer to nations acting collectively, often in defiance of the UN.

Transitional National Assembly, which was tasked with drafting a Constitution; a document that was ratified on October 15, 2005. On December 15, 2005, the members of the Iraqi National Assembly were elected. Finally, on May 20, 2006, the Government of Iraq took office, succeeding the Iraqi Transitional Government.

These steps were taken in accordance with the procedural provisions of Chapter VII of the UN Charter, which require a Security Council decision to determine the existence of a threat to peace, of a breach of the peace or of an act of aggression (Article 39). A complex structure was established by the United Nations in order to impose democracy in Iraq: a Special Representative for Iraq of the Security Council[21]; a United Nations Assistance Mission in Iraq (UNAMI)[22]; a Development Fund for Iraq, and an International Advisory and Monitoring Board of that Fund[23]; and a Multinational Force (MNF)[24].

The purpose of these efforts was to give to the United Nations a "leading role in assisting the efforts of the Iraqi people and Government in developing institutions for representative government and in promoting national dialogue and unity"[25]. During the transition, it was held to be important to ensure welfare, security, stability, self-determination[26] and an internationally recognized, representative government assuming the responsibilities of the Authority[27].

[21] Resolutions 1483, Para. 8 and 1546 Para. 7.
[22] Resolutions 1550 Para 2 and 1546, Para 7.
[23] Resolution 1483, Paras. 12 and 17. Proceeds from export sales of petroleum products and natural gas are deposited into the Fund.
[24]Resolutions 1511, Para 13 and 1546, Paras. 9 – 15.The mandate of UNAMI, of the Fund, of the Board and of the MNF have been extended with Resolutions 1619 and 1637 (2005).
[25] Resolution 1619.
[26] Resolution 1483, Para. 4.
[27] Resolution 1511, Para. 1.

According to the Security Council, the concept of democracy included the right of the Iraqi people to determine their own political future and control over their own natural resources[28]; to independence, sovereignty, unity and territorial integrity[29]; to the rule of law[30]; to democracy, including free and fair elections[31]; and to an internationally recognized representative of the government of Iraq[32].

This last case raises the question of whether democracy can be exported by military force. We might recall, in this regard, the achievements of occupation forces in Germany and Japan after World War II, and, more recently, in Bosnia and Herzegovina; however, the question of whether democracy can be imposed from outside, or can grow only by means of indigenous development[33], can also be raised in this context.

3. Does the global legal order threaten or enhance democracy?

These five examples raise a number of different sets of questions.

Firstly, can democracy be imported from abroad or protected from the outside? Should not democracy rely on self-creation and self-preservation, instead

[28] Resolutions 1511, p. 1 (no. 4), 1546, Para 3, and 1637.
[29] Resolution 1546, p. 1 (no. 3) and Resolutions 1619 and 1637.
[30] Resolution 1546, p. 1 (no. 10).
[31] Resolution 1546, p. 1 (no. 10).
[32] Resolution 1483, Para. 22.
[33] See S. Cassese, *The Globalization of Law*, in "NYU Journal of International Law and Politics", vol. 37, n. 4, 2005, Summer, p. 973-974.

of depending on external pressures? How democratic is an imported democracy? And what is the proper role of the "demos" in a democracy?

This argument descends into a contradiction: if democracy can only be self-given, the only way to introduce or protect democracy in a non-democratic country[34] (because the people cannot express themselves through elections) is through a non-democratic, but domestic process: for example, a popular upheaval. However, as history teaches, the introduction of democracy, or its protection against authoritarian impulses, are not necessarily domestic processes: they can be the product of external pressures or conditions, provided that these allow, after a certain amount of time, for local elections to be held. Therefore, external pressures or conditions can play the same role as a constituent process.

Secondly, as there is not just one type or kind of democracy, the following question arises: *which* democracy should be imported or protected from the outside? For example, should the emphasis be placed on free elections, or rather on a multi-party system? What about freedom of information, public access to official documents, equality, and the separation of powers? Should the global legal order lend its support also to forms of "militant democracy" ("streitbare Demokratie")[35]? Which attitude should the global system adopt vis-à-vis anti-system actors (such as insurrectionist parties) and secessionism (such as separatist

[34] Assuming that "the people" do not agree to be ruled by non-democratic rules. The existence of such support is often difficult to ascertain. But one can assume that, in this case, the non-democratic rulers enjoy some popular support. Therefore, there is some kind of (very limited amount of) democracy.

[35] "A democracy capable of defending itself against anti-democratic actors who use the democratic process in order to subvert it" (P. Harvey, *Militant democracy and the European Convention on Human Rights*, cit., p. 408.

parties)? Should the members of the judiciary be appointed through a democratic process, or selected according to merit?

This is a much more difficult question. Even having assumed that democracy can be transplanted from outside, one has to recognise that the choice among so many different alternative interpretations of the concept of democracy results from a non-democratic process if left in the hands of foreign (or global) institutions. However, experience shows that democratic institutions imported from the outside can adjust to the domestic context.

One good example is that of local government in Germany. The *Länder*, while not entirely new, were introduced under pressure from allied military forces, following the American federalist example. After a few years, however, they evolved into an entirely new institution; in their new context, they became different bodies from the originals upon which they were modelled.

Thirdly, at which stage should the global legal order defend democracy? At the very beginning, seeking only to introduce democratic institutions? Or also at a later stage, in order to protect and safeguard democracy against extremism or other kinds of attack?

The democratic process is not necessarily a machine that runs by itself. In every democracy there are developments and set backs. Therefore, corrections are necessary.

The example of the European Court of Human Rights is instructive, as its interference with national democracies, including mature ones, puts pressure on

national governments to democratize, notwithstanding the fact that it does not impose any solutions on them (as the domestic legal order is only subject to a penalty in case of non-compliance). The Strasbourg Court introduces a "dialogue" between a global court and national governments.

This result raises a different question. A favourable international environment is important for the survival of democracy[36] . But can external pressures or conditions, even if they come from "above" (global bodies, a group of foreign governments), genuinely be effective?

Lastly, which authority can decide in case of conflicting values, and in particular in extreme cases? Is more democratic to prohibit or exclude from the electoral arena insurrectionary and secessionist parties, or to leave them to act freely? Must the domestic legal order adjust to the global standards? And where does the legitimacy of global standards come from, given that the global legal order is not itself democratic (i.e. that there is no cosmopolitan "demos"; no global public opinion, debate or deliberation; no global political party; no global elections; and no World Parliament).

However, a real conflict between the legitimacy of global decisions and that of domestic authorities occurs only in extreme cases. Global institutions establish standards not in order to impose, but rather for the purpose of promoting and inducing democracy in domestic governments. They want – as a rule – the national governments to respect democratic rules; they do not, however, seek to

[36] G. Capoccia, *Defending Demœracy*, Johns Hopkins Univ. Press, 2005, p. 224.

force them onto domestic institutions. The case of the Iraqi war (and military occupation) in order to impose democracy is an exception in this regard.

The final observation brings me back to my point of departure. Democracy is strongly correlated with the rule of law and with economic development. In terms of the former, "[t]he relationship between the rule of law and liberal democracy is profound. The rule of law makes possible individual rights, which are at the core of democracy. A government's respect for the sovereign authority of the people and a constitution depends on its acceptance of law"[37]. In terms of the latter, "[…] for democracy to *endure*, historical experience suggests that the chances for democratic survival are directly linked to per capita GNP"[38].

This correlation has led many global institutions, such as the World Bank and the European Union, first to develop indicators to evaluate and monitor respect for democracy and compliance with the rule of law; and then to provide assistance and aid in order to promote both. Institutions engaged in promoting economic development have also become engaged in promoting a better institutional setting for policymaking, through encouraging efficient administration, more transparency and accountability, disclosure laws, more secure property rights, protection of shareholders, and anti-corruption regulations.

5. Democracy as a global problem

[37] T. Carothers, *The Rule-of- Law Revival*, in T. Carothers (ed.), *Promoting the Rule of Law Abroad. In Search of Knowledge*, Washington Carnegie Endownments for International Peace, 2006, p. 4-5.
[38] E. Bellin, *The Iraqi Intervention and Democracy in Comparative Historical Perspective*, in "Political Science Quarterly", vol. 119, no. 4, 2004 – 2005, Winter, p. 597.

The subject of this contribution has not been the widely discussed problem of the "democratization of the international realm"[39]. "Global democracy" – unlike global warming or global terrorism – simply does not exist. The proper setting of democracy remains exclusively the State.

This does not, however, mean that questions of democracy are irrelevant to global governance; quite the contrary. Firstly, democracy in the national setting suffers from many inherent weaknesses, and may gain in effectiveness if supported from outside (as the example of Turkey before the Strasbourg Court illustrates). Secondly, many important actors within the global arena have an interest in increasing the spread of democratic institutions – not least because it is often embarrassing for the heads of democratic States and governments to deal with partners who do not represent the will of their people).

Therefore, despite finding its proper location in the state, democracy is not only a domestic matter. Global institutions care about national democracy, and there is widespread interest in the global arena in the goals of achieving, diffusing and maintaining democracy worldwide. The purpose of the present contribution has been to seek to illustrate how, when and why global institutions take responsibility for introducing or defending democracy within national institutions

As the preceding analysis has illustrated, global institutions make use of a wide array of instruments, using benchmarks and other means of evaluating democratic performance, in order to fulfil the varied goals of promoting, assisting,

[39] See A. von Bogdandy, *Globalization and Europe: how to square democracy, globalization, and international law*, in "The European Journal of International Law", vol. 15, no. 5, 2004, p. 899. This contribution is important because it lays down the "conceptual foundations" (p. 896) of the relations between globalization and democracy.

monitoring, or imposing democracy. Moreover, they take action both in terms of introducing democracy into States in which it is not present and strengthening democracy in States in which it is under threat. Lastly, different global institutions can and do act to further different conceptions of democratic governance.

Each of these conclusions raises many problems of its own. The various means of introducing democracy can be classified as falling under one of two major categories: soft and hard interventions. While those in the first category act as incentives, the second seek to impose democracy from the outside, and their results should be at least ratified or confirmed by subsequent popular elections.

A second major problem stems from the interventions by global institutions into democratic societies in order to adjust or improve domestic democracy. The legitimacy of any such interventions can be considered doubtful, as particular non-democratic practices can themselves be the product of a democratic regime (consider, for example, the lack of transparency rules in many democratic legal systems). But democracy does not mean only democratic investiture through elections: it also implies a wealth of other institutions (among others, free speech, transparency, and local government), the absence of which can, indeed, endanger elections themselves.

A third major problem concerns global judicial oversight over the basic institutional arrangements of national politics. When the global body in question is not "political" (such as the United Nations), but rather judicial in nature (such as the Strasbourg Court), there is a risk that "courts […] enter the political domain".

In the national arena, "it is becoming commonplace for courts to confront questions that were long deemed beyond the realm of possible judicial competence. […] courts now routinely engage the complicated world of political power in ways unimaginable a few generations ago"[40] . The question remains, however: are courts beyond the State entitled to exercise similar control?

A fourth major problem has to do with the definition of democracy: beyond self-determination and representative government, should it also be conceived of as including pluralism, self-government, and the separation of powers? Should only a common core of democratic institutions and rules be imposed from the outside, or should the global bodies in question rather seek to ensure that each country imports the entire panoply of democratic arrangements? The answers to these questions cannot be furnished by abstract reflection alone, but instead require decisions made in the particular context of each individual case.

[40] S. Issacharoff, *Democracy and Collective Decision Making*, in "International Journal of Constitutional Law", vol. 6, 2008, p. 266.