

THE RIGHT TO GLOBAL PARTICIPATION THROUGH NGOS

O DIREITO À PARTICIPAÇÃO GLOBAL ATRAVÉS DE ONGS

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Convidado

ABSTRACT: The following article justifies the right to global participation through NGOs from the active dimension of human dignity and from self-determination in a philosophical perspective: People are citizens if they are only subject to those laws in whose legitimation they could also participate. However, human dignity and positive freedom as self-determination not only establish this right, but also determine the weight that can be given to NGOs: The more democratic the internal structure of the organization, the greater its weight can be in legitimizing global governance. In this way, NGOs can contribute to the development of world citizenship in a global republic.

Keywords: Participation. Democracy. Globalization. Human Right. Legitimation. Non-Governmental Organizations, NGOs. International Law.

RESUMO: O artigo seguinte justifica o direito à participação global através das ONGs a partir da dimensão ativa da dignidade humana e da autodeterminação em uma perspectiva filosófica. Pessoas podem ser consideradas cidadãs apenas se estiverem sujeitas às leis de cuja legitimação também pudessem participar. A dignidade humana e a liberdade positiva como autodeterminação não só estabelecem este direito, como também determinam o peso que pode ser dado às ONGs: Quanto mais democrática for a estrutura interna da organização, maior poderá ser o seu peso na legitimação da governança global. Desta forma, as ONGs podem contribuir para o desenvolvimento da cidadania mundial numa república global.

Palavras-chave: Participação. Democracia. Globalização. Direitos humanos. Legitimação. Organizações não-governamentais, ONGs. Direito internacional.

SUMÁRIO: Introdução. I Globalization. II Challenges to the Legitimacy of International Law. III Legal Structure of International NGOs. IV The Contribution of Democracy and Participation to the Legitimation of Public Authority. 1 Democracy and Participation. 2 Democracy and Participation under the Conditions of Globalization. V Human Rights Justification of Participation. 1 Human Dignity as the Basis of the Status Activus. 2 Status Activus and Forms of Participation. 3 Status activus universalis. References.

INTRODUÇÃO

In recent years, the question of the legitimacy of international law and its institutions has been increasingly raised.¹ In this context, non-governmental organizations (NGOs) play both a problematic and a legitimacy-promoting role. Namely, they present themselves as—asymmetrical—forms of citizen participation. It is the thesis of the following paper that the activities of NGOs are expressions of the political dimension of the human rights of the people working in them and thus contribute to the legitimization of globalized politics and international law.

In order to justify this thesis, I will first discuss the concept of globalization (I.). Against this background, I am going to outline the associated challenges for the legitimization of international law (II.). In the third section, I will present the legal structure of international non-governmental organizations (III.). Then, the concepts of democracy and participation are briefly analyzed (IV.) in order to finally provide a human rights justification of the right to participation on the basis of dignity (V.).

I GLOBALIZATION

As far as I can see, the concept of globalization has not been generally defined.² It is oriented—and this is legitimate—to the respective issues. In any case, it is too narrow to assume that it is only about the “unleashing of the financial markets”, that globalization is primarily an economic phenomenon.³ Rather, it encompasses all areas of life, although—admittedly—economic activities have assumed a pioneering and often problematic role.⁴ Everyday life and activity increasingly transcend national borders on the basis of networks with a high degree of mutual dependence. This influences society’s self-perception more strongly via mass media and tourism and leads to forms of behavior that lose their rootedness in local traditions. This is related to the placelessness of community, work and capital. In this respect, one could also speak of globalization of the lifeworld,⁵ informational globalization,⁶ ecological globalization,⁷ economic globalization,⁸ cultural globalization,⁹ religious globalization,¹⁰ globalization of the legitimization of politics,¹¹ and globalization of labor cooperation or production,¹² but also of poverty and violence¹³. At the same time, the horizon of perception for global ecological dangers and corresponding arenas of action is widening.¹⁴ For jurisprudence, the question of the globalization of law¹⁵ and the possibility of a world law¹⁶

¹ See, for example, Wolfrum/Röben (2008); Meyer (2009).

² A sorting of approaches can be found in: Kirste 2001, pp. 7-12; a definition of the concept from the perspective of systems theory: Stichweh 2008, pp. 329 ff.

³ However, Müller 2003, p. 62.

⁴ In general, it is still disputed whether globalization represents an opportunity (Brandl/Stelzl 2004, pp. 1309 ff.) or a danger - on the latter view, for example, Burchardt 2003, pp. 505 ff.

⁵ Habermas 1998a, pp. 91 ff.

⁶ Stehr 2008, pp. 301 ff.; Lamnek/Tinnefeld 1998; Beck 1997, p. 39.

⁷ Beck 1997, pp. 40; Huber 1999, pp. 193-213; from a legal theory perspective: Rowe 1998, pp. 249-304.

⁸ Beck 1997, pp. 40

⁹ Senghaas 2007, p. 55 ff.; Türcke 1999, pp. 154 ff. Gessner 1994, pp. 132 ff. Beck 1997, p. 42

¹⁰ Leggewie 2005, pp. 3 ff.

¹¹ In particular, the question of inclusion and exclusion, Chanos 2008, pp. 383 ff.

¹² Beck 1997, p. 41

¹³ Mahnkopf 2006, pp. 817 ff.

¹⁴ Beck 1997, pp. 31 f.

¹⁵ Anderheiden/Kirste/Huster 1998; Galagno 2003, pp. 237 ff.

¹⁶ In general: Schulte 2008, pp. 143 ff.; Voigt 2008, pp. 357 ff.; Ziegert 2008, pp. 453 ff.; as a right arising from common features of national constitutions: Kotzur 2008, pp. 191 ff.; as a result of global communication: Krawietz 2008, pp. 419 ff.

and its justice,¹⁷ the legitimacy of international law,¹⁸ transnational public authority as a whole and the position of the individual¹⁹ as well as the state²⁰ and its constitution²¹ in this arena arises.

Global problems such as the environment and globalization have challenged the state's ability to govern.²² The denationalization of the state's competences is a partial phenomenon of globalization.²³ As a result, not only the goals of the state but also its statehood itself are exposed to globalization.²⁴ It affects above all sovereignty, which is modified by the influence of transnational legal systems. For quite some time now, we therefore speak of an “erosion of the Westphalian order”.²⁵ States are no longer the only actors in world politics. Non-state actors have come to their side supporting and criticizing.²⁶ However, emerging economies and least developed countries in particular are experiencing the ambivalences of globalization, which bring them an improvement in prosperity but also increased externalization.²⁷ Law is not exempt from this. Rather, it participates in this process itself, so that one can speak of a globalization of law in terms of a “multidimensional process” in the course of which “national law gradually recedes in favor of, and is eventually replaced by, world law.”²⁸

States still do not see themselves as self-governing bodies for global affairs, but as (largely) sovereign managers of all public tasks falling within their jurisdiction. For the time being, the United Nations does not have any agencies at its disposal, such as those that help the EU to solve complex issues in a way that is close to the problem and the location. However, the dependence of national politics and lawmaking on transnational and international factors has increased since World War II, even though effective political globalization is still lacking.

Mistaken developments such as the unfair distribution of resources and intrinsic problems such as increasing demands on the qualifications and mobility of workers have led to problems of exclusion in democratic and legal processes as well.²⁹ Local economic crises can have global consequences, such as the U.S. housing crisis, the financial crisis, the Covid pandemic and last but not least, the Ukrainian war.³⁰ As well known, there is a lack of global institutions of policy that could influence these processes. Persons struggling for daily survival hardly have the factual possibility to participate in their state policies. Instead of being able to participate in the political and legal discourse, these persons are subjected to national laws that may not be democratically legitimized and/or are disconnected from state law, such as those persons living in poor neighborhoods such as the Brazilian favelas.³¹ Many authors therefore see globalization as a “trap”, and an “attack on democracy and prosperity”.³²

¹⁷ Neves 2002, pp. 323 ff.

¹⁸ Bothe 2008, pp. 235 ff; Kadelbach 2004, pp. 1 ff; Nettesheim 2002, pp. 569 ff.

¹⁹ Wahl 2001, pp. 45 ff.

²⁰ Sassen 2005, pp. 413 ff; Di Fabio 2008, pp. 399 ff; Müller-Franken 2009, pp. 542 ff; Halfmann 2008, pp. 279 ff; with implications for organization - Möllers 2008, pp. 217 - and the actions of administrations - Tietje 2008, pp. 255 ff.

²¹ Stoll 2007, pp. 1064 ff.

²² Schwerdt 2003, p. 65.

²³ Kirste, Introduction, p. 7; Beck 1997, p. 44: “Throughout, a central premise of the First Modernity is overturned, namely the notion of living and acting in closed and mutually delimitable spaces of nation-states and national societies corresponding to them”.

²⁴ Habermas 1998, esp. 91 ff.

²⁵ Schwerdt 2003, pp. 40 f.

²⁶ Schwerdt 2003, p. 64.

²⁷ Neves 2002, pp. 323 ff.

²⁸ Voigt 2008, Preface, 7

²⁹ Müller 2003, pp. 66 f.

³⁰ Brunnengräber/Altwater 2002, p. 7 summarize: “The deficit of socialization in the globalized world is thus justified in several ways: politically because of deregulation and the associated delegitimization, socially because of the increased inequality in the world, and economically because of the crisis tendencies that affect the 'real economy' from the financial markets and set development efforts back”.

³¹ Müller 2003, p. 69.

³² This is the subtitle of the book „*Die Globalisierungsfalle*“ by Hans-Peter Martin and Harald Schumann (Reinbek b. Hamburg 1996); Alfred Keck: *Deutschland in der Globalisierungsfalle. The End of the Nation-State?* 1999.

While some scholars argue for a world state, for a “world republic” in the Kantian sense based on a world social contract,³³ other voices see the solution in a “world society without a world state and without a world government”,³⁴ which requires civil society solutions³⁵.

Protest movements have formed against the alleged and real undesirable developments of globalization, and these movements also operate internationally. They recognize values and human rights as goals of a global order of justice and stand up for them. Insofar as NGOs are directed toward these goals, they act as a “world conscience”, criticize grievances against the yardstick of these norms, also organize resistance, and thus establish political public spheres as the basis of an issue-based world democracy.³⁶ But “conscience” is a moral concept. It enjoys the protection of law, feeds political decisions, but is not itself a legal institution.

II CHALLENGES TO THE LEGITIMACY OF INTERNATIONAL LAW

The challenges of globalization for the legitimacy of international law have become increasingly apparent in recent years.³⁷ While not all legitimation problems of international institutions and international law can be attributed to it, as a result of the globalization of communication media since the 1990s, those that have existed for longer are also coming more into public focus.

Like other forms of rule, international law requires legitimation. In need of legitimation are decisions of one authority over others. The need for legitimation is raised by the influence and perhaps displacement of national lawmaking by international norms, even if the identification and sanctioning of norm violation and norm enforcement remain national matters. This “denationalization” is at the same time also a de-parliamentarization, since an equivalent to democratic collegial bodies is lacking at the international level.³⁸ The regulatory areas of human rights, environmental law, economic law, and others are affected by this development.³⁹ However, international law also bypasses nation states and addresses citizens directly—as does the *ius in bello*, for example.⁴⁰ In international environmental law, there are norms that give international organizations the competence to concretize on the basis of majority decisions by the relevant collegial bodies, so that the will of the nation states is no longer purely reflected in these concretizations. Finally, the international organizations have interpreted their treaty-granted powers extensively, as NATO’s missions show, for example. Expert bodies create their own legal systems, e.g. the *Lex Mercatoria* in the area of trade law. This condensation of political control compared to the classical system of international law, which nevertheless does not have the intensity of state governance or even EU governance, is also called “global governance”.⁴¹

Criteria to justify government action and especially laws are self-determination by those affected and the facilitation of individual or collective (common good) interests. The first form means input legitimation, the second output legitimacy. Input legitimation relies on the justification of decisions based on the deliberation of shared reasons. This justification can be based on certain values, interests, or on certain

³³ Höffe 1999, pp. 308 f.

³⁴ Beck 1997, p. 32. Zürn 1992, pp. 490 ff; Stichweh 2008, pp. 338 f.

³⁵ On issues of globalization in democratic theory, see Brunkhorst/Kettner 2000; Brunkhorst 1999, pp. 82-94; Angehrn/Baertschi 1999; the essays by Beck, Goodman, and McGrew in: Beck 1998, pp. 7-67.

³⁶ Müller 2003, p. 76.

³⁷ Cf. only Meyer 2009; Wolfrum/Röben 2009; Heiskanen/Coicaud/Coicaud 2001.

³⁸ Wolfrum 2009, p. 20.

³⁹ Wolfrum 2009, p. 12.

⁴⁰ Wolfrum 2009, p. 13.

⁴¹ The term “global governance” is also understood in very different ways. Zürn 2010 provides a helpful characterization: “The analytical concept of governance points out, on the one hand, that the authoritative regulation of social problems is not necessarily tied to states. In addition to *governance by government*, there can also be *governance without government* (self-imposed norms and rules by societal actors) and *governance with governments* (commitment of states to certain norms and rules in their dealings with each other, without these being decided and enforced by a superior actor). The use of the concept of governance in the field of international relations points to the fact that international rules no longer provide simple coordination services. Often they aim at an active handling of common affairs of the international community of states or the “world society” linked with normative objectives; admittedly, also and especially non-normative forms of politics are encompassed by them.

discourses or procedures. Output legitimacy focuses on the beneficial outcome of decisions. To simplify: Consequentialist positions tend to emphasize the importance of input legitimacy; utilitarian positions tend to emphasize output legitimacy. However, both forms of legitimation are not necessarily mutually exclusive and are also combined by different theories.

Traditionally, the legitimacy of international law is mediated by consensus among states.⁴² If a non-democratically governed state participates, this impairs the democratic legitimacy of international authority as well. International law can increasingly—especially in the field of human rights—disregard the sovereignty of states; however, the form of government remains an arcanum of the independence of states. For this reason, international law seeks to gain legitimacy precisely through its effects. At the same time, however, there are considerations about how democratic input legitimacy can be strengthened.

These challenges to the legitimacy of international law are perceived as the transfer of rules of substantive constitutional law to supra- and international organizations without the corresponding co-transfer of democratic decision-making procedures.⁴³ Rüdiger Wolfrum identifies four views on this:⁴⁴ The first approach compares the national with the internationally achievable level of legitimacy of political decisions, states a deficit and advocates lower competences of the United Nations. A second school of thought advocates a reform of the United Nations against the background of new global policy fields and calls, among other things, for new competencies and greater participation by NGOs and national parliaments. The other two approaches diagnose partial legitimacy deficits, but recommend either a strengthening of the legitimacy chains mediated by national parliaments or a reform of the United Nations.

In the following, we want to explore potentials of a stronger participation of international non-governmental organizations for the legitimation of international law, thus we pursue the second group of theories a bit. To this end, NGOs should first be analyzed in a little more detail.

III LEGAL STRUCTURE OF INTERNATIONAL NGOS

Again, with regard to NGOs—and here we are only talking about internationally active NGOs⁴⁵—there is no generally accepted definition.⁴⁶ Based on international and European legislation, Lindblom convincingly characterizes NGOs by their founding based on private initiative, not-for-profit goals, non-violence and formal existence.⁴⁷ Their history, which goes back to the 17th century and probably received an important impulse by the Peace Conference of Versailles in 1919,⁴⁸ does not give any clear indication to their identifying criteria.⁴⁹ Within the UN they are understood as non-state associations.⁵⁰ Helpful for their conceptualization is their accreditation with the Economic and Social Council of the United Nations

⁴² Wolfrum 2009, p. 7.

⁴³ Young 2003, p. 544.

⁴⁴ Wolfrum 2009, p. 2.

⁴⁵ They are certainly typically, though not necessarily, characterized by the fact that their members come from more than one state, Charnotitz 2006, p. 350.

⁴⁶ On the history of the term, Charnotitz 2006, pp. 350 f., who defines: NGOs “are groups of persons or of societies, freely created by private initiative, that pursue an interest in matters that cross or transcend national borders and are not profit seeking”. On the problem of definition cf. Lindblom 2008, pp. 36-52; Ben-Ari 2013, pp. 31, 116, Ahmed 2006, p. 8: Any international organization which is not established by inter-governmental agreement shall be considered as an NGO”.

⁴⁷ Lindblom 2008, p. 52: “In sum, the definition of ‘NGO’ used in this study implies that it: 1. is ‘non-governmental’, meaning that it is established by private initiative, is free from governmental influence, and does not perform public functions, 2. has an aim that is not-for-profit, meaning that if any profits are earned by the organisation they are not distributed to its members but used in the pursuit of its objective, 3. does not use or promote violence or have clear connections with criminality, and 4. has a formal existence with a statute and a democratic and representative structure, and does normally, but not necessarily, enjoy legal personality under national law.” The democratic internal structure is a strong presupposition. As a starting point, it may be helpful to begin without the democratic structure as a defining element of NGOs and rather use this structure as a criterion for a distinction of their rights.

⁴⁸ Charnovitz 2003, pp. 61 u. 74: “a global constitutional moment”. Even the Aborigines' Protection Society participated. Crucially, NGO activities thereafter were seen as legitimate.

⁴⁹ Hobe 1999, p. 154.

⁵⁰ Brunnengräber/Altvater 2002, p. 8.

(ECOSOC).⁵¹ According to Art. 71 p. 1 of the Charter of the United Nations, this Council can establish relations with NGOs. Here, the Committee on Non-Governmental Organizations is responsible for accreditation at the United Nations. As of September 1, 2019, 4.341 (2010: 2408) NGOs with special consultative status, which gives them access to all official intergovernmental documents, were accredited there.⁵² However, numerous NGOs can also be found outside this classification. Only the IOC or the International Lawyers Association (ILA) should be mentioned. In 2013, there are said to have been 40.000 NGOs.⁵³ Stefan Hobe speaks of “associations ... which are founded by private natural or legal persons on the basis of private law and not international law contracts and which pursue idealistic, non-profit-oriented goals on a national or international level within the framework of the law and which have a permanent structure capable of acting and their own headquarters”⁵⁴. This provides a helpful starting point for further analysis.

NGOs are voluntary associations of natural or legal persons under private or public law for the purpose of pursuing cross-border common interests.⁵⁵ It is precisely in the voluntary association that they have an important advantage over states.⁵⁶ By their thematic orientation they belong to sectorally integrated associations, whose foundation follows the logic that common factual interests do not have to stop at state borders.⁵⁷ As soon as a global problem arises, NGOs also come into being and network with existing associations. The interest that unites them is based on the factual problems and does not stop at national borders, as in the case of migration or the environment. Caritas and the World Jewish Congress, as well as church umbrella organizations, have religious interests. Issues are human rights (Amnesty International), the environment (Greenpeace), religious issues (World Council of Churches), workers' interests (World Federation of Trade Unions). Their interests are necessarily particular, directed at individual issues, even and especially when they are globally oriented. The kind of all-encompassing competence that the state possesses is alien to them.⁵⁸ In this respect, the interest aroused may be coincidental; its implementation is more market-based than controlled. The nature of their goals is not determined by the contracting parties, as is the case with international organizations, and they can therefore be flexibly adapted to new developments. Accordingly, their effectiveness is determined by the attractiveness of their programs and the commitment of their members. Success - for example, the treaty banning landmines (Ottawa Convention)⁵⁹—or failure, however, depends only on political and not legal factors. Also essential are the resources available to them. In any case, the European and North American organizations have in fact a stronger weight than, for example, the African ones.⁶⁰ They carry out their activities voluntarily, on the basis of personal concern and personal commitment, and certainly not as a public task that would have been legally conferred on them.

The subjectivity of NGOs under international law is strongly debated.⁶¹ The decisive factor must be a differentiated consideration according to the concrete rights and obligations conferred upon them⁶². Efforts to give them a legal status as subjects of international law go back almost a hundred years, without,

⁵¹ In its Resolution 1996/31 of 25 July 1996: “Arrangements for Consultations with Non-Governmental Organizations”, Part I, 12, p. 2 states: “Any such organization that is not established by a governmental entity or intergovernmental agreement shall be considered a non-governmental organization for the purpose of these arrangements, including organizations that accept members designated by governmental authorities, provided that such membership does not interfere with the free expression of views of the organization”.

⁵² List at: https://csonet.org/content/documents/INF_List_lastest.pdf, last accessed Jan. 17th 2023.

⁵³ Ben-Ari 2013, pp. 5 ff.; Ahmed 2006, pp. 19 ff. on their development.

⁵⁴ Hobe 1999, p. 156.

⁵⁵ The voluntary social association distinguishes them from international organizations, which are associations of states by virtue of international treaties, Charnotitz 2006, p. 352.

⁵⁶ Charnovitz 2006, p. 348.

⁵⁷ Charnovitz 2003, p. 54.

⁵⁸ Attac (“Association pour une Taxation des Transactions financière pour l'Aide aux Citoyen”) is no exception here, as they advocate stronger regulation of the financial markets, tax havens, debt relief, fair trade, etc., i.e. an economic order of globalization, www.attac.org.

⁵⁹ German Federal Law Gazette, II 1998, p. 779.

⁶⁰ Brunnengräber/Altwater 2002, p. 10.

⁶¹ Lindblom 2008, pp. 58-79, 164 f.; Vitzthum-Vitzthum I, marginal no. 19; this does not preclude their having domestic legal personality under the appropriate conditions. Mosler 1984, pp. 444-445.

⁶² Hobe/Kimminich, Völkerrecht p. 160.

however, being successful. Since a decision of the ICJ in 1949⁶³ NGOs could be subjects of international law with partial legal capacity. This would be the case if they are entitled under international law⁶⁴. Furthermore, it is necessary that they have an objective, a certain organizational solidification, which guarantees them the ability to act and permanence⁶⁵. However, they lack the state recognition constitutive for subjects of international law⁶⁶. It is questionable whether the consultative status extends so far that this would have to be judged differently: they have no rights to act in a way that is binding under international law; in particular, they may neither negotiate nor vote. More importantly, however, corresponding organizations have petition rights on behalf of victims of serious human rights violations, for example under Article 34 of the ECHR or Article 44 of the American Convention on Human Rights. Thus, they can take legally effective procedural actions. This justifies speaking of a partial international legal capacity.⁶⁷

The internal organization of NGOs is often, but not necessarily, democratically structured. Democratically structured interest groups, such as associations of trade unions or business associations, therefore emphasize this characteristic to differentiate themselves from other organizations.⁶⁸ Their degree of organization ranges from informal forums, working groups, and networks to annually recurring institutions such as the World Economic Forum in Davos.⁶⁹ Admittedly, a permanent organization is required for their accreditation. In some cases, the internal structure is legally standardized to the point of an autonomous legal system, such as that of the IOC.⁷⁰

Their activity consists in the processing of facts, the initiation of public debates, “agenda setting”, “creation of (global) publicity”, elaboration of alternative solutions, proposals for interpretation of international law, lobbying, campaigns for fair trade and against child labor, against whaling, etc. They are regularly accredited at conferences of states, such as for the first time at the Versailles Peace Conference in 1919 and in large numbers at the 1992 UN World Conference in Rio.⁷¹ In this way, they provide enlightening counterweights to economic globalization in particular, and also local and regional injustice.⁷² The public is influenced by debates, hearings,⁷³ actions etc.⁷⁴ Conversely, they mediate programs of the United Nations, in the elaboration of which they were involved in an advisory capacity, vis-à-vis those affected. They also appear as expert witnesses in proceedings of the International Criminal Tribunal for the former Yugoslavia and for Rwanda, for example.⁷⁵ The parties to the Aarhus Convention agreed that NGOs nominated members to their Conventions Compliance Committee. The main field of activity of NGOs is informal action to exert political pressure. However, their actions are also important for the enforcement of international law. Here, fact finding plays a role, as do public campaigns, as do the reports of Amnesty International. Post-conflict peace-building and humanitarian aid operations are also part of their field of activity.⁷⁶ In terms of lawmaking, they mainly have a reporting function: They describe the facts of life and influence alternative regulations. However, they also have a standard-setting function, such as the

⁶³ Reparations for Injuries, ICJ Reports 1949, pp. 178 ff.

⁶⁴ Hobe 1999, p. 158.

⁶⁵ See also nos. 9 u. 10 of the ECOSOC arrangements mentioned above.

⁶⁶ Schweisfurth, Völkerrecht Marginal number. 158.

⁶⁷ Hobe/Kimminich, Völkerrecht p. 161; Hobe 1999, p. 172.

⁶⁸ Even if one focuses on groups with specific goals, as Lindblom does, for example, there still remains a great heterogeneity of internal organizations, Brunnengräber/Altvater 2002, p. 12.

⁶⁹ Brunnengräber/Altvater 2002, p. 7.

⁷⁰ Hobe 1999, p. 154.

⁷¹ Davies 2014, pp. 77-92; Iriye 1999, pp. 421-435.

⁷² Müller 2003, p. 81.

⁷³ BVerfGE 9, pp. 89 ff. (95): "The individual should not merely be the object of the judicial decision, but should have his say before a decision affecting his rights is made, in order to be able to influence the proceedings and their outcome."

⁷⁴ Müller 2003, pp. 134 f.

⁷⁵ Charnovitz 2006, p. 353.

⁷⁶ Schweisfurth 2006, para. 156.

International Chamber of Commerce in the case of standard clauses for international trade.⁷⁷ Finally, they may have a dispute settlement function.⁷⁸ They also take on tasks in the field of law enforcement.⁷⁹

Depending on their status, the consultative NGOs accredited to ECOSOC have the right to propose topics for the agenda of the committees, to send observers to meetings, and to submit written and, if necessary, oral statements. However, they do not have the right to vote.⁸⁰ In certain international organizations, they may be granted observer status (e.g. Art. 23 para. 5 Biodiversity Convention). Since the 1992 UN Conference on Environment and Development in Rio, at which 700 NGOs were admitted, there has hardly been a conference of states without NGO participation. The extent of their participation depends on the procedural rules of the respective conference.⁸¹ Following their accreditation, which is part of the prerogative of the conference organizer, they can then submit written statements, for example. State representatives may also allow oral statements. However, they do not negotiate⁸² and have no voting rights (consultative status I for NGOs whose activities largely coincide with the ESC, which can make substantial contributions in the areas and represent substantial parts of the population; specific interest is sufficient for status I; other NGOs can send observers to the committees on the basis of appropriate registration).⁸³

In summary, it can be said that NGOs can still hardly act in a legally effective manner—the rights to file applications in proceedings under the regional human rights conventions are still exceptions in this respect.⁸⁴ They therefore do not participate in the formation of political will in international law and can take only very limited action aimed at bringing about legal consequences. Their rights are limited to informal action without direct legal effect. In this sense, the rights to be heard in proceedings are to be valued, as is assistance in enforcing the law. In this respect, however, they can exercise considerable actual influence. For this reason and to this extent, it is justified to speak of participation here. In other words, they are active in the periphery of sovereign decisions that actually require democratic legitimation.

Great expectations are placed on the actions of NGOs with regard to the legitimacy of international law and the United Nations institutions founded on it. Although they do not participate in formal decision-making, they are supposed to make an essential contribution precisely to legitimation in democratic terms. In order to assess this in more detail, it is necessary to take a look at the concepts of democracy and participation.

IV THE CONTRIBUTION OF DEMOCRACY AND PARTICIPATION TO THE LEGITIMATION OF PUBLIC AUTHORITY

1 Democracy and Participation

The goal of a general, uniformly acting state was achieved in the classical nation-state model by detaching public authority from the asymmetrical influences of various domestic power groups. Now, in this model, the democratic self-determination of the people means not to be subject to any power the reasons of which are not authorized by public deliberation of the citizens. To achieve this, every citizen must have a strictly equal influence on the establishment of state power.⁸⁵ Only in this way all citizens have autonomy, that is, they are subject to a law that they have given themselves, as Rousseau has explained.

The people, which determines itself in democracy, can be distinguished from the nation. The people includes all those citizens who legitimize rule because they are permanently affected by it. The underlying cause why they unite to this rule may be the nation; but it is also possible that they were united

⁷⁷ Hobe 1999, p. 165.

⁷⁸ For example, the Air Traffic Association (IATA).

⁷⁹ Hobe 1999, p. 166.

⁸⁰ Critical about the consultative status Ben-Ari 2013, pp. 17-23.

⁸¹ Schweisfurth 2006, para. 154.

⁸² Resolution No. “50.- In recognition of the intergovernmental nature of the conference and its preparatory process, active participation of non-governmental organizations therein, while welcome, does not entail a negotiating role”.

⁸³ Hobe/Kimminich 2008, p. 161.

⁸⁴ for more recent trends to improve their status cf. Ben-Ari 2013, pp. 47-64.

⁸⁵ Böckenförde 2004, para. 2 and 35.

to it by other factors. It is decisive that they form a ruling association⁸⁶ on the basis of civic equality.⁸⁷ In this Rousseauian conception of democracy, other powers and interest groups are based only on particular interests and not on the “*volonté générale*” which alone supports the law as general.⁸⁸

However, public authority does not act uniformly and should not do so in the interest of objectivity. Accordingly, citizens are affected by it in different ways. If this is regulated by law, the general framework is still given. Within it, however, self-government can take place as self-determination by those affected. Corresponding to an asymmetrical concernment by acts of public authorities, different influence is exercised. Political participation can thus take place both in democratic participation in the form of active and passive voting rights and in the periphery to this participation through participation in the formation of political opinion. This deliberation in the public opinion is the basis of more immediate political participation. Political opinion-forming is protected by fundamental rights such as freedom of opinion and freedom of assembly. The right to form political associations and, in particular, parties, also belongs here.

2 Democracy and Participation under the Conditions of Globalization

Internationalization and globalization are relativizing the influence of nation-states on global law, as described above. The law of international corporations, privately set standards, such as the *lex mercatoria*, which now represents reflexive law in a minimal sense, and other processes of law-making bypass it or take place with an increasing loss of importance of its share. They take place past it when private actors become active. The significance of state-mediated legitimation decreases when sovereignty is exercised in the state vis-à-vis its citizens by international organizations in whose decision-making the state is not significantly involved, in particular secured by the principle of unanimity. In this “supranationalization”⁸⁹, democratic legitimation by the citizens of the nation-state is no longer reflected at the international level.

The transfer of sovereignty to supranational and international organizations—which also remain sovereign vis-à-vis the citizen—is not matched by equally effective organs of legitimacy at the inter- and supranational level as exist at the state level. Democratic legitimation chains⁹⁰ have a limited number of links. The determining influence of the electoral citizen can be diluted to the point that it no longer has any effect at the end of the chain.⁹¹ The state organs legitimized by the citizen are replaced by decisions of institutions under international law. In the procedures of these institutions the national will dissolves and is modified according to the majority principle by their will, if no unanimity requirement exists.⁹² The question arises how to deal with this. In Europe, the Treaty of Lisbon confirming it, on the one hand strengthens the directly elected European Parliament, but in view of the democratic deficits necessarily associated with it, at the same time extends the co-determination functions of the national parliaments.⁹³

Legitimacy deficits arise when political rule does not have a sufficient level of legitimacy. In the present context, this means that extensive or important national competences are transferred to international organizations or, in the case of limited transfers of competences, there is considerable scope for interpretation and concretization without the international organization in question having a sufficient source of legitimacy, as is usually the case. The establishment of independent executive apparatuses with a

⁸⁶ Müller 2003, p. 49: “Volk’ [a people, SK] does not mean a de facto homogeneous community; but rather a population that is differentiated, mixed and grouped, but organized in an equal and non-discriminatory way. De jure, no exclusion in the sense of exclusion is legal or legitimate, not least because of democracy”.

⁸⁷ Cf. also Benhabib 2008, pp. 149 f.

⁸⁸ Müller 2003, p. 18: “That is why Rousseau is against the actions of interest groups, large churches, parties, trading companies, pressure groups and economic oligopolies of all kinds. They are only *volontés particulières*, organized egoism; they are based on private property and the organizational power that follows from it. Laws preformulated and enforced by them remain *volontés particulières* in the abused form of the general law”.

⁸⁹ “*Supranationalization* refers to a process in which international institutions form procedures that break away from the intergovernmental principle of consensus. This can create obligations for national governments to take action even when they themselves do not agree. As a result of supranationalization, some political authority shifts from individual states to international institutions. ... Authority understood in this way requires legitimation,” Zürn 2010, p. 16.

⁹⁰ Böckenförde 2004, para. 17 f.

⁹¹ Described vividly in Müller 2003, p. 90.

⁹² Wolfrum 2009, p. 13.

⁹³ In more detail, Kirste 2013, pp. 85-108.

high level of expertise in the usually complex matters, but with ever less democratic control, is an important consequence of the legitimacy deficit. The consequences are intransparency and a lack of controllability. It may also be caused by the internal structure of international organizations or their organs: The inequality of states created by the limited number of permanent seats on the Security Council is an example.⁹⁴ A source of legitimacy in representative democracy is first and foremost the parliament. Output legitimation through the use of such denationalized competences cannot compensate for the problem of paternalism or foreign domination. It would be possible, however, to compensate for this through *supplementary mechanisms* of input legitimation.

One could think of a cosmopolitan democracy that takes up these problems.⁹⁵ Corresponding views agree that at least currently a world state must be rejected and rather, democracy should be redesigned. For this, international participation possibilities are to be extended. Institutions such as a petition council, a people's general assembly and a forum of the global civil society are suggested, in order to make stronger co-determination possible.⁹⁶ This cosmopolitan democracy should be able to set rules that take precedence over national law.

Because sovereignty is not transferred at the international level, but rather diffusely lost, a corresponding compensation of legitimacy is currently out of the question. Here, the forms of participation of NGOs are an equivalent to the diffusion of sovereignty to social actors.⁹⁷ “If denationalization of politics is not at the same time to bring about de-democratization of government, the necessity of democratization of post-national organizations arises from this”.⁹⁸ Although the basic idea of compensating for deficits in classical democracy is correct, it should be noted that it is not democracy that is being compensated for by new forms of democracy, but by new forms of other participation. Just as governance is not government, participation by NGOs is not democracy. Democracy is built on the equality of the citizens of the people—and this means: the less substantialist one regards this people, the better—and the generality of governance; this cannot be replaced by the participation of NGOs, but it can be compensated for.

But how can compensation for deficits of legitimation be justified by the asymmetrical influence of NGOs? One could focus on output legitimacy. This seems to be what Friedrich Müller has in mind. He counters the objection that many NGOs are not internally structured democratically: “If the elected no longer decide and the decision-makers are not elected, those in exemplary resistance do not have to be ‘elected’ in the traditional nation-state way either. They legitimize themselves—for the time being—through their commitment and through the openness of the discussion about it, to which they themselves have to attach the greatest importance.”⁹⁹ The function of NGOs, he said, is to create political publics. NGOs—and this means most of them—would convey legitimacy through the goals they represent and through the fact of their participation. Already today, international organizations such as the IMF, with the friendly embrace of their opponents, use NGOs as a legitimacy resource.¹⁰⁰ However, the justification of international public authority generated in this way is not democratic in several respects: 1. because of the asymmetrical influence of these organizations and 2. because of the partially non-democratic internal structure: a non-democratic organization cannot convey democratic legitimation; nor can a democratically structured organization bring about democratic-equivalent legitimation in an asymmetrical arrangement of influence. It is true that the ultimate justification of democracy is not equality but self-determination, as will be shown in a moment; but without the articulation of autonomy in the form of equal participation, there is no democratic influence. This does not mean, of course, that this influence should be rejected, or that Müller's argument cannot be used to justify any legitimacy of this influence; it is, however, a matter of justifying an output legitimacy, not an input legitimation. Like any output legitimacy, however, there is a tension with genuine democratic self-determination.

⁹⁴ Charnovitz 2003, p. 48, who, however, objects: “‘One state one vote’ does not follow logically from ‘one man one vote.’” The problem of sovereignty remains, however, and with it the fact that the will of the national parliaments also does not count equally.

⁹⁵ Schwerdt 2003, p. 101.

⁹⁶ Schwerdt 2003, p. 102.

⁹⁷ Wolfrum 2009, p. 23.

⁹⁸ Gusy 2000, p. 132.

⁹⁹ Müller 2003, p. 80.

¹⁰⁰ Brunnengräber/Klein/Walk 2001.

In the following, therefore, a justification of the input legitimacy of NGO participation is attempted. It focuses on the activities of NGOs as an expression of the human rights of the people working in them. Thus, at the same time, a criterion on the scope of the legitimation thus justified is to be gained. The result, of course, will be the justification of a participatory, not a democratic, input legitimation through the participation of NGOs.

V HUMAN RIGHTS JUSTIFICATION OF PARTICIPATION

1 Human Dignity as the Basis of the Status Activus

The common principle of democracy and other participation in the legitimation of political authorities are the rights of freedom.¹⁰¹ Their basis and at the same time a subjective right is human dignity.¹⁰² It secures the human being the claim to be treated by all ruling powers as subject and never only as object. In legal terms, this means first of all that every human being is to be treated as a legal subject, as the subject of rights and duties, and not merely as a legal object, as their subject. Legal capacity is the basis for a person's being able to develop legally, to have further rights and duties attributed to him or to acquire them, and to be able to express himself in a legally relevant way and, in particular, to act. Human dignity thus protects the human being's potential for freedom in legal terms, which can then unfold in greater detail and is thus protected in the further fundamental rights as an actualization of this potential. The dignity of all human beings as the inalienability of their legal subjectivity ensures them a right to inclusion in the law: no human being may be excluded from the law. In relation to the other fundamental rights, it is a right to rights, as one could say, taking up a thought of Hannah Arendt¹⁰³—or more precisely: a right to recognition as a legal subject.

The other fundamental rights then secure for the individual a sphere of development independent of the state and in this respect protect, with Georg Jellinek, his *status negativus*. At the level of constitution-making, the democratic constitution-making power itself is limited by the goal of all government, of securing freedom and equality for the individual and the common good. Under the conditions of modern industrial and post-industrial society, however, the freedom of the individual is increasingly dependent on social conditions that he cannot always provide himself. For this reason, individual fundamental rights and also second-generation human rights grant him performance rights vis-à-vis the state and thus protect the *status positivus* of the individual.

If he is thus legally secured against political rule or can make legal claims against the state, the state would be paternalistic and always in danger of degenerating into a welfare state if the individual did not also have a right to participate in the state and to work for the common good. This applies first of all to the assumption of public office. Against the background of his dignity, however, the claim goes even further: man should not only have rights of defense and rights to benefits vis-à-vis the state, but in establishing these rights he should not be the object of a grant of rights, but the subject of the establishment of rights. With Aristotle, the slave was under certain circumstances the beneficiary of the right, but certainly not its creator. He should therefore be able to participate in the creation of the rights that protect and promote him. The realization of the capacity for freedom here is called self-determination. Self-determination is realized in the domination-free sphere under the protection of fundamental rights as defensive, negative rights through private autonomy. The individual shall assume rights and duties only in a self-determined manner in free agreement with the self-determination of other subjects of private law. In the area of political power, he should likewise be subject only to that authority in whose legitimation he could participate. Thus, citizens shall possess only such duties but also only such rights on whose establishment they could participate. For the area of the duties this was formulated in the classical, *James Otis* attributed expression: “not taxation without representation”¹⁰⁴. But it also applies to his rights. If rights protect him, which he does not want to

¹⁰¹ This view is also shared, for example, by the German Federal Constitutional Court, Amtliche Sammlung vol. 107, pp. 275 ff. (284) - Schockwerbung II, Starck 2005, para. 4.

¹⁰² For the concept of human dignity as a human right, cf. Kirste 2013a, S. 63-83; Kirste 2018, pp. 2-15; Kirste 2022, pp. 102-106.

¹⁰³ Arendt 2009, pp. 602 ff.

¹⁰⁴ Gratian already said: “Quod omnes tangit, omnibus tractari et approbari debet”. Also Althusius: Politics IV, 20.

have, in particular protect him from harm to himself, this is paternalistic.¹⁰⁵ Paternalism however represents an injury of its autonomy and in last consequence also its dignity, because it makes the individual the bare object of a right grant.¹⁰⁶ The necessary connection between the rule of law and democracy, which Habermas has emphasized, is thus founded in the dignity of all people in terms of freedom law.¹⁰⁷ Also the people consists of citizens with a dignity. For their sake, the entire political authority is installed,¹⁰⁸ not vice versa.

2 Status Activus and Forms of Participation

Human dignity is therefore the basis of the *status activus*. The status activus is the name for the unity of all rights, which are entitled to the legal subject on influence in the public authority. Fundamental rights are possible without democracy, but democracy is not possible without its basis in fundamental rights.¹⁰⁹ This influence takes place centrally, but by no means exclusively, in the democratic co-determination of public authority. First and foremost, in the constitutional power on the basis of the idea of the social contract.¹¹⁰ But it also takes place where it is a matter of concretizing parliamentary laws in substantive laws such as plans. The establishment of other rights and duties also gives rise to rights of participation in the procedures for their production. Many of these procedural positions will follow from the procedural dimension of fundamental rights, especially of property; but the fact that in procedures for the concretization of law decisions are not simply made about the rights of individuals, but that they are actively involved, that they are heard and given all the rights necessary for the effective exercise of this right, has its ultimate reason in the fact that in these procedures too they are to be treated as subjects and not as objects to be disposed of, even if for their own good (*status activus processualis*).¹¹¹ The participation becomes here for the organizational protection of its rights¹¹². This participation is not co-determination—the authority or the courts can deviate and bear political responsibility via the ministries.¹¹³ Here the individual is protected in various participation forms as a result of his or her dignity.

Influence is also asymmetrical where the state has transferred tasks to legally independent subjects and these subjects perform them on their own responsibility. Particularly in the areas of stakeholder self-government, democratic legitimation is supplemented by participation in public affairs that flows from fundamental rights and is also in the public interest. For example, when the members of the independent public agencies jointly organize their interests in the overall interest as an expression of their professional or property freedom, or when the universities self-govern in the sense of academic freedom and within the framework of the law.

The human dignity-based right to participate in the establishment of public authority, however, is now structured differently, depending on the type of public authority. If it is a matter of legitimizing public authority, which has the same effect for all, in particular in the form of the law, its status activus is also strictly the same as all others who are subject to this rule. Even if it is founded in human dignity, the right to vote¹¹⁴ remains equal. The equality of the democratic influence follows consequently the same liberty, ability and the necessity of the formation of a general public authority, not conversely the democracy arises

¹⁰⁵ Kirste 2013b, pp. 73-86.

¹⁰⁶ In terms of content, he is a legal subject; in terms of form, however, i.e. with regard to the emergence of this right, he is a mere object. Häberle is therefore of the opinion that those who are excluded from the election are not only violated in their fundamental right to the generality of the election, but also in their dignity. The person concerned "would become an object of state action (with repercussions in the social sphere as well) and would lose his or her identity as a person as well as the capacity for social, public communication," Häberle 2004, para. 69.

¹⁰⁷ Cf. also Häberle 2004, para. 60.

¹⁰⁸ Häberle 2004, para. 65.

¹⁰⁹ Starck 2005, para. 13.

¹¹⁰ Starck 2005, para. 12.

¹¹¹ Häberle 2004, para. 76.

¹¹² Starck 2005, § 3, marginal no. 12.

¹¹³ Starck 2005, para. 42.

¹¹⁴ For this foundation, see Häberle 2004, para. 66.

from the equality, as Besson holds it.¹¹⁵ In the concretization of law by courts, a different influence can be justified in the measure of the affectedness.

Individuals are free if they take on a political mandate of their own initiative. The individual is freest when he is active in the social environment of state rule, when he participates in the founding of parties or works in them, when he joins with others in other political associations that want to serve the common good on their own initiative, when he makes his opinion known individually together with others in meetings or in various media. All these forms of participation in the public sphere outside the political sphere of rule are protected by the democratic function of fundamental and human rights. Without these freedoms, democracy is not possible¹¹⁶.

Human dignity, as the protection of the capacity for freedom, is not only the basis of the other fundamental rights, but in particular also the basis of democracy. It contains a fundamental right to democracy¹¹⁷. For example in the South African constitution it says in chapter 2, number 7 I “The Bill of Rights is a cornerstone of democracy in South Africa”. On this basis in human dignity, the human right to democracy, or more precisely: participation, determines a level of requirement that cannot be undercut with regard to how people are treated in real terms in this sphere of rule—neither as subjects nor as sub-humans; but without exception as members of the legitimizing addressee people. “Democracy is the positive right of every human being”,¹¹⁸ as Friedrich Müller rightly states. In this way, it can also be the basis of a right to collective self-determination as a group right, but is not identical with it¹¹⁹.

The primary obligated addressees of such a right are the nation states, which must not prevent corresponding participation. However, the Economic and Social Council of the United Nations should also be considered, which, for example, exercises sovereign power in denying accreditation, which affects this participation. Under international law, the United Nations¹²⁰ and various regional human rights covenants have recognized it.¹²¹ Accordingly, a positive human right to democracy can be assumed.

The rationale presented here for the connection between human rights and democracy is intrinsic, not instrumental. As Besson correctly points out, the two perspectives are not mutually exclusive.¹²² In the present case, however, the focus is on a human rights justification for the participation of NGOs in establishing a sufficient level of legitimacy for the United Nations. The question of the positive effects of democracy on human rights, i.e. the question of the instrumental approach, is largely a different matter.¹²³ To be sure, it also concerns legitimacy issues, because output legitimacy could be generated via the effects on human rights. But no output legitimacy prevents the paternalism problem described above, that individuals are granted benefits they may not want. This problem can be overcome from the outset only by a genetic perspective, that is, by focusing on input legitimation. This, however, addresses the human rights justification of participation, which has been dealt with here.

Human dignity is thus the basis of a status activus. It demands that the individual should never be recognized by public authority merely as an object, but always as an active subject. To this end, he must be

¹¹⁵ Besson 2011, pp. 72 and 79 f.

¹¹⁶ Starck 2005, para. 4: “The self-determination of the people depends on the self-determination of the members of that people.”

¹¹⁷ Kirste 2015, pp. 11-31; Kirste, 2017, pp. 93 ff.; Häberle 2004, para. 67 and 98: Today, one must “unmistakably... emphasize the connection between human dignity or fundamental freedoms and liberal democracy; the latter is the organizational consequence of the latter”.

¹¹⁸ Müller 2003, p. 72.

¹¹⁹ Besson 2011, pp. 82 f.

¹²⁰ Art. 21 Universal Declaration of Human Rights of 1948: “1. everyone has the right to take part in the government of his country, directly or through freely chosen representatives. 2. everyone has the right of equal access to public office in his country. 3. the will of the people shall be the basis of the authority of public power; this will shall be expressed by regular, genuine, universal and equal suffrage by secret ballot or by an equivalent free electoral process”. See also Article 25 of the 1966 Covenant on Civil and Political Rights: “Every citizen shall have the right and the opportunity, without distinction on the basis of the characteristics mentioned in Article 2 and without undue restriction, (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected at genuine, periodic, general, equal and secret elections, at which the free expression of the will of the electors is guaranteed; (c) to have access, on a general basis of equality, to public office in his country”.

¹²¹ Besson 2011, pp. 64 f.

¹²² Besson 2011, p. 77.

¹²³ Kirste 2015, pp. 16-18.

granted opportunities to influence public authority. The possibilities of influence differ according to the public authority to which they are directed and the form in which this takes place. If it is a matter of generally binding measures, democracy with the equal right to vote is a fulfillment of this claim. If the individual is affected individually or with interests similar to those of others, a right of participation follows from this, the scope of which must correspond to the extent to which he is affected. His right to participate in the assumption of public office is a right of equality, requiring equal consideration with all others subject to that sovereign power and equally qualified. Finally, the rights of communication have a political dimension that shapes the status activus. According to this, the influence can also consist in influencing public opinion, which shapes politics.

3 Status activus universalis

If one takes the loss of significance of democratic legitimacy mediated by the nation-state together with the compensation by non-democratic forms of participation with the right to participation, then a status activus universalis follows. The current level of legitimacy of international politics is the result of democratic legitimacy mediated by the nation state and complementary participation by non-governmental organizations, which has a compensatory effect. International law, too, has an increasing impact on the individual; if it is not to become paternalistic, he must be allowed to participate in the making of this law. This participation can be democratically mediated through the nation states; but it can also take place through globalized forms of communication and precisely through freely formed transnational and internationally recognized organizations.

The need for legitimation results from the citizen's right to self-determination. This right of self-determination is not only a right to be protected against the nation-state in the conventional view of human rights; it is also a right with regard to these very human rights themselves. Here, too, its self-determination requires that citizens be the subject only of those rights and duties in the establishment of which it could itself be involved. Accordingly, the world republic must not be paternalistic even with regard to the rights it grants itself. In this respect, the citizen also has a right to participation at the global level. It protects his participation in global opinion-forming and, if necessary, will-forming processes. In view of the lack of statehood in the global community, the obligated addressees of this right are the nation-states. However, NGOs gain legitimizing power the more they themselves respect this right. In this way, there is a normative criterion between democratic NGOs, which can contribute input and output legitimacy in their participation in global governance, and non-democratically structured NGOs, which—depending on the quality of the reasons given by them—can at best contribute to output legitimacy. It may well be appropriate for NGOs to focus on generating output legitimacy, for example, through increased expert knowledge, as is the case with reports for international courts.¹²⁴ In questions of value, however, their influence is justified by the stronger democratic backbone of these value judgements. Respect for one's capacity for self-determination, even in global political affairs, is the basis of a status activus universalis of every human being. The subject of human rights today is a national citizen and global bourgeois. He deserves to be recognized globally as a citizen as well.

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¹²⁴ Charnovitz 2006, p. 353.

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