



GOVERNANCE

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The democratic legitimacy of international law: the role of non-State actors

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Democracy as a system of government is closely associated with the territorial State. The democratic legitimacy of the classic system of international law is provided by the 'democratic' nature of diplomacy, and the fact that legal obligations of democratic States are depended upon the consent of national authorities. The Westphalian paradigm is no longer the whole story. Non-State actors play a significant role in a system of international governance without government. In terms of the democratic legitimacy of international governance, a distinction may be made between input and output legitimacy, and the substantive legitimacy of legal norms and their application. Greater transparency, the inclusion of all relevant voices, and reasoned decision-making processes are important, but they cannot cure the democratic deficit inherent in the system of international governance. Democratic legitimacy requires that all who might be subject to a law must enjoy a right of political participation in its formation. Direct democratic legitimacy is concerned with the actual exercise of political authority, not the working of the system of inter-nation law. It is provided by an act of collective will-formation by a political community in which the principles of public autonomy (political participation) and private autonomy (individual self-determination) are respected. The *telos* of the international constitutional order is a democratic system of laws: deliberations and bargaining between democratic States, and the promotion of democratic control and decision-making within democratic States. The consequences of this recognition for the system of global governance are explored in this paper.