THOUGHTS ON INTERNATIONAL DEMOCRACY

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A. Introduction

The legitimacy of international institutions, in particular their democratic legitimacy, has been one recurrent topic in Rüdiger Wolfrum’s writings.¹ His presentation at the annual meeting of German public law professors in 1996 made a powerful plea for developing domestic parliaments better to scrutinize and hence legitimize foreign policy.² In his 2008 book on “Legitimacy in International Law”, he argues that a legitimacy gap may develop where international legal instruments are designed to be progressively developed without the requirement of approval by the competent national institutions. This gap should be addressed by strengthening the impact on and control of the legislature with regard to foreign policy affairs and by the establishment of international organizations or fora exercising legitimate global governance.³

This text wants to contribute to this debate by analyzing what lessons can be learnt from the European Union (EU) experience for other institutions of public authority beyond the state. It tries to show that the provisions of EU law and the doctrinal elaboration of a

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² Meeting held in Dresden, 2–5 October 1996. See Wolfrum, Kontrolle der auswärtigen Gewalt (note 1).
³ Wolfrum, in: Wolfrum/Röben (note 1), 22.
Supranational principle of democracy provide at least a useful framework for the discussion of how to address the democratic legitimacy of international organizations.

European social sciences, like the European public in general, have dealt impressively for quite some time with the issue of democracy in European integration, and have led by now to some significant declarations, provisions, doctrines, and cases. The debate on other institutions of public authority beyond the state is in a less developed state and has so far had few consequences in positive law. As comparison is a main avenue to insight, this article will present several elements of European positive law, and ask what can be learnt from these norms for the international debate. It will sketch the difficult path from a political idea to positive law (B.), present the path-breaking conceptual innovation in EU law (C.), highlight the importance of parliamentary institutions (D.), stress the importance of further instruments of accountability and responsiveness (E.), and conclude with a look at the role of domestic institutions (F.).

B. Development

I. The Positivization of the Principle at the European Level

For many decades, European legal scholarship focused not on the principle of democracy, but rather on that of the rule of law. With regard to the latter, there was consensus *ab initio* that it should be applied *directly* to the acts of the supranational organs, i.e. that the Community needed its proper rule of law legitimacy. Mere *indirect* application, i.e. via the national officials participating in the European political process or implementing its result in the national sphere, was always considered insufficient.4

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