

Can there be a global demos? An agency-based approach

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1. Introduction

The world is increasingly characterized by transnational interdependence, cross-border policy externalities and the widely perceived need to provide certain global collective goods and to avoid global collective bads. Consider, for example, the problem of climate change and the need to limit greenhouse gas emissions; the problem of global refugee flows and the commitment to protect the human rights of forced migrants; and the problem of controlling and eradicating infectious diseases that can spread very fast, such as new forms of influenza. In all these cases, the need for “global governance”, that is, the challenge to make good collective decisions and to coordinate actions transnationally, is more pressing than ever. There are at least two dimensions of this challenge. First, global public goods are typically underprovided, and global public bads over-occur, in part because there are too few mechanisms to prevent free-riding at the global level (the “efficiency dimension”).¹ And second, where global public goods are provided, and global public bads avoided, this is often the result of bargaining based on differential power and resources rather than the product of a process generally perceived as legitimate (the “legitimacy dimension”).²

* Department of Government, London School of Economics, London WC2A 2AE, U.K. This paper was partly inspired by Christian List’s joint work with Philip Pettit on group agency (List and Pettit forthcoming), and we wish to record our intellectual debt to Philip Pettit for inspiration and comments. We are also grateful to Daniele Archibugi, Kimberly Hutchings, Guido Parietti, Laura Valentini, and the participants in the Global International Studies Conference, Ljubljana, 22-25 July 2008, where an earlier version of this paper was presented.

¹ See, e.g., Sandler (2004) and Barrett (2007). We use the term public goods broadly to include common pool resources.

² See, e.g., Pogge (2002) and Held (2005).

Similar challenges arise in national contexts too, but there they are usually met through well-established institutions with enforcing powers and democratic mechanisms for burden-sharing based on widely held norms of distributive justice. The former ensure efficiency, the latter legitimacy. There is no shortage of proposals for institutional designs that might perform similar functions at the global level, but it is often held that such institutions would be unlikely to be established and that, even if they were established, they would not function properly. In particular, it is said, they would lack the required social basis that supports equivalent institutions at the national level. What is missing at the global level, so the argument goes, is a “demos”.³

On this picture, the lack of a global demos hinders good global governance, that is, successful global collective decision-making and coordinated action. Conversely, if a global demos existed, it would facilitate efficient and legitimate global governance, for instance by promoting the emergence of supranational institutions or by shaping the policies of national ones. But what is actually meant by a “global demos”? The notion of a demos, let alone that of a global one, is less well established than other political notions such as the notion of a state, and so a careful conceptual analysis is needed. And could a global demos – assuming it has been defined properly – ever come into existence and succeed at facilitating good global governance, as has been suggested? This paper seeks to offer a new theoretical perspective on these questions.

The current debate about the global demos is divided between two opposing camps, which differ on both conceptual and empirical levels. On the one hand, there are the “pessimist” or “impossibilist” views, according to which the emergence of a global demos is either conceptually or empirically impossible. On the conceptual version of this view, the very notion of a global demos is incoherent, while on the empirical one we are faced with a vicious circle in which the absence of a global demos both leads to, and is reinforced by, the absence of successful institutions for global governance. On the other hand, there are the “optimist” or “possibilist” views, according to which the emergence of a global demos is conceptually as well as empirically possible and an embryonic version

³ In a related vein, Weiler (1995) coined the phrase “no-demos thesis” in relation to the European Union and its post-Maastricht predicament.

of it already exists. On this view, there exists a virtuous circle in which existing global institutions promote the development of the global demos, which in turn can strengthen global institutions. However, since the two camps agree neither on a common working definition of a global demos, nor on the relevant empirical facts, it is difficult to reconcile their conflicting outlooks.

Our aim is to move the debate beyond its current stalemate. We argue that existing conceptions of a demos are ill-suited for capturing precisely what *kind* of a global demos is needed in order to facilitate good global governance, and we propose a new conception of a demos that is better suited for this purpose. In particular, we suggest that some of the most prominent conceptions of a demos have focused too much on the question of who the members of a demos are and too little on the question of what functional characteristics it must have in order to perform its role in facilitating governance within the relevant domain. Our new proposal shifts the emphasis from the first, “compositional” question to the second, “performative” one, and thereby provides a more “agency-based” account of a global demos. The key criterion that a collection of individuals must meet in order to qualify as a demos, we suggest, is that it is not merely demarcated by an appropriate membership criterion, but that it can be organized, in a democratic manner, so as to function as a state-like agent, as explained in the course of our argument. Compared to the existing, predominantly “compositional” approaches to thinking about the demos, this agency-based approach puts us into a much better position to assess the empirical prospects for the emergence of a global demos that can facilitate good global governance.

The paper is structured as follows. In section 2, we introduce two approaches to conceptualizing a “demos”, the “compositional” and the “performative” ones, and argue that the compositional approach alone is insufficient for capturing the role a demos is supposed to play in facilitating governance. In section 3, we propose and defend our own, “agency-based” approach, which focuses on the performative dimension of the demos but keeps lessons from the compositional approach on board. In section 4, we offer a first operationalization of this approach, so as to allow for diachronic and global-national comparisons. However, we present this operationalization only as a tentative

approximation, in the hope that it will inspire more extensive research. In order to show that a global demos is in principle possible under our agency-based conception, we devote section 5 to an illustrative case study of how the emergence of a global demos might be promoted through some forms of transnational deliberation. Section 6, finally, contains some concluding remarks.

Our paper builds on ideas from several different fields, including international political theory (e.g., Macdonald 2003, Christiano 2006, Goodin 2007), the theory of group agency (List and Pettit forthcoming), and theories of deliberation and social choice (e.g., Miller 1992, Knight and Johnson 1994, Dryzek and List 2003, List, Luskin, Fishkin and McLean 2000/2007). Although many of the elements of our approach are well established in those fields, the novelty of our approach lies in the particular way in which these elements are put together so as to illuminate the notion of a global demos.

2. Two approaches to conceptualizing a demos

What is a demos? Or more precisely, what is a demos in relation to a particular set of issues or policy area? Adapting a distinction used in the theory of group agency (List and Pettit forthcoming), we can distinguish between two ways of approaching this question. We can either ask who a demos is composed of, that is, what its membership criterion is. Call this the “compositional” approach. Or we can ask what functional characteristics it must have in order to perform its role in guiding decisions in relation to the given set of issues or policy area. Call this the “performative” approach.

In what follows we begin with a discussion of the compositional approach, which has been the dominant one in existing debates on the idea of a global demos. We distinguish two variants of the approach, but find both of them unsatisfactory. Firstly, it is difficult to adjudicate which variant is the correct one, and, secondly and more importantly, in either variant the approach leaves open the question of whether a demos as defined by it can achieve what it is supposed to do, namely to facilitate governance, that is, decision-making and action-taking. This leads us to the performative approach. While its two most established variants exhibit some crucial limitations, it provides useful insights for the development of our own, “agency-based” approach in the subsequent section.

2.1 *The compositional approach*

As we have noted, the compositional approach defines the demos for a particular set of issues by providing a membership criterion.⁴ The identification of such a criterion has been the central goal in the debate on the so-called “boundary problem” (e.g., Dahl 1970, Whelan 1983, Macdonald 2003, Goodin 2007). There are two main rival criteria in the literature.⁵ One is the “affectedness criterion”, according to which all those (potentially) affected by decisions on the given issues are entitled to take part in those decisions and should therefore be members of the demos.⁶ The other is the “affectivity criterion”, according to which the demos is defined by underlying cultural commonalities and a shared identity, at least with regard to the given issues. Often those commonalities and identity are defined in terms of nationality, since – it is argued – “territorialized linguistic/national political units provide the best and perhaps the only sort of forum for genuinely participatory and deliberative politics” (Kymlicka 2001: 324). But this focus on nationality is conceptually distinct from, and not implied by, the claim that underlying commonalities and a shared identity provide the criterion of membership in a demos.

From a conceptual perspective, neither membership criterion as just defined, affectedness or affectivity, rules out the possibility of an issue-specific demos. For example, several of us may be affected by decisions regarding the city of London and thereby qualify as fellow Londoners, but not by decisions regarding a particular local project, say at our university, and thereby fail to qualify as fellow members of the relevant, more local demos. Similarly, we could all have a shared identity qua being Londoners, which does not extend to issues that have nothing to do with London, and so we might belong to different “demoi” in relation to those other social, religious or cultural issues. Thus, on

⁴ As discussed below, on some accounts it only ever makes sense to define the demos in relation to the all-encompassing set of all issues, while on other accounts there can be issue-specific demoi.

⁵ In fact, both criteria have a number of different variants, but we set the details aside here. A third approach – whereby the demos is defined as the set of those individuals that happen to be nationals of a state that is governed democratically – is not relevant here.

⁶ The sentence “*Quod omnes tangit ab omnibus approbetur*” was first used in a constitutional rather than private law sense in the 13th century, most famously in the writ by King Edward I of England that summoned the bishops and abbots to the so-called Model Parliament of 1295 (Tierney 1995: 86-88).

both membership criteria, *demoi* can in principle be issue-specific. However, one might also amend each criterion with a further requirement that, in order to belong to the same *demos*, people must exhibit a shared affectedness across multiple issues, or a shared identity in some overarching, privileged respect, not just one restricted to a narrow set of issues.⁷ With such an amendment, a *demos* would always have to be defined in relation to a broader, perhaps all-encompassing set of issues.⁸

Whether we use affectedness or affectivity for defining the membership of a *demos* makes a real difference. Given the empirical fact of significant cross-border externalities of a large number of policy decisions, the first criterion would point towards a very inclusive, possibly even global *demos* for many policy areas. If one accepts that the *demos* is in principle unbounded (Abizadeh 2008), then a global *demos* is normatively justified by the conjunction of the affectedness criterion and the empirical fact that “[t]he growth of transboundary problems creates [...] ‘overlapping communities of fate’; that is, a state of affairs in which the fortune and prospects of individual political communities are increasingly bound together” (Held and McGrew 1998: 237). Goodin (2007) has elaborated on the globalizing implications of the affectedness criterion and discussed ways to attenuate its impact.⁹

The affectivity criterion, by contrast, usually implies a bounded *demos*, at least under present empirical conditions (Miller 2000: 81-96). As Kymlicka (2001: 319-320) observes in his critique of Held’s cosmopolitanism, “what determines the boundaries of a ‘community of fate’ is not the forces people are subjected to, but rather how they respond to those forces, and, in particular, what sorts of collectivities they identify with when

⁷ Indeed, many proponents of the affectivity criterion hold that, in reality, a *demos* requires one level of identity to take priority over others (i.e., there cannot be multiple issue-specific *demoi*).

⁸ Christiano argues that democratic boundaries should be drawn around “common worlds”. For a group of individuals, a common world is “a world in which all or nearly all the individuals’ fundamental interests are intertwined with each other” (Christiano 2006: 97).

⁹ On the all-inclusiveness criterion, see Marchetti (2008).

responding to those forces. People belong to the same community of fate if they care about each other's fate, and want to share each other's fate".¹⁰

Given the affectedness and affectivity criteria alone, then, it is not clear how to demarcate the demos in many circumstances. Consider the common case in which the set of individuals potentially affected by a decision is much wider than the set sharing affective bonds and identities. Faced with this kind of incongruence, proponents of the affectedness criterion would hope that common experiences will promote a we-feeling and would support policies that intentionally further its development. The active promotion of such feelings and the pursuit of appropriate policies can be described as "identity-expanding strategies". Proponents of the affectivity criterion, by contrast, would favour policies that limit or reduce the ways in which decisions taken within one community affect the interests of others, for instance by strengthening state sovereignty and limiting economic interdependence. Such attempts to reduce the number of people affected by certain decisions can be described as "externality-limiting strategies".¹¹ But neither the identity-expanding strategies nor the externality-limiting ones will always be successful when there is an incongruence between affectedness and affectivity. Identities cannot always be molded and externalities are often hard to contain.

However, even if we were able to adjudicate between the two criteria in cases of conflict, there would be no guarantee that the collection of individuals picked out by a given criterion will be able to perform the role of guiding decisions and coordinating actions on the relevant set of issues. It is possible, for example, that the set of all people potentially affected by a particular decision exhibits so much internal discord and disagreement that

¹⁰ Goodin retorts: "It is arbitrary, from a moral point of view, to whom we happen to feel sentimentally attached or with whom we happen to share a common history or ancestry. What makes those factors matter, in ways that justify constituting our demois around them, is the way that those factors lead to people's interests being intertwined. [...] The reason we think that territorial or historical or national groups ought make decisions together is that, typically if not invariably, the interests of individuals within those groups are affected by the actions and choices of others in that group." (Goodin 2007: 48)

¹¹ Macdonald (2003: 178-179) develops a similar argument about how different approaches mandate either the "alignment" of boundaries of power to the boundaries of legitimate solidaristic peoples or vice versa, although we would not describe the contrast as one between "idealist" and "realist" approaches.

it can deliver no policy guidance whatsoever. Similarly, sharing a common identity and exhibiting some affective bonds is not the same as being able to generate a coherent collective stance on the issues in question, on which policy decisions can be based and enacted.

In short, if we try to define the demos in terms of a membership criterion alone, it is not guaranteed that the resulting “demos” can support “kratos”, the second and equally important etymological component of “democracy”. We also need to look at the demos’s performance in facilitating governance.

2.2 The performative approach

The performative approach defines the demos not in terms of a membership criterion but in terms of the functional characteristics it must have in order to perform its role in guiding decisions and enabling actions on the given set of issues. As in the case of the compositional approach, we can extract two main variants from the literature.

On one variant, which we call the “populist” or “Rousseauvian” one, a collection of people counts as a demos if it can be said to have a general will. Although this idea can be fleshed out in a number of ways, at a minimum it requires that it make sense, from the perspective of an impartial but well-informed observer, to ascribe coherent collective preferences to the collection. On another variant, which we call the “discursive” or “Habermasian” one,¹² the mark of a demos is not the presence of a coherent general will, but rather the interconnectedness of its members in a sufficiently closely knit network of communicative interactions or “discourses”. The details of this idea can be variously spelt out, but what matters is a certain kind of internal “cohesion” among the members. This cohesion need not preclude diversity among them – in fact, some of the most prominent demoi in the world exhibit significant internal pluralism – but it does require participation and interaction within a shared public sphere.

Despite capturing some key prerequisites for democratic governance, both variants of the performative approach have their shortcomings. The populist variant, by focusing on

¹² Inspired by Habermas (1992: 364-366). See also Fraser (2007), Dryzek (2006) and Habermas (2007).

whether a general will can be coherently ascribed to a given group, runs the risk of not paying enough attention to the group's internal structure, particularly its internal diversity. The mere fact that a group, when looked at impartially from the outside, appears to have a "general will" is entirely consistent with the lack of any internal cohesion required for successfully implementing collective decisions on that basis. Although an extreme Rousseauvian might try to explain this away by claiming that, in such cases of destructive internal disunity, a part of the group is "in error" over what its will is or how to enact it, the weakness of defining the demos in populist terms is its lack of sociological sophistication.

The discursive variant of the performative approach, by contrast, is more nuanced with respect to social details: It focuses precisely on the networks of interactions and systems of discourses present within a group. Its weakness, however, lies in its insufficient focus on the criteria for determining what the group as a whole wants or even on whether there exists a coherent answer to this question. If the demos is to play a central role in facilitating good governance – or, expressed more bluntly, if policies are to be guided by "what the demos wants" – then the possession of coherent collective preferences is crucially important. Recall that this is exactly the insight underlying the populist approach, where it is expressed, however, in a way that is too detached from the social basis underlying the ascribed collective will.

It seems, then, that both the populist and the discursive variants of the performative approach are onto something correct, but they each get only part of the picture right. The main insight of the populist variant is that, for a set of individuals to function as a demos, it must be possible to ascribe coherent attitudes to it, at least on the issues on which the demos is to guide and legitimize policies and actions. And the main insight of the discursive variant is that, in order to function as a demos, a set of individuals must exhibit sufficient internal cohesion to allow the successful implementation of those policies and actions. Our proposal in the next section builds on both of these insights, while also keeping the earlier, compositional question about the demos in sight.

3. An agency-based approach

What we can learn from contrasting the compositional and performative approaches is that there are two genuinely distinct questions about a demos:

The compositional question: Which collection(s) of individuals should be considered as candidate(s) for a demos for a given policy area or set of issues? In particular, what membership criterion should be employed for specifying such a collection?

The performative question: For any such collection of individuals, what functional characteristics must it exhibit in order to guide collective decision-making and to enable coordinated actions on the given set of issues?

Although these two questions are obviously related to each other – for example, some membership criteria may fail to specify collections that could possibly function well on the performative dimension – they should not be confused with each other, and in our view a satisfactory account of the demos must address both of them.

The first, compositional question is, to a large extent, a normative question. Principles specifying who should be included in any given collective decision process are normative principles of democracy, and although certain consequentialist or efficiency standards may guide our choice of those principles, this fact makes that choice no less normative. (Of course, once we have identified an appropriate normative criterion of membership, the question of which collection(s) of individuals the criterion picks out becomes a descriptive one, and hence empirical considerations will still play a role in identifying sets of people that are possible candidates for demoi.) Our personal view is that, on affectedness grounds, we have good reasons to consider all of humanity a possible candidate for a demos, at least with regard to issues of global reach, but there can still be reasonable disagreement on this question, especially if affectivity as well as affectedness is assumed to matter.

So let us turn to the second, performative question. Once our normative membership criterion, together with some empirical information about who meets that criterion, has

led us to focus on a particular collection of individuals – be it humanity as a whole, or the population of some territory – it becomes largely a positive, social-scientific question as to whether that collection can actually perform the role expected of a demos. Or at least it becomes such a question once we have specified what exactly that role requires, namely to guide collective decision making and to facilitate coordinated action. There will still be a normative element in giving the details of this requirement; later we look at a concrete operationalization.

Highly divided societies, for example, may sometimes fail on this performative count, at least temporarily. However normatively desirable it may have seemed, for instance, to expect the population of Iraq to function as a demos after the American invasion in 2003, the level of social discord initially precluded this (due to a variety of factors, to which the invasion and occupation undoubtedly contributed). As efforts of nation building progress, the situation in Iraq will hopefully improve, but it should be clear that there are very real, factual constraints on whether a particular collection of individuals can function well in guiding collective decision making and facilitating action. The performative question about the demos takes those constraints seriously.

In the remainder of this paper, we concentrate on this second, performative question, for two reasons. First, there are already well-established off-the-shelf membership criteria, such as affectedness and affectivity, by which we can answer the first, compositional question, whereas the analysis of the second question – that is, what functional characteristics a collection of individuals must exhibit to function as a demos – is less developed. Second, as we have seen, there may be alternative strategies for promoting or restoring congruence between different membership criteria – e.g., the identity-expanding and externality-limiting strategies – when the sets of individuals picked out by them do not coincide. The application of an appropriate performative criterion can help choose between those alternative strategies, as only one – but not the other – of these strategies might be able to yield a collection of individuals that meets that performative criterion. As we have mentioned, the two variants of the performative approach reviewed above will provide useful inspiration for our task, but to introduce the central idea it is helpful to bring in the notion of group agency.

3.1 A demos as a collection capable of democratic agency

The capacity to make decisions and to take actions, as opposed to exhibiting mere behaviour, is one of the distinguishing features of an agent. Agency can be defined in thicker and thinner ways, and on some accounts even a device as simple as a thermostat can count as an agent, though of course not as a particularly sophisticated, let alone conscious one. For the present purposes (following List and Pettit forthcoming, Dennett 1987), we define an “agent” thinly as a system which

- has attitudes – which can be described as “beliefs” and “preferences” – on the issues it faces,
- and acts (by making decisions or taking actions) in such a way as to “pursue” its attitudes – in particular, to satisfy its preferences, as far as possible, in accordance with its beliefs.

Humans, cats and dogs – and with a little stretch even thermostats – come out as agents under this definition, while rocks, armchairs and cars (without a driver) do not. A thesis that is increasingly receiving attention is that certain groups or collections of individuals can constitute agents in their own right, provided they are organized in an appropriate way (List and Pettit forthcoming). Corporations or cohesive multi-member courts may be the paradigmatic examples of group agents, taking attitudes on issues within particular domains and acting in accordance with those attitudes, but well-functioning states, which are particularly important for our present analysis, equally qualify, since they, too, take attitudes on a large range of issues and systematically pursue them, ideally on the basis of a democratic process.

Of course, it would be preposterous to suggest that a demos, which is not the same as a state but at most an “ingredient” of a state, should be a fully fledged group agent. Even if a state, understood as the composite system consisting of a demos *and* a suitable set of institutions, might fit the definition of an agent, the demos by itself, without the relevant institutions, need not. What we do suggest, however, is that, in order to function as a demos, a collection of individuals must at least be *capable* of being incorporated into such a state-like group agent. Moreover, this must be possible through some democratic

form of organization, rather than, for instance, only in an authoritarian manner. Thus the key condition for functioning as a demos is the following:

Capacity for democratic agency: The collection of individuals in question has the *capacity* (not necessarily actualized) to be organized, in a democratic manner, in such a way as to function as a state-like group agent.

It is important to emphasize that the reference to democratic organization does not make the use of this condition in characterizing a demos in any way circular. As we will see, the notion of democratic organization of a given collection of individuals can be understood entirely procedurally, without having to settle any prior question of whether that collection meets the conditions for a demos. In the next two subsections we say more about what the capacity for democratic agency means both theoretically and practically.

However, the general idea should already be clear. By combining an appropriate compositional membership criterion for a demos with our performative condition of capacity for democratic agency, we obtain the following working definition of a demos:

A “demos” is a collection of individuals, demarcated by the appropriate membership criterion, which is in principle capable of being organized, in a democratic manner, in such a way as to function as a state-like group agent.

Being a demos under this definition does not imply that the relevant state-like agent already exists or that it will ever come into existence. Nor does it specify how extensive such a state-like agent could or should plausibly be – for example, whether it would be a full-blown state or something less encompassing. All it says is that the nature of the collection of individuals itself would be no barrier to the emergence of such a state-like agent, even if there may still be other barriers. Intuitively, a well-ordered society – say the population of some stable democratic country – fulfils the condition of capacity for democratic agency without difficulty, while the population of a highly divided society in a situation of intractable civil war does not. Similarly, to give another example, the test for whether or not there exists a European demos (assuming that the European population is at least a candidate for a demos on the grounds of affectedness and possibly even affectivity) is whether or not the population of Europe can be democratically incorporated

into a European state or state-like agent. Commentators are still divided on this question, but it should be uncontentious that the population of Europe is now closer to meeting this condition than it was, for instance, a hundred years ago.

Of course, the present working definition still leaves a lot of questions open or underspecified, but this should be seen as a virtue rather than a vice. Our first aim should be to get the big picture right, while still leaving some flexibility with regard to its technical details, so that disagreements about those details do not undercut that big picture itself. Assuming, however, that we have accomplished this first aim, our next step should be to zoom in on the relevant details, by trying to clarify what the capacity for democratic agency means in theory and what it requires in practice. We now address these questions in turn.

3.2 What does the capacity for democratic agency mean in theory?

According to the theory of group agency, a “group agent” is a collection of individuals which meets the conditions of agency, that is, roughly speaking, it has attitudes on the issues it faces and acts so as to pursue those attitudes, as defined above. To meet these conditions, the collection needs to have in place a certain “organizational structure”, which can be understood as the totality of rules, procedures and conventions by which the individuals coordinate their decision-making and action-taking (List and Pettit forthcoming). In the case of a state, the key group agent for our purposes, the organizational structure consists of the formal and informal institutions that underlie the state’s political and economic life. In the case of a corporation, another familiar group agent, it is given by the relevant corporate structure, its procedures and organizational mechanisms. By contrast, a completely unorganized collection of individuals, such as the random collection of people who happen to be in the same subway carriage at a given time, does not usually meet the conditions of agency, unless they started organizing themselves in an appropriate way, thereby setting up the necessary organizational structure.

The organizational structure of a group agent, particularly that of a state or other state-like entity, may or may not be democratic. It is democratic at least in a minimal sense if it

satisfies conditions such as Dahl’s classic conditions of procedural democracy (e.g., Dahl 1979), for example political equality among the individuals organized by the given structure, effective opportunities for participation by these individuals, effective opportunities for developing an “enlightened understanding” of the relevant issues, for instance through certain forms of deliberation, and control over the relevant agenda of issues to be decided. More technically, we might distinguish between democratic and non-democratic organizational structures by means of the formal conditions employed in social choice theory (see also List and Pettit forthcoming). Importantly, as Dahl himself recognized, one can assess whether a given organizational structure meets such procedural conditions, independently of whether or not the underlying collection of individuals has been demarcated according to appropriate normative criteria. Thus it is entirely meaningful to say, for instance, that *within its own institutional boundaries* a given organizational structure counts as democratic, while we may still ask questions about whether those institutional boundaries are legitimate.

We have already emphasized that a demos is neither by itself a group agent, nor necessarily part of an actually existing group agent. What, then, do we mean when we say that a demos must be capable of democratic agency? The capacity for democratic agency can imply either of two things: Either the collection of individuals is already democratically organized in such a way as to function as a state-like group agent – in particular, the resulting democratic state or state-like agent already exists – or it is *capable* of becoming so, that is, such a state or state-like agent could be brought into existence if the collection were given the appropriate democratic organizational structure. Only the demoi of well-functioning states or other state-like entities, say those of established democratic countries, fall into the first category. In the case of any other collection, we need to ask whether, if supplemented with an appropriate democratic structure, the collection would generate a state-like agent.¹³

Roughly speaking, someone or something has the capacity to achieve X just in case there is a feasible set of circumstances (a “nearby possible world”, in technical terms),

¹³ On the question of whether a democratic institutional structure could emerge at the global level, see Koenig-Archibugi (2008).

attainable from the actual circumstances, in which he, she or it achieves X. Applied to the present context, this means that a collection, say a particular population, which does not yet constitute a democratically organized group agent has the capacity of doing so just in case there is a feasible set of circumstances in which this collection is supplemented with a democratic organizational structure and through it functions as a state-like group agent.

For example, since the beginning of European institutional integration, the population of the European Union has arguably moved in the direction of satisfying this condition – in the sense that the attainment of state-like agency through a democratic structure has become increasingly realistic – while any rapidly disintegrating society en route to civil war, such as the society of Yugoslavia in the period of its breakdown, fails to meet it. To be sure, there can be reasonable disagreement as to what criteria of feasibility to employ in making such judgments, but those difficulties are no different from the difficulties with any other social-scientific use of “modal” concepts, such as the concepts of possibility, feasibility, avoidability, and so on.

After these theoretical reflections on what the capacity for democratic agency means, we now need to ask what this capacity requires more practically. At this point, the insights from the existing two variants of the performative approach come into play.

3.3 What does the capacity for democratic agency require in practice?

We have noted that some groups or collections of individuals exhibit so much internal discord and disunity that any attempt to organize them democratically so as to achieve state-like agency would be likely to fail, while others are very well suited for this purpose. Which characteristics distinguish the one type of group from the other in practice? Based on the insights of the two existing variants of the performative approach, two characteristics stand out. First, for a group to be capable of supporting collective decisions – one central prerequisite of the capacity for democratic agency – it must be possible to ascribe coherent attitudes to it, which can serve as a basis for these decisions. And secondly, for a group to be capable of endorsing its collective decisions and taking the required coordinated actions – another key prerequisite of the capacity for democratic agency – the group must exhibit sufficient internal cohesion, in a sense to be spelt out

further. Let us make both of these practical requirements more explicit, beginning with the first one.

External coherence: It is possible to ascribe to the collection of individuals in question coherent collective attitudes (particularly, preferences) on the issues on which collective decisions are needed, where these attitudes are defined by a suitable democratic criterion.

A paradigmatic example of such a criterion is the majority criterion, as advocated by both Locke and Rousseau, who argued, respectively, that “the act of the majority passes for the act of the whole, and of course determines as having, by the law of Nature and reason, the power of the whole” (Locke 1960) and “the vote of the majority always obligates all the rest” (Rousseau 1997) (quoted in List and Pettit forthcoming). A more systematic defence of the majority criterion might invoke May’s theorem (1952), which states that when a group seeks to form an attitude on some binary issue – say, whether to accept or reject some proposition – the majority criterion uniquely satisfies four very basic and plausible conditions of procedural democracy.¹⁴ However, in some contexts, other criteria for the ascription of collective attitudes are conceivable as well. A jury’s attitudes, to give just one example, may be determined by a supermajority or unanimity criterion. Thus the appropriate criterion can clearly be group- and context-specific.¹⁵

To spell out the second practical requirement for the capacity for democratic agency, some preliminary discussion is needed. It may be tempting to interpret the requirement of internal cohesion as demanding a consensus among all group members on the relevant issues. Such a consensus, however, is certainly not necessary for a group to be capable of endorsing its collective decisions and taking the required coordinated actions. Groups exhibiting less than a full consensus can still succeed on both fronts, and as already

¹⁴ First, it is open to all possible combinations of individual attitudes on the issue in question (“universal domain”). Second, all individuals have equal weight in determining the collective attitude (“anonymity”). Third, the criterion itself is unbiased between a positive and a negative attitude (“neutrality”). And fourth, the collective attitude is a positively responsive function of the individual attitudes (“positive responsiveness”).

¹⁵ A full defence of any given criterion for ascribing collective attitudes is beyond the scope of this paper.

noted, many generally recognized demoi exhibit a fair amount of internal pluralism. While certain destructive kinds of pluralism would be likely to undermine a group's capacity for democratic agency, other, more benign kinds of pluralism pose no difficulties; indeed, they can be helpful, given the epistemic benefits of diversity (e.g., Sunstein 2003, Page 2007). To capture the fact that a certain degree of diversity within a group is entirely consistent with the capacity for democratic agency – and quite plausibly also beneficial – we can distinguish between two types of consensus or agreement (List 2002). One of them is unnecessary and too demanding, while the other is arguably closer to what is required, at least when restricted to issues on which collective decisions are needed. However, a fully adequate analysis of what kind of internal cohesion in a group is needed for the capacity for democratic agency would require extensive empirical research, and so the present remarks are very tentative.

Let us say that a set of individuals “agree substantively” on a particular issue if they hold the same attitudes on it. As we have pointed out, such a strong form of agreement is not necessary for a group's capacity to endorse its collective decisions and to take the required actions. By contrast, a set of individuals “meta-agree” on a particular issue if they agree on how to conceptualize that issue within some shared cognitive or normative space, while not necessarily agreeing substantively on it (List 2002). A common conceptualization ensures that the individuals are able to rationalize their conflicting individual attitudes in a common way, which in turn enables them to endorse and enact certain compromise decisions that might otherwise be unavailable. The notion of meta-agreement can be made more precise in various ways – and we can distinguish weaker and stronger versions of it – but what matters most for the present purpose is our strategy of defining a group's internal cohesion not primarily in terms of substantive agreement among the group members, but primarily in terms of meta-agreement.¹⁶

Internal cohesion: The collection of individuals in question is in sufficient meta-agreement on certain issues on which collective decisions are needed – and, if required, in sufficient substantive agreement on some relevant fundamental matters.

¹⁶ This is not to deny that substantive agreement on certain particularly fundamental issues may be a necessary condition for the capacity for democratic agency.

Obviously, a lot more needs to be said about how exactly this condition is to be understood, given the variety of ways in which meta-agreement can be defined and the variety of ways in which one might distinguish the issues on which meta-agreement or substantive agreement are needed from those on which they are not. For example, one might speculate that substantive agreement is needed only on a few very fundamental, perhaps constitutional matters, and that meta-agreement is more important in the case of preferences than in the case of beliefs. For simplicity, we mainly focus on preferences in our present analysis, but this is not meant to reflect any judgment about the relative importance of preferences vis-à-vis beliefs. We can only flag these questions for further research here.

As in the case of our general performative condition for a demos, the fact that the requirements of external coherence and internal cohesion are left somewhat underspecified should be seen as a virtue rather than a vice. It insulates the key ideas underlying our agency-based approach to conceptualizing the demos from disputes about its precise operationalization. While it is already a major challenge to sketch out the big picture correctly, filling in all the details would require a research programme well beyond the scope of this paper. However, to suggest some starting points, we devote the next section to a first simple operationalization of our approach.

4. A simple operationalization

So how can we operationalize the requirements of external coherence and internal cohesion? How can we assess the extent to which a collection meets them? In what follows, we propose a first, very simple and tentative operationalization of both requirements in the case of the preferences held by the members of the collection, drawing on ideas from social choice theory (particularly as developed in List 2002 and List et al. 2000/2007). Roughly, to assess a collection's external coherence, we ask whether its majority preferences satisfy standard consistency conditions such as "acyclicity". And to assess the collection's internal cohesion, we ask whether the individual preferences across the members satisfy certain homogeneity and structure

conditions, which capture the levels of substantive and meta-agreement on the issues in question.

4.1 Operationalizing external coherence

It is helpful to begin with a stylized example. Suppose we want to find out whether the world's population has a coherent general will on what to do about climate change. For simplicity, suppose that there are three relevant policy options:

- x : All countries reduce greenhouse gas emissions.
- y : Only rich countries reduce greenhouse gas emissions.
- z : No countries reduce greenhouse gas emissions.

Now it is entirely conceivable that the world's population falls into three subsets of roughly equal size. The members of the first subset, which may include, for example, many Europeans, prefer x to y to z . The members of the second subset, which may include some of the world's poor, prefer y to z to x . The members of the third, which may include the conservative global warming skeptics, finally, prefer z to x to y . With individual preferences like these, a majority prefers x to y , a majority prefers y to z , and a yet majority prefers z to x : an overall "cyclical", and thereby inconsistent majority preference. This is an instance of Condorcet's much-discussed "paradox".

When majority preferences are cyclical, they cannot coherently guide decisions. In our example, none of the options would command a majority over all the others – there is no "Condorcet winner" – and thus the question of what the group wants has no coherent answer here. If the world's population is as divided in reality as in our simple example, it clearly fails to meet the test of external coherence.

Generally, then, we propose to measure external coherence in terms of the absence of cyclical majority preferences. For any given set of options and any given combination of preferences across individuals, it is a yes-no question whether the resulting majority preferences are free from cycles. This would give us a first simple binary test of external coherence. However, when we look at more than one set of issues and perhaps at individual preferences within the same collection of individuals at different times and

under different circumstances, we can take the *infrequency* of cyclical majority preferences as a continuous measure of external coherence. It is needless to say that this measure can be generalized further.

How difficult is it for a collection of individuals to achieve external coherence in this sense? One influential body of theoretical work suggests that it is extremely difficult. Assuming no particular reason why individual preferences should be systematically constrained or correlated, one might expect all possible combinations of individual preferences to be equally likely to occur: the so-called “impartial culture” assumption. But if this is true, the probability of cyclical majority preferences increases as the group size and the number of options increases (Gehrlein 1983). The larger the collection of individuals and the more complex the issue in question, the less likely it then becomes that the group can be externally coherent in the sense defined, and so the prospects for a global demos would be rather slim. Riker (1982) notoriously used similar arguments to attack the notion of a general will *per se*, that is, even at a national level and not going as far as considering its possibility beyond state borders.

However, the assumption which leads to these bleak predictions – namely that of an “impartial culture” – is not only empirically unrealistic, but also constitutes what we may call a “knife-edge” scenario. It is unrealistic because there is no reason to think that, even in a collection as diverse as the world’s population, any logically possible combination of individual preferences is as likely to occur as any other. Surely, empirical constraints make some combinations of preferences more likely than others. And even more importantly, an “impartial culture” constitutes a “knife-edge” scenario because, even for the slightest deviations from it, the probability of cyclical majority preferences can already drop significantly (Tangian 2000; List and Goodin 2001, appendix 3; Tsetlin, Regenwetter and Grofman 2003). Indeed, there is surprisingly little empirical evidence of cycles in real-world preferences (Regenwetter, Grofman et al. 2006, Mackie 2004), although, as far as we know, the relevant studies never consider preferences at a transnational level.

Given recent empirical and theoretical work, then, there is some reason to think that the threat of majority cycles is not as serious as it may appear at first sight, at least at the

level of those groups that are candidates for *demoi* according to standard compositional criteria. But whatever our external coherence measure would say about the world's population, we still need to consider our second, and perhaps more challenging performative requirement: internal cohesion.

4.2 Operationalizing internal cohesion

As observed earlier, consistent collective preferences alone are not generally sufficient to guarantee that a collection of individuals is able to endorse its collective decisions and to support coordinated actions. This can be nicely illustrated by a slight modification of our example of preferences over policies to address global warming. Suppose, as before, that the world's population is subdivided into three groups who prefer, respectively, x to y to z , y to z to x , and z to x to y . This time, however, suppose, that, as a result of differential population growth, one of the three groups, say the second one, has become an absolute majority, constituting more than half of the world's population. Unlike before, the majority preferences are then consistent, since they now coincide with the preferences of the enlarged subgroup. Qualitatively, however, nothing has changed in the *structure* of pluralism across the three groups. Intuitively, the world's public opinion is as divided as it was before, even though the relative group sizes have slightly changed. Achieving coordinated action may be no easier than it was before. What this shows is that the existence of consistent majority preferences alone is not enough to tell us whether the group is internally cohesive in any meaningful sense.

We have suggested that internal cohesion can be conceptualized in terms of substantive and/or meta-agreement on the relevant issues. How can we operationalize these notions? As defined above and now applied to the case of preferences, a set of individuals agree substantively on a particular issue if they hold the same preferences on it. Formally, we can measure the substantive agreement within a group by quantifying the diversity among its members' preferences on the relevant issue. We can employ, for instance, a suitable measure of fragmentation to quantify how much heterogeneity there is in individual first-

choice preferences (List et al. 2000/2007).¹⁷ The lower its value, the higher is the level of substantive agreement in a group.

But substantive agreement is neither necessary for consistent majority preferences, nor is it needed for achieving compromise decisions and coordinated actions, at least not once we move beyond certain fundamental issues.¹⁸ As noted, many generally recognized demoi exhibit only very limited substantive agreement. What appears to be a more plausible requirement of cohesion in a demos is a suitable meta-agreement. Recall that a set of individuals meta-agree on a particular issue if they agree on how to conceptualize that issue within some shared cognitive or normative space. In the case of preferences, we can measure the meta-agreement in a group by quantifying the degree to which its members' preferences satisfy a structure condition that reflects such a common conceptualization.

The best-known such structure condition is Black's (1948) notion of single-peakedness, though it is not the only one in the literature and we here focus on it just for simplicity. Black's condition considers not whether the individuals substantively agree on the given options, but whether their preferences are rationalizable in terms of the same underlying "left-right" dimension. Crucially, the terms "left" and "right" can have any meaning, such as "urban" and "rural", "secular" and "religious", "pro-redistribution" and "contra redistribution", and so on. A combination of preferences across a group of individuals is called "single-peaked" if the options can be aligned from left to right such that every individual has a most preferred position somewhere on that left-right dimension with decreasing preference as options get more distant in either direction from it.

¹⁷ One such measure is the "Laakso-Taagepera index of fragmentation". Suppose n_1 (among n) individuals most prefer the first alternative (among k alternatives), n_2 most prefer the second, ..., n_k most prefer the k -th. Then the "Laakso-Taagepera index" can be defined as

$$LT = \frac{1}{(n_1/n)^2 + (n_2/n)^2 + \dots + (n_k/n)^2}.$$

In particular, $LT = 1$ means perfect consensus; $LT \rightarrow \infty$ means extreme fragmentation.

¹⁸ Perhaps a shared commitment to certain fundamental rights and duties *is* required for the capacity for democratic agency.

The notion of single-peakedness has several appealing properties for our present purposes. It not only formalizes the idea that individual preferences are rationalizable in terms of a shared cognitive or normative dimension, thereby capturing the notion of a meta-agreement among the individuals, but it is also sufficient for consistent majority preferences. Black famously proved that whenever preferences across a collection of individuals are single-peaked, the resulting majority preferences are free from any cycles, and furthermore, the option that is majority-preferred to (or at least tied with) every other option lies at the “peak” of the median individual on the relevant left-right dimension. Single-peakedness therefore entails the satisfaction of our requirement of external coherence and ensures that whatever option is most preferred by the majority can be justified as a “compromise” by virtue of occupying a median position on a shared cognitive or normative dimension.

So far, we have defined single-peakedness as a binary notion: Either the preferences across a group are single-peaked or they are not.¹⁹ More generally, we would like to measure single-peakedness in a continuous manner. We can do so by calculating the group’s “proximity to single-peakedness”, defined as the size of the largest subgroup within which preferences are single-peaked, divided by the overall group size (List et al. 2000/2007, Niemi 1969). A value of one would correspond to full single-peakedness and thus a high level of meta-agreement in the group; a value close to zero would correspond to the opposite case where the group is far removed from meta-agreement.

This simple measure not only captures the degree to which a group is internally cohesive, in the sense of exhibiting meta-agreement, but it is also relevant to the group’s performance with regard to external coherence: the higher a group’s proximity to single-peakedness, the lower the probability of cyclical majority preferences. In the limiting case of a value of one, external coherence is fully guaranteed.

¹⁹ In the stylized example of the world population subdivided into three groups, the condition is violated: No matter how we align the three options from left to right, one of the three groups will fail to have preferences that fit the pattern of single-peakedness. If, on the other hand, one of the groups were to change their views, transforming their preferences into those of one of the other groups, or even into the exact reverse of those preferences, the violation of single-peakedness would disappear.

Interestingly, Riker (1982) himself, despite his criticism of a populist or Rousseauvian conception of democracy, recognized the potential that a common conceptualization of an issue has in producing a coherent general will. Even more interestingly, he related the possibility of such a common conceptualization to conditions usually associated with the presence of a demos:

“If, by reason of discussion, debate, civic education, and political socialization, voters have a common view of the political dimension (as evidenced by single-peakedness), then a transitive outcome is guaranteed.” (Riker 1982)

These remarks not only support the idea that proximity to single-peakedness might be a good proxy measure for assessing a group’s internal cohesion and that such cohesion could be indicative of a demos, but they also point to a possible role that deliberation – “discussion, debate, civic education and political socialization” – could play in promoting such cohesion. We explore these ideas further in the next section. Before doing so, however, it is important to emphasize, once again, that our proposed simple operationalization of external coherence and internal cohesion is analytically distinct from our general agency-based approach to conceptualizing the demos, or from the idea that the capacity for democratic agency requires *some form* of external coherence and internal cohesion. While majority acyclicity and proximity to single-peakedness are particularly simple proxy measures of external coherence and internal cohesion in the case of preferences, other, more sophisticated measures may undoubtedly need to be developed for many contexts.

5. Towards a global demos

With our conceptual apparatus in place, we can return to our original question of whether there can be a global demos. A comprehensive answer to this question is beyond the scope of this paper, but we can now see much more clearly what such an answer would require. We would need to determine, first, to what extent the world’s population already has a capacity for democratic agency, operationalized in terms of internal coherence and external cohesion, and secondly, which forces and mechanisms could move it in that direction, as a result of either intentional policies or unintentional developments. Given

the enormity of this task, we limit ourselves to illustrating the implications of our approach in one particular policy area in relation to which the world's population is, at least *prima facie*, a candidate for a demos – on affectedness and perhaps also affectivity grounds. The issue is the creation of a permanent judicial institution capable of prosecuting and punishing individuals who have committed genocide, war crimes, and crimes against humanity. Our brief analysis of the creation of the International Criminal Court (ICC) in the 1990s will suggest, first, that the external coherence and internal cohesion of the “international community” on this issue displayed a marked increase and, second, that this increase was due at least in part to processes of deliberation across state boundaries. This latter point is particularly important for the question of how a global demos might be promoted. It has been suggested that deliberation can help overcome difficulties such as majority cycles (Miller 1992, Knight and Johnson 1994, Dryzek and List 2003, List 2002), and empirical evidence from domestic contexts, such as local and national Deliberative Polls, is consistent with this claim (List et al. 2000/2007).²⁰ But more research is needed to ascertain if the same effect can result from transnational deliberation, where the Habermasian shared life-world is much thinner. Our discussion is meant to be a tentative and illustrative step in that direction.

Probably only a small part of the world's population is or will ever be a direct victim of genocide, war crimes, and crimes against humanity, but in this area Kant's dictum that “the growing prevalence of a (narrower or wider) community among the peoples of the earth has now reached a point at which the violation of right at *one* place on the earth is felt in *all* places” (Kant 1795/2006: 84) appears particularly compelling. For instance, a 2007 poll of twelve countries in different parts of the world found that in all these countries a majority agreed that the UN Security Council should have the right to authorize the use of military force to prevent severe human rights violations such as genocide (Chicago Council on Global Affairs and WorldPublicOpinion.org 2007). Apart from assuming a wide substantive agreement against doing nothing in the face of

²⁰ Specifically, the deliberation appears to move individual preferences away from combinations leading to cycles, by increasing proximity to single-peakedness (List et al. 2000/2007). Deliberative Polls have also shown that deliberative exercises may have a negative, neutral or positive effect on substantive agreement (e.g., Eggins et al. 2007, Andersen and Hansen 2007, Luskin, Fishkin and Jowell 2002).

atrocities, however, it is difficult if not impossible to determine whether the attitudes of the world's population on this issue – specifically on how perpetrators should be prosecuted and potential perpetrators deterred – are sufficiently coherent and cohesive to meet the performative criterion for a global demos. Obviously there has been no global referendum, but neither has the question been explored in any depth by transnational opinion polls such as the World Values Survey or the Pew Global Attitudes Project.²¹ For this reason, and for the sake of argument, we will assume that the positions taken by national governments are reasonable proxies of the attitudes of their populations. This assumption may be true in some cases but, of course, it is questionable in others. The illustrative character of our discussion ensures that the inevitable discrepancy of government and public opinion does not invalidate our argument.

Several attempts to create an international criminal court during the Cold War ended in failure. The post-cold-war years saw a renewed impetus on the issue, and in 1991 the UN General Assembly asked the International Law Commission to draft an international criminal court treaty. Formal discussions among UN member states took place in two sessions of an *ad-hoc* committee in 1995, six sessions of a preparatory committee between 1996 and 1998, and a diplomatic conference held in Rome in June and July 1998. The meetings and the diplomatic conference addressed a wide and complex set of legal and political questions, but on the key issues three main positions were taken by the participating states (Hampson and Reid 2003). The coalition semi-officially known as the Like-Minded group (LM) wanted a strong and independent court, which would be able to prosecute individuals without requiring the specific consent of the affected states or the UN Security Council (let us call this option *Strong*). The group of governments that Hampson and Reid refer to as the “conservative states” (CS) were concerned that an international criminal court would merely be yet another tool available to the great powers to encroach upon the sovereignty of weaker states, and thus preferred a weak court, or no court at all (we call this option *Weak*). A third group of governments, which Hampson and Reid call the “restrictive states” (RS), wanted to make the court subordinate to the UN Security Council and reserve to the latter the authority to trigger as

²¹ But it should be noted that, even in national opinion polls, questions are rarely asked in such a way as to capture possible cyclical majority preferences.

well as to block the court's action (call this option *Subordinate*). Although the statements made by state representatives in the forums in which the court was negotiated usually only pointed to the most preferred option, the ranking of the other options can be inferred with a reasonable degree of confidence from the arguments presented by those representatives and general considerations (Benedetti and Washburn 1999; Hall 1997, 1998a, b, c; Lee 1999). The LM group would have preferred a court dependent on the UN Security Council to a weak court, as the former would have been in a better position to apprehend and convict perpetrators of atrocities. Since a key concern of the CS was the possibility that the court could be manipulated by the great powers, they would have preferred a strong but independent court to a court that was essentially a tool of the Security Council. Finally, the RS would have preferred a weak court to a strong independent court, as the latter may have acted against their core interests, for instance by indicting their military personnel involved in peacekeeping or other foreign missions.

Thus, when the "international community" started negotiating on the creation of an international criminal court, it displayed a low level of external coherence and internal cohesion. Not only were there major substantive differences over the court's jurisdiction and independence, but the way the states' preferences were distributed over the three main options reflected low levels of meta-agreement. In these conditions, negotiating a compromise solution was difficult and, even if the governments had resorted to voting at an early stage, it may well be that every main option would have been defeated.²²

However, when a vote on the final draft of the Statute of the International Criminal Court was called on 18 July 1998, 120 governments voted for the Statute, 7 voted against, and 21 abstained. The Statute created a strong court, which is closer to the preferences of the LM coalition than to the positions voiced by other states. What led to this outcome? First, the conference chair was able to exercise a degree of agenda-setting power and propose a

²² For instance, if we consider the positions voiced at the beginning of the negotiation process, a hypothetical vote by simple majority rule on pairs of alternatives and on the basis of the "one state, one vote" principle might have produced a majority cycle, as the sum of LM and CS votes could have ensured a majority for *Strong* against *Subordinate*, the sum of LM and RS votes could have ensured a majority for *Subordinate* against *Weak*, and the sum of CS and RS votes could have ensured a majority for *Weak* against *Strong*.

comprehensive package. Second, this package incorporated a few concessions to delegations that remained concerned about a strong and independent court and requested some safeguards. But arguably the main reason for the large majority supporting the Statute was the fact that over the years the LM position had gained many supporters, while the CS and RS positions had not. The majority of states that had not participated or clearly positioned themselves during the preparatory meetings came to support positions close to those of the original LM group.

A number of scholars who examined the negotiation process emphasize the key role of deliberation in increasing support for the LM position (Deitelhoff 2006, 2009; Glasius 2006). The LM group made little or no use of bargaining tactics such as promising rewards for support or threatening sanctions against opponents. On the other hand, pro-court officials, scholars and activists had repeatedly sought opportunities for open and trust-promoting dialogues with other delegates. Extensive deliberation also took place among officials of pre-existing and well-tested groupings, such as NATO, and in regional conferences organized by LM states and involving other governments in regions such as southern Africa, western Africa and central and eastern Europe (Deitelhoff 2006: 212, 228-37). Particularly notable was the contribution of non-state groups to the promotion of deliberation among state representatives. Members of several human rights NGOs, foundations, and professional associations participated in conferences, workshops and other events with government officials. NGO representatives were often legal experts who could provide authoritative views on various aspects of international criminal law. In 1995 the World Federalist Movement promoted a Coalition for an International Criminal Court, which grew rapidly to encompass over 800 organizations by the start of the Rome conference in June 1998. Most of the 237 NGOs officially accredited at the Rome conference belonged to that Coalition. In addition to exercising pressure and increasing transparency, NGOs had a major role in shaping the views of delegations from small developing countries and strengthened their ability to participate in the negotiations, for instance by offering legal advice, providing free translations of legal documents, and circulating information on the positions of other delegations.

This brief analysis of the ICC negotiations offers an illustration of several points made in this paper. The existence of an effective international regime capable of deterring

genocide, war crimes, and crimes against humanity, and of prosecuting alleged perpetrators even at a cost to national sovereignty, is arguably something that affects most people in the world. Worldwide abhorrence of such crimes may even be sufficient to stimulate global bonds of solidarity on that issue. The application of compositional criteria – almost certainly the criterion of affectedness but perhaps even that of affectivity – is very likely to identify the world’s population as a whole as the relevant demos for the decision to establish a global legal regime against atrocities. However, if we take the governments’ positions as a proxy of citizen attitudes (an admittedly very imperfect indicator), it is doubtful whether the world as a whole met our performative criterion for a demos when the creation of the Court was placed on the international agenda in the early 1990s. External coherence and internal cohesion, as defined earlier in this paper, were low globally in relation to this issue. But, crucially, this was not an inescapable situation. Not only did positions change, producing higher levels of external coherence and internal cohesion; this change was at least in part the result of a process of deliberation that was consciously promoted and stimulated. The United Nations provided a broad institutional framework that facilitated repeated communication and interaction, and this forum was supplemented by the activities of a large number of government officials, international civil servants, experts, and NGO representatives who created and used many opportunities for formal and informal, open and closed deliberation. The performative dimension of the international community was thus enhanced by design. Extrapolating from this illustrative case, a global demos, in the agency-based sense introduced in this paper, no longer seems completely unattainable, at least when it comes to certain issues of global concern such as the present one.

6. Concluding remarks

To recapitulate our argument, we have suggested that a good account of the demos must answer two questions. It must tell us, first, which collection(s) of individuals can be considered as candidate(s) for a demos for a given set of issues, and second, what functional characteristics such a collection must exhibit in order to facilitate good governance on those issues, that is, to guide collective decisions and to enable coordinated actions. Since there are good off-the-shelf proposals on how to answer the

first, compositional question, we have concentrated on the second, performative one and proposed an agency-based approach to it. The central idea is that, to function as a demos, a collection of individuals must have the capacity to be organized democratically in such a way as to function as a state-like group agent. Metaphorically speaking, the collection must be “fit”, under the right democratic organization, either for statehood or at least for some restricted variant of it, even if it has not yet achieved that status. We have suggested that having such a capacity requires the collection to exhibit sufficient external coherence – in the sense that consistent collective attitudes can be ascribed to it – and internal cohesion – in the sense that its level of internal diversity does not prevent successful collective decisions and coordinated actions. However, we have tried to insulate this big picture from disputes about its operationalization by leaving many of its details open, proposing only a first simple and tentative operationalization in the case of preferences. Nonetheless, our approach should make the question of whether there can be a global demos tractable by clarifying what an answer to this question requires, both conceptually and empirically. As an empirical illustration, we have finally looked at one particular policy issue – the creation of the International Criminal Court – to suggest that the satisfaction of the identified conditions for a global demos is not completely out of reach and that it can be actively promoted through certain forms of transnational deliberation. Our case study is as modest, however, as our theoretical claims are ambitious, and we hope that this paper provides some useful conceptual resources for more comprehensive research.

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