

A Reflection on the Participation of Individuals in the Creation of European Law through the European Citizens' Initiative and its Scope in International Law*

Una reflexión sobre la participación de los individuos en la creación de derecho comunitario a través de la Iniciativa Ciudadana Europea y sobre su alcance en derecho internacional

Carlos Espaliú Berdud

Profesor agregado de Derecho Internacional Público
y Derecho Europeo de la Universitat Internacional de Catalunya (Barcelona)
Acreditado Catedrático AQU

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Summary: I. Introduction.—II. The capacity of individuals to elaborate International Law by themselves. 1. Treaties. 2. Customary law. 3. Resolutions of International Organizations—III. The European Citizen's initiative in the context of the democratic functioning of the European Union.—IV. The European citizens' initiative in practice until now.—V. Conclusion.

Abstract: The Lisbon Treaty introduced in the Law of the European Union (EU) the European citizens' initiative, with the aim to enhance further the democratic functioning of the Union. From the broader Public International Law perspective, it is a unique legal institution in the law of international organizations, considering that, so far, no similar right for citizens is supported by any other international organization in the world. Furthermore, this step seems to imply, potentially, an important push in the growing international subjectivity of individuals. Indeed, by associating European citizens in the formation of some important EU resolutions, the European citizens' initiative allows individuals to take part in the law making process of European Law, at least in an indirect way. Nevertheless, this potential influence is weakened by the poor outcome of the proposals reaching the European Commission have had in the first three years since the way was opened for presenting initiatives.

Keywords: Democratic functioning of the EU, international subjectivity, individual, civil society, European citizens' initiative, legislative procedure in the EU, European citizens' rights.

Resumen: *El Tratado de Lisboa introdujo en el Derecho de la Unión Europea (UE) la figura de la iniciativa ciudadana europea, con el objetivo de mejorar*

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el funcionamiento democrático de la UE. Desde la perspectiva más amplia del Derecho Internacional, es una institución única en el derecho de las organizaciones internacionales, teniendo en cuenta que, hasta ahora, no existe ninguna institución similar en ninguna otra organización internacional en el mundo. Además, este paso parece implicar, potencialmente, un impulso importante en la creciente subjetividad internacional del individuo. En efecto, al asociar a los ciudadanos europeos en la formación de importantes resoluciones de la UE, la iniciativa ciudadana permite participar a los ciudadanos en la creación, al menos de un modo indirecto, del Derecho Comunitario. Sin embargo, esta potencialidad se ha visto debilitada por el escaso resultado obtenido hasta ahora en la práctica en los primeros tres años de ejercicio de este derecho.

Palabras clave: *Funcionamiento democrático de la UE, subjetividad internacional, individuo, sociedad civil, iniciativa ciudadana europea, procedimiento legislativo en la UE, derechos de los ciudadanos europeos.*

I. Introduction

The Lisbon Treaty reformed the Constitutive Treaties¹, reinforcing citizenship of the European Union (EU) and enhancing further the democratic functioning of the Union by providing, inter alia, that every citizen is to have the right to participate in the democratic life of the Union by way of a European citizens' initiative. Pursuant to this reform, one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties. This possibility enlarged the list of citizens' rights under European Union's Law. From the broader Public International Law perspective, this step seems to imply, potentially, an important push in the growing international subjectivity of individuals², which is one of the more relevant trends in the evolution of International Law.

¹ See Article 11 of the Treaty on European Union and the Article 24 of the Treaty on the Functioning of the European Union.

² For the purpose of this article, individuals are defined as natural human beings. We will focus on the individuals as a category of international subjectivity, but we will refer incidentally to some type of association of individuals forming part of the civil society in general, like the NGOs or the associations of workers and employers. In my opinion, even if those entities could be considered different categories of international persons, a strict separation from the individual per se could be too rigid and artificial. On the contrary, for the purpose of this article, we do not take into consideration the obvious fact that every legal

It is well known that the field of international subjectivity has changed considerably. From the famous Permanent Court of International Justice's dictum in the *Lotus* case, in 1927, according to which «[i]nternational law governs relations between independent States»³, the situation has evolved significantly, inasmuch as through its institutionalisation and its humanisation, International Law is also concerned with the relations of some other entities that play an important role in the international sphere, such as international organizations, non-governmental organizations (NGOs), multinational companies, peoples, the individual, etc. This article cannot engage too deeply with the question of international subjectivity, a notion which has sometimes given rise to controversy⁴. Nevertheless, it can be taken for granted that, to the extent to which those entities have capacities in the international sphere, they can be considered legal persons in International Law⁵. From our point of view, therefore, the effectivity is the touchstone of the international subjectivity.

The main capacities of international legal persons are fourfold. First, to be the recipient of rights and duties granted by the different sources of International Law. Second, the ability to make claims before international bodies in order to vindicate those rights. Third, the responsibility for the non-respect of the own obligations and for the violation of the rights of other international legal persons. Fourth, the ability to create law by any of their sources⁶.

There are, of course, great differences between the status of legal persons in International Law in respect of the number of capacities that they possess and in the way in which they acquire those capacities. From the

person is composed of individuals, for instance the state itself. We exclude also from the scope of this article the fact that through the political parties the individual take part in the legislative process in municipal and international law.

³ Permanent Court of International Justice, *The case of S.S. «Lotus»*, 1927 PCIJ Series A, No. 10, p. 18.

⁴ In that sense, see the 1949 Advisory Opinion of the International Court of Justice in the *Reparation case (Reparation for injuries suffered in the service of the United Nations)*, Advisory Opinion, 11 April 1949, ICJ Reports (1949) p. 178; see also: PARLETT, K., *The Individual in the International Legal System*, Cambridge University Press, Cambridge, 2011, p. 29; VAURS CHAUMETTE, A-L., *Les sujets du droit international penal*, Pedone, Paris, 2009, pp. 1-2. For a throughout study on international personality see: PORTMANN, R., *Legal Personality in International Law*, Cambridge University Press, Cambridge, 2013.

⁵ According to professor Tomuschat, «Everyone directly endowed with rights under international law enjoys an international status». See: TOMUSCHAT, C., «International Law: Ensuring the Survival of Mankind on the Eve of a New Century. General Course of Public International Law», *Collected Courses of The Hague Academy of International Law*, 281, 1999, p. 160.

⁶ In that sense, see for example: CARRILLO SALCEDO, J.A., *Curso de Derecho internacional público*, Tecnos, Madrid, 1991, p. 25.

quantitative perspective, due to the fact that states and international organizations enjoy all the capacities just mentioned, only their status in International Law can be considered complete. From the perspective of the capacities' origin, as long as the state does not receive its capacities from another entity, it remains as the only entity that has an autonomous status, which is not derivative from another source, in International Law⁷.

What would then be the status of the individuals? A salient trend in contemporary International Law is the growing recognition of the capacities of individuals, who can increasingly act by themselves at the international level without the aegis of their national states⁸. It is obvious that a huge quantity of treaties recognize the rights and obligations of individuals, and furthermore that the protection of the human person is the main concern of some branches of International law, like Humanitarian Law and Human Rights Law. It is becoming more and more common to see individuals responsible for having committed international crimes. On 13 March 2012, Thomas Lubanga Dyilo was considered guilty of the war crimes of enlisting and conscripting of children under the age of 15 years and using them to participate actively in hostilities⁹ by a Trial Chamber of the International Criminal Court (ICC), and he was later condemned for those crimes to serve a term of 14 years imprisonment¹⁰. It has also become common, at least in Europe, for individuals to make claims before international bodies like the European Court of Human Rights or the Court of Justice of the European Union, on their own¹¹.

⁷ The distinction between «legal person» and «subject» has been traditionally employed in the legal literature, but was conflated by the International Court of Justice in the 1949 Advisory Opinion in the *Reparation case*: «Accordingly, the Court has come to the conclusion that the Organization is an international person.... What it does mean is that it is a subject of international law and capable of possessing international rights and duties, and that it has capacity to maintain its rights by bringing international claims». (*Reparation for injuries suffered in the service of the United Nations*, Advisory Opinion, 11 April 1949, ICJ Reports (1949), p. 179). After that, nowadays is common to use the term interchangeably.

⁸ In that sense see, for instance: ABELLÁN HONRUBIA, V., «La responsabilité internationale de l'individu», *Recueil des Cours de l'Académie de droit internationale de La Haye*, 280, 1999, p. 423.

⁹ International Criminal Court, Judgment pursuant to Article 74 of the Statute, *The Prosecutor v. Thomas Lubanga Dyilo* (ICC-01/04-01/06 [1358]), Trial Chamber I, 14 March 2012, § 1358.

¹⁰ International Criminal Court, Decision on Sentence pursuant to Article 76 of the Statute, *The Prosecutor v. Thomas Lubanga Dyilo* (ICC-01/04-01/06-2901), Trial Chamber I, 10 July 2012, § 107.

¹¹ For having a global idea of the capacities awarded to the individual by the international legal system, see, for example: CANÇADO TRINDADE, A.A., «International law for humankind: towards a new jus gentium (I)», *Collected Courses of the Hague Academy of International Law*, 316, 2005, pp. 9-312; HAFNER, G., «The Emancipation of the Individual

Notwithstanding that expanding international legal personality of individuals, so far it has been extremely difficult to demonstrate that individuals can create law by themselves, without the intervention of other entities, for example, the state of their nationality. Accordingly¹², their status remains not only derivative, but also incomplete, in International Law¹³. In this light, the European Citizen's initiative is particularly relevant, in the measure in which it will allow the individuals to take part, at least indirectly, in the creation of European Law and thus in International Law.

Therefore, my intention in this article would be, in the first place, to explore some of the possibilities of recognizing in individuals the capacity to create International Law by themselves. In the second place, it is necessary to delve into the regulation of the European citizens' initiatives, in its context, in order to ascertain how this right can be implemented. Then, in the third place, I will consider the treatment given by the European Commission to all initiatives presented to date, particularly those which have met the requirements set out in the Regulation of the European Parliament and the Council on the Citizens' Initiative. At this juncture, we come into possession of a global picture of the relevance of the European citizens' initiative in European Law and in International Law. This may lead us to conclude whether or not the European citizens' initiative could be considered to convey any real participation of individuals in the creation of European Law and, therefore, if by the same token such individual has acquired, or may acquire a complete status in International Law.

II. The capacity of individuals to elaborate International Law by themselves

In this part of the article, the question will be raised as to whether or not individuals can create International Law by themselves. For this purpose,

from the State», *Collected Courses of the Hague Academy of International Law*, 358, 2011, pp. 263-454.

¹² In that respect see: CLAPHAM, A., «*The Role of the Individual in International Law*», *European Journal of International Law*, 21, 2010, p. 30; or: PARTSCH, K.J., «Individuals in International Law», in Bernhardt, R. (ed), *Encyclopedia of Public International Law Volume II*, North-Holland, Amsterdam, 1995, pp. 957-958.

¹³ For Christian Tomuschat, «(...) the capacity to conclude international treaties would stand out as the main element permitting identification as a subject of international law. [This approach], too, has its merits. It allows to distinguish between the true actors on the international level, those who by their conduct shape the international legal order, and those other subjects who only enjoy a derivative status, having been provided with certain specific rights in a limited area», see: TOMUSCHAT, C., *op. cit.*, note 5, p. 160.

the focus will be upon treaties, customary law and the resolutions of the international organizations¹⁴.

1. *Treaties*

From a very strict conceptualisation, only States and international governmental organizations can make treaties and become obligated by them. This statement is correct insofar as these entities are the only ones to enjoy a franchise in international conferences, the capacity to sign the instruments, and thus to give their consent to the rights and obligations included as parties to the conventions¹⁵. However, that assertion provides a very poor description of the treaty making systems predominant in some of the branches of International Law, like environmental law, international human rights law, international labour law, or humanitarian law. Indeed, there may be no better example to illustrate the restrictions of this conception than to appreciate the huge role that the International Red Cross Committee plays in the development of the latter field of International Law.

To enumerate all the conventions in which the NGOs have participated in their treaty making process would be a wearying task¹⁶. Even if it is beyond the scope of this paper to discuss the connections between NGOs and

¹⁴ Regarding the unilateral acts of states, as long as they have their origin in national decisions, the question of the role of the individual in their formation either exceed the scope of this article or can be answered having recourse *mutatis mutandi* to what we are going to say regarding the treaties or the customary law. With respect to the General principles of law, which are basic rules whose content is very general and abstract, mainly inferred from logic or the practice of the tribunals, both of municipal law systems and International Law, it can be said that taking into account the vagueness of their origin, the question of the role of the individuals in their formation also exceed the scope of this article. Moreover, in the reality, the central question about general principles of International Law is not their creation but their determination by the judges or judicial bodies, something that leads to the role of the jurisprudence in International Law; thus not a source of International Law.

¹⁵ We deal in this article with treaties in the narrow sense, as is defined in the Vienna Conventions on the law of treaties. A broader approach is taken for instance by professor Reisman in his General Course at The Hague Academy, see: REISMAN, W.M., «The Quest for World Order and Human Dignity in the Twenty-First Century: Constitutive Process and Individual Commitment», *Collected Courses of the Hague Academy of International Law*, 351, 2012, pp. 135-144.

¹⁶ See in this matter: BRETON-LE GOFF, G., «NGO's perspectives on non-state actors», in D'ASPREMONT, J., (ed.), *Participants in the International Legal System. Multiple perspectives on non-state actors in international law*, Routledge, London, 2011, p. 248.

individuals¹⁷, it is nevertheless evident that, and in that point we join professor Ochoa, that through NGOs, individuals «have a formalized role in the treaty making process»¹⁸.

Sometimes, the role played by individuals goes even further. The importance of the role of workers and employers through their representatives in the tripartite governing structure of the International Labour Organization (ILO) is well appreciated. In the International Labour Conference, the legislative organ through which conventions and recommendations are elaborated and adopted, each ILO member state has four representatives at the conference: two government delegates, an employer delegate and a worker delegate. All of them have individual voting rights with equal value¹⁹. Regarding the legal status of those rules, it can be said that when ILO Conventions are ratified they become binding on the ratifying state, like any other treaty, while recommendations are not open to ratification and are not binding *per se*²⁰.

However, even before the negotiation starts, the role of NGOs, or civil society in general terms, to lobby for the convening of international conferences with the potential to adopt the pertinent treaties, is impressive. In this regard, it should be remembered the role played by *Anti-Slavery Society* in combating that scourge. Closer to us, it may be helpful to think about some of the most relevant international conventions of our days, like the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, probably triggered by the Amnesty International's im-

¹⁷ In any case, we adhere completely to what professor Hafner said in his summer course of The Hague Academy. For him: «Accordingly, the appearance of the individual as a recognized actor in international law is closely connected to the emergence of civil society groups as independent actors in international relations» HAFNER, G., *op. cit.*, note 11, p. 302. And also: «[NGOs]... must be involved in the discussions of the status of individuals because of their plausible claim, collectively, to represent the unorganized collectivity of individuals, the amorphous mass of civil society, and act as their spokesperson», *Ibid.*, pp. 304-305.

¹⁸ OCHOA, CH., «The Individual and Customary International Law Formation», *Virginia Journal of International Law*, 48, 2007, p. 157.

¹⁹ About the composition of the Conference see: SERVAIS, J.-M., *International Labour Organization*, Wolters Kluwer, Alphen aan den Rijn, 2011, pp. 42-43.

²⁰ On the legal nature of international standards elaborated by the ILO see: MORSE, D.A., *The Origin and Evolution of the I.L.O. and Its Role in the World Community*, Cornell University, New York, 1969, pp. 9-10; GHEBALI, V. Y., *The International Labour Organization. A Case Study on the Evolution of U.N. Specialised Agencies*, Martinus Nijhoff, Dordrecht, 1989, pp. 212-220, or YOKOTA, K., «International standards of freedom of association for trade union purposes», *Collected Courses of the Hague Academy of International Law*, 144, 1975, pp. 326-327. For an analysis of the content of the ILO Conventions see for instance: OJEDA-AVILÉS, A., *Transnational Labour Law*, Wolters Kluwer, Alphen aan den Rijn, 2015, pp. 90-108.

pressive campaign against torture; the 1997 Treaty Banning Landmines, to which the International Campaign to Ban Landmines gave a considerable push; or the 1998 Statute for the International Criminal Court, which was promoted by a coalition of non-governmental organizations. For example, in the preamble of the 1997 Convention on Anti-Personnel Landmines it is stressed

«[...] the role of public conscience in furthering the principles of humanity as evidenced by the call for a total ban of anti-personnel mines and recognizing the efforts to that end undertaken by the International Red Cross and Red Crescent Movement, the International Campaign to Ban Landmines and numerous other nongovernmental organizations around the world, [...]»²¹

In this frame it is worth acknowledging the participation of individuals, and civil society in general terms, in the treaty making process concerning the Treaty establishing a Constitution for Europe, something which was required by the Declaration on the Future of the European Union, or Laeken Declaration, committing the Union to becoming more democratic, transparent and effective, adopted by the European Council, on 15 December 2001. By this Declaration, the European Council convened a Convention bringing together the main stakeholders to examine the fundamental questions raised by the future development of the Union so as to prepare, as broadly and transparently as possible, for the 2004 Intergovernmental Conference. But next to the Convention, in order for the debate to be broadly based and involve all citizens, a Forum was convened «[...] for organizations representing civil society...»²². It took the form of a structured network of organizations receiving regular information on the Convention's proceedings' and expected to be heard and consulted on specific topics in accordance with arrangements established by the Praesidium²³. In reality, a total of 160 organizations participated in the Forum, including public institutions, university and cultural circles, NGOs, etc²⁴. Consultations were organized into eight contact groups: social field, environment, academic world and think tanks, citizens and institutions, local and regional authori-

²¹ Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction 1997, 2056 UNTS 211.

²² European Communities (2001). Presidency Conclusions of the Laeken European Council. Annex I, Laeken declaration on the future of the European Union', 14 and 15 December 2001, *Bulletin of the European Union*, pp. 19-23.

²³ *Ibid.*

²⁴ Digest of contributions to the Forum, Conv. 112/02.

ties, human rights, development and culture²⁵. The Forum's influence in the final achievements of the Convention may have been quite limited, but it can be considered an important step, at least theoretically, in the way leading the individuals to participate more effectively in the treaty making process in the EU law²⁶.

2. Customary law

As with treaties, a strict conception according to which only States are the relevant subject in the formation of custom can no longer be sustained. It is beyond all doubt that the practice of international organizations has to be taken into account in the formation of customary International Law, as can be seen, for examples, in the jurisprudence of the International Court of Justice²⁷, and also with the study of customary international humanitarian law conducted by the International Committee of the Red Cross²⁸. As Professor Mendelson puts it in his famous Course of The Hague Academy of International Law regarding the customary law: «A rule of customary international law is one which emerges from, and is sustained by, the constant and uniform practice of States *and other subjects of international law*,...»²⁹.

Still, for the time being, the role of other entities, including individuals, in the formation of custom is not as important as it is the case with states

²⁵ See the study: European Parliament, «The European Parliament and the proceedings of the European Convention», p. 28 (http://www.europarl.europa.eu/pdf/cardoc/pe_and_job_ce_en.pdf).

²⁶ On that point see: CAMMAERTS, B., *Internet-mediated participation beyond the nation state* Manchester University Press, Manchester, 2008, pp. 170-175.

²⁷ For instance, in its advisory opinion in the case of the *Genocide's convention*, the International Court of Justice took into account the depository practice of the United Nations Secretary-General. See: *Case concerning Reservations to the Convention on Genocide*, Advisory Opinion, 28 May 1951, *ICJ Reports* (1951), p. 25.

²⁸ See: International Committee of the Red Cross, Assessment of Customary International Law, available online at: https://www.icrc.org/customary-ihl/eng/docs/v1_rul_in_asofcuin (last visited 3 August 2015).

²⁹ See: MENDELSON, M. H., «Formation of Customary International Law», *Collected Courses of the Hague Academy of International Law*, 272, 1998, p. 188 (emphasis added). It is also worth to quote the opinion of Professor McCorquodale; for him: «In an international legal system where non-state actors are participants, the practice of these actors, their role in the creation, development and enforcement of law and their actions within the international and national communities (whether or not this forms part of “state practice”), can, and should, be considered to form a part of customary international law». (See: MCCORQUODALE, R., *International Law: Revista Colombiana de Derecho Internacional. Bogotá (Colombia)*, 8, 2006, p. 142.

and international organizations, insofar as their acts are not taken into consideration directly by the International Court of Justice or other bodies, like the International Committee of the Red Cross when drafting its database on customary law³⁰.

This perspective is supported by the sources enumerated in Article 38 of the Statute of the International Court of Justice. What requires more reflection, however, is the role of individuals in the customary law making process in an indirect way³¹, or in a broader sense³². This seems to be the opinion also of the Judge Van den Wyngaert in her dissenting opinion in the *Yerodia* case before the International Court of Justice. According to her, the opinion of civil society «...cannot be completely discounted in the formation of customary international law today»³³.

In fact, there are certain fields of International Law, mainly those connected to the private sector, for instance the domain of banking, in which the contribution of non-state actors and individuals in the formation of their rules is determinant; even if technically speaking those rules create soft law rather than hard law³⁴.

³⁰ An exception of this rule could be the practice of the International Committee of the Red Cross itself, which has been regarded by the International Criminal Tribunal for the Former Yugoslavia as an important factor in the emergence of customary rules applicable to non-international armed conflicts. See: International Criminal Tribunal for the Former Yugoslavia, *Tadić case*, Case No. IT-94-AR72, Decision on the defence motion for interlocutory appeal on jurisdiction, 2 October 1995, *ICTY Reports* (1995), § 109).

³¹ Professor Mendelson, developing the opinion that we have previously quoted argued that «[a] contribution to the formation of customary international law, in a broader sense, is also made by other types of entity, such as non-governmental international organizations... multinational and national corporations; and even individuals». See: MENDELSON, M.H., *op. cit.*, note 29, p. 203.

³² Some authors have been critics about the possibility to increase the role of NGOs in the institutional apparatus that produces transnational norms. For instance Professor Perez, put forward some lack of legitimacy, democracy and universal representation in some NGOs. See: PEREZ, O., «Normative Creativity and Global Legal Pluralism: Reflections on the Democratic Critique of Transnational Law.» *Indiana Journal of Global Legal Studies*, 10, 2003, p. 43.

³³ International Court of Justice, *Case Concerning the Arrest Warrant (Belgium v. Congo)*, Judgement, 14 February 2002, Judge Van den Wyngaert (Dissenting Opinion), *ICJ Reports* (2002), p. 155, para 27.

³⁴ For instance, the Basel Committee on Banking Standards, in which networks of national officials cooperate to agree common standards, often framed in terms of codes of best practices, model legislation, or governing principles to be implemented by national members (in this sense see WHEATLEY, S., *The Democratic Legitimacy of International Law*, Hart, Oxford, 2010, pp. 264-267. Another example is provided by both Professor Janet Koven Levit and Professor Christiana Ochoa. They referred to the rules set out in the Uniform Customs and Practice for Documentary Credits which are created by private bankers who congregate under the auspices of the Commission on Banking Technique and

3. Resolutions of International Organizations

The participation of workers and employers representatives in the governing structure of the ILO, and the granting of consultative or participative status to NGOs in some international organizations, could be considered the most significant manifestations of participation — understood in a broad manner— of civil society in international law making. It will be necessary to study these two examples separately, because their respective importance differ substantively, with regard to the legal nature of the resolutions that those international bodies adopt.

First, regarding the ILO resolutions, it has to be underlined that the tripartite structure of its governing bodies assure the participation of individuals in the adoption of the resolutions of this international organisation. The legal nature of the different acts ranks from the recommendations of the International Labour Conference, which in principle do not have binding legal effect but provide guidance for national legislation, collective negotiation and administrative action, to certain resolutions of the International Labour Conference which have an important binding legal effect, for instance the resolutions admitting new members in the ILO³⁵.

Second, the granting of consultative or participative status to NGOs in some international organizations like United Nations via ECOSOC, the Council of Europe, or the European Union, also manifests the increasing role of individuals in the international sphere, even if that status is a very limited one, due to the fact that the will of the NGOs is not decisive in the adoption of the resolutions of those international governmental organizations; indeed, it is far from that.

In the case of United Nations ECOSOC, only member States of the Council can vote in the deliberations. Under Articles 69 and 70 of United Nations Charter, participation without vote is provided for only in the case of States which are not members of the Council, and of the specialized agencies. Meanwhile, for the NGOs, Article 71 of the Charter provides for suitable arrangements for consultation. In this regard, as the ECOSOC Resolution 31/1996 — which updates the arrangements set out

Practice (Banking Commission) of the International Chamber of Commerce. According to these professors, despite the fact that those rule are not technically law, courts in the United States and elsewhere frequently use it to decide letter-of-credit disputes (See KOVEN LEVIT, J., «A Bottom-Up Approach to International Lawmaking: The Tale of Three Trade Finance Instruments», *The Yale Journal of International Law*, 30, 2005, p. 128 and OCHOA, CH., *op. cit.*, note 18, p. 148). In this regard, see also: PEREZ, O., *op. cit.*, note 32, p. 40.

³⁵ For a comprehensive list of all the resolutions of the International Labour Conference see: <http://www.ilo.org/public/english/bureau/leg/resolutions.htm>.

in its resolution 1296 (XLIV)— recalled, that distinction, «... deliberately made in the Charter, is fundamental and the arrangements for consultation should not be such as to accord to non-governmental organizations the same rights of participation as are accorded to States not members of the Council and to the specialized agencies brought into relationship with the United Nations»³⁶.

Regarding the Council of Europe, since its foundation it has established working relations with NGOs. In 1951 the Committee of Ministers decided to make suitable arrangements for consultation with those international NGOs (INGOs) dealing with matters that were within the competence of the Council of Europe. The decision of the Committee of Ministers led to the introduction in 1952 of a consultative status for NGOs. On 19 November 2003, the Council of Europe decided to change the former consultative status to one of participatory status, by the Committee of Ministers Resolution (2003)8. At present, 320 INGOs³⁷ hold this status and together they make up the Conference of INGOs, which is now recognised as an institution of the Council of Europe. It constitutes civil society's pillar in the Council of Europe «quadrilogue» with the Committee of Ministers, the Parliamentary Assembly and the Congress of Local and Regional Authorities. But this participatory status does not go further than to be involved in the definition of Council of Europe policies, programs and actions through the different bodies of the Committee of Ministers in which their participation was settled³⁸.

Moreover, the scope of the participations of the NGOs in the law making process in the international organizations is also limited by the lack of any normative force of most of the resolutions of those entities, as is the case with the resolutions of the ECOSOC in United Nations or the Council of Europe. Much more importance has a consultative or participative status of NGOs in an international organisation of integration with normative force like the European Union; however, we will deal with the participation of the NGOs and individuals in the law of the European Union in the following part of this article where the European citizens' initiative is explained in the framework of the democratic functioning of the European Union.

³⁶ ECOSOC Res. 1996/31 Consultative relationship between the United Nations and non-governmental organizations, E/1996/96, 25 July 1996, para. 18.

³⁷ Council of Europe, participatory status at a glance, available online at <http://www.coe.int/en/web/ingo/participatory-status>, last visited on 3 August 2015.

³⁸ Council of Europe, Committee of Ministers Res. 8 (2003), 19 November 2003, Appendix para. 4.

III. The European Citizen's initiative in the context of the democratic functioning of the European Union

In order to evaluate the contribution of the Citizens' initiative, among the forms of democratic participation in the functioning of the EU, it is necessary to define the term «democracy». For the purpose of this article, we understand democracy to be the liberal, political representative system predominant in the western world during the last century, in which the legislative and executive power are delegated by the people to a political elite chosen through free and periodical elections. This system has restrained the participation of the citizens to voting from time to time; something central at the same time to the legitimization of those political elites in power that represent them³⁹.

Nevertheless, the neoliberal mainstream in international society, prevailing after the shipwreck of the Soviet Union, has brought with it, among other phenomena, a trend to the globalization, to the erosion of the State-nation, and to the appearance of new forms of «stakeholderism» that promote the need of a major participation of the citizens in the politics⁴⁰.

Besides, both inside the States and on the worldwide scale, these phenomena have also taken place in the European stage⁴¹. As a matter of fact, in relation with the Community law, which traditionally responded to the typical characters of the political systems of the liberal western States featured above, where the political and legislative life was a property quasi-absolute of a representative elite of the citizenship, the situation began to change little by little with the change of millennium. In 2000, the Commission launched an ambitious policy initiative aimed at promoting a greater involvement of non-state actors in the EU law-making process, which led to the publication of the «White Paper on European Governance»⁴². This initiative was translated afterwards, among other things, on the adoption of a Communication on «general principles and minimum standards for consultation of interested parties by the Commission», with the objective to involve non-state actors in the law-making process of some policies of the EU⁴³, and this has proven to be instrumental in certain improvements.

³⁹ In this sense see: CAMMAERTS, B., *op. cit.*, note 26, pp. 15-16.

⁴⁰ *Ibid.*, pp. 18-19.

⁴¹ In this sense see: *Ibid.*, p. 21.

⁴² Communication from the Commission of 25 July 2001 «European governance – A white paper» (COM(2001) 428 final), OJ C 287.

⁴³ «Towards a reinforced culture of consultation and dialogue – General principles and minimum standards for consultation of interested parties by the Commission of 11 December 2002, COM(2002) 704 final». About the outcome of the participation of non-state actors in the law-making of the EU after the White Paper on European Governance see: GERARD, D., «Non-state actors in European law. Enhanced participation of non-state actor in EU law-

Along the same lines, the Treaty of Nice of 2001⁴⁴ incorporated a provision by which the former Treaty Establishing the European Community was modified⁴⁵, in order to include the reference to the organised civil society as a constituent element of the European Economic and Social Committee. This slight turn was confirmed with the setting up of the Forum of the civil society⁴⁶ in parallel with the proceedings of the Convention convened with the intention to pave the way for the following intergovernmental conference aimed to draft the future Treaty establishing a constitution for Europe, to which we have already referred.

Continuing in the direction of fostering the direct participation of citizens, one of the more relevant developments was the introduction of the European citizens' initiative⁴⁷, in the Treaty establishing a Constitution for Europe and then in the Treaty of Lisbon, which constitutes the object of this article.

Thus, during the last phase of the Convention, in May 2003, professor Jürgen Meyer, representative of the German *Bundestag*, proposed to insert in the future Constitution the possibility for the citizens of submitting to the European Commission any proposal on matters on which they consider that a legal act was needed for the purpose of implementing the Constitution⁴⁸.

making and law-enforcement processes — a quest for legitimacy», in D'ASPROMONT, J., (ed.) *Participants in the International Legal System. Multiple perspectives on non-state actors in international law*, Routledge, London, 2011, p. 407.

⁴⁴ OJ 2001 C 80/1.

⁴⁵ Article 257.

⁴⁶ Meaning by that: «... the social partners, the business world, non-governmental organizations, academia, etc.». See: Presidency conclusions. European Council meeting in Laeken on 14 and 15 December 2001. About the final relevance in the Convention that had the Forum see: CAMMAERTS, B., *op. cit.*, note 26, pp. 170-175.

⁴⁷ In that sense see: *Ibid.*, p. 169.

⁴⁸ Suggestion for amendment of Article: I-46, part I, title VI (CONV 724/03), by Prof. Dr. Jürgen Meyer, Delegate of the German Bundestag. Available online at: http://european-convention.europa.eu/docs/Treaty/pdf/34/34_Art%20I%2046%20Meyer%20EN.pdf (last visited on 4 August 2015). The proposal contained the following explanation: «The effect of the above proposal is to bring Europe closer to the people, as Laeken recommended. It represents a large step in the democratisation of the Union. It will extend the existing right of petition to a right of the citizens to present legislative proposals to the Commission of the EU. The commission has then to decide whether it will take legislative activity or not. It is very important that the threshold for the signatures that are to be gathered for the European Citizens' Legislative Submission is not too high. A high threshold interferes with the process and effectively allow only powerful organizations the possibility of securing the required signatures». (*Ibid.*). About the origin of the European citizens' initiative during the Convention see as well: LEVRAT, N., «L'initiative citoyenne européenne: une réponse au déficit démocratique?», *Cahiers de droit européen*, 2011, p. 58 and CUESTA LÓPEZ, V., «The Lisbon Treaty's Provisions on Democratic Principles: A Legal Framework for Participatory Democracy», *European Public Law*, 16, 1, 2010, p. 136.

This proposal was accepted by the *Praesidium*, and then appeared as the paragraph 4 of Article I-47 of the Treaty establishing a Constitution for Europe⁴⁹ and that, later on, became the paragraph 4 of Article 11 of the Treaty on European Union, cited above.

However, the facts should be placed in their context. In this respect, it is important to note that the insertion of the Citizens' initiative in the Treaty establishing a Constitution for Europe took place in an article named «The principle of participatory democracy» (I-47)⁵⁰, which was linked to a previous one, called «The principle of representative democracy» (I-46), in a title dedicated to «the democratic life of the Union» (Title VI). After the failure of the Constitution, those provisions have entered into the Constitutive Treaties with the Treaty of Lisbon, being today Article 10 and 11 respectively of the Treaty on European Union.

Therefore, even if the institution of the European citizens' initiative of Article 11 of the Treaty on European Union supposes a great advance as for democratic participation of the citizens, it is however very significant the clarity with which the current Article 10 gives absolute priority to the traditional, or representative, democracy. Indeed, the paragraph 1 reads as follow: «The functioning of the Union shall be founded on representative democracy», and the paragraph 2 states that: «Citizens are directly represented at Union level in the European Parliament». This language contrasts with the indefinite promises contained in Article 11, according to which the institutions of the Union will give to the citizens some ability to express their opinions through the appropriate channels. Definitively, the difference of weight between the participative democracy and the representative one in the functioning of the Union, according to the Constitutive Treaties, is enormous⁵¹.

Anyway, let us continue exposing the origin and the legal framework of the European citizens' initiative. Article 24 of the Treaty on the Func-

⁴⁹ OJ 2004 C 310/01.

⁵⁰ For professor Auer, the citizens' initiative opened «... a new constitutional competence for the citizens ...». See: AUER, A., «European Citizens' Initiative», *European Constitutional Law Review*, 1, 2005, p. 80.

⁵¹ But, it seems to us that the participative democracy has also its limits and should not replace the representative one, because in principle the traditional democracy can serve better the general interest of the population, whereas the NGOs or the groups of individuals are at risk of defending only particular interests. In that sense see also: MARTÍ, J.L., «Alguna precisión sobre las nuevas tecnologías y la democracia deliberativa y participativa», in: *La democracia electrónica [monográfico en línea]*. IDP. *Revista de Internet, Derecho y Política*, 6, 2008, p. 5; PRIEDITIS, M. «Participation in the legislative process and new information technology», in KARPEN, U., (ed.), *E-Government : Proceedings of the Fifth Congress of the European Association of Legislation (EAL) in Athens (Greece), November 28th-29th, 2002*, 2005, p. 114.

tioning of the European Union, authorized both the Parliament and the Council to adopt the provisions for the procedures and conditions required for a citizens' initiative within the meaning of Article 11 of the Treaty on European Union.

Those procedures and conditions are set out in the Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative⁵². According to this Regulation, in order to launch a citizens' initiative, the individuals must form a citizens' committee composed of at least seven EU citizens old enough to vote in the European Parliament elections and being resident in at least seven different member states⁵³. The citizens' committee must require the Commission to register its initiative online before starting to collect statements of support from citizens. Then the Commission, within two months from the receipt of the information, has to verify that the citizens' committee has been correctly formed; that the proposed citizens' initiative does not manifestly fall outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties; that the proposed citizens' initiative is not manifestly abusive, frivolous or vexatious; and that the proposed citizens' initiative is not manifestly contrary to the values of the Union as set out in Article 2 of the Treaty on European Union⁵⁴. Once the registration is confirmed, organisers have one year to collect statements of support in paper form or electronically⁵⁵. The initiative has to be backed by at least one million EU citizens, coming from at least seven out of the 28 member states⁵⁶. A minimum number of signatories⁵⁷ is required in each of those seven member states. In order to be eligible to support a proposed citizens' initiative, signatories shall be citizens of the Union and shall be of the age to be entitled to vote in elections to the European Parliament⁵⁸. Once the required number of statements of support has been collected, and once organisers have received the certificates from the competent national authorities demonstrating that they have collected the required number of statements of support, the organisers may submit the citizens' initiative to the Commission, accompanied by information regarding any support and funding

⁵² European Parliament and Council Regulation (EU) 211/2011, of 16 February 2011, on the citizens' initiative, OJ 2011 L 65.

⁵³ *Ibid.*, Article 3.

⁵⁴ *Ibid.*, Article 4, paragraph 2.

⁵⁵ *Ibid.*, Article 5, paragraph 2, and 5.

⁵⁶ *Ibid.*, Article 5, paragraph 5, and Article 7.

⁵⁷ *Ibid.*, Annex I.

⁵⁸ *Ibid.*, Article 3, paragraph 4.

received for that initiative⁵⁹. The Commission shall, «within three months, set out in a communication its legal and political conclusions on the citizens' initiative, the action it intends to take, if any, and its reasons for taking or not taking that action»⁶⁰.

When it comes to ascertaining the possible remedies in the hands of the organisers in face of a negative answer by the Commission, either *ab initio*, when considering admissibility at registration, or upon examination of a successfully registered proposal, the Regulation does not clarify matters deeply. Nevertheless, regarding the decision on registration, Article 4(3) states that «[w]here it refuses to register a proposed citizens' initiative, the Commission shall inform the organisers of the reasons for such refusal and of all possible judicial and extrajudicial remedies available to them». The Regulation itself does not provide any further detail as to what the remedies in question are. However, it seems logical that the organisers should be able to challenge such a decision in the framework of an action for annulment under Article 263 of the Treaty on the Functioning of the European Union (TFEU)⁶¹, something that the Commission has recommended for cases in which the registration has been rejected⁶². On the other hand, in reality, the Commission has also recommended to file a complaint about maladministration with the European Ombudsman under the conditions specified in Article 228 of the TFEU⁶³.

On the contrary, nothing is foreseen in regard to the decision of the Commission upon examination of a successfully registered proposal, but the same solution would be applicable here.

To sum up, the relevance of the new institution of European citizens' initiative in the European Law context is that it gives the individual the possibility to participate in the legislative process of an international organisation with capacity to create binding norms for all the subjects in

⁵⁹ *Ibid.*, Article 8, paragraph 2, and Article 9, paragraph 1.

⁶⁰ *Ibid.*, Article 10 c). On 31 March 2015, the European Commission adopted the Commission Delegated Regulation (EU) 2015/1070 of 31 March 2015 amending Annexes III, V and VII of the Regulation (EU) No 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative, OJ L 178/1.

⁶¹ On this matter see also: SZELIGOWSKA, D, and MINCHEVA, E., «The European Citizens' Initiative — Empowering European Citizens within the Institutional Triangle: A Political and Legal Analysis», in *Bruges Political Research Papers*, 24, 2012, p. 71; and: LEVRAT, N., *op. cit.*, note 48, pp. 93-97.

⁶² For instance, in the case of the Stop TTIP, see: European Commission, *Commission's reply stating the reasons for refusal of registration of a proposed citizens' initiative entitled «STOP TTIP*, C (2014) 6501 final, 10.09.2014, available online at: <http://ec.europa.eu/citizens-initiative/public/initiatives/non-registered/details/2041>, last visited on 10 August 2015.

⁶³ *Ibid.*

Community Law. Of course, it is in an indirect way, since the European Commission can reject the citizens' invitation and in the end, if the Commission accepts the initiative, the idea will be transformed in a Commission proposal. However, the European citizens' initiative supposes a new exception to the monopoly to draft and submit legislative proposals that the Constitutive Treaties in Community Law have given to the European Commission. Therefore, in the context of the right of legislative initiative in the European Union, it places the individual in the same position as the European Parliament, the Council of Ministers, the member states, the European Central Bank, the Court of Justice of the European Union and the European Investment Bank, which, in a few well defined cases, may ask the Commission to submit legislative proposals⁶⁴.

Finally, in order to determine the relevance of the European citizens' initiative in an appropriate context, it is necessary to see if there are similar institutions in other international organizations of regional integration. In this regard, it is worth mentioning that there are already some studies about the level of democratization of international organizations⁶⁵ and that exploration reveals that any other legal institutions similar to the European citizens' initiative has yet to emerge in the rest of the world⁶⁶.

IV. The European citizens' initiative in practice until now

It is still too early to assess the influence of the European citizens' initiative both on the EU legislative process and on International Law, tak-

⁶⁴ On this matter see i.e: Articles 17. 2 and 22.2 TEU, and 76, 129, 225, 241, 257 and 289 TFEU.

⁶⁵ One of them is the 2014 first report of the International Democracy Watch, an international research study group promoted by the Centre for Studies on Federalism, based in Turin, Italy, which constitute a useful tool to compare the European Union with other regional international organizations: LEVI, L.; FINIZIO, G., and VALLINOTO, N., (eds), *The democratization of International Institutions*, Routledge, London, 2014. Another interesting studies are: ZWEIFEL, TH. D., *International Organizations & Democracy. Accountability, Politics, and Power*, Lynne Rienner, Boulder, 2006; RIBEIRO HOFFMANN, A., and VAN DER VLEUTEN, A., (eds), *Closing or Widening the Gap? Legitimacy and Democracy in Regional Integration Organizations*, Ashgate, Hampshire, 2007.

⁶⁶ To a similar result has arrived a study conducted by Democracy international, an association registered in Germany with international scope, aimed at strengthening direct democracy at all political levels in the nation states, in the EU and on the global level. See: https://www.democracy-international.org/sites/democracy-international.org/files/PDF/eci_support_centre_response_to_the_european_ombudsman_own_inquiry_into_the_functioning_of_the_european_citizens_initiative.pdf.

ing into account that only three and a half years passed since the moment at which the possibility to promote citizen's initiative arrived, that is to say the entering into effect of the Regulation (EU) No 211/2011 on 1 April 2012. However, some reflection can already be done on this matter. Since that date, the Commission has received 51 requests for registration of proposed citizens' initiatives⁶⁷. 31 of them were registered⁶⁸. 20 proposed initiatives did not fulfil the registration criteria set up in Article 4.2 of the Regulation (EU) No 211/2011, and therefore could not be registered by the Commission⁶⁹. Among those registered, ten were withdrawn before the end of their collection period⁷⁰ and 18 initiatives reached the end of it. Among those 18, two seem to be in a sort of grey zone in which, according to the Commission, it is not clear whether the organisers managed or failed to collect the required number of statements of support⁷¹; 13 did not manage to

⁶⁷ European Commission, *Report from the Commission to the European Parliament and the Council on the application of Regulation (EU) No 211/2011 on the citizens' initiative*, COM(2015) 145 final, 31.3.2015, available online at: <http://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-145-EN-F1-1.PDF>, last visited on 10 August 2015.

⁶⁸ *Ibid.*

⁶⁹ Stop TTIP; Vite l'Europe sociale ! Pour un nouveau critère européen contre la pauvreté; Ethics for Animals and Kids; A new EU legal norm, self-abolition of the European Parliament and its structures, must be immediately adopted ; The Supreme Legislative & Executive Power in the EU must be the EU Referendum as an expression of direct democracy; Our concern for insufficient help to pet and stray animals in the European Union; Right to Lifelong Care: Leading a life of dignity and independence is a fundamental right!; To hold an immediate EU Referendum on public confidence in European Government's (EG) competence; Minority SafePack — one million signatures for diversity in Europe; Stop cruelty for animals; Cohesion policy for the equality of the regions and sustainability of the regional cultures; Ensemble pour une Europe sans prostitution légalisée; Enforcing selfdetermination Human Right in the EU; Unconditional Basic Income; Création d'une Banque publique européenne axée sur le développement social, écologique et solidaire; One million signatures for a Europe of solidarity; Abolición en Europa de la tauromaquia y la utilización de toros en fiestas de crueldad y tortura por diversión; My voice against nuclear power; Fortalecimiento de la participación ciudadana en la toma de decisiones sobre la soberanía colectiva; Recommend singing the European Anthem in Esperanto. (<http://ec.europa.eu/citizens-initiative/public/initiatives/non-registered>; last visited on 10 August 2015).

⁷⁰ Moveurope; New Deal 4 Europe; Turn Me Off;; Teach for Youth – Upgrade to Erasmus 2.0; Kündigung Personenfreizügigkeit Schweiz; European Initiative for Media Pluralism; End Ecocide in Europe: A Citizens' Initiative to give the Earth Rights; Let me vote; EU Directive on Dairy Cow Welfare; Single Communication Tariff Act. (http://ec.europa.eu/citizens-initiative/public/initiatives/obsolete/withdrawn_by_organiser; last visited on 10 August 2015).

⁷¹ Weed like to talk; European Initiative for Media Pluralism; (http://ec.europa.eu/citizens-initiative/public/initiatives/finalised/collection_closed; last visited on 10 August 2015).

collect the required number of statements of support⁷²; three initiatives have reached the required number of statements of support and were submitted to the Commission: «Water and sanitation are human rights! Water is a public good, not a commodity!» («Right2Water»), «One of us», and «Stop vivisection»; the three of them have already received a formal response from the Commission. Finally, three initiatives are currently collecting statements of support⁷³.

At the present, only the *Right2Water* initiative has been accepted by the Commission⁷⁴, which means that only about 2% of the initiatives promoted achieved partially their objectives. And that is not all, since we have to wait to see what the outcome of this initiative in the legislative process will be, bearing in mind that, in its communication accepting the initiative, the Commission did not announce any new legal proposal, but only that it would «... reinforce implementation of its water quality legislation, ...»⁷⁵. Such a poor outcome has already been criticized by the European Parliament, which, in its resolution on the follow-up to the European citizens' Initiative Right2Water, has stressed that «...the response given by the Commission to the Right2Water ECI is insufficient, as it does not make any fresh contribution and does not introduce all the measures that might help to achieve the goals»⁷⁶. The Parliament, in conclusion, has called on the Com-

⁷² European Free Vaping Initiative; DO NOT COUNT EDUCATION SPENDING AS PART OF THE DEFICIT! EDUCATION IS AN INVESTMENT!; Act 4 Growth; Let me vote; End Ecocide in Europe: A Citizens' Initiative to give the Earth Rights; Unconditional Basic Income (UBI) – Exploring a pathway towards emancipatory welfare conditions in the EU; Single Communication Tariff Act; «30 km/h – making the streets liveable!»; Central public online collection platform for the European Citizen Initiative; Suspension of the EU Climate & Energy Package; Pour une gestion responsable des déchets, contre les incinérateurs; High Quality European Education for All; Fraternité 2020 – Mobility. Progress. Europe (http://ec.europa.eu/citizens-initiative/public/initiatives/obsolete/conditions_not_fulfilled; last visited on 10 August 2015).

⁷³ 10 August 2015. On The Wire; For a socially fair Europe! Encouraging a stronger cooperation between EU Member States to fight poverty in Europe; An end to front companies in order to secure a fairer Europe (<http://ec.europa.eu/citizens-initiative/public/initiatives/ongoing>; last visited on 10 August 2015).

⁷⁴ European Commission, *Communication from the Commission on the European Citizens' Initiative «Water and sanitation are a human right! Water is a public good, not a commodity!»*, COM(2014) 177 final, 19.3.2014, available at: <http://ec.europa.eu/transparency/regdoc/rep/1/2014/EN/1-2014-177-EN-F1-1.Pdf>, last visited 10 August 2015.

⁷⁵ *Ibid.*, conclusions.

⁷⁶ European Parliament, *Resolution of 8 September 2015 on the follow-up to the European Citizens' Initiative Right2Water (2014/2239(INI))*, available online at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2015-0294+0+DOC+XML+V0//EN>, last visited 6 October 2015.

mission, in line with the primary objective of the Right2Water initiative, to come forward with legislative proposals⁷⁷.

On the other hand, seven citizens' committees decided to bring proceedings before the General Court against Commission decisions refusing the registration of their proposed initiatives⁷⁸. All of these cases are pending. The European Ombudsman received two complaints from organisers of initiatives, which were both resolved, concluding that there had been no maladministration by the Commission⁷⁹.

This result is of course very poor and says little in favor of the scope of the European citizen's initiative in the European Law making.

V. Conclusion

The European citizens' initiative was conceived to open a door to direct democracy in the functioning of the EU. In this sense, it is a unique legal institution in the law of international organizations, considering that, so far, no similar right for citizens is supported by any other international organization in the world.

By associating European citizens in the formation of some important EU resolutions, the European citizens' initiative allows individuals to take part in the law making process of European Law, and thus in International Law, at least in an indirect way. In that sense, potentially, it is a significant step towards expanding the international legal personality of individuals.

Nevertheless, this potential influence is weakened by the poor outcome of the proposals reaching the European Commission have had in the first three years since the way was opened for presenting initiatives. The fact that, to date, among 51 initiatives presented, only one has been accepted by the European Commission presents an enormous shock for the citizen's ex-

⁷⁷ *Ibid.*

⁷⁸ Cases T-754/14 (*Efler and Others v Commission*); T-561/14 (*One of Us and Others v Parliament and Others*); T-361/14 (*HB and Others v Commission*); T-44/14 (*Costantini and Others v Commission*); T-646/13 (*Minority SafePack — one million signatures for diversity in Europe and Others v Commission*); T-529/13 (*Izsák and Dabis v Commission*); and T-450/12 (*Anagnostakis v Commission*).

⁷⁹ European Ombudsman, *Decision of the European Ombudsman closing the inquiry into complaint 2071/2013/EIS against the European Commission*, 12 December 2014, available at: <http://www.ombudsman.europa.eu/en/cases/decision.faces/en/58564/html.bookmark>, last visited 10 August 2015; European Ombudsman, *Decision of the European Ombudsman closing the inquiry into complaint 402/2014/PMC against the European Commission*, 31 Mar 2015, available online at: <http://www.ombudsman.europa.eu/en/cases/decision.faces/en/59451/html.bookmark>, last visited 10 August 2015.

pectations. Furthermore, bearing in mind the feeble legal response given by the European Commission to the only successful initiative, Right2water, the situation becomes even more cloudy; something that is being strongly criticized by the civil society and by the European Parliament, where a resolution on the follow-up to that European citizens' Initiative has urged the Commission to come forward with legislative proposals.

If European institutions do not seize upon the opportunity created in 2007 by the Treaty of Lisbon aimed at the democratization of European policies and the association of European citizens in their daily work, the gap between the EU and its citizens will grow at this critical moment. For that reason, the European institutions could profitably be urged to modify the regulation of the European citizens' initiative, even at the level of the Constitutive Treaties.

In any case, since the European citizens' initiative is only an indirect way to create international rules, the mere existence of this legal institution does not allow the conclusion that the individual has acquired a complete status in International Law.

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