

# SHOULD CITIZENS BE DEMOCRATICALLY REPRESENTED IN THE 21ST CENTURY INTERNATIONAL SYSTEM?

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## I. INTRODUCTION

Democracy is increasingly the *sine quo non* of legitimate governance at the local, provincial and national levels. As power increasingly transfers to the international system, a decent collective future for humankind is likely to hinge on the extent to which we can integrate the values of democracy into the global system. If a more than cosmetic democratization of the global order is to occur, some institution or institutions representing citizens directly will need to take a prominent place within it.

Different people will have different ideas about how this can be done, and I do not wish to suggest that there is only one way parliamentary processes can be institutionalized at the global level.<sup>1</sup> But to make today's discussion concrete, and to encourage further dialogue, I will first present the proposal for a global democratic organization that Richard Falk and I have been promoting.<sup>2</sup> I will then discuss why I believe some initiative along the lines we are suggesting is important to our collective future.

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1. For example I compare four different approaches to initiating a global parliament in Andrew Strauss, *On the First Branch of Global Governance*, 13 WIDENER L. REV. 347 (2007).

2. For some of our representative works see, e.g., Richard Falk and Andrew Strauss, *Toward Global Parliament*, 80 FOREIGN AFF. 212 (Jan./Feb. 2001); Richard Falk and Andrew Strauss, *On the Creation of a Global Peoples Assembly: Legitimacy and the Power of Popular Sovereignty*, 36 STAN J. INT'L L. 191 (2000); Richard Falk and Andrew Strauss, *The Deeper Challenges of Global Terrorism, A Democratizing Response*, in *DEBATING COSMOPOLITICS*, (Archibugi, Ed., 2003).

## II. THE PROPOSAL FOR A GLOBAL PARLIAMENTARY ASSEMBLY

Richard Falk and I have been arguing that it is time to respond to the crisis of democratic legitimacy with the creation of a Global Parliamentary Assembly (GPA), a popularly elected world parliamentary body modeled on the European Parliament. The key to this proposal for a global parliament is that it is potentially transformative of the global system, while at the same time being politically realistic. It is potentially transformative in that its ultimate goal is a universally elected world body with limited but important legislative powers.<sup>3</sup> It is politically realistic in that it prescribes a process of incremental steps for bringing this vision to fruition. We propose that a stand-alone treaty agreed to by a vanguard of progressive democratic countries constitute the GPA.<sup>4</sup> We have suggested that even as few as twenty geographically, and economically diverse countries could be enough to found the GPA.<sup>5</sup> At the beginning, so as not to be too threatening to existing national leaders, the GPA's powers could be largely precatory. A civil society campaign could help create a political climate conducive to the successful conclusion of such a treaty.<sup>6</sup> The hope would be that the success of the kinds of initiatives best exemplified by the creation of the International Criminal Court could be repeated.

One lesson of the last half of the twentieth century is that Promethean plans to instantly transform global governance are exceedingly difficult to realize. What has proved successful, however, is the incrementalism that culminated in the European Union. Though the future cannot be predicted, once in place a GPA would be poised to grow in influence. Citizen elections would give it a unique visibility, and as the only global institution with a popular mandate, citizen groups would likely petition the parliament to pass resolutions supporting their causes. Those opposed, be they industrial lobbies, states, or other citizen groups would be unlikely to willingly cede the parliament's popular legitimacy to their policy opponents. Instead, playing out the familiar process of parliamentary politics, they would likely participate as well. The parliament's arena could

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3. The scope of the GPA's ultimate powers would, of course, be the subject of wide ranging negotiations involving multiple stake holders over an extended period of time. There is, however, likely to be strong consensus on two limitations to the GPA's powers as fundamental to its status as a globally democratic body. The first is that its prerogatives be limited by the human rights protections enshrined in the Universal Declaration of Human Rights and other similar human rights instruments. The second is that the GPA's powers be limited by the principle of subsidiary, that it should only legislate in areas that are appropriately in the international, as opposed to the domestic, sphere.

4. *Toward Global Parliament*, *supra* note 2, at 219.

5. *Id.*

6. See Campaign for the Establishment of a United Nations Parliamentary Assembly, [http://en.unpacampaign.org/appeal/support/mps\\_all\\_0.php](http://en.unpacampaign.org/appeal/support/mps_all_0.php) (last visited Feb. 25, 2010).

grow as a much needed venue where the various global interests could directly interact to promote their positions and resolve differences without having to rely on their respective governments to be intermediaries.

Once the GPA is established, citizen groups from countries all over the world could petition their governments to join, and once a critical mass of membership is reached even authoritarian governments would find it politically costly to deny their citizens the right to be represented through free and fair elections in the one globally democratic institution. At some point in its evolution the Parliament's formal legal powers, as well as its relationship with the United Nations, would have to be settled. Perhaps it could, along with the General Assembly, be a part of a bicameral global legislative system.

### III. THE CASE FOR A GLOBAL PARLIAMENTARY ASSEMBLY

#### A. *Democracy*

The international system is not organized along democratic lines. Most significantly, it does not provide citizens, or even states, an equal democratic right to participate in the political process. The UN Security Council, for example, does not allow meaningful citizen participation, and it only includes representatives from fifteen countries.<sup>7</sup> As is well known, even delegates from most of those fifteen countries are not fully enfranchised as the Security Council's five permanent members can unilaterally veto non procedural resolutions.<sup>8</sup> Even organizations that are ostensibly more democratic such as the World Trade Organization, where voting is based on member consensus,<sup>9</sup> are in truth largely controlled by the dictates of a few dominant members.<sup>10</sup> As the demands of globalization increasingly transfer power from many relatively democratic national systems to the undemocratic international system, the future of democracy may depend upon the international system being democratized.

A GPA would introduce democratic equality into the global system. If democratically constituted, it would grant citizens a substantially equal voice in choosing their representatives, and all citizens would have access to the parliament's processes. In addition a GPA would further the goal of

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7. U.N. Charter art. 23, para. 1.

8. *Id.* art 27, para. 3.

9. See Marrakesh Agreement Establishing the World Trade Organization, art. IX, para. 1, 33 I.L.M. 1140 (1994).

10. See Sonia E. Rolland, *Developing Country Coalitions at the WTO: In Search of Legal Support*, 48 HARV. INT'L L.J. 483, 525-530 (2007) (discussing the practice of "Green Room" decision-making whereby important decisions are made outside of formal processes by the most influential countries).

making international organizations democratically accountable to the global citizenry. While the powers of the GPA would grow gradually, even from its inception, it could play a positive advisory role in democratically overseeing the global system by holding hearings, issuing reports, and passing resolutions. To have the Director General of the World Trade Organization, for example, appear before the only popularly elected global body to answer to citizen representatives would introduce some popular accountability into the system.

### *B. Effective Global Governance*

The undemocratic international system is often unable to enforce law on states. This means that it cannot effectively act to protect vital community interests, such as in the control and elimination of weapons, the preservation of the earth's biosphere, and the protection of fundamental human rights. The problem is that to maximize their autonomy, governments have erected a global system where with limited exceptions a state is bound only by laws it agrees to, and even once bound, states often flaunt those laws they find disagreeable or inconvenient.<sup>11</sup>

Unlike the United Nations, in the GPA delegates would be elected by citizens rather than appointed by states. Because national capitals would not control citizen elected representatives, they would be unlikely to favor states maintaining their autonomy not to comply with international law. To the contrary, the institutional interests of GPA delegates would be in expanding that organization's powers. Over time they would, therefore, likely push for democratically approved international laws to be collectively binding on states and, even more importantly, on citizens directly. If citizens, loyal to an assembly elected by them, and that allowed for their lobbying and other participation, began to answer the call to directly follow

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11. The two primary sources of international law are treaties and customary international law. States maintain that they are only bound by treaties to which they agree to become party. States, likewise, generally maintain that they are not bound to general customary international law if they object to the custom at the time of its formation (the persistent objector rule). See Luigi Condorelli, *Custom, in International Law: Achievements and Prospects* 179, 205 (Mohammed Bedjaoui ed., 1991). Because states can seldom demonstrate that they manifested this lack of consent, customary international law is not completely consensual. See generally J. Patrick Kelly, *The Twilight of Customary International Law*, 40 VA. J. INT'L L. 449 (2000). In addition, most states accept that states cannot opt out of a certain limited class of international *jus cogens* norms that are so fundamental to international society's core values as to be non-derivable. See, e.g., Vienna Convention on the Law of Treaties, May 23, 1969, art. 53, 1155 U.N.T.S. 331, 334 (1969) (providing that a treaty is "void if . . . it conflicts with a peremptory norm of general international law"). Peremptory norms are probably inclusive of core human rights standards. See Lauri Hannikainen, *Peremptory Norms (jus cogens) in International Law: Historical Development, Criteria, Present Status*, Part III (1988).

democratically inspired international law, governments would lose the requisite influence over those they rely upon to defy international law.

### *C. War and the Prevention of Terrorism*

In the age of weapons of mass destruction, the most dangerous deficiency of the global system is its propensity for political violence. A global parliament would provide a democratic substitute to achieving national security through domination and violence. In a global parliament there would be no unified states to counter, contain, or even attack other states. Rather, as occurs in other multinational parliaments, such as in India, Canada or in the European Parliament, delegates would likely break national ranks to vote along lines of interest and ideology.<sup>12</sup> Thus, fluid transnational parliamentary coalitions could begin to supplant conflict, including armed conflict, among states. If parliamentary decision-making proved itself successful, it is possible to imagine over time a genuine lessening of global tensions, and perhaps, if citizens gradually gained confidence in global democratic processes, meaningful disarmament.

Likewise, the GPA would offer disaffected citizens an alternative to terrorism and other forms of political violence. Those impassioned about perceived injustices would be less likely to feel forced to choose between surrender and resort to desperate tactics. Citizens would be able to stand for office, champion candidates, and form coalitions to lobby the parliament. Those with diverse or opposing views would be brought into a give-and-take setting that would improve the chances for compromise and reconciliation. When compromise is not possible, even those whose views do not prevail would more likely accept defeat out of a belief in the fairness of the process, and a knowledge that they could continue to press their cause on future occasions.

In particular, a Global Parliamentary Assembly would directly counter the attraction of antidemocratic extremists such as Al Qaeda. One important feature of a liberal parliamentary process is its capacity to assimilate even those who do not share a pre-existing commitment to democracy. Because parliaments invite participation and have the ability to confer popular legitimacy on a policy position, experience suggests that even those with extreme agendas will often be drawn into the parliamentary process. Of course, the Osama bin Ladens of the planet will never accept the legitimacy of a global parliament. But their ability to attract a

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12. For an examination of transnational voting in the European Parliament, *see generally* Amie Kreppel, *THE EUROPEAN PARLIAMENT AND SUPRANATIONAL PARTY SYSTEM: A STUDY IN INSTITUTIONAL DEVELOPMENT* (2002).

significant following would be diminished by the vitality of such an institution.

#### IV. CONCLUSION

In making today's case for a GPA, I have argued that such an institution is both feasible and highly desirable. Of course, the constraints of a conference where global democracy is only one among many topics has required that my presentation be at the most general level of abstraction. Many more questions at the threshold between feasibility and desirability must be satisfactorily answered for such a project to proceed to fruition.

For example, what voting method or methods for selecting parliamentarians should be adopted, and in this connection how would voting districts be determined? Likewise, how would a GPA ensure that the elections to select its membership are both free and fair? What rules of campaign finance would be appropriate and workable for a globally elected body?

In addition, how would the parliament be organized internally? What would be the role of political parties, and what systems would have to be put in place to ensure that the parliament's business was appropriately translated so both parliamentarians and citizens from all over the world could fully participate in the organization's business?

As important as it is that these matters be appropriately considered by scholars and those who wish to participate in building a GPA project, they are of the nature of the questions that all democratic polities must face and should not obscure the twin core realities that it has been my purpose to convey today: The global system is deficient in that it is undemocratic, ineffective, and prone toward political violence, and a global democratic vision, practically and incrementally pursued, could make an important contribution toward overcoming these deficiencies.