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The parliament of the world? Reflections on the proposal to establish a United Nations Parliamentary Assembly

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Abstract

On 5 July 2018, the European Parliament adopted a recommendation to the Council endorsing a proposal for the establishment of a United Nations Parliamentary Assembly. Conceived as a new primary organ of the United Nations (UN), the Parliamentary Assembly aims at complementing the work of the General Assembly by giving direct representation to the peoples of the world and passing binding legislation. This article reconstructs the historical roots of the proposal and speculates about the possible legal implications for both the UN and its member states stemming from the establishment of an elected citizens' chamber within an intergovernmental organization. An argument is made that in order to achieve the stated goals of the model of United Nations Parliamentary Assembly endorsed by the European Union (EU), the required institutional changes to the UN system would be so radical as to effectively repudiate it in favour of a newly established system of international co-operation.

Keywords: democracy; global governance; UN Parliamentary Assembly; world law; world parliament

1. Introduction

A recent proposal advocating the creation of a UN Parliamentary Assembly has revived the old academic debate of creating a world parliament to give unmediated voice to the citizens of the world in international institutions. Initially put forward by the World Federalist Movement in 1992,¹ but endorsed by the European Parliament since 1993,² the proposal calls for implementing cosmopolitan ideals about democracy in international institutions. In this respect, it is reminiscent of Thomas Franck's suggestion of creating a second chamber of the UN General Assembly as a means to address, and redress, the 'both manifestly unfair and, ultimately, destructive' characteristic of the current global discourse, 'where voice and vote are reserved exclusively for governments'.³ Compared to the previous ones, the novelty of the proposal lies in the suggestion to create a new principal organ of the UN aimed at complementing the work of the UN General Assembly. However, scholars have largely overlooked the theoretical and practical implications of the proposal. This article fills the gap in the academic literature.

The central argument put forward for the establishment of a UN Parliamentary Assembly is two-pronged. On the one hand, it questions the very notion of state sovereignty. By creating a civil

¹J. Leinen and A. Bummel, *A World Parliament: Governance and Democracy in the 21st Century* (2018), 51–5; A. Bummel, *Developing International Democracy: For a Parliamentary Assembly at the United Nations* (2010), at 17.

²European Parliament, Report of the Committee on Foreign Affairs and Security on the role of the European Union within the UN and the problems of reforming the UN (8 November 1993) A3-0331/93, at 6, para. 14.

³T. Franck, *Fairness in International Law and Institutions* (1995), at 480.

society chamber in a universal organization, it aims at creating an alternative source of legitimation of the international legal system, the General Assembly being mainly perceived as ‘a generally ineffectual talk shop’.⁴ On the other hand, it advocates the creation of a parliamentary assembly with the power of adopting binding laws.⁵ In doing so, it transcends the mandate of the UN, as envisioned by its founders.⁶ The legal significance of the proposal thus emerges in at least two respects.

The first one is theoretical. By reigniting the academic debate on the right to democratic governance and political participation in international law, it challenges some of the positivist cardinal assumptions about the legal nature of the type of international co-operation delivered by the UN, including through the General Assembly.⁷ Specifically, the conceptual premise of the proposal is that, despite the fact that the opening words of the UN Charter read ‘[w]e the peoples’, ‘[o]ne will seek in vain for any clause in the document that specifies a means by which ordinary peoples can play a role in the organization’s deliberations and decision making’.⁸

Viewed from this angle, the international community represented at the UN turns out to be a community of peoples rather than states. Hence, by pointing to an allegedly profound democratic deficit at the UN, proponents of a UN Parliamentary Assembly have repeatedly called for a radical institutional change: ‘UN decisions have impacted the lives of virtually the whole of humanity. Thus, a powerful case can be made for greater citizen input into the UN decision-making process.’⁹ However, the proposal lacks coherence, since the creation of a UN Parliamentary Assembly would be incompatible with, and therefore detrimental to, the proper functioning of some of the current institutional arrangements under the UN Charter.

The second one is pragmatic. Moving from the premise that the system of international co-operation embodied by the UN is not fully or sufficiently democratic,¹⁰ it advocates the creation of a new system of international co-operation.¹¹ The latter requires a reform of the UN system in the direction of world government.¹² Establishing a UN Parliamentary Assembly as a new principal organ of the UN is one step in that direction. While focusing on aspects related to composition and functions of the proposed UN Parliamentary Assembly, the consequences related to the implementation of the proposal have been underestimated. This is largely due to the unwillingness of states and international institutions alike to move beyond the logic of intergovernmental co-operation the proposal seeks to overcome. In this regard, the proposal lacks coherence as it advocates the creation of a peoples’ chamber endowed with the power of passing laws aimed at binding states and, through them, influencing international institutions.

Section 2 outlines the main features of the proposal to establish a UN Parliamentary Assembly while Section 3 examines the level of support to the proposal offered by the EU. Section 4 critically

⁴J. Schwartzberg, *Creating a World Parliamentary Assembly: An Evolutionary Journey* (2012), at 15.

⁵*Ibid.*, ‘the time has come for the UN General Assembly to assume a greater role in making binding decisions in respect to a limited range of matters of truly global concern . . . [T]he General Assembly should *evolve . . . into a viable legislative body*’ (emphasis added).

⁶A proposal by the Philippines to empower the General Assembly with legislative powers was rejected at the San Francisco conference in 1945. See United Nations Conference on International Organization (UNCIO) Doc. IX, (1945), at 70. See also H. Haviland and N. Entezam, *The Political Role of the General Assembly* (1951), at 26.

⁷See Schwartzberg, *supra* note 4, at 14.

⁸Campaign for a United Nations Parliamentary Assembly, Declaration of Buenos Aires (2010), para. 2. See also D. Heinrich, *The Case for a United Nations Parliamentary Assembly* (2010), at 8 (arguing that ‘through the United Nations . . . humanity has become united for the first time within one organization, in affirmation of a universal code of principles, as embodied in the UN Charter’).

⁹See Schwartzberg, *supra* note 4, at 15.

¹⁰See Heinrich, *supra* note 8, at 8.

¹¹*Ibid.*, at 9.

¹²*Ibid.* The expression world government is not to be equated with the idea of world executive. The proponents of a UN Parliamentary Assembly see it as a means for governing the world. See Schwartzberg, *supra* note 4, at 15.

assesses the proposal. Sub-section 4.1 addresses the issue of compatibility of the proposal with the relevant provisions of the UN Charter. In particular, it examines the extent to which the proposed parliamentary assembly would complement the work of the UN principal organs. Sub-section 4.2 evaluates the type of democratic entitlement the creation of the UN Parliamentary Assembly would bring to the international community. Section 5 assesses the feasibility of transplanting a parliamentary model inspired by the European Parliament's experience in the UN. Section 6 concludes. The research methodology adopted consists of normative analysis grounded on archival and doctrinal research. The article evaluates the proposal to establish a UN Parliamentary Assembly primarily through the lens of UN law.

2. The proposal in outline

A Campaign for the Creation of a United Nations Parliamentary Assembly was officially launched in 2007.¹³ Actively supported by a number of non-governmental organizations (NGOs), such as Democracy Without Borders and the World Federalist Movement,¹⁴ the Campaign has held five international meetings and quickly gained widespread support.¹⁵ Among its individual supporters feature nine Nobel laureates, including the Dalai Lama, as well as 22 current and former Heads of State or Government, 654 members of parliament and 897 former ones. Institutional support comes chiefly from the EU, including 54 current and former Members of the European Parliament.¹⁶

The stated aim of the Campaign is to address the democratic deficit in global governance,¹⁷ especially at the UN, the latter being regarded as 'the essential core institution for international cooperation and a more viable framework for effective international governance'.¹⁸ As the supporters of the Campaign point out, the bodies of international organizations are composed exclusively of officials appointed by governments.¹⁹ In turn, international organizations are not directly accountable to the citizens of the world for their actions or omissions. In order to democratize global governance, the Campaign advocates the creation of avenues for democratic representation of the world's citizens at the UN with a view to enabling them to be directly involved in the agenda-setting and decision-making process.²⁰

The logical precondition for enabling popular representation through democratically elected representatives at the UN is to establish a parliamentary assembly. To that end, the approach advocated by the Campaign's supporters is a pragmatic and gradual one aimed at achieving the eventual long-term goal of a world parliament.²¹ The envisioned strategy to attain this goal comprises three stages of development.

The first stage consists of the creation of a consultative body,²² either as a subsidiary body of the UN General Assembly²³ or through the conclusion of a multilateral treaty by an intergovernmental

¹³'UNPA campaign', available at en.unpacampaign.org/, accessed 1 April 2019.

¹⁴'About the campaign', available at en.unpacampaign.org/about/, accessed 1 April 2019.

¹⁵'Meetings', available at en.unpacampaign.org/meetings/, accessed 1 April 2019.

¹⁶'Supporters', available at en.unpacampaign.org/supporters/, accessed 1 April 2019.

¹⁷Campaign for a United Nations Parliamentary Assembly, Declaration of Brussels: Toward a Democratic and Equitable Order (2013), para. 2; Declaration of Buenos Aires, *supra* note 8, para. 4.

¹⁸See Declaration of Buenos Aires, *ibid.*, para. 6.

¹⁹'The Proposal of a UN Parliamentary Assembly', available at en.unpacampaign.org/proposal/, accessed 1 April 2019.

²⁰See Declaration of Brussels, *supra* note 17, para. 4.

²¹'Conclusions regarding policies of the Campaign for a UN Parliamentary Assembly', available at en.unpacampaign.org/about/declarations/conclusions/en/, accessed 1 April 2019.

²²See Heinrich, *supra* note 8, at 10; Schwartzberg, *supra* note 4, at 47.

²³1945 Charter of the United Nations, 1 UNTS XVI, Art. 22. See also Heinrich, *ibid.*, at 26; Leinen and Bummel, *supra* note 1, at 370.

conference, followed by a separate co-operation agreement with the UN specifying the functions and powers of the UN Parliamentary Assembly.²⁴ None of the alternatives would require an amendment of the UN Charter.²⁵ In this initial stage, the functions of the UN Parliamentary Assembly would be limited to providing support for the work of the General Assembly's committees²⁶ and improving communication between the UN, the national parliaments, and the world public mainly by way of reporting to the General Assembly.²⁷ In terms of composition, as representatives of the world citizens, delegates would be initially chosen by their governments from the members of their respective national parliaments. Alternatively, states could allow for direct popular elections from the beginning.²⁸

The second stage is the progressive consolidation of the UN Parliamentary Assembly into a democratic institution. Aimed at making the voice of governments and citizens equally heard at the UN,²⁹ the Parliamentary Assembly will progressively have all the representatives directly elected by the world's citizens. In terms of functions, it would not replace the existing bodies of the UN, but rather complement them.³⁰ For example, it would have co-decision powers with the General Assembly with regard to the UN budget³¹ and the appointment of the UN Secretary-General as well the right to submit draft resolutions to the General Assembly and the ECOSOC for consideration.³² Such an expansion of the UN Parliamentary Assembly's competence would arguably require a formal amendment of the UN Charter.

The third stage envisions the transformation of the UN Parliamentary Assembly into a primary organ of the UN, like the General Assembly or the Security Council, composed only of democratically elected representatives and able to pass 'universally binding regulations'.³³ Bummel writes that delegates at the Parliamentary Assembly would 'vote individually according to their personal judgment and [be] only bound by their conscience' rather than national interests.³⁴ Subject to UN Charter amendment, the completion of this final stage would effectively fulfil the campaigners' long-term goal of creating a world parliament.³⁵

The supporters of the Campaign argue that, by acting as an independent watchdog in the UN system, the UN Parliamentary Assembly 'for the first time would give popularly elected representatives a formal role in global affairs',³⁶ thus making the UN accountable to the world's citizens.³⁷ While advocating a reform of the present system of international institutions and global governance,³⁸ it would also act as 'a democratic reflection of the diversity of world public opinion'.³⁹ The experience of the European Parliament is advocated as a model for guiding the creation of the UN Parliamentary Assembly. Moreover, the European Parliament itself appears to be backing the Campaign's proposal.

²⁴See Declaration of Buenos Aires, *supra* note 8, para. 8.

²⁵See Leinen and Bummel, *supra* note 1, at 370.

²⁶For example, through the exercise of a right of discussion equal to the one of the General Assembly *ex Art. 10 UN Charter*. See Leinen and Bummel, *ibid.*, at 371.

²⁷See Heinrich, *supra* note 8, at 26; Schwartzberg, *supra* note 4, at 47.

²⁸A. Bummel, *The Composition of a Parliamentary Assembly* (2010), at 13–14; Schwartzberg, *supra* note 4, at 16, 40.

²⁹See Heinrich, *supra* note 8, at 11.

³⁰*Ibid.*, at 26.

³¹See Declaration of Brussels, *supra* note 17, para. 3 (referring to limited legislative rights).

³²See Bummel, *supra* note 1, at 36.

³³See The Proposal, *supra* note 19; Schwartzberg, *supra* note 4, at 31.

³⁴See Bummel, *supra* note 28, at 16.

³⁵See the outcome of the UN Parliamentary Assembly's First International Meeting held in Geneva in 2007, available at en.unpacampaign.org/meetings/november2007/, accessed 1 April 2019.

³⁶See The Proposal, *supra* note 19.

³⁷See Declaration of Buenos Aires, *supra* note 8, para. 5.

³⁸See Conclusions regarding policies, *supra* note 21.

³⁹See The Proposal, *supra* note 19.

3. Endorsement by the European Union

On 3 November 1993, the European Parliament's Committee on Foreign Affairs and Security unanimously adopted a motion for a resolution on the problem of reforming the UN.⁴⁰ Aimed at improving the goals and the structure of the UN,⁴¹ the Committee's Report envisioned 'the possibility of setting up within the UN a *Parliamentary Consultative Assembly* to enable the elected representatives of peoples to participate more fully in the work of UN bodies'.⁴² It also pointed out that, in terms of nature and power, the UN General Assembly is, to a certain extent, comparable to the European Parliament.⁴³ However, while advocating a closer relationship of the General Assembly with the peoples of the world through direct elections,⁴⁴ the Committee never discussed the functions the reformed General Assembly would serve. Nor did it elicit further discussion.

For over a decade, the proposal to establish a parliamentary assembly at the UN did not feature in the European Parliament's annual debate on the role of the EU in the UN and the latter's needs for reform. It reappeared in 2005 in a motion for a resolution on the reform of the UN, this time calling for the establishment of a *United Nations Parliamentary Assembly* within the UN system.⁴⁵ The terminological change does not appear to be coincidental.

Aimed at addressing the democratic deficit of the UN,⁴⁶ the 2005 resolution does not elaborate on the concrete features of the proposed UN Parliamentary Assembly. The information provided is scant, fragmentary, and rather superficial. The relevant passage from the text of the adopted resolution reads:

[The European Parliament] Calls for the establishment of a United Nations Parliamentary Assembly (UNPA) within the UN system, which would *increase the democratic profile and internal democratic process of the organisation and allow world civil society to be directly associated in the decision-making process*; [The European Parliament] states that the Parliamentary Assembly should be vested with *genuine rights of information, participation and control*, and should be able to *adopt recommendations directed at the UN General Assembly*.⁴⁷

The wording of the resolution is immediately reminiscent of the Campaign's proposal to establish a UN Parliamentary Assembly.⁴⁸ Indeed, the discussion following the adoption of the resolution features statements made by Members of the European Parliament who also happen to be public supporters of the Campaign for a UN Parliamentary Assembly.⁴⁹ Other Members of the European Parliament have endorsed the idea of creating a parliamentary assembly without referring to any function or power of the advocated institution.⁵⁰ The limited number of statements, as well as the absence of a dedicated debate on the creation of a parliamentary assembly at the UN, suggests a weak interest on part of the European Parliament to mobilize time and resources to implement the proposal.

⁴⁰See Report of the Committee on Foreign Affairs and Security, *supra* note 2.

⁴¹*Ibid.*, at 4, para. A.

⁴²*Ibid.*, at 6, para. 14 (emphasis added).

⁴³*Ibid.*, at 13.

⁴⁴*Ibid.*, at 13–14.

⁴⁵European Parliament, Motion for a resolution to wind up the debate on statements by the Council and Commission pursuant to Rule 103(2) of the Rules of Procedure by Armin Laschet on behalf of the Committee of Foreign Affairs (30 May 2005), B6-0328/2005, point 36.

⁴⁶See Amendment 111 to the draft motion for a resolution (4 May 2005), AM\563197EN.doc (amendment by Jo Leinen, Véronique De Keyser, Pasqualina Napolitano, Michael Rocard, Jan Marinus Wiersma, and Ana Maria Gomes).

⁴⁷European Parliament, Resolution on the reform of the United Nations (9 June 2005), Res P6_TA(2005)0237, point 39 (emphasis added).

⁴⁸See *supra* Section 2 discussion.

⁴⁹Verbatim report of proceedings (8 June 2005), P6_CRE(2005)06-08_DEF_EN, statement by Jo Leinen, at 44 (referring to the need to establish a Parliamentary Assembly within the UN); Verbatim report of proceedings (28 September 2005), P6_CRE(2005)09-28_DEF_EN, statement by Jo Leinen, at 69.

⁵⁰See P6_CRE(2005)06-08_DEF_EN, *ibid.*, statement by Nirj Deva, at 47; P6_CRE(2005)09-28_DEF_EN, *ibid.*, statement by Alexander Lambsdorff, at 66, and statement by Manuel António dos Santos, at 72.

A similar scenario has accompanied the adoption in 2011 of a recommendation of the European Parliament to the Council on the 66th session of the UN General Assembly, where the only two references to the UN Parliamentary Assembly have been introduced through amendments requested by some of the Campaign's supporters. Specifically, the first amendment⁵¹ brings to the fore the need 'to foster a debate ... on the topic of establishing a *United Nations Parliamentary Assembly (UNPA)*'.⁵² The second amendment⁵³ recommends the Council:

to advocate the establishment of a *UNPA* within the UN system in order to increase the democratic nature, the democratic accountability and the transparency of global governance and to allow for greater public participation in the activities of the UN, acknowledging that a *UNPA* would be complementary to existing bodies, including the Inter-Parliamentary Union.⁵⁴

While adopted by 45 votes to five,⁵⁵ the debates following the adoption of the recommendation suggest that, for the Members of the European Parliament not directly involved in the Campaign, the creation of a UN parliamentary assembly mainly represents a proposal closer to an aspirational goal than a specific proposition.⁵⁶ Similarly, answering a written question by a Member of the European Parliament supportive of the Campaign, the Council stated that regarding the proposal to create a UN Parliamentary Assembly, 'the Council does not have a position on this matter',⁵⁷ thus confirming the weak interest on the part of EU institutions to support the proposal.

The active role of the campaigners in sparking the interest of the European Parliament in backing their proposal becomes pronounced, without explicitly stating it, in the passage of the 2011 recommendation envisioning a role for the UN Parliamentary Assembly complementary to that of other international institutions, including the Inter-Parliamentary Union.⁵⁸ The remark as such is not particularly striking or innovative. It becomes significant when read in light of the Campaign's activities, since the Inter-Parliamentary Union initially featured as a possible host institution for the establishment of the UN Parliamentary Assembly.⁵⁹ After refusal by the Inter-Parliamentary Union to support the creation and the activities of the UN Parliamentary Assembly on the ground that they are 'incompatible with the strategy for parliamentary interaction with the United Nations',⁶⁰ the Campaign's steering committee decided to portray the relationship between the UN Parliamentary Assembly and the Inter-Parliamentary Union as complementary, due to the inability and unwillingness of the latter to address the problem of the democratic deficit at the United Nations.⁶¹

⁵¹Committee on Foreign Affairs of the European Parliament, Amendments 1-120 (4 April 2011), PE462.624v01-00, Amendment 118, at 70 (tabled by Kinga Gál).

⁵²European Parliament, Recommendation to the Council on the 66th session of the United Nations General Assembly (8 June 2011), P7_TA(2011)0255, point (be) (emphasis added).

⁵³See PE462.624v01-00, *supra* note 51, Amendment 120, at 71 (tabled by Jo Leinen, Elmar Brok, Alexander Alvaro, and Andrew Duff).

⁵⁴See P7_TA(2011)0255, *supra* note 52, point (bf) (emphasis added).

⁵⁵Committee on Foreign Affairs of the European Parliament, Report with a proposal for a European Parliament recommendation to the Council on the 66th Session of the United Nations General Assembly (13 May 2011), A7-0189/2011, at 22.

⁵⁶European Parliament, Debates (8 June 2011), P7_CRE(2011)06-08_EN, statement by Diogo Feio, at 81 (arguing that '[t]he creation of a United Nations parliamentary assembly within the framework of the United Nations system is an interesting proposal that is worth studying and debating'); statement by José Manuel Fernandes, at 82 (pointing out 'the need to foster debate on the role of parliaments and national assemblies in the UN system, and on creating a UN parliamentary assembly').

⁵⁷European Parliament, Question for written answer to the Council (28 November 2011), P-008768/2011.

⁵⁸See P7_TA(2011)0255, *supra* note 52.

⁵⁹See Bummel and Leinen, *supra* note 1, at 113–14.

⁶⁰Inter-Parliamentary Union Council, Preparations for the 3rd World Conference of Speakers of Parliament (15 February 2010), CL/186/13-R.1, Annex I, at 2, para. 7.

⁶¹Declaration of Brussels, *supra* note 17.

The considerations above suggest that the interest of the European Parliament in the proposal to create a parliamentary assembly within the UN is largely a reflection of the personal views of those Members of the European Parliament involved in the Campaign for the establishment of a UN Parliamentary Assembly. The assumption appears to find confirmation in the absence of any reference to the UN Parliamentary Assembly in the European Parliament's recommendation to the Council on the 67th Session of the UN General Assembly (2012),⁶² despite amendments tabled by two Members of the European Parliament who are also Campaign supporters.⁶³ Likewise, the recommendation to the Council on the 68th Session of the UN General Assembly (2013)⁶⁴ does not refer to the UN Parliamentary Assembly, despite tabled amendments by Members of the European Parliament.⁶⁵ A similar amendment was also unsuccessfully introduced in the Committee on Foreign Affairs Report on the implementation of the Common Security and Defence Policy (2016).⁶⁶

The recommendation to the Council on the 72nd session of the UN General Assembly (2017) contains a statement identical to the one in the 2011 recommendation,⁶⁷ thus denoting lack of progress in the implementation of the proposal. An unsuccessful amendment to the text tabled by Members of the European Parliament who are also Campaign supporters⁶⁸ shows at the same time the activism of individual Members of the European Parliament and the reluctance of the European Parliament itself to take the proposal forward. Moreover, asked whether institutional support for the establishment of a UN Parliamentary Assembly figured in the EU's external policy, Vice-President of the European Commission Federica Mogherini replied that '[t]he EU has no formal position as regards the establishment of a UN Parliamentary Assembly'.⁶⁹ It is therefore not surprising that the text of the 2018 recommendation to the Council on the 73rd Session of the UN General Assembly simply reiterates the need to create a UN Parliamentary Assembly in the UN system with a view to democratizing global governance and facilitating citizens' direct participation in UN activities.⁷⁰ It is also noteworthy that the reference to the UN Parliamentary Assembly appears only after a Member of the European Parliament supportive of the Campaign for the establishment of a UN Parliamentary Assembly successfully introduced an amendment to the original text of the recommendation.⁷¹

Despite the aspirational nature of the content of the 2018 and previous recommendations, it is difficult to grasp what the real intention of the European Parliament is in endorsing the establishment of a UN Parliamentary Assembly. So far, the proposal has not been followed by any real discussion about the nature, role and functions of the suggested UN Parliamentary Assembly. However, it appears that over time the debate, started in 1993 about the creation of a parliamentary

⁶²Committee on Foreign Affairs of the European Parliament, Recommendation to the Council (5 June 2012) 2012/2036(INI).

⁶³Committee on Foreign Affairs of the European Parliament, Draft Report (11 May 2012), PE486.097v01-00, Amendment 43 (tabled by Helmut Scholz) and Amendment 135 (tabled by Jo Leinen, Alexander Alvaro, Elmar Brok, Corina Creñu, Andrew Duff, Kinga Gál, and Graham Watson).

⁶⁴Committee on Foreign Affairs of the European Parliament, Recommendation to the Council (5 June 2013), 2013/2034(INI).

⁶⁵Committee on Foreign Affairs of the European Parliament, Draft Report (29 April 2013), PE506.222v01-00, Amendment 104 (tabled by Graham Watson, Jo Leinen, Andrew Duff, and Franziska Keller).

⁶⁶Committee on Foreign Affairs of the European Parliament, Draft Report (15 September 2016), PE582.127v01-00, Amendment 255 (tabled by Jonás Fernández).

⁶⁷European Parliament, Recommendation to the Council concerning the 72nd session of the United Nations General Assembly (5 July 2017), P8_TA(2017)0304, point (bm).

⁶⁸Committee on Foreign Affairs of the European Parliament, Draft Report (6 April 2017), PE601.127v01-00, Amendment 247 (tabled by Jo Leinen, Soraya Post, Elmar Brok, and Andrey Kovatchev).

⁶⁹European Parliament, Answer given by Vice-President Mogherini on behalf of the Commission (16 January 2017), E-006879/2016(ASW).

⁷⁰European Parliament, Recommendation to the Council (5 July 2018), P8_TA-PROV(2018)0312 point (m).

⁷¹Committee on Foreign Affairs of the European Parliament, Draft Report (2 May 2018), PE619.283v01-00, Amendment 88 (tabled by Jo Leinen, Elmar Brok, Soraya Post, Juan Fernando López Aguilar, Helmut Scholz, Eugen Freund, and Andrey Kovatchev).

assembly at the UN, has evolved into seeking support to establish the specific model of UN Parliamentary Assembly advocated by the Campaign supporters. The fact that the Member of the European Parliament who has taken the lead to sponsor the 2018 European Parliament's recommendation is also one of the co-chairs of the Campaign's steering committee and co-author with the Campaign's global co-ordinator of a monograph on the UN Parliamentary Assembly further suggests that, weakly but steadily, the EU is effectively endorsing the proposal developed by the Campaign.⁷²

The implication of this practical development is not negligible, since the European Parliament in principle appears to be in favour of establishing a consultative assembly whereas the long-term goal of the Campaign for the establishment of a UN Parliamentary Assembly is to turn the consultative assembly into a world parliament with full legislative powers. Discussing the creation of a parliamentary assembly is not the same as endorsing the establishment of a world parliament, which the European Parliament never openly discussed or endorsed. Indeed, the European Parliament has never presented itself as a model for the gradual development of the UN Parliamentary Assembly, which is an isolated view held by the Campaign supporters.⁷³ It follows from the preceding that the potential legal implications of the endorsement are worth exploring, should the proposal for the establishment of a UN Parliamentary Assembly pick up momentum.

4. Critical assessment of the proposal

A cursory view of the UN General Assembly's practice shows that the resolutions adopted since 1946 have covered a vast array of issues ranging from fairness in economic relations to the protection of human rights within and beyond national boundaries.⁷⁴ Some resolutions have been more persuasive than others,⁷⁵ but virtually all of them have initiated a process of dialogue and recommendation among states accompanied by different levels of confrontation and support.⁷⁶ In light of this, it is not immediately clear what a UN Parliamentary Assembly would add to the work of the General Assembly. Coverage in terms of the subject matter of resolutions does not appear a convincing reason. Likewise, concerns about the efficiency of the General Assembly have been raised and are currently being dealt with by the General Assembly itself as part of its process of revitalization.⁷⁷ A UN Parliamentary Assembly would arguably add little to the ongoing efforts. A third and more plausible possibility is that, by working side by side with the General Assembly, the UN Parliamentary Assembly would increase the legitimacy of the UN system as a whole.

Certainly, at present the UN General Assembly is only representative of the UN member states, as it lacks a mechanism aimed at ensuring participation of elected parliamentarians.⁷⁸ Perceiving this as a manifestation of the more general undemocratic character of contemporary international organization,⁷⁹ proponents of the UN Parliamentary Assembly argue that '[t]his flaw is a main source of the democratic deficit of global governance. The primary means to correct this deficiency is the establishment of a United Nations Parliamentary Assembly'.⁸⁰

⁷²See Leinen and Bummel, *supra* note 1.

⁷³*Ibid.*, at 369–70; Heinrich, *supra* note 8, at 10, 20.

⁷⁴For a chronological list of resolutions see www.un.org/en/sections/documents/general-assembly-resolutions/index.html, accessed 1 April 2019.

⁷⁵Arguably, the foremost example is the 1948 Universal Declaration of Human Rights, UNGA Res 217A(III).

⁷⁶For an analysis of political influence at the General Assembly see D. Panke, *Unequal Actors in Equalising Institutions: Negotiations in the United Nations General Assembly* (2013).

⁷⁷UN Documentation and www.un.org/en/ga/revitalization/, accessed 1 April 2019.

⁷⁸See Bummel, *supra* note 28, at 9.

⁷⁹A. Strauss, 'Overcoming the Dysfunction of the Bifurcated Global System: The Promise of a Peoples Assembly', (1999) 9 *Trans'l L & Contemporary Problems* 489, at 490 (referring to the lack of democracy at the international level 'the most glaring anomaly of the global system today').

⁸⁰See Bummel, *supra* note 28, at 9. For similar remarks see A. Strauss, 'On the First Branch of Global Governance', (2007) 13 *Widener Law Review* 347.

From this perspective, a UN Parliamentary Assembly endowed with the power to pass binding laws would complement the existent General Assembly, thus turning the UN into an instrument of world governance. The latter refers to the capability of the UN – through the General Assembly and the Parliamentary Assembly – to take decisions of common concern of the international community in a way that is fairly representative of the people of the world.⁸¹ Specifically, since members of the UN Parliamentary Assembly would not be accountable to states but directly to the citizens of the world,⁸² the UN Parliamentary Assembly ‘would not merely be a new voice, [but] a *fundamentally different* kind of voice’.⁸³ Regarding this, Heinrich writes that:

Where the voices in the General Assembly today are the voices of the institutions of national governments speaking through diplomats, *the voice of a UN parliamentarian would be the voice of a citizen speaking for citizens . . . a parliamentarian would be able to take positions of individual conscience, ultimately accountable only to constituents.*⁸⁴

On point of law, denouncing the democratic deficit of the General Assembly raises two different, but intimately connected, sets of problems – namely, the coherence of the proposal to create a UN Parliamentary Assembly with the UN Charter provisions and what type of democratic entitlement it would bring to the international community. The following sub-sections discuss, in turn, each set of problems.

4.1 Assessing the relationship between the proposal and UN law

Often perceived as an exercise in utopianism,⁸⁵ the idea of creating a world parliament is not new.⁸⁶ In the last two decades alone, proposals for the creation of a peoples’ chamber in international institutions have appeared in a stream of academic writings.⁸⁷ Albeit indirectly, the proposal for the establishment of a UN Parliamentary Assembly is informed by selected works of scholars, who also happen to be supporters of the Campaign.⁸⁸ Such writings complement the vision of the Campaign’s committee, which remains largely seminal in relation to the long-term goal of creating a world parliament.

For instance, the Campaign supporters argue that once established and functioning, the UN Parliamentary Assembly should ideally be converted into a UN primary body endowed with limited legislative powers of its own.⁸⁹ However, the proposal, like previous ones,⁹⁰ is not entirely clear on this point. For example, Schwartzberg writes that:

It would also be desirable to provide for a [UN Parliament Assembly’s] check against *dubious decisions* in the Security Council, the General Assembly and other entities within the UN system. This would, in effect, establish, in extreme situations, the principle of a non-binding, though politically potent, *people’s veto*.⁹¹

⁸¹E. Childers and B. Urquhart, ‘Renewing the United Nations System’, (1994) 1 *Development Dialogue* 176.

⁸²See Bummel, *supra* note 1, at 17.

⁸³*Ibid.*, at 16 (emphasis added).

⁸⁴See Heinrich, *supra* note 8, at 10–11 (emphasis added).

⁸⁵See Childers and Urquhart, *supra* note 81, at 176.

⁸⁶See, for instance, M. Nerfin, ‘The Future of the United Nations System: Some Questions on the Occasion of an Anniversary’, (1985) 1 *Development Dialogue* 5, at 24 (advocating the creation of a ‘Citizens Chamber’ at the UN General Assembly); Heinrich, *supra* note 8, at 20. See also Leinen and Bummel, *supra* note 1, at 27–41.

⁸⁷As discussed *infra*.

⁸⁸The Campaign’s website lists the name of 441 academics endorsing the proposal to establish a UN Parliamentary Assembly, available at en.unpacampaign.org/supporters/overview/?mapcountry=allpro&mapgroup=pro, accessed 1 April 2019.

⁸⁹As discussed in *supra* Section 2.

⁹⁰R. Falk and A. Strauss, ‘Globalization Needs a Dose of Democracy (The International Herald Tribune, 1999)’, in R. Falk and A. Strauss (eds.), *A Global Parliament: Essays and Articles* (2011), 29, at 31 (‘The global assembly could usefully contribute to the creation of planetary norms by expressing views on critical issues of global policy . . .’ (emphasis added)).

⁹¹See Schwartzberg, *supra* note 4, at 79 (emphasis added).

A possible counterargument to such suggestions is that endowing the UN Parliamentary Assembly with recommendatory powers would not grant any veto power to it, since a recommendation would be tantamount to a simple manifestation of dissent. However, from a theoretical perspective, the proposal is interesting as it significantly departs from previous ones. Franck, for example, envisioned the possibility of transforming the General Assembly into a two-chamber forum with only powers of discussion and recommendation. Within this framework, resolutions on important matters would be subject to a two-thirds, rather than simple, majority without implying any significant transfer of power from the governments to the people's representatives.⁹²

Other supporters of the Campaign suggest that, subject to a four-fifth majority, a vote of the UN Parliamentary Assembly could 'nullify a decision of the Security Council'.⁹³ This suggestion is more problematic. In the absence of a definition of international peace and security in the UN Charter and in the light of the discretionary powers of the Security Council bestowed on it by the UN Charter itself,⁹⁴ it is difficult to assess the legitimacy of Security Council action without challenging the doctrine of implied powers, which entails that international organizations can exercise only those powers attributed to them.⁹⁵

With regard to the permanent organs of international organizations, some scholars argue that their implied powers are limited by the powers of other organs.⁹⁶ From this perspective, decisions of the UN Parliamentary Assembly taken by a four-fifth majority could limit the scope of those of the Security Council and possibly nullify them, subject to a previous amendment of the UN Charter conferring such powers to the UN Parliamentary Assembly. A counterargument is that the same implied powers would apply to the Security Council, whose decisions could in practice restrict the scope of application of the decisions by qualified majority of the UN Parliamentary Assembly.

Other scholars point out that, in line with the Advisory Opinion of the Permanent Court of International Justice in the *Greco-Turkish Agreement*,⁹⁷ 'the competence of each organ to determine the scope of its respective powers is self-referential and self-judging, measured only against the aims it pursues'.⁹⁸ From this perspective, it is difficult to identify the scope and limits of the implied powers of the Security Council and assess the legitimacy of its action in the abstract. As things stand, the only possible limit to Security Council action is the one set forth in Article 24, paragraph 2, of the UN Charter – namely, the purposes and principles of the UN, which are themselves aspirational goals rather than objective criteria.⁹⁹ In this regard, it is noteworthy that a proposal to give the General Assembly the right to review Security Council resolutions was discussed and rejected at the San Francisco Conference by the framers of the UN Charter.¹⁰⁰ This further

⁹²See Franck, *supra* note 3, at 484.

⁹³*Ibid.*, (emphasis added). For a similar proposition in relation to a reformed General Assembly see J. Habermas, 'The Constitutionalization of International Law and the Legitimation Problems of a Constitution for World Society', (2008) 15 *Constellations* 444, at 451.

⁹⁴See UN Charter, *supra* note 23, Art. 39. See also R. Deplano, 'The Use of International Law by the United Nations Security Council: An Empirical Framework of Analysis', (2015) 29 *Emory International Law Review* 2085, at 2098–9.

⁹⁵*Reparations for Injuries Suffered in the Service of the United Nations*, Advisory Opinion of 11 April 1949, [1949] ICJ Rep. 174, para. 182. With specific regard to implied powers of the Security Council see *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276*, Advisory Opinion of 21 June 1971, [1971] ICJ Rep. 16, para. 52. For a commentary see N. Blokker, 'International Organizations or Institutions, Implied Powers', in R. Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law VI* (2009), at 18–27.

⁹⁶A. Campbell, 'The Limits on the Powers of International Organizations', (1983) 32 *International and Comparative Law Quarterly* 523, at 528.

⁹⁷*Interpretation of Greco-Turkish Agreement of December 1st, 1926 (Final Protocol, Article IV)*, Advisory Opinion of 28 August 1928, PCIJ Rep Series B No 16, at 20.

⁹⁸N. Tsagourias, 'Security Council Legislation, Article 2(7) of the UN Charter, and the Principle of Subsidiarity', (2011) 24 *LJIL* 539, at 543.

⁹⁹*Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter)*, Advisory Opinion of 20 July 1962, [1962] ICJ Rep. 151, at 168.

¹⁰⁰See UNCIO XII, at 297; Haviland and Entezam, *supra* note 6, at 14–15.

confirms that introducing a power of the UN Parliamentary Assembly to strike down Security Council resolutions would necessarily require a formal amendment of the UN Charter. Absent a Charter amendment, the provisions on collective security currently in place, and in particular Article 24 of the UN Charter, would prevail over the decisions of the UN Parliamentary Assembly.

Even if the UN Charter was formally amended, introducing the relevant provisions bestowing legislative powers on the UN Parliamentary Assembly would probably require a contextual amendment of Article 24, paragraph 1, of the UN Charter in order to prevail over both the discretionary and the implied powers of the Security Council. Without amending such provision, the Security Council would formally remain the organ of the UN endowed with primary responsibility to maintain international peace and security. Thus, whether challenging the legality of its resolutions by the UN Parliamentary Assembly would be in theory possible, striking down a resolution would essentially prevent the Security Council from performing its functions – that is to say, its Charter mandate – to the detriment of the entire UN system.

In this regard, it is noteworthy that in the *Certain Expenses* advisory opinion of 1962, the ICJ held that ‘it cannot be said that the Charter has left the Security Council impotent in the face of an emergency situation when agreements under article 43 have not been concluded’, effectively legitimizing the practice of peacekeeping operations.¹⁰¹ This suggests that having a fully operative Security Council is a precondition for the correct functioning of the UN as a whole, as envisioned by the framers of the UN Charter. Conversely, allowing the UN Parliamentary Assembly to strike down Security Council resolutions, especially those authorizing the use of military force, would severely undermine both the functionality and the credibility of the Security Council as an institution of collective security.

Even if Article 24 of the UN Charter was contextually amended, the proposal does not specify the criteria according to which the UN Parliamentary Assembly could strike down Security Council resolutions. One criterion could be the violation of international law. However, it is widely accepted that the Security Council is not bound by international law, possibly with the exception of *jus cogens*,¹⁰² in the sense that it is not required to assess the legal position of the parties before taking a decision.¹⁰³ According to Article 39 of the UN Charter, the determination of whether a dispute amounts to a threat to or breach of international peace and security, or an act of aggression rests on the Security Council alone. Moreover, at the San Francisco conference, proposals aimed at requiring compliance of Chapter VII resolutions to general international law were rejected.¹⁰⁴ Likewise, in the *Lockerbie* cases, the ICJ rejected Libya’s claim that a Security Council resolution conflicting with the provisions of a treaty to which the parties to the dispute are bound is invalid.¹⁰⁵ In truth, in the *Namibia* advisory opinion, Judge de Castro recognized the possibility of questioning the validity of an irrational resolution of the Security Council.¹⁰⁶ However, no such

¹⁰¹See *Certain Expenses* Advisory Opinion, *supra* note 99, at 167.

¹⁰²For instance, the Security Council could not acquiesce in acts of genocide. See *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia [Serbia and Montenegro])*, Further Request for the Indication of Provisional Measures, [1995] ICJ Rep. 325, at 440. See also D. Akande, ‘The International Court of Justice and the Security Council: Is There Room for Judicial Control of Decisions of the Political Organs of the United Nations?’, (1997) 46 ICLQ 309, at 322–3.

¹⁰³B. Martenczuk, ‘The Security Council, the International Court and Judicial Review: What Lessons from Lockerbie?’, (1999) 10 EJIL 517, at 545.

¹⁰⁴UNCIO VI, at 318.

¹⁰⁵*Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)*, Preliminary Objections, Judgment of 27 February 1998, [1998] ICJ Rep. 9; *Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States)*, Preliminary Objections, Judgment, [1998] ICJ Rep. 115. For an analysis of the case see Martenczuk, *supra* note 103.

¹⁰⁶*Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276*, Advisory Opinion of 21 June 1971, [1971] ICJ Rep. 16, at 45.

instance has ever been invoked. It thus seems unlikely that the UN Parliamentary Assembly would be able to challenge the validity of a resolution, which is by definition grounded on a determination of the Security Council made under Article 39 of the UN Charter.

However, it may be said that international law indirectly constrains the decisions of the Security Council. For instance, since *Kadi* and *Al Barakaat* (2008), the European Court of Justice has ruled that EU regulations implementing Security Council sanctions must comply with the human rights guaranteed under EU law.¹⁰⁷ Similarly, since the *Bosphorus* case (2005),¹⁰⁸ the European Court of Human Rights has consistently interpreted the implementation of Security Council resolutions by states in light of the European Convention on Human Rights.¹⁰⁹ Such jurisprudential developments suggest that, instead of questioning the legality of Security Council resolutions *per se*, compliance with international law is in practice achieved by sanctioning the national acts implementing the resolutions. This, in turn, casts doubt about the desirability of endowing the UN Parliamentary Assembly with the power to nullify resolutions of the Security Council.

Another possible criterion for guiding the decision of the UN Parliamentary Assembly to strike down Security Council resolutions could be a violation of decisions of the UN Parliamentary Assembly itself.¹¹⁰ In the absence of a concrete example, it is difficult to speculate on their content. Nevertheless, it is reasonable to assume that they would be of at least two types. As Heinrich suggests, decisions adopted with a qualified majority by both the UN General Assembly and the UN Parliamentary Assembly could be accorded higher status than those adopted by a simple majority.¹¹¹ Arguably, resolutions adopted by simple majority would be recommendatory while those adopted by qualified majority would be binding,¹¹² thus forming a solid benchmark for assessing the legality of Security Council resolutions. However, the problem with the idea of binding resolutions is that the General Assembly has no power to adopt binding resolutions.¹¹³ Under the doctrine of implied powers, it cannot exercise powers greater than those conferred to it. Amending the UN Charter to enlarge the scope of its legislative powers would be an option. Yet, this would affect the entire balance of power among the principal organs of the United Nations, fundamentally changing the nature of international cooperation envisioned by the UN Charter.

Last but not least, allowing the UN Parliamentary Assembly to strike down Security Council resolutions (under whichever hypothetical ground) would effectively endow it with judicial powers of review. As things stand, not even Article 92 of the UN Charter confers such powers to the ICJ, which is the judicial organ of the United Nations. The ICJ is only entitled to decide on the legal consequences arising from decisions of the UN political organs, including Security Council resolutions, when they have a bearing on a case before it.¹¹⁴ This is part of the judicial

¹⁰⁷Joined Cases C-402 & C-415/05 P, *Kadi v. Council of the European Union, and Al Barakaat Int'l Found. v. Council of the European Union*, [2008] ECR 299. See also E. de Wet, 'The Role of Human Rights in Limiting the Enforcement Power of the Security Council: A Principled View', in E. de Wet and A. Nollkaemper (eds.), *Review of the Security Council by Member States* (2003), 7, at 19 (focusing on the right to fair hearing).

¹⁰⁸*Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland*, Decision of 30 June 2005, [2005] ECHR (App No 45036/98).

¹⁰⁹L. Sicilianos, 'The European Court of Human Rights Facing the Security Council: Towards Systemic Harmonization', (2017) 66 ICLQ 783.

¹¹⁰As discussed in *supra* Section 2.

¹¹¹See Heinrich, *supra* note 8, at 32. See also Schwartzberg, *supra* note 4, at 56, 79 (recognizing a co-decision power with the General Assembly).

¹¹²See Heinrich, *ibid.*, at 32 (arguing that resolutions passed with certain majority in both the UN General Assembly and the UN Parliamentary Assembly 'could be accorded some higher status, conceivably even the status of binding international law in some situations').

¹¹³See *supra* note 6.

¹¹⁴See *Namibia Advisory Opinion*, *supra* note 106, at 45.

functions of the ICJ and does not amount to a separate power of judicial review.¹¹⁵ In any case, as recognized in *Northern Cameroons*, the judgments of the ICJ do not have binding force on the UN political organs.¹¹⁶ Conversely, a power to strike down Security Council resolutions would turn the UN Parliamentary Assembly into a judicial organ of the UN acting outside the sphere of dispute settlement. Such a power, if created, would profoundly alter the current balance of power among the primary organs of the UN, as envisioned in the UN Charter.

The considerations above suggest that the proposal to establish a UN Parliamentary Assembly, as it stands, lacks coherence in terms of supplementing the institutional architecture of the United Nations. Another sign that points to a lack of coherence in the proposal relates to the composition of the UN Parliamentary Assembly in its second stage of life. Supporters of the creation of a UN Parliamentary Assembly envision it as composed exclusively of ‘reasonably functional democrac[ies],’¹¹⁷ effectively implying a process of exclusion of members initially admitted to the UN Parliamentary Assembly which do not meet the new criterion. However, the proposal is not entirely coherent on this point, as it starts by stating that UN members would not be required to accede the UN Parliamentary Assembly¹¹⁸ and concludes by recognizing that the accession process would ‘almost surely [gain] momentum’.¹¹⁹ In any case, such a newly restructured UN Parliamentary Assembly would consist of circa 1,000 parliamentarians popularly elected and, as such, accountable to the people rather than governments.¹²⁰

As a matter of UN law, reference to such a selective membership of the UN Parliamentary Assembly is problematic, since the UN member states have already been qualified as peace-loving countries and, on the basis of that assessment, admitted to membership by joint decision of the General Assembly and the Security Council.¹²¹ To grant admission to the UN Parliamentary Assembly on the basis of a democratic requirement would amount to a de facto amendment of Article 4 of the UN Charter.¹²² Likewise, the decision on the admission to the UN Parliamentary Assembly would apply to members of the United Nations which have already been judged as able and willing to carry out the UN Charter obligations.¹²³ A similar matter arose in 1946 when five countries – namely, Albania, Mongolia, Transjordan, Ireland, and Portugal – applied for membership at the United Nations only to see their application vetoed in the Security Council by the Soviet Union, the reason being their conduct during the Second World War.¹²⁴ Asked whether the application for admission was dependent on considerations not included in the text of Article 4 of the UN Charter, the ICJ ruled that the enumeration of

¹¹⁵For instance, in *Lockerbie*, the ICJ held that two resolutions of the Security Council adopted under Ch. VII of the UN Charter could not have made Libya’s application inadmissible, since they had been adopted after the date of the filing of the application before her. Hence, they did not supersede, as such, the rights that Libya was claiming. See *Lockerbie case (Libya v. United States)*, *supra* note 105, para 43.

¹¹⁶*Northern Cameroons (Cameroon v. United Kingdom)*, Judgment of 2 December 1963, [1963] ICJ Rep. 3, at 33.

¹¹⁷See Schwartzberg, *supra* note 4, at 69.

¹¹⁸*Ibid.*, at 80.

¹¹⁹*Ibid.*, at 81.

¹²⁰*Ibid.*, at 18, 63–4.

¹²¹See UN Charter, *supra* note 23, Art. 4(2).

¹²²T. Zweifel, *International Organizations and Democracy: Accountability, Politics, and Power* (2006), at 187 (pointing out that the UN Charter does not mandate democracy as an explicit criterion for membership). See also B. Roth, *Governmental Illegitimacy in International Law* (2000), at 417 (arguing that ‘[n]othing has happened to demonstrate that the international community posits democracy, however defined, as a *sine qua non* of governmental legitimacy’); H. Charlesworth, ‘International Legal Encounters with International Law’, (2017) 8 *Global Policy* 34, at 35–8 (pointing out that the UN Charter does not refer to democracy as a prerequisite for membership and reconstructing the relationship between the concept of democracy and human rights in the practice of the United Nations).

¹²³See UN Charter, *supra* note 23, Art. 4(1).

¹²⁴For an account of the political background see R. Riggs, *Politics in the United Nations. A Study of United States Influence in the General Assembly* (1958), at 149–54.

conditions for membership in Article 4 was exhaustive.¹²⁵ In the light of the ICJ pronouncement, it is difficult to harmonize the proposal's criterion for admission to the UN Parliamentary Assembly with the established practice of the UN.

Last but not least, Heinrich writes that once endowed with the power to legislate, the UN Parliamentary Assembly would effectively embody the ideal of democratic representation of the world's population in an international institution.¹²⁶ Accordingly, the apportionment of seats should transcend national boundaries through the creation of electoral constituencies not corresponding to states' international borders.¹²⁷ In this respect, the proposal for the creation of a UN Parliamentary Assembly aligns itself to Strauss's suggestion that 'for certain purposes', a world parliamentary assembly should 'transcend states to rest global authority upon *the consent of the governed*. This well-established democratic principle would root global law in the same basis of authority as domestic democratic law'.¹²⁸ Similarly, the Campaign supporters claim that democratically elected parliamentarians 'would have an immediate credibility', since they would be 'understood to be going to the UN as representatives of citizens rather than as representatives of governments-as-institutions'.¹²⁹

However, the claims above run counter the historical roots of the UN Charter. As Haviland points out in relation to the composition of the General Assembly, at the San Francisco Conference the criterion regarding 'democratic institutions' was excluded, as it would have implied 'an undue interference with internal arrangements'.¹³⁰ In the absence of a serious discussion about the functions and powers of the envisioned world parliament, it is difficult to envisage the UN Parliamentary Assembly working within the current framework of the UN Charter provisions. Moreover, in the absence of global political parties, it is difficult to appreciate how representatives of the global civil society would organize themselves at the UN Parliamentary Assembly. More generally, envisioning how the right to political participation in international settings such as the proposed UN Parliamentary Assembly would play out in practice is conceptually challenging.¹³¹

The rationale behind the proposal for the creation of a UN Parliamentary Assembly is that representation in a people's assembly should be by direct elections.¹³² Thus, assuming that the UN decision-making process through majority voting would derive its legitimacy from the direct participation of world citizens gathered in the UN Parliamentary Assembly,¹³³ the Campaign supporters call for the adoption of the degressive proportionality model adopted by the EU to decide the composition of the European Parliament,¹³⁴ accompanied by the creation of an Electoral Commission to supervise the election process.¹³⁵ However, this is problematic. While adopting the principle of degressive proportionality would provide a reasonably balanced representation

¹²⁵*Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)*, Advisory Opinion of 28 May 1948, [1948] ICJ Rep. 57.

¹²⁶See Heinrich, *supra* note 8, at 31. See also Leinen and Bummel, *supra* note 1, at 373–4, 378.

¹²⁷See Schwartzberger, *supra* note 4, at 18, 90–4.

¹²⁸See Strauss, *supra* note 80, at 390. See also Falk and Strauss, *supra* note 90, at 43.

¹²⁹*Ibid.*, at 23.

¹³⁰See Haviland and Entezam, *supra* note 6, at 29–30 (also quoting from UNCIO VII, at 36–7).

¹³¹See Zweifel, *supra* note 122, at 74, 80 (pointing out that it is unrealistic to expect the General Assembly to represent world public opinion).

¹³²See Heinrich, *supra* note 8, at 22.

¹³³*Ibid.*, at 9–10.

¹³⁴Treaty on European Union, Art. 14(2) reads: 'The European Parliament shall be composed of representatives of the Union's citizens. They shall not exceed seven hundred and fifty in number, plus the President. *Representation of citizens shall be degressively proportional, with a minimum threshold of six members per Member State. No Member State shall be allocated more than ninety-six seats . . .*' (emphasis added). See also Schwartzberger, *supra* note 4, at 17, 23; Bummel, *supra* note 28, at 11, 25–31 (discussing models to elect the UN Parliamentary Assembly).

¹³⁵See Heinrich, *supra* note 8, at 51; Leinen and Bummel, *supra* note 1, at 377.

of states in the UN Parliamentary Assembly based on their population size, conceptually the issue of representation of states is not the same as that of representation of their people. As Diamond writes, 'civil society is distinct and autonomous not only from the state and society at large but also from a fourth arena of action, *political society* (meaning, in essence, the party system)'.¹³⁶ By definition, the representation of civil society in the UN Parliamentary Assembly would require the presence of global political parties. At the moment, they do not exist. Nor are they envisioned in the campaigners' proposal.

Without a political mandate emerging from party contested elections,¹³⁷ the type of political participation advocated by the proponents of a UN Parliamentary Assembly resembles an exercise in formal proceduralism – that is to say, an end in itself. As a result, it produces what Rawls termed procedural justice, which is a form of input, rather than output, legitimacy.¹³⁸ At the same time, as Dahl points out in relation to the democratic character of international organizations in general, 'What grounds do we have for thinking . . . that citizens in different countries engaged in international systems can ever attain the degree of influence and control over decisions that they now exercise within their own countries?'¹³⁹

Indeed, a corollary of apportioning seats through the principle of degressive proportionality is that, in the view of the proponents of the UN Parliamentary Assembly, adopting it would re-balance the voting power of large and small states, the latter being the dominant segment of today's UN membership.¹⁴⁰ The suggestion has some merit, since it would replace the current voting system at the UN General Assembly,¹⁴¹ which attributes one vote to each UN member state irrespective of considerations of size. However, it overlooks the fact that the concept of democratic participation in small states differs markedly from that of large countries. While it is widely recognized that small and micro states are generally more democratic than large states, political participation is mostly conducted through personalism rather than good governance practices.¹⁴² Some small states do not even have political parties,¹⁴³ meaning that their propensity to democracy is attributable to local cultural and political factors.¹⁴⁴ Therefore, given their limited economic capacity, it is not to be taken for granted that small states will be willing to participate in a world people's assembly.

The considerations above warrant against assuming that the UN Parliamentary Assembly would derive its legitimacy and secure compliance with its decisions simply by virtue of allowing direct democratic participation. As Steiner points out, there are different and sometimes incompatible theories and practices which inform the right to political participation.¹⁴⁵ Yet, in Roth's words, 'a test for democratic legitimacy that focused exclusively on electoral procedures would yield arbitrary results'.¹⁴⁶

¹³⁶L. Diamond, 'Rethinking Civil Society: Toward Democratic Consolidation', (1994) 5(3) *Journal of Democracy* 4, at 7.

¹³⁷See Roth, *supra* note 122, at 414, 419–20.

¹³⁸J. Rawls, *Political Liberalism* (1993), at 421.

¹³⁹R. Dahl, 'Can International Organizations Be Democratic? A Skeptic's View', in I. Shapiro and C. Hacker-Cordon (eds.), *Democracy's Edges* (1999), 19, at 32.

¹⁴⁰See Schwartzberg, *supra* note 4, at 17, 23. See also Bummel, *supra* note 28, at 11, 25–31 (presenting four models to elect the UN Parliamentary Assembly).

¹⁴¹See UN Charter, *supra* note 23, Art. 18(1).

¹⁴²The leading work on this issue is J. Corbett and W. Veenendaal, *Democracy in Small States: Persisting against All Odds* (2018).

¹⁴³W. Veenendaal and J. Corbett, 'Why Small States Offer Important Answers to Large Questions', (2015) 48 *Comparative Political Studies* 527, at 542.

¹⁴⁴D. Angkar, 'Microstate Democracy Revisited: Development in Time and Space', (2008) 1 *The Open Political Science Journal* 75.

¹⁴⁵H. Steiner, 'Political Participation as a Human Right', (1988) 1 *Human Rights Yearbook* 77, at 84.

¹⁴⁶See Roth, *supra* note 122, at 421.

4.2 A new type of democratic entitlement?

As noted in Section 2 above, the call for the creation of a UN Parliamentary Assembly builds on the idea that international institutions are not democratic.¹⁴⁷ Although contested,¹⁴⁸ this argument is in line with the position expressed by some scholars. For instance, since 1997 Falk and Strauss have advocated the creation of a world parliament that would transpose the domestic mechanisms of representative democracy into the global system.¹⁴⁹ ‘The international system . . . is structured so as to preclude the ideal of political equality. Citizens do not have a formally equal opportunity to select representatives to be the ultimate arbiters of policy in the international system.’¹⁵⁰

Within this theoretical framework, civil society is seen as representing ‘an independent international force’, the clearest example being the role NGOs played in the 1990s at large international conferences of states such as those on antipersonnel landmines.¹⁵¹ Based on the prediction that civil society will continue to institutionalize its presence in global-decision making forums, the creation of a world parliament is seen as the cusp of a wider trend:¹⁵² They write: ‘[The global assembly] could refute the claim that states are bound only by laws to which they give their consent . . . the assembly could encourage compliance with established international norms and standards, especially in human rights.’¹⁵³

Similarly, it seems that the ultimate goal of the UN Parliamentary Assembly is to force states to take action according to the global citizenry’s will. In relation to this, Brauer and Bummel write that the UN Parliamentary Assembly ‘[could] become a political catalyst for further development of the international system and of international law’.¹⁵⁴ Peoples and states alike would obey the decisions of the UN Parliamentary Assembly by virtue of its perceived legitimacy, the latter stemming from its democratic composition. Falk and Strauss concur with this interpretation.¹⁵⁵

However, while apparently adding a layer of legitimacy to democratic participation in international decision-making, the proposal to create a UN Parliamentary Assembly turns out to be problematic in many respects. Firstly, it is widely accepted that there exists no clear and direct link between participation and representation in international institutions, especially in the absence of global political parties.¹⁵⁶ Accordingly, it should not be assumed that the UN Parliamentary Assembly would be representative of a global citizenry. Secondly, despite the undeniable contribution NGOs have made to enlarging participation in the international law-making process, they are not fully representative of civil society either.¹⁵⁷ Consequently, it is difficult to understand why the decisions of the UN Parliamentary Assembly should prevail over state-made international law norms as a matter of legitimacy.

Related to the point above, Leinen and Bummel argue that while international law is binding only on states, world law would apply ‘not only to states but also in principle to individuals and

¹⁴⁷See Falk and Strauss, *supra* note 90, at 16. See also B. S. Chimni, ‘International Institutions Today: An Imperial Global State in the Making’, (2004) 15(1) EJIL 1, at 32–3.

¹⁴⁸J. Crawford, ‘Democracy and the Body of International Law’, in G. Fox and B. Roth (eds.), *Democratic Governance and International Law* (2000), 91, at 110.

¹⁴⁹See Falk and Strauss, *supra* note 90, at 14, 18, 29.

¹⁵⁰A. Strauss, ‘International Law as Democratic Law’, (2010) 103 *ASIL Proceedings of the Annual Meeting* 388, at 389.

¹⁵¹See Falk and Strauss, *supra* note 90, at 22–3.

¹⁵²*Ibid.*, at 23.

¹⁵³*Ibid.*, at 25.

¹⁵⁴M. Brauer and A. Bummel, ‘The Federalist Principle in the Catholic Social Doctrine and the Question of a World Parliament’, (2016) Committee for a Democratic UN, at 7.

¹⁵⁵R. Falk and A. Strauss, ‘On the Creation of a Global Peoples Assembly: Legitimacy and the Power of Popular Sovereignty’, (2000) 36 *Stanford J Int’l Law* 191, at 207.

¹⁵⁶As discussed in *supra* Section 4.1. See also Charlesworth, *supra* note 122, at 41.

¹⁵⁷*Ibid.*, at 35; R. H. Ben-Ari, *The Normative Position of International Non-Governmental Organizations under International Law* (2012), at 311.

companies', thus protecting 'the *planetary interest* of humanity'.¹⁵⁸ In any case, world law would keep precedence over national and international law alike, without exceptions.¹⁵⁹ In this respect, the proposal for a UN Parliamentary Assembly aligns with the understanding of sovereignty endorsed by Falk and Strauss, who argue that the citizenry, rather than the state, is the fundamental source of political authority in both national and international settings.¹⁶⁰ Thus, far from presenting it as a utopian vision, proponents of the creation of a UN Parliamentary Assembly argue that:

Traces of world law are indeed already present in the international law system. This applies for example to the binding status of UN Security Council decisions under Chapter VII of the UN Charter, the concept of the common heritage of humanity in the Convention on the Law of the Sea, the obligatory dispute settlement procedure of the WTO, the powers of the International Criminal Court to prosecute individuals and the emergent principle of the state's responsibility to protect, which sets limits to state sovereignty.¹⁶¹

In this respect, the proposal mirrors the remarks by Falk and Strauss that the creation of a global peoples' assembly 'would challenge the traditional claim by states that each has a sovereign right to act autonomously, regardless of adverse external consequences'.¹⁶² Quite the contrary, a UN Parliamentary Assembly endowed with the power of passing binding legislation for both peoples and states would create a functional international system.¹⁶³ A possible counterargument is that, whether or not the decisions of the international institutions cited above are effective in influencing state behaviour, the idea of binding world laws extends the idea of international obligation to individuals and non-state actors like companies without dealing with the issue of noncompliance with world laws by either of them. As a result, it is not able to circumvent the inherently voluntary character of the international legal system. Nor does it address the issue of accountability of participants in the international legal system.

There is also another relationship between world law and international law. Proponents of the creation of a UN Parliamentary Assembly argue that customary international law is inadequate to regulate pressing issues of the international life. Conversely, a parliamentary assembly democratically elected by the world population would be 'the appropriate mechanism for continuously defining the common interests of humanity'.¹⁶⁴ However, such statements evidence a fundamental misconception about the nature and purpose of customary international law: as spontaneous law, it simply crystallizes a state practice regulating a specific type of interaction among states. It does not, and cannot, purport to protect the interests of humanity. Moreover, the proposal seems to conflate the issue related to the undemocratic character of the process of formation of customary international law¹⁶⁵ with that of efficiency of fully formed customary rules – that is to say, whether or not they are able to serve the purpose for which they have been created.

The considerations above suggest that world laws cannot circumvent the principle of state sovereignty simply by virtue of their adoption. Moreover, the purported power of the UN Parliamentary Assembly to pass binding laws aims at expressing the will of the international

¹⁵⁸See Leinen and Bummel, *supra* note 1, at 379–80.

¹⁵⁹*Ibid.*, at 380.

¹⁶⁰See Falk and Strauss, *supra* note 155, at 209.

¹⁶¹See Leinen and Bummel, *supra* note 1, at 380 (emphasis added).

¹⁶²See Falk and Strauss, *supra* note 155, at 193.

¹⁶³See Strauss, *supra* note 79, at 496, 499–500.

¹⁶⁴See Leinen and Bummel, *supra* note 1, at 381.

¹⁶⁵J. Wouters et al., 'Democracy and International Law', (2003) XXXIV *Netherlands YB Int'l L* 139, at 179–80.

community in the absence of any criteria for determining such global will, thus revealing the ideological premises of the project¹⁶⁶ and confirming that, in general, democracy is a teleological – hence, subjective – concept.¹⁶⁷ It follows that, from a theoretical point of view, the decisions of the UN Parliamentary Assembly cannot be seen as imposing obligations on states. From a practical point of view, similar proposals to establish a democratically elected chamber have proven abortive for lack of state support. For instance, the proposal to establish a WTO Parliamentary Assembly composed of representatives of national parliaments and endowed with legislative powers has been dismissed as incompatible with the WTO legal order and it is unlikely to ever be established.¹⁶⁸

The creation of a UN Parliamentary Assembly may in theory be able to establish a new democratic entitlement. That, however, would entail the creation of an entirely different system of international co-operation markedly skewed toward world government rather than world governance. Current international practice suggests that this is an unlikely scenario, at least for the near future. The argument put forward by Childers and Urquhart that the functions of the citizens' chamber would not 'abridge the existing powers of governments in the UN'¹⁶⁹ confirms the difficulties of departing from the Westphalian model embedded in the structure of international organizations, including the UN.¹⁷⁰

5. Assessing the feasibility of the proposal

Is it possible or desirable to transplant a parliamentary model nominally inspired by the European Parliament, like the UN Parliamentary Assembly, in the UN? Should the European Parliament strengthen its formal level of support for the Campaign's proposal? Practical considerations warrant against the desirability of fostering such an institutional development.

Firstly, it appears that the proposal has received a cold reception by the EU itself. Support by the European Parliament in the form of recommendations to the Council is scant and fragmentary, although featuring in the debates of the Committee on Foreign Affairs. The Campaign's supporters argue that the proposal has received public endorsement by the President of the European Parliament in 2008¹⁷¹ and 2013.¹⁷² However, both instances of support turn out to be routine courtesy statements issued on occasion of meetings held at the European Parliament's premises and organized by a Member of the European Parliament who is also the co-Chair of the Campaign for the establishment of the UN Parliamentary Assembly. In neither statement does the President of the European Parliament refer to the idea of a world parliament, which is the long-term goal of the Campaign's supporters.

Similarly, the proposal to establish a UN Parliamentary Assembly has not been taken forward by the UN. Presented in 2015 to the President of the 70th General Assembly,¹⁷³ the Campaign's appeal for the creation of a UN Parliamentary Assembly has not been further considered by the

¹⁶⁶See Roth, *supra* note 122, at 430.

¹⁶⁷*Ibid.*, at 422. See also S. Marks, *The Riddle of All Constitutions: International Law, Democracy, and the Critique of Ideology* (2003), at 8–29.

¹⁶⁸See Wouters et al., *supra* note 165, at 188.

¹⁶⁹See Childers and Urquhart, *supra* note 81, at 180.

¹⁷⁰See also Leinen and Bummel, *supra* note 1, at 292–329.

¹⁷¹'EP President Pöttering affirms support for United Nations Parliamentary Assembly', 3 November 2008, available at en.unpacampaign.org/209/ep-president-pottering-affirms-support-for-united-nations-parliamentary-assembly/, accessed 1 April 2019.

¹⁷²Message on the occasion of the Fifth International Meeting of the Campaign for a United Nations Parliamentary Assembly, 17 October 2013, available at en.unpacampaign.org/393/martin-schulz-european-parliament-may-serve-as-a-model-for-a-un-parliamentary-assembly/, accessed 1 April 2019.

¹⁷³'Appeal for a Parliamentary Assembly presented at the United Nations in New York', 10 November 2015, available at en.unpacampaign.org/7259/appeal-for-a-parliamentary-assembly-presented-at-the-united-nations-in-new-york/, accessed 1 April 2019.

General Assembly or any other primary body of the UN. The only formal reference to the UN Parliamentary Assembly appears in the 2013 report of the Independent Expert on the Promotion of a Democratic and Equitable International Order to the Human Rights Council, which mentions the desirability of having a *consultative assembly* at the UN similar to the one proposed by the Campaign supporters with a view to widening participation in the work of the UN.¹⁷⁴ However, the Independent Expert's report makes no reference to the long-term goal of creating a new primary organ of the UN. Another reference to the desirability of creating an institution like the UN Parliamentary Assembly appears in the UN Development Programme's Human Development Report (2013) in the form of a guest article by the Campaign's co-Chair and does not amount to a UN endorsement of the proposal.¹⁷⁵

Secondly, as a matter of UN law, the chances of success of the Campaign's proposal to establish a UN Parliamentary Assembly appear very low. As it stands, the UN Parliamentary Assembly does not even meet the criteria for qualifying as an observer at the General Assembly, being neither a state nor an intergovernmental organization.¹⁷⁶ Exceptions to this rule exist. Most notably, the Inter-Parliamentary Union – an organization representing national parliaments, not individual parliamentarians, in Cooperation Agreement with the UN since 1996¹⁷⁷ – was granted observer status in 2002.¹⁷⁸ Formally classified as a non-governmental organization in consultative status with the Economic and Social Council, in 2001 the Secretary-General considered the classification outdated and no longer corresponding to the status of the Inter-Parliamentary Union, which was to be seen as 'an inter-State organization representing parliaments'.¹⁷⁹ He therefore recommended granting the Inter-Parliamentary Union observer status as an exception to the criteria set forth in General Assembly decision 49/426.¹⁸⁰ What differentiates the Inter-Parliamentary Union and the UN Parliamentary Assembly is the type of co-operation sought with the UN: the former promotes parliamentary debate and action in support of the achievement of the UN goals, including the implementation of the 2030 Agenda for Sustainable Development,¹⁸¹ the latter promotes direct popular participation in the decision-making at the UN, a goal of dubious compatibility with the spirit and the letter of the UN Charter.

The case of the International Conference of Asian Political Parties (ICAPP) also warrants caution in assessing the feasibility of establishing a UN Parliamentary Assembly. Established in 2000 as an association of political parties in Asia aimed at 'promot[ing] regional cooperation through the unique role and channel of political parties',¹⁸² the ICAPP's goal is broadly similar to that of the UN Parliamentary Assembly. However, its application for observer status at the General Assembly has been rejected by the General Assembly's Sixth Committee since 2011. Although committed to align its mandate to the UN goals,¹⁸³ the main reason leading to the repeated rejection is that the ICAPP is not an intergovernmental organization.¹⁸⁴ In the absence of a consensus

¹⁷⁴A. M. de Zayas, Report of the Independent Expert on the promotion of a democratic and equitable international order, UN Doc. A/HRC/24/39 (1 July 2013), para. 49.

¹⁷⁵United Nations Development Program, Human Development Report (2013), at 112.

¹⁷⁶UNGA, Decision 49/747, UN Doc. A/49/747 (9 December 1994).

¹⁷⁷UNGA, Cooperation Between the UN and the Inter-Parliamentary Union, UN Doc. A/51/402 (25 September 1996), annex.

¹⁷⁸UNGA, Res. 72/278, UN Doc. A/RES/72/278 (23 May 2018), para. 14; and UNGA, Res. 57/32, UN Doc. A/RES/57/32 (20 January 2003), para. 1.

¹⁷⁹UN Secretary-General, Report on the Cooperation between the United Nations and the Inter-Parliamentary Union, UN Doc. A/55/996 (26 June 2001), para. 5.

¹⁸⁰*Ibid.*, para. 13(a).

¹⁸¹UNGA, Res. 70/298, UN Doc. A/RES/70/298 (9 August 2016), para. 4.

¹⁸²ICAPP Charter, Art. 1(c).

¹⁸³UNGA Sixth Committee, Summary record of the 8th meeting, UN Doc. A/C.6/66/SR.8 (5 January 2012) (statement by the representative of Korea).

¹⁸⁴UNGA Sixth Committee, Summary record of the 8th meeting, UN Doc. A/C.6/66/SR.8 (5 January 2012) (statements by the representatives of Venezuela, Cuba, and Argentina).

among the Sixth Committee's members and related backing by the UN Secretary-General, no exception can be made to the criteria set forth in General Assembly decision 49/426, as it happened in the case of the Inter-Parliamentary Union.¹⁸⁵ Perhaps most importantly, the Sixth Committee has repeatedly recommended applying for observer status at the Economic and Social Council,¹⁸⁶ thus refusing to foster a direct co-operation between the General Assembly and political parties of Asia composed of 'democratically elected members in the parliaments of their respective countries'.¹⁸⁷

Unlike the Inter-Parliamentary Union, the ICAPP is not considered as unique in nature, as held by its members,¹⁸⁸ the reason being that it is not an inter-state organization representing parliaments. This makes the event that the General Assembly will ever establish the UN Parliamentary Assembly as a subsidiary organ highly unlikely, especially in light of the long-term goal of converting it into a world parliament with full legislative powers. Related to this is the fact that the EU has not committed itself financially to providing any institutional support to the creation of a popular chamber at the UN.¹⁸⁹ This stays in stark contrast to the approach taken to support the creation of the eventually abortive WTO Parliamentary Assembly.¹⁹⁰ Instead, the European Parliament is actively supporting the Parliamentary Conference on the WTO, which it co-founded in 2003 with the Inter-Parliamentary Union. Aimed at examining the effectiveness and fairness of WTO activities and improving dialogue between governments, parliaments, and civil society, the Parliamentary Conference on the WTO is a consultative body that meets once a year during the WTO Ministerial Conferences. It comprises national parliaments and other parliamentary assemblies, such as the Parliamentary Assembly of the Council of Europe.¹⁹¹ This suggests that, like the UN, the EU is keen to support inter-state entities endowed with consultative powers, not popular assemblies, as a way to democratize global governance. The finding also aligns with a strand of scholarly literature on the democratic deficit in global governance.¹⁹²

Thirdly, the campaigners argue that the UN Parliamentary Assembly should be funded through the UN regular budget or voluntary contributions by member states. An estimate of the costs will depend on the actual number of seats, which should be apportioned according to the principle of degressive proportionality adopted by the European Parliament.¹⁹³ However, the proposal puts a condition on the representation of non-democratic governments, which are already UN members, in the UN Parliamentary Assembly: absent the possibility of

¹⁸⁵UNGA Sixth Committee, Summary record of the 11th meeting, UN Doc. A/C.6/67/SR.11 (20 December 2012) (statement by the representative of the Russian Federation); and UNGA Sixth Committee, Summary record of the 12th meeting, UN Doc. A/C.6/71/SR.12 (2 November 2016) (statement by the representative of Syria).

¹⁸⁶See, for instance, UNGA Sixth Committee, Summary record of the 11th meeting, UN Doc. A/C.6/70/SR.11 (9 November 2015) (statement by the representative of Argentina).

¹⁸⁷See ICAPP Charter, *supra* note 182, Art. 2.

¹⁸⁸Letter dated 11 August 2015 from the representatives of Australia, Cambodia, Japan, Nepal, The Philippines, the Republic of Korea and Sri Lanka to the United Nations to the Secretary-General, UN Doc. A/70/194 (18 August 2015), at 7. See also UNGA Sixth Committee, Summary record of the 11th meeting, UN Doc. A/C.6/70/SR.11 (9 November 2015) (statements by the representatives of Korea and the Philippines qualifying the ICAPP as a quasi-intergovernmental organization).

¹⁸⁹See, for instance, the Final adoption of the general budget of the European Union for the financial year 2008, 2008/165/EC, Euratom (14 March 2008), at 189, para. 1004.

¹⁹⁰European Parliament, Debates, P7_CRE(2011)09-12 (12 September 2011), at 9 (statement by Niccolò Rinaldi).

¹⁹¹'Parliamentary Conference on the World Trade Organization', available at www.ipu.org/our-impact/global-governance/parliamentary-conference-world-trade-organization, accessed 1 April 2019.

¹⁹²S. Wheatley, 'A Democratic Rule of International Law', (2011) 22(2) EJIL 525, at 529; J. A. Scholte, 'Civil Society and Democracy in Global Governance', (2002) 8 *Global Governance* 281, at 291.

¹⁹³See *supra* note 134; Schwartzberg, *supra* note 4.

direct elections, delegates will have to be chosen from parliaments inclusive of opposition parties while appointment through the government will not be permissible.¹⁹⁴ Conversely, ‘delegates close to autocratic governments’ would be allowed participation, the reason being that for them ‘the experience of participating in an assembly and of cooperating with other delegates from democratic countries could set a powerful example and have a democratizing effect’.¹⁹⁵

As noted in Section 4.1 above, it is difficult to reconcile the democratic criterion for membership at the UN Parliamentary Assembly with the criteria for admission to UN membership set forth in Article 4 of the UN Charter. Even more problematic is to differentiate between non-democratic governments and autocratic governments. For instance, it is not clear whether authoritarian countries that are also permanent members of the Security Council like China¹⁹⁶ and Russia¹⁹⁷ should be excluded from membership of the UN Parliamentary Assembly. In any case, as Wheatley points out, ‘there is no breach of the obligations of membership by those states who are not democratic’.¹⁹⁸ Instead, there should be functional criteria guiding the selection of representatives. For instance, membership in the Human Rights Council is open to all UN members and based on equitable geographical distribution, the contribution of candidates to the promotion and protection of human rights and their voluntary pledges and commitments made thereto.¹⁹⁹ Absent any functional criteria for admission at the UN Parliamentary Assembly, a derogation from the criteria of Article 4 of the UN Charter would appear arbitrary and unjustified.

Finally, it is misleading to assume that allowing delegates from autocratic countries to work side by side with delegates from democracies will automatically produce democratizing effects. Participation of autocratic countries in the UN General Assembly should already serve the envisaged democratizing function. However, it is not apparent how and why the socialization of parliamentarians would have a better chance of success than the socialization of governments. On the one hand, previous studies have demonstrated that international organizations are successful at contributing to the democratization of authoritarian states when the latter experience tangible economic and military benefits from membership.²⁰⁰ Similarly, Keohane, Macedo and Moravcsik argue that international organizations may succeed at making governments more respectful of certain democratic values, including the rights of minorities and the public interest.²⁰¹ Yet this often happens at the expense of popular control, thus undermining a different set of democratic values.²⁰² On the other hand, as Diamond points out, the internal democratic character of civil society itself, not the state, affects the degree to which it can socialize participants into democratic (or undemocratic) forms of behaviour.²⁰³ In relation to this, Fukuyama also notes that, in democracies with low levels of income and education, clientelism is more likely to mobilize voters than promises of programmatic public policies.²⁰⁴ This runs directly counter the theoretical premises of the proposal to establish a UN Parliamentary Assembly.

¹⁹⁴How can citizens of states without democratic elections be represented?, available at en.unpacampaign.org/proposal/faq/, accessed 1 April 2019.

¹⁹⁵How could a Parliamentary Assembly contribute to national democratization?, *ibid.*

¹⁹⁶R. O. Keohane, S. Macedo and A. Moravcsik, ‘Democracy-Enhancing Multilateralism’, (2009) 63 *International Organization* 1, at 18.

¹⁹⁷R. O. Keohane, ‘Nominal Democracy? Prospects for Democratic Global Governance’, (2015) 13(2) *Int. Journal of Constitutional Law* 343, at 349.

¹⁹⁸S. Wheatley, ‘Democracy in International Law: A European Perspective’, (2002) 51(2) *ICLQ* 225, at 227.

¹⁹⁹UNGA, Res. 60/251, UN Doc. A/RES/60/251 (3 April 2006), paras. 7–8.

²⁰⁰J. C. Pevehouse, ‘Democracy from Outside-In? International Organizations and Democratization’, (2002) 56(3) *International Organization* 515. More generally, on the democratizing effects of international organizations, see Keohane, Macedo and Moravcsik, *supra* note 196.

²⁰¹*Ibid.*, at 9.

²⁰²E. Gartzke and M. Naoi, ‘Multilateralism and Democracy: A Dissent Regarding Keohane, Macedo, and Moravcsik’, (2011) 65(3) *International Organization* 589.

²⁰³See Diamond, *supra* note 136, at 12.

²⁰⁴F. Fukuyama, ‘Why Is Democracy Performing So Poorly?’, (2015) 26 *Journal of Democracy* 11, at 17.

It stems from the above that the democratizing effects of the UN Parliamentary Assembly are likely to be limited and mainly confined to procedural functions. However, in the absence of a global citizenry organized around political affiliations, the risk is that the project will turn into what Keohane termed ‘a nominal democracy’ – that is to say, an institution meeting democratic standards on the surface, but lacking content.²⁰⁵ Popular sovereignty and the right to seek to influence decisions in international institutions are not the same.²⁰⁶ The former does not necessarily imply forms of direct democracy and the European Parliament should be wary of supporting distortions of the cardinal principles of international co-operation enshrined in the UN Charter. Moreover, as a matter of human rights, granting a voice to civil society in the international decision-making process does not entail a right to vote through global parliaments.²⁰⁷

6. Conclusions

The idea of creating a world parliament is one of the boldest proposals ever conceived to establish a peaceful and prosperous international society. Civil society groups and scholars alike have engaged in a prolonged debate about the specific features a global parliamentary assembly should have to meet the challenges of the twenty-first century, globalized society. The proposal for the creation of a UN parliamentary assembly endorsed by the European Union since 1993 is a contribution to such efforts.

The proposal that the European Parliament has endorsed in its 2018 recommendation to the Council aims at establishing a new primary organ of the United Nations endowed with full legislative powers. Implementing such a proposal is challenging, since it advocates the institutionalization of a form of popular sovereignty in international relations that does not conform to the state-centred structure of the UN. At the same time, it is difficult to single out specific themes of international concern which have not been discussed by the General Assembly in over seven decades. As things stand, the UN Parliamentary Assembly and the General Assembly cannot coexist under the aegis of the UN. They are simply incompatible. Nonetheless, should the EU decide to go ahead with the proposal, a few suggestions may be taken into consideration.

Firstly, the name ‘United Nations Parliamentary Assembly’ is confusing as it is too similar to another UN principal organ. It should be replaced by another name. Secondly, in order to enable the UN Parliamentary Assembly to function in parallel with the General Assembly, a system of direct consultation modelled after the EU Commission’s public consultations with civil society could be added to the proposed framework of legislative powers of the UN Parliamentary Assembly with a view to allowing civil society to directly influence and shape the General Assembly’s policy-making.²⁰⁸ Thirdly, the legislative powers of the UN Parliamentary Assembly could also be informed by the experience of the European Citizens’ Initiative.²⁰⁹ This would allow the global citizenry to compel the General Assembly to discuss proposals for resolutions without necessarily being bound to adopt them. Finally, in relation to the voting procedure envisioned by the proponents of the UN Parliamentary Assembly, the use of some of the most recent technological advancements, such as digital ledgers embedded in online platforms,

²⁰⁵See Keohane, *supra* note 197, at 344.

²⁰⁶See Wheatley, *supra* note 198, at 244.

²⁰⁷N. Maisley, ‘The International Right of Rights? Article 25(a) of the ICCPR as a Human Right to Take Part in International Law-Making’, (2017) 28(1) EJIL 89, at 110–11.

²⁰⁸European Commission’s ‘Consultations’, available at ec.europa.eu/info/consultations_en, accessed 1 April 2019.

²⁰⁹For information on European Citizens’ Initiative, see ec.europa.eu/citizens-initiative/public/welcome, accessed 1 April 2019.

would likely achieve some aspects of the proposal's ultimate goal to provide a truly global and unmediated representative forum for the peoples of the world²¹⁰ with no overhead costs adding to the UN regular budget.

Attempts at reshaping the intergovernmental machinery can only perpetuate the inherently voluntary character of the current system of international co-operation. Moreover, an institution with a universal mandate and quasi-universal membership like the UN cannot be used to govern the world. If a UN Parliamentary Assembly was to be created with the power of adopting world laws binding on states and people alike, it would effectively resemble a world government. What makes an international parliament is not (or not only) its composition, but the function it serves within a political system of international co-operation. Establishing a UN Parliamentary Assembly may create a legitimate model of international governance. However, it cannot be implemented without tearing apart some of the cardinal provisions of the UN Charter. Hence, it cannot be established through the evolutionary stages indicated by its proponents. This essentially relegates the project to the realm of utopianism. As such, it should be recognized as an aspirational goal only by the EU.

²¹⁰For a discussion of transnational digital constitutionalism see E. Celeste, 'Digital constitutionalism: a new systematic theorisation', (2019) 33(1) *International Review of Law, Computers & Technology* 76.