

Democratizing Global Climate Policy through a United Nations Parliamentary Assembly

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The paper presents the proposal for establishing a United Nations Parliamentary Assembly (UNPA) and discusses its potential importance in democratizing global climate policy. This includes an overview of the basic features of a UNPA that are under discussion, in particular with regard to its membership and composition. Firstly, it is then argued that a UNPA, as a body composed of elected representatives, would be a means to connect climate deliberations with the grassroots level as citizens and NGOs could directly interact with its members. Secondly, the paper looks into the question of how a UNPA could be integrated into the global climate negotiation and decision-making process. Based on models for the distribution of seats in a UNPA that had been presented recently, it is suggested that the body could pave the way for a more effective and more legitimate decision-making procedure. Finally, the paper concludes that a global parliamentary assembly might be a tool to reinvigorate global deliberations on climate policy in general as the members of a UNPA in principle would not be obligated to represent the interests of national governments but instead would be free to consider the global common good and the views expressed by their constituency.

Copenhagen and its Lessons

The failure of the 15th session of the Conference of the Parties to the United Nations Framework Convention on Climate Change (UNFCCC) held in Copenhagen from 7 to 19 December 2009 (COP15) to produce a legally binding agreement on new emission targets which succeeds the Kyoto Protocol and its first commitment period until 2012, has exposed a significant flaw in the UNFCCC's procedures. As the UNFCCC's Conference of State Parties (COP) has not been able to agree upon its rules of procedure for making decisions¹, all decisions have to be taken by consensus. In principle, even a single party is able to put in a veto and to prevent decisions from being taken. This fact puts a heavy strain on negotiators to satisfy and harmonize the suggestions of all involved parties as best as possible. In Copenhagen, this did not work out. Due to the opposition of five countries², COP15 could not for-

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¹ See Alternative A and B, Rule 42, UNFCCC, COP2, Draft Rules of Procedure of the Conference of the Parties and its Subsidiary Bodies, FCCC/CP/1996/2, 22 May 1996.

² According to the assessment of the European Parliament delegation, see Summary Note of the EP Members in the EU-Delegation to the 15th Session of the Conference of the Parties to the UNFCCC in Copenhagen, Denmark, 7-18 December (21 January 2010) at 8. The five countries that threatened to

mally endorse the Copenhagen Accord and instead merely “took note” of the agreement. It is important to note that the accord was negotiated between 27 Heads of State and Government, responsible for more than 80 % of the global CO₂ emissions and supported by a large majority of the Parties to the Convention. The fact that a small minority of parties was able to block an agreement at COP15 has provoked reflections on reaching an agreement outside the UNFCCC framework³, for example within the Major Economies Forum on Energy and Climate (MEF).⁴ Still, MEF and other groupings like G-20 do not provide a framework for operationalizing a political agreement.⁵

On the occasion of a meeting of the delegations of the Pan-African Parliament and the European Parliament at the end of COP15, the delegation leaders declared in a joint statement that

[the] failure of the UN Climate Conference in Copenhagen was caused as well by the non-transparent and ineffective mechanisms of the United Nations working methods. A Parliamentary Assembly at UN level with parliamentary working methods linked with open discussion and majority votes could be helpful for the global decision-making process.⁶

The Head of the European Parliament’s COP15 delegation and Chair of the Parliament’s Committee on Environment, Public Health and Food Safety, Jo Leinen, added that

[i]t is the purpose of national governments to defend, first of all, what they consider to be in the national interest. By contrast, a world parliament would be free to introduce a complementary view, namely the interest of humanity as a whole. This view is underrepresented in the negotiations in Copenhagen but it is badly needed.⁷

The agenda of democratizing global climate policy thus has to address different dimensions, three of which are:

- (1) The decision-making procedure, in particular the possibility of qualified majority votes if consensus is not possible,

veto a decision were Bolivia, Venezuela, Nicaragua, Sudan and Saudi Arabia, see Goldenberg at. al. (2009).

³ See, for example, Anna da Costa (2010).

⁴ The 17 major economies participating in the MEF are: Australia, Brazil, Canada, China, the European Union, France, Germany, India, Indonesia, Italy, Japan, Korea, Mexico, Russia, South Africa, the United Kingdom, and the United States. See <http://www.majoreconomiesforum.org/>.

⁵ See Adrian Macey (2009) at 444.

⁶ See Joint Statement by the Heads of Delegation to the Copenhagen Climate Conference, Mary Mugenyi, Pan-African Parliament, and Jo Leinen, European Parliament, 18 December 2009.

⁷ See "Global governance needs more democracy", says Chair of EP delegation to COP15, 17 December 2009, available at <http://en.unpacampaign.org/news/458.php>.

- (2) the continued inclusion of all UNFCCC parties in negotiations,
- (3) the inclusion of perspectives others than those of governments.

Starting from the proposal of a United Nations Parliamentary Assembly (UNPA), this paper will explore what role(s) a parliamentary assembly could play in such an agenda.

The Proposal for a UN Parliamentary Assembly

Proposals for the establishment of a world parliament have a long tradition and can be traced back to the early 19th century.⁸ Although the suggestion of adding a parliamentary assembly to the UN is as old as the UN itself and was floated occasionally in UN and NGO circles⁹, a first thorough analysis was only presented after the end of the Cold War.¹⁰

A principle that was then established and is generally recognized to this day is drawing upon the phased development of the European Parliament.¹¹ Today, under the Lisbon Treaty that entered into force on 1 December 2009, the European Parliament and the European Union's Council of Ministers essentially constitute a bicameral legislative branch of the European Union. The Parliament's legislative rights, however, have been expanded incrementally in a long process until reaching this stage. The Parliament, set up as an advisory body in 1962, originated from the Parliamentary Assembly of the European Coal and Steel Community, which was established in 1952. In addition, before 1979, the Parliament was originally composed of by members of national legislatures and only since 1979 they started to be directly elected.

It is thus argued that the first modest step towards the long-term goal of a directly elected world parliament should consist of the establishment of a consultative parliamentary body within the UN system that may be composed of national legislators.

The basic purpose of a UNPA is to represent the world's citizens in global decision-making through elected officials. Since April 2007, efforts in favor of its creation are internationally coordinated under the roof of the Campaign for the Establishment of a UNPA (CEUNPA). The Campaign's main policy document, that has been endorsed, among others, by over 600 sitting Members of Parliament from over 80 countries, describes the purpose of the proposed body. It states, in particular, that

[people] must be more effectively and directly included into the activities of the United Nations and its international organizations. They must be allowed to participate better

⁸ For one of the first detailed elaborations of a directly elected, representative world assembly see Sartorius (1837) at 249ff.

⁹ See, for example, Sohn ed. (1970) at 58ff and 121ff.

¹⁰ See Heinrich (2010).

¹¹ See Heinrich (2010)., at 5; Urquart & Childers (1994) at 178 ff.

in the UN's activities. . . . a crucial link between the UN, the organizations of the UN system, the governments, national parliaments and civil society can be achieved through such an assembly.¹²

At a more fundamental level, a UNPA has been proposed as a means to overcome the old paradigm of international affairs, in which only nation states and their governments are recognized as having international relevance.¹³

The Assembly's Delegates and Their Selection

Being a parliamentary body, the membership of a UNPA should not be state-based. The assembly instead would need to be composed of autonomous delegates, both from the majority and the opposition in legislative branches, that are not bound to government instructions. Delegates must need to be able to vote individually according to their personal judgment and only bound by their conscience.

The delegates' purpose would be to act as a direct democratic link between the assembly's work and the constituencies they represent. As best as possible, their selection needs to accrue from a decision-making process that reflects the will of the people and not the interests of governments. An appointment through national governments would be inconsistent with this.

There are three main options in discussion on how the delegates could be selected:

- (1) Through direct elections;
- (2) From the midst of national legislative branches, or
- (3) by national parliaments, which act as an electoral colleges and elect delegates from the midst of the whole population.

In our opinion, the most pragmatic approach in the first step is to have the delegates chosen by national legislative branches.¹⁴ If political groups exist in a given legislature, these could act as electoral college-type bodies instead of the whole parliament. In any case, the selection of delegates would have to reflect the different political currents as best as possi-

¹² See Appeal for the establishment of a Parliamentary Assembly at the United Nations, April 2007, available at <http://en.unpacampaign.org/appeal/>.

¹³ See Kerr (2001) at 144.

¹⁴ If no "constitutionally embodied parliament" exists, participation from that country would be impossible. This is also the recommendation of the Committee for a Democratic U.N., see Bummel (2010a) at 23.

ble. If the example of various regional assemblies which apply this method is followed, the individuals selected to serve in a UNPA would have to be sitting national MPs.¹⁵

The Statutes of a UNPA could include all three options so that countries or regional groupings of countries could choose for by themselves which one of them they want to apply.¹⁶ An advantage of basing representation in a parliamentary assembly on national parliaments, however, is that this link would guarantee that national legislative branches are close to the work at the UN level. This could be helpful in order to facilitate ratification of negotiated instruments and treaties.

In the longer term many who have advocated for the establishment of a UNPA will continue to urge that direct elections be the preferred option for selection of its members. That is not an argument that should be allowed to get in the way of the first steps towards implementing the idea of a parliamentary and representative voice in the meantime. A transition to direct elections could be put onto the agenda in later stages.

Political Groupings in the Assembly

A UNPA is expected to reflect a broad political spectrum, particularly, by enabling members of diverse opposition parties to be represented. While individual delegates would remain the primary constituent element of a UNPA, the administrative and political structure of the body should organize not around member nationalities, but rather along cross-border political groups. These could reflect common political outlooks of delegates such as conservative, socialist, liberal, green and so forth. In the European Parliament that has a total of 736 members, 25 members are needed to form a political group, and at least one-quarter of the 27 member states must be represented within that group.

Deliberative Dimension

The work of the UNPA would be shaped by plenary, commission and group sessions. One of a UNPA's major purposes would be to act as a formal platform to facilitate and organize public deliberation and to gather input from experts and others. Through public hearings, its specialized commissions in particular could seize information, recommendations and expertise from civil society.

In addition to voting delegates, it could be conceivable that at the Commission or Sub-Commission level, temporary advisory members be co-opted. Going beyond mere testimo-

¹⁵ For example, this is the case in the Parliamentary Assembly of the Council of Europe, the Pan-African Parliament or the Latin-American Parliament.

¹⁶ See also Kerr (2001) at 146.

nies, this would make it possible to include into the work civil society representatives and such parliamentarians who are not members of the UNPA but experts in a relevant field.¹⁷

As is the case with most complex global dilemmas climate change involves many different issues, and a parliamentary assembly could act as a hub to gather expertise and to develop coordinated policies. At the discretion of the plenary, Commissions could be formed around specific topics, such as to accompany and monitor the work of the UNFCCC's Conference of State Parties, to evaluate and monitor the work of the Intergovernmental Panel on Climate Change, to consider and monitor mitigation actions and issues like energy, food security, health, biodiversity or water.

Connecting to the Grassroots Level

By contrast to top diplomats and plenipotentiaries who represent governments and report back to them, UNPA delegates would be ultimately accountable to their constituents. Their task would be to establish links to relevant groups and civil-society organizations on the spot and to interact with them. On the one hand, delegates would have first-hand experience and information which they could utilize in their work at the UNPA and on the other, they could educate the public on developments at the international level.

The UNFCCC and a Parliamentary Body

Is it realistic to imagine that the first steps towards the wider establishment of a UNPA could evolve to facilitate the work of the UNFCCC?

According to art. 7.2(i) UNFCCC the Conference of State Parties may establish subsidiary bodies "as are deemed necessary for the implementation of the Convention". On this basis, a parliamentary body could be created within the UNFCCC framework without the need of amending the convention.

The COP's rules of procedure could provide that a draft (post-Kyoto) protocol needs to be approved by this subsidiary parliamentary body before it may be adopted by the Conference of State Parties according to art. 17.1. At the minimum, it should be required that the body has the right to suggest amendments to and to come forward with opinions on any draft negotiated by the Conference of State Parties. Within COP negotiations itself, the UNFCCC Parliamentary Assembly could be represented by a delegation.

¹⁷ See Bummel (2010a) at 20 (arguing that "[t]he UNPA Statute could proscribe that the respective parliamentary commissions of the member states decide on the delegation of a representative to the respective sessions of the corresponding UNPA commission") and Kerr (2001) at 147 (elaborating on the possibility of non-voting seats for "significant non-governmental organizations and major transnational business groups").

Although a new powerful player would be added into the fabric of UNFCCC negotiations and decision-making, this would not necessarily make the process ineffective. On the contrary, giving legislators a significant formal role in the UNFCCC process could make the overall mechanism more effective as it could facilitate subsequent ratifications.¹⁸

Formally, COP would have to take two basic decisions: First, to create the body, and second, to modify its own rules of procedure accordingly.

The difficulty is that, in the absence of an agreement on the mode of decision-making in the rules of procedure, these decisions would have to be taken by consensus.¹⁹ The need of consensus as the only way for making a binding decision has already been identified as the major flaw in the UNFCCC system of governance and the dilemma is that any formal remedy within the framework meets the same requirement. However, reaching a reasonable compromise on the mode of decision-making might be more appealing to the State Parties than risking a total breakdown of the UNFCCC process. The creation of a parliamentary assembly within the UNFCCC might be a part of a the solution.²⁰ There is almost certainly more international agreement for the need for collective action than has thus far been manifested by the existing negotiating processes.

The parliamentary assembly - created for limited or general purposes - could also be established outside the UNFCCC framework as a subsidiary organ of the UN General Assembly. This could be done by a majority vote according to art. 22 of the UN Charter, This provision allows the UN General Assembly to “establish such subsidiary organs as it deems necessary for the performance of its functions.” In a second step, the UNFCCC’s rules of procedure then could determine the role of the UN Parliamentary Assembly in the UNFCCC’s framework on similar lines as already suggested. This approach might be more useful as it would take into account the cross-sectoral nature of climate change by placing the parliamentary body at the core of the UN system. In addition, this strategy would make it easier for other UN bodies and mechanisms to make use of the UN Parliamentary Assembly for other purposes and thus facilitate its organic evolution.

¹⁸ Although US vice president Al Gore signed the Kyoto Protocol it was never put to the Senate for ratification due to a Sense of the Senate resolution passed 95-0 in June 1997 which stated that the US should not sign on to an agreement that puts commitments on it without similar commitments on major developing countries.

¹⁹ See art. 7.2.(k) UNFCCC.

²⁰ It should be noted that Bolivia, which was one of the countries that opposed the Copenhagen Accord, complained about the lack of democracy and the insufficient inclusion of the people in the UNFCCC negotiations, something that would be addressed by a parliamentary assembly. Bolivia’s President Evo Morales even went a step further and suggested a “world referendum“ on climate change, a proposal that was endorsed by the so-called “World People’s Conference on Climate Change and the Rights of Mother Earth“ held in Cochabamba, Bolivia, from 19 to 22 of April 2010.

Besides of co-decision or advisory rights, a UNFCCC-PA or UNPA in particular could monitor government's compliance in order to secure that they really follow-up on their tasks and commitments.

Balancing Between Small and Large States

One of the characteristic features of the UN decision-making system is the principle of equal representation and equal voting power of all states in UN bodies. This principle also governs the UNFCCC as art. 18.1. determines that each party to the convention has one vote. The result is that, at least mathematically, the 128 least populous countries who account for merely 8.4 percent of the world population and 11.2 percent of world economic output can always achieve a two-thirds majority. In comparison, the G-20 alone, collectively represents around 90 percent of the world domestic product and two thirds of the world population. This system has been described as the "core dysfunction"²¹, "the greatest obstacle to the effectiveness"²² of the UN and as "out of step with contemporary geopolitical realities."²³

While it would not alter this system the one nation-one vote principle - in the existing UN bodies, a parliamentary assembly established by the UN General Assembly or in the framework of UNFCCC could serve as an instrument that reflects the actual weight of countries. The number of seats allocated to each country could be based on criteria such as population size, economic size and other factors. The assembly thus could offer a more appropriated distribution of power between the citizens of the world as well as counterbalance and reconcile between large and small countries.

The Distribution of Seats

The distribution of seats in a global parliamentary assembly obviously is a fundamental concern to both advocates and skeptics of a body like this, as this determines its actual power structure.²⁴ Considerations on models for the distribution of seats in a global parliamentary assembly should start by determining an upper limit of the total number of delegates, given that if the assembly has too many members, this would undermine its practicability and efficiency.

According to the opinion of experts and the already existing experience of big countries and continental unions, the largest possible total number for a parliament should probably lie be-

²¹ See Brown (2008) at 8.

²² See Nolan & Lenski (2006) at 352.

²³ See Lamy (2005) at 24.

²⁴ For a detailed analysis see Bummel (2010b).

tween 700 and 900 delegates.²⁵ This total number has been suggested for a UNPA that is established by the UN General Assembly. The range of issues which such a body should be entitled to deal with would potentially be defined similarly to art. 10 of the UN Charter. A UNPA thus may “discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter.” The range of issues that a UNPA which is established on that basis might deliberate on would not be restricted, just as this is the case for the UN General Assembly itself. Based on a more incremental approach, it has been suggested that step by step, legal ties should then also be established with the funds, programmes and specialized agencies of the UN system, peacekeeping operations and with the economic and financial institutions of the Bretton Woods system. If created as a subsidiary body of the UNFCCC Conference of State Parties, a UNFCCC Parliamentary Assembly that is focussed on climate change and related fields would probably manage with less than 700 seats, maybe around 500.

Following the example of regional parliaments and parliamentary assemblies, first of all the directly elected European Parliament, it is recommended that the determination of the number of seats per country in a UNPA should be based on the principle of “degressive proportionality” which would allow to achieve a reasonable balance between the principles of democratic representation on the one hand and of the equality of states on the other.²⁶

An Exemplary Model for a UNFCCC-PA

The distribution of seats in a possible UN or UNFCCC parliamentary assembly will be determined through political negotiations among participating states. There is no ideal model and we do not prefer or promote any specific approach or formula, except for the recommendation that any model should be based on the principle of degressive proportionality. Still, it is important to illustrate at least one theoretical model in order to make the parliamentary assembly proposal more tangible.²⁷

First of all, given that one of the purposes of a UNPA is to represent the political diversity of the world population as best as possible, population size is an indispensable criterion which needs to be taken into account. As the national economic output is an important factor connected to climate change, it would be an option to also consider a country’s share in world GDP. Other factors surely are conceivable. However, the underlying figures, need to be in-

²⁵ See also Bummel (2010a) at 27.

²⁶ If the seats were distributed directly proportional to population size, for example, the threshold for a country to get at least one seat in an assembly of 800 would be at a size of at least 4 million inhabitants. 71 countries thus would not qualify for any representation. At the same time, China would fill 19.9 percent of seats and India 17.3 percent.

²⁷ Four models were recently conceptualized in Bummel (2010b).

disputable. It is doubtful whether such figures can be established for each country with regard to GDP or, to name another example, energy consumption. Since a country's share of the UN budget is supposed to be closely related to its share of the world's combined GDP and clearly fixed, the share of UN dues may be a suitable substitute for GDP.²⁸

The model to be illustrated here is based on a method originally developed to calculate possible voting powers in a reformed UN General Assembly.²⁹ The resulting percentages per country, however, can be translated into the number of seats in a UNPA.

In this model, the share of seats of a given country in the total number of seats in a UNPA is the average of

- (1) P (its percentage share of the total population of all UN member states)
- (2) C (its percentage share of the total UN budget) and
- (3) M (its share of the total UN membership: 1/192 or 0.521 percent)

The formula looks like this:

$$WV = (P + C + M) / 3$$

Factor M could be weighted two times in order to give small states better representation:

$$WV = (P + C + 2 \times M) / 4$$

In the original method the resulting number WV would be a nation's weighted vote. To calculate the number of seats per country in a UNPA another step is now necessary in which WV serves as the percentage share of seats in a fixed total number, T. It's a simple rule of three:

$$\text{Seats} = (T \times WV) / 100$$

The single results finally would have to be rounded up or down to the nearest integer.

The Model in Detail

For this illustration let us assume that the body would be set up as a subsidiary organ of the UNFCCC Conference of State Parties. The total number of seats is fixed at 550.³⁰ Due to rounding effects, the final number would be 549.

How would this assembly look like in detail?

²⁸ See Schwartzberg (2004) at 12.

²⁹ See Schwartzberg (2004).

³⁰ For the same model using a total number of 800, see Bummel (2010b).

The following table shows the distribution of seats among countries and their combined percentage share in world GDP and world population:

Number of seats	No. of states	% of states	Com- bined no. of seats	% of total seats	Com- bined % of world GDP	Com- bined % of world popula- tion
One seat	54	28.1	54	9.8	0.4	0.6
Two seats	99	51.6	198	36.1	9.8	19.1
Three seats	17	8.9	51	9.3	8.9	10.5
Four seats	4	2.1	16	2.9	4.6	3.2
Five seats	4	2.1	20	3.6	2.4	7.9
More than five seats	14	7.3	210	38.3	74.0	58.9

Own calculation. Figures for population numbers CIA (2009a), for GDP average from CIA (2009b), IMF (2008) and World Bank (2008).

This table shows the allocation among the top countries that get more than five seats:

Country	Position	% of world popu- lation	% of world GDP	Seats	% of seats
USA	1	4.56	24.8	38	6.9
China	2	19.86	6.4	32	5.8
Japan	3	1.89	8.0	27	4.9
India	4	17.3	2.1	26	4.7
Germany	5	1.22	6.1	15	2.7
United Kingdom	6	0.91	4.9	12	2.1
France	7	0.95	4.8	11	2.0
Italy	8	0.86	3.9	10	1.8
Indonesia	9	3.56	0.8	7	1.3
Brazil	9	2.95	2.5	7	1.3
Mexico	9	1.65	1.8	7	1.3
Russian Federation	10	2.08	2.5	6	1.0
Spain	10	0.60	2.6	6	1.0
Canada	10	0.50	2.5	6	1.0

Own calculation. Figures for population numbers CIA (2009a), for GDP average from CIA (2009b), IMF (2008) and World Bank (2008).

This table shows the combined number of seats for selected country groupings:

Grouping	No. of states	% of world population	% of world GDP	Seats	% of seats
African Union	49 ^a	13.8	2.3	91	16.6
ASEAN	10	8.8	2.4	28	5.1
European Union	27	7.3	31.2	103	18.8
G-20	19 ^b	62.2	77.6	226	41.2
Pacific Islands Forum	14 ^c	0.5	1.9	19	3.5

a. Without Mauritania, Guinea, Madagascar (suspended) and Western Sahara (not UN member).

b. Without EU.

c. Without Cook Islands and Niue (not UN members).

Own calculation. Figures for population numbers CIA (2009a), for GDP average from CIA (2009b), IMF (2008) and World Bank (2008).

As can be seen in these tables, there is a characteristic effect of degressive proportionality: Countries that have a small share in world GDP and/or world population have a relatively larger percentage of seats than the larger ones.

It should be noted, that the determination of the number of seats that may be occupied by delegates from a given country is only the first of two steps in the arithmetic procedure. After all, the delegates are not appointed by government. In a second step it is necessary, to break down the number of seats per country to the political groups in the respective parliament according to their share in the total number of seats in the national assembly. In countries with less than five seats, the best solution probably is that the largest groups can fill one seat each.

Conclusion

We do not suggest that a magical solution exists to the challenge of making global climate deliberations and governance more effective and democratic. Those challenges are profound—and at least as complex as any set of issues that can be resolved only by global agreements. However, we believe that the potential of involving a global body of elected representatives has not yet been sufficiently recognized and that it deserves more attention. The mere existence of a UNPA, its capacity to deal with the global warming issue and its purpose to develop recommendations on this and possibly other global issues in an inclusive, open, transparent and democratic way would mean an extraordinary step forward.³¹

Eventually, a Protocol approved by a global parliamentary assembly would have a legitimacy incomparably greater than Kyoto ever had or which would stem from the existing inter-governmental arrangement under the UNFCCC or from a new inter-governmental arrange-

³¹ See also generally Fernando Iglesias (2009).

ment outside the UN. This legitimacy would exert moral pressure to join the Protocol and to secure compliance with any agreement on a continuing basis over time. State parties of necessity have restraints on what is possible for them to say without damage to their relationships to allies or neighboring nations. Members of a UNPA would not be subject to those limitations.

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