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A WORLD PARLIAMENT AND THE TRANSITION FROM INTERNATIONAL LAW TO WORLD LAW

Abstract: World civilization depends on the provision of global public goods such as tackling climate change, ensuring international financial stability or peace and security. Yet, the intergovernmental system of global governance is not capable of delivering the required results. At a fundamental level, the change necessary to achieve functioning world governance consists in a transition from international law to world law. A key element in this is the development of a global legislative system that includes a democratically elected world parliament. The establishment of a UN Parliamentary Assembly would be a pragmatic first step.

Key words: *Cultural lag, global public goods, global governance, world government, paradigm change, international law, world law, world parliament, United Nations Parliamentary Assembly*

INTRODUCTION

As science and technology advances and new technological applications spread throughout society, culture needs to adapt and develop ways of how to deal with them. In the process, social change and social conflicts occur. Cultural adaptation takes place with a certain delay and is regularly outpaced by technological development. Because of the rapid speed and the huge extent of technological change, cultural delays may accumulate. In addition, as William Ogburn explained 1922 in his pioneering theory of cultural lag, the various parts of culture are not adapting at the same rate. [1: 200 ff.]

Today, all human beings are part of a single, highly integrated world system that expands over the entire globe. Never before communication and exchange of information was possible in such an immediate, deterritorialized and inexpensive manner. Industrialization and population growth have made human civilization a force of geological proportions. Climate and environment are transformed by hu-

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man activities. To acknowledge this, scientists have suggested that a new formal epoch should be introduced: the Anthropocene.

For the Earth system to remain as habitable for human life as it was during the Holocene in the past 10,000 years, planetary boundaries need to be respected. [2] An effective and responsible management of global commons such as the atmosphere, particularly by controlling carbon emissions, is critical to achieve this. Runaway global environmental change poses a serious risk to the functioning and maybe even to the survival of world civilization. The same applies to nuclear weapons of which an arsenal of over 18,000 still exists. In 1957, Ogburn described the inability of humanity to adapt to this technology, for instance by abolishing nuclear weapons, as an extremely dangerous cultural lag. [3]

1. GLOBAL PUBLIC GOODS AND GLOBAL GOVERNANCE

The advancement of technology, the high degree of global interconnectedness and human impact on the Earth system has led to the dependence of world civilization on the provision of global public goods. A task force initiated by France and Sweden identified six global public goods “whose provision is critical: preventing the emergence and spread of infectious disease; tackling climate change; enhancing international financial stability; strengthening the international trading system; achieving peace and security, which underlies and is essential to all the others; and the cross-cutting issue of knowledge.” [4: xiii.] One global public good that for sure needs be added to this list is ensuring global food security.

However, the intergovernmental system of global governance is not able to deliver the required results. The most critical cultural lag of our time that fundamentally undermines the provision of global public goods is the inability of humanity to overcome the age-old Westphalian intergovernmental system and to establish functioning supranational world governance. This transformation is the cultural evolutionary leap that is necessary to achieve a stable and sustainable world civilization. It is of overarching importance because it affects the global regulatory capacity as such.

This is by no means a new insight. In the years after the Second World War and the first use of nuclear weapons, the concept of a federal world government enjoyed considerable public and intellectual support.¹ Albert Einstein was one of the most prominent advocates at the time. Many founding members of the World Academy of Art and Science such as the academy’s first president John Boyd Orr as well as Bertrand Russell, Brock Chisholm, or Robert Oppenheimer, had championed the idea. As the Cold War set in, the proposal eventually lost traction.

In his presidential address at the 50th anniversary convention of the International Studies Association in 2009, Thomas G. Weiss asked what had happened to the idea of a world government that once was endorsed by so many of the world’s leading intellectuals and lamented the “abject poverty of our current thinking.” [6] While

¹ For a brief history see [5].

the idea of a world government was banned from mainstream thinking for a long time, it is now getting more and more serious attention again. [7][8][9]

2. THE NECESSITY OF PARADIGM CHANGE AND THE DISTINCTION BETWEEN INTERNATIONAL LAW AND WORLD LAW

The global challenges that humanity is faced with in the age of the Anthropocene make it necessary to question established paradigms. Earth system researchers who are at the forefront of scrutinizing human impact on the environment, call for a “fundamental reorientation” of international institutions. While their recommendations focus on specific reform measures, it was emphasized in an important article published in *Science* magazine that bold and comprehensive steps are needed: “The world saw a major transformative shift in governance after 1945 that led to the establishment of the UN and numerous other international organizations, along with far-reaching new international legal norms on human rights and economic cooperation. We need similar changes today, a ‘constitutional moment’ in world politics and global governance.” [10]

The process of world state formation, the development of supranational world governance and possible shapes of a world government naturally involve many complex issues and different viewpoints that have been debated for decades. Nonetheless, at a fundamental level, the major change consists in a transition from international law to world law.

The following paradigmatic differences are playing a key role:

- The main unit in international law is the *states* whereas in world law it's the individual *citizens*. World law is rooted in the notion of world citizenship which implies that individuals are legal subjects with immediate duties and responsibilities. According to Rafael Domingo, “The human person, and not the state, should constitute the cornerstone of global law ... Uniquely situated as spectator, spectacle, legislator, and target of all normative precepts, is it the concept of *person* in all its richness that constitutes the first principle of the global law.” [11: xvi]
- The basic paradigms of international law are *national independence* and the *sovereign equality of states* whereas in world law it's *global interdependence* and the *equality of all human beings*. World law assumes a global responsibility for matters of global concern. Ultimately, this includes a responsibility for individual well-being. Even if global challenges of the magnitude of anthropogenic climate change wouldn't exist, this would not diminish the reality of a planetary civilization and the need of planetary regulation and decision-making.
- International law is based on intergovernmental treaties that states can *optionally join or not join* whereas world law would be *universally binding* not only on states, but in principle also on individuals and other entities such as corporations.

- Rulemaking in international law, is based on *consensus* and on the principle of *one state, one vote*, whereas in world law there would be democratic decision-making based on *qualified majorities* that are derived from the principle of *one person, one vote*.
- Representation in the intergovernmental system that is based on international law is achieved through officials who are *appointed by the executive branch of national governments* whereas in a system of world law representatives are *democratically elected by the world's citizens*. The right to vote in free and fair *planetary* elections of this kind perhaps constitutes the most emblematic expression of world law and a *democratic* system of world governance.
- The perspective prevalent in international law is *national interests*, or the *raison d'état*, whereas in world law it's the *planetary interest*, or the *raison d'humanité*, an expression originally coined by Yehezkel Dror. [12: 83 ff.] World law assumes the unity of humanity as a natural collective of all human beings. World law is concerned not only with individual well-being but with the well-being and survival of the entire species and its natural habitat, the Earth. A body of democratically elected world representatives would be a mechanism that continuously allows for determining the best interest of humanity. Domingo suggests that a system of global democracy that puts humanity center-stage could be called an "anthroparchy." Furthermore, he argues that "Because parliament is the democratic institution par excellence and the cradle of true democracies, only a Global Parliament ... could legitimize the anthroparchy." [11: 119]

Traces of world law can already be found in the international legal system. This concerns, for example, the universally binding character of decisions of the UN Security Council based on Chapter VII of the UN Charter, the concept of common heritage of mankind in the Law of the Sea, the dispute settlement mechanism of the World Trade Organization, the International Criminal Court that is prosecuting *individuals* for the worst possible crimes, or the emerging principle of the Responsibility to Protect.

Nonetheless, the problem remains that international law actually lacks the features of what is considered a legal system: There is no generally binding system of law-making, there is no obligatory settlement of disputes at courts, and there are no means of enforcement. These are exactly the elements that characterize world law by contrast to international law.

3. A HYBRID GLOBAL LEGISLATIVE SYSTEM

In particular, world law would need to be based on a global legislative system that, in principle, is capable of determining universally binding regulation in areas of global concern. As Grenville Clark pointed out, "the word 'law' necessarily implies the law of a world authority, i. e., law which would be uniformly applicable to all nations and all individuals in the world." [13: xv] The procedure, participants, and the scope of decision-making of such an authority are of primary importance. To a high degree, it is the structure of this decision-making that determines the lev-

el of democratic inclusion, legitimacy, and accountability as well as the effectiveness of the system. For this reason, the proposal of a democratically elected world parliament as a core institution in a global legislative system addresses one of the most important aspects of the transition.

In the transition from international law to world law it is long overdue to begin with an incremental process towards the establishment of a global legislative system. In this process it needs to be taken into account that without direct representation of the world's citizens in the global system, it is impossible to implement the principles of world law. The development of an elected world parliament thus is an indispensable long-term goal.

As states will continue to be the most important entities of governance and while vast gaps prevail in the level of development throughout the world, a global legislative system necessarily will have to be a *hybrid* of international law and world law that manages to find the best possible balance between the principles that characterize the two.

With a view of the "balkanization of the world" that went along with the emergence of ever more independent nation-states, Wilfred Jenks for example has already spoken of a paradox "parallel progress of interdependence and independence" and the requirement to "reconcile in a responsible manner the greater concentration of political authority required by the progress of interdependence with the wider diffusion of political freedom implied in the progress of independence." [14: 127]

As Vaclav Havel pointed out in his speech at the UN's Millennium Summit, global legislation in a reformed United Nations thus would "probably have to rest on two pillars: one constituted by an assembly of equal executive representatives of individual countries, resembling the present plenary, and the other consisting of a group elected directly by the globe's population in which the number of delegates representing individual nations would, thus, roughly correspond to the size of the nations." [15]

Additionally, it is imaginable that for global rules to become universally binding, it would be useful to include another layer of decision-making. It could be provided that regulation passed by the UN General Assembly and the directly elected body would have to be approved by a certain majority of national parliaments as well so that the traditional process of ratification is not entirely abandoned but partly included in the new system. To be more effective, it might be better to give a certain majority of national parliaments the possibility to overrule global legislation within a certain period of time after which it otherwise would automatically enter into force.

With regard to overcoming the principle of consensus decision-making in intergovernmental negotiations, Frank Biermann suggested that instead "We could think about different majority and voting rules for different issue areas. We can think about multiple, complex, combined, or layered majorities. And surely, we need to clearly define institutional guarantees that protect smaller countries." [16] Implementing the requirement of different qualified majorities for different issue areas in different decision-making bodies and layers is a good approach for binding decision-making in a global legislative system.

4. A UNITED NATIONS PARLIAMENTARY ASSEMBLY

At this point, a pragmatic first step would be the creation of a United Nations Parliamentary Assembly (UNPA).² As should be clear by now, this wouldn't just be another UN body. It would be the *first body in human history* mandated to represent the world's citizens as such. Members could be directly elected or *initially* be appointed from among national parliaments. They would group according to political affiliation rather than by national origin and thus would transcend one-dimensional national interests. Unlike government-appointed officials and diplomats, UNPA representatives would not be subject to the authority of government executives.

For political reasons, the formal powers could be largely consultative at the beginning and be expanded over time. Still, the assembly would be in a position to deliberate on all issues of global concern. Its recommendations and proposals would carry moral weight and could pressure national governments to adopt programs and solutions that deliver better outcomes in the common global interest. Article 22 of the UN Charter enables the UN General Assembly to establish a UNPA. No cumbersome reform of the UN Charter would be required in the initial stage.

In formulas for the apportionment of seats, population size would have to be taken into account in some way in order to reflect the democratic equality of the world's citizens. According to most models for the distribution of seats, it is evident that a majority of the assembly's delegates would come from electoral democracies which would ensure that the democratic character of the assembly essentially is maintained. [18][19]

A more balanced distribution of voting power might be a key to allow for methods of qualified majority voting. Earth system scholars have rightfully pointed out that "governance systems that rely on majority-based rule are quicker to arrive at far-reaching decisions and that consensus-based systems limit decisions to the preferences of the least ambitious country." [10] The illusion of the equality of states that is formally implemented in most international bodies is an important cause of the dysfunctional character of global institutions and decision-making.

The European Parliament that began as a consultative assembly composed of national parliamentarians and now is a directly elected legislative chamber of the European Union provides an instructive example for how a UNPA could be developed. It takes majority decisions and the distribution of seats is based on the principle of degressive proportionality. This means that on a sliding scale, smaller countries are allocated relatively more representatives per capita than larger countries.

5. A UNPA AS AN AGENT FOR GLOBAL CHANGE

Just as the European Parliament proved to be an important player that pushed European integration forward at crucial points, a UNPA could become a key political catalyst for global change and the transition to world law. Calls for a major

² See also [17].

restructuring of global governance have been made for decades. In 1976 for example, the Aspen Institute and others promoted the “Declaration of Interdependence” authored by Henry Steele Commager and Harlan Cleveland argued in favor of a “Third Try at World Order.” [20] When the Cold War had passed, the Commission on Global Governance in 1995 called for a World Summit on Global Governance to take place in 1998 that should reconsider the whole system and whose decisions should be implemented by 2000.

It is finally time to recognize that major change is unlikely to be initiated and spearheaded by governments. Despite successful campaigns for the Anti-Personnel Mine Ban Convention and the International Criminal Court, so far civil society, too, has not managed to address the need of systematic change in global governance in any adequate manner and, more importantly, the little effort that is spent on this issue is badly coordinated.

As Dieter Heinrich reasoned, the best thing UN reformers could do “would be to stop dissipating ourselves in trying to promote this or that isolated policy to deaf governments and their equally unhearing, unimaginative and unambitious foreign ministries. Instead we might try uniting our meager energies behind just one common goal that would serve all our causes, that of creating a consultative assembly at the UN. We could hope that once founded ... it could recapitulate for us at the UN the course of events followed by the European parliament.” [21: 42] A UNPA thus would not only be an embryonic element of a post-Westphalian order but also its most important agent.

CONCLUSION

The World Academy of Arts and Science’s initiative for the establishment of an international Consortium on a New Paradigm comes at the right time and it’s exactly the approach that is needed: strengthening civil society’s efforts towards systemic change through better networking and coordination. The establishment of a UNPA as a first step towards a world parliament and a transition to world law should be a key goal.

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