

Joint submission by the *World Citizens Association of Australia*
and *Democracy Without Borders* to the

**Inquiry of the Senate Committee on Legal and Constitutional Affairs regarding
Nationhood, national identity and democracy**

26 September 2019

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A. Preliminary matters

1. About the proponents

The World Citizens Association of Australia (WCA) is a civil society organization with individual members in all Australian states dedicated to the promotion of global citizenship and democratic global governance.

Democracy Without Borders (DWB) is an international civil society organization with chapters and partners across the world, including in Australia. Its programs include the promotion of a UN Parliamentary Assembly and a UN World Citizens' Initiative.

2. Summary of recommendations

We recommend that the Senate should give consideration to proposals that aim at strengthening global democracy and the notion of global citizenship by advancing citizens' participation and representation in global affairs.

We recommend that the Senate should call on the Australian government to take action at the United Nations on the occasion of its 75th anniversary in 2020 in support of the creation of

- a United Nations Parliamentary Assembly (UNPA) and
- a United Nations World Citizens' Initiative (UNWCI).

3. Questions addressed by this submission

This submission addresses – in particular but not limited to – points (d) and (f) of the terms of reference:

- the role that globalisation and economic interdependence and economic development plays in forming or disrupting traditional notions of national identity;
- the extent to which nation states balance domestic imperatives and sovereignty and international obligations;

as well as the following question raised in the discussion paper:

- What are the implications of international law and treaties for domestic democracy and sovereignty? How should we think about democratic representation as countries become increasingly connected and interdependent?

B. Exposition

1. Preamble

The discussion paper refers to the “growing sense that democracy is under threat”. Yet there is no better alternative on offer as a governance system, as Winston Churchill famously remarked. The principle of democracy must be defended, and its operations improved. This submission concerns democracy at the global level.

Surveys show that most people recognize that they are world citizens, as well as national citizens. Yet at the global level, democracy does not yet exist, and global citizens have very limited opportunities to express their views. The United Nations, in particular, has no democratic institutions. We recommend very strongly that Australia, as a dedicated supporter of the rules-based international order, should play an active and constructive role in promoting democracy at the global level.

2. The dis-empowerment of the legislature

National legislation and domestic issues are increasingly determined and influenced by treaties agreed on by governments at the intergovernmental level. Economic and trade agreements, for example, today potentially affect all possible areas of life.

According to Section 61 of the Australian Constitution, entering into treaties and determining their content in the course of negotiations is an exclusive power of the executive. Decisions to sign and ratify a given treaty are taken at the ministerial level or by the cabinet. As a rule, a treaty is tabled for approval in both Houses of Parliament after it has been signed by the government but before formal ratification which would make it binding under international law. Treaties are reviewed by the Joint Standing Committee on Treaties (JSCOT).¹

Treaty negotiations often take place in secret which makes a public discourse on proposed treaty clauses difficult or outright impossible. Both Houses of Parliament and the public generally are only involved ex-post, i.e. after the negotiations are finished and a final treaty text was agreed on by the governments involved. At this stage it is no longer possible to suggest and implement any changes. In order not to harm the international credibility of the government treaties presented to the parliament will in general be automatically approved and, if necessary, implemented into domestic law.²

It has been observed in general terms that shifting decisions on matters that previously would have been considered domestic issues into the intergovernmental arena removes

¹ Department of Foreign Affairs and Trade, Treaty-making process (<https://dfat.gov.au/international-relations/treaties/treaty-making-process/Pages/treaty-making-process.aspx>)

² The rejection of the bilateral extradition treaty with China in August 2017 represents an exception from the rule and it originally did pass JSCOT.

them from parliamentary involvement, oversight and accountability and that the principle of separation of powers is effectively suspended.³

Apart from treaties, agenda-setting, discussions and decisions taken by the bodies of inter-governmental organizations such as the United Nations or at meetings of informal fora such as the Group of Twenty are also playing an increasing role. Here, too, there are few, if any, formal mechanisms in place that allow elected representatives – let alone individual citizens – to be involved.

In our assessment this results in a dis-empowerment of parliaments not only in Australia but across the world which in turn contributes to a loss of citizens' confidence and trust in the legislature as an institution that is able to pursue citizens' interests effectively.

This is in line with the Cardoso report on United Nations–Civil Society Relations which already pointed out in 2004 that “elected legislators and parliaments seem to have little impact on decisions made intergovernmentally or in the supervision and regulation of international markets”. The panel identified this as one of the main characteristics of the democratic deficit of global governance.

As no action was taken to establish new international parliamentary mechanisms that mitigate this problem, the democratic deficit still exists and by now it is having a profoundly negative impact on the development of democracy.

3. Citizenship and sovereignty

According to an international survey commissioned by the Global Challenges Foundation in 2018, 77% of respondents from Australia believe that the United Nations needs to be reformed.⁴ At the same time, 64% of Australians agreed that a new supranational organization should be created to make “enforceable global decisions to address global risks”.⁵ In another international survey carried out in 2017, 49% of respondents from Australia agreed that their country should “give up some of its sovereignty if that could help respond to global risks” whereas only 28% opposed this notion.⁶ The same study reports that 64% of respondents from Australia agreed that they consider themselves as global citizens in addition to citizens of their own country, where the question explained that “global citizenship is the rights, responsibilities and duties that come with being part of the world”.⁷ This indicates that for a majority of Australians national identity includes a cosmopolitan dimension.

The above suggest that a majority of Australian citizens are not worried about the loss of sovereignty. Quite the contrary, they are supportive of Australia delegating parts of its sovereignty to a new supranational body although more support a reform of the UN.

The response to the question on global citizenship implies that a majority would expect that such a body – either a new organization or a reformed UN – is not detached from citizens

³ Jo Leinen and Andreas Bummel, *A World Parliament: Governance and Democracy in the 21st Century* (Berlin: Democracy Without Borders, 2018), pp. 315f.

⁴ Global Challenges Foundation, *Attitudes to Global Risk and Governance 2018*, p. 37.

⁵ *Ibid.*, p. 38.

⁶ Global Challenges Foundation, *Attitudes to Global Risks and Governance 2017*, p. 22.

⁷ *Ibid.*, pp. 19, 36.

but instead suggests that a majority of citizens expect to have certain rights that go beyond the national realm and extend to this organization.

4. Citizens' representation at the UN

In 2019 an international group of parliamentarians connected with the Campaign for a UNPA⁸ confirmed that current arrangements are not sufficient to address the democratic deficit described in the Cardoso report and as outlined above.⁹ Major international, regional and sub-regional intergovernmental organizations such as the Organization for Security and Co-operation in Europe¹⁰, the African Union, the Council of Europe, Mercosur or the East African Community include parliamentary organs in their institutional structure.¹¹ At this time neither the UN core organization nor any of the institutions of the wider UN system including the World Trade Organization and the international financial institutions incorporate a formal parliamentary body.

In order to improve citizens' representation in global governance, we recommend that the UN General Assembly creates a subsidiary consultative parliamentary UN organ based on Article 22 of the UN Charter. This body will serve to formally connect parliamentarians of UN member states with UN affairs, in particular on matters of UN governance. As opposed to the notion of a new supranational body, a UN Parliamentary Assembly represents a pragmatic step forward within current arrangements that would not encroach on the question of sovereignty (even though the above survey suggests that this would have majority support). The proposal has been supported by more than 1600 present and former parliamentarians from around the globe.

As the European Parliament and the Pan-African Parliament respectively suggested, a UNPA, among other things, (a) would be complementary to the Inter-Parliamentary Union^{12, 13}, (b) could be vested with genuine rights of information, participation and control¹⁴ and (c) should have the right to send delegations to international governmental fora and negotiations.¹⁵ The latter would allow the UNPA and its parliamentary members to play a role in UN-related multilateral negotiations while they are actually conducted and not ex-post-facto.

⁸ Website: <https://en.unpacampaign.org>

⁹ Fernando Iglesias et al., Call to Action on the Creation of a UN Parliamentary Assembly, *The Guardian*, 6 March 2019, sec. World news (www.theguardian.com)

¹⁰ The OSCE's membership includes all countries of the Northern hemisphere and Australia is a partner of cooperation.

¹¹ Recent assessments include: Andrea Cofelice, *Parliamentary Institutions in Regional and International Governance* (Routledge, 2019) and Henry G. Schermers and Niels Blokker, *International Institutional Law* (Brill Nijhoff, 2018), Chapter 5.

¹² European Parliament Resolution on the 66th Session of the United Nations General Assembly (P7_TA (2011) 0255, 8 June 2011), para. (bf).

¹³ Pan-African Parliament, Recommendation on the Establishment of a United Nations Parliamentary Assembly (UNPA) (Resolution adopted on 13 May 2016) and the same, A United Nations Parliamentary Assembly (Resolution adopted on 24 October 2007), para. 16.

¹⁴ European Parliament Resolution on the Reform of the United Nations (P6_TA(2005)0237, 6 June 2005), para. 39.

¹⁵ Pan-African Parliament, 2007, loc. cit., para. 14.

5. Citizens' participation at the UN

The UN currently does not have any formal mechanisms in place that allows individual citizens to influence its work. We believe that this needs to change in order to meet citizens' growing sense of global rights and responsibilities.

In many countries, including Australia, there are instruments such as petitions that allow citizens to provide input for consideration of the executive or legislative branches of government. In the European Union there is the official transnational instrument of a European Citizens' Initiative (ECI) which gives citizens the power to submit a legislative proposal to the European Commission. Learning from this example the UN should consider establishing the instrument of a World Citizens' Initiative (WCI). Civil society organizations and networks across the world, including the submitters, are preparing a campaign to support this goal.¹⁶

Again, a WCI could be created as a subsidiary organ of the UN under Article 22 of the UN Charter. The process of an individual WCI could follow three steps: (1) Registration, (2) collection of support and (3) submission and response. A UN Administrative Board would be responsible to register individual initiatives drafted by a geographically representative organizing committee of individual global citizens. An initiative could qualify for submission to the UN General Assembly and/or the UN Security Council if it manages within a given time span to get sufficient support from global citizens representative of a minimum number of UN member states across world regions. A robust online platform for signing initiatives would need to be set up to facilitate the process. A successful proposal should be automatically placed on the agenda of the UN General Assembly and/or the UN Security Council and the organizing committee should be allowed to make their case. The UN General Assembly and/or the UN Security Council should be obliged to adopt resolutions in response to each individual initiative that is successfully submitted and presented.

6. Conclusions

Setting up a UNPA and a UNWCI requires agreement on many details but there should be no major technical challenges involved that cannot be overcome with sufficient political will. Both projects can be pursued separately and in parallel, independently from each other.

The 75th anniversary of the UN in 2020 will be commemorated under the theme "The future we want, the UN we need". This is an opportunity for Australia as a long-standing democracy and a founding member of the UN to address the global democratic deficit and propose measures to mitigate it. The Senate should call on the Australian government to start an open, transparent and inclusive intergovernmental process at the UN that looks into the proposals for a UNPA and a UNWCI and paves the way for their establishment.

¹⁶ Website: www.worldcitizensinitiative.org