



TranState Working Papers

LEGITIMIZING GLOBAL ECONOMIC
GOVERNANCE THROUGH
TRANSNATIONAL PARLIAMENTARIZATION:
THE PARLIAMENTARY DIMENSIONS OF
THE WTO AND THE WORLD BANK

MARKUS KRAJEWSKI

No. 136

Universität Bremen • University of Bremen
Jacobs Universität Bremen • Jacobs University Bremen
Universität Oldenburg • University of Oldenburg

Staatlichkeit im Wandel • Transformations of the State
Sonderforschungsbereich 597 • Collaborative Research Center 597

Markus Krajewski

***Legitimizing global economic governance
through transnational parliamentarization:
The parliamentary dimensions of the
WTO and the World Bank***

TranState Working Papers

No. 136

Sfb597 „Staatlichkeit im Wandel“ – „Transformations of the State“

Bremen, 2010

[ISSN 1861-1176]

Markus Krajewski

Legitimizing global economic governance through transnational
parliamentarization: The parliamentary dimensions of the WTO and the World Bank
(TranState Working Papers, 136)

Bremen: Sfb 597 „Staatlichkeit im Wandel“, 2010

ISSN 1861-1176

Universität Bremen

Sonderforschungsbereich 597 / Collaborative Research Center 597

Staatlichkeit im Wandel / Transformations of the State

Postfach 33 04 40

D - 28334 Bremen

Tel.:+ 49 421 218-8720

Fax:+ 49 421 218-8721

Homepage: <http://www.staatlichkeit.uni-bremen.de>

Legitimizing global economic governance through transnational parliamentarization: The parliamentary dimensions of the WTO and the World Bank

ABSTRACT

This paper discusses the potential contribution of parliamentary institutions and networks to the democratization of global economic governance. It places the analysis in the context of the larger debate on the democratic deficit of international economic institutions, in particular the WTO. On a theoretical level, the paper distinguishes different notions of legitimacy and democracy in order to identify which aspects of democratic legitimacy of global economic governance can be addressed through transnational parliamentarization. It is argued that national parliaments must react to the emergence of global economic governance in a multi-level system through new forms of transnational parliamentarization. In its empirical part, the paper assesses the Parliamentary Conference on the WTO (PCWTO) and the Parliamentary Network on the World Bank (PNoWB) as two examples of such transnational parliamentarization. Drawing on the theory of deliberative democracy the paper argues that the contribution of these settings to democratic global governance should not be measured on the basis of their formal decision-making power but with regard to their role as fora for transnational discourses and on their potential to empower national parliamentarians.

CONTENTS

I. INTRODUCTION.....	1
II. A FRAMEWORK OF DEBATE: THE NEED FOR AND THE LACK OF DEMOCRATIC LEGITIMACY IN GLOBAL ECONOMIC GOVERNANCE	2
1. Legitimacy.....	2
a) Positive and normative legitimacy.....	3
b) Input and output legitimacy	4
2. Democracy	6
a) The “subjects” of democratic decision-making: States, NGOs or citizens?.....	7
b) National, cosmopolitan and deliberative democracy	9
3. The democratic deficit of the WTO.....	11
a) Three elements of the democratic deficit (and one argument against it)	11
b) The WTO and the international financial institutions: Are they special?	14
III. LEGITIMIZATION THROUGH PARLIAMENTARIZATION.....	14
1. Domestic strategies.....	15
2. Transnational parliamentarization	15
IV. THE PARLIAMENTARY CONFERENCE ON THE WTO (PCWTO).....	18
1. Historical development and legal basis	19
2. Objectives and functions	20
3. Structure and decision-making.....	21
4. Content of meetings and outcome	23
5. The PCWTO's contribution to democratic legitimacy of the WTO	25
V. THE PARLIAMENTARY NETWORK ON THE WORLD BANK (PNOWB)	27
1. Historical development and legal basis	27
2. Objectives and functions	28
3. Structure and institutional setting.....	29
4. Contribution of the PNoWB to transnational democratic legitimacy.....	31
VI. WHITHER FROM HERE? ELEMENTS TO IMPROVE AND INCREASE THE PARLIAMENTARIZATION OF GLOBAL ECONOMIC GOVERNANCE.....	31
BIOGRAPHICAL NOTE	34

Legitimizing global economic governance through transnational parliamentarization: The parliamentary dimensions of the WTO and the World Bank*

I. INTRODUCTION

The debate about the legitimacy deficit of the World Trade Organisation (WTO) and of other international economic institutions forms a core element of the legal and political discourse about global economic governance.¹ Even though the current financial and economic crisis seems to be an “hour of the executive” as the creation of economic recovery programmes and the discussions about the redesign of the international financial architecture involve almost exclusively governments, parliamentary and civil society interest of and engagement with issues of global economic governance continue to flourish. Questions about legitimacy and democratization will also remain a prominent element of the debate about the institutional structure and decision-making processes of global economic institutions.

This paper aims to contribute to this debate by analysing the potential role of transnational parliamentary institutions and framing this analysis in the wider debate about democratic legitimacy at the international level. The paper is organised in five main sections. The first section develops a terminological and conceptual framework for the debate by identifying different usages of the key notions of legitimacy and democracy. It shows the different meanings of these terms in different discourses and relates them to each other. This allows me to discuss the elements of the democratic deficit of global economic governance more precisely and develop a framework for the analysis of the potential of transnational parliamentarization as a means of reducing this deficit. Transnational parliamentarization is explained in the next section as the growing trend of parliamentary activities beyond the nation state. This involves the proliferation of parlia-

* This paper was originally presented at the World Trade Forum 2009 “Making Decisions at the World Trade Organization: Past, Present and Beyond Doha“, 25 and 26 September 2009, in Berne, Switzerland. I would like to thank Thomas Cottier, Manfred Elsig, Steffen Grammling and the participants of the World Trade Forum for helpful comments and a fruitful debate. I am also indebted to Christian Joerges, Thorsten Hüller, Henning Deters and two anonymous reviewers for reading the paper critically and suggesting many improvements. All errors remain mine.

¹ R. Nye, *The “democracy deficit” in the global economy, Enhancing the legitimacy and accountability of global institutions* (London: Trilateral Commission, 2003); D. Esty, 'The World Trade Organization's legitimacy crisis', *WTRev* 1 (2002), 7.

mentary assemblies in various regional settings and the emergence of less formal parliamentary dimensions of global economic governance.

The third and fourth sections of the paper discuss the Parliamentary Conference on the WTO (PCWTO) and the Parliamentary Network on the World Bank (PNoWB) respectively as two recent examples of transnational parliamentarization. It is argued that the contribution of these settings to the democratization of global governance should not be measured on the basis of their formal decision-making power but on the basis of their contribution to the empowerment of national parliamentarians to engage in substantive deliberations and discourses on the key issues which are at stake in organizations such as the WTO, the World Bank or the IMF. Based on this, the paper turns to the question of how the current system can be improved in its final section. It is suggested that the two parliamentary settings engage in more controversial (parliamentary-style) debates on pertinent issues, publicize their deliberations, broaden the topics of their debates beyond the core issues of the institutions they are associated with, strengthen their institutional basis and establish links between each other.

II. A FRAMEWORK OF DEBATE: THE NEED FOR AND THE LACK OF DEMOCRATIC LEGITIMACY IN GLOBAL ECONOMIC GOVERNANCE

A key challenge for anyone approaching the debates on the democratic legitimacy of international law or international institutions are the variations in terminology.² The core concepts of that debate, legitimacy and democracy, are used in very different ways. In order to engage in a fruitful exchange of ideas it is therefore essential to clarify the meaning of these terms. This section distinguishes different notions of the two concepts and relates them to each other. This will then allow me to identify more precisely the place of transnational parliamentarization in the legitimacy/democracy debate.

1. Legitimacy

The starting point of the analysis should be the notion of legitimacy, because it has the broader meaning and encompasses democratic legitimacy as well as other forms of legitimacy. It is generally agreed that a positive (or sociological) and a normative approach towards legitimacy can be distinguished.³

² R. Howse, 'How to Begin to Think About the "Democratic Deficit" at the WTO', in: S. Griller (ed), *International Economic Governance and Non-economic concerns* (Vienna: Springer, 2003), p. 79.

³ A. Buchanan/R. Keohane, 'The Legitimacy of Global Governance Institutions', in: R. Wolfrum/V. Röben (eds.), *Legitimacy in International Law* (Berlin: Springer, 2008), p. 25; D. Georgiev, 'Politics or Rule of Law: Deconstruction and Legitimacy in International Law', *EJIL* 4 (1993), 12.

a) Positive and normative legitimacy

Positive legitimacy addresses the question whether a norm of international law or a decision of an international organisation is accepted as legitimate by the international legal community.⁴ This encompasses actual compliance with the norm or decision, but also relates to the perception of the norm from the perspective of those who have to comply with it. Positive legitimacy concerns itself with the behaviour of nations and the reasons why they comply (or do not comply) with a particular norm of international law or a decision of an international tribunal.⁵ For example, empirical studies have shown that the compliance rate of WTO dispute settlement decisions is higher than the observance of decisions under the GATT 1947 regime.⁶ It can therefore be argued that the positive legitimacy of the WTO is higher than that of its predecessor. Contrary to this, the proliferation of regional and bilateral free trade agreements increased exponentially under the WTO regime⁷, which could be seen as an indication that states increasingly “opt out” of the multilateral trading system suggesting a reduction in the positive legitimacy of the WTO. Positive legitimacy can only be determined on the basis of those who are actually bound by a particular regime, i.e. the subjects of that regime. Violent protests at WTO meetings are therefore not an indication of a lack of positive legitimacy, because individuals are not subject to WTO law. However, the protests can be seen as a sign of a deficit of the normative legitimacy of the WTO.

Normative legitimacy refers to the principles and values which justify the existence of a particular norm or a legal regime. Normative legitimacy does not address whether a norm is accepted, but whether it should be accepted or, more generally, whether it is acceptable. Normative legitimacy requires that a rule or decision meets certain generally accepted standards of justice, fairness, or reasonableness derived from substantive values which are generally assumed to be of a higher rank. In other words, normative legitimacy refers to the principles upon which the justification of a norm is based.⁸

⁴ T. Franck, *The Power of Legitimacy among Nations* (Oxford: OUP, 1990).

⁵ A. Beviglia Zampetti, 'Democratic Legitimacy in the World Trade Organization: The Justice Dimension', *JWT* 37 (2003), 107.

⁶ A. Mondré/G. Neubauer/A. Helmedach/B. Zangl, *Between Law and Politics: The Judicialization of International Dispute Settlement in the Fields of Security, Trade and the Environment*, TranState Working Papers, 71, 2008; B. Zangl, 'Judicialization Matters! A Comparison of Dispute Settlement Under GATT and the WTO', *International Studies Quarterly* 52 (2008), 825.

⁷ R. Fiorentino/L. Verdeja/C. Toqueboeuf, *The Changing Landscape of Regional Trade Agreements: 2006 update*, WTO Discussion Paper No. 12 (Geneva: WTO, 2007), available at http://www.wto.org/english/res_e/reser_e/discussion_papers_e.htm (last visited 18 February 2009).

⁸ D. Bodansky, 'The Legitimacy of International Governance', *AJIL* 93 (1999), 601.

The two notions of legitimacy are often intertwined: It can be assumed that a rule which is not perceived as legitimate from a normative perspective will often not be adhered to. Similarly, the lack of observance of a norm can be an indicator for a legitimacy deficit from a normative perspective.⁹

b) *Input and output legitimacy*

Another often used distinction in the debate concerns the sources of (normative) legitimacy: On the one hand, legitimacy can be based on the processes, structures or institutional frameworks of how a rule is created or how a decision is made. On the other hand, it can be based on the substantive results of a rule or decision.¹⁰ In the terms of *Fritz Scharpf*, these different dimensions refer to input and output legitimacy respectively.¹¹

Traditionally, the input dimension of the legitimacy of international law and international institutions concerns the consent of sovereign states which are parties of an agreement or members of an organisation.¹² Contemporary approaches reach beyond the mere consent of states and stress the importance of procedural fairness, of transparency and of a representative and open decision-making process. In addition, the requirement that decisions meet standards of democratic legitimacy can also be seen as an element of input legitimacy.¹³ Whether or not an international rule or institution such as the WTO is perceived as legitimate depends therefore on the standards that are used. Under a traditional model which “only” requires the formal consent of the states, the WTO and other global economic institutions can be seen as organisations without a legitimacy deficit,

⁹ P. Nanz, 'Democratic Legitimacy and Constitutionalisation of Transnational Trade Governance: A View from Political Theory', in: C. Joerges/E.-U. Petersmann (eds.), *Constitutionalism, Multilevel Trade Governance and Social Regulation* (Oxford: Hart, 2006), p. 63.

¹⁰ A. Herwig/T. Hüller, 'Towards Normative Legitimacy of the World Trade Order' in: C. Joerges/P. Kjaer (eds.), *Transnational Standards of Social Protection - Contrasting European and International Governance* (Oslo: University of Oslo, 2008), p. 232.

¹¹ F. Scharpf, *Problem-Solving Effectiveness and Democratic Accountability in the EU*, MPIfG Working Paper 03/1, February 2003. See also M. Elsig, 'The World Trade Organization's Legitimacy Crisis: What Does the Beast Look Like?', *JWT* 41 (2007), 81 et seq.; R. Keohane/R. Nye, 'The Club Model of Multilateral Cooperation and Problems of Democratic Legitimacy', in: S. Porter et al (eds.), *Efficiency, Equity, Legitimacy* (Washington, D.C.: Brookings, 2001), p. 282 et seq. and M. Zürn, 'Governance Beyond the Nation-State', *EJIR* 6 (2000), 184.

¹² R. Wolfrum, 'Legitimacy of International Law from a Legal Perspective', in: R. Wolfrum/V. Röben (eds.), *Legitimacy in International Law* (Berlin: Springer, 2008), p. 6 et seq.

¹³ T. Cottier, 'The legitimacy of WTO law', in: L. Yueh (ed.), *The Law and Economics of Globalisation* (Cheltenham: Edward Elgar, 2009), p. 17.

because they all were founded on explicit consent of the participating nations.¹⁴ However, if one applies other and more advanced models of input legitimacy, questions arise. As will be discussed in the next section, the institutions of global economic governance can be questioned in particular on the basis of democratic legitimacy.

Aspects of output legitimacy concern the effectiveness of the rule or organisation to achieve its goals and to contribute to the achievement of specific policy objectives. On a general level output legitimacy can be measured in terms of the capacity of an organisation or legal regime to solve pertinent problems.¹⁵ More specifically output legitimacy could be seen to aim at production of global public goods such as international peace, protection of human rights, sustainable development, the fair distribution of economic growth, or trade liberalisation. Again, whether or not the WTO can be seen as legitimate from this perspective, depends on the standards applied. If the only relevant public good for the WTO is trade liberalisation¹⁶, in particular the gradual reduction of tariffs and the avoidance of overt discrimination, the WTO could be ranked relatively high on the legitimacy scale.¹⁷ Yet, if one asks for the contribution of the WTO towards raising standards of living, full employment, sustainable development or ensuring that developing countries secure a share in the growth in international trade commensurate with the needs of their economic development¹⁸, a number of other aspects will have to be considered.

Elements of input and output legitimacy can coexist and often supplement each other.¹⁹ In particular, notions of fairness and justice involve both elements of input and output legitimacy. The different dimensions and elements of legitimacy which can be associated with the international trading system are illustrated in Figure 1. It should be noted that the different elements of input and output legitimacy depicted in this figure are not meant to be exhaustive nor should they be considered as clearly distinguishable.

¹⁴ J. Bacchus, 'A Few Thoughts on Legitimacy, Democracy, and the WTO', *JIEL* 7 (2004), 668 et seq.

¹⁵ P. A. Kraus, Die Begründung demokratischer Politik in Europa. Zur Unterscheidung von Input- und Output-Legitimation bei Fritz W. Scharpf, 32 *Leviathan* (2004), p. 560-561.

¹⁶ There is a debate whether trade liberalisation qualifies as a global public good, see R. Mendoza, 'The Multilateral Trade Regime: A Global Public Good for All?', in: I. Kaul et al. (ed.), *Providing Global Public Goods: Managing Globalisation* (Oxford: OUP, 2003), p. 455-483.

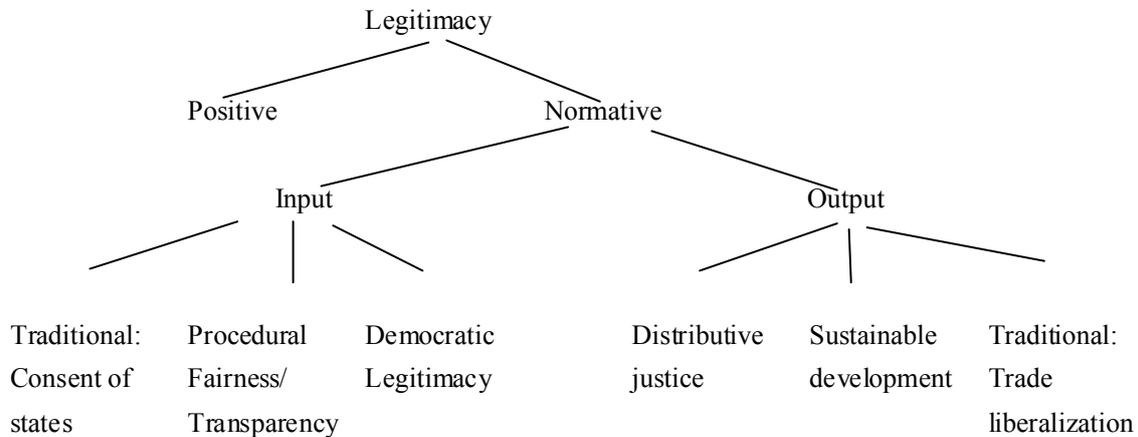
¹⁷ This coincides with the notion of „embedded liberalism“ which was the basis of the legitimacy of the trading system in the early days, see R. Howse/K. Nicolaidis, 'Enhancing WTO Legitimacy', *Governance* 16 (2003), 76.

¹⁸ These objectives are mentioned in the preamble of the Marrakesh Agreement.

¹⁹ T. Cottier, The legitimacy of WTO law, in: L. Yueh (ed.), *The Law and Economics of Globalisation* (Cheltenham: Edward Elgar, 2009), p. 18.

For example, there are certainly overlaps between aspects of transparency and democratic legitimacy or between distributive justice and sustainable development.

Figure 1: Elements of legitimacy of the international trading system



2. Democracy

While the two notions of legitimacy (empirical and sociological) and the two dimensions of the sources of normative legitimacy (input and output) seem to be relatively uncontroversial, the term and the idea of democracy remains much more contested.²⁰ It would be impossible to trace all meanings of the term in the debate about the legitimacy of international law.²¹ Instead I will try to sketch the general strands of the debate.

At the outset it should be noted that one approach to the notion of democracy in the context of global economic governance does not fit with the model developed here. This approach uses democracy in a very broad manner including elements of political decision-making and of redistributive justice.²² It is argued that a regime which increases the unequal distribution of wealth cannot be considered democratic. While it is convincing to claim that democracy and social justice or development are closely linked²³, it is neither necessary nor useful to combine both aspects in a single term of “democracy”. In fact, the use of the term democracy in such a broad sense may even reduce analytical

²⁰ R. Howse, 'How to Begin to Think About the “Democratic Deficit” at the WTO', in: S. Griller (ed), *International Economic Governance and Non-economic concerns* (Vienna: Springer, 2003), p. 79; B. S. Chimni, 'The World Trade Organization, Democracy and Development: A View From the South', *JWT 40* (2006), 13.

²¹ For an overview see S. Marks, 'Democracy and International Governance', in: J.-M. Coicaud/V. Heiskanen (eds), *The Legitimacy of International Organizations* (Tokyo: United Nations University Press), 2001, p. 52 et seq.

²² J. Boyce, 'Democratizing Global Economic Governance', *Development and Change 35* (2004), 597

²³ B. S. Chimni, 'The World Trade Organization, Democracy and Development: A View From the South', *JWT 40* (2006), 13.

clarity. It is therefore suggested that questions about redistributive justice are better discussed as part of output legitimacy and not as part of a debate on democracy.

As pointed out above, the traditional approach towards input legitimacy of international law merely requires the consent of the states and does not consider the democratic legitimacy of international institutions to be necessary. However, the majority of commentators do not seem to share this view, though. The predominant view seems to be that international organisations can and must be legitimised from a democratic perspective and that this requires reforms of the current system of global governance.²⁴ Nevertheless, there are considerable differences between the notions of democracy.

a) *The “subjects” of democratic decision-making: States, NGOs or citizens?*

At the risk of oversimplifying matters, it is suggested that three general approaches towards the term democracy can be distinguished as a first layer of differentiation. These approaches employ different notions of who are the participants or the “subjects” of a democratic decision process.

One group of scholars and representatives of civil society focusses on the subjects of international law, i.e. the states. According to this view, democracy in international organisations requires that every state has an equal right and practical opportunity to participate in the decision-making process of the international organisation. Based on this perspective the weighted voting system in the organs of the World Bank and the IMF is sometimes called undemocratic.²⁵ This critique would also apply to proposals regarding the introduction of weighted voting in the WTO.²⁶ According to this view, the “one country one vote” principle of the General Assembly of the United Nations would be more democratic. It is submitted that this is a reductionist concept of democracy which does not reflect the very basic principle of democracy. The basic idea of democracy is the notion of self-determination of individuals. Therefore, a decision-making rule which gives equal weight to the representative of a very small group of people (e.g. the population of Malta) and to the representative of a very large group of people (e.g. the population of China) is not based on the idea of democracy. Characterising the “one country one vote” principle as democratic is based on the mistake of equating individuals with states.

²⁴ T. Zweifel, *International Organizations and Democracy – Accountability, Politics, and Power* (London: Lynne Rienner, 2006), p. 13.

²⁵ P. Chowla/J. Oatham/C. Wren, *Bridging the Democratic Deficit: Double Majority Decision Making and the IMF*, Working Paper, One World Trust and Bretton Woods Project, 2007.

²⁶ T. Cottier/S. Takenoshita, 'The Balance of Power in WTO Decision-Making: Towards Weighted Voting in Legislative Response', *Aussenwirtschaft* 58 (2003), 171-214.

Somewhat related are claims that informal meetings (“green rooms”) which only include a selected number of countries are less democratic than plenary and public meetings.²⁷ This is sometimes labelled as a question of “internal democracy”.²⁸ While these are important elements of the wider discourse about the legitimacy of international economic institutions such as the WTO²⁹, they are not directly related to the classical understanding of democracy as the rule of the people. The usage of the notion of democracy in this context is therefore misleading. However, it highlights an important problem. The full and equal participation of representatives of states in international institutions is a prerequisite for any form of democratic decision-making in such institutions. If a representative from a country is not able to effectively participate in the decision-making process, his or her voice cannot be heard. Hence, the interests of the people he or she represents are equally not heard and are therefore not reflected in the decision-making process.

A second model of democracy focusses on the democratic functions of the participation of interests groups, in particular non-governmental organisations.³⁰ The benefits of NGO participation in the world trading system and the potential of NGO participation to enhance the democratic legitimacy of international institutions have been discussed extensively in the literature.³¹ There seems to be a general consensus that the participation of NGOs can play an important role regarding the transparency of the decision-making process and with regards to facilitating debate. However, the direct and formal participation of NGOs in international regimes do not lead to the democratisation of these regimes as such, because these organisations do not represent the people in general and are not subject to control by the electorate. Instead, they serve special interests and have

²⁷ T. Zweifel, *International Organizations and Democracy – Accountability, Politics, and Power* (London: Lynne Rienner, 2006), p. 121 et seq.

²⁸ B. S. Chimni, 'The World Trade Organization, Democracy and Development: A View From the South', *JWT* 40 (2006), 14.

²⁹ R. Keohane/R. Nye, 'The Club Model of Multilateral Cooperation and Problems of Democratic Legitimacy', in: S. Porter et al (eds.), *Efficiency, Equity, Legitimacy* (Washington, D.C.: Brookings, 2001), p. 276 et seq.

³⁰ R. Nickel, 'Participatory Transnational Governance', in: C. Joerges/E.-U. Petersmann (eds), *Constitutionalism, Multilevel Trade Governance and Social Regulation* (Oxford: Hart, 2006), p. 190.

³¹ Just see D. Esty, Non-governmental Organizations at the World Trade Organization: Cooperation, Competition or Exclusion, *JIEL* 1 (1998), p. 123–147 and J. Steffek/C. Kissling, 'Why Co-operate? Civil Society Participation in the WTO', in: C. Joerges/E.-U. Petersmann (eds), *Constitutionalism, Multilevel Trade Governance and Social Regulation* (Oxford: Hart, 2006), p. 135-155.

often highly specialised political agendas. In addition, there is often a remarkable North-South divide regarding the actual participation of NGOs in international regimes.³²

The third and most common use of the term democracy relates the concept to the idea of self-governance of members of a certain political body (citizen-based approach). Democratic legitimacy is construed from the perspective of individuals. It depends on the possibility of those affected by a regulation to consent to the regulation.³³ According to this understanding the basis of the democratic legitimacy of institutions such as the WTO or international financial institutions is the will of the people. The remainder of this paper is based on this approach of democratic legitimacy.

b) National, cosmopolitan and deliberative democracy

Two broad schools of thought which both adhere to the citizen-based notion of democracy can be distinguished. A traditional school of thought restricts the use of the term democracy to a political system established at the nation state. At least implicitly, this approach is based on the assumption that democracy requires a “demos”, a pre-defined group of people, which governs itself and which is presumed to exist only at the nation state level.³⁴ Democratic governance is exercised through general elections and – partly – through referenda. The source of political power is hence the popular vote. Decision-making takes place in parliaments and is based on majority voting. Governmental power is either derived from a parliamentary vote or a direct election of the president. The democratic legitimacy of an international organisation or of international law according to this approach rests on the link between decisions taken at the international level and the popular will as expressed in the general election. This link is based on two elements: The personal legitimacy which each negotiator or diplomat receives through a chain of decisions which can ultimately be traced back to a parliamentary decision (legitimacy chain)³⁵ and the approval of any international agreement by parliament (parliamentary consent).³⁶ The level of democratic legitimacy according to this approach therefore de-

³² For a comprehensive empirical analysis of the participation of NGOs in the WTO see M. Piewitt, *Participatory Governance in the WTO: How Inclusive Is Global Civil Society?* *JWT* 44 (2010), pp. 467–488

³³ P. Nanz, 'Democratic Legitimacy and Constitutionalisation of Transnational Trade Governance: A View from Political Theory', in: C. Joerges/E.-U. Petersmann (eds), *Constitutionalism, Multilevel Trade Governance and Social Regulation* (Oxford: Hart, 2006), p. 67.

³⁴ A. von Bogdandy, 'Globalization and Europe: How to Square Democracy, Globalization, and International Law', *EJIL* 15 (2004), 897.

³⁵ A. von Bogdandy, 'Globalization and Europe: How to Square Democracy, Globalization, and International Law', *EJIL* 15 (2004), 902.

³⁶ E.-U. Petersmann, 'Constitutionalism and International Organizations', *Northw. JILB* 17 (1996/1997), 433.

depends on the level of these two elements and on the extent to which the will of the people is reflected in the acts of an international organisation or an international agreement.

Some authors following the national understanding of democracy go even further than this. According to their view democracy is a concept which is confined to national law and domestic institutions. Hence, international law and international organisations cannot and should not be measured on the basis of democratic legitimacy.³⁷ However, they can restrict democratic governance of the nation state. In fact, it is often argued from this perspective that organisations such as the WTO limit democratic decision-making and are therefore “undemocratic”.³⁸ The remedy suggested by these authors is a restriction of the power of international settings and the ability of the nation state to always leave the organisation.³⁹

The classical approach of national democracy can be contrasted with a cosmopolitan understanding of democracy. Cosmopolitan democracy does not restrict the notion of democracy to the self-government of national *demos*. Instead, this approach assumes that democratic decision-making can transcend national borders and can also be exercised in transnational constellations. However, cosmopolitan democracy requires forms and methods different from those at the national level.⁴⁰ Cosmopolitan democracy refers to a system of governance comprising democratic nation states and democratic elements at the regional and international level, including *inter alia* parliamentary assemblies for international organizations, the participation of NGOs or transnational referenda.

Both approaches put an emphasis on formal rules of representation and decision-making. Many authors, in particular in the social sciences, argue that these forms must be supplemented by elements of deliberative democracy.⁴¹ Based on the theory of communicative action and rational discourse deliberative democracy refers to decision mak-

³⁷ R. Dahl, 'Can international organizations be democratic? A skeptic's view', in: I. Shapiro/C. Hacker-Cordón (eds), *Democracy's Edges* (Cambridge: Cambridge University Press, 1999), p. 19 et seq.

³⁸ Generally C. Barfield, *Free Trade, Sovereignty, Democracy - The Future of the World Trade Organization* (Washington, D.C.: AEI Press, 2001). See also E. Stein, 'International Integration and Democracy: No love at first sight', *AJIL* 95 (2001), 490.

³⁹ A. von Bogdandy, 'Globalization and Europe: How to Square Democracy, Globalization, and International Law', *EJIL* 15 (2004), 897.

⁴⁰ D. Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Cambridge: Polity Press 1995), p. 210.

⁴¹ M. Verweij/T. Jostling, 'Special Issue: Deliberately Democratizing Multilateral Organization', *Governance* 16 (2003), p. 10; P. Nanz, 'Democratic Legitimacy and Constitutionalisation of Transnational Trade Governance: A View from Political Theory', in: C. Joerges/E.-U. Petersmann (eds), *Constitutionalism, Multilevel Trade Governance and Social Regulation* (Oxford: Hart, 2006), p. 73.

ing process based on the exchange of arguments (arguing). Deliberative decision-making is contrasted with decision-making based on the exchange of commitments aiming at a compromise that benefits all (bargaining). The differentiation between arguing and bargaining and its implication for the democratic legitimacy of a decision-making process is particularly relevant for international organizations, which often include both forms of decision-making. Advocates of deliberative democracy at the international level highlight the institutional requirements for deliberation in an international organization, such as transparency and inclusiveness of the process, and the requirement to state the reason for a decision. This is where democratic legitimacy and other forms of input legitimacy meet and reinforce each other.

It is submitted that the three approaches should not be seen as alternative but as core elements of a substantive idea of democracy in a multi-level system. In this system, the requirements of the traditional model are the necessary basis: Without formal consent of domestic parliaments and the responsibility of diplomats and negotiators there is no formal link between decisions at the global level and the articulation of the will of the people at the domestic level. However, this is not sufficient. Without the additional elements of the cosmopolitan and the deliberate notions of democracy the link remains formal and thin. Transparency, debate and deliberation and a process of public deliberation are necessary to ensure the emergence and articulation of a “will of the people”.

3. The democratic deficit of the WTO

Based on such a combined approach it seems possible to identify three elements of a democratic legitimacy gap of decision-making in the WTO.

a) Three elements of the democratic deficit (and one argument against it)

The first concerns the *accountability* of the relevant actors at the WTO. This relates primarily to the representatives of the WTO Members and to a lesser degree the WTO officials. These individual decision-makers have to be held accountable to the articulated will of the peoples of the WTO Members. As mentioned above, the vehicle of this accountability is the legitimacy chain. However, in international organizations, in particular in the WTO and in the international financial institutions the chain becomes so long that it is questionable whether the actors are de facto still accountable to a domestic constituency. *Lori Wallach* of the US Non-governmental organization *Public Citizen* put it this way: “Between someone who actually got elected and the DG of the WTO there are so many miles that he is accountable to no one”.⁴² Arguably, the Director Gen-

⁴² As quoted in R. Nye, *The "democracy deficit" in the global economy, Enhancing the legitimacy and accountability of global institutions* (London: Trilateral Commission, 2003). p.1.

eral of the WTO should not be the primary target of such a critique, because he has only very limited formal power. The argument about the length of the legitimacy chain is more convincing with regard to the representatives of the WTO Members in Geneva or in the context of international financial institutions, whose officials exercise real power. In these cases the length of the chain considerably weakens the accountability of the decision-maker.

A second element concerns the *lack of parliamentary control* and participation in the decisions of the WTO. Parliamentary participation of multilateral trade negotiations has traditionally been very weak, with the notable exception of the US Congress.⁴³ National parliaments are mostly faced with the negotiations only after they are finished. The results are presented to them as a *fait accompli*.⁴⁴ It is well known that many national parliaments were not able or not willing to invest much time in the study and discussion of the Uruguay Round Agreements before they agreed to the package of treaties.⁴⁵ Parliaments also had little choice – again with the exception of the US Congress – but to agree to the Uruguay Round Agreements if they did not want their country to stand outside the new international trade system.

Thirdly, decision-making at the WTO often does not meet the criterion of a *rational discourse* and deliberation defined as a process of exchanging arguments in order to convince each other. While the decision-making process in the committees and councils of the WTO regarding technical and organisational matters meets these standards to a certain degree, the decision-making process in multilateral trade negotiations is usually based on bargaining instead of arguing.⁴⁶ Negotiators do not reach solutions and compromises by trying to convince each other on what is the best solution by rational arguments. Rather a negotiator must have enough concessions to offer in some areas without granting too many concessions in key areas in order to receive concessions from her or his negotiating partners. WTO negotiators seek “package deals”, which combine different interests, but do not integrate them into a common framework. The principle of “do ut des” is a principle of contract-making but not of deliberation and rational discourse.

Many commentators seem to share the view that these three elements of the democratic deficit in WTO decision-making are problematic. They differ regarding the sever-

⁴³ G. Shaffer, 'Parliamentary Oversight of WTO-Rule Making', *JIEL* 7 (2004), 635 et seq.

⁴⁴ A. Beviglia Zampetti, 'Democratic Legitimacy in the World Trade Organization: The Justice Dimension', *JWT* 37 (2003), 105.

⁴⁵ See e.g. the different country reports on parliamentary ratification of the Uruguay Round agreements in J. Jackson/A. Sykes (eds.), *Implementing the Uruguay Round* (Oxford: Clarendon, 1997).

⁴⁶ B. S. Chimni, 'The World Trade Organization, Democracy and Development: A View From the South', *JWT* 40 (2006), 5.

ity of the problem. While some authors only concede that decision-making and the institutional framework of the WTO could be improved regarding these issues, others consider the WTO to be a more or less illegitimate organisation. I would position myself somewhere in the middle of the two extremes agreeing with the critics that the problems are severe and seriously undermine the legitimacy basis of the WTO. However, I am also of the opinion that decision-making in the WTO will never match the level of democratic decision-making that is possible (and necessary) at the national level. Hence, it should not be measured on that basis alone.

It should be noted that the relationship between democratic legitimacy and international global governance does not have to be a conflicting one. Using an argument *Christian Joerges* developed in the context of EU law, the debate on the democracy deficit of global economic governance can be framed in a different way by focussing on the democracy deficit of the nation states. As *Joerges* writes “The legitimacy of governance within constitutional states is flawed in so far as it remains inevitably one-sided and parochial or selfish. The taming of the nation-state through democratic constitutions has its limits. [If and, indeed, because] democracies presuppose and represent collective identities, they have very few mechanisms to ensure that ‘foreign’ identities and their interests are taken into account within their decision-making processes”.⁴⁷ The democratic deficit results from the impact of unilateral policies of one nation on the people living in another country. Since the government of the first country cannot be held accountable by the electorate of the second country, the decision of the first country lacks legitimacy from the perspective of the second. In this light, international institutions and rules which discipline the use of unilateral measures and which provide a forum for the two countries to resolve the issues contribute to the democratisation of trade policy.

This “democratising” effect of the WTO and of other international disciplines cannot be denied. Nevertheless, it does not solve the problem that decisions taken at the global level pose a democratic legitimacy challenge vis-a-vis domestic policies. Hence, the conflict of laws approach developed by *Joerges* also calls for further democratisation of transnational decision making processes. In order to achieve this, he proposes a three-dimensional system which includes innovative and new forms of cooperation between administrations and other experts. It is submitted that the cooperation of parliamentarians in the two networks discussed further in sections III and IV could be characterised as an element of this three-dimensional system.⁴⁸

⁴⁷ C. Joerges, 'Conflict of Laws as Constitutional Form - Reflections on the International Trade Law and the *Biotech* Panel Report', RECON Online Working Paper 2007/03, May 2007, available at <http://www.reconproject.eu/projectweb/portalproject/RECONonlineWorkingPapers.html>.

⁴⁸ I am grateful to Christian Joerges for this suggestion.

b) *The WTO and the international financial institutions: Are they special?*

Before I turn to the question how greater participation of parliaments can contribute to the legitimacy of the WTO and the international financial institutions, I would like to address the question whether my considerations are restricted to these organisations. Are not the claims about the length of the legitimacy chain and the lack of accountability equally true in the context of other international settings? And: Are international organisations not always characterised by bargaining instead of arguing? The answer to these questions has to be nuanced. The legitimacy deficit differs between different international organisations. Not all acts of all international organizations necessitate the same level of legitimacy. Organizations which perform technical activities or serve as a forum for consultation and coordination are usually not mentioned in the discussions about democratic legitimacy of international organizations. It is also generally agreed that organizations with the power to take decisions which are binding on all members regardless of their consent and which create rights and duties with direct effect for private individuals (supranational law) require democratic legitimacy in particular. In this context, *Eric Stein* has shown a correlation between the level of integration of an international organization and the public debate about the necessity of democratic legitimacy.⁴⁹

Though the decisions of the WTO, IMF and World Bank differ from a legal point, they have two characteristics in common: First, they have a high compliance pull, because the decisions are either legally binding as in the case of the decisions of WTO dispute settlement organs or are backed by financial power as in the case of international financial institutions. Second, the decisions leave little room for deviation or discretion for a national government. They therefore cut deeply into national legal and regulatory autonomy. The combination of these two factors creates the legitimacy deficit: On the one hand, the decisions of the international organization must be accepted even if they contradict national laws or policies. On the other hand, the content of these decisions has a profound effect on the national regulatory system. Due to the similarity of these effects, decisions that exercise a high compliance pull and affect domestic regulatory issues can be seen as “functionally equivalent” to supranational decisions.⁵⁰

III. LEGITIMIZATION THROUGH PARLIAMENTARIZATION

If one agrees that the three elements of the democratic deficit of the WTO are problematic, legitimisation through an increased or even different role of national parliaments

⁴⁹ E. Stein, 'International Integration and Democracy: No love at first sight', *AJIL* 95 (2001), 498.

⁵⁰ M. Krajewski, 'Democratic Legitimacy and Constitutional Perspectives of WTO Law' *JWT* 35 (2001), 171.

may be an option. A number of proposals which address the problems just mentioned have been discussed in the literature. As far as they involve the development of parliamentary settings or institutions beyond the nation state they can be referred to as elements of “transnational parliamentarization”.

1. Domestic strategies

As mentioned above, the traditional representative model of democracy emphasises the impact of national parliaments on trade policy. Efforts to increase the legitimacy of the WTO would therefore aim to improve the instruments through which parliament influences trade policy. However, both the legitimacy chain and the parliamentary consent are instruments which are structurally weak. The remedies they provide (a vote of no confidence against a minister or the government and the refusal to ratify and international agreements) are only ultima ratio possibilities. Parliaments must therefore try to overcome the structural weakness of these instruments by exercising more control and providing more input during the negotiations. This could include greater scrutiny of the governments’ activities in this field and possibly guidelines for trade negotiations. These procedural instruments should be backed by informed and well-reasoned parliamentary opinion. To achieve this, national parliaments could engage in meaningful and substantive debates on trade policy issues. Even if the result of such a debate would only be a recommendation to the government or a report on a specific issue, it might still influence the position of the government, in particular if they are combined with a credible threat to reject the ratification of an agreement if the opinion of parliament was not taken into account.

A popular counter-argument against the increased parliamentarization of trade policy points out that governments – in democratic states at least – are themselves sufficiently legitimised from a democratic perspective to negotiate and agree upon international agreements. This argument is flawed, because it reduces the question of democratic legitimacy to the question whether the person taking the decision received his or her authority on the basis of an election. If democracy would be reduced to this criterion there would be no need for parliaments at all. Even laws could then be passed by a democratically elected government.

2. Transnational parliamentarization

The second element of parliamentarizing global (economic) governance coincides with the cosmopolitan idea of democracy and seeks to add a “parliamentary dimension” to international law-making. The highest level of democratic legitimacy could be achieved through the establishment of an international or transnational parliament, which consists of democratically elected Members and which has substantial influence on the law-

making and the budget of the respective organisation. It is well known that currently only the European Parliament meets these standards.

Another instrument of transnational parliamentarization is the establishment of a parliamentary assembly to an international organisation. Parliamentary assemblies are formal organs of an international organisation. They normally exist next to an organ which represents the governments and a common institution, such as a Commission. The main function of these assemblies is the debate of the decisions of the respective organisation. They predominantly serve as institutions for transnational deliberation and have typically no formal or decisive power to participate in the decision-making process. This does not exclude the possibility to gain that power as the integration of the organisation continues and the demand for its democratic legitimacy grows as seen by the example of the European Parliament which began its life as a Parliamentary Assembly. However, currently most parliamentary assemblies have only consultative powers and it remains to be seen if one of them will follow the example of the European Parliament.

International practice shows a great variety of parliamentary assemblies associated with different organisations. So far the practice of parliamentary assemblies is restricted to regional organisations. Parliamentary assemblies exist, however, with regional organisations in all continents. Examples include the Andean Parliament, the MERCOSUR Parliament or Pan-African Parliament of the African Union (which are still parliamentary assemblies despite their names), the parliamentary assemblies of NATO, of the Council of Europe, and of the Organization for Security and Co-operation in Europe (OSCE) or the ASEAN Inter-Parliamentary Assembly show.

If one compares the various parliamentary assemblies, one notices a great degree of variation. First, some parliamentary assemblies exist at the level of international organisations with a specialised mandate, such as NATO or the OSCE. Subject of the mandate of the respective organisation, the function of the parliamentary assembly is also limited to that special field. Other assemblies are associated with regional (economic) integration organisations, such as MERCOSUR or the Andean Community. Yet others serve as the parliamentary branch of general organisations at the continental level, such as the Pan-African Parliament or the Parliamentary Assembly of the Council of Europe. Second, parliamentary assemblies differ in their size. Some are relative large, such as the Parliamentary Assembly of the OSCE, which has 320 members or the Parliamentary Assembly of the Council of Europe with more than 600 members. On the other end of the spectrum, the Andean Parliament has only 25 Members. Somewhere in the middle is the newly constituted Parliament of Mercosur with 90 Members. Thirdly, the selection of these Members also differs. In most cases, the members of parliamentary assemblies are selected by the national parliaments and are usually also members of that parliament. In some cases members can also be selected by direct vote. For example the An-

dean Parliament will be directly elected after the Ratification of Additional Protocol of 1997. Ecuador and Peru already apply this procedure.⁵¹ Following of decision of 2005, the Mercosur Parliament will be directly elected from 2014.⁵²

In the context of the debates about the democratic legitimacy of the WTO some academic commentators⁵³ and civil society groups⁵⁴ have discussed the potentials of a Parliamentary Assembly of the WTO. The European Parliament has called repeatedly for the establishment of Parliamentary Assembly of the WTO in order to reduce the democratic deficit of the WTO.⁵⁵ If modelled on the basis of existing examples, the establishment of a parliamentary assembly for the WTO would require a change of the constitutional framework of the WTO, in particular the Marrakesh Agreement Establishing the WTO. The idea of such an assembly was also met with opposition within the WTO Membership and also within the epistemic community as clearly demonstrated by the rejection of the idea in the Sutherland Report.⁵⁶ As there is no consensus on this issue among the WTO Members and it seems unlikely that this will change in the foreseeable

⁵¹ See information provided on the Andean Parliament by the Andean Community, available at http://www.comunidadandina.org/ingles/sai/estructura_6.html

⁵² Decision 23/05. See also G. Elsner, 'Das neue Mercosur-Parlament', KAS Report 2007, available at http://www.kas.de/proj/home/pub/61/1/year-2007/dokument_id-10872/index.html.

⁵³ T. Cottier, 'The WTO and Environmental Law: Three Points for Discussion', in: A. Fijalkowski/J. Cameron (eds.), *Trade and the Environment: Bridging the Gap* (London: Cameron & May, 1998), p. 58; L. Cabrera, 'The Inconveniences of Transnational Democracy', *Ethics & International Affairs* 2 (2007), 233. See also M. Hilf/F. Schorkopf, 'Das Europäische Parlament in den Außenbeziehungen der Europäischen Union', *Europarecht* 1999, 201 et seq.

⁵⁴ R. Gerster, 'Ein Parlament für die WTO?' *Informationsbrief Weltwirtschaft und Entwicklung*, 07-08/1998, 5; M. Buck/S. Pfahl/R. Verheyen, 'Parliaments and International Trade Decision-Making: Observations in Europe before Seattle', in: The Heinrich Böll Foundation (ed.), *On the Road to the WTO Ministerial Meeting in Seattle* (Washington, D. C.: Heinrich Böll Foundation, 1999), p. 21.; F. Watt, 'Parliamentarians Have a Role to Play in Doha', *Bridges* 5 No. 8 (October 2001), 14, available at <http://ictsd.net/downloads/bridges/bridges5-8.pdf>.

⁵⁵ Resolution of the European Parliament of 15 January 1998, OJ 1998 C 43/139, No. 36. See most recently Resolution of European Parliament of 24 April 2008 on "Towards a reform of the World Trade Organization" P6_TA(2008)0180: "Stresses the need to create a WTO parliamentary assembly with consultative powers, given the WTO's lack of democratic accountability and legitimacy, and welcomes any reform that will strengthen the association of parliamentarians with the WTO".

⁵⁶ P. Sutherland et al, *The Future of the WTO – Addressing institutional challenges in the new millennium* (Geneva: WTO, 2004), p. 45. Note that the Report of the Warwick Commission, *The Multilateral Trade Regime: Which Way Forward?* does not mention the parliamentary dimension of the WTO at all.

future, the establishment of a Parliamentary Assembly at the WTO level does not seem a realistic option. It should also be remembered that there is no global or multilateral organisation with a parliamentary assembly yet. This also indicates that the time for parliamentary assemblies at the global level has not yet come.

As an alternative to formal parliamentary assemblies, parliamentarians from different national parliaments can also form transnational networks on specific issues and topics.⁵⁷ These networks can be established in some institutional forms or on an informal basis. Some of these networks are predominantly channels through which their members share information and exchange views without holding regular plenary meetings, such as the Parliamentary Network on Nuclear Disarmament (PNND)⁵⁸, a worldwide association of parliamentarians concerned about issues of nuclear weapons, or Global Legislators for a Balanced Environment (GLOBE), a high-level group of parliamentarians from the G8+5 countries which shadows the G8-process.⁵⁹ Other networks such as the Parliamentary Network on the World Bank (PNoWB) also host annual conferences which enable their members to engage in a deliberative discourse amongst each other and with officials of international organisation. Yet another form of parliamentary networking short of formalised parliamentary assemblies are regular or ad hoc transnational meetings of parliamentarians, such as the International Parliamentary Forum which meets at the occasions of the World Social Forum or the Parliamentary Conference on the WTO (PCWTO). The following sections will discuss the Parliamentary Conference on the WTO and the Parliamentary Network on the World Bank as two examples which are of particular interest for an increased parliamentarization of global economic governance.

IV. THE PARLIAMENTARY CONFERENCE ON THE WTO (PCWTO)

The Parliamentary Conference on the WTO (PCWTO) is a unique international institution.⁶⁰ It is jointly organised by the Inter-Parliamentary Union (IPU), an international organisation comprised of 153 national parliaments, and the European Parliament. The

⁵⁷ S. Charnovitz, *Trans-Parliamentary Associations in Global Functional Agencies*, *Transnational Associations*, May/June 2002, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=324320.

⁵⁸ Information about the Parliamentary Network on Nuclear Disarmament is available at <http://www.gsinsitute.org/pnnd/about.html>

⁵⁹ Information on the Global Legislators for a Balanced Environment is available at <http://www.globeinternational.org/content.php?id=1:0:0:0>

⁶⁰ Information on the PCWTO can be found at a special webpage of the European Parliament, http://www.europarl.europa.eu/intcoop/conference_wto/default_en.htm and at the special webpages of the Inter-Parliamentary Union, <http://www.ipu.org/splz-e/trade08.htm>.

sessions of the PCWTO take place roughly once a year. If there is a WTO Ministerial Conference the PCWTO often meets at the same location and time.

1. Historical development and legal basis

As mentioned in the previous section, the idea of a parliamentary dimension to the WTO was first articulated in the late 1990s by proposals to establish a Parliamentary Assembly of the WTO. It gained prominence in the running up to the Seattle Ministerial Conference.⁶¹ At this conference, a first ad hoc meeting of parliamentarians took place at the initiative of Senator Bill Roth and MEP Carlos Westendorp. After the Seattle Ministerial Conference, the IPU and the European Parliament took the initiative. Following meetings of parliamentarians on WTO issues in 2001, both organisations hosted a parliamentarians' meeting during the Doha Ministerial Conference in 2001. Following this meeting, a steering group of the two institutions was created which staged the first parliamentary conference on the WTO in Geneva in February 2003. This conference decided to meet on a regular basis and at the occasions of WTO Ministerial Conferences.⁶² This conference also decided to call its meetings Parliamentary Conferences on the WTO. Since its first meeting the PCWTO held five sessions until now in Cancún (September 2003), Hong Kong (December 2005), Brussels (November 2004) and Geneva (December 2006 and September 2008). No annual session was held in 2007 in light of the lack of progress of the DDA. There will also be no meeting at the Geneva Ministerial Conference in 2009.

The sessions of the PCWTO are jointly organised by the IPU and the European Parliament. The legal basis of the PCWTO is therefore an agreement between these two organisations. The legal character of that agreement is difficult to determine. Since the IPU is an international organisation (see Art. 1 of its Statutes) and has signed a host state agreement with Switzerland, it is partially a subject of international law. However, the EP is not. Yet, since the EC – of which the EP is an organ – is a subject of international law, the agreement to establish the PCWTO can be considered as part of international law. Nevertheless, this does not make the PCWTO an international organisation subject to international law.

⁶¹ E. Mann, 'A Parliamentary Dimension to the WTO – More than just a vision?!' *JIEL* 7 (2004) 662. For a longer description of the historical development of the PCWTO see S. Charnovitz, *Trans-Parliamentary Associations in Global Functional Agencies, Transnational Associations*, May/June 2002, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=324320 and D. Cass, 'The Future of the WTO: Institutional Reform', *JIEL* 10 (2009), 23 et seq.

⁶² Parliamentary Conference on the WTO, Final Declaration, adopted by consensus on 18 February 2003, para. 10, available at <http://www.ipu.org/splz-e/trade03/declaration.pdf>

In addition to the agreement between the two sponsoring institutions, the PCWTO has adopted Rules of Procedure which can be seen as an equivalent of a constituting charter. The most recent version of these Rules of Procedure dates from 2008.⁶³ The preamble of these Rules solemnly declares „the days when trade policy was the exclusive domain of the executive branch“ to be over. The preamble further states that the Inter-Parliamentary Union and the European Parliament “are therefore jointly organising a Parliamentary Conference on the WTO that will meet at least once a year and on the occasion of WTO Ministerial Conferences.” This passage can be interpreted as a self-imposed obligation of the two bodies on each other. However, it is unclear whether the failure to gather once year gives rise to any claims by either of the two institutions or by a participating national parliament. In fact, the PCWTO did not meet in 2007 for unknown reasons and this did not seem to have any legal consequences.⁶⁴ From the legal perspective, the sessions of the PCWTO are best characterised as invitations of the IPU and the EP to parliamentarians from around the world which gather to discuss trade-related issues.

2. Objectives and functions

The objectives of the PCWTO are stated in Art. 1 of its Rules of Procedure. The PCWTO defines itself as “a forum for the exchange of opinions, information and experience, as well as for the promotion of common action on topics related to the role of parliaments and the organisation of parliamentary functions in the area of international trade issues.” Furthermore, the PCWTO wants to “provide a parliamentary dimension to the WTO by overseeing WTO activities and promoting their effectiveness and fairness (...), promoting the transparency of WTO procedures and improving the dialogue between governments, parliaments and civil society, and building capacity in parliaments in matters of international trade and exerting influence on the direction of discussions within the WTO.”

Based on this, three main functions of the PCWTO can be identified. First and foremost, the PCWTO serves as a forum of information and exchange of opinions on trade issues for parliamentarians. Building on this, the second function of the PCWTO is to enhance the debate in national parliaments and to assist national parliaments in their attempts to control and influence the trade policy of their government. The main instrument of this is the exposure of parliamentarians to pertinent debates on trade issues and the dissemination of these debates into the national parliaments. Thirdly, the

⁶³ The Rules of Procedure are available at <http://www.ipu.org/splz-e/trade08/rules.htm>

⁶⁴ It should of course be noted that the failure of the WTO Ministerial Conference to meet at least every two years, which is a clear violation of Art. IV:1 of the WTO Agreement, had no legal consequences either.

PCWTO claims that it also wants to “oversee” WTO activities and influence the WTO in order to promote fairness, effectiveness and transparency. This is the most demanding objective, but it is questionable whether the PCWTO can live up to this claim.

The PCWTO constituted itself as an institution which generally supports the aims and objectives of the WTO. In fact, Art. 1.2 of the Rules of Procedure explicitly states that the PCWTO “seeks to promote free and fair trade that benefits people everywhere”. It should not be surprising that an institution which associates itself with the WTO generally supports the goals of that organisation. However, this objective should not be interpreted in such a way that national parliaments cannot send delegates which are fundamentally critical or even openly opposed to the WTO and trade liberalisation in general. It would undermine the representative basis of the PCWTO if its policy goals could be used to exclude certain parliamentarians based on their political views and would defeat the very purpose of the PCWTO.

3. Structure and decision-making

According to Art.2.1 of the Rules of Procedure of the PCWTO participants in the PCWTO are delegations designated by parliaments of sovereign States that are members of the WTO, delegations designated by IPU Member Parliaments from countries that are not represented in the WTO and delegations from the European Parliament, the Parliamentary Assembly of the Council of Europe, the Commonwealth Parliamentary Association and the Assemblée parlementaire de la Francophonie. The parliamentarians attending the PCWTO therefore represent their parliaments. They are neither official representatives of their home countries nor do they act in a personal capacity.

There is no fixed number of parliamentary delegations which can attend the meeting. If delegations from all parliaments of WTO Members which are sovereign states and all IPU Member States which are not Members of the WTO would attend the meeting, there would be more than 170 delegations from national parliaments. Out of these, only 89 national parliaments were represented at the 2008 session.⁶⁵ This was already an ex-

⁶⁵ Afghanistan, Algeria, Angola, Austria, Bahrain, Bangladesh, Belgium, Benin, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burkina Faso, Burundi, Cameroon, Canada, Chile, China, Croatia, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Dominican Republic, Egypt, El Salvador, Estonia, Finland, France, Germany, Ghana, Greece, Guinea, Hungary, India, Indonesia, Iran (Islamic Republic of), Ireland, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Lesotho, Lithuania, Luxembourg, Madagascar, Mauritius, Mexico, Morocco, Namibia, Niger, Nigeria, Norway, Pakistan, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Saudi Arabia, Senegal, Serbia, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, The former

ceptionally high number. Earlier sessions were attended by less than 80 delegations. The geographical distribution of the participating delegations seems relatively widespread, but not equally distributed. The majority of delegations comes from Europe and Africa and smaller numbers from Asia and the Americas. The large number of African delegates is possibly explained by the active involvement of the European Parliament which maintains close connections with parliamentarians in Africa through the ACP partnerships.

It should also be noted that the United States Congress does not send a delegation to participate in the meetings of the PCWTO. The absence of parliamentarians from the United States is noteworthy because the first meeting of parliamentarians in Seattle took place also at the initiative of US legislators. However, parliamentarians from the United States did not participate in the preparation of the PCWTO⁶⁶ and have not joined since then.⁶⁷ The reason for the reluctance of Members of the US Congress to participate in the PCWTO is a generally unfavourable attitude towards the activities of the IPU.⁶⁸ In addition, as *Greg Shaffer* has shown, US parliamentarians tend to feel more comfortable with the control of the government at the domestic level, whereas European parliamentarians have greater sympathy for parliamentary control (also) at the international level.⁶⁹

The size of the delegations varies and there is no clear link to either the size of the population or to the importance of the respective country in international trade relations. Most delegations comprise members of the national parliaments. If there are two parliamentary chambers, often both are represented. The list of participants does not reveal any party affiliation. It is hence not possible to determine whether the delegation includes ruling and opposition parties. In many cases, however, this seems to be the case (eg. France, Germany). Furthermore, it can be assumed that the members of the delegations usually include those parliamentarians which also deal with trade issues in their home parliament. This seems to be a necessary prerequisite for the PCWTO's function of facilitating dialogue and exchange of ideas on trade issues and disseminating this debate into the work of the parliaments.

A few other points are worth mentioning: The composition of the PCWTO and the composition of each delegation varies between different sessions. Not all parliaments

Yugoslav Republic of Macedonia, Togo, Turkey, Uganda, Ukraine, United Arab Emirates, United Kingdom, Uruguay, Yemen, Zambia.

⁶⁶ E. Mann, 'A Parliamentary Dimension to the WTO - More than just a vision?!' *JIEL* 7 (2004) 663.

⁶⁷ G. Shaffer, 'Parliamentary Oversight of WTO-Rule Making', *JIEL* 7 (2004), 642.

⁶⁸ G. Shaffer, 'Parliamentary Oversight of WTO-Rule Making', *JIEL* 7 (2004), 643.

⁶⁹ G. Shaffer, 'Parliamentary Oversight of WTO-Rule Making', *JIEL* 7 (2004), 635 et seq.

are represented at every session and the delegations often include different members. While a change in the composition of the parliamentarians increases the number of members of a national parliament to be exposed to trade issues it also makes a real discourse on trade issues more difficult.

It is noteworthy, that a number of delegations to the PCWTO also included members of the diplomatic mission of the country (Benin, China, Egypt, Guinea, India, Italy, Kazakhstan, Lesotho, Mauritius, Nigeria, Russia, Turkey, United Kingdom, Yemen, and Zambia). This practice is questionable because it may undermine the institutional separation of parliaments from government which is a prerequisite for independent control of the government by parliament as part of a system of “checks and balances”. The practice is also remarkable since governments are accepted as observers to the PCWTO and most governments which participated as observers sent delegates from their missions.

The presidency of the PCWTO is held jointly by the President of the Inter-Parliamentary Union and the President of the European Parliament or their substitutes as stated in Art. 3 of the Rules of Procedure. The main executive committee is the Steering Committee, which is responsible for all organisational matters. According to Art. 4.1 of the Rules of Procedure, the Steering committee consists of representatives of national parliaments, of the IPU and the EP as co-organizers of the PCWTO, of selected other regional and international parliamentary institutions and of the WTO Secretariat. The Steering Committee currently comprises of representatives from 23 national parliaments (including a vacant US seat) and representatives of the Commonwealth Parliamentary Association and the Parliamentary Assembly of the Council of Europe in addition to the members ex officio from the IPU, the EP and the WTO.

It is interesting to note that participants and observers have the same speaking rights in the plenary sessions of the PCWTO (Art. 6.1 of the Rules of Procedure). No priority is given to parliamentarians. However, only participants have the right to adopt the final declaration (Art. 6.3. of the Rules of Procedure). The final declaration is adopted by consensus. There are no formal votes since there is no formal selection mechanism for the delegates and the number of the delegations is also not fixed.

4. Content of meetings and outcome

The sessions of the PCWTO usually last two days and involve with the exception of the meetings of the Steering Committee only plenary meetings. Apart from opening and closing ceremonies, the adoption of the agenda and the final declaration which is prepared by the Steering committee, there are three types of debates on substantive issues. The first type concerns debates on – usually current – trade topics based on reports prepared by special rapporteurs from parliaments represented the PCWTO. For example,

the 2008 PCWTO held sessions on “Looking beyond Doha” and “Can international trade help mitigate climate change?” based on reports by parliamentarians from the EP, South Africa and Thailand.⁷⁰ These reports were first discussed by commentators which included parliamentarians and trade officials or other experts and then the floor was opened to all members of the PCWTO. This type of debate is modelled on common parliamentary practice. The second type is called “Interactive panel discussion”. Here, formal presentations are given by experts from parliaments, the WTO, other international organisations, academia, business or civil society. The 2008 PCWTO included panel discussions on “Defusing the threat of conflicts over food and energy through trade” and on “Trade in the era of digital revolution”. This type of debate resembles political or academic conferences. Its main function seems to be informative. The third type of debates concerns meetings with WTO officials and trade negotiators, sometimes called “hearing”, sometimes “dialogue”. In 2008, sessions were held with Pascal Lamy and the chairmen of the Special Session of the Committee on Agriculture and of Special Session of the Council for Trade in Services. The purpose of these sessions is also geared towards information and exchange of views. In addition, they may also be used to influence trade officials and to scrutinise their activities. These debates partly take the form of question and answer and therefore seem to be modelled after question time sessions with government representatives in national parliaments.

There is no formal record of the debates at the PCWTO. For the 2008 session, the IPU and the EP produced a brochure which includes the speeches and presentations and excerpts from the debates.⁷¹ Assuming that these excerpts are representative, they show that most parliamentarians joining the debate share a genuine concern about the future of the world trading system and its impact on developmental, environmental and social issues. It should not be surprising that the level of knowledge of detailed trade issues is diverse. Some parliamentarians seem to follow the negotiations at the WTO and the current debates on trade issues very closely, while others seem to have only a very general and sometimes even vague idea of what the WTO actually does.

The contributions to the debates on the thematic issues are also very diverse in their level of knowledge about these issues. In the debates there are relatively few political controversies. Sometimes there are critical remarks towards governments or trade negotiators in general. Every now and then a delegate defends the position of his or her own country. If something like a debate takes place, it often concerns general, and known,

⁷⁰ Programme of the Annual 2008 Session of the Parliamentary Conference on the WTO, available at <http://www.ipu.org/splz-e/trade08/programme.pdf>

⁷¹ Annual session of the Parliamentary Conference on the WTO Geneva, 11-12 September 2008, available at http://www.europarl.europa.eu/intcoop/conference_wto/2008_geneve/brochure2008_en.pdf.

controversies between developing and developed countries. However, there seems to be little debate between the delegations.

At the end of each session a final declaration is adopted by consensus. The draft of this declaration is usually prepared by the Steering Committee. Apparently there is hardly any time to discuss this draft a great length. This may explain why the final declarations are usually very broad and contain no specific political recommendations or demands. For example, the 2008 declaration contains general statements about the desirability of a conclusion of the Doha negotiations, the need to take the interests of developing countries into account and a self-imposed obligation to increase parliamentary scrutiny in trade matters.⁷²

A more concrete outcome of the 2008 session of the PCWTO is a set of guidelines for relations between governments and parliaments on international trade issues.⁷³ In this document the PCWTO stresses that quantity and quality of information to the parliament, the timing of the information exchange, and the opportunities of the parliament to use this information are key elements to increase the influence of a parliament on trade policy. Based on these three elements the PCWTO developed specific guidelines. These include *inter alia* the production of information on trade issues as soon as it becomes available, the preparation of easily accessible material on draft trade agreements, opportunities for meetings with ministers in the parliamentary committees in advance of international trade meetings, information about the positions of the government and other WTO Members and the inclusion of members of parliament in their country's delegations to international trade events including WTO Ministerial Conferences.

5. The PCWTO's contribution to democratic legitimacy of the WTO

When assessing the PCWTO's contribution to democratic legitimacy, the uniqueness of the institution and the pragmatic approach of its organisers must be appreciated. Furthermore, it should be noted that there is no template at the global level for a parliamentary gathering. Nevertheless, it should be stated that the PCWTO is not a permanent body and not part of the institutional design of the WTO like a parliamentary assembly. Hence, the PCWTO cannot exercise and control or scrutiny over the WTO as an organisation as such. PCWTO Members can only exercise scrutiny over their own governments and delegations at the WTO. The PCWTO does not add an additional layer of parliamentary control to the control exercised by national parliaments. This is a conse-

⁷² Outcome document, adopted by consensus on 12 September 2009, available at <http://www.ipu.org/splz-e/trade08/declaration.pdf>

⁷³ Guidelines for relations between governments and parliaments on international trade issues, adopted by consensus on 12 September 2009, available at <http://www.ipu.org/splz-e/trade08/guidelines.pdf>

quence of the legal status of the PCWTO and the lack of consensus among WTO Members to include a formal parliamentary dimension in the WTO system. Nevertheless, it is possible that the PCWTO is an intermediate step on the road towards a permanent Parliamentary Assembly. In fact, the European Parliament stressed in a recent resolution that “until the WTO assumes this responsibility (*i.e. to establish formal links with parliamentarians, M.K.*), the parliamentary dimension to the WTO will be granted by the Parliamentary Conference on the WTO jointly co-organised by the European Parliament and the IPU.”⁷⁴

If measured against the establishment of a Parliamentary Assembly as the ultimate goal, the PCWTO can be seen as deficient, because it has no formal right of input or control of WTO activities. Still, if measured by its own standards, the picture becomes more nuanced. The PCWTO's main objective is to inform national parliamentarians on pertinent and controversial issues on the international trade agenda and to allow them to ask questions and voice concern towards WTO trade officials. This enhances the capacities of parliamentarians to scrutinise and control the trade policy of their own governments. The PCWTO also serves as a forum for the exchange of views and ideas which may give parliamentarians a better understanding of the relevant issues and an opportunity to develop or reflect on their own position regarding trade police matters.⁷⁵ It should however be noted that the PCWTO only serves this function in the context of its meetings. The PCWTO does not facilitate an ongoing exchange of information and ideas. This seriously diminishes the function of the PCWTO to support parliamentarians in their daily work. In addition, the changing membership of the PCWTO undermines its capacity to contribute to continuing debates.

The PCWTO also produced a tool which supports parliamentarians in their efforts to control the trade policy of their governments by suggesting guidelines regarding the relationship between parliamentarians and governments. In this respect, the PCWTO therefore supports a position which seems to be followed in particular in the US regarding the control of trade policy.⁷⁶ In light of this, it is somewhat ironic that the US Senate is not represented in the PCWTO.

It is still unclear to which extent the PCWTO functions as a forum of deliberation. Since there are no formal records of the debates and the final declarations are not voted on, it is difficult to determine whether the PCWTO fulfils a deliberative function for a global discourse. If the excerpts of the debate which were published in the 2008 bro-

⁷⁴ Resolution of European Parliament of 24 April 2008 on “Towards a reform of the World Trade Organization” P6_TA(2008)0180, para 20 (explanation added).

⁷⁵ D. Cass, 'The Future of the WTO: Institutional Reform', *JIEL* 10 (2009), 27.

⁷⁶ G. Shaffer, 'Parliamentary Oversight of WTO-Rule Making', *JIEL* 7 (2004), 647.

chure can be used as indication of the debates in general, it seems quite clear that the members of the PCWTO are not interested in debating the subjects in an adversarial manner. Hence, the debates in the PCWTO cannot be seen as a mirror of the global discourse about trade matters in all its varieties. There are no formal or institutional reasons why this could not be changes. The PCWTO is not part of the WTO system. Its Member can therefore also voice opinions which are fundamentally opposed to the WTO. In addition, Members of the PCWTO are not prevented from debating and disagreeing with each other. It is understandable that the PCWTO which is still a young and relatively weak institution aims at unity in order to make itself heard vis-a-vis governments and the WTO. However, the deliberative function of a parliamentary setting depends on the quality and breadth of its debates.

In short, the PCWTO contributes to an increase of democratic legitimacy as long as it enables parliamentarians to better control and scrutinise the trade policy of their own governments. However, the PCWTO cannot contribute to a control of the WTO in general, because it is construed as a common initiative of the EP and the ITU and maintains no institutional links with the WTO. Whether the PCWTO can serve as a forum which reflects the global discourse on trade remains to be seen. So far, the debates have not been recorded and only little has been reported about the PCWTO sessions in the press. This can, however, be changed in the coming sessions of the PCWTO.

V. THE PARLIAMENTARY NETWORK ON THE WORLD BANK (PNoWB)

The Parliamentary Network on the World Bank (PNoWB) comprises parliamentarians from around the globe with a special interest in the policies of the World Bank and issues of development.⁷⁷ The PNoWB meets once a year in plenary sessions to discuss issues which are on the agenda of the World Bank (and to lesser extend of the IMF) and to debate with senior Bank and Fund officials.

1. Historical development and legal basis

The history of the PNoWB began in May 2000 at a first World Bank conference with Parliamentarians organized by the European Vice Presidency of the World Bank with the intention to inform parliamentarians about the Bank's role in poverty reduction, to exchange views on the role of parliamentarians in international development and to engage them in reflection on future development challenges.⁷⁸ Following this meeting, a group of parliamentarians who were interested in pursuing the dialogue on a regular

⁷⁷ General information on the PNoWB can be obtained from its webpage <http://www.pnowb.org>

⁷⁸ See „PNoWB History“ available at <http://www.pnowb.org/admindb/docs/PNoWB%20History.doc>.

basis launched the initiative to a parliamentary network on World Bank issues. At the second World Bank conference with parliamentarians in January 2001, parliamentarians elected a steering committee which was entrusted with the task to run the initiative during the next two years. Parliamentarians assembled at the third World Bank conference with parliamentarians in May 2002 called for a continuation and formalisation of the initiative. In February 2003, the Steering Committee adopted the Articles of Association, which transformed the PNoWB from a loose network of parliamentarians to an independent non-profit association. With the exception of 2006, the PNoWB has met every year for an Annual Conference.

The structure and the work of the PNoWB is governed by its Articles of Association of 7 February 2003 and By-Laws of the association of 10 February 2004.⁷⁹ These documents contain provisions which are typical for a private, non-profit association. The association is formed in accordance with French law.

Membership of the PNoWB is open to parliamentarians of member countries of the World Bank. The definition of parliamentarians also includes Members of the European Parliament which play an active role in the PNoWB. Currently, the PNoWB includes more than 1100 parliamentarians from 110 countries. Members of the PNoWB join this institution on a personal basis. They represent themselves (and politically their constituency), but unlike the PCWTO or parliamentary assemblies, they do not represent their parliaments let alone their countries. The PNoWB is also neither institutionally linked with any transnational parliamentary setting nor with the World Bank or any other international institution. Due to its legal status as an independent association the PNoWB can maintain a critical distance to the World Bank and its activities. In the words of a former Chair of the PNoWB *Bert Koenders* “We’re not fans of the World Bank. We’re critics when necessary, supporters when necessary.”⁸⁰

2. Objectives and functions

Following its Articles of Association, the PNoWB has five objectives. They include accountability, i.e. the facilitation and encouragement of a direct dialogue between parliamentarians and multilateral development institutions in order to promote greater transparency of the policies and practices in particular of the World Bank; advocacy, i.e. providing its members with a platform for coordinated parliamentary advocacy on international development issues; networking, i.e. the encouragement of concerted action, early debate and exchange of information; partnerships, i.e. taking initiatives to further cooperate and encourage partnerships among parliamentarians and policy makers, the

⁷⁹ The Articles of Association and the By-Laws are available at http://www.pnowb.org/contentm_1_1.

⁸⁰ Cited in 'PNoWB at a Glance' available at http://www.pnowb.org/content_20_1.

academic community, the business sector and non-governmental organizations on development issues; and progress review, i.e. the promotion of the development of parliamentary mechanisms and practices for the effective democratic control of development assistance in all its phases.

Apart from its meetings at global and regional levels, which will be described in the next section, the PNoWB supports its Members through various information sharing channels, such as an e-mail newsletter or the production of information material. For example, the PNoWB and the World Bank have jointly developed a handbook to provide an overview of the Bank's governance structure, policies, evaluation and review mechanisms.

3. Structure and institutional setting

The main event of the PNoWB is its Annual Conference which seeks to engage parliamentarians in debates about issues on development and global governance and according to the PNoWB's own view "help strengthen the accountability and transparency of international financial institutions by providing a platform for dialogue". This statement in itself is interesting, because it seems to be based on the perception that accountability can be achieved through dialogue rather than through control and critique. The Annual Conference is attended by some 150 to 200 members of the PNoWB. The fact that only 10% of the Members attend the meetings indicates that many PNoWB members perceive it less as a forum for actual face-to-face exchange and more as a network to exchange ideas and information.

In addition to PNoWB members officials from the World Bank, the IMF and multilateral development agencies as well as representatives from parliamentary organisations, development NGOs and civil society attend the meeting. The Eight Annual Conference was attended by 150 parliamentarians from 85 countries.⁸¹ Unlike the PCWTO, no government delegations are present at the Annual Meetings of the PNoWB. However similar to the PCWTO, the Annual Meetings of the PNoWB do not seem to be attended by members from the US Congress. The Annual Conferences of the PNoWB are held in different countries and are usually sponsored by the host country and parliament. With the exception of a meeting in Cape Town in 2007, all Annual Conferences so far were held in Europe.

⁸¹ Parliamentary Network on the World Bank, Annual Conference 2008, Conference Report, available at http://www.pnowb.org/admin/db/docs/Conference_Report_April_8_2009_WEB_version.pdf.

At the Eight Annual Conference of the PNoWB, Members met in plenary meetings and in parallel workshop sessions.⁸² The workshops addressed pertinent issues regarding development and the activities of the World Bank such as micro finance, food security, climate change and regional integration in Africa and issues of special parliamentary interest such as strengthening the capacity of parliaments and the role of parliaments in promoting investment in extractive industries. These sessions included presentations of an expert panel and discussions. In its plenary sessions the PNoWB also discussed topical issues based on presentations, but these were more focused on the work of the World Bank itself and also included a questions and answer time with World Bank President Robert Zoellick. The PNoWB also heard a keynote speech by Michael Spence, Nobel Laureate in Economics. Unlike the PCWTO the PNoWB did not adopt a final declaration. In general, it seems that the PNoWB's Annual Session focused mostly on information exchange and general debates and less on attempts to directly influence the World Bank or Member governments.

It is noteworthy that the PNoWB developed an institutional structure below the level of its Annual Conferences. Members can associate themselves on a geographical and/or special-interest basis. The geographical substructure of the PNoWB is called a PNoWB Chapter and brings together a group of parliamentarians on a country or regional basis. PNoWB maintains national chapters in India and Japan and regional chapters for East Africa, for the Middle East and North Africa, for West Africa, for the Balkans and for southern Africa as well as an informal group of donor country parliamentarians.

In addition to the chapters, the PNoWB established a Committee on International Trade for Development and a Committee on HIV/AIDS, TB and Malaria. The PNoWB's Committee on International Trade for Development⁸³ was established in 2004 and comprises of 50 parliamentarians who share information, engage in debates with each other and officials from the World Bank and the WTO. The committee identified agriculture and services as key areas to focus on and established two sub-committees on trade in agriculture and trade in services. The PNoWB campaigns for a successful Doha outcome and has approached EC Trade Commissioner Peter Mandelson in this respect. Regarding its efforts to lobby for a successful outcome of the WTO, the Committee has also attempted to establish links with other international parliamentary networks such as the NATO Parliamentary Assembly.⁸⁴ Interestingly though, there is no record of any contacts or attempts to liaise with the PCWTO.

⁸² Parliamentary Network on the World Bank, Annual Conference 2008, Conference Report, available at http://www.pnowb.org/admindb/docs/Conference_Report_April_8_2009_WEB_version.pdf.

⁸³ Information taken from the Committees website http://www.pnowb.org/content_22_1

⁸⁴ See minutes of inaugural meeting http://www.pnowb.org/admindb/docs/trade_working_group_launching.pdf

4. Contribution of the PNoWB to transnational democratic legitimacy

Similar to the PCWTO, the PNoWB's main contribution to the enhancement of transnational parliamentarization consists of its ability to strengthen the deliberative capacity of its members through information facilitation, exchange of views and dialogue with representatives of the international financial institutions. To the extent that this empowers national parliaments to better scrutinise the policies of the World Bank and the contribution of their respective governments to the World Bank, it contributes to the reduction of the democratic legitimacy gap of global economic governance. However, it is not entirely clear whether the PNoWB functions as a forum for transnational deliberation and whether it can effectively exercise any control over the World Bank and its affiliations. In this respect it shares again characteristics with the PCWTO. The members of both bodies seem to focus more on information seeking when they meet with officials from the respective organisations.

The PNoWB is characterised by a greater degree of institutional stability and continuity than the PCWTO as its Membership does not depend on ad hoc decisions of a national parliament on whom to include as member of a delegation. Furthermore, the PNoWB also exists as an institution in the time between its Annual Conferences and continues to provide its Members different modes and platforms of exchange and deliberation. However, unlike the PCWTO, the PNoWB is not an institution of parliaments, but of parliamentarians. This has two implications: First, the mandate of the members of the PNoWB is only self-imposed. There is no limitation to the number of parliamentarians from one parliament joining the PNoWB. There are no mechanisms to ensure that members of the ruling party and the opposition are represented.⁸⁵ Hence, these parliamentarians do not fully represent the population of their countries. Second, since the PNoWB members represent only themselves there is no obligation or expectation on them to report back to their parliaments and connect the transnational deliberations with a domestic discourse. This is, however, vital in order to enhance the contribution of the PNoWB to transnational democratic legitimacy.

VI. WHITHER FROM HERE? ELEMENTS TO IMPROVE AND INCREASE THE PARLIAMENTARIZATION OF GLOBAL ECONOMIC GOVERNANCE

The preceding analyses of the PCWTO and the PNoWB and their contribution to transnational parliamentarization and hence to a reduction of the democratic deficit of global economic governance was only based on written material about and of these two set-

⁸⁵ For example, at the Seventh Annual Conference, the only two representatives from Germany were a Social Democratic member of the German Parliament and a Socialist member of the European Parliament.

tings which is publicly available. In order to fully assess the capacity of the PCWTO and the PNoWB to contribute to transnational democratic legitimacy, further research, in particular empirical studies would be necessary. Despite the limited character of the findings presented above, it seems possible to draw some preliminary conclusions and suggest some improvements of both bodies in order to strengthen their legitimizing function.

At the outset, it should be noted that both parliamentary settings differ substantially from a traditional parliamentary assembly of an international organisation and even more so from a directly-elected international parliament such as the European Parliament. The differences concern the legal basis, membership, and structure as well as the deliberative and control functions as summarised in Table 1. These differences must be taken into account when assessing the potentials of the PCWTO and the PNoWB to contribute to democratic global economic governance.

Table 1: Institutional and structural differences between elements of transnational parliamentarization

	Legal basis	Membership and Representation	Structure	Functions
<i>PCWTO</i>	Agreement between EP and IPU = inter-parliamentarian	Representatives of parliaments; membership open and variable	Infrequent Plenary sessions only; no inter-sessional work	Information; exchange of views; networking; limited deliberation and control
<i>PnoWB</i>	Non-governmental association = private	Individual parliamentarians, membership open and variable	Annual Plenary sessions; sub-plenary structure; inter-sessional work	Information; exchange of views; networking; limited deliberation and control
<i>Parliamentary Assembly</i>	Agreement establishing international organisation = constitutional	Representatives of parliaments; membership closed and pre-defined	Frequent plenary sessions; sub-plenary structure; inter-sessional work	Information; exchange of views; networking; control of IO through formalised right of information, limited deliberation
<i>International Parliament</i>	Agreement establishing international organisation = constitutional	Directly elected parliamentarians	Permanent sessions; plenary, sub-plenary structure	Frequent deliberations, Various degrees of control of IO, e.g. budget, vote of no confidence etc.

Given the structural differences between parliamentary assemblies or international parliaments on the one side and the PCWTO and the PNoWB on the other, the proposals for improvement suggested subsequently remain with the current institutional settings of these institutions and do not include proposals to transform them into another institution, such as a parliamentary assembly. As noted above, there is currently no political consensus for such a transformation and the objectives of improving democratic legiti-

macy beyond the nation state are served better by proposals which have a chance of being realised.

To start with, both bodies should make an effort to meet on a regular basis in order to ensure continuity of the debates and exchanges. The PNoWB has a better track-record in this respect than the PCWTO, which is partly due to the PCWTO's development out of meetings of parliamentarians at the occasion of WTO Ministerial Conferences which take place on an infrequent basis.

Perhaps even more important than regular meetings is the engagement in substantive debate and to create a room for deliberation. This could be facilitated by the production of reports on particular issues from different perspectives and controversial debates among the parliamentarians about these. Furthermore, both bodies should produce public records of the debates so that their debates can contribute to the wider discourse. Both institutions would also benefit from establishing institutional relationships between each other. This seems particularly obvious in the case of the PNoWB's Committee on International Trade for Development.

Turning more specifically to the PCWTO, it would be an improvement if the institution would be transformed into a more permanent setting.⁸⁶ This would not have to involve any changes in its current legal structure. However, if the administrations of the PCWTO at the IPU and the European Parliament would maintain an information flow among the Members of the PCWTO during the times in between sessions and hence ensure a continuation of the debates, this would be already an improvement. In addition and related to this, it may be worth exploring ideas of how the membership of the PCWTO could be made more permanent. The model of the PNoWB based on self-mandated membership of individual members may not be the most promising way forward, because it would give up the formal relationship between the members of the PCWTO and their parliaments which is an advantage. Instead, it might be worth considering that every parliament nominates two permanent Members of the PCWTO at the beginning of each parliamentary term. Ideally, these members would be members who work on WTO issues in their national parliament. In order to strengthen its institutional structure to facilitate dialogue and exchange between plenary meetings, the PCWTO could consider the model of the PNoWB which includes regional chapters and special committees. The PNoWB would benefit from increasing its connections with national parliaments through rules which encourage the participation of members from different parties and ways which integrate the debates at the PNoWB with the debates in national parliaments.

⁸⁶ L. Cabrera, 'The Inconveniences of Transnational Democracy', *Ethics & International Affairs* 2 (2007), 232.

The actual contribution of the PCWTO and the PNoWB to an increased democratic legitimacy depends on the connection between the deliberations in these settings and the domestic parliamentary process. Those members of national parliaments which attend the meetings of the PCWTO and the PNoWB will have to feed the information, exchange of ideas and policy formulation back into the domestic settings in order to enhance the quality of the parliamentary decision-making at home. Unfortunately, little is known about this connection. Further research in this regard is therefore necessary.

BIOGRAPHICAL NOTE

Markus Krajewski is a guest professor at the Collaborative Research Center “Transformations of the State”, University of Bremen and on leave from the University of Potsdam.

Telephone: +49 421 218 8705

Fax: +49 421 218-8721

E-Mail: markus.krajewski@sfb597.uni-bremen.de

Address: University of Bremen, Collaborative Research Center „Transformations of the State“, Linzer Strasse 9a, D 28359 Bremen