

Ten years after the Earth Summit in Rio de Janeiro, there is still a need for more effective public participation in negotiations on environmental issues at international level. Both Principle 10 of the Rio-Declaration and Chapter 27 of Agenda 21 stress the importance of an effective participation of civil society. Non-governmental organisations (NGOs) play an important role as facilitators of a broad policy dialogue. They enhance the knowledge base, contribute to compliance review and enforcement and promote transparency.

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▶ Participation of Non-Governmental Organisations in International Environmental Governance

Legal Basis and Practical Experience

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Participation of Non-Governmental Organisations in International Environmental Governance

Legal Basis and Practical Experience

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Foreword

The Johannesburg World Summit on Sustainable Development (WSSD) in 2002 confirmed again that ten years after the Earth Summit in Rio de Janeiro there is still a need for more effective public participation in negotiations on environmental issues at international level. The Johannesburg Declaration, in points 26 and 31, and the WSSD Plan of Implementation, in Chapter XI, echo Principle 10 of the Rio-Declaration and Chapter 27 of Agenda 21. All these agreed texts stress the importance of an effective participation of civil society. Non-governmental organisations (NGOs) play an important role as facilitators of a broad policy dialogue. They enhance the knowledge base, contribute to compliance review and enforcement, and promote transparency.

Although the role of NGOs in international environmental governance has increased since 1992, considerable progress has yet to be made to fully implement the measures identified in Johannesburg and Rio. Still NGO participation varies tremendously from one institution to another.

In this context, the study "Participation of Non-Governmental Organisations in International Environmental Governance" was launched. The study explores functions, rules and practices of NGO participation in international environmental co-operation and suggests ways and means of enhancing their role. The study was commissioned by the German Federal Environmental Agency (UBA) and elaborated by the two research institutes Ecologic, Institute for International and European Environmental Policy (Berlin) and the Foundation for International Environmental Law and Development (FIELD, London). This Ecologic Brief presents the main conclusions and results of the study.

Currently, many actors such as the European Union, the United Nations Economic Commission for Europe (UNECE) and the United Nations Environment Programme (UNEP) increasingly recognise the potential benefits of an enhanced involvement of civil society in international policy-making on sustainable development. In the National Strategy for Sustainability, the German Federal Government has underlined its support for initiatives to enhance NGO involvement in the work of international organisations. This Brief identifies a number of options for such a strengthened participation of NGOs in international environmental governance and is intended to contribute to the related international discussions.

We would like to invite all actors concerned, particularly civil society and its organisations, to join us in our efforts to further advance this process.

Prof. Dr. Andreas Troge, President
German Federal Environmental Agency

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Ecologic, Berlin & Brussels

Participation of NGOs in International Environmental Governance

Role of NGOs
in International
Environmental
Governance.

Executive Summary

The importance of non-governmental organisations (NGOs) in international environmental co-operation has increased tremendously over the last decades. Accordingly, the participation of non-governmental actors has become a prominent subject for research, resulting in a dynamically growing body of literature on the subject, especially in the legal and social sciences. However, only a limited effort has been made to systematically analyse the relationship between the legal basis and the practical influence of NGOs in different areas of international environmental co-operation.

Against this backdrop, this study first lays a conceptual basis by reviewing existing definitions of NGOs, elaborating the functions NGOs perform in international environmental policy-making and examining various criteria that can serve to distinguish different types of NGOs (I). It then analyses in more detail the legal basis and the practice of NGO participation in Multilateral Environmental Agreements (MEAs), economic institutions, and other relevant international institutions. Constraints on the role of NGOs are also identified.

On the basis of the state of development of related principles of international law, this analysis includes an assessment of the extent to which NGO participation in international institutions can be considered legitimate ground (II).

Finally, the study identifies and discusses a number of options for enhancing the role of NGOs in international environmental governance (III). The full study also contains detailed case studies on the role of NGOs in two environmental treaty systems (climate change and trade in endangered species) and two economic institutions (International Organisation for Standardization, ISO; and the World Bank). A total of close to almost 40 representatives of governments and different NGO constituencies as well as secretariat staff were interviewed in undertaking these case studies.

The full report is available free of charge at the Web sites of both the Federal Environmental Agency (www.umweltbundesamt.de) and Ecologic / Field (www.ecologic.de). Moreover, the report has been published as a book and can be ordered at the Federal Environmental Agency's Website.

Background: Definition, Classifications and Functions of NGOs

Definition

While no commonly applied definition of NGOs exists in international legal instruments or in the relevant literature, the review of international law undertaken in this study identifies three minimum criteria that appear to be applied generally in international institutions for purposes of accreditation. First, NGOs are distinguished from organisations established by inter-governmental agreement. Second, NGOs, in order to be accredited need to establish an expertise or other interest in the subject matter of the international institution. Third, an accredited NGO must establish that it is not part of any government and is free to express independent views.

This study aims to capture the complexity of the many ways in which NGOs actually contribute to international environmental governance. It therefore covers private-interest business groups, environmental NGOs, other public-interest groups, research bodies, expert groups, representatives of municipal and local authorities and others. NGOs may derive funding from governments and may have governments and government officials as members, provided that such funding or membership does not limit the organisation's ability to express its views independently.

Classification

A great number of criteria can potentially be applied in order to classify such NGOs for purposes of analysis, including the primary aims of the organisations, their types or scope of activities, the type of membership, their organisational structure or their funding structure. Only a few of these criteria are used by the international institutions reviewed in this study to differentiate between NGOs. In these cases, such differentiation either primarily serves practical/organisational needs (e.g. structuring communication; see below on NGO constituencies) or it introduces a differentiated treatment that is hardly justifiable. As an example for the latter, some institutions such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) systematically differentiate between international and national NGOs in their accreditation procedures, while both national and international organisations may have legitimate concerns and have at their disposal relevant expertise relating to trade in endangered species (and, in fact, most issues relevant to the environment).

In general, only few of the criteria that can be applied to classify NGOs are also potentially relevant when it comes to thinking about a differentiated treatment of NGOs in the context of international institutions. Among the best-known are the distinctions between private-interest and public-interest NGOs, and between business and environmental/social NGOs. In addition, the distinction between NGOs from different regions/countries (in particular industrialised countries vs. developing countries) appears to be relevant. In both cases, the distinctions are not necessarily relevant for differentiating with respect to participatory rights, since they do not lay the basis for differences in the legitimacy of different NGOs. However, NGOs' capacities to participate in international institutions vary according to these dimensions because of existing resource constraints. These criteria might therefore be used to facilitate and support access to international environmental policy-making in order to counter the structural trend towards under-representation of public-interest NGOs, especially from poorer regions.

Functions

NGOs fulfil a diversity of functions in international environmental co-operation. For example, they contribute their own expertise and thereby enhance the scientific and policy-related knowledge base of policy-making; are engaged in advocacy and lobbying; serve as members of national delegations; participate in review and enforcement procedures; ensure transparency of international processes; and support international secretariats. In addition, they fulfil broader functions in international environmental governance, for example by raising public awareness, linking the international with national and local levels, influencing industry and business, etc. (see Table). In so doing, they employ a range of activities and channels of influence as summarised in the Table.

Functions

Illustrative List of Activities and Channels of Influence

Enhancing the knowledge base (science, policy and law)

- gather, compile and disseminate information
- conduct and publish studies and reports
- distribute information and organise side-events at major conferences

Advocacy and lobbying

- informal contacts with government delegates (side-events, workshops, conferences, in the corridors, modern telecommunication technology)
- formal participation in inter-governmental negotiations (official written submissions, unofficial written position papers, statements in meetings)
- provision of advice to "friendly" delegations
- campaigns outside the negotiating arena (e.g. media and public information, protests) to enhance influence

Membership in national delegations

- receipt of inside information about governmental negotiations
 - provision of advice to governments
 - negotiate on behalf of governments
-

Functions

Illustrative List of Activities and Channels of Influence

Contribution to compliance review and enforcement as well as dispute settlement procedures	<ul style="list-style-type: none">• submission of <i>amicus curiae</i> briefs• provision of information on implementation/alerting delegations and institutions of non-compliance
Ensuring transparency	<ul style="list-style-type: none">• reports from negotiations• “naming and shaming” of laggard countries• public relations work (media)• reports on effectiveness of implementation
Supporting international secretariats	<ul style="list-style-type: none">• provide Secretariat functions• provide advice and expertise to Secretariats
Broader functions of NGOs in international environmental governance	<ul style="list-style-type: none">• shaping the opinions of individuals and groups (campaigns and training)• co-operation between environmental groups and business and industry• networking, including integrating levels of governance• “globalisation” of values and preferences shaping the opinions of individuals and groups (campaigns and training)• co-operation between environmental groups and business and industry• networking, including integrating levels of governance• “globalisation” of values and preferences

The functions described are frequently closely related. For example, there is a close connection between the provision of “objective” information and advocacy and lobbying. These functions establish NGOs as important international actors that have an influence in all phases of the political process, although not all the functions and activities might be of equal relevance for each of the policy phases. For example, while enhancing the knowledge base and ensuring transparency appears to be relevant to all policy phases, the participation in enforcement procedures relates per se mainly to the implementation phase. Similarly, advocacy and lobbying, and membership in national delegations, primarily relate to the policy-making process itself, whereas support for international secretariats is not exclusively limited to any policy phase.

NGOs within and among different constituencies vary with respect to the focus of their activities. For example, as a result of an implicit or explicit division of work, some environmental NGOs may (generally or with respect to a specific international process) be more concerned with the review of implementation, while others put their emphasis on lobbying in international political processes or conducting studies and disseminating information (or have several foci). Furthermore, private-interest business NGOs, while promoting transparency if it is in the interest of their membership to do so, have generally been less engaged in ensuring transparency of international processes (as public pressure is usually not their major basis of influence). Both active membership in national delegations and the provision of support to international secretariats are functions mainly fulfilled by expert NGOs, which also are particularly active when it comes to enhancing the knowledge base. In addition, some countries have invited representatives of NGOs to become members of their delegation in a non-negotiating capacity.

The Participation of NGOs in International Environmental Policy-Making to Date

The legitimate role of NGOs in international environmental policy-making is widely acknowledged. Consequently, Agenda 21 devotes Chapter 27 to NGOs and the strengthening of their role as “partners for sustainable development”. In particular, it aims at enhancing or establishing formal participatory procedures “for the involvement of [NGOs] at all levels from policy-making and decision-making to implementation”. Overall, Agenda 21 establishes a general presumption for a further strengthening of the role of NGOs in international institutions (treaty systems and organisations).

Furthermore, the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters establishes relevant provisions in international law. In particular, it defines the three principles contained in its title (access to information, public participation in decision-making, and access to justice) and requires in paragraph 7 of its Article 3 each of its parties to “promote the application of the principles of this Convention in international environmental decision-making processes and within the framework of international organizations in matters relating to the environment”.

All international institutions reviewed in this study appear to have at their disposal some kind of NGO consultation that is at least to some extent based on formal rules. However, these rules are commonly very limited in scope and detail. They are usually permissive rather than restrictive and provide for the general opportunity for non-state actors to participate in the proceedings of bodies of the respective institution (accreditation and access to meetings). Beyond that, NGO participation in international environmental policy-making in principle relies heavily on practice.

Across the institutions reviewed in this study, there is no clear discernible correlation between the degree of formalisation of rules governing NGO participation and the degree to which NGOs were able to influence, or make a valuable contribution to, policy-making. For example, one argument holds that formalisation of rules on NGO participation may lead to less progressive rules and hence less effective participation. However, the example of CITES does not support this argument: Parties to CITES have developed a particularly and exceptionally detailed set of rules governing the participation of NGOs and CITES belongs to the most advanced institutions investigated in this study with respect to NGO participation.

Accreditation and access to information

Accreditation and access to information represent the very heart of any NGO participation in international institutions. Without accreditation, NGOs lack the basis for participating in the decision-making process, i.e. the actual negotiations in the relevant international institutions. Even if accredited, only open access to information (documents, reports, data) enables them to communicate the state of play to the media and the public and to bring to bear their expertise.

Problems with respect to accreditation and access to information have occurred relatively rarely. NGOs interested in participating have generally been admitted or have found ways to receive accreditation to most meetings of the institutions reviewed in this study. Also, the advent of modern communication technologies and the internet in particular has mitigated problems with respect to access to information. However, deficits regarding accreditation remain, especially in some economic institutions. For example, the WTO does not admit NGO observers to the meetings of the councils, committees and bodies that manage its day to day activities. Similarly, there are no formal procedures for NGO participation in structural adjustment policies of the World Bank and the IMF or meetings of the World Bank Board of Directors. Furthermore, not all institutions are open in their information policy to the same extent. Whereas all official documents are usually available from the web-site of the UNFCCC, for example, the Implementation Committee and the Multilateral Fund of the Montreal Protocol make only available the final reports of their meetings.

Active participation

Over and above accreditation and access to information, active participation in the form of access to meetings and the possibility to make oral interventions and provide written comments/documents enables NGOs to contribute to, and influence, the ongoing policy-discussions. The problems in this respect have been more widespread than regarding accreditation and access to information. Particularly meetings of “informal” negotiating groups and of bodies dealing with politically sensitive matters such as implementation review and compliance, dispute settlement and financial issues have in most cases remained closed to NGOs. If NGOs are admitted to meetings, they are frequently not allowed to make oral interventions or to flexibly participate in discussions alongside government delegates.

Good and justifiable reasons can exist for restricting active participation of NGOs in meetings (such as confidentiality, to avoid politicisation, and to ensure effectiveness of meetings): this is even acknowledged by observers. However, governments may easily employ them arbitrarily to try to evade

public scrutiny and public participation. Consequently, application of such restrictions on public participation may best be limited to instances where clearly defined criteria (e.g. related to confidentiality) are fulfilled. This raises the question of who would ensure that any such criteria and conditions are adhered to, i.e. the question of a mechanism to ensure proper implementation of the rules governing NGO participation in international environmental governance (see below).

Moreover, mechanisms can be devised to grant access to and active participation in meetings even where completely free access and participation are not feasible and restrictions are necessary. For example, an informal constituency system has developed in the framework of the UNFCCC in which NGOs sharing major objectives are grouped together to facilitate communication with the secretariat. As the case of the UNFCCC illustrates, this system can be used to ration NGO interventions and provide the basis for allocating slots for meetings where attendance of observers is restricted (such as the meetings of the Executive Board of the Kyoto Protocol's Clean Development Mechanism). Application of similar systems could also be considered in other international institutions to structure participation of NGOs in meetings (including interventions) where restrictions are necessary. Another option might be to differentiate between NGOs according to the interest they demonstrate in the issues addressed by an institution, similar to the system operated by the ISO.

Imbalanced representation

In many international institutions, an imbalanced representation of civil society by NGOs is prevalent. Institutions do not discriminate between NGOs on the basis of country of origin, but NGOs vary according to the resources at their disposal. As a result, most NGOs that can afford to participate in international decision-making processes are based in northern, OECD countries. In contrast, especially NGOs from developing countries are seriously underrepresented. NGOs from the Former Soviet Union and from Central and Eastern European countries with "economies in transition" are also generally underrepresented when compared to OECD countries. The means to address this issue have remained very limited to date. The only institutions that have granted funding for participation by (public-interest) NGOs to some extent are the UN Convention to Combat Desertification (UNCCD) and the Global Environment Facility (GEF). Other measures have hardly been considered. Overall, sufficient mechanisms to address the issue have not been developed.

Enhancing the role of NGOs in international environmental policy cannot be an end in itself and cannot be without limits. Many institutions provide NGOs with opportunities to observe and contribute to debates and NGOs perform a number of valuable functions in international environmental cooperation (see Table above). However, like other non-Parties, NGOs are generally not allowed a formal vote on decisions that would not be applicable to them.

There are two exceptions to this approach, both due to particular circumstances because NGOs are formal members of the relevant institution. First, labour unions and employers' associations can participate in voting as members of national delegations within ILO for specific historical reasons. Second, national standard-setting bodies within the formal membership of ISO frequently are non-governmental bodies. Also in these cases, NGOs acting as observers have not received formal voting power. For the most part, NGOs themselves recognise this limit and have not called for voting rights.

Requirements on NGOs

At the same time as possibilities of NGOs to participate in international environmental governance have increased, the requirements on NGOs (as a precondition of such participation) have remained skeletal. Consequently, proposals have been put forward to strengthen these requirements, e.g. by requiring them to submit regular reports, disclose their funding structure, fulfil certain standards of transparency, internal democracy, etc. In particular, public-interest NGOs have an in-built interest in demonstrating their transparency and accountability, since their own credibility represents a major source of their influence. However, explicit/formal requirements ensuring such transparency and accountability may not be needed especially for this reason. Formal requirements may also place a prohibitive burden on some kinds of NGOs (such as informal networks and small NGOs) and could therefore tend to lead to an unwarranted restriction of NGO participation. Overall, the rather limited benefits that may be expected from introducing standards on transparency and accountability of NGOs can hardly justify the potential drawbacks resulting therefrom.

The role of MEAs

As is also visible from the overview provided here, MEAs and other environmental institutions appear to be more advanced than economic institutions with respect to many aspects of participation of NGOs. Thus, accredited NGOs have generally been granted open access to all formal sessions of MEAs and have even been admitted to informal meetings and to intervene in discussions upon the invitation of the chairman at least on

some occasions. Also, NGO submissions have occasionally been posted on official web-sites or have even been included in official documents alongside government submissions. In contrast, access to meetings of bodies of economic institutions is not necessarily granted, and the opportunities for active participation (interventions, written submissions) have remained more limited, if existing at all (see above). In some cases, only international NGOs are admitted (ILO, ISO, but also UNEP where efforts to adapt this aspect of the rules of procedure are underway, though).

There are some explanations available for these differences but no justifications. For example, NGOs and civil society have played a particularly prominent role in putting environmental issues on the political agenda. CITES has largely evolved out of a NGO initiative. It may thus come as little surprise that its rules and practice on NGO participation are far more advanced than in the cases of, for example, the World Bank and WTO. In contrast, there is a general tendency of governments to provide for less transparency and public participation with respect to politically sensitive issues such as financial and economic matters. As a result, the need for enhancing the role of NGOs is therefore particularly high in economic institutions.

However, room for strengthening the possibilities for NGO participation also exists in most MEAs. On various occasions, access to meetings of MEA bodies has remained severely restricted, as have the possibilities to participate actively in the policy-making process, for example in the UNFCCC context. The problem of imbalanced geographical representation of NGOs in international environmental governance remains largely unabated also within the framework of MEAs. Possibilities for enhancing input by NGOs and making better use of their expertise exist in virtually all institutions.

Options for Enhancing the Role of NGOs

As mentioned before, the manner in which NGOs participate in international environmental governance has derived primarily from informal practice rather than explicit rules. While this provides for a high degree of flexibility, it carries the danger that possibilities for NGO participation granted to date will be eroded easily in the future. A formalisation of the rules governing NGO participation could provide an insurance against such a weakening and would enhance the certainty about applicable rules. The formal codification and extension of best practice from the more progressive regimes (and in this process possibly the further development of this best practice) could enhance possibilities for NGO participation where current practice is deficient.

A further formalisation of the rules governing NGO participation in international institutions relevant to the environment should therefore be considered. Such a formalisation of rules governing NGO participation may best be done by development of minimum standards in the form of decisions, through the adoption of guidelines or revisions to rules of procedure; these would be preferable to treaty amendments. Such an approach could enhance the willingness of governments to codify progressive practices (since they would not become legally binding). Framing the rules as minimum standards would allow to provide NGOs with even greater opportunities on an ad hoc basis, as appropriate.

Explicit rules on NGO participation may be elaborated for each relevant institution individually, for several institutions and/or even globally. Promoting harmonisation could help increase the efficiency and coherence of the overall system. However, differences in institutional cultures and history, memberships and structures and legal obstacles need to be taken into account. Care also has to be taken that harmonisation allows for continued development of best practice and experimentation in various institutions. Any efforts at harmonisation of rules governing NGO participation in international institutions must therefore proceed cautiously in a bottom-up approach and can only determine minimum standards. Integration would need to start with combining institutions that share important characteristics and may first be limited to certain substantive areas (e.g. funding) or regions. Broader integration might then be pursued in subsequent steps. Eventually, a system of different levels/circles of harmonisation could emerge: general minimum-standard guidelines on NGO participation in international environmental governance could be complemented by more specific guidelines applying to various sets of institutions, and even more concrete rules could be elaborated for specific institutions.

Fundamental Elements of NGO Participation Accreditation and Access to Information

Accreditation to relevant international institutions and access to information (documents and data) constitute fundamental preconditions for any effective NGO participation in international environmental governance.

- As a general rule, all NGOs qualified in relevant matters should be entitled to accreditation in any international institution involved in international environmental governance (including relevant economic and other institutions). Limitations on accreditation of NGOs qualified in relevant matters should only be considered if essential to the functioning of the body concerned (e.g. the operation of small bodies may be impeded by participation of large numbers of NGO representatives).

- There is no urgent need to introduce further requirements concerning the internal structure, public accountability, etc. of NGOs as preconditions for their accreditation.

Institutions involved in international environmental governance generally require some proof of the qualification of an NGO (copy of statutes, description of activities, etc.). While these requirements could be made more transparent and scope for their harmonisation across institutions could be explored, introducing further requirements (such as submission of regular reports on activities or requesting a declaration of support for the institution) are, on the basis of this study, not expected to deliver substantial benefits in relation to the additional costs involved. They could, however, severely hamper involvement of smaller NGOs in international environmental governance by placing a burden on them that is disproportionate to the expected benefits.

- Application of an accreditation fee for NGOs provides a disincentive for NGO participation and thus restricts transparency. It should therefore only be considered where NGO participation places a unacceptable burden on available resources or other compelling reasons exist. Any accreditation fee system should reflect the differentiated capabilities of different (types of) NGOs so as to minimise its negative impact on NGO participation.

To avoid effectively excluding certain types of NGOs (e.g. southern NGOs, small scientific observer organisations), any accreditation fee system would need careful differentiation. Alternative options for addressing the underlying problems (organisation of NGOs in constituencies, differentiation according to level of involvement) should also be explored. All things considered, accreditation fee systems would seem justified only on an exceptional basis.

- All NGOs and the public at large should, as a general rule, have access to all information that feeds into the decision-making process of international institutions in international environmental governance.

Only very limited exceptions to the general rule of open access to information following clearly defined criteria such as confidentiality of business information contained in documents might be justifiable on a case by case basis. Providing access to information also requires actively addressing barriers to such access such as user-unfriendly web-sites. In particular with respect to developing countries where access to the Internet can still be limited, information needs to be made available also through other channels (e.g. by mail).

- As part of their best practice procedures, international institutions should also actively pursue targeted outreach and education activities to inform and raise awareness about their activities in relevant NGO communities.

Some NGO communities may not even be aware that the decisions of a particular international institution affect their interests. In this regard, the respective institution has an obligation to inform potential stakeholders by engaging in outreach and education activities aiming at awareness raising.

Access to Meetings and Active Participation

Access to meetings and the possibility to participate actively (oral interventions, provision of written documents) enables NGOs to contribute to policy-making in international environmental governance.

- As a general rule, NGOs should be granted access to all relevant meetings, and should be entitled to distribute documents and intervene in official discussions in international institutions involved in international environmental governance (including relevant economic and other institutions).

Only on a case by case basis, very limited exceptions to the general rule of access to meetings on the basis of well-defined criteria (e.g. consideration of confidential information) might be justifiable. Secretariats may facilitate the distribution of NGO documents fulfilling certain minimum requirements (in particular identification of author/origin).

- “Logistical considerations” (limitations of space and time) cannot justify total closure of meetings and prohibition of the possibility to intervene in government discussions. Where practical limitations exist and cannot be remedied, means can be devised to allow for the best-possible use of NGO contributions.

Logistical limitations can be minimised by taking into account the requirements resulting from NGO participation when selecting meeting facilities and planning the agenda of meetings. Where limitations of time nevertheless exist, the duration and number of NGO interventions may be limited to the extent necessary to ensure an effective functioning of the respective body (in consultation with the NGOs concerned). Such restrictions could best be managed drawing on a NGO constituency system in which each NGO constituency would be allotted time to intervene. In case of inescapable limitations of space, the numbers of representatives of NGO groups/constituencies could be limited.

- Systems of “NGO constituencies” (environmental, labour, business, scientific, etc.) might facilitate active participation and access to meetings by NGOs (see above). This may require building up suitable systems of NGO constituencies (environmental/public-interest NGOs, business NGOs, scientific observers, etc.).

Rather informal constituency systems already exist in some contexts (for example, the UN Framework Convention on Climate Change), mainly as a device for organising the management of NGO relations by secretariats. Such constituency systems may prove useful for enhancing the effectiveness of NGO participation and input in international policy-making (oral interventions, access to meetings) in various contexts. Any such system would need to be set up with the consent and the active involvement of the NGO communities concerned, in order to ensure its acceptance and legitimacy. Such a constituency system could be combined with or could supplement systems where NGOs can select between different levels of involvement in an international organisation (e.g. passive observer versus active participant), as appropriate.

Imbalanced Representation

The present imbalance in representation of NGOs from different regions and different NGO constituencies (reflecting and reinforcing existing power structures) has been identified as a major problem in virtually all international institutions relevant to the environment.

- Raising additional financial resources for the support of underrepresented NGOs provides the major means for addressing the existing imbalance in the representation of varying NGO communities.

Funding of participation of underrepresented NGOs in international meetings, related capacity building and other activities aimed at establishing a suitable internal enabling structure all require resources. There are various options for generating the necessary funds (voluntary/mandatory government contributions, innovative sources, where considered appropriate also accreditation fees) and administering/distributing them. Mechanisms could also be combined across various institutions. More work is required to design feasible and practicable approaches towards addressing this problem.

- NGOs most in need should be given priority in receiving any financial support for effective participation. To reflect the varying needs of different types of NGOs, any financial support should focus on or be limited to qualified public-interest NGOs from developing and transition countries.

- Beyond covering the direct costs of NGO participation in international meetings, achieving more balanced representation requires addressing various other causes of under-representation such as insufficient domestic NGO structures, cultures or attitudes through targeted capacity building. While addressing the various causes of under-representation such as inappropriate internal structures, neglect and lack of knowledge about international processes and lack of expertise regarding how to enter into constructive dialogue with policy makers (and vice versa) usually requires money, money alone will not suffice. Carefully crafted capacity building and awareness raising activities enabling NGOs from under-represented regions or constituencies to participate more fully in international processes could make an important contribution to improving the situation.

- Creating advisory NGO bodies to international institutions composed of limited numbers of NGO representatives can under certain circumstances provide a useful means for co-ordination among NGOs and structuring their input in decision-making (where limitations are required). However, it does not in itself constitute a promising response to the problem of imbalanced representation.

Such representative NGO bodies can help NGOs structure their own co-ordination. Limited representational NGO participation may also be required in some cases due to practical considerations (see above). While balanced representation of varying NGO groups in such bodies should be ensured, creating the bodies as such does not help solve the underlying problems and could result in overall restrictions on NGO participation (see above).

- All NGOs should receive accreditation and receive equal treatment with respect to possibilities for access, input, and consultation mechanisms. There is no a priori reason why different types of NGOs should have formally different chances of access to policy-making (if they are “qualified” in relevant matters and “play by the rules”). At the same time, some economic institutions such as the OECD in particular provide for special consultation mechanisms for business NGOs without similar arrangements for environmental/public-interest NGOs. Equivalent mechanisms should exist for all NGO constituencies.

Dispute Settlement and Implementation Review (Ombudsman/Panel)

An elaboration of explicit rules governing NGO participation raises the question of how it can be ensured that the rules are followed. Enabling NGOs to trigger a public review of the application of the rules can provide a means for promoting their proper implementation (even where there are no formal/codified rules governing NGO participation).

- Establishment of an implementation review mechanism (e.g. independent ombudsman for NGOs or a review panel) could promote the proper application of rules governing the NGO participation in international environmental governance. Establishing a regular evaluation of rules and practice regarding NGO participation in relevant institutions may create a first step towards such more encompassing review mechanisms. Review mechanisms could apply to each institution individually or could be combined across a number of institutions. Such an implementation review mechanism could ensure that, on the basis of a complaint by an NGO, the application of the appropriate rules would be subject to public scrutiny and that governments would have to justify their application of the rules. It should help prevent tacit erosion of the application of the rules. Establishing a regular evaluation of rules and practice regarding NGO participation may create a first step towards this type of more encompassing review mechanisms.

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Participation of Non-Governmental Organisations in International
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