



**Participation of  
Non-Governmental Organisations in  
International Environmental Governance:  
Legal Basis and Practical Experience**

**On behalf of the Umweltbundesamt**

**Final Report**

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## Report Cover Sheet

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| 16. Abstract<br><br>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, limited effort has been spent at systematically analysing the relationship between the legal basis and the practical influence of NGOs in different areas of international environmental co-operation (broadly understood). Against this backdrop, this study first laid a conceptual basis by reviewing existing definitions of NGOs and developing an own working definition, 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 analysed in more detail the legal basis and the practice of NGO participation in Multilateral Environmental Agreements (MEAs), economic institutions, and other relevant international institutions and identified constraints of the role of NGOs. Part of this analysis was also an appraisal of the question to what extent NGO participation in international institutions can be considered legitimate against the background of the state of development of related principles of international law (II). Finally, the study identified and discussed a number of options for enhancing the role of NGOs in international environmental co-operation (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 40 representatives of governments and different NGO constituencies as well as secretariat staff were interviewed in undertaking these case studies. |     |                                    |
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## Contents

|   |            |
|---|------------|
| <b>SUMMARY .....</b>  | <b>1</b>   |
| I. BACKGROUND: DEFINITION, CLASSIFICATIONS AND FUNCTIONS OF NGOS .....                            | 1          |
| II. THE PARTICIPATION OF NGOS IN INTERNATIONAL ENVIRONMENTAL POLICY-MAKING TO DATE .....          | 5          |
| III. OPTIONS FOR ENHANCING THE ROLE OF NGOS .....   | 9          |
| <b>1. INTRODUCTION .....</b>  | <b>17</b>  |
| <b>2. GENERAL ASSESSMENT .....</b>  | <b>21</b>  |
| 2.1 DEFINITIONS, CLASSIFICATIONS AND FUNCTIONS OF NGOS .....                                      | 21         |
| 2.1.1 Definitions .....   | 21         |
| 2.1.2 Classifications .....   | 32         |
| 2.1.3 Functions, Activities and Channels of Influence .....                                       | 40         |
| 2.2 PARTICIPATION OF NGOS IN RELEVANT INTERNATIONAL INSTITUTIONS .....                            | 53         |
| 2.2.1 Multilateral Environmental Agreements .....   | 53         |
| 2.2.2 International Economic Institutions .....   | 78         |
| 2.2.3 Other Relevant International Institutions .....   | 100        |
| 2.2.4 Conclusion .....  | 111        |
| <b>3. CASE STUDIES .....</b>  | <b>117</b> |
| 3.1 THE CLIMATE CHANGE REGIME .....   | 117        |
| 3.1.1 Overview .....  | 117        |
| 3.1.2 Legal Provisions and Practice of NGO Participation .....                                    | 125        |
| 3.1.3 The Kyoto Procedures and Mechanisms: New Challenges and Opportunities .....                 | 135        |
| 3.1.4 Problems of NGO Participation and Proposed Solutions .....                                  | 138        |
| 3.2 CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES) ..... | 142        |
| 3.2.1 Overview .....  | 142        |
| 3.2.2 Legal Provisions and Practice of NGO Participation .....                                    | 146        |

|           |  |            |
|-----------|--|------------|
| 3.2.3     | Problems of NGO Participation and Proposed Solutions.....                    | 157        |
| 3.2.4     | Conclusions .....  | 162        |
| 3.3       | INTERNATIONAL STANDARDS ORGANISATION (ISO) .....                             | 164        |
| 3.3.1     | Overview .....   | 164        |
| 3.3.2     | Legal Provisions and Practice of NGO Participation .....                     | 167        |
| 3.3.3     | Problems of NGO Participation and Proposed Solutions.....                    | 176        |
| 3.3.4     | Conclusions .....  | 180        |
| 3.4       | WORLD BANK.....  | 183        |
| 3.4.1     | Overview .....   | 183        |
| 3.4.2     | Legal Provisions and Practice of NGO Participation .....                     | 188        |
| 3.4.3     | Deficits, Problems and Need for Improvement .....                            | 199        |
| 3.4.4     | Conclusions: Proposed Solutions .....  | 201        |
| <b>4.</b> | <b>CONCLUDING ASSESSMENT AND OUTLOOK .....</b>                               | <b>205</b> |
| 4.1       | LEGAL BASIS AND PRACTICE OF NGO PARTICIPATION.....                           | 205        |
| 4.2       | TOWARDS DETERMINING THE LEGITIMATE ROLE OF NGOS .....                        | 212        |
| 4.2.1     | Emerging Principles of NGO Participation in International<br>Law .....       | 212        |
| 4.2.2     | Legitimacy of NGOs .....   | 217        |
| 4.2.3     | Conclusions .....  | 223        |
| 4.3       | EXISTING CONSTRAINTS AND PROPOSALS FOR IMPROVEMENT .....                     | 225        |
| 4.3.1     | Formalisation and Harmonisation of Rules .....                               | 225        |
| 4.3.2     | Accreditation and Access to Information: the Basis of<br>Participation ..... | 229        |
| 4.3.3     | Access to Meetings and Active Participation .....                            | 234        |
| 4.3.4     | Imbalanced Representation and Differentiation .....                          | 238        |
| 4.3.5     | Institutional Support: Implementation Review.....                            | 243        |
| 4.4       | POLICY OPTIONS (RECOMMENDATIONS).....  | 245        |
|           | <b>ANNEX 1: DRAFT GUIDELINES FOR INTERVIEWS .....</b>                        | <b>253</b> |
| 1.        | LEGAL PROVISIONS AND PRACTICE OF NGO PARTICIPATION .....                     | 253        |
| 1.1       | Purpose: .....   | 253        |
| 1.2       | Topics/questions.....  | 254        |
| 2.        | DEFICITS, PROBLEMS AND NEED FOR IMPROVEMENT .....                            | 254        |

|     |  |            |
|-----|--|------------|
| 2.1 | Purpose: .....   | 254        |
| 2.2 | Topics/questions.....  | 255        |
| 3.  | ASSESSMENT OF PROPOSALS FOR ENHANCING NGO<br>PARTICIPATION ..... | 255        |
| 3.1 | Purpose: .....   | 255        |
| 3.2 | Topics/questions.....  | 255        |
|     | <b>REFERENCES.....</b>   | <b>259</b> |
|     | LITERATURE.....  | 259        |
|     | LEGAL INSTRUMENTS AND DOCUMENTS .....                            | 271        |
|     | <b>INTERVIEWEES .....</b>  | <b>284</b> |

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## List of Tables and Figures

|          |  |    |
|----------|--|----|
| Table 1: | NGOs in international law: selected definitions and criteria.....  | 26 |
| Box 1:   | International NGOs as defined in the Yearbook of International Organizations.....                        | 29 |
| Table 2: | Assessment of Potential Classifications of NGOs.....   | 39 |
| Table 3: | Functions, Activities and Channels of Influence of NGOs in International Environmental Co-operation..... | 52 |

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## Abbreviations

|               |   |
|---------------|---|
| <b>AOSIS</b>  | Alliance of Small Islands States  |
| <b>ATCMs</b>  | Consultative Meetings of the Parties to the Antarctic Treaty                    |
| <b>ATS</b>    | Antarctic Treaty System   |
| <b>BIAC</b>   | Business and Industry Advisory Committee  |
| <b>BINGOs</b> | Business and industry NGOs  |
| <b>CAO</b>    | Compliance Advisor and Ombudsman  |
| <b>CAN</b>    | Climate Action Network  |
| <b>CBD</b>    | Convention on Biological Diversity  |
| <b>CCAMLR</b> | Commission for the Conservation of Antarctic Marine Living Resources            |
| <b>CDM</b>    | Clean Development Mechanism   |
| <b>CIME</b>   | Committee on International Investment and Multilateral Enterprises              |
| <b>CITES</b>  | Convention on International Trade in Endangered Species of Wild Flora and Fauna |
| <b>COP</b>    | Conference of the Parties   |
| <b>CSD</b>    | Commission on Sustainable Development   |
| <b>EBCDM</b>  | Executive Board of the Clean Development Mechanism                              |
| <b>ECOSOC</b> | Economic and Social Council   |
| <b>ENGOS</b>  | Environmental Non-Governmental Organization                                     |
| <b>FIELD</b>  | Foundation for International Environmental Law and Development                  |
| <b>GEF</b>    | Global Environment Facility   |
| <b>IAEA</b>   | International Atomic Energy Agency  |
| <b>IBRD</b>   | International Bank for Reconstruction and Development                           |

|                |   |
|----------------|---|
| <b>ICSU</b>    | International Council of Scientific Unions            |
| <b>IDA</b>     | International Development Association                 |
| <b>IEC</b>     | International Electrotechnical Commission             |
| <b>IFC</b>     | International Finance Corporation                     |
| <b>IGOs</b>    | International Governmental Organization               |
| <b>ILO</b>     | International Labour Organisation                     |
| <b>IMF</b>     | International Monetary Fund                           |
| <b>INC</b>     | Intergovernmental Negotiating Committee (for a FCCC)  |
| <b>INEM</b>    | International Network for Environmental Management    |
| <b>ISO</b>     | International Organization for Standardisation        |
| <b>IUCN</b>    | International Union for the Conservation of Nature    |
| <b>IWC</b>     | International Whaling Convention                      |
| <b>JI</b>      | Joint Implementation                                  |
| <b>MAI</b>     | Multilateral Agreement on Investment                  |
| <b>MEAs</b>    | Multilateral Environmental Agreements                 |
| <b>MIGA</b>    | Multilateral International Guarantee Agency           |
| <b>MOP</b>     | Meeting of the Parties                                |
| <b>NAAEC</b>   | North American Agreement on Environmental Cooperation |
| <b>NAFTA</b>   | North American Free Trade Association                 |
| <b>NGOs</b>    | Non-Governmental Organizations                        |
| <b>OECD</b>    | Organization for Economic Cooperation and Development |
| <b>QUANGOs</b> | Quasi-Autonomous Non-Governmental Organizations       |
| <b>PINGOs</b>  | Public Interest Non-Governmental Organizations        |
| <b>PRSPs</b>   | Poverty Reduction Strategy Papers                     |

|                |   |
|----------------|---|
| <b>ROP</b>     | Rules of Procedure  |
| <b>SAP</b>     | Structural Adjustment Programmes                                    |
| <b>SAPRIN</b>  | Structural Adjustment Participatory Review International Network    |
| <b>SBI</b>     | Subsidiary Body for Implementation                                  |
| <b>SBSTA</b>   | Subsidiary Body on Technological and Scientific Advice              |
| <b>SCAR</b>    | Scientific Committee on Antarctic Research                          |
| <b>TC 207</b>  | ISO Technical Committee 207   |
| <b>TRAFFIC</b> | Trade Records Analysis of Flora and Fauna in Commerce               |
| <b>TUAC</b>    | Trade Union Advisory Committee                                      |
| <b>UNCCD</b>   | United Nations Convention to Combat Desertification                 |
| <b>UNCED</b>   | United Nations Conference on Environment and Development Collection |
| <b>UNCTAD</b>  | United Nations Conference on Trade and Development                  |
| <b>UNECE</b>   | United Nations Economic Commission for Europe                       |
| <b>UNEP</b>    | United Nations Environment Program                                  |
| <b>UNFCCC</b>  | United Nations Framework Convention on Climate Change               |
| <b>UNFF</b>    | United Nations Forum on Forest                                      |
| <b>WIPO</b>    | World Intellectual Property Organization                            |
| <b>WTO</b>     | World Trade Organization  |
| <b>WWF</b>     | World Wide Fund for Nature  |

## 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.

### **I. Background: Definition, Classifications and Functions of NGOs**

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.

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 to-

wards under-representation of public-interest NGOs, especially from poorer regions.

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.

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.

**Table: Functions, Activities and Channels of Influence of NGOs in International Environmental Co-operation**

| Functions  | Illustrative List of Activities and Channels of Influence   |
|--|---|
| Enhancing the knowledge base (science, policy and law)                                     | <ul style="list-style-type: none"> <li>gather, compile and disseminate information</li> <li>conduct and publish studies and reports</li> <li>distribute information and organise side-events at major conferences</li> </ul>  |
| Advocacy and lobbying  | <ul style="list-style-type: none"> <li>informal contacts with government delegates (side-events, workshops, conferences, in the corridors, modern telecommunication technology)</li> <li>formal participation in inter-governmental negotiations (official written submissions, unofficial written position papers, statements in meetings)</li> <li>provision of advice to "friendly" delegations</li> <li>campaigns outside the negotiating arena (e.g. media and public information, protests) to enhance influence</li> </ul> |
| Membership in national delegations   | <ul style="list-style-type: none"> <li>receipt of inside information about governmental negotiations</li> <li>provision of advice to governments</li> <li>negotiate on behalf of governments</li> </ul>   |
| Contribution to compliance review and enforcement as well as dispute settlement procedures | <ul style="list-style-type: none"> <li>submission of <i>amicus curiae</i> briefs</li> <li>provision of information on implementation/alerting delegations and institutions of non-compliance</li> </ul>   |
| Ensuring transparency  | <ul style="list-style-type: none"> <li>reports from negotiations</li> <li>'naming and shaming' of laggard countries</li> <li>public relations work (media)</li> <li>reports on effectiveness of implementation</li> </ul>   |
| Supporting international secretariats  | <ul style="list-style-type: none"> <li>provide Secretariat functions</li> <li>provide advice and expertise to Secretariats</li> </ul>   |
| Broader functions of NGOs in international environmental governance                        | <ul style="list-style-type: none"> <li>shaping the opinions of individuals and groups (campaigns and training)</li> <li>co-operation between environmental groups and business and industry</li> <li>networking, including integrating levels of governance</li> <li>'globalisation' of values and preferences</li> </ul>   |

## II. 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 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.

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 en-

sure 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.

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 co-operation (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.

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.

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.

### III. 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.

Specifically, the following core elements of a further elaboration of rules on NGO participation in international environmental governance deserve consideration:

1. **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 request-

ing 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.

2. **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 interna-

tional 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.

3. **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.

**4. 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 institu-

tions 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.

## 1. Introduction

The importance of non-governmental organisations (NGOs) in international environmental governance 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. Most of this literature has been concerned with analysing the (legal) basis for this growing role of NGOs in world environmental affairs, improving our understanding of the forces driving this process and investigating the consequences of this phenomenon (in addition to asking the question of the extent to which such NGO involvement might be legitimate). Less effort has been spent at systematically analysing the relationship between the legal basis and the practical influence of NGOs in different areas of international environmental policy-making.

Against this backdrop, the Umweltbundesamt commissioned Ecologic to analyse, in co-operation with the Foundation for International Environmental Law and Development (FIELD), the legal basis and practical experience with respect to the participation of NGOs in international environmental co-operation. On the basis of an in-depth analysis of the current role of NGOs in policy-making in international institutions<sup>1</sup> related to the environment, the study aims at elaborating practical suggestions for enhancing the contribution of NGOs to effective policy-making in the field of international environmental governance. In this respect, the room for improving the relevant legal provisions will be assessed, as well as other potential measures such as funding and modifications to current practice.

The study is based on a broad understanding of international environmental co-operation. As has become increasingly evident with the accelerating process of economic globalisation, the environment is a cross-cutting theme that influences and is influenced by a broad range of policy fields. Under these circumstances, relevant policies are formed and implemented in the framework of many international institutions including both traditional environmental institutions and economic and social institutions. Therefore, this study investigates the participation of NGOs in multilateral environmental agreements (MEAs), a number of international economic institutions, and other institutions related to the environment (including the UN Economic and Social Council (ECOSOC), the UN Environment

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<sup>1</sup> In the context of this study, 'institution' refers to both the systems of rules and the political processes based upon international agreements and international organisations.

Programme (UNEP), and others). This more comprehensive approach also reflects the fact that the debate on international environmental policy has been broadened to include economic and social aspects, as is obvious from the coming to the fore of the paradigm of sustainable development in the context of the UN Conference on Environment and Development (UNCED) held in Rio de Janeiro in 1992.

In so doing, the study focuses on the international political process within the aforementioned institutions. This international political process includes both the formation of public policy and the international review of implementation and settlement of disputes. While NGOs also perform various functions with respect to domestic implementation of international commitments and implementation of specific projects on the ground (including projects funded by international institutions such as the World Bank and others), this is not the emphasis of this report.

The study does not include the analysis of the legal basis and practice of NGO participation in the European Union (EU). The EU as a supra-national organisation constitutes a particular type of international institution with unique decision-making procedures and mechanisms that differ largely from those of other international institutions. Its inclusion was thus beyond the scope of this study.

This report consists of three major substantive parts. Part 2 contains a general assessment of the role of NGOs in international environmental governance, looking at a broad range of international institutions and building upon the existing body of knowledge as reflected in the literature. First, it reviews the definitions of NGOs applied in international law, presents a number of dimensions that can serve to distinguish and classify NGOs, and introduces the basic functions performed and channels of influence used by NGOs in participating in international environmental co-operation (section 2.1). Subsequently, the legal basis and the practice of NGO participation in MEAs, economic institutions, and other relevant international institutions are reviewed. As a result of this review, preliminary conclusions are drawn regarding the status and trends of NGO participation in the aforementioned areas of international co-operation and the relationship between legal provisions and practice in this respect (section 2.2). The analysis in Part 2 is mainly based on information solicited from the international institutions reviewed (such as treaty texts, rules of procedure, further documents, information available at the respective websites and from secretariats) and available literature.

Part 3 assesses in more detail NGO participation in policy-making in two international environmental institutions (the UN Framework Convention on Climate Change, UNFCCC; and the Convention on International

Trade in Endangered Species, CITES) and in two international economic institutions (the International Organisation for Standardization, ISO and the World Bank). In each of the cases, the legal basis and practice of NGO participation are investigated in more detail with respect to the particular political decision-making process of the institution. In addition, deficits with respect to NGO participation and options for addressing these and enhancing NGO participation are identified with respect to the institutions analysed in the case studies. In addition to official documents and the available literature, the analyses in the case studies of Part 3 are based on interviews with secretariat officials, government representatives and representatives of relevant NGOs. The guidelines for interviews are reproduced in Annex 1.

Part 4 first summarises the findings of the study regarding the legal basis and practice of NGO participation in international environmental co-operation (section 4.1). It then discusses to what extent NGO participation in international institutions can be considered legitimate against the background of the state of development of related principles of international law (section 4.2). Section 4.3 explores existing constraints and proposals for enhancing the role of NGOs in international environmental governance. The study concludes by identifying a number of policy options that may be suitable for further enhancing the contribution of NGOs to good international governance.

## 2. General Assessment

It is generally recognised by the relevant literature on the role of “civil society” in international law and policy that NGOs have become an increasingly influential class of actors.<sup>1</sup> At the same time, the role of NGOs in international environmental policy is still evolving, as reflected in the related rules and practice of various international institutions. Bearing in mind the evolutionary character of the subject, Section 2 of this study attempts to take stock of the current status of NGO involvement in international environmental policy by drawing on both the rules that currently exist in relevant international institutions and existing insights from research. Section 2.1 lays the basis by reviewing existing definitions and classifications of NGOs as well as giving an overview of the various functions that NGOs perform in international environmental politics. In section 2.2, the legal provisions and the practice relating to NGO involvement are reviewed with respect to three different areas of international politics relevant to the environment: multilateral environmental agreements (MEAs), economic institutions, and other relevant international institutions.

### 2.1 Definitions, Classifications and Functions of NGOs

#### 2.1.1 Definitions

While a large number of international legal instruments refer to NGOs<sup>2</sup> and the body of literature on the subject is growing, there is no commonly applied definition of the term “non-governmental organisation”.<sup>3</sup> However, any study about NGOs needs to delimit its object of research and thus needs a definition of NGOs. In the following, therefore, a number of elements of a definition of NGOs as (a) applied in various international legal instruments and (b) put forward in the scientific literature are introduced and discussed in order to derive (c) a working definition for the purposes of this study. Since our study deals with the legal basis and practice of NGO participation in a number of different institutions, the

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<sup>1</sup> E.g. Peterson (1992); Princen and Finger (1994); Risse-Kappen (1995); Smith et. al. (1997: 74-77); Keck and Sikkink (1998).

<sup>2</sup> E.g. Article 71 UN-Charta, Chapter 27 of Agenda 21, Article 23 paragraph 5 CBD, Article XI paragraph 7 CITES, Article 7 paragraph 6 UNFCCC.

<sup>3</sup> Riedinger (2001: 30).

working definition applied needs to be sufficiently broad so as to capture the varying circumstances in different institutions.

### 2.1.1.1 “Non-Governmental Organisations” in International Law

International organisations and secretariats apply a range of criteria in order to determine whether or not they consider a non-state actor to be an NGO in their context. These criteria fall short of a positive definition of NGOs and also differ among the various institutions in which they are applied. Table 1 provides an overview of a range of related provisions found in international legal instruments, as discussed below.

**(i) Founding act:** International organisations are established by an inter-governmental agreement, i.e. an instrument governed by public international law.<sup>4</sup> NGOs in contrast are generally established by individuals, groups of individuals or associations under the domestic law of a state.<sup>5</sup> References to NGOs in international legal instruments commonly recognise this difference by distinguishing between “inter-governmental” or “governmental” on the one side and “non-governmental” bodies, agencies or organisations on the other.<sup>6</sup>

**(ii) Headquarters and executive officer:** Some institutions such as ECOSOC, the Council of Europe, and UNCTAD require that NGOs have headquarters and an executive officer (Table 1). NGOs therefore need to have some basic organisational structure. As a consequence, some forms of non-governmental groups that operate without a formal organisational structure (so called “international activist networks”<sup>7</sup>) may not be regarded as NGOs in the context of these institutions. It may be for this reason that many other international institutions, including most MEAs, do not require NGOs to prove the existence of elaborate organisational structures.

<sup>4</sup> Klein (2001: 277).

<sup>5</sup> Klein (2001: 279); Riedinger (2001: 30).

<sup>6</sup> The UN ECOSOC and UNCTAD, for example, refer to NGOs as organisations “not established by inter-governmental agreement”. The “European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations” requires that an NGO has “been established by an instrument governed by the internal law of a Party”. This further specification owes itself to the purpose of this convention, which is mutual recognition of domestic legal status of NGOs operating in states that are parties to the Council of Europe. See also the 1995 Vienna Convention, 1989 Basel Convention, 1992 UNFCCC: Table 1.

<sup>7</sup> On international activist networks see Keck and Sikkink (1998).

**(iii) Aims and activities in support of international co-operation:** ECOSOC, CSD, and UNCTAD require that NGOs are supportive of the UN Charter and the specific objectives of the respective international institutions. This requirement aims at preventing the opponents of an institution from making use of the institution’s structure itself to pursue their objective. This may be particularly justifiable where the respective institutions can be considered to be of a constitutional character (such as the ECOSOC). It is less convincing in the case of institutions that elaborate rules for specific issue areas. Similarly, some national constitutions, such as the German Grundgesetz, permit a ban on participation in the political process for opponents of the constitution, but nevertheless allow opponents of particular laws full participation. Consequently, such a requirement is not commonly part of MEAs (see Table 1). In any event, the effectiveness of a requirement to subscribe to the specific aims of an institution is in doubt, since only lip-service is needed to fulfil it. In addition, such a requirement carries the danger that governments employ it in order to prevent the recognition of NGOs who criticise them.

**(iv) Expertise or representativity:** Institutions such as ECOSOC and UNCTAD require NGOs to either be representative of important elements of public opinion or to provide special expertise and competence on topics relevant to the international institution in question. Similarly, MEAs require NGOs to be “qualified” in matters relating to the respective agreement (see Table 1). This formulation leaves considerable room for interpretation and has provided the basis for a particularly liberal practice.<sup>8</sup> The differences in wording between ECOSOC/UNCTAD and MEAs may again be due to the different scope and nature of these institutions.

**(v) Non-profit-making/funding:** International institutions such as the Council of Europe or ECOSOC require NGOs to be non-profit-making. The Council of Europe Convention determines that accredited NGOs pursue a non-profit-making *aim* thereby excluding commercial companies or other bodies which exist to distribute financial benefits among their members. ECOSOC stipulates that the “main sources” of accredited NGOs must be derived from contributions of national affiliates or other components, or from individual members. If funding from other sources (non-members, governments) constitutes a main source, the NGO must “explain to the satisfaction” of the responsible ECOSOC Committee its reasons for

<sup>8</sup> See also Section 2.2.1 below.

not meeting the general funding requirements.<sup>9</sup> Similarly, some international economic institutions such as the World Bank and ISO have tended to exclude organisations with business or commercial interests from the NGO definition.<sup>10</sup> In contrast, MEAs do not generally require NGOs to be non-profit-making or to disclose their funding sources.<sup>11</sup>

**(vi) No governmental control over activities:** NGOs are generally regarded as actors which voice opinions and carry out activities independent of, complementary to or possibly conflicting with governmental positions.<sup>12</sup> Consequently, the Council of Europe makes reference to the “private” nature of NGOs, while ECOSOC and UNCTAD refer to the “free expression of views” that is necessary even if governmental authorities have a say in designating some members of an NGO. Problems of delimitation occur, first of all, with respect to so-called “hybrid” organisations that are composed of both NGOs and of governmental bodies, such as the World Conservation Union (IUCN) or the International Council of Scientific Unions (ICSU).<sup>13</sup> Even more difficult to determine is the status of organisations that are established, funded and staffed by governments, but which are expected to act independently. Examples for these so called quasi-autonomous non-governmental organisations (QUANGOs) include independent scientific advisory councils such as the German Advisory Council on Global Change (WBGU).<sup>14</sup> The practical relevance of such difficulties is greatly reduced in the context of MEAs which commonly grant observer status to both governmental and non-governmental organisations (see Table 1).

**(vii) NGO governance:** Some international institutions such as ECOSOC and UNCTAD set out rather detailed requirements relating to the internal governance-structure of NGOs, including democratic structure, accountability of NGO representatives, and transparency of decision-making pro-

<sup>9</sup> See UN ECOSOC Res. 1996/31 of 25 July 1996, “Consultative relationship between the United Nations and non-governmental organizations”, Part I, No.13.

<sup>10</sup> See Sections 2.2.2, 3.3 and 3.4. In contrast, the World Intellectual Property Organisation (WIPO) refers to NGOs as organisations with a technical or commercial interest in intellectual property protection; see About WIPO, General Information, <http://www.wipo.org/aboutwipo/en/index.html?wipocontentframe=report.html>.

<sup>11</sup> See section 2.2.1.

<sup>12</sup> E.g., Willetts (1996: 6).

<sup>13</sup> See, for example, Willetts (1996: 6-8); Riedinger (2001: 46-48).

<sup>14</sup> For the terminology and its use see Willetts (1996: 6, Footnote 15).

cedures. In MEAs, in contrast, such requirements are usually not applied.<sup>15</sup> Generally, it appears difficult to argue that non-state actors need to display democratic structures in order to act legitimately as members of “civil society”, since they represent private interests that do not necessarily need democratic legitimisation. In this respect, it is revealing that such requirements are especially included in the more general international institutions (of a quasi-constitutional nature), whereas issue-specific arrangements (such as MEAs) do not display such restrictions.

<sup>15</sup> For details see section 2.2.1.

Table 1: NGOs in international law: selected definitions and criteria

| Institution | Instrument(s)/Provision   | Definition and Criteria  | Main Aspects   |
|-------------|---|--|--|
| UN ECOSOC   | <ul style="list-style-type: none"> <li>UN ECOSOC Res. 288 B(X) of 27 February 1950, "Review of Consultative Arrangements with Non-Governmental Organizations", Paragraph 8 as amended by ECOSOC Res. 1296 (XLIV) of 23 May 1968, "Arrangements for Consultation with Non-Governmental Organizations", Paragraph 7.</li> <li>UN ECOSOC Res. 1996/31 of 25 July 1996, "Consultative relationship between the United Nations and non-governmental organizations", Part I.</li> </ul> | <ul style="list-style-type: none"> <li>Res. 288 B(X) and Res. 1296 (XLIV): "Any international organization which is not established by inter-governmental agreement shall be considered as a non-governmental organization for the purpose of these arrangements, including organizations which accept members designated by government authorities, provided that such membership does not interfere with the free expression of views of the organization."</li> <li>Further criteria applied by Res. 1996/31, Part I: expertise (No.1, No.4, No.9), support for UN's work and principles (No.2, No.3), representativity (No.9, No.11), headquarters and executive officer, democratic structure, internal transparency, accountability (No.10, No.12), funding must come in main part from contributions of national affiliates or other components or individual members, other sources of funding must be made transparent (No.13)</li> </ul>   | <ol style="list-style-type: none"> <li>founding act;</li> <li>no governmental control over activities;</li> <li>support for UN's work and principles;</li> <li>expertise or representativity;</li> <li>NGO-governance (headquarters, democratic, transparent, accountability);</li> <li>generally non-profit-making, disclosure of outside funding-sources.</li> </ol> |
| UNCTAD      | "Arrangements for the participation of non-governmental organizations in the activities of the United Nations Conference on Trade and Development", UNCTAD, Trade and Development Board Decision 43 (VII) of 20 September 1968.   | <ol style="list-style-type: none"> <li>The organization shall be concerned with matters of trade and of trade as related to development...</li> <li>Relationship arrangements are to be made...to secure information or advice from organizations having special competence...[and] to enable organizations which represent important elements of public opinion to express their views...</li> <li>The aims and purposes of the organization shall be in conformity with the spirit, purposes and principles of the Charter of the United Nations.</li> <li>...shall undertake to support the work of UNCTAD....</li> <li>...shall be of recognized standing and shall represent a substantial proportion of the organized persons within the particular field in which it operates...</li> <li>...shall have established headquarters with an executive officer [and a] policy-making body...</li> <li>...shall have authority to speak for its members through its authorized representatives...</li> <li>...shall be international in its structure...not established by intergovernmental agreement.."</li> </ol> | <ol style="list-style-type: none"> <li>founding act;</li> <li>support for UN's and UNCTAD's work and principles;</li> <li>expertise or representativity;</li> <li>NGO-governance (headquarters, policy-making body, authority to speak for its members);</li> </ol>  |

## Definitions, Classifications and Functions of NGOs

27

| Institution            | Instrument(s)/Provision  | Definition and Criteria   | Main Aspects   |
|------------------------|--|---|--|
| Council of Europe      | Article 1 of the "European Convention on the Recognition of the Legal Personality of International NGOs", Council of Europe, European Treaty Series – No. 124 of 24 April 1986 (entry into force: 1 January 1991). | <p>"This Convention shall apply to associations, foundations and other private institutions (hereinafter referred to as 'NGOs') which satisfy the following conditions:</p> <ol style="list-style-type: none"> <li>have a non-profit-making aim of international utility;</li> <li>have been established by an instrument governed by the internal law of a Party;</li> <li>carry on their activities with effect in at least two States; and</li> <li>have their statutory office in the territory of a Party and the central management and control in the territory of that Party or of another Party."</li> </ol> | <ol style="list-style-type: none"> <li>Founding act;</li> <li>no governm. control over activ.;</li> <li>org. base in contracting Party</li> <li>not-for-profit aim;</li> <li>international activities;</li> <li>activities must be of benefit to the intern. community.</li> </ol> |
| 1985 Vienna Convention | Article 6 paragraph 5 Vienna Convention  | "Any body or agency, whether national or international, governmental or non-governmental, qualified in fields relating to the protection of the ozone layer which has informed the secretariat of its wish to be represented at a meeting of the Conference of the Parties as an observer may be admitted unless at least one-third of the Parties present object."   | <ol style="list-style-type: none"> <li>National or international;</li> <li>Expertise in the area of protection of the ozone layer.</li> </ol>  |
| 1989 Basel Convention  | Article 15 paragraph 6 Basel Convention  | "Any other body or agency, whether national or international, governmental or non-governmental, qualified in fields relating to hazardous wastes or other wastes which has informed the Secretariat of its wish to be represented as an observer at a meeting of the Conference of the Parties, may be admitted unless at least on-third of the Parties present object."  | <ol style="list-style-type: none"> <li>National or international;</li> <li>Expertise relating to hazardous wastes or other wastes.</li> </ol>  |
| 1992 UN FCCC           | Article 7 paragraph 6 FCCC   | "Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by the Convention, and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties as an observer, may be so admitted unless at least one-third of the Parties present object."  | <ol style="list-style-type: none"> <li>National or international;</li> <li>Expertise in the area of climate change.</li> </ol>   |
| 1992 UN CBD            | Article 23 paragraph 5 CBD   | "Any body or agency, whether governmental or non-governmental, qualified in fields relating to conservation and sustainable use of biological diversity, which has informed the Secretariat of its wish to be represented as an observer at a meeting of the Conference of the Parties, may be admitted unless at least one-third of the Parties present object."   | <ol style="list-style-type: none"> <li>National or international;</li> <li>Expertise in the area of conservation and sustainable use of biological diversity.</li> </ol>   |
| 1994 UN CCD            | Article 22 paragraph 7 CCD   | "Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by the Convention and which has informed the Permanent Secretariat of its wish to be represented at a session of the Conference of the Parties as an observer, may be so admitted unless at least one-third of the Parties present object."   | <ol style="list-style-type: none"> <li>National or intern. activities;</li> <li>Expertise in the area of combating desertification and mitigating the effects of drought.</li> </ol>   |

### 2.1.1.2 “Non-Governmental Organisations” in the Literature

The difficulties involved in defining NGOs, which also stem from the tremendous diversity of non-state actors, are well-documented in the literature.<sup>16</sup> As a consequence, many different definitions can be found to have been applied by researchers. These definitions have usually not been derived from general principles, but have been selected in accordance with the respective research interest. Consequently, a number of researchers have limited use of the term NGOs to environmental and social groups<sup>17</sup>, while others have employed a more encompassing definition.<sup>18</sup> In the following, some selected definitions are presented and discussed in their relevance for this study.

The *Yearbook of International Organizations*<sup>19</sup> is one of the best-known sources of empirical information on NGOs and their activities in the international sphere. It distinguishes international NGOs from “inter-governmental organisations” on the one hand and “multinational enterprises” on the other, employing seven criteria (see Box). This definition of international NGOs is widely used by scholars working on statistical data and historical developments of international NGO-activities.<sup>20</sup>

However, the definition hardly captures the reality of NGO participation in international environmental politics. First, the definition only applies to “international” NGOs. Second, the definition is based on the concept of constituency-based NGOs. Finally, it establishes various requirements on the internal governance structure of NGOs (members, structure, officers, finance). The definition thus excludes “grassroots” and other national NGOs, “expert” NGOs and many of the more loosely organised groups and activist networks, all of which play a considerable role in the current practice of international environmental governance.<sup>21</sup>

<sup>16</sup> See for instance Princen and Finger (1994: 6), Riedinger (2001: 30/31).

<sup>17</sup> See for example Walk and Brunnengräber (2000); Princen and Finger (1994).

<sup>18</sup> See for example Yamin (2001).

<sup>19</sup> See Union of International Associations (1983 ff).

<sup>20</sup> See for example Smith (1997); Boli and Thomas (1999).

<sup>21</sup> See section 2.1.3 below. On the importance of “grassroots” and national NGOs for international policy-making see Princen and Finger (1994: 221); Smith (1997: 56/57); Kriesberg (1997: 16); Keck and Sikkink (1998: 140-142).

#### Box 1: International NGOs as defined in the Yearbook of International Organizations

- (i) aims: The aims must be genuinely international in character, with the intention to cover operations in at least three countries;
- (ii) members: There must be individual or collective participation, with full voting rights from at least three countries. Membership must be open to any appropriately qualified individual or entity in the organisation’s area of operations. Voting power must be such that no one national group can control the organisation;
- (iii) structure: The NGO’s constitution must provide for a formal structure giving members the right periodically to elect a governing body and officers. There must be permanent headquarters and provision made for continuity of operations;
- (iv) officers: There should be rotation at designated intervals of headquarters and officers among various member countries;
- (v) finance: Substantial contributions to the budget must come from at least three countries and there must be no attempt to make profits for distribution to members. Effectively, this criteria excludes international business enterprises, investment houses or cartels;
- (vi) relations with other organisations: Even if connected with another organisation, there must be evidence that the international NGOs lead an independent life and elect their own officers;
- (vii) activities: There must be evidence of current activities.

Peter Willetts defines NGOs as “any non-profit-making, non-violent, organised group of people who are not seeking government office”.<sup>22</sup> He thereby excludes groups that use or advocate violence from the definition of NGOs, which appears appropriate for the purposes of this study, which investigates forms of constructive NGO participation in international environmental institutions.<sup>23</sup> The last phrase is used to distinguish NGOs from political parties and opposition groups. The definition is too narrow for the context of our study, however, as it excludes business groups/companies from its scope, despite these being part of the reality of international environmental co-operation (see below 2.1.3).

<sup>22</sup> Willetts (1996: 5).

<sup>23</sup> As a consequence, guerrilla groups or liberation movements such as the South West African Peoples Organisation (SWAPO) and the Palestine Liberation Organisation (PLO), which were given observer status in the UN General Assembly and a standing invitation to attend all UN conferences, are excluded from this definition of NGOs; see Willetts (1996: 4).

Bas Arts defines NGOs even more broadly as “a promotional pressure group which seeks to influence political decision-making on certain issues at [the] global level”,<sup>24</sup> The term “pressure group” is used as a distinction to “protest groups”.<sup>25</sup> Pressure groups carry out advocacy and lobbying inside political arenas to directly affect policy- and decision-making, whereas protest groups act outside formal arenas to change policies.<sup>26</sup> The practical value of this distinction is questionable, however, since various NGOs (e.g. Greenpeace, Friends of the Earth) carry out both types of activity concurrently. Political pressure by means of protest activities outside of conference halls and in domestic capitals may even be important to enhance the credibility and influence of NGO representatives inside the conference halls.<sup>27</sup> While raising the important distinction between NGOs contributing directly and NGOs contributing indirectly to international environmental policy-making, the definition does not appear to include expert NGOs.

Sonja Riedinger, finally, defines NGOs as follows: “A NGO is a permanent non-profit-making organisation of individuals or groups of individuals not established by inter-governmental agreement, the activities of which are determined by a common goal and the collective will of its members. Members of NGOs may be designated by governments if the free expression of opinion of individuals or groups of individuals is safeguarded within the organisation.”<sup>28</sup> This definition has been developed to include NGOs relevant for international environmental governance. In order to include “hybrid” NGOs with governmental membership, it uses wording similar to the ECOSOC definition. It does, however, exclude business groups/companies, even though these are active participants in international environmental policy-making (see section 2.1.3 and 2.2).

<sup>24</sup> Arts (1998: 50).

<sup>25</sup> Arts (1998: 51).

<sup>26</sup> A similar distinction between professional and public opinion environmental NGOs is proposed by Thomas Princen in a case-study on the influence of NGOs in the CITES-regime. Professional NGOs are described as closely working with international agencies, whereas public opinion NGOs largely rely on the mass media to sway public opinion for their political goals (Princen 1995).

<sup>27</sup> Arts (1998: 234). For further discussion of this point see section 2.1.3 below.

<sup>28</sup> Riedinger (2001: 39); own translation.

### 2.1.1.3 Defining “Non-Governmental Organisations” for the Context of this Study

No commonly applied definition of NGOs exists in international legal instruments or in the relevant literature. Rather, criteria for defining NGOs are usually introduced to suit the respective particular circumstances. The search for a working definition of NGOs for the purposes of this study may be guided by two considerations.

1. The review of international law in section 2.1.1a) above allows to identify minimum criteria that appear to be applied irrespective of the institution in question. First, NGOs can be distinguished from organisations established by inter-governmental agreement. Second, international law appears to assume that NGOs need to have some minimum qualification for the matter dealt with in an international institution. Third, NGOs have to be free to express their views independently from governments.
2. As the current study is supposed to reflect on the reality of NGO participation in international environmental co-operation, the working definition applied should aim not to artificially exclude any organisations from its scope that are considered as NGOs by significant parts of the institutions that form the field of study. In other words, the definition should be broad enough to cover all organisations that act as NGOs in relevant international fora.

On this basis, the term NGO can be defined for the purposes of this study as follows:

*“A non-governmental organisation is a permanent organisation of individuals or groups of individuals qualified in relevant fields and operating independently from government influence. 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.”*

The introduction of further criteria discussed above – such as non-profit-making status, requirements concerning the internal governance structure, explicit support for the institution in question – have not been considered, as these are not generally applied in international institutions and would thus have led to an artificial exclusion from the study of certain types of NGOs that in reality play significant roles in the policy-making process.

### 2.1.2 Classifications

NGOs differ in a number of dimensions that are highlighted in the literature and/or employed by existing international institutions. These dimensions may generally be used to classify NGOs. Such classifications can help structure our thinking about NGOs as international actors. In the context of this study, we are particularly interested in whether any such classification may be suitable to build the basis of a differentiated treatment of NGOs in relevant international institutions. To try to answer this question a number of classifications are introduced in the following section. In each case, an analysis is made as to whether the classification is already applied in some international institution and whether such application promises additional benefits and/or appears to be practicable.

#### 2.1.2.1 Primary Aims

As frequently practised in the relevant literature, NGOs can be classified according to their primary aims, interests or motivations. For example, private-interest NGOs can be contrasted with public-interest NGOs (PINGOs); business and industry NGOs (BINGOs) can be distinguished from environmental, human rights, development or expert NGOs.<sup>29</sup> A somewhat related distinction is made in some existing international institutions that require NGOs to be of a non-profit-making nature (although this excludes neither private-interest nor business NGOs).<sup>30</sup> In the framework of the UNFCCC, it has become common to distinguish between three 'constituencies'; BINGOs, environmental NGOs (ENGOs), and representatives of municipal and local authorities.<sup>31</sup> However, this has mainly served as an organisational device, i.e. the participatory rights of these constituencies have not been differentiated significantly.

If NGO participation in international environmental governance is meant to ensure that legitimate societal interests are represented and can make their voice heard, the primary aim can hardly be a reason for differentiating with respect to participators' rights. As long as the primary aim is compatible with the overall constitution of a political system, private interests appear to be as legitimate as public ones, etc. However, not all societal interests operate on the same footing and have equal chances to participate in and provide input to the political process. Business and industry usually have resources available from their usual activities to par-

<sup>29</sup> E.g. Smith et. al. (1997); Porter and Brown (1996: 50 and 59).

<sup>30</sup> See section 2.1.1 above.

<sup>31</sup> See sections 2.2.1.2. and 3.1.2.2.

ticipate, whereas 'public interests' do not generate such resources by themselves and have a different starting point. As a consequence, PINGOs may be underrepresented. Where this occurs, there may be reason for a differentiated treatment of NGOs in accordance with their primary aim with respect to, for example, the costs of accreditation or support for participation.<sup>32</sup> Further sub-distinctions (e.g. between environmental and development NGOs<sup>33</sup>) appear to be primarily of an analytic value. While severe problems in delimiting sub-groups exist, such distinctions hardly provide a reason for differentiated treatment within international institutions.

#### 2.1.2.2 Type of Activities

Some authors have distinguished NGOs according to the main type of activities they are pursuing.<sup>34</sup> For example, Arts distinguishes pressure groups that focus on advocacy and lobbying inside political arenas and institutions from protest groups which pursue their goals and strategies outside political arenas and institutions (e.g. through street protests).<sup>35</sup> Similarly, Princen distinguishes professional and public opinion NGOs.<sup>36</sup> In principle, it might also be possible to specify further the kinds of activities of certain NGOs (e.g. public-awareness campaigns).

However, existing international institutions generally do not differentiate the participatory rights of NGOs according to their preferred type of activity. Any such attempt would also meet with severe difficulties. Most NGOs (even relatively small ones) are involved in a range of activities.<sup>37</sup> These activities are also steadily being further developed and are therefore subject to constant change. And finally, it is virtually impossible to define which activities would make an NGO's participation in international envi-

<sup>32</sup> See Section 4.

<sup>33</sup> E.g. Keck and Sikkink (1998: 11); Smith (1997: 47).

<sup>34</sup> On the different functions and activities of NGOs see section 2.1.3 below; see also Keck and Sikkink (1998: 44); Smith (1997: 44, Table 3.1); Porter and Brown (1996: 54-57); Arts (1998: 52, Table 2.2).

<sup>35</sup> Arts (1998: 51).

<sup>36</sup> Princen (1995).

<sup>37</sup> Princen and Finger (1994: 7). In the context of climate change, for instance, Greenpeace staff elaborates expert policy papers for climate change mitigation strategies; it encourages its members to write letters to the US president to protest against the US' pull-out of the Kyoto Protocol, its international campaigners are part of the Climate Action Network and engage in political lobbying and advocacy at Conferences of the Parties to the UNFCCC (See the Greenpeace website, <<http://www.greenpeace.org>>).

ronmental governance more or less legitimate (except where such activities seek to undermine the constitutional basis of this co-operation). Therefore, distinguishing NGOs according to their main activities can hardly serve as a basis for a differentiated treatment in international institutions.

### 2.1.2.3 Scope of Activities

Another classification applied by some international organisations (e.g. ECOSOC, UNCTAD) is to distinguish NGOs which pursue a narrow agenda (*single-purpose*) from other NGOs with a broad political agenda (*multi-purpose*). NGOs applying for accreditation at ECOSOC, for example, are grouped into one of three categories. Organisations concerned with most of the activities of the Council receive General Consultative Status (Category I). Organisations which have a special competence in, and are concerned specifically with, only a few fields of activity covered by the Council are given Special Consultative Status (Category II). Organisations which do not have general or special consultative status but which are considered to make occasional and useful contributions to the Council's work become part of the General Roster. Each of these categories corresponds to a different set of participatory rights.<sup>38</sup>

This distinction is particularly applied by international institutions with a broad mandate such as ECOSOC, but usually not by issue-specific ones such as most MEAs. Where it is applied, it can mainly be understood as an organising device in order to avoid inefficiencies of the system, i.e. input/rights of too many actors congesting the system. There is hardly another justification for a differentiated treatment of NGOs in international environmental governance according to their scope of activity. The legitimacy of an NGO participating in international institutions does not depend on the scope of its activities but on it being qualified in matters relating to the respective issue. Reasons to differentiate between NGOs according to their scope of activities can therefore only really be found for a limited number of institutions with a particular broad mandate.

<sup>38</sup> For further details see ECOSOC Res. 1296(XLIV) of 23 May 1968.

### 2.1.2.4 Type of Membership<sup>39</sup>

As regards the type of membership, one of the most common distinctions concerns the origin of the members of an NGO from industrialised or developing countries.<sup>40</sup> It also occasionally plays a role already in the accreditation practice of existing institutions (e.g. the CSD). Sometimes a broader concept of a regional balance of NGO representation is pursued (e.g. with respect to NGOs from "countries with economies in transition").<sup>41</sup> The objective of reaching a *North-South balance of NGOs* appears to be particularly prominent, since Northern NGOs usually have a strong focus on environmental issues, while their Southern partners tend to be more concerned with linkages between environmental degradation and poverty, property rights or power over natural resources.<sup>42</sup>

As in other aforementioned cases, the origin of NGOs hardly is a cause of the legitimacy of their concerns and interests. It is therefore difficult to argue that NGOs should be granted differentiated participatory rights in international institutions based upon their origin. However, as in the case of private-interest and public-interest NGOs, there may be reason for a differentiated treatment of NGOs on this basis with respect to, for example, the costs of accreditation or support for participation so as to ensure and support a balanced representation of legitimate interests.

Another potentially applicable distinction with respect to the type of membership concerns whether a NGO has individuals as members or is itself assembling groups of individuals or associations (such as, for example, Friends of the Earth International or the International Chamber of Commerce).<sup>43</sup> While this distinction might be interesting from an academic point of view, it can hardly be the basis for a differentiated treatment of NGOs in the context of international institutions. It is therefore not pursued further here.

<sup>39</sup> Whether or not NGOs have governmental members is not pursued here as a criterion, since this has been dealt with above and is reflected in the working definition of NGOs given in section 2.1.1; see in general Willetts (1996: 8 and Table 1).

<sup>40</sup> E.g. Princen and Finger (1994: 6); Duwe (2000).

<sup>41</sup> See also Section 2.2.2 below.

<sup>42</sup> Porter and Brown (1996: 50-53).

<sup>43</sup> Smith (1997: 52-54).

### 2.1.2.5 Organisational Structure

A further common distinction concerns whether NGOs are national or international.<sup>44</sup> The distinction is also applied in selected international institutions such as the Consultative Meetings of the Parties to the Antarctic Treaty (ATCMs) and the Convention on International Trade in Endangered Species (CITES).<sup>45</sup> As discussed above, it is unclear why societal interests organised in one country should differ in their legitimacy from interests represented by organisations that have offices in several countries in the context of international environmental governance. Most issues addressed in international environmental co-operation are relevant for local and regional politics. “Grassroots”-NGOs and national NGOs participating in international negotiations therefore play an important role in bringing local knowledge and local concerns to the international level of policy-making.<sup>46</sup> Even though the distinction is already applied in some existing institutions, it would not appear to be particularly suitable for building the basis of a differentiated treatment of NGOs in international institutions relevant to environmental policy.

With respect to organisational structure, one may also distinguish centralised NGOs such as Greenpeace-International from rather decentralised NGOs such as Friends of the Earth International or the Climate Action Network<sup>47</sup>. The Climate Action Network, for instance, is organised in regional blocs (so called “networking nodes”, in Europe, Central and Eastern Europe, South Asia, Africa, Latin America, United States). The internal organisational structure of NGOs appears to be an internal matter for NGOs to decide without a major impact on the legitimacy of their interest representation. It should therefore not concern their status in international institutions.

### 2.1.2.6 Funding-Structure

NGOs also vary with respect to the sources of their funding. Generally, one can distinguish membership contributions from outside funding sources. With respect to the latter, these can be public (from governments) or private funds (e.g. donations or grants from foundations).

<sup>44</sup> E.g. Riedinger (2001: 40-46).

<sup>45</sup> See section 2.2.

<sup>46</sup> See Princen and Finger (1994: 221); Smith (1997: 56/57); Kriesberg (1997: 16); Keck and Sikkink (1998: 140-142).

<sup>47</sup> For details see <<http://www.climateactionnetwork.org/>>.

BINGOs, in general, derive their finances from member contributions. As regards PINGOs, the picture is much more diverse: some organisations such as Greenpeace derive most of their funding from membership contributions and donations; other NGOs such as WWF International rely to a significant degree on outside funding (at least for specific projects); NGOs such as the Forum Umwelt und Entwicklung even depend on public funds for a significant share of their core funding.<sup>48</sup> In this regard, it also needs to be taken into account that the ability of NGOs to generate funding is closely related to their domestic legal environment. Tax laws, rules on voluntary contributions, rules on economic activities of NGOs (e.g. sale of products), and other regulations, largely determine which sources of finance are accessible to NGOs. Second, the “donor culture” of foundations and wealthy individuals is very different between countries and regions. Whereas in the US and the UK NGOs generate a large part of their funds from independent foundations and individual donors, NGOs in continental Europe rely much more on financial support provided by governments. In poorer regions there may not be much of a “donor culture” at all and NGOs will have difficulties to generate any funding.

Although ECOSOC, for example, applies certain rules regarding funding of NGOs (see above), and the amount of resources available to NGOs is a subject of discussion in the literature<sup>49</sup>, it does not follow that the sources of funding need to be a criterion for differentiating NGOs in the context of international institutions. As long as the funding sources do not endanger the independence of an NGO, the legitimacy of their taking part in international environmental governance is not dependent on the sources of their funding.<sup>50</sup>

### 2.1.2.7 Conclusions

Many criteria exist according to which NGOs can be distinguished and classified: these are depicted in Table 2. The criteria discussed above and summarised in Table 2 cover most dimensions but are not necessarily exclusive. Of the dimensions along which NGOs vary, only a few are used in existing international institutions relevant to the environment in order to differentiate between different NGOs with respect to their rights and roles. Even where such distinctions are applied to provide for differentiation between NGOs, this may be due primarily to organisational difficulties

<sup>48</sup> See web-site of the Forum Umwelt und Entwicklung at <<http://www.forumue.de/ueberdasforum/projektstelle/index.html>>.

<sup>49</sup> E.g. Princen and Finger (1994: 2).

<sup>50</sup> See section 2.1.1 above.

that require such differentiation (scope of activities), or there may appear to be little justification for such differentiation (national/international).

Many of the distinctions that can be made may be fruitful for gathering insights about the diversity of NGOs and their functioning and effectiveness and for structuring the diversity of NGOs existing in reality (e.g. organisational structure, funding structure, type and scope of activity). However, only few of the criteria that can be applied to distinguish NGOs are also potentially relevant when it comes to thinking about a differentiated treatment of NGOs in the context of international institutions.

This appears to be primarily true for distinctions using the criteria of primary aim and membership. The distinction between private-interest and public-interest NGOs or between BINGOs and environmental/social NGOs is among the best-known. 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. Where there are options to facilitate and support access to international environmental policy-making, these criteria might be used to support the participation of PINGOs, especially from poorer regions, in order to counter the structural trend towards under-representation of such interests.<sup>51</sup>

<sup>51</sup> This issue is taken up in section 4.

**Table 2: Assessment of Potential Classifications of NGOs**

| Dimension                | Potential Categories of NGOs   | Application in Existing International Institutions   | Potential Value/Applicability  |
|--------------------------|--|--|--|
| Primary aims             | <ul style="list-style-type: none"> <li>• Business/environmental</li> <li>• private/public-interest</li> <li>• profit/non-profit making</li> <li>• expert, local authorities, etc.</li> </ul> | <ul style="list-style-type: none"> <li>• UNFCCC (constituency system)</li> <li>• ECOSOC and other institutions (non-profit making status)</li> </ul> | <ul style="list-style-type: none"> <li>• potential basis for differentiated treatment regarding resources (accreditation fees, financial support, etc.)</li> </ul>                               |
| Type of activities       | <ul style="list-style-type: none"> <li>• pressure/protest</li> <li>• professional/public opinion</li> <li>• advocacy/lobbying</li> </ul>   | –  | <ul style="list-style-type: none"> <li>• distinction hardly applicable in practice</li> <li>• no legitimate basis for differentiation</li> </ul>   |
| Scope of activities      | <ul style="list-style-type: none"> <li>• single/multi-purpose or issue</li> </ul>  | <ul style="list-style-type: none"> <li>• ECOSOC</li> </ul>   | <ul style="list-style-type: none"> <li>• hardly justifiable as basis for differentiation;</li> <li>• pot. Organising device where circumstances warrant restriction on number of NGOs</li> </ul> |
| Type of membership       | <ul style="list-style-type: none"> <li>• Northern/Southern</li> </ul>  | <ul style="list-style-type: none"> <li>• (CSD)</li> </ul>  | <ul style="list-style-type: none"> <li>• potential basis for differentiated treatment regarding resources (accreditation fees, financial support, etc.)</li> </ul>                               |
| Organisational structure | <ul style="list-style-type: none"> <li>• national/international</li> <li>• centralised/decentralised</li> </ul>  | <ul style="list-style-type: none"> <li>• some institutions distinguish national and international NGOs</li> </ul>                                    | <ul style="list-style-type: none"> <li>• legitimacy of NGOs hardly depending on organisational structure</li> </ul>  |
| Funding structure        | <ul style="list-style-type: none"> <li>• government funding: none, only for specific projects, as part of core funding</li> </ul>  | <ul style="list-style-type: none"> <li>• partially ECOSOC</li> </ul>   | <ul style="list-style-type: none"> <li>• legitimacy of NGOs hardly depending on share of government funding</li> </ul>   |

### 2.1.3 Functions, Activities and Channels of Influence

NGOs perform a variety of functions and activities in the context of international law and policy.<sup>52</sup> This section tries to give an overview over these functions, focusing – in line with the emphasis of this study – on the international policy-making process (see Table 3). In doing so, we elaborate which activities and channels of influence NGOs employ in order to fulfil these functions. In addition, we briefly indicate the relevance of NGO activities in international environmental governance more generally.

#### 2.1.3.1 Enhancing the Knowledge Base

International (environmental) policy-making is commonly characterised by uncertainties.<sup>53</sup> These may include scientific uncertainties about the causes and effects of an environmental problem and potential response strategies as well as legal and political uncertainties about the available ways and means to achieve desired policy objectives and their implications. Uncertainty also frequently exists about the behavioural effects (e.g. on sub-national actors such as industry and consumers) and the effectiveness of implementation of international rules when these have been adopted.<sup>54</sup> Although the precautionary principle may provide a sufficient basis to take measures even in the absence of full scientific certainty<sup>55</sup>, uncertainty is still in many cases a major factor hindering the adoption of effective policies and measures.

NGOs play a considerable role in addressing these uncertainties, thereby enhancing the knowledge base for international environmental governance. They gather, compile and disseminate relevant information to policy-makers and the broader public. Independent research institutes and

<sup>52</sup> For an overview see Porter and Brown (1996: 50-59).

<sup>53</sup> Accordingly, ‘decision-making under uncertainty’ has been a common theme of the literature on international environmental law and policy; see, for example, Haas (1992); Riedinger (2001: 133-143).

<sup>54</sup> International scientific assessments therefore frequently cover all these aspects. The Intergovernmental Panel on Climate Change (IPCC), for example, assesses the causes and effects of as well as the possible response strategies to climate change; see IPCC (2001); also Oberthür/Ott (1999: 3-12). Assessments of the Technology and Economic Assessment Panel under the (older and more mature) Montreal Protocol for the protection of the ozone layer now also include assessments of the progress of implementation; see TEAP (1999), (2001).

<sup>55</sup> The precautionary principle is defined in Principle 15 Rio Declaration and enshrined in many international environmental agreements (e.g. Art. 3 para. 3 UNFCCC, Art. 2 para. 2a OSPAR). It is increasingly recognised as part of customary international law. See Sands (1995: 213); O’Riordan et al. (2001).

expert NGOs such as the World Resources Institute<sup>56</sup>, the World Watch Institute<sup>57</sup>, the World Conservation Monitoring Centre<sup>58</sup>, Tata Energy Research Institute, IUCN’s Environmental Law Centre<sup>59</sup>, the International Institute for Sustainable Development (IISD)<sup>60</sup> or the Foundation for International Environmental Law and Development (FIELD)<sup>61</sup> and many others are particularly active in this respect.<sup>62</sup> A particularly well-known example in the area of implementation review is the TRAFFIC International, which has regularly provided information to Parties to CITES on illegal trade in endangered species and has been officially acknowledged as a source of relevant information within the framework of this MEA.<sup>63</sup> In the context of the 1989 Basel Convention, an international network of activists and NGOs documented the ineffectiveness of the original “prior informed consent”-procedure with respect to the transboundary movements of hazardous wastes.<sup>64</sup>

In providing relevant information and assessments, NGOs frequently play a considerable role in taking up and framing environmental problems as political issues that need to be addressed in international politics.<sup>65</sup> Such information is, however, not only provided by expert NGOs but also by private-interest BINGOs and public-interest ENGOs. For example, Greenpeace International has become one of the major sources of information on the illegal trade in hazardous wastes.<sup>66</sup> Similarly, the Environ-

<sup>56</sup> See <<http://www.wri.org/>>.

<sup>57</sup> See <<http://www.worldwatch.org/>>.

<sup>58</sup> See <<http://www.unep-wcmc.org/>>. As of 3 July 2000 The World Conservation Monitoring Centre has become an official centre of UNEP with a responsibility for assessment and information about the world’s environment.

<sup>59</sup> See <[http://www.iucn.org/themes/law/elp\\_elc.html](http://www.iucn.org/themes/law/elp_elc.html)>. The IUCN Environmental Law Centre provides legal expertise to the various IUCN programmes, regional and country offices or to international organisations and secretariats to international conventions.

<sup>60</sup> See <<http://iisd1.iisd.ca/>>.

<sup>61</sup> See <<http://www.field.org.uk/>>.

<sup>62</sup> See also Yamin (2001: 156-157).

<sup>63</sup> CITES Decisions 10.1 and 10.2, see sections 2.2.1 and 3.2.

<sup>64</sup> Based on this information the Third Conference of the Parties to the Basel Convention in 1995 formally amended the Convention by a general prohibition to ship hazardous wastes from industrialised to developing countries. See Buck and Helm (1999: 28-29).

<sup>65</sup> Keck and Sikkink (1998: 204); Riedinger (2001: 178-183).

<sup>66</sup> Clapp (1994: 36). See also section 2.2.1.2, under „NGO participation and influence“.

mental Investigation Agency, an ENGO, has provided much of the information on illegal trade in ozone-depleting substances used in the context of the Montreal Protocol.<sup>67</sup> Both Greenpeace and WWF have carried out studies on the state of the environment as well as on the potentials for greenhouse gas emissions reductions in various countries.<sup>68</sup> An industry association, the Alternative Fluorocarbon Environmental Acceptability Study, provides one of the most authoritative sources of information on the production of ozone-depleting substances used by Parties to the Montreal Protocol.<sup>69</sup>

In practice, NGOs particularly enhance the knowledge base in international policy-making by distributing information material and organising related side-events alongside inter-governmental conferences such as the Conferences of the Parties to specific MEAs. These activities and channels of influence are generally acknowledged under international law, either explicitly (e.g. in the rules of procedure of such conferences) or implicitly through established practice.<sup>70</sup> NGOs also organise workshops, seminars and conferences independently of inter-governmental meetings aimed at enhancing relevant knowledge (*inter alia*).

### 2.1.3.2 Advocacy and Lobbying

Going beyond the provision of information, NGOs also participate in and directly influence the international policy-making process through lobbying and advocacy. Advocacy in this context refers to NGOs acting publicly as advocates of their cause by making use of their formal position within an institution. Lobbying may be understood as the process of informally influencing decision-makers in the corridors of meetings.<sup>71</sup>

In so doing, they employ a number of activities and formal and informal channels of influence. Side-events or expert conferences during inter-governmental conferences, mentioned above, can provide an informal forum for discussion with relevant government delegates<sup>72</sup> and to generate

<sup>67</sup> See the section dedicated to the ozone campaign on the website of the Environmental Investigation Agency, <http://www.eia-international.org/Campaigns/Ozone/index.html>.

<sup>68</sup> See, for instance, WWF 1996, WWF 1998, and Greenpeace International and Stockholm Environmental Institute 1997.

<sup>69</sup> See <<http://afeas.org>>.

<sup>70</sup> See sections 2.2 and 3.

<sup>71</sup> On the distinction see Arts (1998: 57).

<sup>72</sup> One prominent example is the Global Biodiversity Forum held before meetings of the parties to the Biodiversity Convention.

negotiating options which may be taken up by individual delegations.<sup>73</sup> Further opportunities for informal face-to-face contacts between NGOs and government representatives exist in various settings, for example 'in the corridors' of conference buildings during and between official meetings.<sup>74</sup> Modern communication technologies such as mobile phones enable NGO representatives to stay in contact and communicate with government delegates even during closed negotiating sessions.<sup>75</sup>

More formal opportunities for lobbying are also provided for in many international institutions by granting NGOs access to the official proceedings. Such opportunities commonly include the making of statements during official meetings, the submission of written statements and position papers to delegations either inside or outside meeting rooms. They are reflected to varying degrees in the legal rules and practice of relevant international institutions.<sup>76</sup>

Analytically, two different bases for lobbying and advocacy by NGOs can be distinguished: political pressure and expertise (which, in reality, frequently occur in combination<sup>77</sup>). The political pressure PINGOs can bring to bear on decision-makers in international institutions is a function of the size of their membership and their ability to organise public support for their cause outside the official negotiations (e.g. through letter-writing campaigns, media and public information campaigns, protest activities or boycotts).<sup>78</sup> Consequently, big NGOs in particular can use political pressure as a basis for their lobbying activities. BINGOs, in contrast, can rely on their general economic weight.

<sup>73</sup> Smith et.al. (1997: 69).

<sup>74</sup> Such contacts can obviously occur on various occasions outside official meetings. For example, meetings between delegations and individual NGOs or groups of NGOs can be arranged, delegates can meet over lunch or dinner, etc. One particular focal point for contacts has developed in the context of the UN Framework Convention on Climate Change, where environmental NGOs organise a "NGO Party" at each negotiating session that is attended by many government delegates and provides ample opportunity for close contact.

<sup>75</sup> Oberthür and Ott (1999: 83); Yamin (2001: 158).

<sup>76</sup> For an overview of the current situation in this respect and the variation existing between different institutions see section 2.2.

<sup>77</sup> Available research indeed suggests that NGOs that are able to both exert pressure and assemble considerable expertise are most likely to succeed in pursuing their goals; see the case studies on climate change and biodiversity in Arts (1998).

<sup>78</sup> Porter and Brown (1996: 50-59).

Expertise as a source of influence is less dependent on the size of an NGO. It becomes relevant in particular where governments and NGOs broadly share the same objectives in the political process. The examples of the provision of advice by NGOs based on their expertise are innumerable. For instance, Greenpeace advice to African delegations during negotiations under the Basel Convention was decisive in achieving agreement on the ban of exports of hazardous wastes from OECD to developing countries.<sup>79</sup> As regards BINGOs, representatives of the Global Climate Coalition and of The Climate Council have constantly provided effective advice to OPEC countries during the climate change negotiations.<sup>80</sup> The role of NGOs as advisers who help governments to understand and order the issues at hand appears to increase with the number and complexity of problems addressed at the international level.<sup>81</sup>

### 2.1.3.3 Membership in National Delegations

Increasingly, NGO representatives have also become members of national delegations in two different functions. First, some governments have included NGO representatives on their delegations without any specific task. In this case, NGO representatives have primarily benefited from more extensive opportunities to participate in the proceedings of meetings (including, for example, access to closed meetings), which provided them broader access to information. The price of such enhanced access to information usually is a restraint on the ability to lobby and influence delegates, since all members of national delegations will be associated with the country they are representing and are therefore subject to certain guidelines of behaviour.<sup>82</sup>

Second, NGO representatives are also increasingly recruited by governments as direct advisers, even sometimes acting as negotiators. Expert NGOs in particular qualify as fulfilling such a function. The best-known example in international environmental policy is the assistance provided by lawyers from FIELD to the Alliance of Small Island States (AOSIS) in the international climate negotiations. FIELD staff not only provides advice to government representatives from AOSIS countries but frequently negotiates on their behalf. Concrete negotiating text has been drafted by

<sup>79</sup> See Clapp (1994).

<sup>80</sup> Oberthür and Ott (1999: 31).

<sup>81</sup> See also Yamin (2001: 158-159).

<sup>82</sup> For reasons of increased transparency, it has been proposed to institutionalise and increase such participation of NGOs in national delegations; see Zürn (1998: 352.).

FIELD lawyers and has at times found its way into official agreements.<sup>83</sup> Even though the eventual political decision rests with government representatives, such arrangements provide considerable influence to expert NGOs, since the mandate for their negotiating role usually leaves significant room for designing substantive positions. Similar arrangements can increasingly be found in other countries and other issue areas.<sup>84</sup>

Again, this close co-operation between governments and NGOs comes at a price. Not only are NGO representatives acting as negotiators on national delegations unable to pursue their usual NGO activities, they may even have to act under government instructions that do not necessarily conform to the positions otherwise taken by them. Acting as direct advisers and governmental negotiators may thus be limited to those circumstances where there is large overlap of the positions taken by the respective government and the NGO in question.

### 2.1.3.4 Participation in Review and Enforcement Procedures

Increasingly, NGOs also play an active role in review and enforcement procedures relating to environmental policy, although options for direct participation have remained very limited. Most international dispute-settlement mechanisms are of an inter-governmental character and therefore do not allow for participation of non-state actors. Exceptions include the World Bank Inspection Panel<sup>85</sup>, the International Tribunal on the Law of the Sea (ITLOS)<sup>86</sup> or the Permanent Court of Arbitration.<sup>87</sup>

Even where they cannot participate directly, NGOs frequently fulfil an important function in review and enforcement procedures by commenting on the legal substance of cases in the form of so called *amicus curiae* briefs and by providing additional information. *Amicus curiae* briefs can

<sup>83</sup> The most prominent example of such draft text prepared by FIELD was the proposal for a protocol to the UNFCCC submitted in 1994 asking for a 20% reduction of CO<sub>2</sub> emissions of industrialised countries by 2005; see Oberthür/Ott (1999: 44-45).

<sup>84</sup> See Riedinger (2001: 195-196); on the relationship between AOSIS and FIELD so also Arts (1998); Chayes and Chayes (1995); see also section 3.1 below.

<sup>85</sup> Riedinger (2001: 229-231) and <<http://wbln0018.worldbank.org/ipn/ipnweb.nsf>>; see also section 3.4.

<sup>86</sup> Riedinger (2001: 223-225) and <<http://www.un.org/Depts/los/itlosnew/itlosindex.htm>>.

<sup>87</sup> On 19 June 2001, the PCA Administrative Council has adopted optional arbitration rules for disputes relating to the environment or natural resources. See <<http://www.pca-cpa.org/EDR/>>.

only become relevant in international disputes, however, if the relevant rules of procedure are interpreted to allow the competent bodies to consider such briefs, as is the case for the WTO Dispute Settlement Mechanism.<sup>88</sup> In various compliance mechanisms of MEAs, NGOs may supply information on a case before the respective body or may even indirectly trigger such cases by submitting relevant information to actors that are empowered to trigger the procedure.<sup>89</sup>

The possibility to feed information about the implementation of international commitments into the political process is of particular importance given that most international environmental agreements rely on parties to self-report on their implementation efforts and governments are generally reluctant to report own non-compliance. Data compiled by NGOs therefore provide an important alternative independent source of information against which the accuracy of national reports can be assessed.<sup>90</sup>

### 2.1.3.5 Ensuring Transparency

Transparency of political processes is one of the fundamental principles of democratic and good governance. It is one of the pre-requisites to ensure that political decision-makers can be held accountable by the public. Ensuring transparency in international policy-making poses a special challenge, since inter-governmental negotiations frequently take place behind closed doors. International policy-making also appears to be remote from public policy discourses that are organised nationally, while a “global public” hardly exists.

Under these circumstances, NGOs play a crucial role in increasing the transparency of international political processes and ensuring that international policy-makers can be held accountable for their decisions. Reports of NGO representatives from inside international negotiations help disclose “laggard” behaviour by governments. To this end, NGOs employ various activities and channels of influence. First of all, they operate special reporting services (e.g. Earth Negotiations Bulletin<sup>91</sup>, ECO<sup>92</sup>,

<sup>88</sup> On public participation in the WTO Dispute Settlement Mechanism see ICTSD (1999) and section 2.2.2.

<sup>89</sup> See Bombay (2001: 229-230); see also the non-compliance procedure under the Montreal Protocol in UNEP (2000) and the recently finalised compliance procedure under the Kyoto Protocol, see UNFCCC Decision 24/CP.7.

<sup>90</sup> Porter and Brown (1995: 56); Smith et. al. (1997: 69).

<sup>91</sup> See <<http://www.iisd.ca/>>.

<sup>92</sup> See <<http://www.climate-network.org/eco/>>.

Bridges<sup>93</sup>). NGOs reporting on the details of international environmental policy-making not only help to inform a broader public but often also provide individual delegates, who are caught up in detailed negotiations on a specific issue, with a comprehensive picture about ongoing negotiations.

The conference newsletter ECO has been published by ENGOs at major international environmental conferences since 1972. It not only contains reports on the state of negotiations but has proven as an effective tool for “naming and shaming” laggard governments. Such naming and shaming is further pursued by targeted activities in order to point out ‘cheating’ by countries at relevant international conferences. For example, the Climate Action Network awards the so-called “Fossil of the Day” daily to expose those countries with the worst behaviour in the international climate negotiations at meetings of the UNFCCC bodies.<sup>94</sup>

NGOs also provide an important link connecting the diplomatic activities within international institutions and journalists and the media in general. ENGOs at international conferences in particular work intensively with the media to increase public awareness and pressure at home. They are in high demand as sources of information by journalists because NGOs possess insider knowledge not otherwise available to the media, they are frequently able to condense complex negotiations into simple messages, and they provide quasi-independent third-party analyses of the state of negotiations (since they do not sit at the negotiating table themselves). Overall, NGOs thus help transmit knowledge about the political processes within international institutions to national publics, thereby raising awareness and supporting public interest and pressure.<sup>95</sup>

NGOs also increase transparency beyond international conferences. Once international commitments or specific time-tables for further international co-operation have been adopted they serve as benchmarks which NGOs use to hold governments and international organisations accountable in national and international discussions.<sup>96</sup> NGOs lobby on the international and national levels for the ratification and implementation of international agreements. And they act as “whistle-blowers” where countries fail to meet their international commitments, ensuring that any cheating does not go unnoticed. Research has identified this “benchmark” function

<sup>93</sup> See <<http://www.ictsd.org/>>.

<sup>94</sup> See <<http://www.fossil-of-the-day.org/>>.

<sup>95</sup> On the public relations work of NGOs in the climate change context, for example, see Walk and Brunnengräber (2000: 158-161).

<sup>96</sup> Risse-Kappen (1995: 299).

as a key factor contributing to the effectiveness of international environmental institutions.<sup>97</sup>

### 2.1.3.6 Supporting International Secretariats

NGOs also support the work of secretariats of international institutions relevant to the environment, in particular by offering and providing their expertise. This support can occur in various forms and at various levels of intensity. In the most advanced stages, NGOs provide secretariat functions themselves. This, for instance, has been the case for the Ramsar Convention, which commissioned IUCN to perform secretariat duties to the convention during its early days<sup>98</sup> and which today is jointly managed by IUCN and the International Waterfowl Research Bureau under the auspices of a Standing Committee. Similarly, until 1984 IUCN provided secretariat functions for CITES.<sup>99</sup> As mentioned above, parties to CITES have also conferred control functions over the international trade in endangered species to an international network of NGOs (TRAFFIC), and the non-governmental World Conservation Monitoring Centre manages the secretariat's database of international trade transactions in endangered species regulated by CITES.<sup>100</sup>

More commonly, NGOs (in particular, expert NGOs) provide input to international secretariats by providing advice, preparing background papers and the like. NGOs thereby get the opportunity to influence the framing of issues on the agenda and establish close contacts with secretariats, which play an important role in organising and structuring the political processes within international institutions.<sup>101</sup>

### 2.1.3.7 Further Functions of NGOs in International Environmental Governance

While this study focuses on the role of NGOs in concrete international political processes, the functions of NGOs transcend this field of international environmental governance. Thus, the resources (time, staff, budget)

<sup>97</sup> Haas et al. (1993); see also Chayes and Chayes (1995); Yamin (2001: 159-161).

<sup>98</sup> Art. 8 para.1 Ramsar Convention.

<sup>99</sup> For further details see section 2.2.1.

<sup>100</sup> See <<http://www.unep-wcmc.org/>>.

<sup>101</sup> Contracting of experts is regularly done, for example, by the OECD Secretariat, which subsequently generally publishes the resulting analyses, for example as OECD Information Papers; see <http://www.oecd.org>. Although frequently less publicised, such contracting is standard practice of international secretariats, which seek to enhance their limited capacities.

employed by ENGOs for a direct participation in inter-governmental co-operation have traditionally been outweighed by those devoted to other NGO activities.<sup>102</sup> Many activities of PINGOs are aimed at educating and shaping the opinions of individuals and groups (e.g. by conducting media campaigns or training workshops for journalists or teachers), or at working with business and industry to change their practices. In so doing, NGOs not only build a broader constituency for their political goals but also directly influence behaviour.<sup>103</sup> Such behavioural changes are also the objective of efforts to establish international governance structures independent of governments. The standards for sustainable forest management established by the non-governmental Forest Stewardship Council provides a prominent case in point.<sup>104</sup>

One important contribution of NGOs to environmental governance stems from their ability to simultaneously act on different levels of environmental governance (local, regional, national, transnational, global). Frequently, states – struggling with conflicts of competencies across levels of government (particularly in federal systems) or with a lack of policy-integration between different departments – have difficulties in integrating environmental concerns into all areas of policy-making. NGOs, in contrast, establish ties with individuals and groups engaged in conservation projects “on the ground”, thereby linking local knowledge and local concerns to the national and international levels of policy-making.<sup>105</sup>

In doing so, NGOs have established large networks of individuals and NGOs engaged in a specific policy area on all levels of governance (e.g. Climate Action Network, Pesticide Action Network, Basel Action Network). This networking has been facilitated by the intense use of modern communication technologies (Internet, email, fax).<sup>106</sup> In addition, expert seminars or international conferences organised by NGOs provide opportunities for establishing new networking links. These networks also enable

<sup>102</sup> Smith (1997).

<sup>103</sup> Smith et al. (1997: 70).

<sup>104</sup> On the forest management standards established by the Forest Stewardship Council, see “FSC Principles and Criteria” (Revised February 2000) available under <<http://www.fsc.org/>>.

<sup>105</sup> Princen and Finger (1994: 221); Smith (1997: 56-57); Kriesberg (1997: 16); Keck and Sikkink (1998: 140-142).

<sup>106</sup> Some scholars regard this aspect as the most important contribution of NGOs to international environmental governance and as central to their identity; see Keck and Sikkink (1998: 10).

NGOs to share their work, which they urgently need to do given the range of functions they fulfil and the limited available resources.<sup>107</sup>

An important by-product of such information exchange and networking is that it challenges ethno-centric interpretations of events and thereby cultivates a sensitivity to the needs and experiences of individuals and groups in different regions of the world. In effect, NGOs “serve as vehicles for the diffusion of values, frames, tactics, and practices on environmental protection among different national populations”.<sup>108</sup>

### 2.1.3.8 Conclusions

NGOs fulfil a diversity of functions by employing a range of activities and channels of influence in international environmental governance. Table 3 provides an overview by summarising the functions spelled out in this section. However, the distinctions made should not obscure the fact that the distinguished functions are frequently closely related. For example, there is a close connection between the provision of information and the pursuance of policy objectives by advocacy and lobbying.

These specified 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 (agenda setting, definition and selection of policy options, implementation). 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 (agenda-setting and the definition and selection of policy options), whereas support for international secretariats is not exclusively limited to any policy phase.

NGOs vary with respect to the focal points in their activities within as well as between constituencies. For example, as a result of an implicit or explicit division of work, some NGOs may 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).<sup>109</sup> At the same time, BINGOs are fre-

<sup>107</sup> Princen and Finger (1994: 221).

<sup>108</sup> Smith (1997: 72). Potentially also resulting from therefrom, empirical studies have found a trend towards greater coherence in environmental values and preferences held by individuals around the globe; see Dunlap et.al. (1993).

<sup>109</sup> Foci of NGOs may vary in this respect between different international processes.

quently less engaged in ensuring transparency of international processes (as public pressure is usually not their major basis of influence). As mentioned previously, active membership in national delegations as well as 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.

The functions performed by NGOs in international environmental governance as summarised in Table 3 are only partially reflected in international law. The relevant rules and the practice of international institutions, while by no means uniform, generally allow/provide for the distribution of information material, organisation of side-events, some kind of formal participation in inter-governmental meetings, and, more rarely, some role in review and enforcement procedures by NGOs. While this section has shown that the activities and influence of NGOs go far beyond this list, the next section analyses in more detail the legal basis and practice concerning NGO participation in MEAs, international economic institutions, and other international institutions.

**Table 3: Functions, Activities and Channels of Influence of NGOs in International Environmental Co-operation**

| Functions  | Illustrative List of Activities and Channels of Influence   |
|--|---|
| Enhancing the knowledge base (science, policy and law)                                     | <ul style="list-style-type: none"> <li>gather, compile and disseminate information</li> <li>conduct and publish studies and reports</li> <li>distribute information and organise side-events at major conferences</li> </ul>  |
| Advocacy and lobbying  | <ul style="list-style-type: none"> <li>informal contacts with government delegates (side-events, workshops, conferences, in the corridors, modern telecommunication technology)</li> <li>formal participation in inter-governmental negotiations (official written submissions, unofficial written position papers, statements in meetings)</li> <li>provision of advice to “friendly” delegations</li> <li>campaigns outside the negotiating arena (e.g. media and public information, protests) to enhance influence</li> </ul> |
| Membership in national delegations   | <ul style="list-style-type: none"> <li>receipt of inside information about governmental negotiations</li> <li>provision of advice to governments</li> <li>negotiate on behalf of governments</li> </ul>   |
| Contribution to compliance review and enforcement as well as dispute settlement procedures | <ul style="list-style-type: none"> <li>submission of <i>amicus curiae</i> briefs</li> <li>provision of information on implementation/alerting delegations and institutions of non-compliance</li> </ul>   |
| Ensuring transparency  | <ul style="list-style-type: none"> <li>reports from negotiations</li> <li>‘naming and shaming’ of laggard countries</li> <li>public relations work (media)</li> <li>reports on effectiveness of implementation</li> </ul>   |
| Supporting international secretariats  | <ul style="list-style-type: none"> <li>provide Secretariat functions</li> <li>provide advice and expertise to Secretariats</li> </ul>   |
| Broader functions of NGOs in international environmental governance                        | <ul style="list-style-type: none"> <li>shaping the opinions of individuals and groups (campaigns and training)</li> <li>co-operation between environmental groups and business and industry</li> <li>networking, including integrating levels of governance</li> <li>‘globalisation’ of values and preferences</li> </ul>   |

## 2.2 Participation of NGOs in Relevant International Institutions

This section reviews and assesses the status and the trends regarding the participation of NGOs in three sets of international institutions related to the environment, namely multilateral environmental agreements (MEAs; see sub-section 2.2.1), relevant international economic institutions (2.2.2), and other relevant international institutions (2.2.3). The structure of each of these institutions is typically divided into governing bodies (meeting in plenary or in subsidiary committees or working groups) and administrative bodies headed by a secretariat. The main functions of the institutions include policy development, negotiation and decision-making, together with relevant research and analysis. Economic institutions in particular are also involved in the design, funding and implementation of projects.

In line with the general focus of this study, the following analysis focuses on the role of NGOs in policy-making. In each of the three areas of international environmental governance distinguished, the legal provisions governing the involvement of NGOs are investigated first. Subsequently, this legal basis is contrasted with the praxis that has developed and with the more general functions performed and channels of influence used by NGOs in the framework of these institutions. As part of that analysis of the practical experience, the available knowledge about the degree of success of NGOs, the main factors influencing that success, remaining deficits and existing proposals to further improve the situation are reviewed.

### 2.2.1 Multilateral Environmental Agreements

This sub-section analyses the participation of NGOs in multilateral environmental agreements (MEAs).<sup>1</sup> After reviewing the relevant legal provi-

<sup>1</sup> The analysis includes in particular: the 1992 UN Framework Convention on Climate Change (UNFCCC), the 1992 Convention on Biological Diversity (CBD), the 1994 Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa (UNCCD), the 1985 Vienna Convention for the Protection of the Ozone Layer and the 1987 Montreal Protocol on Substances that Deplete the Ozone Layer, the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, the 1973 Washington Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES), the 1971 Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat, the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, and the Antarctic Treaty System (ATS), comprising four legal instruments (the 1959 Antarctic Treaty, the 1972 Convention for the Conservation of

sions, the practical experience with NGO involvement in policy-making in the framework of MEAs is examined. While focusing on the policy making within MEAs (i.e. after their becoming operational), occasional reference is also made to the treaty formation stage.

### 2.2.1.1 Legal Provisions

Apart from the more specific provisions dealt with below, regarding NGO accreditation and access to meetings etc., the general references to NGOs in the treaty texts of MEAs reflect the increasing acknowledgement of the role of NGOs in international environmental governance. Thus, in contrast to early MEAs such as the 1959 Antarctic Treaty and the 1946 International Whaling Convention, MEAs adopted in the context of the United Nations Conference on Environment and Development (UNCED) of 1992 and thereafter contain specific references to NGOs.<sup>2</sup> In particular, most post-Rio agreements explicitly require, in standardised language, the Conference of the Parties (COP) to “[s]eek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies”<sup>3</sup> for the implementation of the relevant agreement. This trend towards increasing acknowledgement of NGOs in international environ-

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Antarctic Seals, the 1980 Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR), and the 1991 Protocol on Environmental Protection to the Antarctic Treaty). The Aarhus Convention is particularly devoted to public participation in environmental decision-making. However, this section does not evaluate the contents of the Convention, but focuses on the participation of NGOs in its formation and operation. For references to the mentioned MEAs and the relevant secondary rules (Rules of Procedure, decisions of governing bodies, etc.) referred to in the following, please see the references section.

<sup>2</sup> Cf. the preambles of the CBD and the UNCCD, Art. 4, para. 1 (i) of the UNFCCC and Art. 3, para. 7 of the Aarhus Convention.

<sup>3</sup> See Art. 7, para. 2 (l) of the UNFCCC; Art. 13, para. 4 (i) of the Kyoto Protocol; Art. 29, para. 4 (c) of the Biosafety Protocol; Art. 22, para. 2 (h) of the UNCCD (note that this provision is missing from the CBD). Similarly, the 1991 Protocol to the Antarctic Treaty provides that the Committee for Environmental Protection shall, as appropriate, consult with relevant scientific, environmental and technical organisations (Art. 12, para. 2). Note that some earlier MEAs such as the Vienna Convention (Art. 6, para. 4 (j)) and the Ramsar Convention (Art. 6, para. 2) in a similar way refer to competent or relevant “international bodies” which includes (international) NGOs implicitly.

mental governance is also apparent from the decision-making within the framework of earlier MEAs.<sup>4</sup>

### Accreditation and access to meetings

Irrespective of the differences between the general referencing of MEAs to NGOs, *all* reviewed legal regimes today provide NGOs with the opportunity to gain general observer status at meetings of their governing bodies. While the large majority of the treaties employ similar language, there are also examples of both more restrictive and more far-reaching rules.

Since the 1985 Vienna Convention, most MEAs provide that “any body or agency whether national or international, governmental or non-governmental” that is “qualified” in relevant fields and has informed the secretariat of its wish to be represented at a meeting of the Conference of the Parties as an observer “may be admitted unless at least one-third of the parties present object”. This has become the relevant standard formula.<sup>5</sup>

The standard formula establishes a twofold condition for the accreditation of NGOs<sup>6</sup>. First, an NGO must be “qualified” in the subject-matter regulated by the Convention. As noted in section 2.1.1, this may be a requirement for the NGO to either be competent or represent a broad constituency interested in the matter relating to the agreement. Two different formulations can be found, with most agreements referring to matters relating to environmental issue at hand (e.g. the protection of the ozone layer) and some employing the phrase “qualified in matters covered by the

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<sup>4</sup> See, for example, Recommendation 5.6 adopted at COP-5 of the Ramsar Convention in 1993 which, inter alia, asks Parties to strongly support and give particular attention to the development and functioning of relevant national and international NGOs.

<sup>5</sup> See Art. 6, para. 5 of the 1985 Vienna Convention and Art. 11, para. 5 of its Montreal Protocol; Article 15, para. 6 of the Basel Convention; Art. 22, para. 7 of the UNCCD; Article 23, para. 5 of the CBD and Art. 29, para. 8 of its Biosafety Protocol; Article 7, para. 6 of the UNFCCC and Art. 13, para. 8 of its Kyoto Protocol; and rule 7, para. 1 of the 1999 Rules of Procedure for the 1971 Ramsar Convention; see also Riedinger (2001: 122); Raustiala (1997a: 543).

The standard formula distinguishes between NGOs and other international (governmental or non-governmental) bodies, on the one hand, and United Nations, its specialised agencies and observer states, on the other hand, the latter category not being subject to the twofold condition for accreditation as observers. The 1994 International Timber Agreement, however, treats NGOs and United Nations organisations on an equal basis, and the admission procedure of the 1992 Convention for the Protection of the Marine Environment of the North-East Atlantic places NGOs on a level with observer states (Riedinger 2001: 123f.).

<sup>6</sup> Cf. Raustiala (1997a: 543).

Convention” or a similar wording (UNFCCC, UNCCD, Aarhus Convention). The latter phrase can be interpreted as a softening of the requirement, since the treaties often also cover such matters as financial arrangement, monitoring and reporting<sup>7</sup>. However, both formulations leave substantial room for interpretation.

Second, the accreditation must not receive an objection from one-third or more of the member states. It would seem this provision allows the exclusion of either all NGOs or individual ones. In addition, NGOs are required to apply for observer status with the respective secretariat. The use of the word “may” furthermore indicates that there is no recognised right for NGOs to participate, but that the ultimate decision remains in the discretion of the states. Finally, it is noteworthy that the standard formula does not limit its application to any specific set of NGOs but relates to both environmental organisations and business organisations as well as hybrid bodies that include some degree of governmental representation (see section 2.1.1 above).

The 1973 Washington Convention, a fairly early treaty, and the Aarhus Convention provide for an even more liberal accreditation scheme. In contrast to the standard formula, Article XI, paragraph 7 of CITES determines that “technically qualified” bodies or agencies “shall” be admitted. This applies to international organisations and to national NGOs “that have been approved for this purpose by the state in which they are located”. NGOs that have been admitted “shall have the right to participate but not to vote”. A quarter of a century later, the Aarhus Convention also recognises a right for NGOs to participate.<sup>8</sup> Otherwise, the other elements of the standard formula are used<sup>9</sup> - except that CITES requires national NGOs, in the 1970s regarded with suspicion by many states,<sup>10</sup> to receive approval by their home governments, which may thus filter out NGOs at their own discretion.<sup>11</sup> Furthermore, CITES parties recently specified that an international NGO is registered only if it demonstrates that it is “an or-

<sup>7</sup> Raustiala (1997a: 544).

<sup>8</sup> According to Art. 10, para. 5 qualified NGO “shall be entitled to participate unless at least one third of the Parties present in the meeting raise objections”.

<sup>9</sup> The term “technically qualified” used by CITES is potentially more restrictive than the term “qualified” used in the standard formula but has never been defined (Wijnstekers 2000: 472).

<sup>10</sup> Riedinger (2001: 119).

<sup>11</sup> Favre (1989: 273).

ganization in its own right, with a legal persona and an international character, remit and programme of activities”.<sup>12</sup>

In contrast, the 1959 Antarctic Treaty, originally not focusing on environmental protection, has remained more restrictive with respect to NGO participation. NGOs were originally not allowed to attend any ATS meeting, although Article III of the Antarctic Treaty appears to provide a sufficient legal basis.<sup>13</sup> Through changes of the rules of procedure in 1987 it became possible for “experts from international organisations”<sup>14</sup> to get access to the deliberations on particular agenda items of Consultative Meetings of the Parties to the Antarctic Treaty (ATCMs). Another revision of the rules of procedure adopted in 1992 gave NGOs more liberal access to the ATCMs’ agenda items.<sup>15</sup> However, only international NGOs that have a “scientific or technical interest”<sup>16</sup> may be admitted. The invitation procedure is *ad-hoc*, based on tacit consensus, and an invitation requires a corresponding initiative by a party. NGOs thus must complete a burdensome invitation procedure for each ATCM they wish to attend.<sup>17</sup> Similarly restrictive accreditation rules apply with respect to most other legal instruments within the ATS.<sup>18</sup>

Space requirements and costs resulting from increasing NGO participation (e.g. for documentation) have posed practical problems, in particu-

<sup>12</sup> CITES Decision 11.125. In contrast to the standard formula, the Dolphin Conservation Agreement also contains a more liberal provision with respect to the option to refuse accreditation of NGOs. It gives NGOs automatic observer status “unless a majority of the Parties formally objects for cause in writing at least 30 days prior to the beginning of the meeting.” (Annex X, paras. 2-5, cited in Wiser 2000: 16).

<sup>13</sup> Article III provides that “every encouragement shall be given to the establishment of cooperative working relations with those Specialized Agencies of the United Nations and other international organizations having a scientific or technical interest in Antarctica”.

<sup>14</sup> This term covers both intergovernmental and international NGOs but not national NGOs.

<sup>15</sup> Herr (1996: 108).

<sup>16</sup> Rules 38 and 39 ROP for ATCMs.

<sup>17</sup> All parties must propose those NGOs they want to attend at the latest six months before a meeting (rule 39 of ROP for ATCM). Subsequently, each Party enjoying the right to vote has the power to veto the participation of any NGO up to three months prior to the meeting (rule 40).

<sup>18</sup> Generally, NGOs may participate if invited; see Art. 11, para. 4 of the Protocol on Environmental Protection; Art. XXIII, para.4 of CCALMR and rule 30 of the Commission’s ROP; ROP for the Scientific Committee of the CCAMLR Commission; Kimball (1988: 44).

lar for MEAs with more liberal accreditation rules. This has led to the introduction of special requirements, in particular by CITES. Observers to CITES meetings have to pay a registration fee. In response to some parties' concerns that this requirement could discourage groups from less developed regions such as Africa from attending meetings, the relevant Resolution adopted at COP-5 leaves it at the discretion of the Secretariat to waive the fee for certain observers.<sup>19</sup> The IWC also requires observer organisations to pay a special registration fee.<sup>20</sup>

Regarding the access to actual meetings of the governing bodies, the large majority of MEAs determine, through their rules of procedure, that the secretariat shall notify the relevant bodies and agencies of upcoming COP meetings.<sup>21</sup> As a precondition for registration for a specific meeting, NGOs wishing to attend frequently have to register with the Secretariat a certain time in advance.<sup>22</sup> Registration confers the legitimate expectation (but not the right) to be present and observe at the meeting. Whereas only COP meetings are mentioned explicitly, the rules of procedures are usually applied *mutatis mutandis* to all subsidiary bodies unless decided otherwise by the COP.<sup>23</sup>

<sup>19</sup> Cf. CITES Resolution Conf. 10.1, (Wiser 2000: 26, n.159). Accordingly, a NGO has to pay CHF 600 for its first representative, which includes a set of documents. There was a fee of CHF 300 for each additional participant without documents (CITES Notification No. 1999/90). Similarly, NGOs must pay a USD 100 registration fee to attend meetings of the CITES Committee of Plants and Animals.

<sup>20</sup> Oberthür (1997: 249). Some other agreements, such as the International Dolphin Conservation Program and the Northwest Atlantic Fisheries Organization also provide for the possibility to charge NGO observers fees (Wiser 2000: 26).

<sup>21</sup> See rule 7, para. 1 of the CBD ROP: "The Secretariat shall notify any body or agency, whether governmental or non-governmental, qualified in fields relating to the conservation and sustainable use of biological diversity, which has informed the Secretariat of its wish to be represented, of meetings of the Conference of the Parties so that they may be represented as observers unless at least one third of the Parties present at the meeting object." See also the similar wording of rule 7, para. 1 in the ROP for the UNCCD, the UNFCCC, the Basel Convention, the Vienna Convention and its Montreal Protocol, and the Ramsar Convention. In the last case, access is subject to seating limitations (rule 7, para. 5).

<sup>22</sup> Applications are usually to be submitted one month (e.g. rule 7, para. 2 of ROP for Ramsar Convention; rule 3.4 of the CITES ROP) or three months (e.g. UNFCCC) in advance of a meeting; according to CITES Decision 11.126 of COP-11, the Secretariat is advised to handle this deadline in a strict fashion.

<sup>23</sup> See e.g. rule 26, para.5 of CBD ROP. "Subsidiary body" is defined as including committees and working groups (rule 2 (h)).

The CITES rules of procedure adopted in 2000 differ from most other MEAs in that they regulate in more detail access to meetings of subsidiary committees. They grant a clear right to non-state observers to be represented in the plenary sessions and sessions of Committees I and II and the Budget Committee, unless one-third of the representatives present and voting object.<sup>24</sup> However, sessions of other committees (including the Animals and Plants Committees which review the biological and trade status of species and may propose amendments to the Appendices) as well as working groups are, "as a general rule", only open to those observers invited by the competent Chairperson.<sup>25</sup> The same applies to meetings of a representative body, the Standing Committee.<sup>26</sup>

The Antarctic Treaty System is special in that all invited experts "may attend the Meeting during consideration of all items, except for those items relating to the operation of the Antarctic Treaty System which are identified by the previous Meeting or upon adoption of the Agenda".<sup>27</sup> In the case of the CCAMLR, any Member of the Commission has the right to ask for the exclusion of NGO observers for the debate of a particular agenda item.<sup>28</sup>

MEAs usually do not regulate access by NGOs to informal meetings (which are generally closed to observers and where political deals are frequently made and final decisions taken). The exception to this rule is the UNFCCC, where COP-4 in Buenos Aires in 1998 decided to allow observers to attend open-ended contact group meetings, unless one third of the parties present at the session of the Convention body setting up that contact group object.<sup>29</sup> However, the contact group Chairperson may close the meeting to observers at any time. The decision was furthermore taken in the understanding that the observers' participation would be limited to

<sup>24</sup> See rule 2, para. 2 of ROP for CITES COP. Committee I negotiates any amendment of the Convention's appendices and recommends them to the COP, whereas Committee II makes proposals on any other matters (except financial matters) (rule 5, para. 2 CITES ROP).

<sup>25</sup> Rule 12, para.2 of CITES ROP; see also rule 5 of ROP for CITES Animals and Plants Committees.

<sup>26</sup> Cf. rule 5 of ROP for Standing Committee. Similarly, the ROP for the Ramsar Convention allow the invitation of observers to attend meetings of the Conference Committee, which reviews the progress of meetings (rule 26).

<sup>27</sup> Rule 41 of ROP for ATCMs which also applies to the committees established under the Antarctic Treaty, since they operate under the same rules of procedure (rule 10 of ROP for ATCM).

<sup>28</sup> Rule 32 of ROP for CCAMLR.

<sup>29</sup> see UNFCCC Decision 18/CP.4; Wiser (2000: 20).

attendance without the right to make interventions. Moreover, the Chairs of contact groups could request IGOs and NGOs to “limit their participation” due to space limitations in meeting rooms.<sup>30</sup> This decision has, however, not opened (unregulated) informal closed meetings to observers.

### Special Functions of Specific NGOs in Individual MEAs

Some MEAs provide for a special status of specific NGOs. Hence, the Scientific Committee on Antarctic Research (SCAR) – a government-supported scientific NGO that was established by the International Council of Scientific Unions (ICSU) to assist in co-ordinating Antarctic research in the years after the 1957-8 International Geophysical Year – has been entrusted with significant responsibilities within the ATS from the very beginning and now enjoys permanent observer status.<sup>31</sup> The parties to the Ramsar Convention have recently established the special category of “International Partner Organisation”. This status is presently accorded to four NGOs. In contrast to the standard treatment of NGOs, it yields additional benefits such as permanent observer and adviser status and unconditional and unlimited access to meetings. However, it results in duties as well (see below) and requires NGOs to meet a range of additional criteria.<sup>32</sup> Furthermore, the secretariat of the Ramsar Convention has concluded memoranda of cooperation with a limited number of NGOs.<sup>33</sup> Parties to CITES conferred control functions to, *inter alia*, Traffic International in 1997. This NGO shall participate in the setting up and maintenance of an

<sup>30</sup> Yamin and Wasserstein (1999: 11). The Executive Secretary said that the decision was relevant to the draft rules of procedure, as applied, and suggested to amend them at the appropriate moment so as to reflect the substance of the proposed decision (*Ibid.*).

<sup>31</sup> Rule 2 of ROP for ATCMs; before this change in the ROP in 1987, Recommendation XIII-2 of the 1985 meeting invited observers from SCAR and the (inter-governmental) Commission of the CCAMLR (Kimball 1988: 45). The membership of SCAR is quasi-governmental and it has decided to refrain from political advocacy (Herr 1996: 97-98; Kimball 1988: 40).

<sup>32</sup> International partners must have, *inter alia*, a programme of activities that is global or at least covers several regions of the world, a track of project experience, a positive reputation for being willing and able to co-operate with national and international bodies; and they must be ready to actively contribute on a regular basis to the further development of the policies and tools of the Ramsar Convention and their application on the ground; see Resolution VII.3, 1999; the benefits, criteria and duties are contained in the Annex.

<sup>33</sup> See UNEP (2001: 97).

international system for reporting and monitoring legal and illegal international trade in ivory and illegal hunting of elephants.<sup>34</sup>

The Ramsar Convention also commissioned the International Union for the Conservation of Nature (IUCN), a hybrid NGO, to perform, at least on a temporary basis, certain secretariat duties.<sup>35</sup> Nevertheless, until the early 1990s the Convention used to contain no mechanism for substantive financial support and the skeletal institutional arrangements were sustained by voluntary contributions from NGOs and governments. Today, the convention is jointly managed by IUCN and another scientific NGO, the International Waterfowl Research Bureau (providing scientific and technical services). However, the activities of the secretariat are now the subject of quite detailed regulation by a Standing Committee that was established in 1987. It is recognised that the willingness of IUCN to provide services on this basis was an indispensable factor in the initial establishment of the Ramsar system.<sup>36</sup> Until 1984 when UNEP took on this task, IUCN had been charged with secretariat functions for CITES as well.<sup>37</sup> For purposes of setting up a secretariat, Art. XII, para. 1 of CITES gave an explicit mandate for receiving assistance by “suitable” NGOs to UNEP’s executive director.

Such special status appears to have been granted especially to NGOs that are widely recognised as scientific and impartial. Particular authority has also been given to them specifically for issues that are of a technical rather than political nature.

### Active participation in meetings

In general terms, NGOs “may, upon invitation of the President, participate without the right to vote in the proceedings of any meeting in matters of direct concern to the body or agency they represent unless at least one third of the Parties present at the meeting object”.<sup>38</sup> The level and quality

<sup>34</sup> CITES Decisions 10.1 and 10.2.

<sup>35</sup> Art. 8, para. 1 of the Convention; cf. Riedinger (2001: 117). Note that the Ramsar Convention calls its secretariat “bureau” (similar to the Convention for the Protection of the World Cultural and Natural Heritage; see UNEP (2001: 22)).

<sup>36</sup> Bowman (1995: 36-39).

<sup>37</sup> Sand (1997: 169).

<sup>38</sup> Rule 7, para. 2 of the ROP for the CBD; see also the similar wording of rule 7, para. 2 in the ROP for the UNCCD, the UNFCCC, the Ramsar Convention, and the Basel Convention; the ROP for the Vienna Convention and its Montreal Protocol do not specify a quorum for an objection by states, but require that there be “no objection from the Parties present” thus in effect requiring a simple

of participation beyond being present is thus at the discretion of the Chair who may grant participatory rights (except the right to vote) to observers unless parties object.

This discretion of the Chair is made explicit again with respect to making oral statements in meetings in the ROP of most MEAs. All but two agreements provide that “No one may speak at a session of the Conference of the Parties without having previously obtained the permission of the President.”<sup>39</sup> The neutral form “speaker” gives the general discretion to the Chair to give the floor to observers as well.<sup>40</sup> Obviously, parties can prevent interventions by observers by objecting to their participation, as discussed above.

On some occasions, more specific rules have been passed. For example, the Intergovernmental Negotiation Committee (INC) on the UNFCCC decided that two observers, representing different groups of NGOs (ENGOs and BINGOs), could be invited to address the INC at the end of the general debate during its sessions in 1991 and 1992.<sup>41</sup> Unlike most agreements, CITES rules establish a clear hierarchy for giving statements. They give precedence to delegates, followed by non-Party States, IGOs, and, lastly, NGOs.<sup>42</sup>

The Ramsar Convention, in rule 7, para.4 of the ROP for its COP, goes beyond the standard by providing that “proposals made by observers may be put to the vote if sponsored by a Party”. This appears to imply that they can intervene relatively freely in the deliberation, since they may otherwise not be able to put forward proposals.<sup>43</sup> In the ATS, on the other hand,

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majority. Again, CITES provides for a non-conditional right to participate (cf. rule 2, para. 2 of ROP for CITES COP).

<sup>39</sup> See rule 32 of draft ROP, as applied, for UNFCCC, rule 31 of ROP for CBD, rule 38 of ROP for UNCCD, rule 31 of ROP for the Vienna Convention and its Montreal Protocol, rule 31 of ROP for the Ramsar Convention.

<sup>40</sup> Except for matters related to raising a point of order, for which the rules of procedure use the term „representative“ (see e.g. rule 34 of draft ROP for UNFCCC).

<sup>41</sup> INC A/AC.237/6: para. 33.

<sup>42</sup> Rule 17, para.1 of ROP for CITES COP as agreed upon in the recent revision of the ROP (CITES Doc. 11.1 (Rev. 1), para 2 (c)).

<sup>43</sup> On some occasions, this appears to have occurred. Thus, Recommendation C.5.6 concerning the role of NGOs was apparently based on a proposal by Bird-life International; see Bowman (1995: 35).

the chairman may invite an “expert” to address the Meeting only if all Consultative Parties agree.<sup>44</sup>

#### Submission and distribution of documents, and dissemination of information

NGOs do not have formal rights to submit documents which would create a procedural obligation to consider their content. However, some legal regimes contain explicit rules allowing the submission of informative documents to delegates and their distribution by the Secretariat. Thus, experts observing Antarctic Treaty meetings may submit information documents that are relevant to an agenda item. In line with the special position of SCAR, its reports and relevant documents are distributed to the ATCMs as “working papers”.<sup>45</sup> The rules of procedures of the Ramsar Convention even permit the Secretariat to decide whether to issue documents submitted by observers as official documents. However, when in doubt, it shall request the agreement of the Conference Committee.<sup>46</sup>

CITES again constitutes a special case, since its ROP adopted in 2000 provide for rules on this aspect in unusual detail. Hence, NGOs may submit “informative documents” if they clearly identify the observer presenting them. If to be distributed by the Secretariat, they are subject to its approval, if necessary in consultation with the Bureau. At the same time, any representative who considers a document offensive may complain to the Bureau, which has the right to decide on appropriate action. As for exhibitions, none are authorised in the immediate vicinity of meeting rooms except exhibitions from the host country. Other expositions set up may be subject to the approval of the Bureau, which may withdraw such permission at any time.<sup>47</sup> Otherwise, informal distribution of information material and the holding of side-events (which are also unregulated under CITES) has remained beyond the scope of any explicit rules under MEAs.

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<sup>44</sup> Rule 42 of ROP for ATCMs. Note that the relevant provisions regarding SCAR are subtly different: the chairperson may invite SCAR to address the Meeting unless a Consultative Party requests otherwise (rule 32). While retaining the principle of consensus, this consensus can be tacit. A similar regime applies to NGOs observing meetings of the CCAMLR Commission (see rule 33 ROP for CCAMLR Commission).

<sup>45</sup> Rules 34 and 44 of ROP of ATCMs.

<sup>46</sup> Rule 54, paras. 4 and 5 of ROP of Ramsar Convention.

<sup>47</sup> Rule 28 of ROP for CITES COP as agreed upon in the recent revision of the rules of procedures in 2000 (CITES Doc. 11.1 (Rev. 1), para. 2 (d and e)); see also rule 15 of ROP for CITES Animals and Plant Committees.

While the secretariats of MEAs generally have some freedom to consider information provided by NGOs, rules under some MEAs provide for this possibility explicitly. According to Article 16, para.1 (b) of the Basel Convention, for example, one of the Secretariat's function is "[t]o prepare and transmit reports based [...] upon, as appropriate, information provided by relevant intergovernmental and non-governmental entities". The COP of the Desertification Convention, in its Decision 11/COP.1 of 1997 provides that the secretariat shall compile the summaries of reports submitted by the Parties, and information provided by UN bodies as well as other IGOs and NGOs, which are also encouraged to provide such information. As the secretariat shall prepare a synthesis of the "reports", it arguably has discretion to integrate NGO submissions. Finally, the Secretariat of the Montreal Protocol can trigger the Protocol's non-compliance procedure where it "becomes aware of possible non-compliance"<sup>48</sup>, including the possibility that the relevant information may be provided by NGOs.<sup>49</sup> The recently finalised compliance mechanism under the Kyoto Protocol provides that "competent" NGOs may submit information to the Compliance Committee on an existing case.<sup>50</sup>

#### Voting, funding, and duties

Generally, MEAs do not grant voting rights or funding to NGOs nor do they impose any duties on them. In the case of voting rights, the ROP of all MEAs explicitly deny this.<sup>51</sup> As regards funding and duties, there are some exceptions to the rule. Thus, in accordance with point 9 (a) of the Annex to the ROP of the UNCCD, the supplementary fund (managed by the head of the Convention Secretariat) supports "the participation of some representatives of non-governmental organizations from affected developing country Parties, particularly the least developed among them, in sessions of the Conference of the Parties".

Duties exist in particular for those NGOs enjoying special treatment under some MEAs (see above). Hence, SCAR shall attend ATCMs for the

<sup>48</sup> Non-compliance procedure as of 1998, para. 3. Interestingly, the related provisions on the proposed Multilateral Consultative Process under the UNFCCC and the compliance mechanism under the Kyoto Protocol do not contain this possibility.

<sup>49</sup> Under the 1979 Council of Europe Convention on European Wildlife Protection has organically grown a similar informal system which allows for an NGO to launch „complaints“, which via the Secretariat will be followed up by the COP (Bombay 2001a: 230, n.17).

<sup>50</sup> See UNFCCC Decision 24/CP.7.

<sup>51</sup> See above on active participation.

purpose of reporting on relevant aspects.<sup>52</sup> Moreover, the currently four "International Partner Organisations" to the Ramsar Convention are expected to "contribute on a regular basis and to the best of their abilities to the further development of the policies and technical and scientific tools of the Convention and to their application"<sup>53</sup> particularly by assisting Contracting Parties to meet their obligations under the Convention. The specific responsibilities of each partner organisation are fully spelled out in a "memorandum of co-operation", and are defined in the work plan for the Convention for each triennium.<sup>54</sup> Finally, where NGOs have performed secretariat functions, this has obviously involved accepting some duties. In the case of Ramsar, for example, this has included the tasks of maintaining lists of endangered and important wetland, convening and organising meetings of the parties, and generally acting as an information clearing house.

#### *Membership in bureau*

No MEA allows an NGO representative to become a member of the bureau. However, this could change if similar provisions to those contained in the Secretariat's draft of the rules of procedure to the Aarhus Convention are endorsed by the COP. The draft provides that an NGO representative would become eligible as Vice-Chair of the COP and thus be entitled to membership of the COP's Bureau.<sup>55</sup> Furthermore, the draft provides for an additional position in the Bureau for an ENGO representative to be nominated by those NGOs.<sup>56</sup> Through two out of not more than eight bureau members, NGOs could thus gain a decisive role in the preparation of the provisional agenda for each meeting and the relevant documentation.<sup>57</sup>

#### **2.2.1.2 Practice**

##### NGO participation and influence

By and large, the number of non-state actors attending international negotiations has been found to be increasing. With differences accounted for mainly by the varying degree of public interest in the respective issues, NGOs attending MEA sessions today number several tens to several hun-

<sup>52</sup> Rule 30 of ROP for ATCMs; see also Herr (1996: 97).

<sup>53</sup> Resolution VII.3, 1999, para. 1 of the Annex. See also para. 4.6 of the Annex.

<sup>54</sup> UNEP (2001: 97).

<sup>55</sup> Rule 18, para.1, of the Draft ROP of the Aarhus Convention.

<sup>56</sup> Draft Rule 22.

<sup>57</sup> Bombay (2001a: 229).

dreds, in particular in the case of the global conventions such as the CBD and the UNFCCC.<sup>58</sup> On some occasions (e.g. in the case of the UNFCCC), observers even outnumber State delegates.

The process of accreditation is usually administered by the secretariat, which presents its recommendation to the chair of the COP. While the Secretariat may grant provisional accreditation, only the COP can give formal, open-ended accreditation to NGOs, usually “rubber-stamping” the secretariat’s recommendation.<sup>59</sup> In this process, the secretariat may ask NGOs to provide additional information not specifically provided for in the legal provisions.<sup>60</sup> While secretariats thus exert some degree of discretion, the “qualification” requirement and subsequent deadlines have generally been interpreted in a rather broad sense. As a result, denial of accreditation has been a rare event, although cursory evidence for such denial exists.<sup>61</sup> Also, a certain variance exists in the application of the rules between secretariats. In the case of CITES, parties have even requested the Secretariat to handle the deadlines for registration for meetings in a rather strict manner.<sup>62</sup> Based on the more restrictive rules (see above), however, the practice of NGO accreditation in the ATS has remained more restrictive, with invitations occurring as the exception rather than the rule.<sup>63</sup> Greenpeace, for example, has never been “invited” to ATCMs. On one

<sup>58</sup> See, e.g., Finger and Princen (1994: 4). For specific MEAs see, for example Gupta and Gagnon-Lebrun N.Y.: 6 (Montreal Protocol), Arts (1998: 169) (negotiations on the CBD, Walk and Brunnengraber (2000: 101) (on the UNFCCC) and the reports of the meetings of the respective governing bodies.

<sup>59</sup> See, e.g., Wisner (2000: 16f) on the UNFCCC. Although observer status is in most cases permanent, NGOs may be requested to reconfirm their interest in continuing to participate in the Convention process (see, e.g., FCCC/SBI/1997/14/ Add.1: para. 3). In few cases, parties have taken an interest by expressing a „reservation“ to a NGO application mainly due to political considerations, most prominently the rejection by China of Taiwanese participation in MEA meetings (Wisner 2000: 17, n.92). In early 2002, at the CSD acting as Preparatory Committee for the World Summit on Sustainable Development, China opposed the accreditation of the US-based NGO “International Campaign for Tibet”. The US and EU argued in favour of accreditation, but a majority of parties voted against accreditation (Earth Negotiations Bulletin 2002: 2).

<sup>60</sup> See, e.g., for the UNCCD Interim Secretariat of the Convention to Combat Desertification 1999.

<sup>61</sup> Raustiala (1997a: 551); Wisner (2000: 16-18); Favre (1989: 272); Yamin (1997: 55).

<sup>62</sup> CITES Decision 11.126.

<sup>63</sup> Vidas (1996: 56), ASCO, “The Antarctica Project”, <http://www.asoc.org/>; Herr (1996: 105).

occasion, the CCAMLR requested a declaration of support, although none of the MEAs reviewed here requires such a “loyalty oath”.<sup>64</sup>

Although NGOs may lobby national delegations independent of their access to MEA meetings, accreditation has enabled them to approach government delegates in the corridors of the congress centres. It also allows them to link up closely with national delegations which frequently meet with different NGOs on a regular basis during major conferences. Furthermore, such access to meetings generally provides the basis for employing the media that are present at major international conferences for the purposes of NGOs. In particular, environmental and expert NGOs are frequently asked for their opinion and interviews by journalists, which gives them the opportunity to influence public opinion and, subsequently, the governments’ positions.<sup>65</sup>

The quality of access to official meetings of MEA bodies also varies to some extent in practice. This appears to be the result of practical (space) limitations, to some degree. Thus, access to the conference room floor by NGO representatives is granted before and after sessions of the COP, but not during meetings in the case of the UNFCCC, and on some occasions access had to be limited due to space limitations in meeting rooms.<sup>66</sup> Access has especially been banned where discussions have been considered politically particularly sensitive (implementation review, financial matters) or informal. Informal negotiating sessions of parties have generally been closed to observers in most contexts as well. However, access by NGOs to such informal meetings appears to have been granted occasionally, in particular in regimes dealing with nature conservation issues.<sup>67</sup>

The role of NGOs in implementation review procedures/fora has remained more limited than with respect to other MEA bodies. As a result of different problem structures, dispute settlement provides a prime implementation tool in the trade regime (see below), while states have rarely, if ever, used the dispute settlement provisions of MEAs (that generally con-

<sup>64</sup> Kimball (1988: 44f).

<sup>65</sup> See, e.g. on COP-3 of the UNFCCC Oberthür and Ott (1999: Ch. 7).

<sup>66</sup> Walk and Brunnengraber (2000: 103f.). The Bureau of the COP has agreed to allow wider access to be granted at the discretion of the Chair of each subsidiary body (Paoletto and Schroeder 1997).

<sup>67</sup> Thus, non-state observers have good access to most meetings (including informal ones) of CITES (cf. Finger 1994: 141; Riedinger 2001: 203), the Ramsar Convention (UNEP 2001: 97), and, to a certain extent, the Biodiversity Convention (cf. ICTSD 1999: 10). However, the CBD budget group is closed to NGO observers (ICTSD 1999: 10), and so may be groups that are not open-ended such as technical expert groups or liaison groups (UNEP 2001: 61).

tain no provisions on the participation of NGOs).<sup>68</sup> The primary tool for ensuring effective implementation of modern MEAs has become multilateral compliance procedures (that can therefore be understood as the functional equivalent to dispute settlement procedures in trade agreements). As mentioned above, NGOs have been allowed – implicitly or explicitly – to feed information into such compliance procedures. However, they have hardly secured access to meetings of compliance bodies. For example, the parties to the Montreal Protocol do not permit access to meetings of the Implementation Committee dealing with cases of non-compliance<sup>69</sup>. The novel compliance system of the Kyoto Protocol at least foresees that any hearing in the case of the consideration of a case should in principle be held in public (unless the compliance body decides otherwise).<sup>70</sup>

Furthermore, despite the similarity of the applicable rules, the practice concerning oral interventions varies considerably. This practice generally appears to be more liberal in UNEP conventions than in conventions negotiated under the auspices of the UN General Assembly such as the UNFCCC.<sup>71</sup> In the Climate Change Convention, for example, NGOs have traditionally been granted the opportunity to address the meetings of the COP and its subsidiary bodies only once (usually at the end of the meeting), with the number of speakers usually being balanced between ENGOs and BINGOs and the statements being encouraged to be on behalf of a broad constituency.<sup>72</sup> In this respect, the UNFCCC secretariat has developed a constituency system to structure NGO participation. ENGOs and BINGOs are treated as separate constituencies, as are municipal and local (governmental) authorities. The constituency system has become broadly accepted by States.<sup>73</sup>

<sup>68</sup> See, for example, Széll (1995); see also Oberthür (2002).

<sup>69</sup> Riedinger (2001: 125); Victor (1998: 142).

<sup>70</sup> See UNFCCC Decision 24/CP.7, Art. IX, para. 2; see also Oberthür/Marr (2002).

<sup>71</sup> Arts (1998: 164).

<sup>72</sup> Wisner (2000: 22). This practice very much reflects the rules established in the INC negotiating the Convention (see section 2.2.1.1 above). The practice in some of the subsidiary bodies has been more generous (Yamin 1997: 60).

<sup>73</sup> The Executive secretary speaks of the „recognition of 'constituencies', (FCCC/SBI/1997/14/Add.1: para. 5). The SBI refers to „the practice [...] of meeting the different NGO constituencies“ (FCCC/SBI/ 1998/6: para.80). The secretariat provides office space and computers free of charge for the use of each of the three recognised constituencies during the course of the official sessions (Wisner 2000: 26).

In contrast, NGOs are allowed to intervene freely from the floor on individual agenda items under UNEP Conventions such as the Montreal Protocol, the CBD and the Basel Convention.<sup>74</sup> According to the CBD Secretariat, non-state observers have attended contact groups and have often intervened, including making suggestions on text.<sup>75</sup> While priority in taking the “floor” is given to Parties, there is no attempt from the Secretariat or Chairs to “balance” statements made by one kind of NGO (e.g. industry) versus another (e.g. environmental).

The UNCCD features a special “NGO-Official Dialogue” to provide for NGO input into the deliberations. Two half-day open dialogue sessions are allocated at COP meetings for the NGOs to discuss, in the plenary of the COP, all issues deemed relevant. This dialogue is part of the COP’s official agenda. It is usually co-chaired by an NGO representative and the normal chair of the plenary.<sup>76</sup>

Despite the absence of specific provisions to this respect, a practice has developed in some contexts that increasingly acknowledges the value of written submissions from NGOs. In most MEAs, the secretariat often distributes written statements by NGO representatives when they have received permission to address a meeting. Thus, while the UNFCCC Secretariat has not routinely circulated documentation submitted by NGOs, unless requested by Parties<sup>77</sup>, parties did in the past occasionally allow for submissions from NGOs, and the Secretariat has provided internet links to NGO documents on its website. States have so far not objected to this practice. Reportedly, the UNFCCC Secretariat is even trying to develop a framework or structure under which NGOs may make parallel submissions that would be accepted by the secretariat and then electronically posted in some way.<sup>78</sup>

NGO information is also frequently fed into the political process in a rather informal way through the secretariat. The secretariat of the UNCCD, for example, building upon rules that appear to open up that opportunity, has used its discretion by integrating points or ideas submitted

<sup>74</sup> Yamin and Wasserstein (1999: 9) and 16f. (Montreal Protocol); Yamin (1997: 60f). (CBD). The practice at CITES meetings is also considered to be quite liberal (Finger 1994: 141).

<sup>75</sup> UNEP (2001: 61).

<sup>76</sup> UNEP (2001: 126); Wisner (2000: 23). An NGO representative has also co-chaired a recent CBD inter-sessional working group meeting held to discuss the implementation of CBD rules (Wisner 2000: 23).

<sup>77</sup> Yamin and Wasserstein (1999: 18); Yamin (1997: 60).

<sup>78</sup> Wisner (2000: 25).

by NGOs into synthesis documents without attributing them to a specific NGO.<sup>79</sup> Similarly, discussions in the framework of the Basel Convention have apparently been based to a large extent on information provided by Greenpeace.<sup>80</sup> Accordingly, the Secretariat recognises that civil society plays a central role in the agreement's implementation, largely through the provision of scientific and technical expertise.<sup>81</sup>

The recognition of NGOs as sources of information is also apparent from the broadly accepted practice with respect to the distribution of information material and the holding of side events. The only MEA having developed specific rules on this aspect has been CITES (see above). However, the informal practice of NGO documents being distributed outside meeting rooms and the holding of side-events, including workshops and seminars, in the context of meetings of governing bodies has become fairly common. While it is typically at the discretion of the chair to permit written statements or other documents by NGOs to be distributed directly to the party delegates<sup>82</sup>, no prior approval of documents to be distributed outside meeting rooms is usually required.<sup>83</sup>

A special feature of the distribution of information by NGOs at environmental conferences is the publication of two daily conference journals. The Earth Negotiations Bulletin,<sup>84</sup> edited by the International Institute for Sustainable Development, provides neutral information about the conference proceedings. The newsletter ECO, published at many environmental conferences since 1972 by ENGOs, also provides information on the state of negotiations and promotes the viewpoints of ENGOs.

At side-events, NGOs present their views and provide specific information (e.g. about possible solutions) to the general public, the media, and delegates. One well-known example is the Global Biodiversity Forum which takes place prior to the meeting of COP of the Biodiversity Con-

<sup>79</sup> Wisner (2000: 25).

<sup>80</sup> Clapp (1994: 36).

<sup>81</sup> UNEP (2001: 22).

<sup>82</sup> Wisner (2000: 24).

<sup>83</sup> Such approval has, however, occasionally been required, for example at the 1999 Meeting of the Parties to the Montreal Protocol in Beijing (personal observation).

<sup>84</sup> The journal is available online at <http://www.iisd.ca>. For an assessment of the journal's utility in building capacity of developing country delegates see Chasek (2001).

vention.<sup>85</sup> Within the UNFCCC, a tradition to organise "special events" and "exhibits" on the margins of the official meetings has also developed. The secretariat arranges for and provides facilities, including rooms and equipment, free of charge to NGOs for their use at these events.<sup>86</sup> At COP-5 there were over 145 special events and 50 exhibits.<sup>87</sup> Such side-events have become a common feature of meetings in the context of MEAs.

NGO representatives also sometimes influence international environmental conferences through membership of national delegations. Governments' practices vary considerably in this respect. The US, for example, has repeatedly included NGOs in its delegations already since the 1970s. For instance, the US delegation at the negotiations on CITES and the ATS included officials of many conservation NGOs.<sup>88</sup> In the ozone treaty negotiations, relations between governments and national producers in Europe and Japan were close, and business representatives served officially on national delegations through the entire process.<sup>89</sup> Including ENGOs and expert NGOs in national delegations, however, only appears to have become a more widespread phenomenon in the 1990s. Expert NGOs in particular have even taken on a negotiating role. For example, international lawyers of the expert NGO FIELD have participated in the climate negotiations as members of delegations from countries belonging to the Alliance of Small Island States (AOSIS). FIELD also functioned as a kind of Secretariat to the AOSIS countries. Such direct involvement has not only allowed NGOs to influence negotiations directly but has also provided them with first-hand inside information even from closed informal meetings – although their particular position may put severe limitations on their ability to use this information freely.<sup>90</sup>

<sup>85</sup> About 150 participants—NGOs, governments, academia, indigenous people, industry and other groups – attended the Global Biodiversity Forum the weekend prior to COP-1. This conference was organised by IUCN, the World Resources Institute and the Bahamas National Trust (NGLS 1995b: 4).

<sup>86</sup> Wisner (2000: 26).

<sup>87</sup> Web site of the Climate Change Convention at <http://www.unfccc.int/resource/process/components/participants/observ.html>.

<sup>88</sup> Finger (1994: 139); Herr (1996: 99, n. 22); Kimball (1988: 38f.) Since 1983 Australia, New Zealand and Denmark have also welcomed NGO members in their delegations to ATS (Kimball 1988: 46).

<sup>89</sup> Parson (1993: 37).

<sup>90</sup> Walk and Brunnengraber (2000: 105); Ott and Oberthür (2000: 31); see also Kimball (1988: 46). To be a member of a state delegations does not, however, necessarily mean to have access to all internal communications. NGO experts in European Community delegations are, for instance, generally excluded from in-

NGOs also seek to co-operate with the secretariats managing a treaty.<sup>91</sup> Many MEA secretariats regularly meet with NGOs to exchange information and discuss mutual expectations. In this way, both sides benefit from the information of the other side. In particular, expert NGOs are also hired at times as service organisations, providing services to, or carrying out commissioned work for, secretariats.<sup>92</sup> In addition, as mentioned above, some MEA secretariats (Ramsar, CITES) have either been run by NGOs or maintain close working relations with them. This enables NGOs to insert innovative ideas into the process.

Apart from directly influencing negotiating processes, NGOs have also used major conferences as focal points for organising public events and campaigns. For example, Greenpeace and the Antarctic and Southern Ocean Coalition together have organised public demonstrations at a number of Antarctic meetings involving penguin costumes, etc. Greenpeace also organised an expedition to establish a scientific-research station called "World Park Station" in order to demonstrate that it was eligible to become a formal member of the ATS Consultative Parties.<sup>93</sup> At COP-6 of the UNFCCC in The Hague in 2000, ENGOs organised the construction of dikes around the conference hall to symbolise the seriousness of the issues negotiated inside the Conference building. While more examples exist, such campaigns are no common feature of all meetings. For example, there were hardly any protest activities around any of the formal negotiation sessions on the CBD.<sup>94</sup> This may be due to the facts that not all issues suit themselves to public campaigns and that the NGOs usually involved in such activities, such as Greenpeace, pursue a limited number of issues at any one time.

In addition to influencing the political process from these positions more or less inside the arena, NGOs obviously carry out a number of activities that influence the international process rather indirectly, most importantly through shaping public awareness of environmental issues in various countries. Hence, they are involved in information dissemination and awareness-raising activities, use their established contacts with the

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ternal co-ordination meetings during the conference, as this capacity to influence Community positions is perceived as being beyond the politically acceptable (Bombay 2001a: 231).

<sup>91</sup> The ATS does not make provision for a secretariat. The meetings are managed by the host government.

<sup>92</sup> Breitmeier and Rittberger (2000: 146).

<sup>93</sup> Kimball (1988: 49); Herr (1996: 102).

<sup>94</sup> Arts (1998: 170).

media and organise broader public campaigns (see also section 2.1). An example of such broader activities by BINGOs was a 13-million dollar media campaign launched on the way towards COP-3 of the UNFCCC in 1997 that aimed at strengthening the opposition in the US against a global climate treaty.<sup>95</sup>

### The degree of success and the determining factors

The assessment of NGO influence faces severe methodological challenges. In particular, the significance of informal channels makes it difficult to measure NGO influence.<sup>96</sup> Moreover, most of the recent literature focuses on public interest NGOs.<sup>97</sup> This may be due to the fact that they are perceived as a relatively new phenomenon in international politics, while industry associations seem to be well-established.<sup>98</sup> Also, the literature highlights success stories, whereas an assessment and explanation of NGO failures is somewhat neglected. Finally, the difficulties in measuring the success of NGOs also mean that there is little systematic knowledge available to indicate which mechanisms have the greatest impact on international political processes, especially with reference to the type of NGO employing them.<sup>99</sup>

Under these circumstances, three criteria are used in this section on a preliminary basis to assess the success of NGOs so far. Firstly, the section reviews whether and to what extent NGOs have had access to decision-makers. A second step discusses whether they have been able to introduce proposals into the negotiations. The third criterion refers to whether and to what extent NGO positions have been adopted in negotiations, or whether NGOs have been able to block the adoption of certain proposals. With respect to each criterion, major factors accounting for NGO success are discussed. The first two criteria refer to process influence that may not necessarily be recognisable in the eventual outcome. The last criterion refers to product influence. Whereas assessment of product influence may be relatively straight-forward, the informality of the relevant processes hampers

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<sup>95</sup> Oberthür and Ott (1999: 72).

<sup>96</sup> Cf. Walk and Brunnengräber (2000: 182f).

<sup>97</sup> See Arts (1998), Finger and Princen (1994), Keck and Sikkink (1998), O'Brien et.al. (2000), Walk and Brunnengräber (2000).

<sup>98</sup> In international relations theory, transnational economic actors were for conceptualised the first time by Keohane and Nye (1972). Although involvement of public interest NGOs can be traced back to the last century (Charnovitz 1997), it is widely acknowledged that it has reached an unprecedented quantity and quality recently (Willets 1997).

<sup>99</sup> Risse forthcoming. Breitmeier and Rittberger (2000: 142).

an accurate understanding of process influence. In particular, it is difficult to identify the influence of NGOs where it occurs in informal processes and discussions in which even those involved may not be able to attribute influence.<sup>100</sup>

Access to decision-makers is the major precondition to influence both process and outcomes of negotiations. A distinction can be drawn between access to the forum of negotiation on the one hand, and access to, and the ability to participate actively in, the actual negotiations on the other hand. Because of the general openness of most MEAs to observers, NGO representatives are usually able to approach delegates in an informal manner (e.g. in the corridors of the conference building) in order to present their views and to lobby them. Access to the ATS is much more limited forcing NGOs to rely on alternative channels of influence such as putting public pressure on national delegations. The opportunities to participate actively in negotiations vary quite substantially between MEAs – due less to a difference in rules than a difference in practice. In particular, a more open practice appears to have developed in UNEP conventions and with respect to less politicised issues.<sup>101</sup> Access has been more limited in particular in cases of more politically sensitive issues such as finance and compliance review. In the case of the Multilateral Fund for the Implementation of the Montreal Protocol, which assists developing countries to meet their control obligations, the ROP grant full access to meetings of the Executive Committee but explicitly allow for exclusion of observers from “any portion of its meetings involving sensitive matters”.<sup>102</sup>

Both the legal framework and the practice by secretariats and states seem to be decisive factors with respect to access. Where such access is lacking, alternative channels of influence may be available, especially to BINGOs and large PINGOs that command the resources to make themselves heard even from a distance. Where governments integrate NGO representatives in national delegations, this may also make up for lack of access.

<sup>100</sup> On the distinction between process and product influence see Arts (1998: 59).

<sup>101</sup> These differences may potentially be explained by practical difficulties created by the sheer number of NGO representatives participating, for example, in UNFCCC meetings. However, the number of NGOs attending CBD meetings is no less impressive, but does not seem to impair their active participation by means of interventions (Yamin and Wasserstein 1999: 19).

<sup>102</sup> Moreover, non-governmental observers should include observers from developing and developed countries and their total number should be limited as far as possible (rule 7 of ROP for meetings of the Executive Committee for the Multilateral Fund; see also Parson 1993: 51).

Cursory evidence exists for both for success and failure regarding the introduction of NGO proposals. The introduction of the AOSIS draft protocol that was co-drafted by lawyers from FIELD into what was later called ‘the Kyoto process’ is a prominent case of direct NGO influence.<sup>103</sup> The Global Climate Coalition (GCC), a BINGO, has been rather successful in introducing proposals into the UNFCCC process through selected OPEC countries. While access to decision-makers is apparently a precondition for and facilitates such influence, substantial and procedural knowledge/expertise, strategic abilities of an NGO, the ability to co-ordinate effectively among several NGOs and the like appear to be decisive.<sup>104</sup> Furthermore, such influence seems to decisively depend on politics, since NGOs usually have to build alliances with state governments sympathetic to their concerns in order to feed in their own proposals (as in the case of AOSIS and OPEC). However, opportunities also exist to enhance the chances of NGO proposals being considered by means of legal provisions and practice, as in those cases where NGOs can intervene freely in the negotiations (see above).

NGOs have also succeeded in the adoption or blocking of proposals on several occasions. For example, NGOs succeeded in bringing about a whaling moratorium in the IWC in 1982 after having campaigned and worked to that end for several years.<sup>105</sup> After considerable efforts, NGOs and Greenpeace, in particular, succeeded in 1994 in bringing about a ban on all hazardous waste exports from OECD countries to the developing world under the Basel Convention.<sup>106</sup> NGOs were also decisive in preventing the entry into force of the Convention on the Regulation of Antarctic Mineral Resource Activities (CRAMRA). Instead, Antarctic Treaty Consultative Parties negotiated a Protocol on Environmental Protection.<sup>107</sup>

<sup>103</sup> Arts (1998: 133-138).

<sup>104</sup> Government representatives active in the CBD and UNFCCC negotiations considered expertise as the most important asset of NGOs: Arts (1998: 259). The importance of co-ordination among NGOs is debated in the literature. Arts (1998: 259) finds that closer co-ordination among NGOs may not be a decisive factor for their political influence. However, NGO networks such as the Climate Action Network not only confer special legitimacy (Walk and Brunnengraber 2000: 155) but also allow a more effective division of work; for the Aarhus Convention see Petkova and Veit (2000: 6).

<sup>105</sup> Princen and Finger (1994: 5); Riedinger (2001: 200); Andresen (1998); Oberthür (1997).

<sup>106</sup> See Meinke (2000); Clapp (1994).

<sup>107</sup> Joyner (1996: 251); more cases could be added.

As these examples suggest, the ability to mobilise public pressure through well-prepared long-term campaigning, the politics and 'problem structure' of each case (i.e. the availability of potential state partners etc.), relevant skills/expertise and strategic capabilities, etc. have been decisive factors for such successes. Co-ordination between NGOs may help pool and enhance relevant capacity. Where such proposals have been carried through in international negotiating contexts, rules on access and the ability to make proposals may also have been influential, but less so than informal channels of influence on governments.

#### Remaining deficits and proposals to enhance the role of NGOs

Deficits and potential ways of removing them have been identified with respect to most of the issues discussed above, i.e. regarding access and accreditation to meetings, active participation in meetings (and the possibility to intervene freely), and the submission of documents. Notably missing from that list is the right to vote, which is generally not claimed by NGOs. With regard to accreditation and access in practice, the geographically imbalanced representation of civil society has also been found to constitute a particular problem.

As regards accreditation and access, it has been argued that the virtually unrestricted accreditation practice in the context of NGOs allows access even to such observers who wish to undermine the very purpose of the respective MEA (see also section 2.1). It has therefore been proposed that, similarly to ECOSOC rules, NGOs should be required to sign a declaration of support for the principles and aims of the MEA as a condition for receiving accreditation.<sup>108</sup> BINGOs have claimed, however, that the fullest range of NGOs should be engaged, regardless of why they may be motivated to participate.<sup>109</sup>

Furthermore, as pointed out above, access to informal meetings and to bodies discussing politically sensitive issues such as implementation review and compliance is either limited or prohibited. NGOs have therefore requested to get access to, and a formal role in, all kinds of meetings and bodies.

Another problem related to accreditation and access is the issue of imbalanced representation of NGOs in MEA meetings, especially the number of NGOs from industrialised and developing countries. For example, as of July 1997, nearly 240 NGOs were accredited to participate in the

<sup>108</sup> E.g. in the context of the UNFCCC; see FCCC/SBI/1997/14/Add.1 1997: para. 12; Wisser (2000: 19).

<sup>109</sup> See FCCC/SBI/1997/MISC.7 1997: 13; Wisser (2000: 19).

UNFCCC process. Of these, 91% were based in developed countries, and 9% in developing countries.<sup>110</sup> This problem of regional representativity of NGOs threatens to undermine the legitimacy of NGO engagement.

Insufficient funding of NGOs from developing countries or countries with economies in transition has been identified as a major impediment to addressing this problem effectively. Therefore, NGOs from the North and some national governments have occasionally provided funds to Southern NGOs.<sup>111</sup> However, direct funding is problematic as resulting financial dependencies might impair the independence of views expressed by Southern NGOs.<sup>112</sup> NGOs have thus proposed that Parties establish adequate funding mechanisms.<sup>113</sup> For this purpose, a trust fund could be established.<sup>114</sup> The procedure on how to choose NGOs to receive funding for participation should be open and applications should be judged according to set criteria.<sup>115</sup> In addition, it has been proposed to increase the number of meetings at locations in the different regions of the developing world to enhance possibilities for Southern participation.<sup>116</sup>

A similar problem is the bias towards English speaking groups and actors. This potentially and actually hampers NGOs from non-Anglophone countries (especially from developing countries) to participate in both the NGO community dialogue and international environmental negotiations.<sup>117</sup> As far as the latter are concerned, granting NGOs access to the interpreting and translating services of MEA secretariats could help to remedy this problem.

The possibility of NGOs to actively intervene in deliberations are deemed insufficient in some MEAs (such as the UNFCCC). ENGOs have argued that the present practice of a single, brief opportunity to address a

<sup>110</sup> Cf. FCCC/SBI/1997/14/Add.1. The problem applies not only to public interest NGOs but also to Southern business which is absent at least in relation to the transboundary waste, the ozone and the climate negotiations (Gupta and Gagnon-Lebrun N.Y.: 7).

<sup>111</sup> For instance at the ICN negotiating the UNFCCC, there were extra funds from both national governments and (Northern) NGOs to increase the involvement of Southern counterparts; see Arts (1998: 109).

<sup>112</sup> Cf. Wahl (2001a: 24).

<sup>113</sup> See, for instance, NGLS (1997: 7), FCCC/SBSTA/1996/11: Annex III, para. 4.

<sup>114</sup> UN Secretary General (1998: para. 79); UNEP-CSO Consultation 2001: 10 and 17; Martens (1993: 171); Wahl (2001a: 24).

<sup>115</sup> Paoletto and Schroeder (1997).

<sup>116</sup> Edwards (2000a).

<sup>117</sup> Scholte (2000: 280). Gupta and Gagnon-Lebrun N.Y.: 10.

session does little to enhance dialogue.<sup>118</sup> Instead, NGOs should be given greater leeway to intervene whenever called upon by the Chair under individual agenda items, as is the practice e.g. within the Montreal Protocol.<sup>119</sup>

Under most MEAs, NGOs may also not formally submit documents. In this respect, NGOs have proposed that it should be standard practice for the Secretariat to solicit views of NGOs on specific agenda items.<sup>120</sup> These inputs could be compiled in a separate section of “miscellaneous documents”, perhaps following the submissions from governments. In addition, NGOs could be allowed to electronically post “briefing” materials for government delegates in advance of meetings on a specifically designated section of the institution’s website.<sup>121</sup> This might increase the effectiveness of participation of both NGO and government delegates, especially developing country delegates, who often do not have access to information relevant to their meetings, and reduce the costs of distributing material. It would also give access to international decision-makers to those business, environmental and other NGOs who currently do not have the time or financial resources to participate in international meetings.

In this context, the debate as to the possible formalisation of communication channels between the UNFCCC constituencies and the UNFCCC process is also relevant. The BINGO constituency proposed the establishment of a business consultative mechanism, which would be structured and administered by its members. ENGOs, however, argued that rather than creating a new mechanism for this, the current mechanisms should be enhanced and deepened, especially with regard to access, interventions, and submissions.<sup>122</sup>

## 2.2.2 International Economic Institutions

This sub-section analyses the participation of NGOs in international economic institutions. The institutions investigated are the World Trade Organisation (WTO), the Organisation for Economic Co-operation and Development (OECD), the World Bank, the International Monetary Fund (IMF), the International Organisation for Standardisation (ISO), the World Intellectual Property Organisation (WIPO), the International Labour Organisation (ILO) and, on a selective basis, the institutions operating under

<sup>118</sup> FCCC/SBSTA/1996/11: Annex III, para 16; see Paoletto and Schroeder (1997).

<sup>119</sup> Walk and Brunnengraber (2000: 101).

<sup>120</sup> FCCC/SBSTA/1996/11: Annex III, para 18.

<sup>121</sup> See Yamin (1997: 54f), specifically referring to the CBD’s clearing-house mechanism.

<sup>122</sup> FCCC/SBSTA/1996/11: Annex I and Annex III, para. 14.

the North American Free Trade Agreement (NAFTA). Most of these institutions have only States and governments as members (WTO, OECD, World Bank, IMF, WIPO and NAFTA). The ISO and the ILO have mixed membership constituencies that formally include NGOs that are representatives of industry and, in the case of the ILO, industry as well as labour unions.

### 2.2.2.1 Legal Provisions

Each international economic institution has a governing body that oversees the institution’s operations and promotes the implementation and development of new rules and policies in its area of competence. This body often delegates the day to day running of the institution to bodies of a smaller size, with more focused mandates or with more specialised expertise. For many NGOs seeking to influence the operation of these institutions, gaining access to the meetings of these bodies is essential. Their participation is formally regulated by rules on observer status and accreditation; participation in meetings; distribution of documentation; voting rights; and, particularly for NGOs from developing countries, access to funding to attend and participate. Rather than policy-making, the World Bank and IMF are concerned with the design, funding and implementation of development projects and lending in support of programs addressing macroeconomic policy objectives. Some of the institutions, the WTO in particular, employ dispute settlement mechanisms.

#### Accreditation and access

Most of the international economic institutions reviewed in this study do not extend rights to NGOs to participate directly in the formal decision-making process of their governing bodies. The exceptions are the ILO and the ISO, which were designed from the outset to include representatives of specific sectors of civil society.

#### *NGOs as members*

The ILO is a UN specialised agency which develops international labour standards through a tripartite system of government, labour and business representatives.<sup>123</sup> ILO member States meet as the International Labour Conference and the Governing Body supported by a secretariat, the International Labour Office. Member State delegations to the Conference comprise two government delegates, one employer delegate and one worker

<sup>123</sup> See ILO Constitution and Declaration of Philadelphia; see also <http://www.ilo.org/public/english/about/index.htm> and <http://www.ilo.org/public/english/depts/fact.htm>.

delegate, and may be accompanied by two technical advisers. The Member States “undertake to nominate non-Government delegates and advisers chosen in agreement with the industrial organisations, if such organisations exist, which are most representative of employers or workpeople, as the case may be, in their respective countries.”<sup>124</sup> Thus, although NGOs participate as members and can participate and even vote, it is each state member that selects the NGO members of its delegation. The Governing Body is made up of 28 government members, 14 employer members and 14 worker members. The employer and worker members are elected to the Governing Body by the employer and worker delegates to the Conference.<sup>125</sup>

The ISO is a federation of 140 national standards ‘member’ bodies that develops international standards to facilitate trade in goods and services. Each national body is the “most representative of standardisation in its country” and may comprise any combination of private participants from national standards organisations or government standards agencies. Other categories of members – correspondent and subscriber members – have limited rights in the institution. The ISO meets as a Council, but the bulk of its activities are decentralised, being conducted by over 2,850 technical and policy committees, subcommittees and working groups that may be advised by national Technical Advisory Groups. There is a central secretariat and each technical committee has its own secretariat.<sup>126</sup>

#### *NGOs as observers/non-members*

For the majority of the economic institutions where membership is limited to states, formal participation by NGOs is limited to observer status. To this end, the constitutional instruments of most of the economic institutions either expressly provide for observer arrangements or grant discretionary powers to their organs to put in place arrangements to consult and co-operate with relevant non-government organisations (e.g. WTO, OECD, WIPO, ILO).

Established to administer and negotiate trade agreements and develop trade policy, the WTO comprises over 140 Member States that meet every two years at ministerial level and regularly in a General Council. Members also participate in additional councils, committees and working groups

<sup>124</sup> See ILO Constitution, Article 3.5.

<sup>125</sup> *Ibid.*, Article 7.4.

<sup>126</sup> See <http://www.iso.ch/infoe/intro.htm>; see also Roht-Arriaza (1995).

that are supported by a Secretariat.<sup>127</sup> The WTO’s founding instrument provides for NGO consultation, stating that “the General Council may make appropriate arrangements for consultation and co-operation with non-governmental organisations concerned with matters related to those of the WTO.”<sup>128</sup> Subsequent guidelines point to the “special character of the WTO” and its wide range of activities, stating that there “is currently a broadly held view that it would not be possible for NGOs to be directly involved in the work of the WTO and its meetings.” Rather, “[t]he Secretariat should play a more active role in its direct contacts with NGOs” and this should be done through “*inter alia* the organization on an *ad hoc* basis of symposia on specific WTO-related issues, informal arrangements to receive the information NGOs may wish to make available for consultation by interested delegations and the continuation of past practice of responding to requests for general information and briefings about the WTO.”<sup>129</sup>

The OECD is a group of 30 member governments of industrialised democracies that develops policies and guidelines on issues related to sustainable economic growth and the expansion of trade.<sup>130</sup> It comprises a Council, which meets at the ministerial and ambassador levels, and committees serviced by a Secretariat.<sup>131</sup> With respect to NGOs, the OECD Convention provides that, “[u]pon such terms and conditions as the Council may determine, the [OECD] may: (a) address communications to non-member States or organisations; (b) establish and maintain relations with non-member States or organisations; and (c) invite non-member Governments or organisations to participate in activities of the [OECD].”<sup>132</sup>

Made up of 175 member governments, WIPO was established to administer and develop international agreements relating to intellectual property. Its members meet as a General Assembly, Conference and Unions and are advised by a number of subsidiary bodies and committees that are supported by a secretariat, the International Bureau.<sup>133</sup> The WIPO

<sup>127</sup> Marrakesh Agreement Establishing the WTO; see also [http://www.wto.org/english/thewto\\_e/whatis\\_e/inbrief\\_e/inbr02\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr02_e.htm).

<sup>128</sup> Marrakesh Agreement Establishing the WTO, Article V.2.

<sup>129</sup> Guidelines for arrangements on relations with non-governmental organizations adopted by the General Council on 18 July 1996. WT/L/162.

<sup>130</sup> Convention on the Organisation for Economic Co-operation and Development.

<sup>131</sup> *Ibid.*

<sup>132</sup> Article 12, Convention on the Organisation for Economic Co-operation and Development.

<sup>133</sup> See Convention establishing the World Intellectual Property Organization; see also <http://www.wipo.org/about-wipo/en/>.

Convention provides that WIPO may “make suitable arrangements for consultation and cooperation with international non-governmental organizations and, with the consent of the Governments concerned, with national organizations, governmental or non-governmental. Such arrangements shall be made by the Director General after approval by the Coordination Committee.”<sup>134</sup> The WIPO rules of procedure provide for each WIPO body to decide which NGOs to invite to their meetings as observers.<sup>135</sup>

In addition to participation by NGOs in a member capacity, the ILO also provides for consultation with other NGOs. Under the ILO Convention, the ILO “may make suitable arrangements for such consultation as it may think desirable with recognized non-governmental international organizations, including international organizations of employers, workers, agriculturists and cooperators”.<sup>136</sup>

Some institutions permit duly accredited NGOs to attend and observe certain meetings of their governing bodies (such as WTO, WIPO and the ILO). Most often the institution’s secretariat has the task of carrying out accreditation according to broad criteria which, in most cases, require applicants to demonstrate that their activities are related to those of the institution. A roster of NGOs is then approved, either by the secretariat or by the governing body itself.

In the WTO, NGOs whose activities are “concerned with matters related to those of the WTO” are permitted to attend plenary sessions of the Ministerial Conference as observers. There is no observer status for NGOs in the councils, committees and bodies that manage the day-to-day deliberation of the WTO. NGOs seeking accreditation to the Ministerial Conferences apply in writing to the Secretariat.<sup>137</sup> A roster of accredited NGOs is circulated to the governments for “information” in advance of each meeting of the WTO Ministerial Conference. There is no opportunity for

<sup>134</sup> Convention establishing the World Intellectual Property Organization, Article 13 („Relations with Other Organizations“).

<sup>135</sup> WIPO General Rules of Procedure, Rule 8 (bodies to decide who to invite from organisations as observers); Rule 48 (participants in ad hoc committees of experts).

<sup>136</sup> ILO Constitution and Declaration of Philadelphia, paragraph 3.

<sup>137</sup> In accordance with Marrakesh Agreement, Article V.2. See also WTO and NGOs, Relations with Non-Governmental Organizations/Civil Society [http://www.wto.org/english/forums\\_e/ngo\\_e/intro\\_e.htm](http://www.wto.org/english/forums_e/ngo_e/intro_e.htm).

the Members to refuse accreditation to an NGO that has been approved by the WTO Secretariat.<sup>138</sup>

Pursuant to powers granted by the OECD Convention,<sup>139</sup> the OECD Council has decided that any “international non-governmental organisation” may be consulted by the OECD provided it (1) has wide responsibilities in general economic matters or in a specific economic sector, (2) has affiliated bodies belonging to all or most of the Member countries in the OECD and (3) substantially represents the non-governmental interests in the field or sector in question.<sup>140</sup> The OECD has officially recognised the Business and Industry Advisory Committee (BIAC) and the Trade Union Advisory Committee (TUAC), both independent umbrella organizations formed to represent business and labour within the OECD.<sup>141</sup> BIAC and TUAC’s consultative status permits them to follow the work of the OECD committees and they are consulted prior to the annual ministerial meetings.<sup>142</sup> Other international NGOs falling within the consultative criteria may be consulted on an *ad hoc* basis.<sup>143</sup> In certain circumstances, OECD Council decisions may require committees to consult with BIAC and TUAC or other NGOs. For example, in its decision on the OECD Guidelines for Multinational Enterprises, the Council required the OECD’s Committee on International Investment and Multinational Enter-

<sup>138</sup> Minutes of the WTO General Council Meeting in preparation for the WTO 1999 Seattle Ministerial Conference, WT/GC/M/40/Add.3, 5 July 1999, p. 27; see also WTO and NGOs, Relations with Non-Governmental Organizations/Civil Society [http://www.wto.org/english/forums\\_e/ngo\\_e/intro\\_e.htm](http://www.wto.org/english/forums_e/ngo_e/intro_e.htm).

<sup>139</sup> Article 12, Convention on the Organisation for Economic Co-operation and Development.

<sup>140</sup> Decision of the Council on Relations with International Non-Governmental Organisations, 13 March 1962 [C(62)45], as amended.

<sup>141</sup> BIAC has approximately 40 members consisting of one or more industry associations from each of the 29 OECD Members. TUAC’s affiliates consist of over 55 national trade union centres in the 29 OECD Members, representing some 70 million workers. See <http://www.biac.org>; <http://www.tuac.org>.

<sup>142</sup> See ICTSD (1999: 12).

<sup>143</sup> *Ibid.*

prises (CIME)<sup>144</sup> to invite an expression of views from BIAC, TUAC and other NGOs.<sup>145</sup>

WIPO formal procedures provide for both permanent accreditation of NGO observers and *ad hoc* accreditation to WIPO governing body meetings. To qualify as a permanent observer, the NGO must be international in character. Written applications for accreditation must be submitted to the Secretariat which then passes the applications on to the member states who decide whether or not to grant observer status. Under WIPO rules, *ad hoc* NGO observers to subsidiary body or committee meetings are accredited on a case-by-case basis at the discretion of the relevant body or committee members.<sup>146</sup> In addition, non-governmental experts can participate in WIPO policy making through being appointed as consultants or through participation in the Policy Advisory Commission or the Industry Advisory Commission which advise the governing bodies on policy and industry matters.<sup>147</sup>

NGOs may apply for consultative status with the ILO under one of several categories.<sup>148</sup> The first category comprises NGOs with an “important interest in a wide range of ILO activities” which are granted on a general or regional basis.<sup>149</sup> Standing arrangements govern the NGOs with general and regional consultative status. In practice, the NGOs that have satisfied the “important interest” criterion are industry and labour associations.<sup>150</sup> The second category of NGOs with consultative relations with the

<sup>144</sup> CIME is the body responsible for overseeing the functioning of the OECD’s Guidelines for Multinational Enterprises. See Committee on International Investment and Multinational Enterprises (CIME) Terms of Reference, Annex to C(95)223. See also The OECD Guidelines for Multinational Enterprises, and <http://www.oecd.org/daf/investment/guidelines/faq.htm>.

<sup>145</sup> See Decision of the Council on the OECD Guidelines for Multinational Enterprises, C(2000)96/FINAL, para II.2.

<sup>146</sup> See WIPO General Rules of Procedure.

<sup>147</sup> See ‘About WIPO, General Information’ [http://www.wipo.org/about-wipo/en/index.html?wipo\\_content\\_frame=report.html](http://www.wipo.org/about-wipo/en/index.html?wipo_content_frame=report.html); see also 1999 Annual Report, p.33, [http://www.wipo.org/about-wipo/en/index.html?wipo\\_content\\_frame=report.html](http://www.wipo.org/about-wipo/en/index.html?wipo_content_frame=report.html).

<sup>148</sup> See ‘Relations with the non-governmental sector’, <http://www.ilo.org/public/english/comp/civil/ngo/relnngios.htm>.

<sup>149</sup> *Ibid.* Currently 8 and 16 important interest NGOs with general and regional consultative status respectively.

<sup>150</sup> Lists of NGOs with general and regional consultative status, <http://www.ilo.org/public/english/comp/civil/ngo/ngogen.htm> and <http://www.ilo.org/public/english/comp/civil/ngo/ngoreg.htm>.

ILO are those qualifying for the Special List of Non-Governmental Organisations which includes “international NGOs other than employers and workers organisations which also share the principles and objectives” embodied in the ILO’s constitutional documents.<sup>151</sup> NGOs wishing to be admitted to the Special List must make a written application to the ILO Director-General and comply with formal requirements.<sup>152</sup> The third category of NGOs permitted to participate in meetings of the ILO’s governing body are those expressing an interest in being invited to the ILO Conferences. To obtain *ad hoc* accreditation, NGOs must comply with formal application requirements and make their applications no less than one month before the Conference.<sup>153</sup> The applicant NGOs must demonstrate the international nature of their composition and activities, have aims and objectives that are in harmony with the spirit, aims and principles of the ILO and formally express a clearly defined interest in one of the items on the Conference agenda.<sup>154</sup> The ILO Office considers the applications and, if they meet the prescribed conditions, the requests are passed on to the governing body for a final determination.<sup>155</sup>

In the ISO, NGOs may have an opportunity to participate in technical committees in their capacity as a representative of a national body (participating (“P”) organisations),<sup>156</sup> as observer (“O”) or liaison (“L”) organisations or as individual experts.<sup>157</sup> Liaison organisations are further categorised as either A, B, C or D international or broadly based regional organisations.<sup>158</sup> Generally, NGOs participate as either national delegates or liaison organisations.<sup>159</sup> Certain ISO technical committees have devel-

<sup>151</sup> See ‘Relations with the non-governmental sector’, <http://www.ilo.org/public/english/comp/civil/ngo/relnngios.htm>.

<sup>152</sup> See ‘ILO Special List of Non-Governmental International Organizations’ for applications requirements and a list of the organisations presently include on the Special List <http://www.ilo.org/public/english/bureau/exrel/civil/ngo/index.htm>.

<sup>153</sup> Information Note : Representation of international non-governmental organizations at the International Labour Conference.

<sup>154</sup> *Ibid.*

<sup>155</sup> *Ibid.*

<sup>156</sup> Rights of members discussed above, see footnote 233 and accompanying text.

<sup>157</sup> See the ISO website information, introducing the ISO Technical Committee on Environmental Management at <http://www.tc207.org/aboutTC207/index.html>, p.4.

<sup>158</sup> Section 1.17.2., ISO/IEC Directives, Part I.

<sup>159</sup> *Ibid.* For national delegation participation, see e.g. Standards Council of Canada, administered by Canada Standards Association, <http://www.csa.ca>; see also Pacific Institute, participant in US national delegation, <http://www.pacinst.org>.

oped specific procedures for consultation with NGOs. For example, the NGO Task Group of the ISO Technical Committee on Environmental Management (ISO/TC 207) provides for structured consultation with NGOs.<sup>160</sup>

A side agreement to the North American Free Trade Agreement (NAFTA), the North American Agreement on Environmental Cooperation (NAAEC),<sup>161</sup> establishes the Commission for Environmental Co-operation (CEC)<sup>162</sup> comprising a Council, a Secretariat and the Joint Public Advisory Committee. NAAEC Article 14 provides that the Secretariat may consider NGO submissions asserting failure of a Party to enforce its environmental laws (as required by Article 5 of the NAAEC) which may prompt an inquiry by the Secretariat in certain circumstances. The Joint Public Advisory Committee is a body of fifteen citizens and gives the Council advice on any matter that falls within the scope of NAAEC. Under Article 17 of the NAAEC, each party may also establish a national advisory committee to advise its government on the implementation and further implementation of the NAAEC. The national advisory committee is comprised of members from the public, including representatives of non-governmental organisations and persons.<sup>163</sup>

As regards institutions involved in the design, funding and implementation of projects and lending in support of macroeconomic policy objectives, the World Bank comprises five closely associated financial institutions and is “owned” by 183 member ‘shareholder’ countries represented by a Board of Governors and a Board of Directors.<sup>164</sup> A primary function of the World Bank and other public international development banks is to help design, fund and implement projects within member countries that are eligible for assistance. This function is carried out by the Bank’s management staff which works with the “host country” in identifying projects that are consistent with that country’s development strategy, as well as with the Bank’s operational and financial guidelines. Once developed, projects are

<sup>160</sup> See the Ecologia web site concerning the ISO 14000 NGO Initiative to form the NGO Task Group at <http://ecologia.org/iso14000/initiative/taskgroup.html>.

<sup>161</sup> It is also sometimes called the Environmental Side Agreement (ESA).

<sup>162</sup> The web site of the Commission for Environmental Co-operation can be found at <http://www.cec.org>.

<sup>163</sup> For the web pages of the Canadian National Advisory Committee, see <http://www.naaec.gc.ca/english/nac/index.htm>; for the US, see <http://www.epa.gov/ocempage/overview.htm>.

<sup>164</sup> See <http://www.worldbank.org/html/extdr/about/index.htm>.

approved for funding by the Bank’s Board of Executive Directors.<sup>165</sup> NGOs do not have the right or the possibility to attend or participate in the approval process of the World Bank, although NGOs can participate as agencies that contract to implement Bank-funded projects.<sup>166</sup> In its consultations with civil society, the World Bank staff is guided by a ‘good practice’ policy and general guidelines developed by the Bank.<sup>167</sup> In addition, the World Bank is a GEF Implementing Agency and as such, it replicates GEF policies on stakeholder project participation.<sup>168</sup>

The World Bank and the IMF participate together in lending programs in support of macroeconomic policy objectives. These loans come in many forms, but are best known in the context of support for “structural adjustment”. They combine large, short-term credits of hard currency, with undertakings from the borrower to carry out large-scale changes in economic and social policy. The main terms of these agreements, set out in “letters of intent”, are negotiated between IMF or World Bank staff and the borrowing country, and are approved by the IMF’s or World Bank’s Board of Executive Directors.<sup>169</sup> Although the NGO movement has been active in criticising the lending practices of the World Bank and the IMF, there is no formal participation for civil society representatives in any aspect of this decision-making process.<sup>170</sup> NGO participation, especially in IMF

<sup>165</sup> World Bank, ‘What We Do – Projects/Lending – Project Cycle’ <http://www.worldbank.org/infoshop/projectcycle.htm>.

<sup>166</sup> See Non-Governmental Organisations and Civil Society <http://wbln0018.worldbank.org/essd/essd.nsf/NGOs/home>.

<sup>167</sup> World Bank (2000a); World Bank (2000c).

<sup>168</sup> *Ibid.*

<sup>169</sup> See The IMF at a Glance: A Factsheet, March 2001 <http://www.imf.org/external/np/exr/facts/glance.htm>; What is the International Monetary Fund? Revised September 1998 <http://www.imf.org/external/pubs/ft/exrp/what.htm>; The Unique Nature of the Responsibilities of the IMF Manuel Guitián <http://www.imf.org/external/pubs/ft/pam/pam46/pam46con.htm>; How We Lend: A Factsheet March 2001 <http://www.imf.org/external/np/exr/facts/howlend.htm>. It has to be noted that these lending operations are currently under review, with view to re-establishing a clear division of IMF and World Bank responsibilities and tasks in structural adjustment after a so-called “mission creep” led to a broadening of agendas, mainly at the IMF, and loan conditionalities in structural adjustment. In order to ensure that borrower countries undertake sustainable macroeconomic reforms, the IMF prescribed a number of loan conditionalities with a longer-term macroeconomic perspective and thereby entered the policy realm of the World Bank.

<sup>170</sup> See e.g. Friends of the Earth’s Greening the IMF campaign, <http://www.foe.org/international/imf/>.

structural adjustment policies, is restricted to consultations between governments and civil society organisations in the context of “Poverty Reduction Strategy Papers” (PRSPs). This new policy instrument has been introduced in 1999 in the context of the debt relief campaign targeted at heavily indebted poor countries (HIPC). PRSPs are now mandatory for low income and heavily indebted poor countries (some 70 countries are eligible) in order to receive cross-sectoral funding from the World Bank and/or the IMF. PRSPs also foresee consultations between the government and NGOs and the active participation of civil society organisation in drafting policy approaches for structural adjustment aiming at poverty reduction. However, the quality of the consultation and participation depends to a large extent on the interest and capacities of the loan receiving government and NGOs. In addition, any participation by NGOs in the IMF’s surveillance procedures under Article IV must be done through the national governments that are subject to review.<sup>171</sup> Nevertheless, in comparison to other important intergovernmental organisations, the World Bank opened up quite early to NGOs and adopted a number of important policies towards NGO participation. Therefore, the critique mainly addresses the failure of these policies or the World Bank’s neglecting to apply them.<sup>172</sup>

The World Bank and other regional development banks have begun to recognise the special role of NGOs in ensuring that projects are being implemented in a manner consistent with the Bank’s operational policies, particularly those related to environmental and social concerns. Private citizens based in host countries “who believe that they or their interests have been or could be directly harmed by a project financed by the World Bank” can make an application for inspection by the World Bank Inspection Panel.<sup>173</sup> However, the process is flawed to the extent that the Executive Board has to agree to an investigation. Therefore, the Inspection Panel is severely restricted in its independence and the World Bank has significant discretion in deciding whether a case needs inspection or not.<sup>174</sup>

The IMF is gradually opening to NGOs but its rules and procedures for the facilitation of NGO participation are not as far developed as the World Bank’s. It does not have any internal operational or safeguard policies

<sup>171</sup> See IMF Surveillance: A Factsheet March 2001 <http://www.imf.org/external/np/exr/facts/surv.htm>; see also ICTSD (1999: 15).

<sup>172</sup> Schlemmer-Schulte (2001); see also section 3.4 on the World Bank below.

<sup>173</sup> See World Bank Inspection Panel, <http://wbln0018.worldbank.org/ipn/ipnweb.nsf>.

<sup>174</sup> Bradlow (2001).

comparable to those of the World Bank, neither does it incorporate an institution comparable to the World Bank Inspection Panel. However, it does have an NGO liaison office and actively invites NGOs to its conferences on themes such as “macroeconomics and poverty reduction”.<sup>175</sup>

In the case of international economic institutions with mechanisms for dispute settlement, only members of the institutions may bring a dispute, and only parties to that dispute are permitted to attend and participate in the proceedings, which are closed to the public (WTO, WIPO and NAFTA).<sup>176</sup>

### Active participation

Once accredited, NGO attendance is often limited to formal, plenary sessions and NGO representatives are not allowed to speak or to approach delegations during the debates.

Of those economic institutions that allow NGO observers (WTO, ILO, ISO and WIPO), none give NGO observers the right to participate actively in deliberations or make oral statements to their governing bodies. The WTO, for example, has never permitted NGO participation in the working meetings of its various council, committees and bodies.<sup>177</sup> Accredited NGOs are, however, able to attend the annual or biennial Ministerial Conferences, “without the right to speak”.<sup>178</sup>

Nevertheless, some economic institutions provide for NGO observers to make statements at meetings at the invitation of the members. For example, observers to WIPO meetings are permitted to take part in the debates at the invitation of the Chairman although observers “shall not submit proposals, amendments or motions”.<sup>179</sup> Note also that L-organisations are permitted to address members in TC 207 meetings.<sup>180</sup>

The OECD’s CIME shall “periodically invite” BIAC and TUAC, as well as other NGOs, “to express their views on matters covered by the Guidelines on Multinational Enterprises.” BIAC and TUAC may request a

<sup>175</sup> See [www.imf.org/external/NP/Res/seminars/2002/poverty/index.htm](http://www.imf.org/external/NP/Res/seminars/2002/poverty/index.htm).

<sup>176</sup> See discussion below concerning submission of *amicus curiae* briefs by non-parties.

<sup>177</sup> Guidelines for arrangements on relations with non-governmental organizations adopted by the General Council on 18 July 1996. WT/L/162. ([http://www.wto.org/english/forums\\_e/ngo\\_e/wtdocs\\_e.htm](http://www.wto.org/english/forums_e/ngo_e/wtdocs_e.htm)).

<sup>178</sup> See above, in this section.

<sup>179</sup> WIPO General Rules of Procedure, Geneva 1998, 399 (FE) Rev. 3, Rule 24.

<sup>180</sup> Derived from the formal requirement that TCs seek L-organisations’ “full and formal backing”, Section 1.17.5, ISO/IEC Directives (2001).

meeting with CIME.<sup>181</sup> Finally, the CIME, when preparing its report to the OECD's governing Council, "shall take account of reports [...] the views expressed by the advisory bodies, and the views of other non-governmental organisations [...] as appropriate."<sup>182</sup>

#### Written submissions, dissemination of documents, funding and duties

For the most part, NGOs do not have formal "rights" to make written submissions, to distribute documents or to funding for the attendance of NGOs at governing or administrative bodies in economic institutions with government-only membership. Moreover, economic institutions generally do not impose "duties" on NGOs.

Under the OECD's decision on the OECD Guidelines for Multinational Enterprises, an individual enterprise attending a CIME meeting "will be given the opportunity to express its views either orally or in writing on issues concerning the Guidelines involving its interests." This opportunity is extended to relevant enterprises despite the fact that the CIME is "precluded from reaching conclusions on the conduct of individual enterprises."<sup>183</sup>

The WTO dispute settlement understanding – by far the most active of all international economic institutions – recognises the importance of the non-governmental community in providing arbitral panels with the expertise necessary to effectively resolve complex trade disputes. The dispute settlement understanding therefore provides these panels with the "right to seek information and technical advice from any individual or body which it deems appropriate."<sup>184</sup> The Panel must, before it contacts a body within the jurisdiction of a Member, inform the Member's authorities, but the Member cannot prevent the panel from receiving such information. This right rests with the Panel seeking the information and not with the individual or body, and it is generally considered that NGOs have no right to submit information that has not been solicited. The WTO Appellate Body has ruled that both it and the WTO Panels have the right, but not the duty, to receive information from NGOs that has not been solicited and, in one case, it has issued a special procedure for non-parties to a dispute to request permission to file a legal submission (although none of the 17 re-

<sup>181</sup> Decision of the Council on the OECD Guidelines for Multinational Enterprises, para II.2.

<sup>182</sup> *Id.*, para II.7.

<sup>183</sup> *Id.*, para II.4.

<sup>184</sup> WTO Dispute Settlement Understanding, Article 13.

quests received were granted).<sup>185</sup> At least one NAFTA arbitration panel has also proved willing to consider *amicus* submissions.<sup>186</sup>

For projects funded through the World Bank, budget lines may be allocated to stakeholder consultation in the design and implementation of projects and NGOs may be able to access funding in their capacity as stakeholders.<sup>187</sup> In addition, the World Bank Small Grants Program also provides funding to civil society organisations to "promote dialogue and dissemination of information on development and enhance partnerships with key players in the development arena."<sup>188</sup> World Bank Social Funds might provide indirect sources of funding for local NGOs participating in Social Fund projects.<sup>189</sup>

Where NGOs are represented on national standard-setting bodies from developing country members, they might be able to access funding through the ISO Taskforce for Developing Countries. Beneficiaries may

<sup>185</sup> United States – Import Prohibition of Shrimp and Shrimp Products, Report of the Appellate Body adopted 6 November 1998, WT/DS58/AB/R, 106-7; United States – Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom, Report of the Appellate Body adopted 7 June 2000, WT/DS138/AB/R, para. 39. Members of the Appellate Body concluded that 'as long as [they] act consistently with the provisions of the dispute settlement understanding and the covered agreements, [they] have the legal authority to decide whether or not to accept and consider any information that [they] believe is pertinent and useful in an appeal'; See also *European Communities – Measures Affecting Asbestos and Asbestos-Containing Products*, Additional Procedure Adopted Under Rule 16(1) of the Working Procedures for Appellate Review AB-2000-11, 8 November 2000, WT/DS135/9; Working Procedures for Appellate Review, 28 February 1997, WT/AB/WP/3, drawn up pursuant to Article 17.9 of the Understanding on Rules and Procedures Governing the Settlement of Disputes; *European Communities – Measures Affecting Asbestos and Asbestos-Containing Products*, Report of the Appellate Body, 12 March 2001, WT/DS135/AB/R, paras 55-6.

<sup>186</sup> See *In the Matter of an Arbitration under Chapter 11 of the North American Free Trade Agreement and the UNCITRAL Arbitration Rules, Methanex Corporation v. United States of America*, Decision of the Tribunal on Petitions from Third Persons to Intervene as '*Amicus Curiae*', 15 January 2001, para. 49, available at <[http://www.iisd.org/trade/investment\\_regime.htm](http://www.iisd.org/trade/investment_regime.htm)>.

<sup>187</sup> See Porter et. al. (1997).

<sup>188</sup> About the Small Grants Program, <http://wbln0018.worldbank.org/essd/essd.nsf/d3f59aa3a570f67a852567cf00695688/3fcaee31805c0796852567ed004c48e8?OpenDocument>.

<sup>189</sup> See 'The World Bank and Social Funds', <http://wbln0018.worldbank.org/HDDNet/HDDocs.nsf/2d5135ecbf351de6852566a90069b8b6/427062622b8e150e8525688b0079ded8?OpenDocument>.

be whichever body developing countries wish to put forward as their national standard-setting body. However, these are not usually NGOs.<sup>190</sup>

Where NGOs are recipients of funding, there might be duties associated with the purpose for which they are receiving funds. In the ISO, reciprocity of information is a requirement of the ISO Directives.<sup>191</sup> Therefore, the right to receive technical committee and subcommittee reports and attend meetings, provided for under Section 1.17.2, obliges NGOs to provide the ISO with equivalent relevant information.

### Voting rights

Other than the economic institutions with NGO members (ILO and ISO), none of the economic institutions extend voting rights to NGO observers or accredited NGOs. The WIPO Rules of Procedure expressly state that observers shall have no voting rights.<sup>192</sup>

In the ILO Conference, each delegate is entitled to vote individually; however, if a Member State has failed to nominate either a worker or employer delegate, the other non-government delegate will not be entitled to vote.<sup>193</sup> Employer and worker delegates can vote on instructions from their organisations and are free to vote against the government delegates on their national delegation.<sup>194</sup>

ISO members take decisions by consensus.<sup>195</sup> The situation for ‘observer NGOs’ in ISO technical committees is ambiguous under the relevant governing instrument. Part 1 of the ISO/IEC Directive provides that “Technical committees and subcommittees shall seek the full and, if possible, formal backing of the organisations having A-liaison status for each International Standard in which the latter are interested.”<sup>196</sup> It is not clear whether “full and formal backing” amounts to voting rights for category “A” liaison organisations. L-organisations have been granted voting rights at the level of subcommittee meetings.<sup>197</sup>

<sup>190</sup> *Ibid.*

<sup>191</sup> Section 1.17.4 of the ISO Directives, sets out that „liaison must operate in both directions, with suitable reciprocal arrangements“.

<sup>192</sup> WIPO General Rules of Procedure, Geneva 1998, 399 (FE) Rev. 3, Rule 39.

<sup>193</sup> ILO Constitution, Article 4.

<sup>194</sup> See <http://www.ilo.org/public/english/about/index.htm>.

<sup>195</sup> See <http://www.iso.ch/infoe/intro.htm>.

<sup>196</sup> Section 1.17.5, Part 1 of the ISO Directives.

<sup>197</sup> See e.g. Business Plan for TC 207/SC 3, Environmental Labelling, N207, revised March 2001.

### 2.2.2.2 Practice

Other than NGO members of the ILO and ISO, NGOs have no legal rights in economic institutions. NGO participation is at the discretion of the government members of the government-only economic institutions and the discretionary powers granted to members to consult and co-operate with NGOs have been exercised to varying degrees in each of the international economic institutions.

The level of NGO attendance at meetings and NGO accreditation to the international economic institutions is, to some extent, a reflection of the extent to which NGOs have made use of their opportunities to participate in these institutions. Almost 750 NGOs were accredited to the WTO’s Ministerial in Seattle 1999 and 647 NGOs were accredited to the recent Ministerial in Doha 2001.<sup>198</sup> However, only approximately half of those accredited actually attended and only 20 tickets to attend the plenary sessions were made available to them, on a first-come-first-served basis.<sup>199</sup> In addition to TUAC and BIAC, the OECD has recognised the International Federation of Agricultural Producers, the European Confederation of Agriculture and the International Association of Crafts and Small and Medium-Sized Enterprises.<sup>200</sup> In 1999, there were 159 permanent NGO observers in the WIPO.<sup>201</sup> In the ILO, there are 24 NGOs with general and regional consultative status and over 150 NGOs with a wide variety of social and public interest missions on the Special List.<sup>202</sup>

However, NGO participation generally occurs in informal contexts which makes it difficult to gauge the level of participation. For example, several of the economic institutions provide for informal consultations or briefings with either governing or administrative bodies to which NGOs are invited and provided the opportunity to make written or oral submissions. However, such submissions generally have no formal status. The submission of such contributions does not create a procedural obligation on the institution to consider their content.

Informal consultations occur to some degree in each of the international economic institutions. For example, the WTO arranges symposia

<sup>198</sup> See the WTO Website, <http://www.wto.org/english/forumse/ngoe/ngoinseattle.htm>; [http://www.wto.org/english/news\\_e/pres01\\_e/pr240\\_e.htm](http://www.wto.org/english/news_e/pres01_e/pr240_e.htm).

<sup>199</sup> Bridges Daily Update, 10 November 2001, Issue 1, <http://www.ictsd.org>.

<sup>200</sup> Pursuant to a Council Decision in March 1962, see ICTSD (1999: 12).

<sup>201</sup> 1999 Annual Report, p.33, [http://www.wipo.org/about-wipo/en/index.html?wipo\\_content\\_frame=report.html](http://www.wipo.org/about-wipo/en/index.html?wipo_content_frame=report.html).

<sup>202</sup> See <http://www.ilo.org/public/english/comp/civil/ngo/relngios.htm>.

and issue-specific briefings<sup>203</sup> along with pre-Ministerial briefings and information sessions during the Ministerials.<sup>204</sup> The OECD's governing body committees or divisions of the Secretariat conduct *ad hoc* consultations with NGOs and they communicate with labour unions and industry through the Trade Union Advisory Committee and the Business and Industry Advisory Committee.<sup>205</sup> Together with CIME, the OECD's Development Assistance Committee is another forum through which NGOs may be consulted by OECD members on issues related to co-operation with developing countries.<sup>206</sup> In October 2000, the Trade Committee held an informal consultation with 24 NGOs representing business, labour, environmental, development and consumer points of view on the issue of

<sup>203</sup> For example, in March 1999, the WTO organised a High Level Symposium on Trade and Environment and Trade and Development, „with a high level of participation by both governments and NGOs“. WTO Press Release PRESS/123 of 1 March 1999. The objective of the symposium was to provide „participants with the opportunity to improve their understanding of how the WTO works and how the organization is addressing the issues of trade and environment and development.“; the symposium was well attended and claimed a successful initiative by the WTO (see the WTO website, [http://www.wto.org/english/tratop e/envir\\_e/sumhlevn.htm](http://www.wto.org/english/tratop e/envir_e/sumhlevn.htm)). Again in July, 2001, the WTO arranged a symposium “on critical issues confronting the world trading system” (see WTO website, [http://www.wto.org/english/forums\\_e/ngo\\_e/ngo\\_symp\\_2001\\_e.htm](http://www.wto.org/english/forums_e/ngo_e/ngo_symp_2001_e.htm)): “Approximately 450 representatives of non-governmental organizations (NGOs), governments, businesses, academia and the media attended the WTO Symposium, which served as a forum for the exchange of views on critical issues confronting the world trading system. Participants met in plenary sessions and convened in work sessions focusing on: agriculture; food safety and sanitary and phytosanitary standards; trade related intellectual property rights (TRIPS) - access to essential medicines and biotechnology/biodiversity; trade and environment; trade in services; and WTO and civil society. During the closing plenary, the moderators of the work sessions summarized the issues covered during the discussions in each group, highlighting a spectrum of views expressed and noting that the debates had been rich and led to a clearer understanding of the various perspectives on issues confronting the world trading system.” (see the website of the International Institute for Sustainable Development, <http://www.iisd.ca/sd/wto-issues/>).

<sup>204</sup> See e.g. Information Note: WTO Secretariat activities with NGOs WT/INF/30; see also Bridges Daily Updates, November 2001, <http://www.ictsd.org>.

<sup>205</sup> See <http://www.tuac.org/about/about.htm>; [www.biac.org](http://www.biac.org).

<sup>206</sup> See Development Assistance Committee, <http://www.oecd.org/dac/> and [http://www.oecd.org/about/Committee/2000/english/dev\\_eng.pdf](http://www.oecd.org/about/Committee/2000/english/dev_eng.pdf). See also ICTSD (1999: 14).

“Future Challenges for the Multilateral Trading System”.<sup>207</sup> Similar consultations with NGOs have been undertaken on the question of biotechnology and food safety.<sup>208</sup> In the World Bank, the independent network of NGOs forming the NGO Working Group on the World Bank elects members to the NGO-World Bank Committee. The NGO-World Bank Committee comprises NGO and World Bank representatives and acts as a vehicle for the communication of NGO concerns to the World Bank Secretariat.<sup>209</sup> However, many NGOs see this Committee as rather ineffective and rely on their own informal contacts or other NGOs in the Washington D.C. area that are well-connected to World Bank staff.<sup>210</sup> The ILO also conducts NGO briefings that may provide an opportunity for the submission of documents. In the IMF, NGOs may be consulted, through their national governments, in the IMF surveillance procedures under Article IV.<sup>211</sup>

Although NGOs have no rights to distribute documents, practices that facilitate document dissemination by NGOs have developed on an informal basis. For example, NGOs may submit documents to the WTO NGO contact point which are posted on the WTO website on a monthly basis. At WTO Ministerials, accredited NGOs may be provided with stands from which they can distribute information. NGO observers to WIPO meetings are generally permitted to distribute documents at WIPO meetings.<sup>212</sup> The NGO Working Group on the World Bank provides a forum and means for the distribution of documents.<sup>213</sup> NGOs have opportunities to distribute documents at ILO Conferences and meetings.<sup>214</sup>

It should be noted that several of the international economic institutions differentiate between NGOs. As already mentioned, the World Bank

<sup>207</sup> Informal Consultation between the Trade Committee and Non-Governmental Organisations, Aide-Memoire, TD/TC/NGO(2000)1, 20 December 2000.

<sup>208</sup> OECD Consultation with Non-Governmental Organisations on Biotechnology and Other Aspects of Food Safety (20 November 1999), Document C(2000)86/ADD4 dated 12 May 2000.

<sup>209</sup> NGO-World Bank Committee, Joint Resolution Between the World Bank and the NGO Working Group, 6 December 2000; see also ICTSD (1999).

<sup>210</sup> See section 3.4 on World Bank below.

<sup>211</sup> See IMF Surveillance A Factsheet March 2001 <http://www.imf.org/external/np/exr/facts/surv.htm>.

<sup>212</sup> Email correspondence between FIELD and Edward Kwakwa, Assistant Legal Counsel, World Intellectual Property Organization (WIPO), e-mail: [edward.kwakwa@wipo.int](mailto:edward.kwakwa@wipo.int).

<sup>213</sup> See the World Bank's Website, [http://www.worldbank.org/devforum/forum\\_ngowg.html](http://www.worldbank.org/devforum/forum_ngowg.html).

<sup>214</sup> See <http://www.ilo.org/public/english/comp/civil/ngo/relngios.htm>.

distinguishes between advocacy NGOs that participate in policy development and operating NGOs that participate in project implementation.<sup>215</sup> Furthermore, the independent network of NGOs forming the NGO Working Group on the World Bank elects members to the NGO-World Bank Committee. The NGO-World Bank Committee comprises NGO and World Bank representatives and acts as a vehicle for the communication of NGO concerns to the World Bank Secretariat.<sup>216</sup> In the ISO, participants in technical committees are divided into participating (“P”) organisations, observer (“O”) organisations and liaison (“L”) organisations, which are further categorised as either A, B, C or D international or broadly based regional organisations.<sup>217</sup> To the extent that NGOs participate in one of those capacities, the ISO makes distinctions as to the nature of their contribution. Moreover, the ILO has consultative relations with different categories of NGOs – international organisations with an important interest in the ILO principles and objectives, the Special List NGOs and the *ad hoc* invitees to meetings.<sup>218</sup> Organisations deemed to have an important interest in the ILO are worker and employer associations.

Generally, the economic institutions favour NGOs with activities related to those of the organisation with the result that business or labour NGOs have a greater level of participation in some of the institutions than other NGOs. For example, the OECD distinguishes the worker and industry NGOs that participate in the TUAC and BIAC from other general members of civil society.<sup>219</sup> WIPO differentiates between permanent and *ad hoc* NGO observers, and generally favours industry bodies interested in intellectual property protection.<sup>220</sup> WIPO Consultants and participants in the Policy and Industry Advisory Commissions are largely industry representatives. Where the institutions members are industry, in the case of ISO, and industry and labour representatives in the case of ILO, their respective interests are afforded significant weight.

<sup>215</sup> See <http://wbln0018.worldbank.org/essd/essd.nsf/d3f59aa3a570f67a852567cf00695688/ce6b105aaa19360f85256966006c74e3?OpenDocument>.

<sup>216</sup> NGO-World Bank Committee, Joint Resolution Between the World Bank and the NGO Working Group, 6 December 2000; see also ICTSD (1999).

<sup>217</sup> See ISO Directives; see also the ISO website information, introducing the ISO Technical Committee on Environmental Management at <http://www.tc207.org/aboutTC207/index.html>, p.4.

<sup>218</sup> See above, section 2.2.2.1, under „Accreditation and Access“.

<sup>219</sup> See above, section 2.2.2.1, under „Accreditation and Access“.

<sup>220</sup> See above, section 2.2.2.1, under „Accreditation and Access“.

NGOs have not often had an opportunity to use additional channels of influence to perform further functions such as participation in national delegations. NGO representatives have been known to participate in government delegations in the WTO (FIELD) although their participation was strongly resisted by some members and the Secretariat.<sup>221</sup> Where NGOs have been denied access to the policy development and decision-making processes of the international economic institutions, they have been very efficient in co-ordinating NGO networks and developing public campaigns.

The NGO protests at the WTO Ministerials in Geneva and Seattle and meetings of the World Bank and IMF are visible examples of how NGO movements have been effective in drawing public attention to the activities of these institutions and placing pressure on the institutions to develop procedures for public participation, including participation by NGOs. The WTO provided NGO briefings in the lead up to and during the recent Ministerial Conference and, despite ongoing concerns about the provision for NGO participation, the issue of NGO participation is at least being considered by the Members and the Secretariat.<sup>222</sup>

The impact of informal NGO activity has been apparent in OECD activities where NGOs have influenced developments in the negotiation of agreements such as the Multilateral Agreement on Investment (MAI) and the drafting of Guidelines for Multinational Corporations.<sup>223</sup> NGOs tracked the negotiation of both instruments closely, obtained leaked copies of confidential negotiating texts and were able to apply pressure through the media, the public and sympathetic delegations.<sup>224</sup>

The OECD's negotiations on the MAI to govern foreign direct investment were announced in 1995 and were initially conducted on a confidential basis without the participation of NGOs external to the OECD. Following the Internet publication of the leaked MAI negotiating text in August 1997, NGOs – representing development, consumer, labour, environment and indigenous interests – started a concerted campaign criticising both the closed negotiating process and the draft MAI text itself.<sup>225</sup>

<sup>221</sup> See e.g. Chaytor (2000: 89).

<sup>222</sup> See WTO, [http://www.wto.org/english/forums\\_e/ngo\\_e/briefs\\_e.htm](http://www.wto.org/english/forums_e/ngo_e/briefs_e.htm); see also BRIDGES Weekly Trade News Digest - Vol. 5, Number 17 8 May, 2001.

<sup>223</sup> Friends of the Earth Justice Files, MAI, <http://www.foe.org/international/mai/>; WWF Press release [http://www.panda.org/news/press/archive/news\\_195.htm](http://www.panda.org/news/press/archive/news_195.htm).

<sup>224</sup> See e.g. discussion of public controversy over the Multilateral Agreement on Investment in Trebilcock and Howse (1999: 362f).

<sup>225</sup> See Muchlinski (2000); see generally Mabey (1999); Henderson (1999).

NGOs raised awareness of the one-sided nature of the MAI, in terms of protecting investors without imposing reciprocal obligations on them, and the MAI's failure to address development needs or protections for the environment or labour.<sup>226</sup> The NGO campaign led to the first formal OECD-NGO consultation on the MAI in 1997 and produced a joint statement which was endorsed by over 600 public interest NGOs.<sup>227</sup> Although NGO positions prompted governments to propose draft text on matters such as environment and labour standards, the NGO campaigns had "made the MAI a prominent and sensitive political issue"<sup>228</sup> which became impossible for the OECD governments to justify, and contributed to the collapse of the MAI negotiations in 1998.<sup>229</sup>

Participation of NGOs in World Bank operations and projects have contributed to increased transparency and the integration of broad social and environmental concerns in World Bank decision-making. NGOs have, nevertheless, been vocal in their criticism of the World Bank. For example, in March 2001, NGOs protested against the World Bank's refusal to adopt the guidelines outlined in the World Commission on Dams report for the purposes of financing new dam projects.<sup>230</sup> The NGOs pointed out that the World Bank's response to the recommendations of the World Dams report threatened the legitimacy of multi-stakeholder processes promoted by the World Bank.<sup>231</sup>

NGOs have also been highly critical of the IMF. For example, Friends of the Earth have established a "Greening the IMF" campaign and have published information on IMF activities.<sup>232</sup> The Jubilee 2000 project, an international network of human rights, development and faith-based groups, has been widely credited with shifting the positions of govern-

<sup>226</sup> See Muchlinski (2000) 1039-40 and 1050; see generally Mabey (1999) and Henderson (1999).

<sup>227</sup> See Mabey (1999: 60); for Joint Statement, see <<http://www.web.net/coc/ngostatement.html>>.

<sup>228</sup> Henderson (1999: 47).

<sup>229</sup> See Muchlinski (2000); Mabey (1999); Henderson (1999).

<sup>230</sup> See Berne Declaration and the South Asia Network on Dams, Rivers and People, "NGOs protest against World Bank position on World Dams report", 20 March 2001, [http://www.evb.ch/bd/press/20\\_03\\_01.htm](http://www.evb.ch/bd/press/20_03_01.htm).

<sup>231</sup> *Ibid.*

<sup>232</sup> Friends of the Earth's Greening the IMF campaign and 'Arming NGOs with Knowledge: A Guide to the International Monetary Fund', <http://www.foe.org/international/imf/>.

ments and multilateral donors on debt forgiveness for least-developed countries.<sup>233</sup>

The persistent efforts of NGOs in the submission of *amicus curiae* briefs has led to the emergence of formal procedures governing such submissions and generally contributed to transparency in the trade-related economic institutions such as the WTO and NAFTA.<sup>234</sup>

The International Center for Trade and Sustainable Development (ICTSD) has been very active in developing proposals for transparency in international economic institutions. Its "A Proposed Agreement on Public Participation and Transparency within the WTO" calls for a WTO decision "(a) to establish rules providing for and governing the participation of the public in WTO meetings; (b) to establish rules providing for and governing the participation of the public in WTO dispute settlement procedures."<sup>235</sup>

NGO networks are a significant contributor to effective NGO participation. The restructuring of the NGO World Bank Committee is an example of efforts being made to mainstream NGO participation in the Bank's activities and has mobilised the NGO community through the NGO Working Group on the World Bank.<sup>236</sup> The efforts of the NGO Working Group to draft a formal constitution that provides for democratic participation and regional representation within the network provides a model for NGO co-ordination.<sup>237</sup> However, the experience with the World Bank suggests that such deliberate efforts to integrate NGOs according to the bank's terms are not necessarily effective. The case study suggests that informal Bank-NGO relations and *ad-hoc* NGO coalitions that form around specific topics have more impact in conveying NGO concerns to World Bank staff.<sup>238</sup>

None of the international economic institutions provide funding for NGO participation. In order to address resource impediments to effective

<sup>233</sup> See <http://www.jubilee2000.org/>.

<sup>234</sup> See above, section 2.2.2.1, under "Active Participation"; see also Marceau and Stilwell (2001).

<sup>235</sup> ICTSD A Proposed Agreement on Public Participation and Transparency within the WTO <http://www.ictsd.org/html/annex.htm>.

<sup>236</sup> NGO-World Bank Committee, Joint Resolution Between the World Bank and the NGO Working Group.

<sup>237</sup> Telephone discussions between FIELD and NGO Working Group Secretariat, Institute for Development Research, Boston and Caribbean Policy Development Centre, Barbados, May 2001.

<sup>238</sup> See section 3.4 below.

NGO participation in ISO, the NGO Task Group proposed developing “a mechanism that obtains and sustains funding to support NGO participation in the work of ISO/TC 207 at international and national levels.”<sup>239</sup>

Commentators have also pointed out that even those institutions with a high level of NGO involvement must not rest on their laurels. It has been observed, for example, that NGO participation in the ILO is dominated by industry and worker interests and that it should be improved to provide for participation by NGOs with other interests.<sup>240</sup> Similar comments could be made with respect to several of the other international economic institutions.

### 2.2.3 Other Relevant International Institutions

This section analyses the participation of NGOs in the United Nations Environment Programme (UNEP), the United Nations Economic and Social Council (ECOSOC), the Commission on Sustainable Development (CSD), the United Nations Forum on Forests (UNFF) and the Global Environment Facility (GEF). Each institution in this study has only states and governments as members. Like the economic institutions, these other relevant institutions comprise governing bodies, meeting in plenary or in subsidiary committees or working groups, and administrative bodies headed by a secretariat. Most of the institutions are not funding organisations and their functions are limited to policy development, negotiation and decision-making together with relevant research and analysis. In contrast, the GEF has the additional function of designing, funding and implementing projects.

#### 2.2.3.1 Legal Provisions

##### Accreditation and access

None of the international institutions reviewed in this section extends rights to NGOs to participate directly in the formal decision-making process of their governing bodies. NGO participation is limited to that of observer status. The founding instruments and rules of procedure for the institutions recommend or permit NGO involvement in policy development or provide for NGO attendance at the governing body meetings. Most often the institution’s secretariat has the task of carrying out accreditation according to broad criteria. A list of NGOs is then approved by the governing body.

<sup>239</sup> See NGO Contact Group Summary Report to the ISO/TC 207 CAG, p.2.

<sup>240</sup> Charnovitz (2001).

The General Assembly resolution establishing UNEP invited “those non-governmental organisations that have an interest in the field of the environment to lend their full support and collaboration to the United Nations with a view to achieving the largest possible degree of co-operation”.<sup>241</sup> In addition, Agenda 21 called on UNEP to concentrate on “[r]aising general awareness and action in the area of environmental protection through collaboration with the general public, non-governmental entities and intergovernmental institutions.”<sup>242</sup> UNEP’s Governing Council has made a series of decisions concerning the role of civil society in its activities.<sup>243</sup> Consistent with the statements of its governing body, UNEP rules of procedure provide that “international non-governmental organisations having an interest in the field of the environment ... may designate representatives to sit as observers at public meetings of the Governing Council and its subsidiary organs”, such as the Committee of Permanent Representatives.<sup>244</sup> The UNEP Governing Council in its Decision SS.VII/5 of February 2002 decided to establish a working party to consider, *inter alia*, extending the invitation to NGOs that are not international.

The UN Charter provides that ECOSOC “may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within [ECOSOC’s] competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned.”<sup>245</sup> Consistent with the UN Charter, an ECOSOC resolution provides for the establishment of consultative relations with NGOs falling within three categories: General, Special and Roster NGOs. NGOs in “General” consultative status are those “concerned with most of the activities of the [ECOSOC Governing] Council and its subsidiary bodies”, NGOs in “Special” consultative status are those who have “a special competence in, and are concerned specifically with, only a few of the fields of activity covered by the [ECOSOC Governing] Council and its subsidiary bodies” and NGOs included in the Roster are those that “can make occasional and useful contributions to the work of

<sup>241</sup> General Assembly Resolution 2997, para IV.5.

<sup>242</sup> Agenda 21, Chapter 38.22(g) International Institutional Arrangements <http://www.un.org/esa/sustdev/agenda21chapter38.htm>.

<sup>243</sup> See e.g. UNEP Governing Council Decision 21/19; UNEP Governing Council Decision 16/7; UNEP Governing Council Decision 18/4.

<sup>244</sup> UNEP, Rules of Procedure, Rule 69.

<sup>245</sup> United Nations Charter, Article 71.

the [ECOSOC Governing] Council or its subsidiary bodies”.<sup>246</sup> International, regional and national non-government organisations “concerned with matters falling within the competence of the Economic and Social Council and its subsidiary bodies” are eligible for ECOSOC consultative status.<sup>247</sup> Other prerequisites for ECOSOC consultative status include having activities relevant to the work of ECOSOC, a democratic decision making mechanism; official registration of at least 2 years and funds derived from contributions from national affiliates, individual members, or other non-governmental components.<sup>248</sup>

The General Assembly resolution establishing the CSD as a functional commission of ECOSOC recommended that the CSD provide for “non-governmental organisations, including those related to major groups as

<sup>246</sup> ECOSOC Resolution 1996/31. It provides in Part III:

22. Organizations that are concerned with most of the activities of the Council and its subsidiary bodies and can demonstrate to the satisfaction of the Council that they have substantive and sustained contributions to make to the achievement of the objectives of the United Nations in fields set out in paragraph 1 above [matters falling within the competence of the Economic and Social Council and its subsidiary bodies], and are closely involved with the economic and social life of the peoples of the areas they represent and whose membership, which should be considerable, is broadly representative of major segments of society in a large number of countries in different regions of the world shall be known as organizations in general consultative status.
23. Organizations that have a special competence in, and are concerned specifically with, only a few of the fields of activity covered by the Council and its subsidiary bodies, and that are known within the fields for which they have or seek consultative status shall be known as organizations in special consultative status.
24. Other organizations that do not have general or special consultative status but that the Council, or the Secretary-General of the United Nations in consultation with the Council or its Committee on Non-Governmental Organizations, considers can make occasional and useful contributions to the work of the Council or its subsidiary bodies or other United Nations bodies within their competence shall be included in a list (to be known as the Roster). This list may also include organizations in consultative status or a similar relationship with a specialized agency or a United Nations body. These organizations shall be available for consultation at the request of the Council or its subsidiary bodies. The fact that an organization is on the Roster shall not in itself be regarded as a qualification for general or special consultative status should an organization seek such status.”

<sup>247</sup> *Ibid.*, para 4.

<sup>248</sup> *Ibid.*

well as to industry and the scientific and business communities, to participate effectively in [the CSD’s] work and contribute within their areas of competence to [the CSD’s] deliberations”.<sup>249</sup> The reference to “major groups” recalls Agenda 21 categories of major stakeholders in environmental protection which includes NGOs.<sup>250</sup> A subsequent decision of ECOSOC adopted arrangements for representation of and consultation with non-governmental organizations in the CSD.<sup>251</sup> NGOs with ECOSOC consultative status are permitted to attend CSD governing body meetings and there is an additional list of NGOs accredited to CSD that do not have or are in the process of applying for ECOSOC consultative status.<sup>252</sup>

The ECOSOC resolution establishing the UNFF provides for the involvement of “relevant international and regional organizations [...] as well as major groups, as identified in the Agenda 21”.<sup>253</sup> It further provides that UNFF shall operate under the rules of procedure of the ECOSOC functional commissions.<sup>254</sup> NGOs with consultative status with ECOSOC will be permitted to attend the first session of the UNFF.<sup>255</sup>

The GEF founding instrument provides for the making of arrangements “for GEF project preparation and execution by [...] non-governmental organizations, private sector entities and academic institutions”.<sup>256</sup>

Accreditation procedures for each of the institutions have been developed by their respective administrative bodies.

<sup>249</sup> General Assembly Resolution 47/191, paragraph 7(b).

<sup>250</sup> Agenda 21, Chapter 27 ‘Strengthening the role of non-governmental organisations: Partners for sustainable development’.

<sup>251</sup> ECOSOC Decision 1993/215; see also ECOSOC Note by the Secretary-General, Representation of and Consultation with Non-Governmental Organizations in the Commission on Sustainable Development, E/1993/65.

<sup>252</sup> See ECOSOC Decision 1993/215. See also List of Non-Governmental Organizations Accredited to the Commission on Sustainable Development, E/CN.17/1994/INF/1.

<sup>253</sup> ECOSOC Resolution E/2000/35, Paragraph 4(a).

<sup>254</sup> *Ibid.*, para 4(b).

<sup>255</sup> See Registration Procedures, [http://www.un.org/esa/sustdev/unff\\_2001\\_fsm.htm#RegistrationProcedure](http://www.un.org/esa/sustdev/unff_2001_fsm.htm#RegistrationProcedure).

<sup>256</sup> See Instrument for the Establishment of the Restructured GEF (1994) paragraph 28 <http://www.gefweb.org/Documents/Instrument/instrument.html>; see also The New Delhi Statement of the First GEF Assembly, 15 April 1998 paragraph 2 (<http://www.gefweb.org/Assembly/Eng/html/statement.htm>).

UNEP's newly formed Civil Society and NGO Unit in UNEP's Division of Policy Development and Law maintains a list of accreditation guidelines which are made available to NGOs expressing an interest in becoming accredited.<sup>257</sup>

NGOs seeking consultative status with ECOSOC must send a letter of intent to the secretariat (the NGO Section of ECOSOC's Department of Economic and Social Affairs). The letter must be on the organisation's letterhead and signed by its secretary-general or president. The applicant NGO is then required to complete a questionnaire and provide background documents. Applications are screened by the secretariat and then forwarded to the Committee on Non-Governmental Organisations, which then submits its recommendations for approval to the ECOSOC Council for final determination.<sup>258</sup>

NGOs with ECOSOC consultative status, and those on the CSD List, wishing to attend the CSD and UNFF meetings must register with the ECOSOC and UNFF secretariats respectively.<sup>259</sup>

GEF NGO accreditation procedures are subject to the fulfilment of formal requirements and a description of the NGO's relevance to the work of the GEF. Applications are made to and decided by the Secretariat.<sup>260</sup> Attendance at the Council meetings is limited to ten NGOs that are 'self-selected' through the GEF-NGO Network co-ordinated by NGO-GEF Regional and Central Focal Points.<sup>261</sup>

#### Written submissions, distribution of documents, active participation, and duties

Each of the other international institutions permit accredited NGOs to make written submissions to their governing bodies in certain circum-

<sup>257</sup> Telephone discussion between FIELD and UNEP's NGO-Civil Society Unit, Mr Subramonia Ananthakrishnan, May 2001.

<sup>258</sup> See 'Applying for ECOSOC Consultative Status', [www.un.org/esa/coordination/ngo/howtoapply\\_body.htm](http://www.un.org/esa/coordination/ngo/howtoapply_body.htm). See also Guidelines for association between the UN and NGOs, Documents section, <http://www.un.org/esa/coordination/ngo/>.

<sup>259</sup> See Guidelines for major group participation in CSD – 9 [http://www.un.org/esa/sustdev/mgroups/csd9guid\\_intro.htm](http://www.un.org/esa/sustdev/mgroups/csd9guid_intro.htm) and UNFF Registration Procedures, [http://www.un.org/esa/sustdev/unff\\_2001fsm.htm#RegistrationProcedure](http://www.un.org/esa/sustdev/unff_2001fsm.htm#RegistrationProcedure).

<sup>260</sup> See [http://gefweb.org/Partners/partnersNongovernmental\\_Organ/Accreditation\\_Process/accreditationprocess.html](http://gefweb.org/Partners/partnersNongovernmental_Organ/Accreditation_Process/accreditationprocess.html).

<sup>261</sup> See [http://www.gefweb.org/Partners/partnersNongovernmental\\_Organ/partners-nongovernmental\\_organ.html](http://www.gefweb.org/Partners/partnersNongovernmental_Organ/partners-nongovernmental_organ.html); See also Hisas (1999).

stances. UNEP rules of procedure provide for the Secretariat to circulate written statements provided by observer NGOs where these statements are related to agenda items.<sup>262</sup> At meetings of the ECOSOC governing body, NGOs with General and Special consultative status are permitted to make written submissions and NGOs with General consultative status are permitted to propose agenda items.<sup>263</sup> GEF permits observers to make written submissions to the governing body which must be submitted six months before the scheduled Council meeting.<sup>264</sup>

Each of the other international institutions provide for the distribution of documents. In UNEP and ECOSOC bodies, written submissions made to the governing bodies are circulated.<sup>265</sup>

NGOs with General and Special consultative status with ECOSOC are permitted to make oral statements to meetings of the ECOSOC bodies.<sup>266</sup>

NGOs with General and Special consultative status with ECOSOC are required to submit reports every fourth year to the secretariat which provide a brief report of their activities and describe their contribution to the work of the United Nations (quadrennial reports).<sup>267</sup>

#### Voting rights and funding

None of the other international institutions grant accredited NGOs voting rights. Only the GEF provides for funding to NGOs attending the GEF Council meetings. Fourteen travel grants are given to NGOs nominated through the GEF-NGO Network for NGO attendance at the GEF Council meetings.<sup>268</sup>

#### The design, funding and implementation of projects

GEF projects provide for stakeholder consultation in the design and implementation of GEF projects, and GEF policies on stakeholder project

<sup>262</sup> UNEP, Rules of Procedure, Rule 69.2.

<sup>263</sup> ECOSOC Resolution 1996/31.

<sup>264</sup> Integrating civil society in the GEF: influence and achievements, Liliana Hisas, FEU, Regional Focal Point for Latin America, GEF-NGO Network, Norway, October 1999 <http://www.milli.no/~forum/dokumenter/gefseminar/hisas.htm>.

<sup>265</sup> UNEP, Rules of Procedure, Rule 69.2; ECOSOC Resolution 1996/31.

<sup>266</sup> ECOSOC Resolution 1996/31.

<sup>267</sup> See "About Quadrennial Reports" <http://www.un.org/esa/coordination/ngo/>.

<sup>268</sup> See Hisas (1999).

participation are replicated in the Implementing Agencies of the World Bank, UNEP and UNDP.<sup>269</sup>

For projects funded through the GEF, budget lines may be allocated for stakeholder consultation in the design and implementation of projects and NGOs may be able to access funding in their capacity as stakeholders.<sup>270</sup>

### 2.2.3.2 Practice

UNEP and ECOSOC are large UN institutions and effective NGO participation is most likely to occur at the level of their subsidiary bodies' activities, as well as consultative work or project collaboration with the secretariats. There is, nevertheless, scope for contribution to the larger fora.

2049 NGOs have ECOSOC consultative status, the majority of which are either Special or Roster NGOs.<sup>271</sup> NGOs with consultative status with ECOSOC are members of the Conference of Non-Governmental Organizations in Consultative Relationship with the United Nations, "an independent, international, not-for-profit membership association of non-governmental organizations that facilitates the participation of NGOs in United Nations debates and decisions."<sup>272</sup> There are also 400 additional NGOs accredited to the CSD.<sup>273</sup>

GEF limits the attendance of NGOs to the GEF Council to 10, however the GEF-NGO Network has a significant membership from which the 10 representatives are elected.<sup>274</sup>

Each of the other international institutions differentiates between types of NGOs. UNEP observer status is limited to 'international non-governmental organisations having an interest in the field of the environ-

<sup>269</sup> See [http://www.gefweb.org/Partners/partnersNongovernmental\\_Organ/partners-nongovernmental\\_organ.html](http://www.gefweb.org/Partners/partnersNongovernmental_Organ/partners-nongovernmental_organ.html).

<sup>270</sup> See Porter et al. (1997).

<sup>271</sup> NGO related frequently asked questions and list of NGOs with consultative status, <http://www.un.org/esa/coordination/ngo>.

<sup>272</sup> See <http://www.conferenceofngos.org/ngowhow/index.htm>.

<sup>273</sup> NGO related frequently asked questions <http://www.un.org/esa/coordination/ngo/> and see "CSD Roster" at <http://www.un.org/esa/sustdev/mgroupsMain.htm>.

<sup>274</sup> See database of GEF accredited NGOs maintained by the Central Focal Point, Monitor International, <http://www.monitorinternational.org/search.htm>.

ment'.<sup>275</sup> This definition of international non-governmental organisations includes ENGOs such as IUCN and the World Resources Institute but also includes 'business' organisations such as the ICC.<sup>276</sup> It does not include national and regional NGOs.<sup>277</sup> ECOSOC distinguishes between General, Special and Roster NGOs.<sup>278</sup> It also contemplates other NGOs that will be accredited to other UN conferences on an ad hoc basis.<sup>279</sup> CSD and UNFF also categorise NGOs within the framework of the Agenda 21 'major groups'.<sup>280</sup> In the GEF, NGOs are organised within the GEF NGO Network. Regional and Central Focal Points in the GEF NGO Network serve special functions. NGOs nominated by the GEF NGO Network to attend GEF Council meetings receive information and benefits not provided to other members of the Network.<sup>281</sup>

From late 1997 to early 1998, the Conference of NGOs with Consultative Status with ECOSOC (CONGO) initiated a series of meetings that culminated in a proposal for the Millennium Forum to coincide with the United Nations Millennium Assembly and Summit in 2000. In May 2000, the Millennium Forum was convened by over 1000 non-governmental organisations and other civil society groups and produced the 'We the Peoples Millennium Forum Declaration and Agenda for Action: Strengthening the United Nations for the Twenty-first Century'.<sup>282</sup> The Declaration was taken into account by government representatives in UN General Assembly's Millennium Declaration.<sup>283</sup>

The CSD describes itself as "a lively forum of non-governmental participation by organizations representing all major groups." NGOs are said to "have organized coordinated statements by thematic NGO caucus groups and dozens of side events to share experiences, and successfully

<sup>275</sup> UNEP, Rules of Procedure, Rule 69 <http://www.unep.org/documents/default.asp?documentid=77&articleid=1142>.

<sup>276</sup> Telephone discussion between FIELD and UNEP's NGO-Civil Society Unit, Mr Subramonia Ananthakrishnan, May 2001.

<sup>277</sup> *Ibid.*

<sup>278</sup> See ECOSOC Resolution 1996/31.

<sup>279</sup> *Ibid.*

<sup>280</sup> See above, section 2.2.3.1, under „Accreditation and access“.

<sup>281</sup> See [http://www.gefweb.org/Partners/partnersNongovernmental\\_Organ/partners-nongovernmental\\_organ.html](http://www.gefweb.org/Partners/partnersNongovernmental_Organ/partners-nongovernmental_organ.html); See also Hisas (1999).

<sup>282</sup> UN General Assembly Document, A/54/959, dated 8 August 2000.

<sup>283</sup> See correspondence to NGOs with consultative status from the ECOSOC NGO Section, DESA and General Assembly Resolution 55/2, A/RES/55/2 dated 18 September 2000.

lobbied for particular initiatives that they felt the CSD should undertake or support".<sup>284</sup> NGOs at the CSD meetings have had access to formal and informal sessions with government delegates and, in some instances, they have been able to enter text amendments that were then distributed by the Secretariat.<sup>285</sup> At the Habitat II Conference, NGOs produced an NGO composite text of amendments which was circulated as a UN document.<sup>286</sup>

At UNEP, the secretariat arranges a two-day NGO forum prior to the UNEP Governing Council meetings to brief them on matters related to the agenda and co-ordinate positions. There is no funding earmarked to facilitate NGO attendance at these pre-meeting sessions and they tend to be dominated by Northern NGOs with offices in Nairobi and Kenyan NGOs.<sup>287</sup> UNEP has also established an open-ended Intergovernmental Group of ministers "to undertake a comprehensive policy-oriented assessment of existing institutional weaknesses as well as future needs and options for strengthened international environmental governance".<sup>288</sup> It is recognised that this assessment will "benefit from incorporating the views and perspectives of... expert institutions, major groups and individuals outside the United Nations system".<sup>289</sup> To this end, UNEP is conducting a series of consultations, including consultations with civil society, and has circulated a questionnaire seeking civil society views on international environmental governance.<sup>290</sup> The results of this assessment will be communicated to the next UNEP Governing Council meeting.<sup>291</sup>

<sup>284</sup> Major Group Participation in CSD Meetings, <http://www.un.org/esa/sustdev/mgroups/csd9guid5.htm>.

<sup>285</sup> NGO Participation at the CSD-6 1998 Meeting Of The Commission For Sustainable Development Background information to assist NGOs in their participation at the CSD, [www.igc.org/habitat/csdngo/surviving.htm](http://www.igc.org/habitat/csdngo/surviving.htm).

<sup>286</sup> *Ibid.* See UN document A/Conf.165/INF/8.

<sup>287</sup> Telephone discussion between FIELD and UNEP's NGO-Civil Society Unit, Mr Subramonia Ananthakrishnan, May 2001.

<sup>288</sup> UNEP Governing Council Decision 21/21.

<sup>289</sup> *Ibid.*

<sup>290</sup> See UNEP, Note by the Secretariat, 26 April 2001, Civil Society Consultations on International Environmental Governance, Nairobi, 22-23 May 2001; At the Civil Society Consultations, it was suggested that "(a) [t]he capacity of [g]overnments, civil society and the secretariats of multilateral environmental agreements should be strengthened in the areas of information and verification; (b) [t]he capacity of the judiciary and civil society should be strengthened in international environmental law; (c) [c]ivil society should have direct access to dispute settlement; (d) [l]ike-minded countries should establish an alliance on critical compliance and enforcement issues." It was further recommended that "(a) [a] joint dialogue on international environmental governance should be

Successful contributions from NGOs have tended to be the product of a co-ordinated approach organised by the NGOs themselves. The CSD NGO Steering Committee, made up of NGOs, has facilitated co-ordinated action by NGOs at the CSD meetings and in CSD projects.<sup>292</sup> In the CSD meetings, NGOs use "floor managers" to manage NGO interventions and report back to the NGO network.<sup>293</sup> It should be noted that NGO participants in the UNFF first session have been encouraged to make joint statements.<sup>294</sup> The GEF-NGO Network, co-ordinated by NGO-GEF Regional and Central Focal Points, nominates NGOs for attendance at the GEF council meetings.<sup>295</sup> These networks also serve as a vehicle for the dissemination of documentation.

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convened to bring together the groups already consulted separately; (b) [a] set of criteria for the major groups in the multi-stakeholder process should be developed; and (c) [v]arious modalities of empowering civil society should be considered." see Report of the Civil Society Consultations on International Environmental Governance, Nairobi, Kenya, 22-23 May 2001, <http://www.unep.org/IEG/Meetings.asp>.

<sup>291</sup> UNEP Governing Council Decision 21/21, [http://www.unep.org/GC\\_21st/](http://www.unep.org/GC_21st/). The Intergovernmental Group of Ministers (IGM) first met on 18 April 2001 (IGM-1) to consider a UNEP report reviewing the status of MEAs. Further meetings of the IGM, to discuss specific options for strengthening international environmental governance, were held on 17 July 2001 (IGM-2) and 9-10 September 2001 (IGM-3). Discussions have focused on the future role of the Global Ministerial Environment Forum (GMEF), the 'clustering' of MEAs, and financial issues. The conclusions from the first three meetings of the IGM were presented to IGM-4, held on 30 November-1 December 2001 in Montreal, Canada. A further one-day meeting on 25 January 2002 (IGM-5) discussed draft recommendations of the IGM to UNEP's Governing Council/Global Ministerial Environment Forum. The final meeting of the IGM took place on 12 February 2002 in Cartagena, Colombia, and the recommendations arising from this process were considered by the Seventh Special Session of UNEP's Governing Council (13-15 February 2002, Cartagena, Colombia); see <http://www.unep.org/IEG/>.

<sup>292</sup> See CSD NGO Steering Committee, <http://www.csdngo.org/csdngo/>. See also <http://www.igc.org/habitat/csdngo/tr-steer.htm>.

<sup>293</sup> NGO Participation at the CSD-6 1998 Meeting Of The Commission For Sustainable Development Background information to assist NGOs in their participation at the CSD, [www.igc.org/habitat/csdngo/surviving.htm](http://www.igc.org/habitat/csdngo/surviving.htm).

<sup>294</sup> UNFF Registration Procedures, [http://www.un.org/esa/sustdev/unff\\_2001\\_fsm.htm#Registration Procedure](http://www.un.org/esa/sustdev/unff_2001_fsm.htm#Registration Procedure).

<sup>295</sup> See [http://www.gefweb.org/Partners/partners-Nongovernmental\\_Organ/partners-nongovernmental\\_organ.html](http://www.gefweb.org/Partners/partners-Nongovernmental_Organ/partners-nongovernmental_organ.html); See also Hisas (1999).

The UNEP Executive Director and Member governments have all acknowledged the significant contribution to be made by NGOs in UNEP policy development and projects.<sup>296</sup> UNEP is currently reviewing its policy on engagement with NGOs in an effort to formalise procedures and address concerns about the exclusion of regional and national NGOs from the accreditation process.<sup>297</sup> To this end, UNEP's Civil Society and NGOs Unit is conducting consultations with civil society and NGOs on how to mainstream civil society involvement into its activities.<sup>298</sup>

It should be noted that most of the institutions have special departments or contact points to co-ordinate with NGOs. At UNEP, there is the Civil Society and NGO Unit in UNEP's Division of Policy Development and Law; at ECOSOC, there is the NGO Section of ECOSOC's Department of Economic and Social Affairs; at CSD, there is a Major Groups Co-ordinator; and at the GEF, there are NGO-GEF Regional and Central Focal Points that co-ordinate the GEF-NGO Network.<sup>299</sup> UNFF's Secretariat handles communications with NGOs.<sup>300</sup>

<sup>296</sup> See Statement by Mr. Klaus Toepfer, Executive Director, United Nations Environment Programme At The Earth Forum „Civil Society: „Loyal“ Opposition Or Partner In Governance“ October 2000 Speech <http://www.unep.org/documents/default.asp?documentid=184&articleid=2725> and the Malmö Ministerial Declaration, 31 May 2000, para 16 [http://www.unep.org/malmo/malmo\\_ministerial.htm](http://www.unep.org/malmo/malmo_ministerial.htm).

<sup>297</sup> Telephone discussion between FIELD and UNEP's NGO-Civil Society Unit, Mr Subramonia Ananthakrishnan, May 2001.; see UNEP Policy on NGOs and Other Major Groups, October 1996, <http://www.unep.ch/natcom/Texts/word/AboutNgos.doc>.

<sup>298</sup> See UNEP, Note by the Secretariat, 27 April 2001, Engagement of Civil Society in the Work of the United Nations Environment Programme: Civil Society Consultations, Nairobi, 24-25 May 2001. In a meeting scheduled in May 2001, civil society representatives have been requested to consider the following points:

- What should be the role of civil society organizations in addressing major environmental challenges vis-à-vis the role of UNEP?
- Given the respective roles of civil society organizations and UNEP above, what are desirable modalities of their collaboration to achieve the environmental goals and sustainable development?
- What are main areas where civil society organizations and UNEP should be focusing as an immediate priority and working together, bearing in mind the World Summit on Sustainable Development?
- How should the participation of civil society organizations in planning and implementation of UNEP programmes be improved?

<sup>299</sup> See above Section 2.2.3.1.

<sup>300</sup> [http://www.un.org/esa/sustdev/unff\\_2001\\_fsm.htm#Registration Procedure](http://www.un.org/esa/sustdev/unff_2001_fsm.htm#Registration Procedure).

## 2.2.4 Conclusion

The review of multilateral environmental agreements, international economic institutions and other international institutions relevant to the environment has shown that all these fora of international environmental governance possess some kind of NGO consultation. Similarities between these arenas of policy-making also prevail as regards voting rights, funding (for participation), and duties of NGOs, which apply only in exceptional cases and under particular circumstances. Voting rights are only granted for certain kinds of NGOs within ILO (labour unions and employers' associations) and ISO (national standard setting bodies), where these are full members of the institution for specific historical and constitutional reasons. In most other cases where NGOs act as observers, the right to vote is explicitly denied to them, and there is hardly any call to change that situation.

Funding for NGO participation has only been granted under the Desertification Convention and by the GEF, due to the desire to ensure sufficient representation by civil society from developing countries. Interestingly, such funding has been limited to PINGOs, with business associations not benefiting. NGOs have also been made subject to duties only under very special circumstances, in particular where individual NGOs have been granted particular privileges and roles. This applies, for example, to NGOs that have undertaken to perform certain secretariat functions for MEAs such as the Ramsar Convention and CITES, or that have been acknowledged as having special status such as the SCAR in the ATS and the International Partner Organisations under Ramsar. Also, NGOs with Special and General consultative status with ECOSOC (which enjoy more participatory possibilities than so-called Roster NGOs) are required to submit reports every four years.

Dissemination of information in the framework of international institutions related to the environment has generally been possible. In nearly all cases, this has been governed by practice rather than specific legal provisions, the major exception being CITES where some detailed rules were introduced in 2000.<sup>301</sup> Innovative practices granting NGOs special opportunities to spread information and make their views heard (apart from official conference proceedings) have been developed in particular in MEAs and other international institutions such as CSD and UNEP. This has included granting the opportunity to hold 'side-events' and seminars or workshops in the margins of major international gatherings and organising round-table discussions including NGO representatives. Such practices

<sup>301</sup> See also section 3.2 below.

have also spread to the economic sphere (WTO) to some extent, but are less common here.

This review found more significant differences between the different institutions and groups of institutions in respect to accreditation and access, and active participation (especially opportunities to intervene, speak, and make written submissions). On average, MEAs and some other relevant institutions, notably the CSD, appear to provide for the largest degree of openness. Access and possibilities for active participation have remained much more limited/restricted in many international economic and other non-environmental institutions.

In some multilateral environmental agreements, there is even a codified "right" for accreditation and access (CITES and Aarhus Convention), which is unknown in most of the institutions reviewed. Otherwise, legal provisions for accreditation exist generally in MEAs, and access has been secured and accepted to most official, formal meetings. Access has in practice also been gained to some of the informal meetings and meetings on 'sensitive matters' such as financial matters/funding, although informal negotiations and discussions of politically sensitive matters such as implementation review have, as a general rule, remained closed to observers. Similarly, written submissions have principally remained exclusive to states. However, some recent developments have enhanced the chances for NGOs to reach states with their views in writing (posting of documents on secretariat websites, inclusion of written submissions by NGOs in documents in specific cases). It is noteworthy, moreover, that, whereas formal rules on active participation of NGOs are remarkably similar in many MEAs, practice has ranged from allowing NGOs to freely intervene in discussions to granting them the possibility of making pre-set statements at a defined time at official sessions only (possibly due to the different institutional nesting of MEAs under UNEP or the UN). This practice has generally relied heavily on granting a great amount of discretion to the chairs of meetings. Finally, it is worth mentioning that some specific MEAs such as the ATS (that arguably is a rather 'old' agreement with a very special institutional setting) are far less open than the standard presented.

In contrast to MEAs, international economic institutions only partially provide for NGO accreditation, and in several cases access to meetings of their bodies is granted only sporadically. The opportunities for active participation (interventions, written submissions) are very limited, if they exist at all, although exceptions exist (e.g. NAFTA). Participation is particularly restricted with respect to dispute settlement procedures. In at least one case, access as observers appears to be granted only to *international*

NGOs (ILO). This comparatively less advanced openness of economic institutions applies to both the legal basis of NGO involvement and the practice, although in the latter field some advances have been made in recent years (WTO, World Bank). In general, however, considerable restrictions exist on access and active participation in general policy-making as well as dispute settlement.

The picture regarding other relevant international institutions is diverse. Here there are both relatively liberal legal provisions and practices, and some contrasting limitations. For example, NGO observers are partially allowed to make written submissions, speak in official meetings, and even propose agenda items in ECOSOC, but on the other hand, UNEP's rules appear to provide for accreditation and consultation only with international NGOs. There are ongoing efforts to review the rules and the practice governing NGO participation, especially by UNEP, and these efforts include consultations with the NGOs themselves.

As regards the relationship between legal basis and practice on NGO participation, practices that go beyond legal rules have evolved in all reviewed areas of international environmental governance. It is noteworthy that legal provisions in MEAs are generally remarkably similar (with some exceptions such as ATS), while more significant differences exist in practice. Legal provisions and practice appear to be more diverse in economic institutions, which are generally less open than MEAs on both accounts. Legal basis and practice in other relevant institutions appear to be largely divergent between institutions; it is sometimes difficult to make useful comparisons between them.

As regards the more limited openness with respect to 'sensitive' political matters, this phenomenon is obvious from the practice in all institutions, including MEAs. Since matters with potentially important economic and financial implications generally belong to such 'sensitive' areas, this might be considered an explanation (and justification) for the more restricted participatory rights/opportunities in international economic institutions. However, the higher degree of participatory elements in rules and practice existing in some 'environmental' institutions with important economic and/or financial implications, such as the GEF and the Multilateral Fund of the Montreal Protocol, provides evidence that this argument is by no means conclusive. Rather, there seems to be considerable scope for public participation in economic institutions as well (without compromising their capacity to function).

Further channels of influence such as campaigning, organisation of public events/demonstrations and membership in friendly delegations have been available to and used by NGOs in all three groups of international

institutions. Differences exist as to the degree to which such additional channels of influence have been employed. This appears to have partially depended on strategic choices made by NGOs themselves as to where to focus efforts. Partially, it has been more difficult for NGOs, for example, to be accepted as government representatives in economic institutions than in the context of MEAs.

Differences between the different groups of institutions also occur as regards the differentiation between different (groups of) NGOs. MEAs have generally (with some exceptions such as ATS) allowed accreditation and access by all kinds of NGOs (including national, international, environmental, business, hybrids, QUANGOs), with the only major criterion for formal accreditation being that an organisation be “qualified” in relevant matters. Special status has been granted to selected NGOs in some cases, but equal treatment has otherwise prevailed. In contrast – apart from the special position of certain NGOs as formal members in ILO and ISO – some international economic institutions give special/preferential treatment for industry in particular. While institutions such as the OECD and WIPO have special industry committees, this preferential treatment is further reinforced in practice (e.g. WIPO, ISO).

Overall, there is a general trend towards increasing NGO participation in all groups of institutions reviewed. This trend is visible from both (revisions of) legal provisions and evolving practice. It is, however, by no means uniformly present in all institutions. Thus, advances in enhancing NGO participation appear to be more pronounced in the World Bank than in other economic institutions such as WIPO or WTO. The trend has also not necessarily meant that ‘younger’ institutions have been more open than ‘older’ ones. Thus, while some of the ‘older’ MEAs have seen significant strengthening of participatory opportunities in both legal rules and practice in the 1990s (especially in the field of nature conservation), such opportunities have remained less pronounced in some of the ‘younger’ MEAs (e.g. restrictions on NGO interventions under the UNFCCC). In existing, ‘older’ economic institutions, exchange with NGOs has intensified in recent years in practice, but less substantial progress has been made in the areas of their core activities and regarding the legal provisions governing NGO participation (although some more progressive elements have been included in new, ‘younger’ institutions such as NAFTA). As regards other relevant institutions, noteworthy developments towards increased openness have occurred in particular in new bodies (CSD, GEF, UNFF), while developing the practice in existing ones appears to be a more cumbersome process (ECOSOC; ongoing discussions in UNEP).

The assessment of the real influence and success of NGOs in international environmental governance faces severe methodological challenges, and almost no definite answers are available from the literature. Here, three criteria have been applied as yardsticks for measuring success: (1) NGO access to decision-makers in relevant institutions, (2) introduction of NGO proposals into government negotiations, and (3) adoption or blocking of proposals. While the first two criteria are suitable for measuring NGO influence on process (‘process influence’), the last one refers to the actual outcome (‘product influence’). While a preliminary assessment shows that influence, especially by PINGOs, appears to have been more pronounced in MEAs (and some other institutions) than in economic institutions, the significance of relevant factors influencing the success of NGOs, notably of formal rules and practice on NGO participation in the respective institutions, differs between the three categories of influence. The legal framework and practice by secretariats and states appear to be decisive factors determining the chances of NGO access to decision-makers (process influence). They are a precondition for and can facilitate the introduction of NGO proposals, but are seemingly less important (while potentially still significant) when it comes to securing adoption of key NGO proposals (product influence).

Numerous proposals have been under discussion to enhance the role of NGOs in international environmental governance and increase their participation. These proposals are frequently directed at specific institutions or groups of institutions (such as economic institutions) and differ according to the varying circumstances in these institutions and policy fields (as described above). Such proposals have been reviewed prior to the preparation of the case studies contained in Part 3 and a number of potential options have been identified. A more detailed discussion of such proposals is included in Part 4 of this study.

### **3. Case Studies**

Part 3 assesses in more detail NGO participation in policy-making in two international environmental institutions/MEAs (UNFCCC: section 3.1; CITES: section 3.2) and in two international economic institutions (ISO: section 3.3; World Bank: section 3.4). In each of the cases, the legal basis and practice of NGO participation are investigated in more detail with respect to the particular political decision-making process of the institution. In addition, deficits with respect to NGO participation and options for addressing these and enhancing NGO participation are identified with respect to the institutions analysed in the case studies.

In addition to official documents and the available literature, the analyses in the case studies of Part 3 are based on interviews with relevant stakeholders. Interviews were 'half-standardised', i.e. they were based on an interview guideline that provided the general topics and questions to be pursued with the interviewees (but did not determine the exact order and wording of questions). The guidelines for interviews are reproduced in Annex 1. The interviewees were selected so as to include in particular officials of the relevant secretariats, government representatives and representatives of the major NGO constituencies active/interested in the respective institution. A list of interviewees for each of the case studies is contained in the reference section. The case studies refer to the interviews as specifically as possible. No specifics are given where interviewees asked that information they provided should not be assigned to them.

#### **3.1 The Climate Change Regime**

##### **3.1.1 Overview**

The following case study is based on the author's personal experience as a NGO and a government delegate during ten years of the negotiation of the 1992 UN Framework Convention on Climate Change and its Kyoto Protocol, supplemented by additional research and interviews conducted with the seven individuals listed at the end of this report. The interviewees include the NGO liaison official of the UNFCCC Secretariat, leading figures from the ENGO community from both the north and the south, an industry delegate from an industrialised country, and government officials from north and south who have participated as delegates, chairs and bureau members in the negotiation process.

### 3.1.1.1 General Introduction to the Climate Change Regime

The Climate Change regime consists of the 1992 UN Framework Convention on Climate Change (UNFCCC) and its 1997 Kyoto Protocol (not yet in force). 187 countries and the European Communities are Parties to the UNFCCC. The Convention provides an institutional and procedural framework which has as its ultimate objective the stabilisation of concentrations of anthropogenic greenhouse gases in the atmosphere at levels that will avoid the predicted dangerous impacts of associated global warming. The Convention's general commitments require all Parties to promote this objective by co-operating through scientific research, raising public awareness and providing information on efforts to reduce emissions and to prepare for the impacts of climate change. Parties included in Annex I of the Convention (industrialised country Parties) are required to aim to stabilise their greenhouse gas emissions at 1990 levels by 2000. Annex I Parties also included in Annex II of the Convention (industrialised country Parties members of the Organisation for Economic Co-operation and Development in 1992) are furthermore required, through the provision of financial and technical assistance, to meet the incremental costs incurred by developing country Parties (non-Annex I Parties) in fulfilling their obligations under the Convention. Finally, and perhaps most importantly, the UNFCCC requires Parties to regularly review, in light of the Convention's objective, and of the best available scientific understanding of climate change, the adequacy of Parties' commitments.

This review of adequacy led Parties to acknowledge the fundamental weakness of the Convention in failing to provide for specific, quantified, legally binding commitments to limit and reduce greenhouse gases, and to launch the negotiations that led to the 1997 Kyoto Protocol. The Kyoto Protocol, when in force, will require Annex I Parties that have also ratified the Protocol to limit or reduce their emissions of six greenhouse gases in accordance with the country-by-country targets set out in Annex B to the Protocol. These commitments are expected to reduce the combined emissions of Annex I Parties 5.2% below 1990 levels by the end of the Protocol's first commitment period (2008-2012). Under procedures and methodologies to be agreed, Annex I Parties' targets will be converted into "assigned amounts" expressed in tonnes of carbon equivalent, which will represent the total amount of emissions allowed by each of these Parties during the commitment period. Parties can co-operate in meeting these targets through three "market-based" mechanisms: international emissions trading (IET), joint implementation (JI), which involve transactions amongst Annex I Parties, and the Clean Development Mechanism (CDM) which involves transactions between Annex I and non-Annex I Parties. Under EIT,

an Annex I Party may acquire parts of excess assigned amount from another Annex I Party. Under JI and CDM an Annex I Party may acquire additional carbon credits by investing in projects either in Annex or in a non-Annex I Party that can be shown to generate emissions reductions that would not have taken place in the absence of the investment.

The institution responsible for overseeing the Convention, and for preparing for the entry into force of the Protocol is the Conference of Parties (COP) to the Convention. The COP is supported by two committees open to the participation of all Parties: the Subsidiary Body for Scientific and Technological Advice (SBTA) and the Subsidiary Body for Implementation (SBI), each of which has general duties assigned to it by the Convention. These institutions are supported by a Bureau of 15 members, elected from the Party representatives, and by a Secretariat made up of over 100 international civil servants and based in Bonn. Usually, the COP meets once a year, and the Subsidiary Bodies meet twice a year, once in conjunction with the COP.

The operating procedures of the COP, and of its subsidiary bodies, including procedures dealing with the participation of non-governmental organisations, are set in "rules of procedure" (ROP). Although the Convention provides that its ROP were to be adopted by the COP by consensus at its first session, the COP has never done so. This is primarily because a vocal minority of Parties that are concerned about being outvoted by the majority, have blocked consensus on the adoption of the ROP, thereby successfully preventing the COP from approving voting rules that would enable it to take substantive decisions by a majority vote. Since COP-1, all of the ROP other than the voting rules, including the rules on NGO participation, have been "applied" without having been formally adopted.<sup>1</sup>

When in force, the Protocol will rely upon the Convention's institutions to serve and perform essentially the same functions for its Parties. The Protocol's governing body is known as the COP serving as the meeting of the Parties, or the "COP/MOP." All Parties to the Protocol must first become Parties to the Convention. However, not all Parties to the Convention will necessarily become Parties to the Protocol. To the extent that the Protocol and the Convention's Parties do not overlap, voting rules will operate to exclude those that are only Parties to the Convention, from participating in decisions relevant exclusively to the Protocol. Budgetary

<sup>1</sup> FCCC/CP/2001/13: para 23. The report of COP-7 notes that the intensity of negotiations at COP-7 had not allowed an opportunity for adequate consultations on the adoption of the ROP, and sends the issue forward to COP-8.

rules will ensure only Parties to the Protocol bear the cost of its administration. The Protocol also provides that the COP's ROP, as applied, will also apply to the COP/MOP unless the Protocol Parties decide, by consensus, otherwise.

Since the Protocol was adopted, the COP has recommended that the COP/MOP, at its first session, establish three additional bodies that will be necessary for the operation of the Protocol: the Executive Board of the Clean Development Mechanism (EBCDM), the Article 6 (JI) Supervisory Committee, and a Compliance Committee. Each of these will be a body of limited membership made up of individuals nominated by the Parties and acting in their personal and expert capacities. Each will carry out functions provided for either in the Protocol, or as will be determined by the COP/MOP. Each of these bodies has also been provided with basic rules of procedure, including voting rules and rules on observers, which can be further developed by the COP/MOP.<sup>2</sup> In accordance with the "prompt start" provisions in the Protocol and the decisions of COP-7, the EBCDM will be operational on a provisional basis prior to the entry into force of the Protocol.

The EBCDM has met twice since COP-7, and has adopted its own draft rules of procedure which it will apply and review at subsequent meetings until they are formally approved by the COP. These rules contain provision for the attendance of observers and for the live "web-casting" of sessions over the internet, which are discussed in more detail, below, in section 3.1.3.<sup>3</sup>

### 3.1.1.2 *Climate Change Regime and NGOs*

The climate change regime enjoys a high number – currently over 500 – accredited NGOs, and sessions of the COP can attract more than 3,000 delegates representing these organisations.<sup>4</sup> The popularity of the regime can be attributed, generally, to the COP's liberal rules on accreditation, and to the extremely broad scope of civil society interests affected by climate change and by its predicted impacts. Achieving the Convention's

<sup>2</sup> FCCC Decision 16/CP.7 (the JI Decision); UNFCCC Decision 17/CP.7 (the CDM Decision); UNFCCC Decision 18/CP.7 (Emissions Trading decision). UNFCCC Decision 24/CP.7 (Compliance Decision).

<sup>3</sup> CDM-EB-02.

<sup>4</sup> Negotiations of the Convention were closely followed by over 650 NGOs. In the first COP, in Berlin 1995, 177 NGOs participated. At COP-3 held in Kyoto, 243 NGOs participated with 3,663 representatives. 194 NGOs participated at COP-7 in Marrakech.

objective and the reduction of fossil fuel use that this will entail, may require a reordering of many of the assumptions that currently underpin the global economy, global politics and power structures. Failing to meet this challenge may have profound consequences for weather patterns, ecosystems, agricultural production, human health and the cultural and physical survival of communities. Given these high stakes, that cut across a wide range of environment and development concerns, it is not surprising that so many NGOs have been able to identify a sufficient interest in the regime to justify accreditation and participation.

The Convention touches upon policy areas where NGOs were already extremely active and well-resourced. Within the environmental NGO community, groups working on local air pollution, energy efficiency and renewables; atmospheric issues such as the ozone layer; biological diversity and species conservation; are all attracted to participate in the regime as a potential driver of progress, as well as a potential threat to competing priorities. The world's largest and wealthiest environmental NGOs (ENGOs), including Greenpeace, Friends of the Earth, Worldwide Fund for Nature (WWF), the Natural Resources Defence Council and the Environmental Defence Fund (now Environmental Defence), have invested heavily in participating in the climate change regime over the past decade.

Together with medium sized and small ENGOs from around the world they created the Climate Action Network (CAN). CAN is a global network of over 320 NGOs in 81 countries involved in climate change. It has seven co-ordinating "nodes" in Africa, Central and Eastern Europe, Europe, Latin America, North America, South America and Southeast Asia.<sup>5</sup> It is widely viewed as one of the most successful ENGO networks created, and is supported by donations from members, from governments and from charitable foundations. CAN is the major feature of ENGO participation in the climate regime, providing the source of institutional memory for the regime's informal rules of NGO behaviour.

Academic institutions, whether from the natural sciences, economics, political science or law are drawn by the profound intellectual challenges presented by the regime's ambitious objectives, and regime's struggles to construct solutions in the context of scientific, economic and political uncertainty. Faith-based groups have participated in the climate regime out of concern for impacts on the poor and vulnerable, as well as for the larger ethical questions climate change raises about the relationship between human kind and nature.

<sup>5</sup> See the CAN International NGO Directory 2000, published by the Climate Action Network. The directory is also available online at [www.climatenetwork.org](http://www.climatenetwork.org).

Business and industry NGOs (BINGOs) have also registered and participated in large numbers, representing both vested interests threatened by the regime (fossil fuel production, energy intensive industries, automobile producers) as well as those attracted by the business opportunities directly or indirectly created by the regime (new and renewable energy technologies, nuclear industry, potential “service providers” such as certifiers and brokers of carbon offsets and their derivatives).

Groups representing local authorities and organisations of parliamentarians have also joined the process as those policymakers that are most likely to be directly responsible for designing and enforcing national and local policy for cutting greenhouse gas emissions. Finally, and most recently, representatives of indigenous communities concerned, in particular, about the potential impact of the regime’s project-based mechanisms on local ways of life, have sought to participate in the regime’s institutions.

The climate change regime’s inclusive approach to NGO participation can also be attributed to its shared heritage with the 1992 UN Conference on Environment and Development, (UNCED) the preparations for which ran in parallel with the Convention negotiations. UNCED emphasised the need for engaging representatives of civil society’s “major groups” in processes responsible for developing strategies for sustainable development. The techniques developed by the NGO community, by governments and by international civil servants, for managing NGO participation in large international conferences, evolved during UNCED, and have been further refined in the climate change negotiations.

### **3.1.1.3 Perceptions of the Usefulness and Effectiveness of NGO Participation in the Climate Change Regime**

Generally, the participation of a large number of NGOs in the regime’s meetings has been seen by both Parties and the Secretariat as a positive influence. NGOs, even when critical of developments within the negotiations, are broadly supportive of the Convention and the Protocol as an essential part of the global response to climate change. While this support may be most predictable from the ENGOS, it has also been forthcoming from the majority of BINGOs active in the negotiations who stress the “market’s” need for clear and predictable global rules for combating climate change. Through this support and through their active participation, NGOs can help to enhance the credibility of the regime with the press and with the public at large. To enable NGOs to perform this function, the regime’s rules and procedures need to encourage their presence and effective participation at the sessions.

From the perspective of delegates participating in the meetings, NGOs are viewed as most useful and effective as sources of expertise, particularly with regard to scientific issues relevant to the negotiations.<sup>6</sup> The presence of NGO experts at the sessions of Convention bodies enables them to provide “real time” analysis and advice to delegates, enhancing delegations’ abilities to assess and respond to developments. This function was highlighted by all delegates interviewed for this case study as the most important contribution made by NGOs to the climate change process. It was, however, emphasised that this function can only be performed effectively by individuals who have developed both specialised expertise and long-term relationships of trust with key delegates. This relationship also depends largely on a commonality of interest between the NGO (whether ENGO or BINGO) and the national interests of the relevant delegation. It also tends to favour NGO representatives of larger, well-resourced groups (mostly from industrialised countries) or those from smaller groups with highly specialised professional expertise. The provision of expert advice appears to be appreciated equally by both developed and developing country delegations.

The line between advice and influence in this context is blurred. Most NGOs do not attend Convention sessions merely to provide neutral advice and information. Indeed, at least one interviewee expressed concern that under-resourced developing country delegations may be vulnerable to inappropriate degree of influence from NGOs seeking to advance their own interests.<sup>7</sup> To enable NGOs to perform these functions effectively, rules and procedures must ensure that their representatives have immediate access to documentation, to meetings and to the delegates themselves.

NGOs also seek to perform the “corrective” function by providing government delegations an immediate foretaste of the likely reactions of civil society constituencies to positions taken during the negotiations.<sup>8</sup> From the ENGO community, the main “weathervane” of opinion on progress in the negotiations is provided by the publication of ECO, the daily ENGO newsletter and, more recently, through the presentation of award of the “Fossil of the Day” to the ENGO community’s least favourite delegation of the moment. These are discussed below in sections 3.1.2.2 and 3.1.2.3.

It has been difficult to confirm the effectiveness of the corrective function through interviewing participants in the climate regime. Dele-

<sup>6</sup> Interviews with government delegates.

<sup>7</sup> Interview with government delegate.

<sup>8</sup> Interview with industrialised country ENGO.

gates are loath to admit that government policy could be influenced by these, sometimes adolescent, efforts at ritual humiliation. NGOs are reluctant to concede that initiatives into which they invest a great deal of energy, are ineffectual. There is, however, evidence of ECO and the Fossil of the Day award of having highlighted and corrected divergences between official government positions and the statements or behaviour of delegations in the negotiations themselves. Overall, most delegates seem to appreciate the levity ECO can bring the negotiations, and the thrill of having their own behaviour highlighted in print. For the most part, the more aggressive, critical aspects of ECO and the Fossil of the Day are tolerated in this spirit. BINGOs also seek to perform a corrective function, by signalling to delegations the acceptability of proposals from the perspective of the targets of eventual regulations, and, more importantly, of the main participants in the “markets” that will be created by the regime’s mechanisms. Industry representatives tend to use face-to-face lobbying, often specially arranged meetings away from the conference venue.

To perform these functions effectively, rules and procedures must enable NGOs access to relevant meetings and information, the ability to stage public events within or close to the official meeting places, the opportunity to distribute documentation such as ECO, and one-on-one access to delegates.

Many of the NGO representatives present at climate change meetings are not there to influence the process, but to learn from it, and to establish relationships necessary to carry out their functions in their home countries. This is particularly true of academic institutions and business groups keen to share research and ideas with colleagues working on similar issues around the world.<sup>9</sup> Liberal accreditation rules, and the provision of space at or near the negotiating venues for “side events” can facilitate the effective performance of these functions.

#### **3.1.1.4 Managing NGO Participation in the Climate Change Regime**

Delegations and Convention officials have been very conscious of the importance of NGOs to the climate change regime. The description of formal and informal rules and practices in this case study suggests that the regime, in order to continue to encourage NGO participation, has decided to employ a “light touch” in managing their involvement. While this has generally been the case, there was one sustained effort to impose more

<sup>9</sup> Interview with industry representative.

structure on NGO participation that generated a number of insights that may be useful to future initiatives.

Between 1996 and 1998, the SBI, with encouragement from the secretariat, sought views from government and NGO delegations, commissioned analysis, organised discussions and introduced a formal agenda item to assess “Mechanisms for consultations with non-governmental organizations.” The SBSTA organised, in 1996, a “Workshop on consultative mechanisms for non-governmental organization inputs to the United Nations framework Convention on Climate Change.”<sup>10</sup> The decision to organise the workshop was taken by the COP-1 and the aim was to discuss “the need for, and possible scope, structure, membership and work plans of, non-governmental advisory committees and/or a business consultative mechanism”.<sup>11</sup>

The initiative was driven by:

- a perceived need to better organise the growing number of accredited NGOs in manner that would enable the secretariat to control the costs of servicing them, and that would enable presiding officers to ensure that the limited opportunities for NGO interventions in debates would be shared out in an equitable manner;
- the failure of the Parties to agree on ways of making use of technical advisory panels, which had been successfully used by the Ozone regime as a means for tapping the independent advice of non-governmental experts;
- a perceived need by some for a “business consultative mechanism” that could provide a more balanced and constructive input from BINGOs on market-based and technological solutions to climate change.

The initiative was met with hostility from the ENGO community, which saw it as an effort to curb their greater numbers, and to provide BINGOs with privileged access. The 1998 COP-4 decision that resulted from two years of discussion tinkered with the NGO constituency system, (described below) but no major changes were made. This sustained and conscious effort to better manage NGO participation in the regime may shape and constrain future initiatives.

#### **3.1.2 Legal Provisions and Practice of NGO Participation**

Given this background, the formal and informal rules on NGO participation that have been developed under the climate change regime have been

<sup>10</sup> FCCC/SBI/1997/14/Add.1

<sup>11</sup> Decision 6/CP.1., Annex III.

aimed primarily at managing the high volume of groups and individuals that demand information from and access to the regime's institutions.

### 3.1.2.1 Accreditation of NGOs as observers to the COP and to its Subsidiary Bodies

NGOs have been formally accredited as observers to the climate change regime since negotiations for a Convention began in 1991. Arrangements for their participation were initially made at the first session of the Intergovernmental Negotiating Committee (INC 1), with the *ad hoc* secretariat being responsible for the management of NGO accreditation.<sup>12</sup>

The Convention contains the regime's primary rules on the status and participation of non-Party "observers," including states, intergovernmental organisations and NGOs.<sup>13</sup> Under Article 7(6), observer status is available to NGOs "qualified in matters covered by the Convention" subject to approval by the COP, and the development of any additional relevant rules of procedure.<sup>14</sup> NGOs that apply to the secretariat are admitted as observers, unless one third of parties present at the COP object to their admission.

In practice, the Secretariat receives and processes applications for observer status in advance of each annual session of the COP. Applicants must meet a basic set of criteria that have been developed by the Secretariat in the fulfilment of its mandate. NGOs must be legally constituted entities, "not for profit", and competent in matters related to the Convention. When applying for observer status, they are required to furnish evidence that they carry out activities of relevance to the Convention, and of their not for profit status in a member state of either UN or one of its specialised agencies, or the International Atomic Energy Agency (IAEA). On occasion smaller NGOs working primarily on local issues have been viewed

<sup>12</sup> For a history and general overview of NGO participation in the climate change regime, see the note by the Executive Secretary in FCCC/SBI/1997/14/Add.1.

<sup>13</sup> This discussion is drawn from the author's personal knowledge and interview with secretariat official.

<sup>14</sup> The Article 7.6 reads, in relevant parts:

"[...] Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by the Convention, and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties as an observer, may be so admitted unless at least one third of the Parties present object. The admissions and participation of observers shall be subject to the rules of procedure adopted by the Conference of the Parties."

as being of marginal relevance to the Convention, and have been encouraged to participate through larger national or regional organisations.

The list drawn up by the secretariat is considered by the COP Bureau. NGOs listed obtain a "pre-admittance" status on the understanding that the final authority concerning admissions rests with the COP. Similar practice is employed prior to meetings of the subsidiary bodies, whereby provisional admission is granted to applicants, subject to formal accreditation at the subsequent session of the COP.<sup>15</sup> Each list of new applicants is read out during a formal plenary session of the COP and thus far each list has been admitted, without debate or objection. Once accredited, NGOs are invited by the secretariat to participate in the following sessions of the COP and the subsidiary bodies.

As has been indicated, the liberal application of these formal rules has led to a large number of accredited NGOs, more than actually attend and participate in Convention meetings. In order to fulfil its obligations to notify and invite all accredited NGOs prior to Convention meetings, the secretariat has to maintain an up to date database, and regularly contact all entries. This has significant resource implications for the secretariat, which has been considering ways of ensuring the list of accredited NGOs is up to date, and includes only those groups that are committed to participating in the Convention. Accordingly, NGOs have been requested to re-confirm their interest in continuing to participate in the Convention process.<sup>16</sup>

On occasion, informal proposals have been made to filter out NGOs, particularly BINGOs, that were perceived by some participants as having interests at odds with the Convention's objective. Early on in the negotiations of the Convention a number of coalitions of business and industry with vested interests in fossil fuel production and consumption played a high profile role at the sessions and in the press in criticising the regime and the quality of the scientific conclusions that were driving the negotiations. It was suggested that, in order to be accredited to the regime, an NGO make a statement or pledge to the effect that it supported the Convention's objective. While some ENGOs supported the concept, it did not gain momentum. Many viewed the proposal as fundamentally illiberal, running counter to the principles of openness and participation espoused by ENGOs in other contexts. The secretariat viewed it as unnecessarily divisive and difficult to effectively police.

<sup>15</sup> FCCC/SBI/1997/14/Add.1.

<sup>16</sup> FCCC/SBI/1997/14/Add.1.

It has also been informally proposed that all accredited NGOs disclose with their application for accreditation, more detailed information on their sources of income, to better enable participants to determine where each group's financial interests lie. The secretariat has not encouraged this initiative either. It does require sufficient financial information to determine a group's non-profit status. But beyond that, it is felt that most delegations become aware of groups' interests through informal channels, and that the administrative costs of cataloguing and maintaining detailed financial information on each accredited NGO would be prohibitive.

The only other issues raised at the stage of accreditation have been triggered by efforts of the government of Taiwan to gain access to the negotiations by accrediting government officials as NGO representatives. China carefully polices such efforts in the climate change regime, as it does in all other intergovernmental fora, but no major difficulties have arisen thus far.

When the SBI-8 in 1998 reviewed the Convention's accreditation procedures, it concluded that "the current arrangements for the accreditation of non-governmental organizations were satisfactory, and that no change in the accreditation procedures was required."<sup>17</sup> The secretariat and the Parties have, however, undertaken a number of initiatives to deal with the large numbers of NGOs by structuring the way in which these groups participate in Convention processes. These initiatives are discussed, below.

### **3.1.2.2 Participation of Accredited NGOs in the Convention Institutions**

The Convention indicates that the participation of observers shall be subject to rules of procedure adopted by the COP. The ROP, as applied, provide that observers may "upon invitation of the President, participate without the right to vote in the proceedings of any session in matter of direct concern to the body or agency they represent, unless at least one third of the Parties present at the session object."<sup>18</sup> In other words, the Convention's formal rules define NGO participation in terms of what these groups cannot do (vote) as opposed to what they can do.

In practice, NGO participation takes the following basic forms:

- Access to the conference venue
- Presence during meetings
- Interventions during debate

<sup>17</sup> FCCC/SBI/1998/6.

<sup>18</sup> Rule 7.2 ROP.

- Face-to-face lobbying of delegations
- Distribution of documents

In order to ration scarce resources amongst a growing number of accredited NGOs, the Secretariat and the Bureau have developed an informal "constituency system" whereby groups are requested to "self-organise" into overarching interest groups.<sup>19</sup> For most purposes the groups divide into ENGOs and BINGOs, and these groups are briefed separately by the Executive Secretary and delegations, are often given separate meeting rooms within the conference venue, and are asked to co-ordinate their use of press briefing facilities. As is described below, a more detailed constituency system has been developed for the purposes of interventions in formal debates.

The constituency system, while broadly accepted by the NGO community, has had its drawbacks. The equitable rationing of resources places heightened responsibility on each constituency to ensure, through very informal means, that all its members are informed and consulted. On occasion the constituencies have proved too broad to accommodate groups that had incompatible views, raising the risk that minority voices will be shut out. Thus far, this informal system has accommodated divergent views by allowing new constituencies to form. Divergent views within the BINGO group led to the formation of "Green" and "Grey" BINGO groupings (referred to by the ENGOs as the "Grey" and "Brown" groups).<sup>20</sup>

As the Kyoto bodies, with limited memberships begin to operate, these informal constituency systems may be used to ration observer access to smaller meeting rooms. At present NGO interest in the work of these bodies, and in particular the EBCDM, is intense. The first brush with this challenge is discussed below, in section 3.1.3.

### **Access to the conference venue**

Prior to each session of the Convention bodies, each accredited NGO is invited to nominate individuals to represent it at that meeting. All accredited representatives are provided, upon arrival at the session and the presentation of credentials in the form of a duly signed letter of accreditation from an officer of the NGO, with an identity badge. This badge is a distinctive colour reserved for NGOs, and entitles the holder to access to the conference venue.

<sup>19</sup> This discussion is based on the author's personal knowledge and interview with secretariat official and bureau members.

<sup>20</sup> Interviews with ENGO and BINGO representatives.

A number of serious security breaches occurred at the sixth session of the COP-6 at the Hague. Environmental activists and protesters not formally accredited to the COP used counterfeit badges to enter the conference venue in small groups. In a co-ordinated effort, a large group rushed the security guard and forced their way into an informal contact group, unfurled banners and began chanting their protest at the slow pace of the negotiations. Delegates were instructed by security to remain in their seats, as the protestors made for the dais. They took the stage, knocked over the head table, and locked arms. The room was eventually cleared of delegates and the protesters were arrested. Since this incident, photographs and raised stamps were added to the badges to prevent the transfer or falsification of badges and to increase the accountability of duly accredited NGOs for any unauthorised activity.

#### Presence as observers during meetings

The ability to participate as observers, provided for in the Convention and the ROP, has been interpreted, as a minimum, as a right to be present during the formal public sessions of the COP and of the Subsidiary Bodies. The right can be limited by a decision by one third of the Parties present to close the meeting. A formal public session of a Convention body has never been closed to observers.

Informal meetings, also known as contact groups, as long as they are open-ended (open to all government delegations), are also open to all accredited observers (although the size of the room may – by intention or otherwise – physically constrain the numbers of NGOs present). In order to clarify and regularise this practice, COP-4 confirmed that

“the presiding officers of Convention bodies may invite representatives of intergovernmental and non-governmental organizations to attend as observers any open-ended contact group established under the Convention process, unless at least one third of the Parties present at the session of the Convention body setting up that contact group object, and on the understanding that the presiding officers of such contact groups may determine at any time during their proceedings that they should be closed to intergovernmental and non-governmental organizations”.<sup>21</sup>

As a matter of practice, these informal open-ended contact groups are regularly closed to observers. The choice to close a meeting is usually made by the presiding officer, after taking informal soundings among

<sup>21</sup> Decision 18/CP.4.

delegations or through discussions within the Bureau, but without opening the issue to public debate.

NGOs, particularly ENGOs have been highly critical of the practice of closing meetings. They argue that negotiations tend to close at very moment when discussions become politically sensitive, and when government delegations must be held accountable by observers.<sup>22</sup>

#### Interventions during debate

Participation in Convention sessions has also been interpreted to extend to the opportunity to “intervene” orally during the debates. NGO interventions can take the form of formal prepared statements to plenary sessions of the COP, or spontaneous statements made in the course of the debates.

The climate change procedures have traditionally allowed for formal NGO statements during the COP plenary. For this purpose the informal rules have been developed by the Bureaux and the secretariat to assign speaking slots to a representative cross section of informal NGO “constituencies.” Time allowing, as many as twelve NGO representative can take the floor for 2-5 minute speeches. The slots are divided roughly between four ENGOs, four BINGOs, local government/parliamentarians, faith-based groups, trade unions, and a representative of local NGOs. The NGOs are left to themselves to determine which groups and individuals will fill the slots assigned to each constituency.<sup>23</sup>

Although the opportunity to make these formal interventions is jealously defended by NGOs, most do not see the statements as being particularly useful or effective in influencing delegations or outcomes. Indeed, it is not unusual for some of the NGO slots to go unused. Just like the formal statements made by the Parties themselves, they are often made to a half-empty room (attended by those next on the speakers’ list) as part of a session running in parallel to the “real” negotiations taking place elsewhere.

NGOs, and ENGOs in particular, are far more interested in the opportunity to intervene spontaneously during the substantive debates. The ROP do not prohibit such interventions, and leave the opportunity to the discretion of the chair. In climate change, such discretion is rarely exercised in favour of NGO interventions. Exceptions have been made during negotiations of a highly technical nature, when it has been viewed by the chairman as useful to hear expert opinions. In these circumstances NGOs have been allowed one or two interventions at the conclusion of each agenda

<sup>22</sup> Interviews with bureau members and ENGO representatives.

<sup>23</sup> Interview with secretariat official.

item, and only when there are no government delegations requesting the floor.<sup>24</sup>

While ENGOs have continued to press for increased opportunities to intervene in substantive debates, there seems to be very little support from government delegations to allow them to do so.

#### Face-to-face lobbying of delegations

Opportunities to meet face to face with government delegations in an informal and spontaneous manner is widely viewed as the most important channel for NGOs to influence the process. Full access to the conference venue enables NGOs to meet freely with delegates in the corridors.

During the negotiations of the Convention and prior to its entry into force (1991-1994), observers were also free to approach delegations while debates were in session. This enabled NGOs to sit beside government delegates and to provide advice and suggest interventions in "real time". While frowned upon by some delegations, this practice was not forbidden by the INC's or the Convention's formal rules and was widely tolerated by the informal practice. At the eleventh session of the INC, in the course of a heated debate preparing for the review of adequacy of the Convention's commitments at COP-1, it became apparent that an accredited NGO (a BINGO) was actively prompting a co-ordinated series of interventions. The secretariat was instructed by the chair to request NGOs to remain off the floor. Since then, it has become an entrenched but unwritten rule of the climate change regime that NGOs are not allowed to approach delegations while the debates are in session.

Most BINGOs refrain from this form of lobbying, but ENGOs have since pressed hard for the return to previous practice. The secretariat and government delegations have remained of the view that it undermines the credibility of the process to allow such overt displays of NGO influence. It has, however, been noted, that the wide availability and use of mobile phones amongst government and NGO delegations has in part overcome NGOs' need to access the floor.

#### Distribution of documents

NGOs often seek to participate in the process by expressing their views on paper, and some invest substantial resources in printing large quantities of materials containing their views and analysis. Others prepare and distrib-

<sup>24</sup> Regular, substantive ENGO interventions were relatively common during the negotiations on the design of the multilateral consultative process under the Convention (the so-called AG-13 process).

ute more ephemeral pieces aimed at filling the immediate needs of lobbying or drafting. Government delegates find the written form of targeted lobbying extremely useful to reflect upon and to bring with them into the negotiations.<sup>25</sup>

NGOs are limited, by informal practice, in the manner in which they can distribute such material. They are not allowed to access to delegations' official "pigeon holes", nor are they allowed to distribute materials directly to delegates desks in the conference hall. These rules are intended to ensure that no confusion arises as to the unofficial source of NGO documentation, and, more practically, to cut down on the amount of waste paper generated by mass distribution.

NGOs are, however, generally free to hand materials directly to delegates, or to make them available in piles on designated tables.

ECO, a 2-6 page morning newsletter written and published by members of the Climate Action Network (CAN) provides regular commentary on previous days' negotiations, as well as advice and encouragement for the day ahead. Its publication at the sessions is funded by contributions from the larger (mostly US-based) ENGOs, by charitable foundations, and, increasingly, by donor (industrialised country) governments.

Part informative, part editorial, part satirical, ECO serves to remind participants of mainstream environmental perspectives on specific issues. ECO often contains exhortations aimed at spurring the negotiations on by highlighting bottlenecks, and proposing "progressive" solutions to problems encountered by the process.

On occasion efforts have been made by the secretariat, usually acting under the instruction of the president or another presiding officer, to regulate the distribution of printed NGO material. Complaints have been made with regard to particular documents that have been considered misleading or inappropriate. This has primarily been the case when an NGO has been seen as overstepping bounds of propriety by naming and criticising individuals, rather than governments or delegations. This has led to the development of an informal practice of self-restraint among NGOs in refraining from naming or criticising individuals directly in written documents.<sup>26</sup>

<sup>25</sup> Interviews with government delegates.

<sup>26</sup> Interviews with ENGOs and secretariat official.

### Access to official documentation

As a matter of informal practice, NGO delegates have been provided liberal access to the official documentation of the climate change process, either in hard copy, from the document distribution desks, or in electronic format over the internet. This is in keeping with the SBI's decisions that "encouraged the secretariat to proceed with [...] activities, within the available resources" for "improving the availability of documentation and information to non-governmental organizations."<sup>27</sup>

On occasion, when copies of certain documents have been limited, the secretariat has temporarily rationed access by giving government delegates priority, or by limiting the numbers of copies available to each NGO delegation. This is often the case for working documents that have no official status, such as the written proposals of delegations that are distributed for reference during the debates.

The secretariat has informally proposed managing the cost of document distribution by employing variations on the constituency system developed to manage NGO interventions. At one point it was hoped that regional NGO nodes could take over the responsibility and the costs of distributing materials to interested NGOs. The availability of most documentation in electronic form over the internet seems to have met most of these cost concerns.<sup>28</sup>

#### 3.1.2.3 Other Opportunities for NGO Participation

##### Participation on government delegations

Individuals from NGOs have also participated on government delegations. Some governments include NGOs from their countries on their delegations to represent civil society constituencies. Others include NGOs on their delegations as expert advisors. Each government develops its own rules on how to manage these roles in terms of confidentiality rules, and constraints on the extent to which accredited delegates can speak on behalf of the government.

The Convention's formal rules entitle governments to nominate any individual they choose to serve on their delegations. The Secretariat respects this choice, but does not allow any individual to register for the same meeting under more than one designation, and has been known to

<sup>27</sup> FCCC/SBI/1998/6.

<sup>28</sup> Interview with secretariat official.

scrutinise more closely the credentials of those individuals that engage in "delegation hopping".

The author of this case study is on the staff of the Foundation for International Environmental Law and Development (FIELD), a NGO based in London that provides legal advice and assistance on international environmental law to both NGOs and governments. One of FIELD's founding projects was a grant from a private charitable foundation that enabled it to provide such assistance to small island delegations directly, during the negotiations of the Convention. FIELD lawyers have been frequently accredited as members of these governments' delegations to the Convention bodies, where they also serve as advisors to the members of the Alliance of Small Island States. While FIELD is an ENGO, and is also accredited to the COP as such, the role its staff play in serving on government delegations is not as NGOs, but as government advisors.

##### Side events and infotainment

The climate change secretariat, with the encouragement of the Bureau and, often, the host country, have further encouraged NGO activities by providing the physical space for "side events", display booths, and NGO "infotainment" alongside the official meetings. These events range from academic seminars and debates, to video presentations, to puppet shows and ice sculptures.

The Fossil of the Day Award is a spin-off of ECO, and is CAN's way of singling out those delegations that have in some way undermined the environmental integrity of the negotiations. A daily public ceremony is performed in which a first, second and third prize are awarded to delegations for reasons described. The awards are then prominently displayed in the conference venue, usually through a combination of country flags and symbolic lump of coal.

#### 3.1.3 The Kyoto Procedures and Mechanisms: New Challenges and Opportunities

##### Participation as Observers

Article 13(8) of the Kyoto Protocol contains provisions on participation of observers, similar to those in the Convention, and the COP/MOP will apply the same rules of procedure applied by the COP unless the Parties to the Protocol decide otherwise.<sup>29</sup> This means that the same rules, practice

<sup>29</sup> The Article 13(8) of the Kyoto Protocol reads, in relevant parts: "... Any body or agency, whether national or international, governmental or non-

and culture that have developed under the Convention regarding NGO participation are likely to prevail under the Protocol's COP/MOP and in its use of the Convention's Subsidiary Bodies.

However, unlike the Convention, the Protocol will have institutions of limited membership. This means that for the first time under the climate regime, delegates representing Parties to the regime will be relegated to observer status. New rules and practices may need to be developed to distinguish their participation from the participation of other observers, including that of NGOs. Two of the Protocol's new institutions, the EB-CDM, the SC-JI are expressly required to be "open to attendance, as observers, by all Parties, by all UNFCCC accredited observers and stakeholders, except where otherwise decided" by the relevant body.<sup>30</sup>

This text was, however, recently put to the test at the second meeting of the EB-CDM. In preparation for that meeting, draft rules of procedure were circulated that sought to interpret the "right" for observers to attend EB-CDM meetings as being made operational solely through a live webcast on the Secretariat's website. Informally, the secretariat advanced the view that it would be prohibitively expensive for arrangements to be made that could accommodate at each EB-CDM meeting, all the observers, from both Parties and from NGOs, that might wish to attend. Additional concerns were raised by the possibility that representatives from investors and service industries with financial interests in projects would not only boost attendance, but create an opportunity for inappropriate lobbying.

In the event, the first full EB-CDM meeting was closed to observers. After a prolonged debate (webcast live, and subsequently archived on the Secretariat website), the Board adopted draft rules that repeat the language from the COP-7 text, indicating that the Board meetings will be "open to attendance" by observers. As now drafted, this attendance may "also be facilitated through the availability via world wide web". In language that goes beyond the COP-7 decision, and draws upon the Convention's ROPs, the draft rules further provide that [o]bservers may, upon invitation by the board, make presentations relating to matters under consideration by the

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governmental, which is qualified in matters covered by the Convention, and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties as an observer, may be so admitted unless at least one third of the Parties present object". The Article 13(8) also provides that the admissions and participation of observers shall be subject *mutatis mutandis* to the rules of procedure applied under the Convention, except where otherwise decided by the COP serving as the meeting of the parties to the Protocol.

<sup>30</sup> See UNFCCC Decision 17/CP.7: para. 16; UNFCCC Decision 16/CP.7: para. 18.

board." In order to accommodate the Secretariat's concerns about the size and cost of the venue, the Board also has requested, as part of its report (and not part of the formal rules) that "arrangements be made for the secretariat to secure for its third meeting viewing room for about 50 observers. Observers shall have registered with the secretariat at the latest three weeks before the meeting."<sup>31</sup>

Thus the first formal and informal precedents set for the operation of the Protocol's first institution, and the regime's first body of limited membership, reflects a balance between access and constraints. If these meetings prove to be popular with observers, it is likely that some form of constituency system will have to be deployed to allocate scarce seats.

The text establishing the Compliance Committee is silent on whether its regular meetings will be open to NGOs, though it can be argued that as a subsidiary body of the Protocol, the Committee will follow the rules governing the COP/MOP and be open to accredited observers unless the Parties decide otherwise. The Compliance text does however, specifically provide that hearings of its Enforcement Branch, that can be convened at the request of a Party whose compliance is under review, "shall be held in public, unless the enforcement branch decides, of its own accord or at the request of the Party concerned, that part or all of the hearing shall take place in private."<sup>32</sup> Presumably, if this most politically sensitive form of hearing is to be open to the public, more routine meetings of the Committee and its branches would also be open to observers.

#### Access to Official Documentation

For the first time, with the development of the rules of procedure for the EB-CDM, access of observers, and of the public at large, to UNFCCC documentation has been expressed as a formal right. Documentation shall be made publicly available by the secretariat via world wide web, "soon after" transmission to members and alternate members of Board. The availability of such documentation, particularly as it might relate to specific projects, shall be subject to confidentiality provisions.<sup>33</sup> Similar provisions are included in the text of the JI Supervisory Committee procedures and the Compliance procedures which create presumptions that

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<sup>31</sup> CDM-EB-02: para. 33; Rule 26 of the draft ROP for the EB-CDM.

<sup>32</sup> FCCC Decision 24/CP.7: para. IX.2.

<sup>33</sup> Rule 24.2 of draft ROP for the EB-CDM.

relevant documentation shall be made public, unless the relevant body determines otherwise.<sup>34</sup>

### New functions and new forms of participation

A number of unique procedures and institutions created under Protocol have opened new opportunities for NGO participation, which will depend upon the functions carried out by these bodies. For the EB-CDM and the SC-JI, these functions are associated with the approval of the projects and project certifiers that are eligible to participate in the generation of carbon credits under the Protocol. The Compliance Committee will perform functions associated with facilitating, assessing and enforcing the compliance of Parties with their obligations under the Protocol.

The Protocol's project-based bodies have introduced the concept of a new kind of non-Party participant – the “stakeholder.” Stakeholders are defined in the COP decisions related to the CDM, as “the public, including individuals, groups or communities affected, or likely to be affected, by the proposed clean development mechanism project activity.” It is not clear from this language whether stakeholders must go through a distinct form of accreditation in order to establish their interest in a project.

The EBCDM and the SC-JI provide a role for information provided by NGOs and by “stakeholders” in the project cycle of the investments these institutions will supervise. NGOs and stakeholders are entitled to submit comments and supporting information on projects proposed for approval as CDM and JI credits, and the entities entrusted with validating the projects must confirm that any comments received have been taken into account.<sup>35</sup> Similarly, “competent intergovernmental and non-governmental organizations may submit relevant factual and technical information to the relevant branch” of the Protocol's Compliance Committee.

These rules were incorporated into the design of the Kyoto bodies as a result of a sustained effort to recognise the important role of NGOs in holding these procedures and mechanisms accountable.

## 3.1.4 Problems of NGO Participation and Proposed Solutions

### 3.1.4.1 General Perceptions of “Success”

Most “seasoned” NGOs and government delegates appear to view the NGO participation in the regime as largely successful, in providing them

<sup>34</sup> See, e.g., UNFCCC Decision 16/CP.7: Annex, para. 16; UNFCCC Decision 24/CP.7: para. VII.6.

<sup>35</sup> FCCC Decision 17/CP.7: para 34.

with the access to information and procedures necessary to get their jobs done. While success to many is expressed in terms of the volume of NGOs present in meeting, this is often qualified by references to lack of North/South balance, and questions as to the quality of some NGO participation.

Even those NGOs that have been characterised by some as not successfully participating, describe themselves as having achieved their objectives. For example, NGOs that travel long distances to produce a poorly attended side event, still saw value in the opportunity to network, and to learn more about the process.<sup>36</sup>

Other than the Secretariat, participants are largely unaware of which practices relating to NGO participation resulted from formal rules and which from informal practice.

### 3.1.4.2 Deficits, Problems and Need for Improvement

Amongst ENGOs, one significant “problem” that seems to arise from a first-hand or second-hand nostalgia, is the existing practice in the climate change regime that precludes NGOs from approaching delegates during debate. While this “informal practice” is seldom enforced it is largely adhered to by NGOs.

This limitation has in part been overcome by the use of mobile phones, which allow NGOs in a relationship of trust with delegations to speak to them immediately or call them out of the room. Nonetheless ENGOs interviewed supported the return to a practice that existed during the INCs where NGOs were allowed to approach delegates during all sessions. BINGOs seem less concerned as they prefer a more subdued approach away from the negotiations. This “over the dinner table” access was also viewed as effective by a number of influential delegations.

Although there is a widespread sense of complacency about the success of the present system of NGO participation in the climate regime, there is also a growing sense that the system is under threat. The continued prohibition on approaching delegates, an increasing use of closed contact groups, and reported efforts by presiding officers to restrict the distribution of printed materials have suggested to some that existing, liberal but informal “rights” are being eroded.

<sup>36</sup> Interview with BINGO representative, secretariat official.

Within the Secretariat and Bureau, the most significant problem seems to arise from:

- security risks associated with NGOs, particularly following the incidents at the Hague meeting;
- difficulties in administration and costs associated with the very large number of NGOs “on the books” and appearing at meetings;
- an occasional “overstepping of bounds”, particularly when NGO criticism has reached the level of personal attacks on delegates.

NGOs, governments and the Secretariat share concerns about the dominance of Northern NGOs in the process, but have offered different approaches as to how best to resolve this problem.

### **3.1.4.3 Proposals for Enhancing NGO Participation**

Efforts have been made to increase the level of participation of NGOs from developing countries. Within the ENGO community, CAN works to raise money and awareness within developing countries to encourage the attendance of relevant Southern groups.<sup>37</sup> Host country governments, notably the Dutch government at COP-6, have provided substantial resources towards this end as well. These efforts are not, however, generally viewed as successful. Given that “effective” NGO participation in the climate change process depends so heavily on expertise and personal contacts, simply providing travel money and per diems for ad hoc attendance to COP meetings cannot be expected to have a long term impact.

As has been described, other proposals for enhancing NGO participation seem to have originated from the Secretariat in an effort to “manage” a growing number of registered groups. The Secretariat has on a number of documented occasions developed and promoted “constituency systems” with a view to promoting greater accountability, saving costs, promoting a greater balance of interests, and streamlining NGO participation, access to documentation, intervention opportunities, etc.

The NGO community from across a broad range of interests have resisted efforts to “manage” them, preferring to organise their own constituencies. NGOs have successfully lobbied both to prevent the establishment of more formal “consultation mechanisms” and to get their “rights” to observe at informal sessions recognised.

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<sup>37</sup> Interviews with ENGOs.

Additional possible initiatives by the Secretariat include:<sup>38</sup>

- an effort to document the informal guidelines and practice that has emerged over the past ten years;
- an initiative to pare down the number of registered NGOs by requiring them to respond to questionnaires or face being removed from the data base;
- an effort to promote greater participation of NGOs, particularly from developing countries in meetings aimed at increasing understanding of regime-related issues away from the negotiating process, e.g. through regional, in-country workshops.

Initial responses, particularly from ENGOs suggest some reluctance towards a greater formalisation of the rules out of concern that if put in writing they would like be more restrictive than the current, informal practice allows. There seems, however, to be general support for addressing North/South imbalances by investing in local public awareness and capacity building initiatives, rather than in attendance at COP sessions.

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<sup>38</sup> Interview with secretariat official.

### 3.2 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

The following case study is based on a review of literature and official documentation, as well as interviews with the fourteen individuals listed at the end of this report. The pool of interviewees comprised, in their personal capacities, the CITES Secretariat, a government official from Germany, several members of international and national environmental non-governmental organisations from developed and developing countries, and academic experts. Additional information was provided by individuals from the CITES Secretariat.

#### 3.2.1 Overview

##### 3.2.1.1 General Introduction to CITES

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) was adopted in 1973, making it one of the earliest modern international environmental legal instruments. It broke new ground from traditional wildlife treaties since its focus is not directly on the conservation of species or habitats, but rather on a specific human activity that can affect the conservation status of species: international trade. The objective of CITES is to prevent the overexploitation of listed species caused by international trade. It employs controls on the market so as to eliminate threats to endangered species caused by international trade.

The Convention establishes three appendices, which classify species in accordance with the impact of trade on their conservation status. Species listed on Appendix I are most endangered and therefore commercial international trade in them is highly restricted. Appendix II species may become endangered unless trade in them is controlled. Thus, export of Appendix II species must be preceded by a finding by the exporting Party's "management" and "scientific" authorities that the export will not be detrimental to the survival of the species. The Scientific Authority must also ensure that all exports of Appendix II specimens are limited in order to maintain that species throughout its range at a level consistent with its role in the ecosystems and above a level at which that species might become eligible for Appendix I.

Resolution Conf. 9.24 establishes criteria for the listing of species in Appendices I and II. Adding a species to Appendix I requires that at least one of several trade criteria – which define whether a species “is or may be affected by trade” – and biological criteria – which define whether a species is considered to be “threatened with extinction” – be met. The cri-

teria for Appendix II listings relate to whether it is known, inferred or projected that unless trade is regulated at least one of the biological criteria for Appendix I listing will be met, or that harvesting from the wild for international trade will have a detrimental impact on the species.

Unlike the listing process for Appendices I and II, which take place through decisions by the CITES Conference of the Parties, Appendix III species are listed individually by Parties. Appendix III listing is meant to provide international assistance for a Party seeking to control trade in its own native species. Listing Parties must issue export permits for the species, while importing Parties are to require the presentation of the export permits when the specimen comes from the listing party, and a certificate of origin, when the specimen comes from another range state.

Approximately 800 animal and plant species are listed on Appendix I and nearly 35,000 species are on Appendix II. While most parties are bound by such listings, a Party may, however, enter reservations to specific species when it becomes a party to CITES or at the time a species is listed. A Party with such a reservation is considered a non-party with respect to trade in that species.

CITES contains several institutions, which are important to understand, since the level of NGOs participation varies with the body concerned. The Convention establishes a Conference of Parties as the overall governing body. It also establishes a Secretariat, which is to perform a number of functions, including: undertaking scientific and technical studies, studying the reports of Parties and requesting from them further information to ensure implementation of the Convention, inviting the attention of Parties to any matter pertaining to the aims of the Convention, and making recommendations for the implementation of the Convention. In practice, the Secretariat is a key conduit for the involvement of NGOs (e.g. through joint projects, provision of information, convening of meetings with NGOs etc.), including using its influence in making suggestions to parties. In addition, the Secretariat is also often turned to by chairs of meetings for advice, which also gives it an influential role in shaping specific decisions involving NGOs participation.

The Conference of the Parties, in turn, has established several committees.<sup>1</sup> The most important is the Standing Committee of the Conference of the Parties, which is to be the senior committee. In addition, an Animals Committee and a Plants Committee are established. The Standing Com-

<sup>1</sup> CITES Resolution Conf. 11.1. Committee I deals with listing issues, Committee II with other matters. In addition, there is a Budget Committee and a Nomenclature Committee.

mittee is to carry out a number of functions, including: providing general policy and operational direction to the Secretariat, providing coordination and advice to other Committees, carrying out interim activities on behalf of the Conference, and carrying out any other functions entrusted to it by the Conference of the Parties. The Animals and Plants Committees are more technical in nature, and their functions include: providing advice and guidance to the Conference of the Parties, other committees, and the Secretariat on all matters relevant to international trade in listed species, cooperating with the Secretariat on implementation of its programme of work to assist Scientific authorities, assessing information on those species for which there is evidence of a change in the volume of trade, undertaking a periodic review of listed species, and drafting resolutions for consideration by the Conference of the Parties.

### 3.2.1.2 CITES and NGOs

CITES is considered among the most liberal of environmental treaties in terms of NGOs participation, and some of its provisions on NGO participation were copied in other treaties. Indeed, the culture in CITES is such that no government wants to be seen as obstructing transparency.<sup>2</sup> In part, this may be explained by the Convention's origins. The idea of an international agreement to control trade in wildlife was first initiated in the non-governmental sector, by a 1963 resolution of IUCN.<sup>3</sup> IUCN then prepared what became the first drafts of the Convention, and was intimately involved in the whole negotiation process. Indeed, for a time, the CITES Secretariat was housed at IUCN headquarters.<sup>4</sup> Article XII of the Treaty indicates that the Secretariat may receive assistance from suitable NGOs.<sup>5</sup>

Despite this, one interviewee indicated that the historical trend in CITES has been one of limiting the role of NGOs.<sup>6</sup> It was noted that in the early years, the atmosphere was one of almost equal partnership between NGOs and Parties. But this, reportedly, began to change by the end of the 1980s, partly as a result of growing numbers of Parties, combined with growing numbers of NGOs wanting to participate and increasing controversies within the Convention itself. Another interviewee identified 1989 as the high watermark for NGO participation. He noted that since 1989,

<sup>2</sup> Interview with James Martin Jones, WWF-UK.

<sup>3</sup> IUCN-The World Conservation Union is an international body whose membership is composed of States, government agencies, and NGOs.

<sup>4</sup> See section 2.1.3.6.

<sup>5</sup> See section 2.2.1.1.

<sup>6</sup> Interview with Michael Bean, Environmental Defence.

there has been an increasing tendency to defer to the wishes of Range States, which has lessened the influence of NGOs.

Nonetheless, a high level of NGO participation in CITES is widely seen as a necessary element in the overall success of the Convention. NGOs can often bring much needed expertise into the deliberations, and on particular listing issues may be more knowledgeable than government delegates. In addition, NGOs play a well-recognised role in the implementation of the Convention. This role is informal, in that many wildlife agencies cooperate closely with NGOs, as well as formal, in that several Resolutions and Decisions specifically name some NGOs as implementing partners.<sup>7</sup> Furthermore, as will be discussed below, some NGOs have particularly close relations with the Secretariat, and are often subcontracted by the Secretariat to undertake various technical, and even policy oriented, tasks.

Despite the relatively high level of openness, strengthening communication and collaboration with national and international NGOs is one of the objectives of the CITES Strategic Vision Through 2005.<sup>8</sup> The action points include encouraging greater NGO participation in CITES outreach, encouraging Parties to enhance communication and collaboration with local and national NGOs, improve the availability of CITES information to a broad spectrum of NGOs, collaborate with NGOs in public education and outreach campaigns, and meet regularly with local, national and international NGOs.<sup>9</sup> In addition, the Strategic Vision calls for strengthening alliances with relevant local communities, consumer groups and traders.<sup>10</sup>

To summarise, NGOs carry out several key functions in the CITES process:

- Providers of technical information, including scientific and legal information.
- Advocacy
- Donors
- Potential partners in implementing decisions
- Partners in projects carried out by the Secretariat

<sup>7</sup> See, e.g. Resolution Conf. 10.13, which requires that any Party presenting an amendment proposal for a timber species must consult with a certain number of specified organisations, which includes trade, research and conservation NGOs.

<sup>8</sup> Objective 4.1.

<sup>9</sup> Action points 4.1.1 to 4.1.6.

<sup>10</sup> Objective 4.2.

Unlike other environmental treaties, the NGOs active in CITES are mainly from the public interest sector. With very few exceptions, there is virtually no participation from the private sector. This may be explained by the reality that most species listed under CITES appendices are not of significant commercial value. However, this is not to say that NGOs tend to speak with one voice. Rather, there is a distinct split between NGOs that favour animal rights (and tend to distrust trade) and those that support the concept of sustainable use and see trade as necessary for the survival of a species by providing it with economic value. Although there is no formal division between developed and developing countries – debates tend to be between producer and consumer countries, the former often being from the South, with the latter often from the North – many of the animal rights NGOs come from the developed world.

As indicated above, the level of NGO participation in CITES has steadily increased over time, which may reflect confidence about their ability to influence the process. It is now the case that approximately half of the total participants are NGO observers. At COP 11, 160 NGOs were accredited; 47 were international NGOs, and 113, national NGOs.

### 3.2.2 Legal Provisions and Practice of NGO Participation

#### 3.2.2.1 CITES Conference of Parties

The provisions of the treaty, as well as the Rules of Procedure and COP Decisions govern accreditation to meetings. As a result of controversies at COP-10, where NGOs participation was perceived as curtailed on controversial issues (such as the listing of the African Elephant),<sup>11</sup> the topic of NGOs participation was considered in the lead up to COP-11.<sup>12</sup> At COP-11, the Rules of Procedure were modified and several Decisions were adopted to clarify these issues.

#### Accreditation to meetings

According to Article XI (7) of the treaty:

Any body or agency technically qualified in protection, conservation or management of wild fauna and flora, in the following categories, which has informed the Secretariat of its desire to be represented at meetings of the Conference by observers, shall be admitted unless one third of the Parties object:

<sup>11</sup> Interview with Jon Hutton, Africa Resources Trust.

<sup>12</sup> See, e.g., Doc. 11.16, Recognition of the Important Contribution Made by Observers to the CITES Process at Meetings of the Conference of the Parties.

- (a) international agencies or bodies, either governmental or non-governmental, and national government agencies and bodies; and
- (b) national non-governmental agencies or bodies which have been approved for this purpose by the State in which they are located. Once admitted, these observers shall have the right to participate but not to vote.

Rule 2 echoes these requirements, but adds that observers must also inform the Secretariat of their desire to be represented. It also adds that observers may be represented in Committees I and II, as well as the Budget Committee, unless one third of the Parties object.

In practice, the Secretariat exercises considerable influence about these determinations. For example, at COP-11, Japan objected to the accreditation of Greenpeace International, but after the Secretariat indicated that Greenpeace met the criteria for accreditation, the plenary approved the accreditation.

The wording of Article XI(7) suggests that States have the right to filter the accreditation of their national NGOs.<sup>13</sup> This is echoed by Rule 3.4, which requires that national NGOs submit to the Secretariat “evidence of the approval of the State in which they are located.” This differentiation between the treatment of international and national NGOs does appear in some other wildlife treaties,<sup>14</sup> but not in more recent treaties.<sup>15</sup> In practice, this differentiation has not prevented many national NGOs from being accredited. For example, in Germany, there has been only one case of a national NGO being refused approval, on the basis that the organisation concerned had not fulfilled all the national legal requirements for being a bona fide NGO in Germany.<sup>16</sup> This provision has never been the subject of any adjudication or debate. One possible interpretation is that the “this purpose” referred to in (b) speaks of the competence of the NGO in the matters of the Convention, rather being granted permission to attend a COP. However, as a matter of practice, States have provided approval for actual attendance.

One curious feature of the wording of this treaty provision is the statement that national NGOs have the right to participate but not to vote.

<sup>13</sup> See also section 2.2.1.1.

<sup>14</sup> E.g. article VII (9) of the Convention on the Conservation of Migratory Species of Wild Animals. See also Section 2.1.2.5, above.

<sup>15</sup> E.g. Article 23 of the Convention on Biological Diversity.

<sup>16</sup> Interview with Gerhardt Adams, BMU.

The implicit suggestion is that international NGOs to have the right to vote, since paragraph (a) does not mention the issue of voting. However, in practice no NGOs have been granted the right to vote in CITES.<sup>17</sup> Indeed, Rule 2 is clear in providing that no observers can vote.

To be accredited, NGOs must not only satisfy the criteria, but are also required to pay an accreditation fee of CHF 600.<sup>18</sup> The Secretariat has the discretion to lower that fee in individual cases and favourable consideration is given to national NGOs from developing countries.<sup>19</sup>

In addition to accreditation as observers, NGOs are often on national delegations. Rule 1.1 appears to permit this by entitling a Party be represented by a delegation consisting of, *inter alia*, “Advisors as the Party may deem necessary.” At COP-11, Germany placed many NGOs on its delegation after it turned out that some German NGOs had not properly completed the new registration formalities to be accredited as observers.<sup>20</sup> On occasion, the inclusion of NGOs in government delegations has been perceived as opportunistic, particularly when small States are represented only by NGOs. Despite being frowned upon, however, this practice has not been disallowed. One caveat to note is that if the representative of a Party is also an observer for an NGO, that person is not eligible for sponsorship through the Delegate’s Project.<sup>21</sup>

Finally, it should be noted that NGOs who are not successfully accredited may still be able to attend the meeting as visitors, with no rights to speak.

#### NGO attendance at meetings

Several types of meetings take place at meetings of the CITES Conference of the Parties: plenary, committees, working groups, and others. According to Decision 11.127:

“The Secretariat and the host country ... should make every effort to ensure that each approved observer is provided with at least one seat on the floor in the meeting rooms of the plenary sessions,

<sup>17</sup> It is also worth noting that the comparable provision in the Convention on the Conservation of Migratory Species of Wild Animals makes the statement about NGOs not having the right to vote apply to all NGOs.

<sup>18</sup> CITES Resolution Conf. 10.2. See also section 2.2.1.1

<sup>19</sup> Personal Communication from Jonathan Barzdo, Chief of Convention Support Unit, CITES Secretariat, 27.02.02.

<sup>20</sup> Interview with Gerhardt Adams, BMU.

<sup>21</sup> CITES Decision 11.124.

Committee I, Committee II and the Budget Committee, unless one-third of the Party representatives present and voting object.”

The practice is for NGOs to be able to attend virtually all official meetings. However, the chairs of the relevant bodies can exercise considerable power over NGO attendance. In one instance, a Chair of a Committee ruled that NGOs could not attend any working groups established by that Committee, unless they had intervened in the discussion in the Committee. Such discretion appears to be allowed by Rule 5.3, which allows The Conference and committees to establish working groups as necessary and to determine the composition of each. Rule 12.2 goes to say that as a general rule, sessions of committees and working groups other than Committee I and II and the Budget Committee shall be limited to delegates and those observers invited by the Chairman of the committees or working groups.

Rule 12.1 is unclear in its wording, and may be a source of limiting NGOs attendance at meetings. It provides that single sessions of the plenary or official committees may be “closed to the public by a decision of a simple majority of the Representatives present and voting.” The ambiguity lies in the term “public”, which could potentially include NGOs. However, Rule 13, which governs access by the media, expressly states that attendance at meetings is permitted “except if such sessions are closed to the public”. This would suggest that the “public” being referred to in Rule 12.1 is the general public, through the media, and not NGOs observers. After COP 11, where this provision was discussed, the Chairman confirmed that accredited observers would not be excluded from closed sessions.<sup>22</sup>

Possibly in reaction to the very open practice of allowing NGOs to attend most official meetings, there has been an increase in recent years of informal and Range State meetings. NGOs are excluded from such meetings, unless specifically invited to attend.<sup>23</sup> There have even been dialogues funded by NGOs, to which they have not been entitled to participate.<sup>24</sup> Although difficult and controversial issues have been resolved in these settings, this trend is at odds with the tradition of transparency in CITES. In addition, there has been an increase in the use of secret ballots at COP meetings, which also detract from the transparency of the process.

<sup>22</sup> CITES Doc. Plen 11.2, page 1.

<sup>23</sup> Interview with John Robinson, Wildlife Conservation Society.

<sup>24</sup> E.g. WWF funding of a “workshop” on the hawksbill turtle in Central America – information provided in interview with Jim Armstrong, CITES Secretariat.

### NGO interventions at meetings

The current legal provisions encourage allowing NGOs to make interventions at meetings, but also provide considerable discretion to the chairperson. CITES COP Decision 11.70 states that the “Presiding Officers at plenary sessions, [and sessions of committees] should make every effort to allow observers time in sessions to speak on issues (make interventions).” Decision 11.71 goes on to state that “recognizing that conservation of time, in order to complete the agenda for a meeting [...] is a valid concern, Presiding Officers should give observers a time limit for speaking if necessary and encourage observers not to be redundant in speaking on a particular issue.”

The Rules of Procedure allow the Presiding Officer to take several actions relating to all speakers, whether from NGOs or others: e.g. impose time limits on speakers, limit the number of times an organization may speak, closing the speakers list, and calling a speaker to order if the remarks are not relevant.<sup>25</sup> The only Rule that specifically relates to the type of speaker is the one governing the order of speakers to be followed, where precedence among observers is to be given to non-Party States, followed by intergovernmental organizations and then NGOs.

In general, the practice in CITES is to allow for NGOs to make interventions at virtually all meetings, much depends on the rulings of the particular Chair. For example, as mentioned above, some NGOs were deprived of the right to speak in Committee I of COP 10 on the question of listing the African Elephant. At COP-11, this type of episode did not occur, but some Chairs did not allow NGOs to speak in working groups if they had not intervened on the point in Committee.<sup>26</sup>

### NGO Access to official documentation

Meetings of the CITES COPs generate numerous amounts of official documentation. In general, NGO access to official documentation is generous, although there appears to be no formal requirement for this in the treaty or the Rules. In addition to being able to receive all printed documentation at the meetings themselves, the Secretariat very efficiently places all documentation on its web site.

### Distribution of NGOs documents

Given the large numbers of NGOs that attend CITES COPs, it is not surprising that they bring considerable amounts of documentation for distri-

<sup>25</sup> Rules 16 and 17.

<sup>26</sup> Interview with Jacques Berney, IWMC - World Conservation Trust.

bution to delegations. Distribution of such documentation has been the subject of debate in the CITES process.

Given the key role that NGOs play in contributing technical expertise into the CITES process, the rules and practice have been liberally applied to allow NGO documentation to be distributed. Rule 28.1 provides that “information documents on the conservation and utilization of natural resources may be submitted for the attention of the participants to the meeting by... any observer.” The only formal requirement appears in Rule 28.2, which stipulates that all such documents shall clearly identify the observer presenting them.

Essentially there are two modes for NGOs to distribute documentation. The first involves submission of documentation to the Secretariat, for it to then pass on the documentation directly to delegates (e.g. in delegates’ pigeon holes). In contrast to documentation presented by States for inter-governmental organisations, Rule 28.3 states that documentation from NGO observers shall be subject to approval by the Secretariat, in consultation with the Bureau, if necessary. The second mode for the distribution of NGOs documents is for them to be placed on NGO tables outside the meeting rooms. In this case, the Secretariat plays no role in providing prior approval, although Rule 28.4 entitles any Party to complain to the Bureau if a document is considered offensive.

In cases where the Secretariat is to provide approval, little guidance on the criteria for such approval is provided. Decision 11.128 states that:

“The Secretariat should make every effort to ensure that informative documents on the conservation and utilization of natural resources, prepared by observers for distribution at a meeting of the Conference of the Parties and approved by the Secretariat, are distributed to the participants in the meeting.”

In practice, the Secretariat has allowed most documentation submitted to it to be distributed to delegates. It has mainly checked to ensure certain sensitive formalities are adhered to (e.g. the correct UN designation for China), but also ensure that documentation is not inappropriately offensive (e.g. in criticising a Party without sufficient justification). In the few instances where the Secretariat has become concerned that a document may be inappropriately offensive, it has consulted the Party being criticised before deciding whether to accept or reject the NGOs documentation.<sup>27</sup>

Rule 29 establishes a procedure for complaints to be made to the Bureau in cases involving documents distributed by NGOs without the Sec-

<sup>27</sup> Interview with Jacques Berney, IWMC - World Conservation Trust.

retariat approval or where a participant has been subject to “abuse by another”. This Rule arose out of allegations at COP-10 that an NGO observer had abused a delegate, with the result that the NGO issued a formal apology.<sup>28</sup> Interestingly, the entitlement under Rule 29 to complain does not appear to be limited to States, but to any participant, although the intention is for one of the parties of the dispute to be a Party.<sup>29</sup> The Bureau is then to consider the validity of the complaints, “bearing in mind that legitimate differences of opinion may exist.” Prior to COP-11, the Standing Committee appointed a mediator to act in these, should the need arise.<sup>30</sup> If the complaint involves NGO documentation distributed without the approval of the Secretariat, the Bureau is to consider whether the document concerned “abuses or vilifies a Party, or brings the Convention into disrepute. In all cases, the Bureau is to decide on an appropriate action, which may include withdrawing the right of admission to then NGOs or a formal complaint to a Party. At COP 11, the Chair confirmed the following points regarding the new complaints procedure: (a) the Bureau would appoint a mediator where the issue does not involve a Party, and (b) the decision on withdrawing the right of admission for an observer would be decided by the Conference of Parties. This last point effectively provides a right of appeal of the Bureau decision to the plenary.

#### NGO Access to Delegates

During the meetings, NGOs do not have direct access to delegates. Physically, NGOs are to be granted seats in the meeting rooms. Decision 11.14 provides that Parties should choose venues that would allow NGOs to have such space. Decision 11.127 goes on to recommend that the Secretariat and host country ensure that each observer is provided with at least one seat on the floor, unless one-third of Parties present and voting object. However, Rule 11.4 goes on to provide that NGOs should be seated in one or more designated areas within the meeting room and “may enter an area designates for delegations only when invited to do so by a delegate.”

In addition, Rule 28.5 provides that no exhibition, other than by the host country, can be set up within the immediate vicinity of the meeting rooms. All other exhibitions may be set up elsewhere with the permission of the Bureau, which may withdraw such permission at any time. In practice, many NGO exhibits are established at CITES COPs.

<sup>28</sup> Interview with Chris Wold, Centre for International Environmental Law.

<sup>29</sup> CITES Doc. SC43 Summary Report.

<sup>30</sup> *Ibid.*

As a matter of practice, however, there tend to be several social and information events at meetings of the COP, where both NGO representatives and government delegates can mix freely. More importantly, many countries convene information sessions on a daily basis, which allow NGOs and delegates to interact on specific agenda items for that date.

#### 3.2.2.2 CITES Standing Committee

Although there are specific rules of procedure for the Standing Committee, Rule 32 provides that the rules of the COP apply *mutatis mutandis* in matters not covered by the Standing Committee rules.

#### NGO attendance at meetings

Standing Committee meetings tend to be closed to NGO observers. Rule 5 of the Rules of Procedure of the Standing Committee provides that the Chairman may invite any representative of any organisation to participate in meetings as an observer without a right to vote. In practice, this has been applied so that only on rare occasions – where it was determined that a particular NGO can contribute some specific technical knowledge – has an NGO been invited to attend, and then only for the discussion on particular agenda points.<sup>31</sup> Indeed, Rule 24 provides that the Committee may decide by a simple majority vote whether discussion of a particular subject shall be held in closed session. Only observers from Parties may take part in a closed session.

#### NGO access to documents

The Rules do not specifically provide for NGOs to receive official documents. However, as a result of an amendment to Rule 20, the Secretariat is now permitted to place all documents on its Web site, in the original language, as soon as they become available.<sup>32</sup> Although some States consistently reject the idea of opening the meetings up, the progress that has already been made in publicly releasing meeting documents should not be underestimated. Some countries were initially concerned about the Secretariat proposal to put these documents on the Internet, yet since that practice began, no actual complaints have been received.<sup>33</sup>

The only qualification appears in Rule 31, which allows the Secretariat the right to classify any working document submitted for consideration by the Committee as “Restricted” or “Confidential”. This determination is to

<sup>31</sup> Interview with Jacques Berney, IWMC - World Conservation Trust.

<sup>32</sup> For discussion of this, see CITES Doc. SC 45, summary report.

<sup>33</sup> Interview with Jim Armstrong, CITES Secretariat.

be made when the Secretariat finds that the document contains information that might be detrimental if disclosed to non-Parties or organisations. Parties are then to maintain such restriction or confidentiality unless this classification is removed by the Secretariat.

#### Distribution of NGO documents

Rule 20 provides that all documents submitted to the Secretariat by an observer, which are at the request of the Chairman, are to be placed on the CITES Internet site in the original language. Although NGOs cannot set up information stands outside of Standing Committee meetings, there is usually a table provided for NGO documents to be laid out.

#### NGO access to delegates

Since NGOs do not normally attend Standing Committee meetings, the Rules do not make provision for any seating arrangements. However, as a matter of practice, there is a tradition of an open meeting being held during every Standing Committee, to which NGOs can attend. Only a few NGOs, who tend to be among the better-financed groups, attend these. In addition, these meetings are not part of the official process, so that in practice not all delegations attend and the inputs of NGOs are not reflected in the minutes. Furthermore, in this context NGO inputs cannot be targeted to particular agenda points, and therefore are of limited effectiveness.

#### NGOs as Donors

One of the items traditionally on the agenda of Standing Committee meetings is the approval of Secretariat proposals for externally funded projects, where the donors tend to be NGOs. In the past, withholding approval has been a mechanism to limit the input of certain NGOs in the CITES process. However, at the most recent Standing Committee meeting, all of the Secretariat proposals were approved, with 17 NGO donors, and it was indicated that in the future a mechanism would be established for the Secretariat to approve these donors on its own.<sup>34</sup> The procedure appears to also involve NGOs obtaining the approval of their national CITES management authorities. NGO donors can fund any CITES project or activities that need external funding. Currently, these involve projects relating to species (status survey, trade, management plan, significant trade reviews, etc), including grey parrots in Guinea, musk deer in China, *strombus gigas*, corals, species in Madagascar, captive-bred species, tech-

<sup>34</sup> CITES Doc. SC 45, summary report.

nical workshops on freshwater turtles & tortoises, saiga, seahorses, enforcement activities, national legislation projects, capacity building training workshops, and dialogue meetings among hawksbill turtles range States and elephant range States.<sup>35</sup> In addition, NGOs are invited to contribute to the CITES Trust Fund.<sup>36</sup>

#### 3.2.2.3 *Animals and Plants Committees*

##### NGO Attendance at Meetings

The Animals and Plants Committees are unique among CITES institutions, in that membership is on a personal basis, albeit within specified geographic conditions.<sup>37</sup> Therefore, in principle, and occasionally in practice, members of these committees have come from the NGO sector. As such, these meetings provide the only occasion in the CITES process where someone from an NGO has a right to vote.

Decision 11.7 provides that the proposals for candidates as representatives should be supported by the relevant governments and should ideally be associated with a Scientific Authority, have adequate knowledge of CITES and receive sufficient institutional support to carry out their duties. This suggests that persons associated with NGOs need to persuade their own, and other, governments that they are competent.

Rule 6 provides that the Chairman may invite any organisation to participate in meetings, without having the right to vote. In practice, any NGO that has indicated a desire to attend has been invited, and it is normal for NGO observers to outnumber members, which has caused controversy in the past. One recent development is the current practice of Chairs requiring that observers submit their curriculum vitae, along with a covering letter explaining the organisation's competence to address issues pertaining to the meeting.<sup>38</sup> Furthermore, the representation of NGO observers is now limited to one person.<sup>39</sup>

There has been only one recent occasion where the possibility of not accrediting an observer arose. This was as a result of concern about NGOs inappropriately criticising Parties. In that instance, the Humane Society of the United States alleging that some Southern African countries were

<sup>35</sup> Personal communication from Alice Burke, Projects Officer, Capacity Building Unit, CITES Secretariat.

<sup>36</sup> CITES Resolution 11.2.

<sup>37</sup> See CITES Resolution Conf. 11.1.

<sup>38</sup> Interview with Theresa Mulliken, TRAFFIC International.

<sup>39</sup> Interview with Chris Wold, Centre for International Environmental Law.

breaching CITES rules by selling ivory abroad in exchange for armaments. As a result of complaints by some Parties, the Secretariat issued a notification to all parties indicating that the Humane Society had not provided sufficient evidence to backup its claim.<sup>40</sup> Although China voiced concern at the Animals Committee meeting about the involvement of the Humane Society, a formal request for not accrediting the Humane Society was not lodged, and therefore it was accredited.<sup>41</sup>

#### NGO interventions at meetings

There are no specific rules governing NGO interventions, although as with all issues not specifically dealt with in the Committee Rules, the Rules of Procedure of the COP apply *mutatis mutandis*.<sup>42</sup> As a matter of practice, NGOs have considerable scope to make interventions.

#### NGO Access to Documentation

The Rules governing NGO access to documentation in the Animals and Plants Committees are the same as those applicable for the Standing Committee (see above). However, Rule 30, which governs the classification of documents speaks of “Parties” respecting the confidentiality or restriction of documents, even though participants need not be Parties. One difference with the comparable provision in the Standing Committee is that the Secretariat, in consultation with the Chairman, is to determine whether documents should be marked “Restricted” or “Confidential”. Similarly to the new Rules of Procedure for the Standing Committee, an amendment was made to the Rules for the Animals Committee that now allows the Secretariat to post meeting documents on the Internet as soon as they become available, in the original language.<sup>43</sup>

#### Distribution of NGO documentation

Rule 17 provides that national NGOs may provide documents through the CITES Authorities of the Party where they are located. International NGOs are to submit any documents to the Secretariat. In both cases, the Secretariat will decide whether or not to distribute the documents in consultation with the Chairman. As discussed above, NGO documents that are official meeting documents are placed on the CITES web site.

<sup>40</sup> CITES Notification 2000/060.

<sup>41</sup> Proceedings of the 16<sup>th</sup> Meeting of the Animals Committee, Sheperdstown USA) 11-15 December 2000.

<sup>42</sup> Rule 31.

<sup>43</sup> CITES AC. Doc. 17, Summary Record.

#### NGO access to delegates

The rules do not address the issue of NGO access to delegates, although, again the COP Rules would apply. As a matter of practice, given the openness of these meetings, NGOs have ample access to delegates.

#### 3.2.3 Problems of NGO Participation and Proposed Solutions

The above survey reveals that in many respects, NGOs have considerable opportunities and entitlements to participate in the CITES process. In general, NGO inputs have been considered a source of strength among Parties and only on very few occasions have there been controversies about this. However, there are some areas where improvements might be contemplated. Most NGO interviewees were of the view that the Standing Committee could be made more open and many were uncomfortable about the Secretariat role in filtering documents at meetings of the COP.

Some specific proposals to improve NGO participation in CITES include:

- Making the Standing Committee more open
- Eliminating the Secretariat role in filtering documents at the COP submitted by NGOs
- Eliminating the distinction between the admission of national and international NGOs in the admission of observers
- Constraining further the discretion of Chairpersons so as to ensure that NGOs have the most appropriate opportunities to participate
- Rules of Procedure for the different CITES bodies could be streamlined, so as to avoid unnecessary duplication
- Placing some controls on the *de facto* distinction between NGOs – whereby some NGOs have closer relations to the Secretariat and are received with more credibility
- Improve the handling of reporting illegal trade
- Establishing an Ombudsman to handle NGO complaints
- Creating a civil society chambers
- Creating a funding mechanism for participation of NGOs from the South.

#### Making the Standing Committee more open

The closed nature of the Standing Committee is criticised by many NGOs. The Standing Committee takes important decisions regarding the policy direction and implementation of the Convention, yet NGOs have virtually

no opportunities to influence it. This seems at odds with the spirit of CITES and the practice in the COP and the Animals and Plants Committees.<sup>44</sup>

The arguments in favour of keeping the Standing Committee closed are: (a) the agenda is so full that it is necessary to limit the participation in order to get all the business done, (b) that opening up meetings would make them unnecessarily political, and (c) Parties need a closed place to do hard bargaining on certain issues, which would not be possible if the meetings were open. There is also the desire to keep the Standing Committee from becoming a full-blown meeting of the COP. Finally, creating more opportunities for NGOs to meet would add to the financial burden of Southern NGOs, leading to an undesirable situation where mainly Northern NGOs attend.

While each of those arguments have some merit, they can be overcome in a way that balances the needs of all. Firstly, limitations can be placed on the numbers of NGOs that can attend. NGOs have shown themselves to be capable of self-selection, and even if there are ideological differences among many NGOs involved in CITES, they have proven capable of cooperating in the past. Secondly, the Rules of Procedure could be developed so as to ensure that a Chairperson can limit the time available to NGO interventions, should the agenda prove to be too full. Thirdly, as with other CITES bodies, select sessions can be declared closed, if a majority of Parties agree. It would therefore appear possible to increase the level of NGO participation in the Standing Committee, without interfering with its effective functioning. In order to address the capacity of Southern NGOs to attend, Parties could contribute small amounts of funding to enable limited travel.

#### Eliminating the Secretariat role in filtering documents at the COP submitted by NGOs

In many ways, the distinction between documents that go through the Secretariat and those that do not is somewhat artificial, since, in practice, delegates have easy access to both. Given this, it is questionable whether the Secretariat should play any kind of filtering role – except perhaps to ensure that all documents comply with the requirement of having a clearly identifiable author. Since the Rules now create a mechanism whereby anyone can complain to the Bureau in cases of offence, it does not appear

<sup>44</sup> One interviewee argued it was easier to involve NGO participation in the Animals and Plants Committees, because they dealt with technical issues. Other interviewees disagreed with that assessment.

necessary for the Secretariat to be an intermediary. Relieving it of this responsibility would have the advantage of freeing it from the burden of going through enormous amounts of documentation. Indeed, it appears that as of COP 12, the Secretariat wishes to remove itself from being a filter.<sup>45</sup>

#### Eliminating the distinction between the admission of national and international NGOs in the admission of observers

The argument for creating different requirements for national NGOs is that debates on purely national matters should take place within the countries concerned, and not at the international level. However, this argument is subject to several critiques. Firstly, there are very few CITES issues that are purely national in origin. Indeed, since the Convention involves international trade, almost all CITES issues involve more than one State. Given this, even a purely national NGO might be able to input useful information to the CITES process. Secondly, there is the difficulty of defining a national NGO. Many international NGOs have local branches. Many national NGOs are also part of international networks. Therefore, the distinction between national and international NGOs is often not clear. Thirdly, although the provisions of the treaty have not been applied to unduly limit the participation of national NGOs, they do allow for this possibility to occur. Thus, to avoid the potential for abuse, it would be advisable for this provision to be removed. However, it should be noted that taking this step would involve amending the treaty, which may not be feasible.

#### Constraining the discretion of Chairpersons so as to ensure that NGOs have the most appropriate opportunities to participate

As mentioned above, there have been occasions where the discretion of the Chair in applying the Rules have lead to NGOs being excluded from the CITES process. This has particularly occurred when very sensitive issues have been on the agenda, e.g. involving certain commercially important species. It is difficult, however, to craft rules that will always balance the need for meeting efficiency with the need for full transparency. Although occasionally problematic in practice, there appears to be little that can be done, short of granting NGOs an absolute entitlement to make interventions at every meeting. However, the risk of making this an absolute entitlement would be that Parties would more frequently elect to convene informal closed meetings, without NGOs, in instances where the issues were very controversial.

<sup>45</sup> Interview with Jim Armstrong, CITES Secretariat.

Streamlining the Rules of Procedure for the different CITES bodies, so as to avoid unnecessary duplication regarding accreditation of NGOs

The current system of having separate accreditation procedures for different CITES bodies seems inefficient. An improvement might be to amend the Rules of Procedure of the Committees such that all observers accredited for the previous COP be automatically accredited for the Committees. Separate accreditation procedures could exist for NGOs that were not accredited at the previous COP.

Controlling the *de facto* distinction between NGOs – whereby some NGOs have closer relations to the Secretariat and are received with more credibility

The reality is that there are two circles of NGOs in CITES. The inner circle is composed of groups such as IUCN, WWF, and TRAFFIC that cooperate very closely with the Secretariat and whose opinions carry considerable sway.<sup>46</sup> This is particularly so in listing decisions and the Significant Trade process, where data provided by IUCN and TRAFFIC, which are funded partly by the Secretariat, can be the basis of decision-making. In addition, an overlap in views among these NGOs and the CITES secretariat can be observed.

As an example of the type of co-operation that exists between the Secretariat and this “inner circle”, in 1999, TRAFFIC and the CITES Secretariat signed a Memorandum of Understanding on capacity building. This MoU provided that TRAFFIC offices are to be designated as CITES Capacity Building Collaboration Centres and meant to jointly develop with the CITES Secretariat capacity building activities and regional and sub-regional levels.<sup>47</sup>

The outer circle consists of all other NGOs. There are historical and technically sound reasons for why the Secretariat has these close relations, but the result is that it provides these NGOs with more credibility than other NGOs, raising concerns about equity.<sup>48</sup>

However, there appears to be very little that can be done to control this “fact of life”. Certainly, the Secretariat could be encouraged to subcontract more work to other NGOs – possibly entertain more competitive bidding. However, this overall situation does not appear amenable to any regula-

<sup>46</sup> See section 2.1.3.1 above, concerning the role of TRAFFIC.

<sup>47</sup> TRAFFIC press release of to November 1999.

<sup>48</sup> See interview with Julian Newman, Environmental Investigation Agency.

tion; indeed, any attempt to create rules about this might make matters worse. Furthermore, the reality is shifting somewhat – the Secretariat has recently broadened the base of NGOs in which it carries out projects, including the International Fund for Animal Welfare.

Improve the handling of reporting of illegal trade

NGOs can play a key role in the CITES process, by bringing to light instances of illegal trade in listed species. However, there is currently no effective mechanism to facilitate this. At present, NGOs can report illegal trade to the Secretariat, but since the Secretariat is a servant of the Parties, its investigations tend to be conducted through official channels. The difficulty arises when the source of NGO information is an informant who can be jeopardised if its identity is revealed, particularly when official corruption is involved. This problem arose in the controversy arising from the allegations of the Humane Society described above, where the Humane Society declined the Secretariat offer to provide detailed information either to the Secretariat or to an official law enforcement agency in the United States. This problem is a difficult one of balancing between different legitimate interests, and requires further study.

Creating an Independent Ombudsman

The creation of a complaints procedure during meetings of the COP is innovative. However, it does not answer all NGO concerns, particularly where an NGO is involved in a dispute with a Party. The problem is that the Bureau, which takes the decisions, is made up of Parties – as is the COP if it comes to withdrawing the accreditation of an observer. An independent ombudsman, who could make non-binding recommendations to the Bureau, might be more credible to observers than having the issue decided only by Parties. One interviewee also suggested an appeals process modelled along the Inspection Panel of the World Bank.<sup>49</sup> In addition, an independent ombudsman could also be available to handle cases where an observer is of the view that the Chair of a committee has made an incorrect or inappropriate decision regarding NGO participation. However, it does not appear that this is very high on anyone’s agenda at the moment.

Creating a Civil Society Chamber

One proposal to better organise the inputs of NGOs might be for them to be organised in an official “chamber”. Such a chamber could be a mechanism whereby joint NGO views could be developed and their inputs co-

<sup>49</sup> Interview with Peter Sand, University of Munich.

ordinated. However, this suggestion was not considered useful by interviewees, not only because of the competing views amongst NGOs that participate in CITES, but also because of the reality that NGOs do not want to limit their room to manoeuvre.

#### Funding NGOs from developing countries

Although there is not the same North South divide in CITES as there is in other MEAs, NGOs from developing countries tend to be underrepresented. A mechanism funded by governments to support greater NGO participation from the South would be welcome, particularly if it went to conservation and trader NGOs. Although potentially attractive, so far, this proposal has attracted little attention, and would require further examination in order to determine its feasibility.

#### 3.2.4 Conclusions

All of the interviewees were of the view that NGO participation in CITES was by and large positive. It is an integral part of the process and is generally perceived as constructive by Parties. Furthermore, there is an upward trend in the quality of information provided by NGOs as a whole, which has been observed.

One of the striking features of NGO participation in CITES, as compared to other multilateral environmental agreements, is that so much has been codified. In particular, the complaints procedure in the COP rules of procedure, stands out as a ground breaking precedent. One reason for the relative high level of codification might be due to the strong consensus that NGOs are important partners in the treaty process. However, this may also be due to the fact that CITES has a longer history than most modern MEAs, and therefore has had more time to grapple with these issues and deal with them more maturely.

Despite the story of NGOs participation in CITES being relatively positive, some anomalies, alluded to above, remain. The boundaries of openness have become increasingly evident in the use of non-transparent means to decide controversies, such as range state dialogues. However, given the tendency in CITES for these matters to be debated, it can be expected that further developments will take place. For example, the issue of NGO participation in the CITES Standing Committee continues to be debated within the Standing Committee, and remains the most pressing item for those concerned with enhancing transparency. Other high priority proposals which could feasibly be acted upon include officially eliminating the filtering role of the secretariat in respect of distributing NGO documents at meetings of the COP, providing further specificity in the rules of

procedure to ensure NGOs can effectively participate in the discussions at meetings of the COP, and streamlining the rules of procedure in all CITES bodies. Other issues requiring further study include mechanisms for NGOs to report illegal trade and creating a funding mechanism for the participation of developing country NGOs.

### 3.3 International Standards Organisation (ISO)

The following case study is based on a review of relevant documentation and interviews conducted with the eight individuals listed at the end of this Report. The interviewees represented the ISO Central Secretariat, the Technical Committee 207 Secretariat, the NGO Task Group, ISO Members from a developed and developing country and Liaison Organisations comprising an environmental NGO (ENGO) and a business and industry NGO (BINGO) respectively.

#### 3.3.1 Overview

The International Organisation for Standardization (ISO) is a federation of national standards bodies from 143 countries. It was established in 1947 to “promote the development of standardization and related activities in the world with a view to facilitating international exchange of goods and services and to developing cooperation in the spheres of intellectual, scientific, technological and economic activity.”<sup>1</sup> Its functions include the development and issuance of International Standards.<sup>2</sup> 13,544 International Standards and standards-related documents have been developed to date covering: Generalities, infrastructures and sciences; Health, safety and environment; Engineering technologies; Electronics, information technology and telecommunications; Transport and distribution of goods; Agriculture and food technology; Materials technologies; Construction; Special technologies.<sup>3</sup>

#### Membership

Membership comprises member bodies, correspondent members and subscriber members;<sup>4</sup> only one body in each country may be admitted to membership.<sup>5</sup> By end 2001, there were 93 member bodies, 36 correspondent members and 14 subscriber members, totalling 143 members.<sup>6</sup>

The ISO Statutes provide that: “Member bodies shall be those national standards bodies most broadly representative of standardization in their

<sup>1</sup> See ISO Statutes and Rules of Procedure; Article 2.1 ISO Statutes.

<sup>2</sup> Article 2.2.2 ISO Statutes.

<sup>3</sup> See ISO web site, <http://www.iso.ch/iso/en/aboutiso/isoinfigures/January2002-p3.html> (visited February 2002).

<sup>4</sup> Article 3.1 ISO Statutes.

<sup>5</sup> Article 3.2 ISO Statutes.

<sup>6</sup> See ISO web site, <http://www.iso.ch/iso/en/aboutiso/isoinfigures/January2002-p1.html> (visited February 2002).

respective countries and which have been admitted in [ISO] in accordance with the Rules of Procedure”.<sup>7</sup> The nature of national standards bodies differs from country to country. Most are non-governmental corporate bodies while others might be government or quasi-governmental bodies.<sup>8</sup>

“Correspondent members” are generally organisations from countries that do “not yet have a fully developed national standards activity.”<sup>9</sup> Subscriber members are from countries with small economies.<sup>10</sup>

#### Structure

The ISO structure is made up of a General Assembly, a Council, a Technical Management Board and a Central Secretariat based in Geneva and technical committees based around the world (each having its own technical committee secretariat).<sup>11</sup> In addition, the General Assembly may establish advisory committees for the purpose of organisational development.<sup>12</sup> The Council may establish *ad hoc* advisory groups made up of external executive leaders from organisations having a substantial interest in international standardization.<sup>13</sup> The Technical Management Board may also establish *ad hoc* technical advisory groups.<sup>14</sup> Technical committees may establish subcommittees and working groups subject to ratification by the Technical Management Board<sup>15</sup> and they may establish advisory and *ad hoc* groups, which can include experts.<sup>16</sup>

<sup>7</sup> Article 3.1.1 ISO Statutes.

<sup>8</sup> See ISO web site, <http://www.iso.ch/iso/en/aboutiso/introduction/whoisISO.html>; e.g. cf. Standards Australia International, <http://www.standards.com.au>; Standards Council of Canada (administered by Canada Standards Association), <http://www.csa.ca>; Deutsches Institut für Normung, <http://www.din.de>; Department of Standards Malaysia, <http://www.dsm.gov.my>.

<sup>9</sup> See ISO web site, <http://www.iso.ch/iso/en/aboutiso/introduction/whoisISO.html>.

<sup>10</sup> *Ibid.*

<sup>11</sup> Article 5 ISO Statutes; Clause 5.4 ISO Rules of Procedure.

<sup>12</sup> Article 6.7 ISO Statutes.

<sup>13</sup> Article 7.6 ISO Statutes.

<sup>14</sup> Article 8.4 ISO Statutes.

<sup>15</sup> Sections 1.6 and 1.11, ISO/IEC Directives, Part 1.

<sup>16</sup> Sections 1.13 and 1.14 ISO/IEC Directives, Part 1, respectively.

### Composition and functions

The General Assembly comprises the Officers (President, two Vice-Presidents, a Treasurer and a Secretary-General) and no more than three delegates nominated by each member body.<sup>17</sup> Member body delegates may be accompanied by observers.<sup>18</sup> Correspondent and subscriber members may attend the General Assembly as observers.<sup>19</sup> The General Assembly meets annually.<sup>20</sup> Each member body has one vote<sup>21</sup> and resolutions are adopted by majority vote either in the General Assembly or by letter ballot.<sup>22</sup> Unlike member bodies, correspondent and subscriber members have no voting rights.<sup>23</sup> The Council governs the operations of ISO and comprises the Officers and eighteen member bodies elected in accordance with the Rules of Procedure. The Technical Management Board comprises a chairperson and twelve member bodies appointed or elected by the Council<sup>24</sup> and is responsible for the general management of the technical committee structure.<sup>25</sup> The Technical Management Board establishes technical committees.<sup>26</sup>

### Technical Committees: composition and procedure

A request for undertaking standards development work in a technical field may be initiated by one or more member bodies, by a technical committee or committee established by the General Assembly, by the Secretary-General or by an organisation outside ISO.<sup>27</sup> Proposals to establish a technical committee are circulated to all member bodies to determine whether they support its creation and whether they would actively participate in it.<sup>28</sup> Once a technical committee is established, the appropriate “liaisons” are arranged.<sup>29</sup> At present, there are 186 technical committees concerning

<sup>17</sup> Article 6.1 ISO Statutes.

<sup>18</sup> *Ibid.*

<sup>19</sup> Article 6.6 ISO Statutes.

<sup>20</sup> Article 6.3 ISO Statutes.

<sup>21</sup> Article 6.5 ISO Statutes.

<sup>22</sup> Article 4 ISO Statutes and Clause 2.4 ISO Rules of Procedure.

<sup>23</sup> Article 3.1.2 ISO Statutes.

<sup>24</sup> Article 8.1 ISO Statutes.

<sup>25</sup> Article 8.3 ISO Statutes.

<sup>26</sup> Article 9.1 ISO Statutes.

<sup>27</sup> Clause 5.1 ISO Rules of Procedure; Section 1.5.3, ISO/IEC Directives, Part 1.

<sup>28</sup> Section 1.5.6, ISO/IEC Directives, Part 1.

<sup>29</sup> Section 1.5.9, ISO/IEC Directives, Part 1.

predominantly “nuts and bolts” issues such as fasteners, rolling bearings, boilers and pressure vessels, minerals and metals.<sup>30</sup> The technical committee with most relevance to environmental concerns is TC 207 on environmental management.<sup>31</sup> The Technical Management Board has issued “directives” or working procedures for the work of the technical committees in their development of International Standards which are known as the ISO/IEC Directives Parts 1 to 3 (ISO Directives).<sup>32</sup>

All member bodies may, at their election, participate in the work of the technical committees as active members with an obligation to vote (P-members) or as observers entitled to receive documents, submit comments and attend meetings (O-members).<sup>33</sup> Technical committees decide matters by consensus.<sup>34</sup>

The development of International Standards through the technical committees occurs at the national and international levels. Each national member body may form a national Technical Advisory Group that will comprise the three national member body delegates and any observers that accompany the delegates.<sup>35</sup> The Technical Advisory Group convenes at the national level to develop the national position on issues raised for consideration by the technical committees in an international forum.<sup>36</sup> The national Technical Advisory Groups will then represent the national member body as P or O-members of the technical committees at the international level.<sup>37</sup> The procedures of the technical committees are outlined in the ISO Directives.

### 3.3.2 Legal Provisions and Practice of NGO Participation

NGOs may participate in the work of ISO in varying capacities. Defining NGOs broadly, the national member bodies may themselves be described as non-governmental bodies; they are generally “private” membership

<sup>30</sup> See ISO web site, <http://www.iso.ch/iso/en/stdsdevelopment/tc/tclist/TechnicalCommitteeList.TechnicalCommitteeList>, as of October 2001.

<sup>31</sup> See ISO/TC 207 website, <http://www.tc207.org>.

<sup>32</sup> See Clause 5.6 ISO Rules of Procedure.

<sup>33</sup> Article 9.2 ISO Statutes; Section 1.7.1, ISO/IEC Directives, Part 1.

<sup>34</sup> Clause 5.5 ISO Rules of Procedure.

<sup>35</sup> Article 6.1 ISO Statutes (see also above, this section under “Composition and functions”).

<sup>36</sup> Interviewees from Secretariats, P Members and NGOs participating in P Member delegations or as L-organisations.

<sup>37</sup> Article 9.2 ISO Statutes; Section 1.7.1, ISO/IEC Directives, Part 1.

bodies that develop technical standards in their respective countries. For the purposes of this Section 3.3 of the Report, the term “NGOs” will refer to all NGOs participating in the ISO process other than non-governmental national standards bodies. Some national member body delegations require or allow consultation or the participation of NGOs on their national delegations or Technical Advisory Groups. NGOs may also participate in ISO work through the Central Secretariat or through direct participation in the technical committees as “liaison” organisations or, to a lesser extent, as experts acting in an advisory capacity.

### 3.3.2.1 National Member Bodies

Any rules and procedures for the organisation of national member bodies and consultation with NGOs are developed by the national member bodies themselves and differ from country to country. Some national rules and procedures provide for stakeholder consultation and participation which could include NGOs. For example, standards bodies in Canada and Australia require multistakeholder dialogue at the national level and provide for NGO participation on the national delegations.<sup>38</sup> Canada pays NGO delegates travel costs. Other national delegations are open to all members and do not formally exclude NGOs but they are not necessarily required to be consulted. For example, NGOs participate in the US delegation although there are no specific rules requiring that they be invited to participate.<sup>39</sup>

### 3.3.2.2 Central ISO Co-operation with NGOs

ISO rules provide for cooperation with other international organisations interested partially or wholly in standardisation or related activities. The conditions of cooperation shall be established by the Council.<sup>40</sup> ISO “partners” include IEC (International Electrotechnical Commission) (non-governmental members), ITU (International Telecommunication Union) (inter-governmental organisation) and the WTO (World Trade Organisation) (inter-governmental organisation).<sup>41</sup> Formal cooperation between

<sup>38</sup> For Australia, see Standards Australia International, see <https://committees.standards.com.au/POLICY>; for Canada, see Standards Council of Canada administered by Canada Standards Association, <http://www.csa.ca>; for Germany see Deutsches Institut für Normung, <http://www.din.de>.

<sup>39</sup> Interviewees from NGOs participating in P Member delegations or as L-organisations; Pacific Institute participates in US delegation.

<sup>40</sup> Article 15.1 ISO Statutes.

<sup>41</sup> See ISO website, <http://www.iso.ch/iso/en/aboutiso/introduction/partners.html>.

ISO and other international organisations, including NGOs, generally occurs at the technical committee and subcommittee level.<sup>42</sup>

### 3.3.2.3 Technical Committees

Due to the decentralised nature of its work, NGO participation in ISO is generally through the work of its technical committees.

The ISO Directives recognise the desirability of liaison with international and broadly based regional organisations: “The desirability of liaison between a technical committee or subcommittee and other international or broadly based regional organisations working or interested in similar or related fields shall be taken into account at an early stage of the work” of the technical committees.<sup>43</sup> The restriction to international organisations is derived from the ISO Statutes,<sup>44</sup> with “broadly based regional organisations” being recognised, in effect, as international organisations for the purposes of the ISO Statutes. As an international organisation, ISO cooperates with “other” international organisations and any co-operation with national organisations would be anticipated to occur at a national level through the member bodies.<sup>45</sup>

ISO currently liaises with approximately 600 international and regional organisations through its technical committees.<sup>46</sup> Of the 600 organisations, a vast majority are non-governmental bodies specialising in a specific technical field, although some United Nations agencies are also included. Generally speaking, any ENGOs included in the group of 600 organisations would be those L-organisations registered with TC 207. In practice, direct ISO consultation with NGOs is principally through the technical committee “liaison” process, although NGOs might also participate as experts in advisory and *ad hoc* groups formed by the technical committees.

<sup>42</sup> See below Section 3.3.2.3.

<sup>43</sup> Section 1.17.1, ISO/IEC Directives, Part 1.

<sup>44</sup> See above Section 3.3.2.2.

<sup>45</sup> Interview with Klaus Lingner, ISO Central Secretariat.

<sup>46</sup> The ISO website quotes “500” organisations, *ibid*. Klaus Lingner of the ISO Central Secretariat indicated that as of January 2001, that figure had increased to 564 but that, as of September 2001, had likely grown to 600. He indicated that the vast majority of the 600 organisations were non-governmental bodies specialising in a specific technical field, although some United Nations agencies are also included in the group. Generally speaking, any PINGO included in the group of 600 organisations would be those L-organisations registered with TC 207.

So-called liaison organisations (L-organisations) may participate as Category A (active at the technical committee or subcommittee level), B (passive), C (reserved for ISO/IEC Joint Technical Committee 1 on Information Technology) or D (active at the level of working groups or project team) organisations.<sup>47</sup> The ISO Directives describe each category of L-organisation as follows:

**“Category A:** Organizations that make an effective contribution to the work of the technical committee or subcommittee for questions dealt with by this technical committee or subcommittee. Such organizations are sent copies of all relevant documentation and are invited to meetings. They may nominate experts to participate in a [working group/project team] (see [sections] 1.11.1 and 1.12 [of the ISO Directives concerning the establishment and constitution of working groups (WG) and project teams (PT) respectively]).

**Category B:** Organizations that have indicated a wish to be kept informed of the work of the technical committee or subcommittee. Such organizations are sent reports on the work of a technical committee or subcommittee.

**Category C:** Reserved for ISO/IEC [Joint Technical Committee 1 on Information Technology].

**Category D:** Organizations that have indicated a wish to participate in the work of a working group or project team. Such organizations are sent copies of all relevant documentation and are invited to meetings by the convenor of the [working group/project team] concerned.”<sup>48</sup>

Liaisons with L-organisations are established by the Secretary-General in consultation with the appropriate technical committee secretariat and are centrally recorded and reported to the Technical Management Board, thereby giving formal effect to NGOs’ status as L-organisations.<sup>49</sup> The

<sup>47</sup> Section 1.17.2, ISO/IEC Directives, Part 1.

<sup>48</sup> *Ibid.* Category D was created in 2001 to accommodate those organisations interested in only a very specific aspect of TC work. Category D is not formally a sub-category of Category A in the sense that organisations could be either Category A or Category D, however, the fact that Category A organisations can nominate experts to participate in the working groups and project teams indicates that organisations could fall into both categories contemporaneously.

<sup>49</sup> Section 1.17.3, ISO/IEC Directives, Part 1.

procedure for approval of L-organisations applications, set out in the Supplement to the ISO Directives, is as follows:

“When an external organisation applies for liaison, ISO Central Secretariat shall refer this application to the [technical committee] secretariat. The [technical committee] secretariat shall carry out a full consultation of the P-members of the [technical committee] concerned and shall advise ISO Central Secretariat of the result of this consultation. In case of unanimous approval by the P-members, ISO Central Secretariat shall establish and register the liaison. Negative votes shall be dealt with on a case-by-case basis.

[Technical committees] shall review their external liaisons annually and propose to ISO Central Secretariat cancellation of liaisons which are no longer effective or relevant. Such reviews shall be carried out either during meetings of [technical committees] or during review of the [technical committee/subcommittee] annual reports at the end of each year, whichever comes sooner.”<sup>50</sup>

In addition, Category D liaison is subject to Technical Management Board approval.<sup>51</sup>

According to practice that has developed over the years, international or broadly based regional organisations working on or interested in standardisation that wish to apply for L-organisation status should write to the Secretary-General requesting membership and enclose a copy of the organisation’s statutes and, where applicable, membership. They should be non-profit making and have open membership.<sup>52</sup> Interviewees could not recall any occasion on which an application for L-organisation status from an international or broadly based regional organisation had been denied after consultation with the P-members. However, it would appear from the procedure set out in the Supplement to the ISO Directives that a negative vote from any one member will disqualify the applicant from immediate registration as an L-organisation. The procedure for dealing with negative votes on a case-by-case basis is not clear and, it would appear, has not been put to the test. Ultimately, the status of any contested application is a matter to be determined at the discretion of the P-members and applicants have no formal rights to appeal any refusal of registration as a L-organisation.<sup>53</sup>

<sup>50</sup> ISO/IEC Directives, Supplement, Section 1.17.

<sup>51</sup> Section 1.17.3, ISO/IEC Directives, Part 1.

<sup>52</sup> Interview with Klaus Lingner, ISO Central Secretariat.

<sup>53</sup> Under the ISO Statutes, ISO “may” cooperate with other international organisations; it is not required to cooperate.

The ISO Directives require technical committees and subcommittees to “review all their liaison arrangements on a regular basis, at least at every committee meeting.”<sup>54</sup> The review process could lead to “disaccreditation” where it was considered that the organisation in question was not contributing adequately to ISO work.<sup>55</sup> In practice, L-organisations are infrequently if ever actively discredited and ISO has been slow to record the withdrawal of those organisations that have actively requested that they be removed from the list of L-organisations.<sup>56</sup>

Under the ISO Directives, the ISO relationship with L-organisations is two-way and they are expected to contribute to ISO work on a reciprocal basis: “[L]iaison must operate in both directions, with suitable reciprocal arrangements”.<sup>57</sup> Although L-organisations have no formal voting rights, the ISO Directives provide that technical committees and subcommittees must seek the “full and, if possible, formal backing of the organisations having A-liaison status for each International Standard in which the [A-liaison organisations] are interested”.<sup>58</sup> “Full and formal” backing is not defined and there is no formal process by which Category A L-organisations can complain that their “full and formal” backing of technical committee standards has not been obtained.<sup>59</sup>

There are currently 42 L-organisations, 22 of which are Category A L-organisations.<sup>60</sup> Category A L-organisations include international industry

<sup>54</sup> Section 1.17.6, ISO/IEC Directives, Part 1.

<sup>55</sup> Interview with Klaus Lingner, ISO Central Secretariat.

<sup>56</sup> Interviewees from Secretariats and NGOs participating as L-organisations; see discussion below concerning WWF’s resignation.

<sup>57</sup> Section 1.17.4, ISO/IEC Directives, Part 1.

<sup>58</sup> Section 1.17.5, ISO/IEC Directives, Part 1.

<sup>59</sup> See below.

<sup>60</sup> According to the ISO/TC 207 website, the following are Category A L-organisations: CEFIC (European Chemical Industry Council); CI (Consumers International); EC (European Commission); EEB (European Environmental Bureau); ECOLOGIA (Ecologists Linked for Organizing Grassroots Initiatives and Action); FIDIC (International Federation of Consulting Engineers); GEN (Global Ecolabelling Network); IAF (International Accreditation Forum); IAQ (International Academy for Quality); ICC (International Chamber of Commerce); IISI (International Iron & Steel Institute); ILAC (International Laboratory Accreditation Cooperation); INEM (International Network for Environmental Management); IPAI (International Primary Aluminium Institute); IQNet (The International Certification Network); NWF (National Wildlife Federation); OECD (Organisation for Economic Cooperation and Development); Sierra Club; UNCTAD (United Nations Conference on Trade and Development); UNEP

associations, NGOs and inter-governmental organisations. Six Category A L-organisations are NGOs with environmentally-related missions although they vary from NGO networks, think tank organisations and campaigning or advocacy ENGOs.

### TC 207

TC 207 is charged with developing standards for environmental management – management standards for organisations that are designed to “minimize harmful effects on the environment caused by [the organisation’s] activities, and to continually improve [the organisation’s] environmental performance”.<sup>61</sup> TC 207 has produced the ISO 14000 series of International Standards for environmental management.<sup>62</sup> TC 207 comprises six subcommittees: Environmental Management Systems (EMS); Environmental Auditing & Related Investigations (EA&RI); Environmental Labeling (EL); Environmental Performance Evaluation (EPE); Life Cycle Assessment (LCA); and Terms and Definitions (T&D). Created in 1993, TC 207 is one of the largest ISO technical committees and its secretariat is located in Canada. Unlike most of the other technical committees, TC 207 on environmental management standards deals with issues of specific importance to ENGOs and NGOs with public interest concerns and it is therefore the only technical committee to have experienced significant NGO demand for improved procedures for NGO participation. Some NGOs participate in TC 207 through their national delegations, such as the Pacific Institute in the US delegation. Other NGOs participate as Category A L-organisations such as Ecologia, Consumers International and International Network for Environmental Management (INEM). At TC 207’s meeting in Malaysia in July 2001, there were approximately 17 NGOs participating in the meetings as part of national delegations or as Category A L-organisations.<sup>63</sup>

(United Nations Environment Programme); WFSGI (World Federation of the Sporting Goods Industry); World Stewardship Institute. See <http://www.tc207.org/aboutTC207/index.html> as of February 2002. Note that website details are not necessarily an accurate reflection of current active membership (Interviewees from Secretariats and NGOs participating as L-organisations).

<sup>61</sup> TC 207 website, <http://www.tc207.org/aboutTC207/index.html>.

<sup>62</sup> See <http://www.tc207.org/aboutTC207/index.html>.

<sup>63</sup> Interviewees from NGOs participating in P Member delegations or as L-organisations. Most of the NGOs attending were those on national delegations, including some ENGOs such as Pacific Institute, and some from Malaysia and the South-East Asian region that were readily able to attend. Very few NGO L-organisations (Ecologia and approximately 1 or 2 others) attended.

Category A L-organisations participate in TC 207 plenary and its sub-committees. In subcommittees they are permitted to make oral interventions and suggest textual changes.<sup>64</sup> In seeking the “full and formal backing of L-organisations”, some subcommittees have allowed Category A L-organisations to vote at some stages in the decision-making process, although any issues are finally decided by vote of the member bodies only in the plenary sessions.<sup>65</sup>

ENGO participation in TC 207 has had a discernible impact in a number of areas where the support of the ENGO community is required in order for the relevant standard to be effective. For example, in the context of environmental labelling, interviewees noted that ENGOs had been effective in reorienting the objectives and language of the relevant standards to reflect community values and concerns.<sup>66</sup> In this context, ENGOs have had relative bargaining power because TC 207 members recognise that their support is required to make the standard effective and that they are in a position to develop their own set of standards that will “compete” with the ISO product.<sup>67</sup> Interviewees recalled an occasion on which the representative from WWF threatened to leave a meeting in protest at the members’ refusal to take account of the WWF position on a particular matter. Members immediately sought to address WWF’s concerns.<sup>68</sup> Interviewees noted that ENGOs have had a lesser impact in areas that have a direct impact on industry operations, such as environmental management systems. In that context, ENGOs’ proposals for measures to require public reporting and public access to information have not been taken up by the member bodies at the relevant subcommittee.<sup>69</sup>

When it first commenced development of the ISO 14000 series of International Standards, TC 207 experienced greater ENGO interest and participation than at present. Some interviewees suggested that the wane in ENGO participation might be attributed to the fact that the ISO 14000 series of International Standards for environmental management has been developed and TC 207 work is limited to clarification rather than development of the ISO 14000 series. Accordingly, the bulk of the opportuni-

<sup>64</sup> Interviewees from Secretariats and P Members.

<sup>65</sup> See e.g. Business Plan of TC 207/SC 3 Environmental Labelling, N207, revised March 2001.

<sup>66</sup> Interviewee from P Member.

<sup>67</sup> *Ibid.*

<sup>68</sup> Interviewee from P Member.

<sup>69</sup> *Ibid.*

ties for ENGO contribution has been exhausted.<sup>70</sup> Other interviewees, from the secretariats, member bodies and NGOs, suggested that the decline in ENGO participation could also be attributed to the problems of resource-intensive processes and the costs associated with regular participation. Campaigning and advocacy organisations such as WWF and Sierra Club were originally involved in the process but have now withdrawn from active participation.<sup>71</sup> While Sierra Club remains on the list of Category A L-organisations, WWF formally resigned, noting that its participation in the ISO process had become an unsustainable use of WWF’s resources and citing the “absence of any external funding mechanism for ensuring NGO participation in the process” as the reason for its resignation.<sup>72</sup> The NGOs that remain involved in the process are generally think tank organisations that track the TC 207 process and disseminate information to their members or constituencies that is relevant to implementation of the standards rather than campaigning for changes to the standards.<sup>73</sup>

#### TC 207 NGO Task Group

At a meeting of ISO TC 207 in San Francisco in June 1998, NGOs participating in national delegations and as L-organisations raised concerns about impediments to effective NGO participation in TC 207. TC 207 subsequently passed a resolution to form an NGO Contact Group to investigate the concerns raised. The NGO Contact Group conducted interviews with national member bodies and NGOs from around the world and produced a discussion paper that examined: the value of NGO participation; motivation for NGO participation; procedures for improving NGO capacity to interact with TC 207; and examples of where TC 207 standards are used in non-business applications.<sup>74</sup> The NGO Contact Group pointed out that NGO participation can contribute to a balanced representation of interests, lend credibility to the standards produced through securing the support of NGOs and their constituencies and make it more likely that the standards will be accepted and effective.<sup>75</sup>

In June 2000, the NGO Contact Group submitted a summary report to the TC 207 Chair Advisory Group recommending the establishment of an

<sup>70</sup> *Ibid.*

<sup>71</sup> Interviewee from NGO participating as L-organisation; see WWF letter, ISO Doc.N418, Annex 2.

<sup>72</sup> WWF letter, in: ISO Doc.N418, Annex 2.

<sup>73</sup> Interviewee from NGO participation as L-organisation.

<sup>74</sup> ISO Doc.N418.

<sup>75</sup> *Ibid.*; see also ISO Doc. N419.

NGO Task Group. On the recommendation of the Chair Advisory Group, resolutions were passed at TC 207's ninth meeting in Kuala Lumpur in July 2001 to establish the NGO Task Group and to appoint a chair and a secretariat.<sup>76</sup> The terms of reference for the NGO Task Group identify three issues to be addressed: resource impediments to effective NGO participation; structural and procedural limitations to effective NGO participation; and outreach and dialogue with the broader NGO community.<sup>77</sup> For the purposes of the NGO Task Group, an NGO is defined as:

“a non-profit organisation that operates independently of government or business structures and has non-commercial objectives related to environmental, consumer interest or sustainable development.”<sup>78</sup>

The NGO Task Group has open membership comprising NGO members and national body members. Of the Task Group's 30 participants and 8 observers, 14 are NGOs (including 4 L-organisations) and 9 are “non-NGO” national member bodies.<sup>79</sup> Countries and individuals from the North and South are participating. The NGO Task Group is expected to complete its work by July 2003.<sup>80</sup>

### 3.3.3 Problems of NGO Participation and Proposed Solutions

#### Access to information

With respect to those NGOs participating in the TC 207 process as part of national delegations or as L-organisations, the interviewees did not raise concerns about access to information about TC 207 activities (such as meetings) or relevant documents. Category A and D L-organisations are informed of and are invited to meetings and Category B L-organisations are informed of TC 207's work.

It was recognised that it is difficult for NGOs that are not accredited to national delegations or as L-organisations to access information. Official

<sup>76</sup> Resolutions: TC 207 9th Meeting, 2 and 8 July 2001, ISO/TC 207 N501(E), <http://www.tc207.org/home/index.html>.

<sup>77</sup> ISO Doc. N419.

<sup>78</sup> NGO Task Group Report 2001.

<sup>79</sup> *Ibid.*; L-organisations include Consumers International, Ecologia, the International Institute for Sustainable Development (IISD) and INEM; information as to the identify of the other 10 NGOs was not available except to the extent that one is from Africa, two are from Asia, two are from Europe, one is from Latin America, three are from North America and one is from Oceania.

<sup>80</sup> *Ibid.*

information about TC 207 is available through a decentralised network of ISO websites comprising a central website, a document centre, a website dedicated to TC 207 and each of the active national member body websites, making it difficult to access information. Some information is not available on the Internet and must be ordered from ISO (such as its Statutes and Procedures). Some information has restricted access for members only. Most dissemination of information about TC 207 to the broader NGO community is done by those NGOs involved in the process rather than by the national member bodies or ISO itself.<sup>81</sup>

#### Accreditation

None of the interviewees expressed concern about the nature of the organisations – international or broadly based regional organisations working or interested in similar or related fields – that can be accredited as L-organisations. No examples of international or broadly based regional organisations having applied for and being denied accreditation were identified. Organisations applying for L-organisation status that did not meet the “objective” criteria – such as those organisations that are national or profit-making – would, in practice, be refused registration by the Central Secretariat without reference to the members.<sup>82</sup> More transparency in the application procedure would help to avoid any abuses of discretion in the future. The differential accreditation categories A through D recognise that NGOs might want to participate in the ISO process to varying degrees. Once accredited as Category A or D L-organisations, they are informed of and invited to all meetings.

The failure to update the list of accredited organisations to reflect active participation of fewer organisations was considered problematic in the sense that it did not reflect the changing nature and numbers of actively interested and participating L-organisations.<sup>83</sup> Fewer “advocacy” ENGOs actively participate and relatively few NGOs participate overall. The failure to update the list could be problematic to the extent that it suggests the participation of organisations that would lend credibility to the standard-making process who are in fact not participating or have actively withdrawn from the process.

<sup>81</sup> Such as by Ecologia, INEM and Pacific Institute.

<sup>82</sup> Interview with Klaus Lingner, ISO Central Secretariat.

<sup>83</sup> E.g. WWF, see WWF letter in appendix to ISO Doc. N418.

### Procedures and institutional structures

The opportunities for NGOs to actively participate in ISO processes and influence outcomes is inversely proportionate to the level in the decision-making hierarchy; the smaller the decision-making body in ISO, the greater the opportunity for NGO participation and influence. NGOs might attend General Assembly meetings as national delegates who must vote with the national position or as observers that are unlikely to make oral interventions and cannot vote. At TC 207 meetings in plenary, NGOs may attend as national delegates who must vote in support a national position or Category A L-organisations that infrequently make oral interventions and cannot vote. At TC 207 subcommittee meetings or working groups, NGOs have opportunities to make oral interventions and may be permitted to vote. None of the interviewees suggested that the sliding scale of opportunities for NGO participation was a significant concern. The real work of ISO is conducted at the subcommittee and working group level. It is at the level of small decision-making bodies that NGO participation can be most relevant and effective.

The value of NGO participation in TC 207 is acknowledged by the secretariats, member bodies and the NGOs.<sup>84</sup> However, some member bodies feel that NGO participation should occur through national consultations rather than at the international level.<sup>85</sup> Other member bodies and NGOs are concerned that the approaches to and procedures for NGO consultation and participation at the national level are disparate and variable.<sup>86</sup> Not all national delegations require, permit or facilitate NGO participation and it cannot be assumed that national delegations will consult with NGOs at the national level. Moreover, some national member bodies claim to involve NGOs in their processes because they consult with private “non-governmental” industry organisations. Interviewees pointed out that where national delegations do require, permit or facilitate NGO participation, NGOs are generally in the minority and when consensus cannot be reached and a national decision is taken by vote, NGO positions will invariably be defeated. NGO national delegates or accompanying observ-

<sup>84</sup> Interviewees from Secretariats, P Members and NGOs participating in P Member delegations or as L-organisations.

<sup>85</sup> Argentina, Austria, Denmark, the United Kingdom and Zimbabwe all voted against the proposal to establish the NGO Task Group. Several others abstained.

<sup>86</sup> Interviewees from Secretariats, P Members and NGOs participating in P Member delegations or as L-organisations.

ers are then required to defend the “national position” and are not able to promote any divergent position in the international forum.<sup>87</sup>

Given the problems concerning NGO consultation and participation at the national level, some interviewees considered it appropriate to facilitate NGO participation at the international level.<sup>88</sup> However, interviewees identified a number of barriers to effective NGO participation at the international level.<sup>89</sup> TC 207 deals with highly technical issues requiring significant investments of time and resources to follow developments and remain current. Attendance at meetings is an important aspect of following developments and remaining well-informed. However, the decentralised decision-making procedure involves multiple meetings at a national and international level which are conducted around the world and time and travel costs of attending meetings are significant. US NGOs estimate that travel costs for one individual to attend national meetings around the US and international meetings around the world is USD20,000 a year.<sup>90</sup> Moreover, at any given meeting, there will be a number of break-out sessions or subcommittee meetings scheduled at the same time and it is not possible for L-organisations with only one delegate to be present at all meetings.

Some of the suggestions to overcome the barriers to NGO participation include introducing a public consultation procedure at the national and international levels and ensuring better reporting and dissemination of information about technical committee meetings and decisions so that any consultation and participation is well-informed. It has also been suggested that ISO should develop a funding mechanism to support NGO consultation and participation, however, discussions on funding are currently limited to how ISO might facilitate fundraising by NGOs rather than providing the funding itself.<sup>91</sup>

Interviewees noted that of those NGOs that do participate, they are predominantly based in Northern countries although they have associa-

<sup>87</sup> Interviewees from Secretariats, P Members and NGOs participating in P Member delegations or as L-organisations.

<sup>88</sup> Interviewees from Secretariats, P Members and NGOs participating in P Member delegations or as L-organisations.

<sup>89</sup> E.g. Interviewees from Secretariats, P Members and NGOs participating in P Member delegations or as L-organisations.

<sup>90</sup> Interviewees from NGOs participating in P Member delegations or as L-organisations.

<sup>91</sup> ISO Doc.N419, Terms of reference.

tions or networks that extend to the South.<sup>92</sup> The disproportionate participation of Northern over Southern NGOs is due in part to the disproportionately high representation of Northern countries in the ISO membership. Interviewees also noted the disproportionately high representation of industry interests among the members and NGOs. To the extent that the majority of national member bodies are non-governmental industry-oriented organisations and are the only bodies able to vote, decisions are weighted heavily in favour of industry. It was also noted by interviewees that there are fewer campaigning or advocacy NGOs than there are think tank NGOs actively participating in the current work of TC 207. The larger campaigning NGOs that have participated in the past such as WWF have had greater leverage in the decision-making process than the smaller think-tank organisations.

Interviewees from some national bodies and NGOs observed that NGOs that have a turnover of personnel experience difficulties when “new faces” address TC 207 with issues that have already been raised and considered, creating a negative perception of those NGOs amongst some of the member bodies.<sup>93</sup> Some member bodies question the motives of some of the NGOs participating in the process and have concerns that they have no legitimate mandate or claim to speak for a constituency on false pretences.<sup>94</sup>

As noted above, there is no formal process by which NGOs can complain that their “full and formal” backing of technical committee standards has not been sought in accordance with the Directives. However, the process of creating the NGO Task Group is an example of how NGO concerns about their participation have been raised and are being considered by the institution. It has been a slow process and the original ambitions of NGOs for the process have been scaled down in the short term. The NGO Task Group’s remit is limited and it will take time to implement and give effect to any of the conclusions that it draws.

### 3.3.4 Conclusions

ISO’s traditional areas of activity have focussed on highly technical issues of limited if no social or environmental relevance and the institutional structures created to serve them – decentralised industry-orientated membership – are not conducive to participation of NGOs external to its membership. However, emerging areas of ISO activity, such as TC 207’s work

<sup>92</sup> E.g. Ecologia and Consumers International.

<sup>93</sup> Interviewee from P Member.

<sup>94</sup> Interviewee from P Member.

on environmental management, have necessitated more flexible attitudes and approaches to NGO participation which has culminated in the establishment of the TC 207 NGO Task Group in 2001.

Although ISO’s statutes and procedures provide for cooperation and liaison with NGOs, methods and procedures for engaging with NGOs in TC 207 appear to have extended beyond formal rules and structures and represent a “new” approach to NGO participation within ISO. Nevertheless, while the value of NGO participation is recognised by the NGOs and some national member bodies in the context of TC 207, the value of NGO participation, other than those with highly technical or scientific expertise, is not necessarily apparent in other technical committees or in central ISO procedures. NGOs have a special interest in the work of TC 207 which is not so in the context of many other technical committees that deal with technical industry standards with limited community impact. It is therefore difficult to conclude that any developments in NGO participation in TC 207 should and could be replicated in other ISO bodies. Similarly, it is difficult to ascertain what lessons and experiences of ISO and, particularly, TC 207, could be applied to other international institutions. It should be noted that ISO is a unique body in terms of its non-governmental membership and, to the extent that TC 207 concerns standards that rely on NGO support to be effective, NGOs have significant bargaining power that is not necessarily enjoyed in other institutions.

To the extent that problems associated with NGO participation have been identified, it is more a question of institutional procedures and consequent costs rather than a threshold problem of limited formal rules and procedures. The formal rules and procedures are relatively generous in providing for NGO participation and their breadth and lack of specificity has provided sufficient flexibility for NGOs to be involved in ISO activities. None of the interviewees suggested that the formal rules and procedures need to be more explicit. To date, NGOs have been able to take advantage of the broad rules and procedures to participate in ISO activities and any movement to make the rules and procedures more specific might lead to restrictions on their participation. NGOs initial ambitions for the NGO Task Group were watered down in order to obtain the acceptance of the membership and it is generally recognised that any improvements to NGO participation will have to be carefully negotiated. If eventually ISO forms the view that NGO participation in the ISO process should be mandated rather than permitted, it might be necessary to amend the formal rules and procedures. As ISO activities move into areas likely to impact on the broader community, it might be considered appropriate to develop rules and procedures by which it can not only allow but ensure NGO participation in order for its standards to be effective.

A first step to facilitate NGO participation in ISO would be to improve access to information about ISO through the creation of a centralised Internet source of information that is currently available through a number of websites. The “hub and spoke” arrangement of information on the ISO Central Secretariat, TC Secretariats and individual member websites could be retained but a centralised “map” of the information available with hyperlinks would make the information more readily accessible. Formal rules and greater transparency in the establishment of L-organisation status would help to protect against any arbitrary decisions to reject applications. The development of global guidelines for the engagement of NGOs at the national level, including public consultation procedures and public notice of relevant meetings, would contribute towards harmonised best practice in national NGO participation. A central funding mechanism to support NGO participation in the ISO process, with specific funds allocated to developing country NGOs, would facilitate NGO involvement and help to address the current imbalance between North and South perspectives. NGOs also have a responsibility to educate and persuade members of the value of NGO contributions and should ensure that all members are aware of the nature of their organisation, their activities and constituencies in order to dispel any concerns about their legitimacy.

### **3.4 World Bank**

The following case study is based on a review of literature and official documentation and interviews with ten individuals listed at the end of this report. The interviewees working for the World Bank, international and national environmental and development oriented non-governmental organisations from industrialised and developing countries voiced their personal views. Thus, their position does not necessarily reflect the official position of their organisation.

#### **3.4.1 Overview**

##### **3.4.1.1 General Introduction to the World Bank**

The World Bank encompasses five different entities that finance development programmes in different ways and form the World Bank Group. The International Bank for Reconstruction and Development (IBRD) is the Bank’s public sector lending branch and is typically associated with the term World Bank and its development projects and adjustment programmes. The International Development Association (IDA) processes credits at zero interest for the least developed and poorest countries. The World Bank also manages private sector projects through its International Finance Corporation (IFC). In addition, the Multilateral International Guarantee Agency (MIGA) secures loans to the private sector in developing countries by granting loan guarantees. And lastly, the International Centre for the Settlement of Investment Disputes (ICSID) deals with conflicts among parties related to investment activities in developing countries. Although IFC and MIGA activities are increasingly screened by NGOs the following sections focus on the public sector lending operations of the World Bank, i.e. as IBRD and IDA, since they administer the bulk of the World Bank Group’s development activities.

As of February 2002, the World Bank had 183 members. The decision-making power rests with the owners, respectively the members of the World Bank. Each member appoints a governor whose voting power depends on the shares of World Bank capital that the country holds. Since industrialised countries own the majority of shares it is quite difficult for developing country members to influence decision making against the will of the major shareholders. The governors are usually ministers of finance or planning and meet twice a year. The bulk of the decision making, like the approval of specific development projects, poverty reduction strategies papers (PRSP), structural adjustment programmes (SAP) etc., is delegated to the 24 members of the Board of Executive Directors. The five largest shareholders (France, Germany, Japan, UK and USA) appoint one execu-

tive director each. The other members are represented by 19 Executive Directors who are elected by groups of countries. The Executive Directors normally meet twice a week and decisions are usually taken by consensus. The meeting is chaired by the President of the World Bank. In case of controversies about the approval of specific activities, intensive informal consultations take place – with close co-ordination of the G 7 and like-minded countries – before a project or programme is submitted to the Board. If no consensus can be found in advance of the Board meeting, the project or policy is usually abandoned. In addition to the Board, the Bank's president and senior management team also significantly influence decision-making, due to their relative autonomy in relation to the Board, their technical knowledge, and the outstanding position of the Bank as premier development institution.<sup>1</sup>

The following section illustrates where and how informal procedures and institutional arrangements influence policy making and how this relates to NGO participation.<sup>2</sup> It examines the formal World Bank rules that provide for NGO consultation and participation. The special arrangements for NGO participation will be explored in more detail as they implicitly differentiate between NGO participation in project implementation and the general policy development process. Thereby this brief overview will outline some of the major deficits of the current rules and their application, and present recommendations regarding more comprehensive NGO participation in World Bank policy-making.

### 3.4.1.2 The World Bank and NGOs

#### Development of NGO participation

The current structure of NGO-World Bank relationships in the context of NGO participation in Bank policy making evolved from the participation of grassroots or local NGOs in the implementation of specific development projects (e.g. improvement of health services or the improvement of energy, infrastructure and communication services). Hence, the World Bank confers with NGOs mostly in the context of technical co-operation or collaboration in countries receiving loans or technical and financial support. NGO influence in general policy making or the development of sectoral development policies is thus partly determined by World Bank policies that regulate NGO consultation and participation in specific pol-

<sup>1</sup> See O'Brian et. al. (2000: 27).

<sup>2</sup> See Rich (1995) for a comprehensive overview of the historical development of NGO participation in World Bank policy making.

icy sectors such as environmental action plans, environmental impact assessment or the conservation of natural habitats. These project related policies will be introduced in section 3.4.2: they are also an expression or a result of the impact NGOs have had on World Bank policy making and are an important tool for NGOs to influence Bank policy making.

The institutionalised policy dialogue with NGOs on project-related issues or operational collaboration in Bank-funded lending operations began to emerge in the 1970s when specialist workshops in the context of project implementation involved NGO representatives. In sector workshops, e.g. on forestry, energy, water-resource management, popular participation and poverty reduction, local NGOs were also able to contribute to policy formulation – although to a lesser extent. During one of these workshops the idea to establish a NGO-World Bank Committee emerged, which was then established in 1982. Its meetings provided a formal arena for policy discussions among senior Bank managers and the 26 NGO leaders, invited by the Bank, who formed the NGO Working Group on the World Bank. They represent all geographic regions. During the annual Bank-NGO Committee meeting the NGOs elect the members to the working group. The committee's member organisations host the NGO Working Group Secretariat on a rotating basis, usually for one year. The goals of the Committee are, *inter alia*, the collaboration with the Bank on operations on the project level and the development of new approaches to NGO-Bank co-operation.<sup>3</sup>

However, the Committee's role changed in recent years as more advocacy-oriented or political NGOs dominated the critique of the World Bank policies, pointing out the general failures of World Bank development policies and, more specifically, debt relief policies.<sup>4</sup> In 1999 the World Bank President James Wolfensohn asked the NGO Working Group to present suggestions on how to broaden the Bank-NGO interaction in order to take account of the growing number and varieties of NGOs engaging in World Bank projects and policy making. NGO consultation and participation became a central feature in the conceptualisation of new development approaches like poverty reduction or country assistance strategies. Since 2001, "Thematic Forums" convene a broader range of groups, including trade unions, small farmers' groups, women's organisations etc.<sup>5</sup> Therefore, the direct influence of the NGO Working Group and the NGO Com-

<sup>3</sup> Cleary (1996: 70).

<sup>4</sup> Unmüßig and Walther (2000).

<sup>5</sup> World Bank (2002).

mittee on policy making was weakened.<sup>6</sup> Policy advocacy is now largely promoted by the Washington-based large international NGOs or by well-connected NGO networks that form around specific issues.

According to the World Bank, the collaboration between NGOs and the World Bank in the implementation of specific projects continuously increased over the years. Between 1973 and 1988, NGOs were involved in about 6 % of projects, e.g. in infrastructure development. This figure increased to about 50 % of the projects in 1994.<sup>7</sup> In reaction to critique – voiced not only by NGOs – and the experience gained in project implementation, the World Bank began to introduce formal rules in the early 1980s: the “Operational Directives”, “Operation Policies” or safeguard policies that refer to NGOs and/civil society consultation and participation. In the meantime, more than 50 of these policies exist, of which some are currently under revision. They refer to specific and project-related implementation issues, such as environmental impact assessments, environmental action plans, forestry etc. However, it has to be noted that these rules do not refer to the role NGOs should or can play in the general World Bank policy-making: they do not provide a legal basis for NGOs to be consulted, for example, in the reform of structural adjustment policies or poverty reduction strategies.

#### Definition and Classification of NGOs

As far as the definition and classification of NGOs is concerned, the World Bank documents are slightly confusing, since they use the term civil society or civil society organisations (CSOs) and NGOs interchangeably. According to the Bank “NGOs” are one sub-group of organisations that fall into the category of CSOs. In one recent document the World Bank “defines civil society as the space among family, market and state; it consists of not-for-profit organizations and special interest groups, either formal or informal, working to improve the lives of their constituents. In this sense, the Bank considers research and policy design organizations, labor unions, the media, NGOs, grassroots associations, community-based organizations, religious groups and many others typical examples of the actors that comprise the dynamic web known as civil society.”<sup>8</sup>

More specifically the Bank categorises NGOs according to their functions, without explicitly stating any consequences for the working relationship between the Bank and the NGOs. One explanation for this vague-

<sup>6</sup> Interview B. Unmüßig, WEED, see also O’Brian et. al (2000: 30).

<sup>7</sup> Cf. World Bank Website, [www.worldbank.org/ngo.htm](http://www.worldbank.org/ngo.htm) (19.11.01).

<sup>8</sup> World Bank (2001a).

ness is that in practice, the borders between the different functions and activities of NGOs are indistinct and the definition of different terms of co-operation according to functions would be virtually impossible. The World Bank defines NGOs as “private organizations that pursue activities to relieve suffering, promote the interests of the poor, protect the environment, provide basic social services, or undertake community development”.<sup>9</sup> Subsequently, it classifies NGOs into two broad categories:

- 1) operational NGOs, which are involved in the design and implementation of projects, and
- 2) advocacy NGOs, which defend a specific purpose and seek to influence policies and practices of the Bank.

Obviously, the two categories of NGOs are not mutually exclusive, but if for example advocacy NGOs are not involved in operational collaboration with the Bank, they cannot base their claims for access to information and participation on the safeguard policies. The first category of operational NGOs can be subdivided into what the Bank also calls community-based organisations (CBOs), typically grassroots NGOs, which serve a specific population in a narrowly defined geographic area; national organisations, which operate in individual developing countries; and international organisations, which are typically headquartered in developed countries and carry out operations in more than one developing country. Among projects involving NGO collaboration in 1994, 40 % involved community-based organisations and local NGOs, 70 % national organisations, and 10% international organisations.<sup>10</sup> However, community based organisations or local and national Southern NGOs hardly influence the general World Bank policy making as they are occupied with operational issues. Almost all interview partners confirmed that the influence exerted by advocacy NGOs based in Washington or Northern industrialised countries on policy-making is much more significant than the impact of operational NGOs, because of their direct access to World Bank staff, government representatives and the media.

This development was subject to critique as it points to a crucial lack of representation of Southern groups in the lobbying process in Washington.<sup>11</sup> This is only recently beginning to change, as NGOs from developing countries like the “Third World Network”, “Focus on the Global South” or the groups connected to the debt relief movement “Jubilee South” use modern communication technologies and receive funding to directly

<sup>9</sup> World Bank (2000a).

<sup>10</sup> Cf. World Bank, Website [www.worldbank.org/ngo.htm](http://www.worldbank.org/ngo.htm) (19.11.01).

<sup>11</sup> See also Wade (1997).

communicate with senior bank management, for instance in panel discussions during the annual meetings of the World Bank and the IMF.<sup>12</sup> However, representatives of Southern NGOs do not consider this as sufficient because Washington-based NGOs have the possibility to gain quasi-permanent, albeit informal, access to World Bank staff and influence general policy making of the World Bank, sometimes without adequately taking into account the specific interests of Southern NGOs.<sup>13</sup> There are two main ways in which the Bank reacts to the growing diversity of NGOs and their different functions. First, it specifically supports Southern NGOs, since it foresees their increasing participation in general development policy approaches such as poverty reduction strategies papers (PRSPs), country assistance strategies (CAS) or country development frameworks (CDF). It also increasingly involves these groups in consultation processes on the development of specific guidelines or rules governing the participation processes. Secondly, it assigns staff in Washington and the country offices who are specifically responsible for the Bank's collaboration with NGOs, and it also founded the "Bank Information Centre", an NGO that provides World Bank documents and material about the World Bank to NGOs and offers particular support to Southern NGOs in their dealings with World Bank management. Although it is difficult to evaluate to what extent the opening of the World Bank to these participatory approaches actually influenced the policy making or to what extent the Bank takes account of NGO input, these developments reveal an steadily increasing influence of NGOs, both technical and political NGOs and CSOs, on the general policy making approach of the World Bank. Most sectoral policies can no longer be designed without NGO consultations, because NGOs constantly remind the World Bank of its obligation according to its own policy making standards.

### 3.4.2 Legal Provisions and Practice of NGO Participation

In the past ten years the World Bank committed itself to a number of binding "operational policies" or "bank procedures" and non-binding "good practices" that foresee NGO involvement. However, as already noted, they only refer to specific activities related to project implementation and to those NGOs that are involved in the implementation of a specific project.

The World Bank itself lists 51 policies and procedures that refer to NGOs and/or civil society. Those with general relevance to NGO partici-

<sup>12</sup> Wahl (2001b).

<sup>13</sup> Interview Fernando Carvalho, IBASE (Brazil), October 2001.

pation in the context of environmental protection are briefly described below. They are generally very vague and provide the project management and the recipient government with some flexibility as to the extent they involve NGOs, consult them or take up their recommendations.

#### 3.4.2.1 Operating Procedures

In the *Operational Policies on Environmental Action Plans (EAPs)* "The bank encourages the government to secure support for the EAP and to help endure its effective implementation by (a) using multidisciplinary teams from appropriate agencies within government to assist with preparation, and (b) taking into account the views of interested parties (including local nongovernmental organizations [NGOs]), obtained through means that induce broad public participation."<sup>14</sup> Regarding the disclosure of information policy, the guidelines provide that the Bank "encourages the government to make drafts publicly available to groups that will be affected by its implementation and to other groups, including NGOs".<sup>15</sup>

The *Operational Policies for Environmental Assessments* foresee that the loan-receiving government consults with groups that are affected by the project and local environmental NGOs in order to take their views into account. Projects that are categorised by the Bank as having "significant adverse environmental impacts"<sup>16</sup> need to be discussed at least twice with these groups: after the first environmental screening before the terms of reference for the assessment are established; and once the draft environmental assessment is available. If a government objects to the dissemination of an environmental assessment report the Bank will either stop processing the project if it is implemented by IDA, or in case of an IBRD project, it will submit the issue to the Bank's Executive Directors. But the guidelines say nothing about how the Board has to deal with such a problem and to what extent criticism, objections or suggestions made by NGOs and civil society representatives will be incorporated in the project design.

The Bank's *Policy on Disclosure of Operational Information* that had been approved in 1993 and which is relevant for NGO participation in policy-making has been reviewed and in August 2001 the Board decided to significantly broaden the range of information to be disclosed.<sup>17</sup> The policy has been considerably improved as it covers project-related docu-

<sup>14</sup> World Bank (2000b: para. 4).

<sup>15</sup> World Bank (2000b: para. 5).

<sup>16</sup> World Bank (1999a: para. 8).

<sup>17</sup> Cf. World Bank (1999a: para. 20).

ments, chairman's summaries of Board discussions of CAS and Sector Strategy Papers and adjustment-related country documents. Yet, documents relevant to policy making such as adjustment-related documents or information on CAS under preparation will only be released to in-country target audiences. It therefore remains to be seen if this policy can provide a platform for advocacy NGOs to increase their influence, for example, in improving the environmental sustainability by raising environmental issues in the context of general structural adjustment policy making.<sup>18</sup>

The general rules referring to "*Involving Nongovernmental Organizations in Bank-Supported Activities*" (GP 14.70) only have the status of non-binding "Good Practices". This is reflected in the language used. Overall, NGOs are considered important actors in the development process as addressed by the Bank's rules on good practice for NGO involvement. "The Bank therefore encourages borrowers and staff members to consult with NGOs and to involve them, as appropriate, in Bank-supported activities, including economic and sector work and all stages of project processing identification, design, implementation, and monitoring and evaluation."<sup>19</sup>

Although, the World Bank must, according to its operational policies, undertake environmental assessments of projects where significant environmental impacts are expected, these policies do not yet generally apply to adjustment loans. Due to public pressure the Bank now gradually broadens the scope of these policies. Since 1999 sectoral adjustment loans are subject to environmental assessments. It applies to all sector adjustment plans where a public information document has been released. The Operational Policy on Adjustment Lending is supposed to be revised in 2002 accordingly.<sup>20</sup>

This brief description already points at the constraints of meaningful NGO participation in policy making due to the vagueness of the policies. Moreover, NGO participation in project design and implementation is at the discretion of the loan-receiving country.<sup>21</sup> Hence, in many cases, NGO influence depends on the Bank, who can and does engage NGOs as consultants – in poverty assessments, national environmental action plans, or country assistance programs, for example – if governments are reluctant to do so.

<sup>18</sup> World Bank (2001b: 3).

<sup>19</sup> See World Bank (2000a: para. 1).

<sup>20</sup> See World Bank 2001c: 34).

<sup>21</sup> See World Bank (2000a: para. 17).

Despite the inherent problems of these safeguard policies, it is not appropriate to claim that they are generally ineffective. The application and impacts of the policies depend very much on the political context in which a project is implemented, i.e. on the Bank management, the type of project/sector and the political system of the loan-receiving country. In many countries they were extremely important for raising public awareness regarding the potential impacts of World Bank activities. And the Bank also used the policies to promote its own interests in securing the success of projects. For example, in forestry-related projects in Indonesia, the World Bank was able to receive approval by the government for much wider participation and consultation of civil society and NGOs than the government originally intended. In this case, the project's success depended on the local communities adapting to new, sustainable forestry measures.<sup>22</sup> Thus, most experts agree that the safeguard policies were and still are important as instruments that opened the door for NGOs to influence project implementation. The role of NGOs changed significantly as they improved their capabilities to officially scrutinise the design and implementation of projects. The World Bank staff is seriously concerned when NGOs take up specific issues in public campaigns criticising the Bank's conduct in project management and generally tries to solve the problems in consultation with NGOs.<sup>23</sup> At the same time, the operational policies described above are in many cases inadequate and are in need of reform to make them more binding.<sup>24</sup>

The safeguard policies are partly inefficient because they frequently lack enforcement. Currently, the World Bank staff and management are not accountable if the safeguard policies are not properly applied. There are no rules that commit the management to take up NGO recommendations or at least give an explanation for why it did not take up the NGO input.<sup>25</sup> And there are no formal consequences for the management if it neglects the concerns of civil society. The main concern of the management is to implement the projects and disburse the financial resources. Since consultation and participation processes are time-consuming and costly, they can have a negative impact on the cost-effectiveness of a proj-

<sup>22</sup> Interview Doug Hellinger, Development GAP, Washington DC, August 2001.

<sup>23</sup> Interview Charlotte Streck, World Bank, October 2001.

<sup>24</sup> Interview Heffa Schücking, Urgewald, September 2001.

<sup>25</sup> Interview David Hunter, CIEL, Washington D.C September 2001, see also O'Brian et al (2000: 29).

ect and therefore the management is rather reluctant to either organise comprehensive consultations or redefine their projects.<sup>26</sup>

Therefore, NGOs try to influence policy-making with 'informal' instruments, i.e. by directly approaching World Bank staff, mobilising the public or approaching government representatives on the Board of Executive Directors.

One expert pointed to another problem that is particularly significant for SAPs, which represent the largest share of World Bank lending and which are generally not subject to the safeguard policies governing individual projects. SAPs – with the exception of those in highly indebted poor countries – do not foresee civil society and NGO consultation in the preparation phase of the programme. There is no budget or time allocated for consultation activities and their follow-up before the programme is implemented and when it is still possible to prevent negative environmental and social impacts. If consultations and participation in the design in the context of cross-sectoral activities takes place, they are sometimes implemented by bilateral donors who also monitor the participation process. The expert also pointed out that the World Bank is still in a learning phase as far as the organisation of such country-wide consultation processes is concerned. Accordingly, the current evaluation of the experiences in participatory processes in the context of "Poverty Reduction Strategy Papers" (PRSPs) is likely to have an impact on the current World Bank approach to NGO participation.<sup>27</sup> One NGO expert put it more succinctly, by stating that despite the existing guidelines for Bank staff, the World Bank does not necessarily have a general strategy for how to deal with NGOs or that defines the working relationship between the Bank and NGOs as far as the facilitation of NGO policy recommendations is concerned.<sup>28</sup>

<sup>26</sup> Interview Heffa Schücking, Urgewald, September 2001.

<sup>27</sup> Interview Dr. Füllenbach, German Federal Ministry for Economic Cooperation and Development, September 2001. PRSPs that include civil society consultations in the context of SAPs are only mandatory and thus a precondition for receiving loans in the case of highly indebted poor countries. Under time pressure so-called Interim-PRSPs that do not require the full participation of CSOs are sufficient for the disbursement of the loans.

<sup>28</sup> World Bank (2000c). The guidelines should help staff to facilitate consultations with civil society, but they cannot be considered a general strategy. As a response to the request of World Bank task managers for guidance on how to facilitate public consultations and the involvement of civil society organisations (CSOs) and NGOs, the World Bank NGO and Civil Society Unit prepared non-mandatory guidelines. They focus on the involvement of local and national

### 3.4.2.2 Independent Inspection Panel

The World Bank Inspection Panel was created in 1993 by the Bank in the course of the reform of its information disclosure policies to oversee the compliance with its policies and guidelines that aim at mitigating social and environmental impacts of World Bank activities. The reform was initiated after an independent examination of the bank's Sardar Sarovar Dam Project in India, which heavily altered the natural environment and involved the resettlement of a large number of people, revealed the significant negative social and environmental impacts of the project. They had been exacerbated by the open violation of the Bank's existing stringent environmental and social policies. The Panel is an instrument with which NGOs can influence policy-making by initiating an inspection that creates public awareness and mobilises public support for their claims.

The Inspection Panel is a body with three members that investigate claims of citizens negatively affected by World Bank projects. Despite its name, it is not entirely independent, since the Board of Executive Directors needs to agree to an investigation.<sup>29</sup> In addition, the Panel members, who serve a five-year term, are nominated by the president of the Bank and need to be approved by the Board of Executive Directors. However, to ensure a certain degree of independence, members of the Panel must not have worked for the Bank for at least two years prior to their assignment and are not allowed to work for the Bank for the first two years after their

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CSOs in the context of project preparation and implementation. Apart from offering guidelines for the organisational aspects of the selection of CSOs, timing of consultations and how to keep governments informed, they also remind World Bank staff to make the scope and purpose of the consultations very clear to avoid the situation where the parties involved have expectations that are too high. Interestingly, the guidelines also address the problem of countries where the political environment impedes the involvement of CSOs and NGOs. In such cases, the involvement of CSOs can be encouraged by staff members referring to their own information needs in decision-making. Furthermore, they state that it is always possible to engage CSOs as local consultants. With respect to adjustment operations for which the general disclosure policies do not apply, the guidelines mention the possibility of summaries prepared by CSOs of information to be disclosed after signing an agreement of confidentiality and discussing the general objectives, strategies, social impacts and mitigation measures without disclosing the actual documents.

<sup>29</sup> Several requests for inspections have been denied by the Board without conclusive justifications. Interview Bruce Jenkins, Bank Information Centre.

assignment. Moreover, the Panel is supported by its own secretariat that is institutionally separate from the World Bank.<sup>30</sup>

The Panel is supposed to be the last resort of objection for those negatively affected by projects and should only be contacted if the World Bank staff has not reacted to the concerns that are brought forward. Before submitting a request, steps must have been taken (or efforts made) to bring the matter to the attention of the management with a result unsatisfactory to the requester. A request for inspection can be filed when the Bank violated its own policies or procedures and when two or more persons are adversely affected or are likely to be harmed by the project. Claims can also be filed by a member of the Board of Directors in cases of serious alleged violations or by a non-local representative, provided there is no local NGO-representation and he or she is authorised by the affected persons to act on their behalf.<sup>31</sup>

The Panel can only consider requests which claim that an actual or threatened material adverse effect on the affected party's rights or interests arises directly out of an action or omission of the Bank to follow its own operational policies and procedures during the design, appraisal and/or implementation of a Bank-financed project.<sup>32</sup>

Where the Panel decides to conduct an investigation, it first presents its recommendation to carry out such an investigation to the Board of Executive Directors which needs to agree to an investigation. Once it has agreed, the investigation by the Panel can comprise meetings with the requester, affected people, Bank staff, government officials and NGOs. During the investigation, it is also possible to hold public hearings, visit project sites, to hire independent consultants or use any other research

<sup>30</sup> One NGO representative mentioned that a member of the Panel faced open hostility by the management and the staff of the World Bank during an investigation and subsequently resigned from the post after the investigation was completed prior to the official end of his term. Interview Heike Mainhardt, WWF US, October 2001.

<sup>31</sup> Many governments are very sensitive as far as such complaints are concerned and NGOs have reported cases where complaints that have been submitted through the World Bank's country office never arrived in Washington –the location of the Inspection Panel. Heffa Schücking, Urgewald, reported a case in Chad related to the Chad-Cameroon pipeline project, where the claimant found out by accident that the complaint he sent via the World Bank's office in Paris has never been received by the Panel. Interview September 2001.

<sup>32</sup> However, the eligibility criteria for filing complaints seem to be rather restrictive, since the Bank's policies must be known to the affected people and actual harm must have already been suffered in the course of the project preparation.

method that seems reasonable including researching Bank files.<sup>33</sup> The Panel's main purpose is to assess the information and pass on the claims, additional questions and recommendations on how to solve the issue to the project management. In the course of the investigation, the Panel or the Board of Executive Directors can always ask for clarification of factual information or commission studies to further explore contested issues. Once an investigation is completed the Panel sends its findings and recommendations to the Board of directors and the Bank management. Within six weeks the management prepares its response to the Panel's findings and recommendations on how to solve potential problems and presents them to the Board. Based on the final recommendations by the Panel and the management, but without any further formal consultations with the Panel or the management, the Board develops an action plan for resolving the policy violations. These action plans are also made public.

These guidelines and eligibility criteria constrain the possibilities of advocacy NGOs to initiate a Panel investigation, since they either have to prove that they are directly affected by the project or they have to be authorised by the local people. In addition, an inspection process can only be initiated once the project has been developed but before the first loan has been disbursed, i.e. before the project enters the implementation phase. This means that the time available to intervene and/or delay the project implementation is rather limited. Moreover, negative environmental effects might only emerge after the funds have been disbursed, e.g. after the conversion of natural sites into mining areas took place.<sup>34</sup> Advocacy NGOs therefore tend to use the Panel investigations, or cases where such investigations did not take place, for their lobbying activities raising public awareness in industrialised countries and link these examples with their general critique of World Bank policies.<sup>35</sup>

Although the impact of the Panel's recommendations on the implementation of the project is difficult to assess, NGOs still consider it an important tool that can influence policy making in the long run. For example, in the case of the investigation of the China Western Poverty Reduction Project, which involved the resettlement of large parts of the population without sufficient consideration of ethnic structures and ecological framework conditions, the Panel advised a broad consultation process with civil society supported by the Bank against the interests of the Chinese

<sup>33</sup> World Bank (1994: para. 45).

<sup>34</sup> See World Bank (1999b).

<sup>35</sup> Letter by Urgewald e.V. 15.09.1999 to the German Development Minister Heidemarie Wiecezorek-Zeul, available from the author.

government.<sup>36</sup> Although the consultation never took place because the Chinese government withdrew the project, other countries might learn from this experience and provide for participation if the project has political and economic priority. As such, the Panel process is a tool that can be used to influence policy making of the Bank and loan-recipient.

### 3.4.2.3 Compliance Advisor/Ombudsman for IFC and MIGA Operations

The office of the compliance advisor and ombudsman (CAO) was established in 2000 within the IFC to enable citizens and local CSOs that are adversely affected by the operations of the World Bank Group's IFC and MIGA to file complaints.

It has three different functions:<sup>37</sup>

- (1) Responding to complaints by persons who are affected by projects and attempting to resolve the issues raised using a flexible, problem solving approach (the 'Ombudsman role').
- (2) Providing a source of independent advice to the President and the staff of the IFC and MIGA. Advice is to be provided both in relation to particular projects and in relation to broader environmental and social policies, procedures, guidelines, resources and systems (the 'Advisory role').
- (3) Auditing IFC's and MIGA's social and environmental performance, both overall and in relation to sensitive projects, to ensure compliance with policies, guidelines and procedures (the 'Compliance role').

The procedures concerning the eligibility of complaints and the scope for participation of NGOs are similar to the rules of the World Bank Inspection Panel. "Any community, group of two or more persons, or another party affected or likely to be affected by an IFC or MIGA project, may make a complaint to the Ombudsman. The Ombudsman has discretion to determine whether a complaint is accepted. In general, the Ombudsman will accept complaints only where there is a direct connection between the complainant and the substance of the complaint. Normally, the complainant should be a group of two or more persons, community or organization that has experienced or will experience the social and/or environmental

<sup>36</sup> See CIEL website, [www.ciel.org/IFI/programifi.html](http://www.ciel.org/IFI/programifi.html) (19.11.01). Also interview with David Hunter, CIEL, Washington D.C., September 2001.

<sup>37</sup> IFC (2001a:3).

impacts of a project."<sup>38</sup> The CAO has accepted nine complaints so far, of which seven had been settled and one withdrawn at the time of writing.<sup>39</sup>

In terms of influencing policy making the CAO may not be the most important channel for NGOs to influence general policy making of the IFC. NGOs can be consulted by the CAO at any time during the investigation and mediation procedures. However, the CAO's recommendations are not binding. Ultimately it is up to the president of the World Bank to decide whether and how IFC or MIGA should alter their operations.

### 3.4.2.4 Other Channels of Influence

As these formal channels of ENGO participation are not directed at the policy-making level of the World Bank, most ENGOs resort to other ways of directly influencing Bank policies.

Since the 1980s, ENGOs use campaigns building on NGO coalitions that target specific issues of World Bank policy making. One of the first examples of such a co-ordinated worldwide campaign aimed against the "Tropical Forest Action Plan" (TFAP) developed by the World Bank, the Food and Agriculture Organisation (FAO), UNDP and the World Resources Institute as a general plan to promote the development of the forest industries in developing countries. Although environmental and social goals had been considered by the plan, they were not sufficient to balance the negative environmental (building of logging roads, illegal logging) and social (resettlement to marginal areas) effects of the economic measures to promote forest exploitation. A number of NGOs from South East Asia and Latin America, where the Bank intended to implement individual projects under the TFAP, jointly protested against the plan and the individual projects in their countries. They illustrated how the World Bank and the recipient governments grossly violated the environmental and social provisions of the TFAP. Northern NGOs supported them by lobbying their governments to stop funding the projects and raising public awareness about the environmentally and socially destructive ways of spending tax money. They issued joint statements and started countrywide signature campaigns to raise awareness in the general public, quite often followed by proposals to boycott tropical forest products. Due to this massive co-ordinated campaign by NGOs, the TFAP was given up as a general plan to promote development objectives.<sup>40</sup> However, despite the success of this

<sup>38</sup> IFC (2000: 9).

<sup>39</sup> See IFC (2001b: 4).

<sup>40</sup> For a detailed account of the NGO campaign against the TFAP see Rich (1995: 69 ff.).

campaign the World Bank still funded projects aiming at the development of the forest sector in developing countries. At the end of the 1990s, ENGOs criticised structural adjustment policies for not taking adequate account of the negative environmental impacts of these economic sector programmes as well as for not adequately involving civil society in the countries.<sup>41</sup>

In this case the ENGOs and PINGOs did not focus on a particular problem but on a set of political relationships. They used the campaigns to illustrate the impacts of multilateral financial institutions and to promote “the incorporation of environmental concerns into development policy” in the developing countries.<sup>42</sup> American ENGOs like Sierra Club, Environmental Defense Fund, or CIEL found a very effective way of influencing World Bank policies and lending operations by lobbying the US Congress. Prompted by a number of public interest and environmental NGOs, the US Congress forced the US executive director at the World Bank to file all project documents and budgets with the US Library of Congress. In addition, the executive director is required to decline all project proposals that fall short of certain (American) environmental and social criteria.<sup>43</sup>

In this context it is worth noting that BINGOs or organisations representing the private sector are not engaged in active World Bank lobbying. One NGO representative claimed that the financial sector has longstanding and very close informal relationships with the senior Bank management and subsequently it does not have to act like a typical advocacy NGO.<sup>44</sup>

Northern NGOs, like the Bretton Woods Project, the Development Group for Alternative Policies (Development GAP) or World Economy, Ecology and Development (WEED) quite often work through informal and direct lobbying of World Bank staff and government representatives at the World Bank from their home companies. They use the consultation processes to voice their concerns in the formal process as well as informal consultations.

Another potentially important instrument to influence policy making are NGO observation networks. The Structural Adjustment Participatory Review International Network (SAPRIN) comprises a broad array of more than 1200 citizen organisations that accompany SAPs in different coun-

<sup>41</sup> See Seamour and Dubash (2000).

<sup>42</sup> Keck and Sikkink (1998: 135).

<sup>43</sup> Cleary (1996: 83). See also Bowles and Kromos (1995).

<sup>44</sup> Interview Doug Hellinger, September 2001.

tries. The goal of the network is to bring together citizens, government representatives and Bank staff to jointly review the impacts of SAPs and to develop alternative policy options. From 1995 onwards it closely followed SAPs in Ghana, Mali, Uganda, Zimbabwe, Bangladesh, El Salvador, Ecuador, and Hungary. The network organises international and national public dialogues and participatory on-the-ground investigations of the impact of SAPs. It was created in 1995 by an initiative of the World Bank president James Wolfensohn after several PINGOs pressed the World Bank to assess the impacts of SAPs by civil society and the implementing government in collaboration with the Bank. It is currently coordinated by the Development GAP, an NGO based in Washington D.C.<sup>45</sup>

The assessment of structural adjustment policies aimed at the participation of a broad variety of CSOs and focused on their experiences with typical adjustment measures, such as trade liberalisation, privatisation of public utilities and services, liberalisation of financial markets and labour market reforms. This process was thought to influence the design of future SAPs and Bank policy in general. However, a general overview of the experiences collected during the SAPRIN activities emphasises that despite the quasi-institutionalised collaboration between the Bank and civil society in the SAPRIN framework there seems to be an unwillingness on the part of the Bank to respond to the critique voiced in the context of SAPs.<sup>46</sup> There is no mechanism in the Bank’s administration to process the information coming from SAPRIN in a meaningful way. Despite the fact that the process had been initiated by the president of the World Bank, by the end of 2001, the Bank had virtually stopped taking part in the process. It neither supported organising events to enable civil society to voice its concerns about SAPs nor did it take up the results of such events that had been organised by local and international NGOs.<sup>47</sup>

### 3.4.3 Deficits, Problems and Need for Improvement

Despite the fact that the World Bank Group – compared to other international organisations – involved NGOs relatively early at the functional level, it is still criticised heavily for not adequately involving NGOs and thereby exacerbating the negative environmental impacts of its develop-

<sup>45</sup> Cf. website of The Development Group for Alternative Policies, [www.igc.org/dgap/saprin/](http://www.igc.org/dgap/saprin/) (20.10.01).

<sup>46</sup> The status reports and country updates are available through the SAPRIN website. SAPRIN Secretariat (2000).

<sup>47</sup> Interview with Barbara Unmüßig, WEED, September 2001, see also SAPRIN Secretariat (2001: 3).

ment projects and SAPs. A recent joint ENGO paper by Friends of the Earth, Environmental Defense Fund, Sierra Club, International Rivers Network and the Rain Forest Action Network underlines this critique by pointing at the most pressing problems. According to these groups, the Bank still invests in projects that considerably harm the environment: pipelines or mining sites, for example.<sup>48</sup> SAPs continue to neglect the negative environmental and social impacts of economic adjustment measures such as liberalising public services in the energy and water sectors. In addition, funding by the World Bank for environmental protection is decreasing. According to the World Bank records, environmental funding in the financial year 1999 dropped by 32 % compared to the financial year 1998. The new World Bank environment strategy is reacting to this criticism by realigning budgets with the strategic consideration of mainstreaming the environment in programmatic lending. In particular, the strengthening of the environmental component of PRSPs and CAS is earmarked as a priority in the realignment of programme budgets.<sup>49</sup> ENGOs can monitor the implementation of these policy initiatives through the consultation processes associated with PRSPs and CASE. CASE refers to a pilot programme on "CAS and the Environment" that aimed among other things at raising the profile of environmental issues with national officials and the World Bank country teams preparing the strategy.<sup>50</sup>

ENGOs such as Friends of the Earth US, the Sierra Club, or ENGO coalitions frequently confront the World Bank with policy papers addressed at World Bank and government staff. Internet and media campaigns in the context of the annual IMF/World Bank and G 8 meetings or other important international conferences aim to mobilise citizens and further voice opposition against the policies of the World Bank and other international financial institutions. ENGOs use these events to point out the negative environmental consequences that are exacerbated because of the lack of consultation and involvement of local people and NGOs.<sup>51</sup> They point out that the Bank invests heavily in environmentally destructive extracting industries like oil, gas, and mineral mining. These operations destroy intact eco-systems and pollute the environment by, for example, relying on cyanide-based techniques for separating gold from rocks. Forest destruction and the displacement of indigenous peoples is also very often

<sup>48</sup> FOE US (2000).

<sup>49</sup> World Bank (2001c: 76ff.).

<sup>50</sup> World Bank (2001c: 27).

<sup>51</sup> See website Friends of the Earth International, [www.foe.org/international/omg/foeiomg.html](http://www.foe.org/international/omg/foeiomg.html) (19.11.01).

a negative consequence of these operations. Friends of the Earth US cites cases such as the Bolivia-Brazil gas pipeline, the Chad-Cameroon oil pipeline, oil extraction in Guatemala, and gold mines in Kyrgyzstan, Papua New Guinea, and Guyana, which are all heavily polluting and destroying the surrounding environment and are at least partly financed by the World Bank.<sup>52</sup> By way of media campaigns, press releases and colourful events, the ENGOs are very effective in linking these cases of environmental degradation with the general anti-globalisation critique and movements. These examples and the environmental and procedural critique of the World Bank's operations show that the attempted mainstreaming of environment protection still lacks credibility. And the campaigns seem to have had an influence on policy making recently. Despite no official policy change having been announced by the Bank, it effectively withdrew and stopped funding large infrastructure projects that involve the destruction of eco-systems and the resettlement of entire regions.<sup>53</sup> The recent OED review of the World Bank's environmental performance points at a growing dilemma the Bank faces in this context: developing country governments criticise the Bank for resigning under the pressure of advocacy NGOs, whereas developed country governments frequently criticise the unsatisfactory environmental performance of the Bank.<sup>54</sup>

Yet despite these successful interventions by NGOs, there is no functioning NGO network that systematically monitors the implementation of World Bank projects and SAPs. Most of the time, ad hoc coalitions are built up around specific subjects like the review of PRSPs or single projects and initiatives such as debt relief for heavily indebted poor countries (HIPC). The individual NGOs do not have the financial and human resource capacities to comprehensively monitor the Bank's initiatives on a permanent basis.

#### 3.4.4 Conclusions: Proposed Solutions

This brief description of NGO participation in World Bank projects and policy-making shows that although there is a considerable number of policies that provide for NGO participation, these safeguard policies are not the major instrument for NGOs to influence World Bank policy making. This is partly due to the fact that the safeguard policies providing for par-

<sup>52</sup> See website Friends of the Earth International, [www.foe.org/international/omg/casestudies.html](http://www.foe.org/international/omg/casestudies.html) (19.11.01).

<sup>53</sup> Interview Barbara Unmüßig, September 2001.

<sup>54</sup> World Bank (2001d: 4).

ticipation only address the operational or technical level of project implementation, and partly due to a lack of a meaningful implementation of these existing safeguard policies.

Currently, the World Bank's position on NGO participation in policy making is somehow indeterminate. Although the Bank initiated consultation procedures on general issues like PRSPs and the review of the operational policies, they are not based on binding rules. In addition, it does not currently seem realistic to ask for such rules for NGO participation in World Bank policy-making or official NGO observership of, for example, Board meetings or the negotiations between the management and governments. World Bank and government representatives confirmed that the World Bank members would not accept such rules because of the general argument that these groups have no legitimacy to represent civil society. Although NGOs do not ask for voting rights and base their claims on their function as a multiplier of information, the representatives of governmental and international institutions insist that this form of transparency goes too far for many member governments.<sup>55</sup> Thus, as far as policy-making is concerned, NGOs and civil society representatives rely very much on informal personal contacts and public campaigns in order to promote environmental policies in the context of World Bank activities. However, this approach impedes co-ordinated international campaigns that address fundamental issues, e.g. the social and environmental impacts of SAPs.

In the context of meaningful participation it has been suggested by NGOs – based on rules that prescribe the integration of project and policy related concerns voiced by civil society – that the Bank publishes important policy documents more frequently on the web to allow for commenting.<sup>56</sup> Although this approach probably still does not reach all those that are directly affected by World Bank policies, it would at least create more transparency in the policy formulation process. The application of the new policy to the disclosure of operational information may develop into a test case for NGOs and the World Bank about the participation of NGOs in policy making. Although the policy focuses on operational, project-related and country-specific documents, it grants access to a broader range of information that can be used by NGO campaigns addressing policy issues. Nonetheless, the World Bank still has quite some leverage in providing policy relevant information and processing subsequent comments. The experiences with consultations during the revision of the information disclosure policy or on the findings of the World Commission on Dams point

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<sup>55</sup> This view has been confirmed in the interviews.

<sup>56</sup> Interview David Hunter, CIEL September 2001.

at another failure of the current praxis.<sup>57</sup> Despite the possibility to submit comments, NGOs and individuals are not provided with any feedback by the Bank to what extent their comments or suggestions are being considered or why they are not being integrated in future policies.

As has been shown, there is also a lack of accountability in the project management. Here it seems worth thinking about ways to make the project management more responsible for failing to observe the safeguard policies. The expert interviews confirmed that it is not necessarily the lack of more binding rules that is responsible for the negative environmental record and the lack of consultation, but the failure to apply the existing rules. Because of the lack of enforcement or the need to give any feedback to concerns raised by NGOs, Bank staff and management have no incentive to apply the safeguard rules. In the case of neglecting the safeguard policies, there are no consequences foreseen that influence the career perspectives of Bank employees.

One general recommendation for improving the effectiveness of their participation emerges from this brief account of NGO participation in World Bank policy making. NGOs seem very successful when they initiate an international or global campaign on a set of policy issues in which the campaign participants focus on different aspects of the policy issue and use their established channels of influence to promote their interests and concerns. In the future they could aim at building a more stable network that, as far as possible, institutionalises the processing of information and the lobbying activities on various political levels. The network could then analyse operational, technical and project-related information more systematically and design campaigns on general policy issues addressing a broader spectrum of project-related information and experiences. The case of SAPRIN, for example, calls for such a campaign, which could address the environmental and social impacts of structural adjustment policies, in a similar way to the campaign on the TFAP and the protection of tropical forests. Such a campaign could also be linked to those groups that criticise trade liberalisation and economic globalisation in general and thereby reach more people and decision makers.

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<sup>57</sup> The World Bank never formally endorsed the recommendations of the Commission.

## 4. Concluding Assessment and Outlook

Non-governmental organisations (NGOs) – whether business groups, environmental groups or others – have become a major force in virtually all areas of international environmental governance. They participate and influence policy-making in many international institutions relevant to the environment. NGOs take part in decision-making both based on relevant legal rules and using additional, informal channels and means to influence policy-making in international organisations and agreements.

This study has analysed the legal basis and the practical experience regarding the participation of NGOs in policy-making in international institutions relevant to the environment. This analysis has included investigating the *status quo* and existing trends in multilateral environmental agreements (MEAs), a number of international economic institutions, and other institutions related to the environment. Two MEAs (the UN Framework Convention on Climate Change and its Kyoto Protocol, and the Convention on International Trade in Endangered Species) and two international economic organisations (the International Organisation for Standardisation and the World Bank) have been analysed in more detail.

The following sections present the major findings of the study. Section 4.1 summarises to what extent NGOs participate in and influence policy-making in the different international institutions. In particular it sheds light on the relationship between formal, codified rules guiding the participation of NGOs as compared with informal practices that have developed beyond those codified rules. Subsequently, section 4.2 attempts to develop a yardstick for assessing the legitimate role of NGOs in international decision-making by referring to emerging relevant principles of international law and the discussion in the relevant literature. Section 4.3 goes on to discuss various constraints on effective contributions of NGOs to international policy-making as well as related proposals for improving the situation, that have been identified in the relevant literature. This discussion is informed by the results of the four case studies contained in section 3 of this report, which included a number of interviews with relevant stakeholders. Finally, section 4.4 concludes from that discussion by presenting the resulting policy recommendations.

### 4.1 Legal Basis and Practice of NGO Participation

All international institutions relevant to the environment – be it formal organisations or treaty systems – appear to have at their disposal some kind of NGO consultation. Such NGO consultation and participation is

also regularly based on legal rules, at least to some extent. In general however, these legal rules remain, 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. This concerns the practice of granting access to meetings, the degree of active participation in deliberations, the dissemination of information and other aspects of NGO participation.<sup>1</sup> In that respect, the Convention on International Trade in Endangered Species (CITES) provides the major exception in that its Parties have developed a very detailed set of rules governing the participation of NGOs (see section 3.2.2). In any event, 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.

Most international institutions are open to NGOs without conferring any specific rights on them in this regard. Whereas CITES and the Aarhus Convention grant an explicit (though very general) 'right' for accreditation and participation (see section 2.2.1.1), according to the 'standard formula' used in modern MEAs qualified NGOs "may be admitted unless at least one-third of the parties present object" (authors' underlining). However, the practice that has developed in most international institutions relevant to the environment can be said to have created the legitimate expectation and 'right' that NGOs be allowed to participate in general. Apart from the fact that NGOs could not enforce any right against international institutions, there are hardly any further formal 'rights' granted to them within international institutions relevant to the environment in general.

In particular, NGOs are generally denied any voting rights within international institutions. Two major exceptions to this rule exist that are 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. NGOs have also generally not called for voting rights in international environmental governance (not least due to the fact

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<sup>1</sup> In this respect, the extent to which actual practice has relied on the discretion of the chairs of meetings is noteworthy; see also sections 2 and 3 above.

that they would otherwise also have to assume responsibility for decisions made).<sup>2</sup>

Significant differences exist between the practice of NGO participation in MEAs and some other institutions such as the CSD, ECOSOC, GEF and UNEP, on the one side, and economic institutions on the other. In the framework of MEAs, NGOs have generally been granted open access to all official, formal meetings. In several contexts, they have also been admitted to attend informal meetings and were allowed to intervene in discussions upon the invitation of the Chair. While making written submissions has generally remained reserved to governments, NGO submissions have occasionally been posted on official web-sites or have even been included in official documents alongside government submissions. In contrast, opportunities for NGOs and civil society at large to participate have remained more limited, on average, in economic institutions. Access to meetings of their bodies is not necessarily granted, and the opportunities for active participation (interventions, written submissions) have remained more limited, if existing at all. In some cases, only international NGOs are admitted (ILO, ISO, but also UNEP). In the case of UNEP, the UNEP Governing Council in its Decision SS.VII/5 of February 2002 decided to establish a working party to consider, *inter alia*, changing the relevant provision. In general, considerable restrictions on access and active participation in general policy-making as well as dispute settlement remain in the context of economic institutions.

Given the generally more advanced state of rules and practice on NGO participation in environmental institutions, it may not be surprising that the only institutions that have granted funding for NGO participation to some extent are the UN Convention to Combat Desertification (UNCCD) and the GEF. In this regard, the desire to ensure sufficient representation by civil society from developing countries has been a major motivation. Such funding has been limited to public-interest NGOs (PINGOs).

Considerable variation of the practice of NGO participation exists within the different groups of institutions. Thus, whereas formal rules on NGO participation display a considerable similarity in many MEAs, practice has ranged from allowing NGOs to freely intervene in discussions even in informal working groups to not admitting them to informal meetings and granting them only the possibility to make pre-set statements at official sessions. In the Antarctic Treaty System – admittedly not a 'mod-

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<sup>2</sup> However, NGOs have occasionally acquired/been granted *de facto* veto power in working/expert groups (if and when they were allowed to participate therein); for an example in the context of ISO see section 3.3.2.3.

ern' MEA – NGO access has even remained more restricted, with NGOs being allowed to participate only if invited. With regard to economic institutions, access to meetings of decision-making bodies is virtually non-existent or greatly constrained in some institutions (e.g. the World Bank and, constrained to a lesser extent, the WTO), while being generally granted in others (e.g. ILO, ISO). It is therefore necessary to analyse the specific institution in question when assessing its openness to NGOs and civil society at large.

There is a general tendency of governments to grant less open access to meetings that deal with politically sensitive issues. In particular, matters with potentially important financial and economic implications as well as discussions on dispute settlement, implementation review and non-compliance appear to be considered politically sensitive in this respect. This might partially explain, but can hardly justify, the comparatively less open nature of economic institutions (and the variation within groups). Another part of the explanation of the differences that exist with regard to NGO participation between environmental and economic institutions may be found in the history of their emergence and development. Contrasting the situation in the economic sphere, NGOs and civil society have played a particularly prominent role in putting environmental issues on the political agenda. For example, CITES evolved, to a great degree, out of a NGO initiative (see section 3.2.1). 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.

However, there is no *a priori* reason why economic institutions should be, or would need to be, less open in their approach towards NGO participation (Esty 1997). To be sure, there may be plausible reasons for restricting access of NGOs under certain circumstances (e.g. when confidential information is being considered). However, differentiating systematically between economic and environmental institutions is hardly justifiable and even increasingly difficult conceptually in times of sustainable development. The UNFCCC, for example, may be considered both an environmental and an economic institution. Furthermore, examples exist which show that more progressive rules and practices do not necessarily hinder an efficient decision-making on financial and economic matters. The GEF and the Multilateral Fund of the Montreal Protocol provide cases in point. Furthermore, the concept of sustainable development attempts to approach environmental, economic and social matters in an integrated manner and acknowledges that wide-ranging interdependencies and interrelations exist between these areas. Therefore, similar standards for NGO participation seem to be in order. Consequently, Chapter 27 of Agenda 21 on strengthening the role of NGOs does not systematically differentiate

between the status of NGOs in economic and environmental institutions (see also section 4.2).

While NGO participation in international environmental governance is based on rules and practice, their fulfilment of various important functions and their influence on policy-making is only partially dependent on these rules and practices. NGOs use a number of channels of influence that are largely independent of the legal provisions crafted by governments for NGO participation in international institutions (see section 2.1.3). Apart from the broader influence on public awareness, values and opinion, a large part of the influence of NGOs in international policy-making is brought to bear, for example, in informal contacts between NGO representatives and government delegates “in the corridors”, over lunch or dinner, during side-events and workshops or via modern communication technologies such as mobile phones. Such informal contacts can take the form of lobbying or advice (where governments and NGOs share common objectives). Where NGO representatives serve on national delegations, they can even give advice directly inside the negotiating arena. The most prominent example of such a direct advisory role has been the advisory function of experts of the Foundation for International Environmental Law and Development (FIELD) in delegations of members of the Alliance of Small Island States (AOSIS) in the international climate negotiations (see 3.1.2.3). Similarly, NGOs have at times provided advice and information to international secretariats. Obviously, their influence on decision-making through this channel is more indirect, since Secretariats themselves influence the agenda and the set-up of meetings but do not command decision-making power: this remains with member states.

NGOs also base their influence to a large extent on gathering, compiling and disseminating information and analyses. Relevant activities may include the publication of studies and reports and the distribution of information material. Such information dissemination may concern the scientific basis of policy-making, policy and legal issues as well as the review of implementation of international commitments. It may be aimed at policy-makers and/or the larger public interested in the international process. Its purpose may be to convince and/or to increase public awareness and public pressure.

Such public pressure and awareness may also be enhanced by public campaigns and protests outside the inner arena of policy-making in international institutions. Furthermore, NGOs have come to build close relationships with the media at international gatherings, which has given them the opportunity to amplify their messages and to reach out to a broad public. These activities aiming at the public at large have enabled them to or-

ganise and enhance public pressure e.g. by 'naming and shaming' laggard countries.

Lobbying and providing advice, compilation and dissemination of information, public relations work and campaigning – all these channels of influence depend rather marginally on the specific design of rules on NGO participation in international policy-making processes. The effectiveness of NGOs in using these channels of influence appears to depend rather on their expertise, the resources they command, the legitimacy they possess in the public eye and their own skills and capabilities. Nevertheless, the formal and informal rules provide an important basis for their activities since they can facilitate access to the policy-making arena and thus can assist in the mentioned activities: Lobbying and provision of advice as well as dissemination of information is done more easily where regular access is guaranteed, and public relations work is facilitated where access enables the acquisition of insider knowledge about the policy-making process.<sup>3</sup>

Different kinds of NGOs use the aforementioned channels of influence to varying degrees. Business and industry NGOs (BINGOs) appear to rely more heavily on face-to-face lobbying and providing direct advice to friendly delegations than on public campaigns and compiling and disseminating information. The latter activities are more frequently pursued by environmental NGOs (ENGOs) and other PINGOs, that may also undertake lobbying and give advice to friendly government delegates. Provision of direct advice on government delegations or even negotiating on behalf of government employees appears to be the domain mainly of specialised expert NGOs. At the same time, some countries have invited representatives of NGOs to become members of their delegation in a non-negotiating capacity.

Overall, there is a clear trend towards increasing NGO participation in international environmental governance. The number of NGOs active in relevant international institutions has been increasing tremendously over the last decades, as has been the degree of their expertise and knowledge

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<sup>3</sup> A part of the literature on the role of NGOs in international environmental governance has highlighted the problematic repercussions that such a professionalisation of NGOs can have. Accordingly, it can lead to an increasing assimilation that reduces the ability of NGOs deeply involved in international policy-making to express opposition and to invent solutions beyond the existing institutionalised policy framework. It also legitimises international institutions and can partially lead to an exclusion of NGOs that are not part of the 'inner circle'; see, for example, Altwater/Brunnengräber 2002; Walk/Brunnen-gräber 2000; Wahl 2001b and literature provided there.

about the respective mechanics and mechanisms of decision-making. At the same time, many international institutions relevant to the environment have intensified their efforts to provide more open access to NGOs – a development that may not have reached its endpoint yet, as deficiencies continue to exist and there are further potentials for enhancing international environmental governance by increasing NGO participation (see section 4.3 below).

The trend towards enhanced NGO participation can be said to have been at least partially the result of the growing recognition that a broad participation by NGOs contributes to improving international environmental governance, as reflected especially in the Agenda 21 and the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. Before turning to a discussion of the remaining problems and the options for improving the situation further, the following section will shed more light on the underlying principles of NGO participation in international law and the legitimacy of such NGO participation in general.

## 4.2 Towards Determining the Legitimate Role of NGOs

Enhancing the role of NGOs in international environmental policy cannot be an end in itself and cannot be without limits. What then should be the role of NGOs in policy-making? How should they contribute to international environmental governance? What are the limits to what they should be allowed to do? In summary: to what extent can NGO participation be considered legitimate?

Legitimacy is a concept that is usually applied to political systems. In this context, it is employed to determine the conditions which make collectively binding decisions legitimate.<sup>1</sup> In contrast to the concept of “legality” (determining whether an action is lawful), political legitimacy is generally understood as flowing from shared values and norms, constitutive procedures and actual recognition by citizens.<sup>2</sup> With respect to NGO participation in international environmental governance, the concept of legitimacy has two dimensions. First, the participation of NGOs can contribute to a democratisation of international policy-making, thereby enhancing its legitimacy. Second, the legitimacy of the participation of NGOs in international (environmental) politics can be investigated. It is the second aspect that has moved to centre stage with the increasing influence of NGOs that was most evidently symbolised in the anti-globalisation protests at the 1999 WTO Ministerial Conference in Seattle (and subsequent meetings of the IMF and others).

Against the backdrop, this sub-section attempts to derive some general guidelines that may assist us in determining a legitimate role for NGOs in international environmental policy-making. Legitimacy is a concept that depends on values and perceptions which are subject to change over time. Any discussion of the legitimacy of NGO participation can therefore only yield preliminary results. In the following, we consult two sources for deriving relevant guidelines: established instruments of international environmental law and policy (the Agenda 21 in particular) and the scholarly literature on the legitimacy of NGO participation, mainly rooted in democratic theory.

### 4.2.1 Emerging Principles of NGO Participation in International Law

While no formal treaty rules addressing the legitimate role of NGOs in international environmental policy-making have been established at the

<sup>1</sup> Beisheim (1997: 21f).

<sup>2</sup> See Mandt (1995).

global level, the issue is addressed by both the Rio Declaration on Environment and Development and the Agenda 21 – both adopted at the 1992 United Nations Conference on Environment and Development (UNCED). In addition, the 1998 Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters establishes a number of relevant principles. While the Aarhus Convention has been negotiated within the framework of the UNECE and therefore has only a regional scope, and although it mainly aims at domestic political processes, its principles reflect a broader tendency in international law and shall therefore be briefly analysed below. Our discussion remains limited to the legitimacy of NGO participation in *international* decision-making.

The Rio Declaration (setting out a framework for future developments in international environmental law), in its Principle 10, very broadly states that “Environmental issues are best handled with the participation of all concerned citizens, at the relevant level”<sup>3</sup>. It therefore generally acknowledges the importance of public participation, including that of NGOs.

Somewhat more specific, Agenda 21 (setting out an action plan for realising the Rio Declaration’s aims) acknowledges that “one of the fundamental prerequisites for the achievement of sustainable development is broad public participation in decision-making”<sup>4</sup>. Building upon Principle 10 of the Rio Declaration, it devotes a full chapter to NGOs and the strengthening of their role as “partners for sustainable development”<sup>5</sup>. Agenda 21 recognises that NGOs play “a vital role in the shaping and implementation of participatory democracy” and that the nature of the independent role played by NGOs requires “real participation”<sup>6</sup>. Related to the issue of democratic legitimacy, it is stipulated that their “credibility lies in the responsible and constructive role they play in society”<sup>7</sup>. Furthermore, “the fullest possible communication and co-operation”<sup>8</sup> between international organisations, governments and NGOs is called for to implement Agenda 21. To allow NGOs to play their “partnership role”, Agenda 21 moreover establishes an action plan for UN institutions, including international finance and development agencies, and for all other intergovernmental organisations and fora. This action plan is aimed at enhancing or

<sup>3</sup> Principle 10 of the Rio Declaration.

<sup>4</sup> Ch. 23.2 of Agenda 21.

<sup>5</sup> See Chapter 27 of Agenda 21.

<sup>6</sup> Ch. 27.1 of Agenda 21.

<sup>7</sup> Ch. 27.1 of Agenda 21.

<sup>8</sup> Ch. 27.4 of Agenda 21.

establishing formal participatory procedures “for the involvement of [NGOs] at all levels from policy-making and decision-making to implementation”.<sup>9</sup> The same institutions are called on to provide access to accurate and timely data and information.<sup>10</sup> Finally, international institutions as well as the private sector are encouraged to increase levels of financial and administrative support for NGOs, in particular those based in developing countries.<sup>11</sup>

Agenda 21 thus emphasises the importance of NGO participation in two respects in particular. First, NGO participation is considered as contributing to a democratisation of policy processes both in national and international arenas.<sup>12</sup> Second, NGOs contribute to enhancing implementation and review of policies due to their “well-established and diverse experience, expertise and capacity.”<sup>13</sup>

In total, Agenda 21 acknowledges the role played by NGOs and establishes a general presumption for a further strengthening of their role at all stages of the policy process. Contrary to the interpretation of some scholars,<sup>14</sup> it stops short of calling for formal decision-making power of NGOs in international policy-making. Rather, Agenda 21 appears to carefully avoid any wording that would imply approving or even calling for such direct decision-making powers.

The discussions on international environmental governance spearheaded by UNEP at the beginning of the 21<sup>st</sup> century have also confirmed the importance of granting participatory rights to civil society and NGOs. Among other things, UNEP’s Executive Director has elaborated a strategy on enhancing the engagement of civil society in UNEP’s work and the UNEP Governing Council in its Decision SS.VII/5 determined concrete steps to enhance the role of civil society, including in particular a review of its rules of procedure to allow for more active participation by NGOs in the form of oral statements and written contributions to debates.<sup>15</sup>

<sup>9</sup> Ch. 27.6. See also Chs. 27.5 and 27.9 of Agenda 21.

<sup>10</sup> See Ch. 27.9(g) of Agenda 21.

<sup>11</sup> See Chs. 27.9c and 27.12 of Agenda 21.

<sup>12</sup> See for instance Ch. 27.1 of Agenda 21.

<sup>13</sup> Ch. 27.3 of Agenda 21. See also Schmidt (1999: 3).

<sup>14</sup> See, for example, Schmidt and Take (1997), as well as Martens (1993: 169).

<sup>15</sup> See Decision SS.VII/5 “Enhancing civil society engagement in the work of the United Nations Environment Programme” in UN doc. UNEP/GCSS.VII/6 and the draft strategy in UN doc. UNEP/GCSS.VII/4/Add.1.

The 1998 Aarhus Convention was adopted in the context of UNECE and has been signed by 40 countries, excluding the US, Canada, Russia and Georgia (which are also members of the UNECE). The Convention entered into force on 30 October 2001. While its *provisions* are not addressed to international organisations (other than the European Communities), paragraph 7 of Article 3 of the Convention requires each party 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” (emphasis added). In this respect, the Aarhus Convention establishes three principles: access to information, public participation in decision-making and access to justice. In so doing, the Convention reflects and implements Principle 10 of the Rio Declaration of 1992 at the regional level. Its relevance thus extends beyond the UNECE region by providing a model for the implementation of Principle 10.<sup>16</sup>

Access to information means that citizens have the right to obtain environmental information<sup>17</sup> from public authorities, without having to demonstrate an interest in the information.<sup>18</sup> This general right is only subject

<sup>16</sup> See the preamble of the Aarhus Convention recalling Principle 10 of the Rio Declaration that reads: “Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities and the opportunity to participate in decision-making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.”

<sup>17</sup> Art. 2, para. 3, of the Convention defines „environmental information“ as any information in written, visual, aural, electronic or any other material form on:

- a) the state of elements of the environment (e.g. air, water etc.);
- b) factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment, cost-benefit and other economic analyses used in environmental decision-making;
- c) the state of human health and safety, conditions of human life, cultural sites and built structures, inasmuch as they are or may be affected by the state of the elements of the environment listed under (a) or by the factors, activities and measures listed under (b).

<sup>18</sup> See Art. 4 of Aarhus Convention.

to certain limited and explicit restrictions.<sup>19</sup> Transposing this principle to the international level, it follows that international institutions should establish a presumption of disclosure with limited, clearly defined exceptions.<sup>20</sup> In various international environmental institutions this principle is also generally reflected in daily practice. For example, documentation relating to the UN Framework Convention on Climate Change is generally available for all interested at the secretariat's webpage.<sup>21</sup>

With respect to public participation in decision-making, the Convention differentiates between "specific activities" (Art. 6), "plans, programmes and policies" (Art. 7) and "executive regulations and/or generally applicable legally binding normative instruments" (Art. 8). Although Parties are obliged to make appropriate provisions in the case of decision-making in accordance with Articles 6 and 7, Article 8 (applying to the most general level of decision-making) merely provides that Parties "shall strive to promote effective public participation". Despite different degrees of the binding force of these provisions and slightly different procedures for the different levels of decision-making, there are a number of common principles for public/NGO participation that may be transferable to the international level.<sup>22</sup> Such common elements include that public participation should start early in the process, that time-frames should allow for effective participation, that it should be possible to submit comments, information and analyses (directly or through representative consultative bodies), and that the public input should be considered in the final decision.<sup>23</sup>

The principle of public participation in decision-making is also reflected in the practice of many international institutions relevant to the environment. Thus, the large majority of MEAs formally grant access to most official, formal meetings (although only few recognise a related legal "right") and allow for active participation in deliberations; international economic institutions tend to be more restrictive in these matters. How-

<sup>19</sup> E.g. business confidentiality or confidentiality of the proceedings of public authorities (see Art. 4, para. 4 of the Aarhus Convention).

<sup>20</sup> Saladin and Van Dyke (1998: 5).

<sup>21</sup> See <http://www.unfccc.de>; a similar practice is followed in many other MEAs and other international institutions; see Wisner (2000).

<sup>22</sup> Similar differentiation with respect to public participation in international institutions might be thought of. For example, the process of devising specific projects financed by multilateral financial institutions (such as the World Bank or GEF) may require a different involvement of the public/NGOs than general policy-making by international institutions.

<sup>23</sup> See Saladin and Van Dyke (1998: 7f.).

ever, international institutions generally do not establish an obligation to actually take the public input into account when taking decisions.<sup>24</sup>

Third, the Convention obliges Parties to establish judicial review procedures so that alleged infringements of access to information and to decision-making provisions as well as of substantive environmental legislation can be challenged by law. To give meaning to this right, it is essential that the standing requirements be not overly restrictive. The Convention realises this for the right to challenge denials of access to information and the legality of decisions on specific activities, whereas it leaves the standing criteria for other challenges up to national law.<sup>25</sup>

While international institutions relating to the environment generally do not feature formal procedures for complaints about insufficient access to information, they increasingly grant NGOs some kind of access to review and enforcement procedures, although direct participation in dispute settlement procedures or compliance mechanisms has remained rather limited.<sup>26</sup> For example, the World Bank Inspection Panel and the NAAEC provide a formal opportunity for NGOs to make submissions which can trigger a case.<sup>27</sup> Compliance mechanisms of some MEAs (such as the Montreal Protocol, the Kyoto Protocol, the Council of Europe Convention on European Wildlife Protection) explicitly or implicitly allow NGOs to submit information to the relevant compliance bodies or the Secretariat, either as an input to an existing case or as a potential trigger of such a case (through the Secretariat).<sup>28</sup>

#### 4.2.2 Legitimacy of NGOs

Three problems related to the legitimacy of NGO involvement in international negotiations are discussed in the relevant literature in particular.<sup>29</sup> These problems relate to (1) an apparent lack of democratic mandate and

<sup>24</sup> See section 2.2.

<sup>25</sup> See Art. 9 of the Aarhus Convention. It has been argued that parties that choose to fully embrace the right of access to justice in their national legislation also ought to promote a broad notion of standing in international organisations in which they participate, although the Convention does not require it (Saladin and Van Dyke 1998: 9).

<sup>26</sup> See also section 2.1.3.4.

<sup>27</sup> For the World Bank Inspection Panel, see section 3.4.2.2; for the NAAEC, see section 2.2.2.1.

<sup>28</sup> See Bombay (2001c: 164-165). See also section 2.2.1.1, under "Submission and distribution of documents, and dissemination of information."

<sup>29</sup> See Beisheim (1997); Riedinger (2001: 280-293).

representativity, (2) the lack of internal democracy, transparency and public accountability, and (3) the use of unlawful means to achieve their objectives by some NGOs. The relevance of these concerns as regards the legitimacy of NGO participation in international environmental policy-making is discussed in the following.

**1. Lack of democratic mandate and/or representativity.** On a number of accounts, the increasing role of non-governmental actors in international politics has been portrayed as contributing to a democratisation of international policy-making. With the dawn of what has been termed a “new diplomacy”,<sup>30</sup> “complex multilateralism”,<sup>31</sup> “global public policy”,<sup>32</sup> or “multi-track diplomacy”,<sup>33</sup> governments are losing their monopoly over foreign policy. NGOs represent interests and values that cut across political boundaries.<sup>34</sup> In doing so, they may furnish services that governments and international institutions alone often cannot achieve (monitoring, providing information, etc.), thus enhancing the latter’s ‘output legitimacy’ by contributing to effective problem-solving.<sup>35</sup> This also holds for BINGOs whose knowledge is particularly important to achieve effective implementation. By giving a voice to relevant stakeholders (that may otherwise not be represented), fuelling global debate, increasing transparency and public accountability<sup>36</sup>, NGOs also increase the ‘input legitimacy’ of international institutions. Thereby, they can be said to reduce the democratic and legitimacy deficit that has been identified with respect to the system of international governance<sup>37</sup> by generating a transnational public sphere that functions as a “corrective” to otherwise rather closed international negotiation systems.<sup>38</sup> As a result, NGO participation supports policy-making on

<sup>30</sup> Annan (1998).

<sup>31</sup> O'Brien et al. (1998), see in particular chapters 1 and 6.

<sup>32</sup> Reinicke (1998).

<sup>33</sup> Smith et al. (1998); Waterman (1998).

<sup>34</sup> Esty (1998: 131f); Riedinger (2001: 285-289). Some NGOs represent a membership counting several millions, surpassing the number of citizens of several states (Riedinger 2001: 285).

<sup>35</sup> Beisheim (1997: 28); Schmidt (1999).

<sup>36</sup> See Scholte (2001: 15-18).

<sup>37</sup> See for instance Habermas (1998); Schmalz-Bruns (1999); Zürn (1998); Wolf (2000).

<sup>38</sup> See Wolf (2000: 195). Edwards (2000a: 21) speaks of complementary checks and balances of governments provided by non-state membership bodies (such as labour unions) and pressure groups of different kinds.

the basis of “arguing” rather than “bargaining”, since governments have to justify their positions.<sup>39</sup>

In contrast to this positive contribution to democratising international politics, a number of contributions to the debate have challenged the role of NGOs in international policy-making by pointing to the fact that they do not have a democratic mandate (i.e. they have not been elected) and that they do not represent the people(s) of the world in any way.<sup>40</sup> Furthermore, the “NGO-system” is far from being representative of a ‘global civil society’ as frequently claimed by NGOs.<sup>41</sup> Indeed, due to the dominance of Northern and Western(ised) NGOs there are both geographical and cultural imbalances of representation of civil society in international negotiating processes.<sup>42</sup>

These differing conceptions of NGOs are not necessarily contradictory. Part of the tension disappears upon realisation that all NGOs are interest groups. Even public-interest groups represent special interests. The term “public-interest NGO” indicates that they represent other interests than their self-interest (such as the interest of future generations). ENGOs belong to this group because they represent the common interest of current and future generations in environmental protection and sustainable development. While such public interests may justify a special treatment (as compared to private interests), PINGOs including environmental NGOs still represent societal interests – and not the public as such (which would require a democratic mandate). Any democratic system provides opportunities for interest groups to participate and give input to the policy-making process without requiring such interest groups to have a democratic mandate. There is therefore nothing wrong with giving NGOs a voice in international environmental policy-making.

In contrast, voting rights/formal decision-making power would not appear to belong to NGOs.<sup>43</sup> There are indeed conceptions suggesting

<sup>39</sup> See Risse (2000); Schmalz-Bruns (1999); Zürn (1998).

<sup>40</sup> See, for example, Simmons (1998); Atack (1999: 858).

<sup>41</sup> See Martens (1993: 170f.).

<sup>42</sup> Riedinger (2001: 281f). Scholte (2001: 20) warns that the capacities of civil society to advance democracy in global governance can be compromised if the participants are – as is currently often the case – drawn disproportionately from middle classes, men, Northern countries, whites, Christians, and urban dwellers.

<sup>43</sup> Edwards (2000b: 10); Wolf (2000: 195); Scholte (2000); Schmidt and Take (1997). See, however, Biermann and Simonis (2000: 178f.) who suggest the application of the ILO decision-making model to a proposed a World Environment

that a decision-making role for ENGOs is legitimated by a mandate as “special guardians” representing the “voiceless” elements in nature.<sup>44</sup> As argued above, however, even this “ecocentric” position cannot undo the fact that this kind of mandate is not generated in a democratic process and can therefore hardly justify voting rights. Furthermore, voting rights in international relations are confined to subjects of international law to which the relevant international law is addressed and that eventually have to implement and enforce the decisions, i.e. generally state governments. In this case, a democratic mandate does not appear to be required, since also non-democratic governments possess the right to vote. However, international norms are usually not applicable to NGOs and they can therefore hardly receive the right to vote (except possibly in very limited instances where rules mainly concern NGOs themselves). For the most part, NGOs themselves recognise this limit and have not called for voting rights.<sup>45</sup>

As in national societies, representativity of societal interests remains a valid and constant concern with respect to interest groups. All interested groups should have access – and preferably equal opportunities to participate.<sup>46</sup> Capacity-building in developing countries and countries in transition and funding the participation of NGOs from these countries at international conferences can contribute to this end. As open access to every group could frustrate decision-making within international institutions,<sup>47</sup> it has been suggested to set up regional and/or

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and Development Organization. Along two votes for every national government, the national representative of business NGOs on the one hand, and of environmental and development NGOs on the other, would receive one vote each.

Arguably, make the voting rights for non-state actors in the ILO and ISO special cases. First, since ISO standards are voluntary and the ILO passes, *inter alia*, recommendations, these decisions are not collectively binding. (However, the ILO also negotiates international treaties, thus making this organisation a case *sui generis* which can be explained by its long history pre-dating the foundation of the United Nations). Secondly, NGO members enjoying voting rights are either representatives of states (national standard setting bodies in the ISO), or are specifically and immediately concerned by the standards agreed at (labour unions and employers in the ILO).

<sup>44</sup> See Stone (1972).

<sup>45</sup> Only a minor faction of NGO representatives occasionally calls for the right to vote on decisions (see for instance UNEP-CSO Consultation (2001: 16); Martens (1993: 170), citing NGO proposals to introduce the right to vote for NGOs at ECOSOC meetings).

<sup>46</sup> Scholte (2001: 20); Beisheim (1997: 23).

<sup>47</sup> Simmons (1998).

sectoral NGO assemblies or “civil society chambers” which would elect delegates for international conferences and negotiations and/or organise NGO work between relevant meetings.<sup>48</sup> While such assemblies could mitigate the asymmetries within the “NGO system”,<sup>49</sup> they harbour the danger that one of its main strengths, the diversity of views and expertise NGOs bring to the political process, would be reduced.<sup>50</sup>

**2. Lack of internal democracy, transparency and public accountability.** It has been argued that lack of internal democracy makes (some) NGOs unaccountable either to the people they claim to represent or (in the case of membership NGOs) to members who pay fees but do not have the right to vote on the organisation’s policies.<sup>51</sup> Decision-making power in some NGOs is indeed limited to few people, who therefore control policies and resources.<sup>52</sup> Other NGOs are mainly responsible to a largely self-selected board of trustees, to private funders and/or to official donors who have little contact with clients.<sup>53</sup> Moreover, some NGOs have been found to fail to meet certain standards of transparency and accountability.<sup>54</sup>

Arguably, a tension exists between the objectives pursued and the internal structures in the case of PINGOs without internal participatory

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<sup>48</sup> See Edwards (2000a: 32); Held (1995). The GEF-NGO Network, the NGO Working Group on the World Bank, the NGO Steering Committee to the CSD or the newly established Civil Society forum of UNEP could be regarded as first developments towards such NGO assemblies.

<sup>49</sup> As such NGO assemblies would still not be representative of society at large or constitute subjects of international law, they would not be eligible for the right to vote (Simmons 1998). NGO assemblies may be a more democratic way to achieve representativity than, for example, to restrict the number of Northern NGOs at the negotiations as suggested by Edwards (2000b: 10). For comments rejecting Edward’s proposal see Martens (1993: 171); Riedinger (2001: 287).

<sup>49</sup> See Simmons (1998); Leggewie (2000: 4).

<sup>50</sup> Martens (1993: 171); Schmidt (1999: 25).

<sup>51</sup> See Simmons (1998); Leggewie (2000: 4).

<sup>52</sup> For example, Greenpeace Germany has some 500,000 sponsors, but only 38 members enjoying the right to vote (Riedinger 2001: 283; n.13). However, other major NGOs like Friends of the Earth International or Amnesty International have a democratic internal structure.

<sup>53</sup> Scholte (2000: 280).

<sup>54</sup> Scholte (2000: 280) gives the example that annual reports of activities are missing, or external evaluations of activities do not take place or are not published.

democracy.<sup>55</sup> However, an interest group is free to choose its form of organisation as long as it abides by the applicable law. Furthermore, hierarchical decision-making procedures are in some cases decisive for maintaining the flexibility and effectiveness that account for the success of campaigning NGOs such as Greenpeace. Finally, even hierarchically organised NGOs are not removed from interests of society since the choice of issues and actions is generally made according to their perceived acceptance by the public opinion. Even without internal participatory democracy, these NGOs are closely linked to the broader societal interests, as they are dependent on private funders and donors, paying members, etc. Without public acceptance and legitimacy, they will not be able to sustain their activities.<sup>56</sup>

The issue of transparency and accountability is less clear. There can be little doubt that transparency and accountability enhance the legitimacy of NGOs.<sup>57</sup> At the same time, NGO input is not necessarily delegitimised if transparency and accountability are lacking. The NGO system as such should thus have a self-interest in a minimum of transparency and accountability. Codes of conduct for NGOs specifying minimum standards for both public-interest groups and BINGOs, which could be developed and enforced by themselves, might be a possible way forward in this respect.<sup>58</sup> Furthermore, actors within international institutions, including NGOs themselves, may have a legitimate interest in ascertaining transparency (who am I dealing with?) and accountability (who can I hold responsible in case of misbehaviour?) of actors influencing the policy-making process. NGOs may thus be required legitimately to submit certain information (e.g. aims of organisation) when applying for accreditation (as usually done within international institutions). Nonetheless, there is hardly a need to place additional burdens on NGOs to comply with detailed requirements regarding transparency and accountability.

**3. Use of unlawful means.** Spectacular actions or protest activities organised by NGOs have frequently included demonstrative defiance of the law to draw public attention to a specific problem and to ultimately

<sup>55</sup> Scholte (2001: 21).

<sup>56</sup> Riedinger (2001: 288f); Beisheim (1997: 23f); Schmidt and Take (1997); see also Altvater and Brunnengräber (2002).

<sup>57</sup> Edwards and Hulme (1995: 14); see also Öko-Institut (2001: 17) arguing that granting more possibilities/rights to NGOs in international environmental governance might justify introducing further duties.

<sup>58</sup> Edwards (2000a: 30f); Scholte (2001: 21); Simmons (1998); Riedinger (2001: 292 and 308).

achieve political change. Such illegal actions of civil disobedience may be considered as legitimate if a number of conditions (including the absence of violence) are fulfilled.<sup>59</sup> Again, codes of conduct developed and monitored by NGOs could help establish appropriate criteria. At the same time, no institution can be expected to tolerate activities that endanger the very being of the institution. An NGO can therefore hardly claim legitimately access to policy-making within an institution if its activities interfere with the functioning of the institution itself. An institution may thus legitimately exclude NGOs from participation in its policy process if such NGOs' activities severely endanger the institution as such.

#### 4.2.3 Conclusions

The analysis of relevant international norms and scholarly literature leaves little doubt about the general legitimacy of NGO participation in international environmental policy-making. Such a participation appears to be particularly justified and beneficial to the extent that it 'gives a voice' to significant societal concerns and interests in international processes. In this respect, concerns raised in the literature about a lacking democratic mandate and internal structure of NGOs are hardly well-founded. In democratic polities, the articulation of interests is not usually dependent on having a democratic mandate (and even several state governments participating in international institutions do not operate on the basis of a democratic mandate). In addition, Agenda 21 and other pertinent instruments of international environmental law and politics carry an in-built presumption for more rather than less participation of NGOs. In general, an enhanced participation of NGOs as well as an increasing openness of relevant international processes is supported and promoted.

Both the Agenda 21 and the relevant literature validate the concern that there are imbalances in the representation of interests of global civil society as represented by NGOs with respect to regions and civil society groups. In particular, under-representation of developing country interests has been acknowledged as a problem. Increased funding has in this context been specifically advocated in the Agenda 21 as one way forward (of several).

<sup>59</sup> See Beisheim (1997: 25); Riedinger (2001: 289f). Actions of civil disobedience must be in the public interest and legitimised by democratic and/or moral values, refrain from violence, be proportionate and public, and (if taking place in a democratic and constitutional state) participants must accept the legal sanctions (see Eberl 1984: 362).

There appears to be one clear limit to the legitimate participation of NGOs in international environmental policy-making flowing from the sources analysed: NGOs do not have the right to vote on collectively binding decisions. Documents of international law and policy carefully avoid implying conferral of such direct decision-making power to NGOs. While NGOs generally do not claim the right to a vote, granting such power to them does not appear to be justified given the fact that international norms are commonly not addressed to them and they do not possess a direct democratic mandate of NGOs (except possibly in very limited instances where rules mainly concern NGOs themselves).

As in national democratic systems, there is a legitimate public interest in knowing which interest groups actually take part and influence the policy process and in being able to hold such interest groups responsible for their action. Transparency and accountability of NGOs strengthen their credibility, which is a major source of influence in particular for PINGOs. NGOs are usually required to submit relevant information when applying for accreditation with international institution (e.g. aims of the organisation). It is less clear, however, whether additional explicit/formal requirements ensuring transparency and accountability are needed given the apparent self-interest of PINGOs in particular in ensuring their credibility. Additional requirements could hamper participation of smaller NGOs (including informal networks) in particular by placing a burden on them that is disproportionate to the expected benefits. Introducing additional requirements on transparency and accountability of NGOs therefore provides no suitable means of enhancing the role of NGOs in international environmental governance.

Both the available international instruments and the relevant literature do not cover many of the more detailed issues that are important when designing a proper system of NGO participation (e.g. access to specific kinds of meetings, etc.). However, the sources consulted allow to establish some general principles (presumption of enhancing participation; acknowledgement of concern about representativity, especially with respect to developing countries; no direct decision-making power; promotion of transparency and accountability of NGOs) that can guide our thinking about the role of NGOs in international environmental policy, including about the more detailed questions to be answered in this respect.

### 4.3 Existing Constraints and Proposals for Improvement

Despite the progress that has been made over the last decades in enhancing NGO participation in international environmental governance (see also section 4.1 above), considerable scope remains for further improvements. Constraints on, and scope for improvement of, NGO participation vary from institution to institution. An institution-specific analysis is beyond the scope of this study. Instead we focus on more general problems and discuss solutions that may be applicable as minimum standards or 'good/best practice' for a majority of institutions.

In the following, we distinguish four substantive areas. Firstly, accreditation and access to information constitute the very basis of NGO participation, which should generally be granted in any international institution relevant to the environment (section 4.3.2). Secondly, providing opportunities for active involvement in the policy-making process such as access to meetings and the possibility to contribute directly to the debate belong to the core elements of any system of NGO participation (section 4.3.3). Thirdly, imbalanced representation of different NGO constituencies, and geographically imbalanced representation of Northern and Southern NGOs in particular, has been identified as a major issue that needs to be addressed in efforts to enhance NGO participation (section 4.3.4). Finally, implementation review might support the effective implementation of standards applicable to NGO participation (section 4.3.5). Before entering into the substantive discussion, however, we will explore the strategic framework for enhancing NGO participation in international environmental governance by arguing for a cautious further formalisation and codification of the rules governing NGO participation and their gradual harmonisation across various institutions (section 4.3.1).

#### 4.3.1 Formalisation and Harmonisation of Rules

Interviews conducted in the context of this study (see part 3) revealed that NGOs and others perceived little need for further formalisation/codification of rules on NGO participation in international environmental governance. Generally, also other sources<sup>1</sup> also express the concern that further formalisation could lead to governments backtracking on some of the more progressive practices that have been informally established within various international institutions (since governments may be

<sup>1</sup> See e.g. Öko-Institut (2000: 19).

reluctant to formally and officially grant any such progressive rights or opportunities to NGOs). Furthermore, NGO representatives interviewed were principally largely satisfied with the arrangements for NGO participation established within “their” institution.

Intriguingly, this was the case both in international institutions that largely rely on practice (UNFCCC, ISO, World Bank) and the one institution that has elaborate explicit rules (CITES). This may be due to the fact that all interviewed NGO representatives have been closely involved in the political processes within the respective institution and have thus learned to live with and adapt to the *status quo*. Comparison of the interview results suggests that interviewees have internalised and become used to the existing arrangements and may therefore not be inclined to question them.<sup>2</sup> The interview results may therefore not provide a reliable basis for assessing the pros and cons of a further formalisation.

Moreover, complacency with current practices of NGO participation may not take sufficient account of the danger of these practices being eroded without being safeguarded by means of their formalisation. To date, it appears to have been taken for granted that environmental issues enjoy high and rising public and political awareness. However, recent years have seen a partial reversal of this trend in some parts of the world. For example, changes of governments in some industrialised countries in particular have resulted in a certain backlash in environmental policy (e.g. in the US, Denmark). Codification of environmental standards in these cases has provided important protection against their weakening.

Available experience with the practice of NGO participation in existing institutions also provides some evidence of the disadvantages of relying heavily on informal practice. For example, while early accounts of the proceedings of the Montreal Protocol are witness to the fact that NGO representatives were allowed to intervene flexibly in governmental meetings, this practice has been more or less dropped in more recent years.<sup>3</sup> Furthermore, conflicts have arisen in the course of the elaboration of the institutional structure of the Kyoto Protocol over the possibilities of NGOs participating in new bodies and there is a growing sense that the current

<sup>2</sup> E.g., interviewees on CITES did not question, or complain about, the applied ‘registration fee’, whereas interviewees on the other institutions, where such a fee is not raised, were not in favour of introducing it; see case studies in part 3.

<sup>3</sup> Personal observation; whether this change of practice is due to fluctuations of delegates or the result of an active change of strategy of government representatives is unclear.

system is under threat and that liberal but informal “rights” are being eroded (see section 3.1).

At the same time, the potential drawbacks, namely that governments would backtrack on progressive practice when it is codified and that such codification would prevent the development of innovative liberal practices, can to a large extent be avoided. First of all, the formalisation of rules governing NGO participation may best occur in the form of decisions, through the adoption of guidelines or revisions to rules of procedures; this may be preferable to treaty amendments. Past research has revealed that governments are more prepared to accept relatively far-reaching and innovative rules under these circumstances.<sup>4</sup> Consequently, the probably most detailed elaboration of explicit rules for NGO participation to date – in the framework of CITES – has taken the form of rules of procedure and has provided little evidence to support the aforementioned concerns, since CITES also allows for far-reaching participation of NGOs (see section 3.2). Second, formal rules can be crafted explicitly as minimum standards that can be exceeded in practice. It would even be possible to determine that such minimum standards may not be used to undermine any more liberal/progressive practice. Furthermore, care needs to be taken to take into account immanent trade-offs between different areas of NGO participation (e.g. between access to meetings and possibilities to participate actively in meetings) in the development of any rules.

All things considered, a further formalisation of rules on NGO participation in international environmental governance relying on rules of procedure, ‘simple’ decision-making of governing bodies of relevant institutions, the elaboration of guidelines and the like could therefore offer substantial benefits. It would constitute an insurance against attempts to weaken the possibilities for NGO participation and could enhance possibilities for NGO participation where current practice is deficient.

Explicit rules on NGO participation may be elaborated for each relevant institution individually, for several institutions and/or even globally. Increasing the coherence and efficiency of international environmental governance has been of growing interest in the ongoing discussion of the issue spearheaded by UNEP.<sup>5</sup> Harmonisation and integration of rules governing NGO participation in international environmental governance

<sup>4</sup> Lipson 1991; Abbott and Snidal 2000.

<sup>5</sup> See <<http://www.unep.org/IEG/>>.

across various institutions, as appropriate, could contribute to enhancing synergies and achieving “institutional economy”.<sup>6</sup>

However, differences in institutional structures, cultures, history and memberships can present formidable impediments to a successful integration and harmonisation and may easily make related efforts fail. Legal obstacles also sometimes exist and limit the possibilities for harmonisation (see next section on CITES). Such differences and obstacles need to be taken into account in any attempts to integrate rules on NGO participation. For example, such rules may not easily be harmonised with respect to MEAs on one side and economic institutions such as the World Bank or ISO on the other.<sup>7</sup> Furthermore, integration across various institutions could lead to downward harmonisation because of a tendency towards fixing the lowest common denominator of the institutions combined. 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 areas or regions. For example, rules on funding participation of certain NGOs may be expected to be similar in global MEAs or in MEAs/institutions covering a certain region (i.e. UNECE). 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.

Herewith, we now turn to the areas that appear to be of particular relevance for advancing NGO participation in international environmental governance and the development of related rules/guidelines: accreditation and access to information (section 4.3.2), access to meetings and active participation (section 4.3.3), means to achieve more balanced representation (section 4.3.4) and the review of implementation/application of rules (section 4.3.5).

<sup>6</sup> On the discussion about clustering MEAs/international institutions relevant to the environment, see generally Moltke (2001); Oberthür (2002).

<sup>7</sup> See generally parts 2 and 3 on the different approaches in these institutions.

### 4.3.2 Accreditation and Access to Information: the Basis of Participation

Accreditation and access to information represent the very heart of any NGO participation in international environmental governance. 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 make their expertise available in a meaningful and targeted way.

Few problems have occurred with respect to actual accreditation to meetings of the international institutions investigated in the context of this study so far. NGOs interested in participating have generally been admitted or have found ways to receive accreditation to most meetings of most relevant institutions. However, especially some economic institutions have either not developed clear procedures for NGO accreditation to their decision-making processes yet or do not provide for accreditation at all to meetings of some of their decision-making bodies. For example, the WTO does not admit NGO observers to the meetings of its councils, committees and bodies that manage the day to day activities of the WTO (see section 2.2.2). 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 (see sections 2.2.2 and 3.4).

Some institutions have either introduced differentiated procedures/criteria for accreditation of national and international NGOs (e.g. CITES, see section 3.2.2) or have only granted accreditation to international NGOs (e.g. ISO, see section 3.3.2.3; UNEP, see section 2.2.3.1). A special treatment or even the exclusion of national NGOs appears to be applied in particular in ‘older’ institutions and may thus have its roots in the traditional differentiation and distinction between national and international spheres in politics. The advance in economic and political globalisation has increasingly blurred such a distinction. Furthermore, it is generally acknowledged in the field of environmental policy that even global environmental problems materialise and are caused locally and nationally and that solving them eventually hinges upon action at the national and local levels. It is therefore hardly legitimate to exclude representatives of civil society organisations that are represented in one state only from participating in international policy-making processes and raising their concerns therein. International environmental governance should

hence generally be open to participation by national and international NGOs on the same terms.<sup>8</sup>

However, changing existing rules that provide for a differentiated treatment of national and international NGOs can face severe legal and practical obstacles. For example, the differentiated treatment of national and international NGOs under CITES is provided for in the treaty text. Changing the situation would thus require a formal treaty amendment, which might prove burdensome and difficult to achieve given the requirements applying to treaty amendments. At the same time, NGO participation has only been impeded to a very limited extent since interested representatives of national NGOs have in most cases succeeded in receiving accreditation (either by fulfilling special requirements or as members of international NGO networks that they could use). Providing formally for equal treatment of national and international NGOs in existing rules may therefore not in all cases be a matter of priority (but should be a matter of course in any new rules).<sup>9</sup>

In MEAs, NGOs have generally been required to be “qualified” in relevant matters as a condition for receiving accreditation. Although this requirement has left wide room for interpretation (see section 2.2.1), it appears to have been sufficient to prevent a potential overflow of NGOs wishing to participate (if any such danger exists).<sup>10</sup> Further, more concrete accreditation criteria have been considered in order to ensure that participating NGOs fulfil minimum requirements (see section 4.2). As discussed in section 4.2, the potential drawbacks (restriction of NGO input, burden on small NGOs) of introducing minimum requirements with respect to transparency, accountability and/or internal democracy may not be outweighed by rather uncertain and limited benefits.

<sup>8</sup> This has also been acknowledged by UNEP’s Executive Director who has proposed to abandon the current UNEP rule limiting accreditation to international NGOs, which he coined “outmoded” (see UNEP/GCSS.VII/4/Add.1: para. 18). Subsequently, the 7<sup>th</sup> Special Session of UNEP Governing Council in February 2002 decided to establish a working party to consider the proposed change (see UNEP Governing Council Decision SS.VII/5).

<sup>9</sup> Note that the burden of changing existing rules might be reduced if an amendment was combined with other amendment initiatives.

<sup>10</sup> However, the practice regarding what information NGOs are required to submit when asking for accreditation appears to be neither particularly transparent nor coherent in international environmental governance (see section 2.2); enhancing such transparency and coherence could facilitate efforts of NGOs to receive accreditation.

Likewise, while current rules may indeed allow the “enemies” of an institution to participate in its decision-making, requiring a declaration of support may not be effective in excluding these “enemies”: A declaration of support is easily made, while obstruction may continue irrespective thereof. More importantly, excluding the opponents of an institutions may also not be justified by principles of democratic governance. In democratic governance, the opponents of specific policies and laws are allowed to participate in public policy-making, such participation of the opposition in the policy-making process is indeed an essential element of any democratic governance.<sup>11</sup>

Generally, following the principle of maximum transparency (see section 4.2 above) ‘good/ best practice’ on NGO accreditation would thus require members of relevant international institutions to grant all NGOs “qualified” in relevant matters and “playing by the rules” (see section 4.2.2 above) accreditation to meetings of their decision-making bodies.<sup>12</sup> Suitable mechanisms to exclude NGOs disrupting the proceedings of international institutions can be devised informally. Thus, following a number of security breaches by environmental activists in the UNFCCC context, photographs and raised stamps were added to badges and have so far proven effective in preventing the recurrence of similar events (see section 3.1).

Furthermore, it is difficult to see why a minority of member governments should be given the discretionary power to deny accreditation to individual NGOs, as is currently the case according to the rules applied in most MEAs (see section 2.2.1). Although this provision has rarely been applied, it is hardly compatible with conceptions of democracy and appears to be at odds with the emerging presumption for more rather than less NGO participation in international policy-making, as reflected in international law (see section 4.2). Consequently, only a majority of mem-

<sup>11</sup> The issue-specific international institutions under discussion here are equivalent to specific laws/legal instruments at the national level. In contrast, constitutional laws such as the German “Grundgesetz” occasionally provide for protection against their enemies. At the international level, the UN Charter may come closest to a ‘constitution’. Consequently, the UN ECOSOC requires accredited NGOs to be supportive of the UN Charter; see section 2.1.1.1.

<sup>12</sup> Given the lacking enforceability of a “right” to accreditation (see section 4.1), the question of whether members of an institution “may” or „shall” admit qualifying NGOs could appear to be of negligible importance. However, the stronger binding language (“shall”) expresses the intention of the members more clearly and thereby reduces their discretion.

bers of an institution may take such a decision that should meet clearly defined (in contrast to *ad-hoc*) criteria (to limit discretion).

The advent of modern communication technologies and of the internet in particular has contributed to mitigating problems with respect to access to information (documents, reports and data). Upcoming events and meetings can be and are announced at the web-sites of relevant institutions, which can be checked regularly by NGOs. Also, most of the relevant information usually is available on the institutions' web-sites.

However, 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, the Implementation Committee and the Multilateral Fund of the Montreal Protocol make available only the final reports of their meetings.<sup>13</sup> ISO documents are not easily available for all NGOs and some information has restricted access to members only (section 3.3). It follows from the general presumption of transparency and openness gaining ground in international law (see section 4.2), however, that documents and data should principally be open to the public (and thus to NGOs). Since plausible reasons can exist to keep information confidential, which may be the case in particular where the established rights or legitimate interests of third parties are affected, good practice would consist of making all information that feeds into decision-making available to the public as a general rule, from which only well-defined exceptions may be possible.

In addition, practical difficulties can lead to constraints on the access to information. Especially in some developing countries, access to the internet and other modern communication technologies is not as readily available as in industrialised countries, which may eventually reinforce existing inequalities between different NGO communities (see section 4.3.4 below). Furthermore, available information may not easily be found and accessed at existing web-sites. As a consequence, 'good/best practice' for international institutions should consist of making existing information available to relevant NGOs also by other means than the internet (e.g. mail). Also, enhancing the user-friendliness of their web-sites should be considered to be a constant task.

A particular problem consists in the fact that relevant NGOs do not necessarily know that a particular institution engages in decision-making that affects their legitimate interests. As a result, they may not have a

<sup>13</sup> See websites of the Secretariat of the Montreal Protocol at <<http://www.unep.org/ozone/impcom/impcom-reports.shtml>> and of the Multilateral Fund of the Montreal Protocol at <<http://www.unmfs.org/>>.

chance to participate in the decision-making, make their legitimate interests known and contribute their expertise. There is therefore a danger that the decision-making arena remains limited to an 'inner circle' of stakeholders. To counter such tendencies, institutions involved in international environmental governance should constantly engage in targeted outreach and education activities to inform and raise awareness about their activities in relevant NGO communities.

Mainly because of the demands that an increasing NGO participation places on secretariats and on the system of international environmental governance in general (communication, reproduction of documents, etc.), accreditation fees to cover at least part of the resulting expenses have been introduced in some institutions. Such an accreditation fee is raised, for example, in CITES (see section 3.2.2.1) and the International Whaling Commission (IWC; see section 2.2.1.1). An accreditation fee might indeed appear attractive as it could provide proof of the interest of an NGO in participation. However, such a fee would provide a significant disincentive for NGO participation and would thus run counter to the objective of transparency. It could also reinforce existing imbalances by discouraging in particular the participation of (Southern) PINGOs, while BINGOs may have less difficulty in carrying such a burden.

Introduction of such fee systems may therefore only be considered where NGO participation places an unacceptable burden on available resources (or some other compelling reason exists). Alternative options for addressing the underlying problems should be considered before introducing such systems. For example, giving NGOs the opportunity to select between different levels of involvement (observers without automatic provision of all information, active participants, etc.), as in the example of the ISO (see section 3.3) or creating NGO constituency systems (see below; see also section 3.1) could contribute to lessen the burdens on the institution sufficiently. Any such fee system that was nevertheless considered necessary would have to provide for a careful differentiated treatment of different groups/constituencies of NGOs so as to minimise the negative impacts on NGO participation. For example, CITES has introduced the possibility of waiving the existing fee for certain observers (see section 3.2). Other differentiation schemes may be required in other cases, but would need further elaboration and discussion in the respective specific context with participation of the NGO constituencies concerned.<sup>14</sup> All in

<sup>14</sup> In practice, it might also be considered whether the costs of administrating such a fee system may exceed the income generated.

all, introducing an accreditation fee system may only represent an option worth pursuing on an exceptional basis.

### 4.3.3 Access to Meetings and Active Participation

While accreditation and access to information constitute pre-conditions for effective NGO participation in international environmental governance, 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.

Limited access to some kinds of meetings has been identified as a problem in a number of contexts.<sup>15</sup> In particular, NGOs have frequently been unable to attend meetings of 'informal' negotiating groups and of bodies dealing with politically sensitive matters such as implementation review and compliance, dispute settlement and financial issues. The reasons for closing meetings range from confidentiality of the information considered and the wish to avoid a politicisation of deliberations to a desire to allow governments to provide for a working atmosphere that allows to talk plain text and make political deals.<sup>16</sup> While these reasons have their merits and have been acknowledged by observers, governments may employ them to try to evade public scrutiny. This suspicion is supported in particular where meetings of bodies are closed irrespective of the items on the agenda.

In addition, logistical/practical reasons such as space limitations or security considerations are at times cited as reasons for restricting NGO access to meetings. Frequently, such impediments may, however, be removed by taking into account the requirements of NGO participation in the planning of meetings in the same way as other requirements are considered (e.g. heating, office space). Since NGO participation in international environmental governance is generally acknowledged, consideration of the requirements following therefrom in the planning should be a matter of course. As a result, restrictions on access to meetings for logistical reasons should only prove necessary in a very limited number of cases.

Overall, free access to meetings should constitute the general rule from which governments may only diverge under specific circumstances on the basis of well-defined criteria. In this respect, a total closure of meetings should only be required in few instances. For example, meetings of compliance bodies may be closed to the public where a Party concerned so re-

<sup>15</sup> See e.g. case studies on the Climate Change Regime and CITES in sections 3.1 and 3.2.

<sup>16</sup> For examples, see the case studies in part 3 of this report.

quests in order to facilitate disclosure of the reasons of non-compliance and discussion about remedial action. On many occasions (e.g. to provide for a suitable working atmosphere or where space limitations inescapably exist), it may suffice to limit the number of attending NGOs.<sup>17</sup> Further efforts would be needed to define the criteria for closing a meeting or limiting access of NGOs, and promoting proper application of any such rules may require taking further measures.<sup>18</sup>

Such a limitation could generally be based upon an organisation of NGOs into constituencies that are able to select representatives. NGO constituencies would assemble NGOs with similar objectives such as ENGOs, BINGOs, scientific NGOs, etc.<sup>19</sup> Such systems have so far not been established in general. 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 (see section 3.1). Application of similar systems could be considered in other international institutions to structure participation of NGOs in meetings (including interventions) where restrictions are necessary. Basing NGO participation in certain meetings on a system of NGO constituencies would require close co-operation with NGOs in setting up any such system, since this would have obvious repercussions on their internal organisation; not least NGOs would have to organise themselves in such constituencies. If accepted by NGOs and done properly, such a system of NGO constituencies could provide a basis for enhancing NGO participation.

Another option would consist in differentiating between NGOs according to the interest they demonstrate in the issues addressed by an institution, similar to the system operated by the ISO. ISO distinguishes between four categories of NGOs ("liaison organisations"). The highest category contains NGOs that make an effective contribution to the work of ISO committees. Such NGOs are invited to meetings, receive relevant documentation and may nominate experts to participate in working groups. Less active NGOs may only receive reports of the relevant committees. NGOs with a narrower focus on specific working groups may be

<sup>17</sup> This may also have been the objective of the Chair of a CITES committee who admitted only such NGO representatives to participate in working groups who had previously intervened in the plenary debate (see section 3.2.2.1); this procedure appears, however, to be problematic since it excludes potentially valuable input in later discussions and could provide an incentive to intervene in debates for the sake of intervening.

<sup>18</sup> See section 4.3.5 below for how to ensure the proper application of rules.

<sup>19</sup> See section 3.1 for the constituency system existing under the UNFCCC; see section 2.1.2.1 for various primary aims of different types of NGOs.

invited to relevant meetings of such working groups and receive the relevant documentation (see section 3.3). In principle, a constituency system could even be combined with such a differentiation of NGOs according to interest and activity in order to structure NGO participation in relevant institutions.

As a further measure to, *inter alia*, enhance NGO access to meetings, it has been suggested that a certain number of NGO representatives could generally become members of national delegations.<sup>20</sup> Such membership might, however, not necessarily enhance access to meetings, as frequently only national delegates that are experts in the respective issues under discussion will be able to participate. Moreover, membership in national delegations brings with it a number of restrictions on the ability of NGO representatives to act. For example, they must generally, as government representatives, stick to the respective government's position in public, may not engage in lobbying and are not allowed to pass on confidential information. Consequently, this option was not particularly favoured or even mentioned by NGO representatives interviewed in the course of this study.

While accredited NGOs possess comparatively far-reaching possibilities to participate actively in policy-making discussions in some international institutions such as CITES (see section 3.2), some of the UNEP Conventions (see section 2.2.1.2) or ISO (see section 3.3), more restrictions remain in this respect in particular regarding making oral interventions in other institutions such as the UNFCCC (see section 3.1). Allowing NGOs to intervene alongside governments in debates could generally be expected to enhance the level of discussion since important stakeholders could voice their concerns and bring their expertise directly to bear in negotiating sessions (e.g. by making textual suggestions). Any such possibility to contribute flexibly to the discussions in meetings of bodies of international institutions should be sufficient so that granting in addition explicitly the possibility to propose amendments to draft decisions should not be required: Such proposals could be made in the interventions anyway and could subsequently be sponsored by government delegates, who retain the exclusive decision-making authority.<sup>21</sup>

<sup>20</sup> See Öko-Institut (2001: 17); Zürn (1998: 352). Zürn's proposal aims primarily at furthering transparency of the negotiations and accountability of governments to their domestic constituencies.

<sup>21</sup> Under the Ramsar Convention, for example, NGOs may propose amendments to draft decisions (see section 2.2.1.1). In a consultation process of UNEP with civil society, the right to propose oral or written amendments to draft decisions has been advocated by a number of NGOs (UNEP-CSO Consultation 2001: 15).

There appears to be one major argument against such an extension of the right to speak, namely that it could further impair the effectiveness of the relevant negotiating processes given the undeniable limitations in time (and space). In addition, some governments may be concerned about extending a right that was once granted exclusively to state governments to others that do not have direct decision-making authority. While precedents for such an extension are by now well-established given the practice in various international institutions, solutions may be devised to address the practical problem of limited time. Most importantly, in view of the frequently large number of NGOs, the number of NGO speakers may need to be limited. This could, for example, be achieved by drawing on a NGO constituency system (see above). In such a system, each NGO constituency could determine a limited number of "speakers". Provision can also be made for limiting the time available to NGO speakers and the number of interventions they can make on any agenda item, if and when required.<sup>22</sup> It might also be possible to give priority to government representatives in the speakers list<sup>23</sup>, although such a procedure would significantly limit the flexible participation of NGOs in debates.

Other proposals to enhance the active participation of NGOs in international environmental governance – such as the right to propose agenda items or the right to make written submissions and get official distribution of NGO documents – might be less important by comparison (and have thus received less attention by NGO representatives interviewed in the course of this study; see case studies in part 3). Agendas are generally defined well in advance of meetings. There is usually enough time for NGOs to influence the agenda-setting process through informal contacts with governments, which would need to sponsor their proposals in any event. There is therefore far less need to give NGOs a direct voice in the agenda setting than in the immediate decision-making process. Both official distribution of NGO documents and including their submissions in official documents aim at a more effective dissemination of information provided

On expertise as a major source of influence of NGOs see sections 2.1.3.2 and 2.1.3.3 above.

As discussed in section 4.2 and earlier in this section, granting formal decision-making power to NGOs in international environmental governance is neither justified nor is it requested by the majority of NGOs.

<sup>22</sup> The Rules of Procedure of various MEAs provide for this possibility also regarding government representatives; see for example Rule 32 of the draft Rules of Procedure of the Conference of the Parties to the UNFCCC.

<sup>23</sup> This is the practice in CITES (see section 2.2.1.1); on the more flexible practice of the CSD see section 2.2.3.2.

by NGOs. Official distribution of NGO documents may indeed add little benefit where NGOs are anyway allowed to distribute their documents freely (as is regularly the case). Also, providing links on official web-sites to NGO documents may be nearly as efficient in making governments aware of NGO submissions as including them in official documents. The relatively limited gains to be made in this respect need in particular to be weighed against the potential disadvantages such as an increased burden on secretariats and increased costs. The burden will especially increase where the secretariat is asked to 'filter' NGO documents by ensuring their compliance with certain requirements – a practice that has been found to be burdensome with uncertain benefits in the case of CITES (see section 3.2).

#### 4.3.4 Imbalanced Representation and Differentiation

One major concern raised in the literature<sup>24</sup> and mentioned consistently by those interviewed in the framework of this study (see case studies in part 3) is the imbalanced representation of civil society by NGOs in many international institutions. As a matter of fact, 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. In addition, concern has been raised about the special status of certain NGOs in some economic institutions as this appears to provide for a structural imbalance between different NGO constituencies. Such a special status may even reinforce existing imbalances that are due in particular to differences in resource endowment that may be reflected in the treatment of different types of NGOs regarding financial issues. A number of options and proposals that are not necessarily mutually exclusive exist to address these concerns.

**1. NGO Steering Committee/Civil Society Chambers.** A NGO Steering Committee that serves as a means for furthering discussion and co-ordination among NGOs has been established within the context of the CSD. It also provides for some internal structure and rules.<sup>25</sup> Similar

<sup>24</sup> See, for example, Edwards (2000a: 18f).

<sup>25</sup> To ensure representativity, the Steering Committee consists of elected regional representatives and representatives of caucuses of major groups. It is chaired by one Northern and one Southern Co-Chair; see <<http://www.igc.org/habitat/csdngo/tr-steer.htm>> and Guidelines of the Steering Committee,

structures could principally be put in place also in other international institutions. A somewhat related proposal is to channel NGO input into international decision-making through "Civil Society Chambers" that could be equivalent to parliamentary assemblies and could provide a debating place.<sup>26</sup> In both cases, inequities could be addressed, for example by providing for geographically balanced representation of various constituencies in the bodies. Because of diverse internal cleavages between different NGO communities, such internal structures of self-organisation may best be set up by NGOs according to their different constituencies. While setting up such representative NGO bodies may help NGOs internally to discuss their positions, it may be less appropriate for structuring NGO participation in international institutions. For example, it raises the question according to which criteria representatives will be selected, since they cannot be elected democratically.<sup>27</sup> Such initiatives, which can be pursued independently of government action, can therefore hardly contribute to improving the underlying causes of imbalanced representation such as in particular the lack of resources and expertise.

**2. NGO Advisory Bodies.** NGO advisory bodies would have limited membership representing the varying NGO constituencies in a geographically balanced way. They would differ from proposals for setting up Civil Society Chambers and the like (see above) in that their membership would be relatively small and they would serve the purpose of giving advice to existing institutions rather than providing a debating place. The GEF provides a related precedent as only 10 NGOs are admitted to attend GEF Council meetings that are nominated by the GEF NGO Network (see section 2.2.3.1). Such a representational system can certainly ensure balanced representation of regions and constituencies. At the same time, however, it would severely restrict NGO participation especially in larger institutions such as the CBD or the UNFCCC where public interest is intense and a huge variance of societal interests

<[http://www.igc.org/csdngo/steer/guidelines\\_12\\_2000.htm](http://www.igc.org/csdngo/steer/guidelines_12_2000.htm)>; see also section 2.2.3.2.

<sup>26</sup> See Falk and Strauss (2001); Edwards (2000a): 32; Held (1995). The Millennium NGO forum held at the United Nations in May 2000 agreed to establish a permanent assembly of civil society organisations, which could represent a step towards implementing this idea in the context of the UN (see Falk and Strauss 2001).

<sup>27</sup> See Simmons (1998); Atack (1999: 858).

and viewpoints are involved (which could then not express themselves properly).<sup>28</sup>

**3. Meetings in developing countries.** With few exceptions of international organisations with fixed meeting places, locations of meetings of bodies involved in international environmental governance change regularly, basically rotating between the different regions of the world (depending on offers by suitable hosts). This practice has already in the past proven helpful in spurring public interest in host countries and their regions. It has even been suggested to increase the number of meetings in developing country regions in order to facilitate participation of Southern NGOs (due to resulting cost reductions).<sup>29</sup> This may indeed be one argument for sticking to the current practice that is increasingly being questioned in the pursuit for more efficiency in the system of international environmental governance.<sup>30</sup> Holding meetings more frequently in developing countries is also hindered by a shortage of suitable meeting facilities. In any event, decisions on meeting places have to be based on additional considerations. Facilitating Southern NGO participation may only be one among several factors to be taken into account.

**4. Translation services.** Difficulties in Southern NGO participation in particular have also been identified to be due to the dominance of English in the usual conference proceedings and internal NGO discussions.<sup>31</sup> It has therefore been suggested that translation services be provided to facilitate effective participation of non-anglophone NGO representatives. However, the considerable costs involved need to be taken into account and weighed against the limited benefits. Many non-anglophone NGOs from industrialised but also from developing countries have managed to participate effectively, and selection of additional working languages may indeed disadvantage still others. Governmental negotiations in the “end-game” are in most cases eventually conducted in English only and English language skills are therefore a *sine qua non* in international negotiating processes anyway. It might

<sup>28</sup> See also section 4.3.2 on access to meetings and active participation above.

<sup>29</sup> Arts (1998). Please note that the logic of this proposal may not apply in every case. For example, while facilitating participation of NGOs from the same region, holding meetings in developing countries may indeed increase travel costs for NGOs from other developing country regions, since the major travel routes frequently centre on industrialised countries. South-South travel can therefore indeed be burdensome and particularly expensive.

<sup>30</sup> See the debate on “clustering” MEAs: Oberthür (2002); Moltke (2001).

<sup>31</sup> Gupta and Gagnon-Lebrun (N.Y.: 10).

thus be more promising and efficient to build up corresponding language capabilities in the respective NGO communities rather than attempting to adapt proceedings to the needs of non-anglophone NGO representatives.

**5. Funding for NGO participation and capacity building.** A major constraint on effective participation of Southern NGOs – as well as of other NGO communities thus far underrepresented in international environmental governance – mentioned prominently in the literature and by interviewees is lack of funding and, related to that, lack of expertise.<sup>32</sup> Underrepresented NGO communities frequently cannot afford the costs involved in participating in international meetings (travelling, accommodation, time). They also generally do not have sufficient resources at their disposal that would allow them to build up necessary expertise and capacity (knowledge, skills, human resources). Consequently, interviewees and literature sources conclude that more funds should be made available to support effective participation of underrepresented NGO communities. However, few concrete suggestions for arrangements for raising and distributing the necessary funds have been made. In general, the following options might be considered: (1) voluntary contributions by governments to a trust fund/trust funds for NGO participation;<sup>33</sup> (2) mandatory assessed contributions by governments; (3) use of part of the income from a possible accreditation fee (where considered appropriate) for that purpose; or (4) earmark part of the income from any other innovative source of funding for international environmental governance for that purpose<sup>34</sup>. Setting up trust funds supplied by voluntary government contributions, possibly complemented by accreditation-fee schemes (where these appear to be appropriate; see above), might be the least demanding option. In contrast, mandatory government contributions or establishment of innovative

<sup>32</sup> E.g. Edwards (2000a: 31f. and 34); Martens (1993: 171); FCCC/SBSTA/1996/11: Annex III, para. 4; see case studies in part 3 of this report.

<sup>33</sup> See Martens (1993: 171); Wahl (2001a: 24); UN Secretary General (1998: para. 79). The UNEP Executive Director proposed the establishment of a civil society organisation trust fund to the UNEP Governing Council’s Special Session in 2002 (see UNEP/GCSS.VII/4: para. 78; UNEP/GCSS.VII/4/Add.1: para. 20 and 23). The Governing Council in its Decision SS.VII/5 did not accept that proposal explicitly.

<sup>34</sup> Related proposals include introducing world-wide charges for use of the “global commons”, e.g. an international tax on kerosene consumption of aircraft (WBGU 2001: 155) or on open ocean shipping emissions (WBGU 2002).

international sources of funding only provide sources that could be tapped into in the longer term given widespread political opposition.

With respect to achieving more balanced participation of NGOs from different regions and constituencies, the major issue identified in this study has been funding for financing both participation of NGOs in international meetings and capacity building of needy NGO communities. Further work appears to be required in order to design workable solutions to this problem. In this respect, it might be possible to search for integrated solutions so that the problem would not be addressed by creating specific solutions for each and every international institution, but such solutions may be combined or 'clustered' across a number of institutions (e.g. for all "global MEAs"; see section 4.3.1 above).

At the same time, achieving more balanced NGO representation does not only require raising financial resources, it also requires addressing underlying causes such as insufficient domestic NGO structures, neglect and lack of knowledge about the relevant international processes and lack of expertise regarding how to enter into a constructive dialogue with policy makers (and *vice versa*). While addressing these causes commonly requires money, money alone will not suffice. In addition, 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. Where appropriate, drawing on NGOs in the implementation of specific projects within the remit of international institutions can also make a valuable contribution to their capacity building (as already practised by the World Bank (see section 3.4).

A closely related issue concerns the differentiation between types of NGOs, that has two relevant aspects. First, some such differentiation may be required or justified given the different conditions/constraints under which, for example, PINGOs and BINGOs operate. Second, some international institutions appear to provide preferential treatment for selected types of NGOs that may run counter to the objective of providing for an equal footing of different NGO constituencies in the policy-making process. For example, the OECD consults closely with BINGOs and labour unions in the Business and Industry Advisory Committee (BIAC) and the Trade Union Advisory Committee (TUAC) (see section 2.2.2). While such preferential treatment may be explained by reference to the specific history of such institutions, there is hardly any justification available for it. To achieve equity, the different NGO communities should have similar chances of access to policy-making. BINGOs should be more closely integrated in the usual process of public participation as it applies to other ob-

servers and stakeholders instead of providing them with special opportunities.

A more differentiated treatment may, in contrast, be in order with respect to financial resources. Such differentiation may in particular reflect that some kinds of NGOs command more resources than others and that some serve the business interests of their members rather than the public interest. Any funding provided for NGOs should thus be limited to PINGOs (as is currently already the case under the UNCCD and the GEF). In addition, where accreditation-fee systems are considered necessary (see above), varying fee levels should apply for different types of NGOs (Southern – Northern, PINGOs – BINGOs), with a full exemption granted to Southern PINGOs and possibly others.

#### 4.3.5 Institutional Support: Implementation Review

Any elaboration of explicit rules governing NGO participation raises the question of how it can be ensured that the rules are followed. Governments could agree on rules/guidelines and then 'interpret' them as it pleases them in any particular context.<sup>35</sup> Proposals to provide for an independent implementation review – for example an ombudsman or a panel system, that may serve as a means for evaluating the application of existing rules/guidelines and for settling disputes between NGOs and governments/addressing complaints in this respect – point to one option for supporting the proper application of explicit rules on NGO participation.<sup>36</sup> An evaluation or review of the practice of NGO participation may even support granting proper possibilities to NGOs to participate, where there are no explicit rules.

Given the structure of the international system, it is hard to imagine that any such implementation review mechanism could actually *enforce* application of any rules on state governments. It could, however, provide the opportunity for an independent, public review of the practice of governments/members of the relevant institutions to evaluate to what extent this practice conforms with the explicit rules/guidelines and general standards. Such a mechanism could help make governments accountable and hold them responsible for applying rules that they have agreed and stan-

<sup>35</sup> For example, although the COP of the UNFCCC decided in 1998 that president officers of informal meetings may invite NGO representatives to attend, such informal meetings have regularly been closed to observers as a matter of practice, without any possibility for NGOs to file a complaint or ask for a review of the practice; see section 3.1.2.2.

<sup>36</sup> For such proposals see Öko-Institut 2001: 17; Edwards 2001a: 30f.

dards that are generally accepted. It could thereby contribute to the effective implementation/application of rules and to advancing the role of NGOs in international environmental governance.

First, cautious approaches that go into the direction of an implementation review already exist. For example, under the rules of procedure of the COP of CITES, complaints can be filed in principle also by NGOs about "abuse" by another participant. The complaints are subsequently to be reviewed by the Bureau (section 3.2.2.1). In the framework of the World Bank, NGOs can trigger a review of existing projects by the World Bank Inspection Panel or, in the case of the IFC and MIGA that belong to the World Bank Group, by the compliance adviser and ombudsman, if these NGOs are negatively affected by the project. The eventual decision-making authority rests with the upper political levels (World Bank Board of Directors, President), but the main aim of the mechanism is to settle any disputes between the Bank and any complainants amicably before it reaches that level (see section 3.4).

Efforts to develop a review mechanism regarding NGO participation may build on such existing arrangements and precedents. In so doing, ombudsman/review functions could, as a first step, be performed by special independent Secretariat units. Eventually, an institutional mechanism independent from Secretariats may, however, be more suitable since Secretariat practices themselves may be subject to review. Such an independent review mechanism could contribute to a consistent application of rules within institutions. Since the establishment of a separate institutional mechanism may appear far-reaching to start with, a first step would consist in providing for a regular evaluation/review of possibilities for NGO participation in existing institutions (e.g. by a task force, the Secretariat, or consultants).

Considerable benefits may also be reaped by approaching the issue in an integrated way across a number of relevant institutions (see section 4.3.1 above). A mechanism for evaluation/review of the application of these rules will require largely similar expertise irrespective of the institution in which a question is raised. To limit the number of new mechanisms ("institutional economy"), such a mechanism may therefore principally serve several institutions. Integrating such review mechanisms may have to pay particular attention to differing memberships (e.g. regional versus global institutions), that may require differentiation.

#### 4.4 Policy Options (Recommendations)

NGO participation 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; this may 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 in any attempts to integrate rules on NGO participation. 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.

Substantively, such rules should help ensure accreditation, open access to information and to meetings of decision-making bodies and allow for active participation of NGOs. One of the main unresolved problems to be addressed in this respect is under-representation of Southern NGOs in particular. To support the effective implementation of any elaborated rules on NGO participation, a review mechanism could be considered. Specifically, the following core elements of a further elaboration of rules on NGO participation in international environmental governance deserve consideration.

1. **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. They should be provided for in any relevant forum. While this is already the case in many relevant institutions, deficits remain to be addressed in particular in international economic institutions (despite the progress made over the last decade or so).

- 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 an 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. Furthermore, the administrative costs and their relation to the income generated should be taken into account. 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. Barriers of access to information can also consist in lack of user-friendliness of web-sites. Such user-friendliness should thus be part of international institutions' best practice in providing access to information. 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.

Lack of NGO participation is partially due to the fact that 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.

2. **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. Openness to NGO participation should thus be the general rule in all relevant institutional settings. Practices in this respect vary among existing institutions with many MEAs displaying a considerable degree of openness (with significant variation). Despite a general move towards granting more possibilities for NGO participation that has been observable over the last ten years or so, notable deficits remain in a number of institutions, especially in the economic field.

- 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; sensitive information disclosed in compliance proceedings) might be justifiable. Limitations on the possibility to speak in meetings such as the possibility to limit the time available to NGO speakers and their number of interventions might be introduced where this is required to ensure an effective functioning of the respective body. 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 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 (ENGOs/PINGOs, BINGOs, scientific observers, etc.). These could be combined with or supplement systems where NGOs can select between different levels of involvement.

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, since it systems would have immediate repercussions on their internal organisation. Only if elaborated in co-operation with the NGO community/communities can such constituency systems acquire the needed 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.

3. **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. Provision of sufficient financial resources appears to be the major remedy. Distribution of such resources would need to take into account differences in circumstances of varying types of NGOs. In spending any additional resources, care should also be taken to address the respective root causes of under-representation such as specific NGO cultures, structures and attitudes. This will require initiating targeted activities beyond the mere funding of NGO activities. At the same time, there is no justification for differentiated treatment of different NGO communities with respect to their formal chances of providing input.

- 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. These are not mutually exclusive. Different mixes may be suitable for different settings. Furthermore, funding mechanisms applying to various institutions may also be combined. 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.

Especially PINGOs and BINGOs differ with respect to both their financial needs and the interests they pursue (public/private interest). Furthermore, NGOs from OECD countries generally command more resources than NGOs from developing countries and countries in transition. Any financial support should thus focus on or be limited to qualified PINGOs from developing countries and countries in transition. Where fee systems are considered necessary, varying fee levels should apply for different types of NGOs, with a full exemption applied to Southern PINGOs and others.

- 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. Where appropriate, drawing on NGOs in the implementation of specific projects can make a valuable contribution to their capacity building.

- 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 BINGOs without similar arrangements for ENGOs/PINGOs. Equivalent mechanisms should exist for all NGO constituencies.

- 4. 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 this type of 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. It could build upon limited precedents such as the complaints procedure under the CITES Conference of the Parties (see section 3.2) and related mechanisms such as the World Bank Inspection Panel.

Establishing a regular evaluation of rules and practice regarding NGO participation without creating a separate institutional structure may create a first step towards this type of more encompassing review mechanisms. The further institutionalisation of such a mechanism may build on the experience made with such a less formal mechanism.

## Annex 1: Draft Guidelines for Interviews

Interviews will be in oral form (in most cases: telephone interviews) and will be 'half-standardised', i.e. they will follow an interview guideline that provides the general topics and questions to be pursued with the interviewees; interviewers are, however, free to change the order and choose the concrete wording of the questions/topics. They thus can, and in some cases have to, adapt to the specific circumstances of their case.

Interviews are to be conducted after a first review and analysis of the relevant legal provisions and the available practical experience on the basis of written documents and available literature. It is suggested that the interviews focus on three areas, namely (1) Legal Provisions and Practice of NGO Participation, (2) Deficits, Problems and Need for Improvement, and (3) Assessment of Proposals for Enhancing NGO Participation. The interview guidelines follow that structure. For each of the areas, the purpose of conducting the interviews is given at the beginning in order to ensure that the interviews can be conducted in a targeted way and that follow-up questions can be posed having a clear purpose in mind.

Interviewers should be free to disclose that we conduct our research on behalf of the German Federal Environmental Agency (UBA) in order to generate the open 'climate' necessary to conduct open and fruitful interviews. It may be offered to the interviewee to ensure his/her anonymity.

Interviewees should be identified and interviews be conducted with a clear objective in mind as to why this particular interviewee was selected and what kind of information the interviewer expects to generate by interviewing this particular person. Therefore, prior to conducting each interview, the interviewer should define very clearly for himself/herself the specific purpose of that interview (in addition to the general purpose of the questions given below).

Appended to this interview guideline is a preliminary list of potential interviewees for each of the case studies (to be completed).

### 1. Legal Provisions and Practice of NGO Participation

#### 1.1 Purpose:

- Enhance our knowledge and understanding of particular/innovative aspects of NGO participation in the institution concerned (including to what extent they may be transferable to other settings)
- Confirm, verify, modify our (preliminary) analysis of the legal provisions and the practical experience

## 1.2 Topics/questions

- 1.2.1 What are particularly important/innovative features of NGO participation in the decision-making in the institution concerned?

*[Interviewers may wish to introduce this question by pointing out some of the innovative features they have identified in their review and assessment. If the interviewee does not mention a feature which the interviewer thinks to be important, the interviewer may ask specifically for the opinion of the interviewee on this feature.]*

- 1.2.2 To what extent are these features grounded in legal provisions, i.e. which legal provisions (treaty, rules of procedure, decisions of governing bodies) exist on which the feature is based?
- 1.2.3 How do these features operate/contribute to an enhanced participation of NGOs in practice? *[as appropriate]*
- 1.2.4 How successful have these features been? *[Interviewers may have to clarify interviewees' understanding of 'success'.]*
- 1.2.5 How important are codified legal provisions versus practice with respect to the feature (to the extent that these can be distinguished – may require a qualitative judgement)?
- 1.2.6 Are there any conditions that need to be fulfilled for an identified innovative feature to operate successfully? Is the feature generally transferable to other institutions? *[When exploring this question, it may be useful to explore also to what extent interviewees have knowledge beyond 'their' institution and are thus qualified to judge this issue.]*
- 1.2.7 *[In addition, interviewers may wish to raise specific issues that have arisen in their preliminary review and analysis to receive confirmation of their understanding. They might do so in the context of a brief description of their work, which might provide a suitable introduction.]*

## 2. Deficits, Problems and Need for Improvement

### 2.1 Purpose:

- Identify deficits, problems, need for improvement as perceived by relevant actors
- Assess whether and to what extent these perceived deficits, etc. relate to legal provisions versus state practice

## 2.2 Topics/questions

- 2.2.1 Are there any deficits or problems with respect to NGO participation in and contributions to decision-making processes in the institution concerned? Is there a need for improvement? If yes, what kind of deficits/problems/need for improvement?

*[Once interviewees have answered the question posed in an open manner, interviewers should follow up by raising issues identified in the preliminary review and in the general analysis which have not been touched upon by the interviewee, including limited/restricted access to meetings, unequal representation (North-South, public interest-business NGOs), limited opportunities for active participation (interventions, written submissions), as appropriate. In doing so, interviewers should use the list appended to these guidelines]*

- 2.2.2 Where do these deficits, problems, need for improvement materialise, i.e. are these related to treaty texts, rules of procedure, decision-making by the relevant bodies of the institution, other soft-law instruments (such as guidelines), state practice, etc. (to the extent that this can be determined – may require a qualitative judgement)?

*[This questions aims at determining whether perceived deficits rather relate to codified legal provisions or state practice, but attempts to avoid an artificial dichotomy by differentiating further.]*

## 3. Assessment of Proposals for Enhancing NGO Participation

### 3.1 Purpose:

- Assess and determine the practicability and relevance of proposals for enhancing NGO participation in international environmental co-operation in general and with respect to the institution concerned in particular
- identify promising options for enhancing NGO participation in international environmental co-operation in general and with respect to the institution concerned in particular

### 3.2 Topics/questions

- 3.2.1 How could the participation of NGOs in the institution concerned best be enhanced (if a need for improvement is perceived at all)?

*[As in the case of deficits (see above), interviewees should first be given the opportunity to make proposals without any suggestions by the interviewer. In a second step, the interviewer should ask about any case-specific suggestions identified during the research on the case and general options raised in the literature on NGO participation, as appropriate. In doing so, interviewers should use the list appended to these guidelines].*

### 3.2.2 In which way may this best be done/achieved?

*[As in the case of deficits (see above), this questions aims at determining whether perceived deficits rather relate to codified legal provisions or state practice. If interviewees do not refer to relevant categories (and as a follow-up), interviewers may raise concrete options such as changing treaty texts or rules of procedure, decision-making by the relevant bodies of the institution, other soft-law instruments (such as guidelines), state practice, etc.]*

### List 1: Potential problems and proposals for enhancing NGO participation in international environmental policy

**Note:** Not all the items contained in the list may be relevant to your case (e.g. your institution may already automatically notify relevant activities to NGOs). Please select those items that are relevant to your case. Please recall and be aware that the proposals may be implemented in various ways (amendments to rules of procedure, state practice, treaty amendments, decision-making by governing body, elaboration of guidelines, etc.). This should be covered in the interviews with respect to the proposals that have been identified as promising options.

| Potential problems  | Proposals for enhancing NGO participation   |
|---|---|
| 1) Insufficient information about relevant activities (meetings, etc.) of the institution.  | <ul style="list-style-type: none"> <li>• Automatic notification of interested NGOs about relevant activities</li> </ul>   |
| 2) Insufficient access to documents, reports, data.   | <ul style="list-style-type: none"> <li>• Full access to all documents, reports, data as a general rule to which exemptions may only apply in clearly-defined ways;</li> <li>• Documents, etc. should be accessible through the internet;</li> <li>• release of documents, etc. should be notified by secretariat.</li> </ul>  |
| 3) No clear right for accreditation and access.   | <ul style="list-style-type: none"> <li>• grant clear right to accreditation and access (without possibility for a minority of states to veto the participation of individual NGOs).</li> </ul>  |
| 4) Accreditation criteria provide the very enemies of the institution to participate and obstruct the purpose of the institution.   | <ul style="list-style-type: none"> <li>• Require a declaration of support for the institution's objective(s) as a precondition for accreditation.</li> </ul>  |
| 5) Accreditation criteria do not ensure/support legitimacy of NGO input.  | <ul style="list-style-type: none"> <li>• Establish accreditation criteria that ensure that participating NGOs fulfil minimum requirements with respect to transparency, accountability and/or internal democracy (NGOs may elaborate related 'code of conduct').</li> <li>• Introduce general accreditation fee (also potential remedy for other problems)</li> </ul> |
| 6) Limited or no access to some kinds of meetings (informal meetings, bodies dealing with politically sensitive matters such as implementation review and compliance, dispute settlement procedures). | <ul style="list-style-type: none"> <li>• free access to all meetings as a general rule to which exemptions may only apply in certain, clearly-defined circumstances</li> <li>• include NGO representatives on national delegations (also regarding aforementioned problems)</li> </ul>  |

| Potential problems  | Proposals for enhancing NGO participation  |
|---|--|
| 7) <i>Insufficient possibilities to participate actively</i> (dissemination of NGO documents, oral interventions, proposing agenda items, proposing amendments to proposed decisions, written submissions). | <ul style="list-style-type: none"> <li>• Official distribution of NGO documents (by secretariats, posting on the institution's website);</li> <li>• grant right/possibility to make oral statements in all relevant meetings (note: this may require organisation in NGO constituencies for practical reasons);</li> <li>• Right to make written submissions (e.g. to be compiled in "Miscellaneous documents" alongside submissions from governments).</li> <li>• Right to propose items for the agenda</li> <li>• Right to propose oral or written amendments to draft decisions.</li> </ul>   |
| 8) No right for NGOs to vote on decision  | <ul style="list-style-type: none"> <li>• Should NGO have the right to vote on decisions?</li> </ul>  |
| 9) There is no possibility for NGOs to take action to secure legal rights, legitimate expectations and/or customary practice.   | <ul style="list-style-type: none"> <li>• An Ombudsman could be appointed/established to review alleged breaches of NGO rights and to make recommendations/give opinions (note that this may only be promising if there were clear rights of NGOs).</li> </ul>  |
| 10) Unequal representation (under-representation of developing country NGOs, NGOs from countries with economies in transition, NGOs from non-anglophone countries, public-interest NGOs).                   | <ul style="list-style-type: none"> <li>• Establish a NGO Steering Committee to better coordinate the NGO community without representing it politically (e.g. CSD; no government action required)</li> <li>• NGO Advisory Body with a fixed number of NGO representatives to the respective institution (e.g. GEF-NGO Network).</li> <li>• Civil Society Chambers ("parliamentary assemblies"), standing alongside the respective governing bodies and equipped with largely advisory powers, could act as a fully institutionalised debating place for civil society.</li> <li>• Increase the number of meetings at locations in the different regions of the developing world to enhance possibilities for Southern participation.</li> <li>• Provide access for NGOs to the interpreting and translating services of secretariats.</li> <li>• Provide funding for under-represented NGOs (possibly through use of income from accreditation fee or establishment of a trust fund)</li> </ul> |
| 11) Differences in conditions/interests/ circumstances of varying kinds of NGOs are not taken into account/reflected.   | <ul style="list-style-type: none"> <li>• Introduce elements of differentiated treatment (e.g. differentiated treatment regarding funding and possible accreditation fees for public-interest versus business NGOs).</li> </ul>   |

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**World Heritage Convention**

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**WTO**

Marrakesh Agreement establishing the WTO signed on 15/04/1994, and entered into force on 1/1/1995; reprinted in *The results of the Uruguay Round of multilateral negotiations: the legal texts*, Geneva: Gatt Secretariat, 1994.

Guidelines for arrangements on relations with non-governmental organizations adopted by the General Council on 18 July 1996. WT/L/162. available at [http://www.wto.org/english/forums\\_e/ngo\\_e/wtdocs\\_e.htm](http://www.wto.org/english/forums_e/ngo_e/wtdocs_e.htm).

United States – Import Prohibition of Shrimp and Shrimp Products, Report of the Appellate Body adopted 6 November 1998, WT/DS58/AB/R.

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## Interviewees

The following individuals were interviewed in connection with the case studies:

### UNFCCC case study

Barbara Black, UNFCCC-SEC, July 2001.

Jennifer Morgan, WWF-International, October 2001.

Bill Hare, Greenpeace International, October 2001.

Agus Sari, CANSEA/Delegation of Malaysia, October 2001.

Tom Jacobs, DuPont, November 2001.

Ambdr John Ashe, Antigua and Barbuda and SBI Chair.

Harald Dovland, Norway and SBSTA Chair.

### CITES case study

Michael Bean, Environmental Defence, September 2001.

Jon Hutton, Africa Resources Trust, August 2001.

Gerhardt Adams, BMU, September 2001.

David Favre, Detroit College of Law, Michigan State University, August 2001.

Teresa Mulliken, TRAFFIC International, October 2001.

Jacques Berney, IWMC - World Conservation Trust, August 2001.

Manfred Niekisch, University of Greifswald, September 2001.

Peter Sand, University of Munich, August 2001.

Petra Deimer, Gesellschaft zum Schutz der Meeressäuger e.V., September 2001.

Chris Wold, Centre for International Environmental Law, October 2001.

Julian Newman, Environmental Investigation Agency, September 2001.

James Martin Jones, WWF-UK, September 2001.

Jim Armstrong, CITES Secretariat, November 2001.

John Robinson, Wildlife Conservation Society, August 2001.

### ISO case study

Ahmad Husseini, Secretary, ISO/TC 207, Canadian Standards Association, August 2001.

## References

John Henry, Secretary, TC 207 NGOTG, Standards Australia International, August 2001.

Ed Shoener, A L-organisation and NGOTG participant, Ecologia USA, August 2001.

Jason Morrison, US delegation participant and Chair, TC 207 NGOTG, Pacific Institute, August 2001.

Ossie Dodds, UK delegation to ISO/TC 207, for British Standards Institution, August 2001.

Dr Abu Bakar Bin Jaafar, Department of Standards Malaysia, August 2001.

Matthias Gelber, International Network for Environmental Management (INEM), August 2001.

Klaus Lingner, ISO Central Secretariat, Geneva, September 2001.

### World Bank case study

Barbara Unmüßig, WEED, September 2001.

Bruce Jenkins, Bank Information Centre, October 2001.

Charlotte Streck, World Bank, October 2001.

David Hunter, CIEL, Washington D.C., September 2001.

Doug Hellinger, Development GAP, Washington DC, August 2001.

Dr. Füllenbach, German Federal Ministry for Economic Cooperation, September 2001.

Fernando Carvalho, IBASE (Brazil), October 2001.

Heffa Schücking, Urgewald, September 2001.

Heike Mainhardt, WWF US, October 2001.

Carol Welch, Friends of the Earth US, Washington D.C., USA, October 2001.