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The role of « stakeholders » in international environmental governance

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DRAFT VERSION



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The series of reports will deal with the following themes:

- Issues raised by the international environmental governance system
- Mobilisation, diffusion and use of scientific expertise
- Observation system and alert
- Mechanisms to monitor member states' commitments
- Articulation between the various levels of government
- Role of the stake-holders
- Implication of a UNEO for the global architecture of the international environmental governance system
- Financing for environment and development

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1. Introduction

1. The purpose of this report is to study the role of “stakeholders” in international environmental governance with a view to making proposals on how this role could be further developed and better organized, if not institutionalized, and to provide food for thought for the debate underway. Once we have defined the notion of “stakeholders” (2), we will study how these stakeholders contribute to the development and implementation of international environmental policies, focusing on the role played by the different civil society parties and the sources of innovation that this non-governmental participation can represent (3). We will then review current practices and references in the United Nations (4) and its specialized agencies (5), certain non-UN intergovernmental organizations (6) and certain multilateral environmental conventions (7). On this basis, we conclude with some proposals to improve stakeholder involvement in the global environmental governance system and possibly institutionalize their participation in a new international environment organization. (8)

2. Approach to the notion of “stakeholders”

Definition of the concept of “stakeholders”

2. Who are the “stakeholders” in the global environmental governance process? The term “stakeholders” is not a clear-cut or legal concept, so its scope needs to be defined. On the basis of the dictionary definition, stakeholders could be defined here as all the parties taking part in the international institutions’ deliberative and decision-making processes. The first parties concerned in these processes are obviously the Member States of these institutions. Yet the notion of “stakeholders” extends beyond just the State participants formally involved in the decision-making processes. So although the States remain the principal stakeholders, work on extending participation in global governance processes focuses on other stakeholders in addition to the States. For example, the Panel of Eminent Persons chaired by former President of Brazil, Fernando Henrique Cardoso, tasked by UN Secretary-General Kofi Annan with a study of the UN’s relations with civil society, proposed three major categories of stakeholders: Member States, the private sector and civil society.¹

3. The States have the formal capacity of members or contracting parties and are represented in international institution bodies by their central governments. However, stakeholders may also encompass other State structures and public representatives such as elected representatives, including parliaments, local authorities and their respective international associations.

4. The Cardoso report defines the private sector as comprising firms, business federations, employer associations and industry lobby groups. The status of philanthropic foundations financed by business is less clear cut. Some see them as part of the private sector while other analyses place them in civil society. Although the private sector includes small and medium-sized enterprises, the Cardoso report considers that some of these may also have characteristics closer to civil society.²

5. The third category of stakeholders identified by the Cardoso report is civil society. The notion of civil society is also a poorly defined notion and subject to a multitude of interpretations. Some classifications consider that the private sector is part of civil society. However, the most common interpretation of the notion of civil society – also the interpretation adopted by the Cardoso panel – excludes both the market sector and State circles. Civil society is hence defined as a sphere of social life that is public, but not part of the State, thereby excluding both governmental and commercial activities. So the term covers neither profit-making activities (private sector) nor public authority action (public sector). An extremely wide range of individuals and organizations can be included in this category. The Cardoso report includes citizens’ associations to which its members have decided to belong to promote their interests, their ideas and their ideologies, mass organizations, trade unions, professional associations, social movements, indigenous people’s organizations, religious and spiritual organizations, academic associations and public-benefit non-governmental organizations (NGOs).³

6. The NGOs are the most prominent players in the field of environmental governance. Environmental NGOs are also highly diverse: there may be local, national, regional and even international groups working on environmental protection, but also sustainable development, poverty reduction and animal welfare to name but a few. Given that this is the most often mentioned category of stakeholders with the most formalized relations with the intergovernmental structures, we will conduct a more detailed analysis of its exact definition and the overlaps and differences between this category and the other elements of civil society.

The stakeholders identified by Agenda 21, adopted by the Rio Conference (1992)

7. In the Agenda 21 programme adopted at the Rio Summit, the international community explicitly recognizes the diversity of civil society and the contribution it can make to intergovernmental sustainable development decision-making processes. Although this document, adopted in 1992, does not yet use the term “civil society”, it expressly recognizes different components of civil society as belonging to the “major groups”

¹ Report from the Panel of Eminent Persons on United Nations-Civil Society Relations, Doc. A/58/817, 11 June 2004, p. 13. (hereinafter referred to as Cardoso Report). See also: The Diversity of Actors Within the UN System, Background paper for the Secretary-General’s Panel of Eminent Persons on Civil Society and UN Relationships, <http://www.un.org/reform/pdfs/categories.htm>

² Cardoso report, *op. cit.*, p. 13

³ *Ibid.*

whose role should be “strengthened” with a view to the “effective implementation” of its stated sustainable development goals. Agenda 21 asserts that, “Critical to the implementation of the objectives [...] will be the commitment and genuine involvement of all social groups.”⁴ This calls for, “moving towards real social partnership in support of common efforts for sustainable development.”⁵ Agenda 21 specifically identifies the following “major groups” and devotes an entire chapter to each one of them: women, children and youth, workers and their trade unions, farmers, the scientific and technological community, business and industry, local authorities, indigenous people and their communities, and non-governmental organizations. Most of these social groups form part of civil society as defined by the Cardoso report, but two of them (local authorities and business and industry) belong to other categories of analysis (the public sector and the private sector). Nevertheless, there is controversy over whether it is advisable to include the business and industry sector in the “major groups” defined by Agenda 21. As mentioned above, Agenda 21 appears to consider them part of civil society, while others deem that the private sector should not be included in this category.⁶ Yet the fact remains that, since Rio, “The language about ‘major groups’ has become a standard setter not just for the ongoing work of the Commission for Sustainable Development, but also for other activities of the UN.”⁷

Women

8. Chapter 24 of Agenda 21 addresses women both as individuals and from the point of view of their particular social organizations. It focuses on measures to promote the full, equal and effective integration of women into all development activities and their participation in ecosystem management and control of environmental degradation. In particular, it advocates, “Measures to strengthen and empower women's bureaux, women's non-governmental organizations and women's groups in enhancing capacity-building for sustainable development.”⁸ At UN system level, Agenda 21 also recommends a study of “how to incorporate the role of women in programmes and decisions related to sustainable development.”⁹

Children and youth

9. Chapter 25 of Agenda 21 advocates measures to encourage the individual and collective involvement of youth in environmental protection and the promotion of economic and social development, and enable them to “participate actively in all relevant levels of decision-making processes because it affects their lives today and has implications for their futures.”¹⁰ Youth comprise nearly 30% of the world's population. Hence the chapter states that, “The involvement of today's youth in environment and development decision-making and in the implementation of programmes is critical to the long-term success of Agenda 21.”¹¹ In more concrete terms, Agenda 21 stipulates that, “Each country and the United Nations should support the promotion and creation of mechanisms to involve youth representation in all United Nations processes in order to influence those processes.” It emphasizes the important role of “networks, national organizations and youth non-governmental organizations”¹² in this regard.

Workers and their trade unions

10. Chapter 29 of Agenda 21 states that workers will be, “foremost among those concerned” by action to promote sustainable development and that, “as their representatives, trade unions are vital actors in facilitating the achievement of sustainable development.”¹³ Emphasis is placed in particular on, “the existing network of collaboration among trade unions and their extensive membership” and “the established principles of tripartism [which] provide a basis for strengthened collaboration between workers and their representatives,

⁴ Agenda 21, Report of the United Nations Conference on Environment and Development, United Nations, New York, 1993, Doc.A/CONF.151/26/Rev.1 (Vol. I), pp. 7-495, § 23.1 (hereinafter referred to as Agenda 21).

⁵ *Ibid*, § 23.4

⁶ B. Gemmill & A. Bamidele-Izu, “The Role of NGOs and Civil Society in Global Environmental Governance”, *Global Environmental Governance, Options and Opportunities*, Yale Center for Environmental Law and Policy, 2002, p. 80.

⁷ *UN System and Civil Society – An Inventory and Analysis of Practices*, Background paper for the Secretary-General's Panel of Eminent Persons on United Nations Relations with Civil Society, New York, May 2003, p. 8.

⁸ Agenda 21, § 24.3(b)

⁹ *Ibid*, § 24.9

¹⁰ *Ibid*, § 25.2

¹¹ *Ibid*, § 25.1

¹² *Ibid*, § 25.9(g)

¹³ *Ibid*, § 29.1

Governments and employers in the implementation of sustainable development.”¹⁴ It is recommended that governments and employers “promote the active participation of workers and their trade unions in decisions” on the environment and development at all levels¹⁵ and that the unions “play an active role in the sustainable development activities of international and regional organizations, particularly within the United Nations system.”¹⁶

Farmers

11. Chapter 32 of Agenda 21 highlights the importance of agricultural activities and the rural population as regards sustainable development goals. It calls for the enhancement of “the participation of farmers, men and women, in the design and implementation of policies [...] through their representative organizations,”¹⁷ and support to set up and run farmers’ organizations.¹⁸ The international organizations involved in agricultural policy and rural development are expressly asked to, “involve farmers and their representatives in their deliberations, as appropriate.”¹⁹

The scientific and technological community

12. Chapter 31 of Agenda 21 defines this category fairly broadly. It includes researchers and other professional categories such as engineers, architects, urban planners and other professionals and policy makers. Agenda 21’s aim is, in particular, to improve communication and cooperation between the scientific and technological community and political decision-makers and the general public. To this end, the programme sets down as recommendations, “to extend and open up the decision-making process” and to promote “cooperation at all levels between the scientific and technological community and decision makers”.²⁰ Of particular note with regard to the international level is a recommendation to, “Strengthen science and technology advice to the highest levels of the United Nations, and other international institutions, in order to ensure the inclusion of science and technology know-how in sustainable development policies and strategies.”²¹

Business and industry

13. Chapter 30 of Agenda 21 proposes strengthening the role of business and industry on the basis that, “Increasing prosperity, a major goal of the development process, is contributed primarily by the activities of business and industry,”²² and that, “the policies and operations of business and industry, including transnational corporations, can play a major role in reducing impacts on resource use and the environment.”²³ This is why, “Business and industry, including transnational corporations, and their representative organizations should be full participants in the implementation and evaluation of activities related to Agenda 21.”²⁴ In this regard, the programme states that, “United Nations organizations and agencies should improve mechanisms for business and industry inputs, policy and strategy formulation processes, to ensure that environmental aspects are strengthened in foreign investment.”²⁵

Local authorities

14. The participation and cooperation of local authorities is also considered to be a “determining factor in fulfilling” the objectives of the Agenda 21 programme. Chapter 28 of the document is devoted to this. It is deemed essential that local authorities, “assist in implementing national and subnational environmental policies.”²⁶ Yet they have a greater role to play than merely as implementing agencies in that, “All local

¹⁴ *Ibid*

¹⁵ *Ibid*, § 29.5

¹⁶ *Ibid*, § 29.11(c)

¹⁷ *Ibid*, § 32.5(f)

¹⁸ *Ibid*, § 32.6(e) and § 32.7

¹⁹ *Ibid*, § 32.9

²⁰ *Ibid*, § 31.3(a)

²¹ *Ibid*, § 31.4(d)

²² *Ibid*, § 30.1

²³ *Ibid*, § 30.2

²⁴ *Ibid*, § 30.1

²⁵ *Ibid*, § 30.28

²⁶ *Ibid*, § 28.1

authorities in each country should be encouraged to implement and monitor programmes which aim at ensuring that women and youth are represented in decision-making, planning and implementation processes.”²⁷ Agenda 21 calls for a real “partnership” to be fostered among the local authorities and relevant international bodies, “such as UNDP, the United Nations Centre for Human Settlements (Habitat) and UNEP, the World Bank, regional banks, the International Union of Local Authorities [...] and other relevant partners, with a view to mobilizing increased international support for local authority programmes” in the field of sustainable development.²⁸

Indigenous people and their communities

15. Chapter 26 of Agenda 21 states that, “In view of the interrelationship between the natural environment and its sustainable development and the cultural, social, economic and physical well-being of indigenous people, national and international efforts to implement environmentally sound and sustainable development should recognize, accommodate, promote and strengthen the role of indigenous people and their communities.”²⁹ However, Agenda 21’s concrete recommendations for involving indigenous people in international decision-making processes are extremely tame. This is probably due to the reticence of a good number of governments to give these populations direct access to international forums and the desire of these governments to retain complete control over organizing the participation of indigenous communities in national political life. Hence the relevant provisions in Agenda 21 contain numerous qualifiers: “United Nations organizations and other international development and finance organizations and Governments should, drawing on the active participation of indigenous people and their communities, as appropriate, take [...] measures [...] to incorporate their values, views and knowledge [...] in resource management and other policies and programmes that may affect them.”³⁰ More specifically, a recommendation is made to the international organizations to, “organize annual interorganizational coordination meetings in consultation with Governments and indigenous organizations, as appropriate, and develop a procedure within and between operational agencies for assisting Governments in ensuring the coherent and coordinated incorporation of the views of indigenous people in the design and implementation of policies and programmes.”³¹

Non-governmental organizations

16. Chapter 27 of Agenda 21 addresses the role of non-governmental organizations. It states that, “Non-governmental organizations, including those non-profit organizations representing groups addressed in the present section of Agenda 21 [Section III: Strengthening the Role of Major Groups], possess well-established and diverse experience, expertise and capacity in fields which will be of particular importance to the implementation and review of environmentally sound and socially responsible sustainable development, as envisaged throughout Agenda 21.”³² In addition to these elements of definition, Agenda 21 highlights the independence of these organizations: “Independence is a major attribute of non-governmental organizations and is the precondition of real participation.” The implicit definition of NGOs proposed by Agenda 21 is hence vague. We will endeavour to better define and delimit this important element of civil society in the next section.

The non-governmental organizations as major international civil society players: an attempt at a definition

17. Defining NGOs is no easy task since, despite the fact that they are all “non-governmental”, the complexity and broad diversity of this social phenomenon makes it hard to pinpoint exactly what the NGO notion covers. Their operations cover all economic and social activities. The scope of these activities is also far-reaching: they can be found working as much at direct community, town and regional level as at national and even global level. Moreover, while some NGOs are large institutions with substantial workforces and budgets, others have only a few volunteers working for them. Members’ profiles can also vary extensively, ranging from the general public and socio-economic groups to political and religious spheres. Some international NGOs are highly centralized institutions while others are relatively autonomous federations of national NGOs. In

²⁷ *Ibid*, § 28.2(d)

²⁸ *Ibid*, § 28.4

²⁹ *Ibid*, § 26.1

³⁰ *Ibid*, § 26.5

³¹ *Ibid*, § 26.5(a)

³² *Ibid*, § 27.3

addition, some international NGOs are made up of group members while others only have individual members.³³

18. Despite these differences, some authors and organizations have hazarded a definition to cover these different forms of NGO.

19. In 1950, the International Law Institute drafted a convention in which it defined “international associations” as “groups of persons or communities freely created by private initiative who exercise, with a non-profit aim, an international public-interest activity that transcends any exclusively national concern.”³⁴

20. The definition given by the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations, adopted on 24 April 1986 with an entry into force in January 1991, is more precise. This convention drafted by the Council of Europe stipulates that the associations, foundations and other private institutions must satisfy the following conditions to be referred to as “international non-governmental organisations”: have a non-profit-making aim of international utility; have been established by an instrument governed by the internal law of a State; carry on their activities with effect in at least two States; and have their statutory office in the territory of a State Party and the central management and control in the territory of that Party or of another Party.³⁵

21. Given the diversity of implicit definitions and the absence of an explicit, official and universally accepted definition, the international organizations draw on an entire range of criteria to determine whether they consider a non-state entity to be an NGO. The main criteria are³⁶:

22. The founding act: NGOs are created by private individuals and obey internal legal procedures. Under no circumstances should such an establishment derive from an agreement between governments, an event that would make it an intergovernmental organization.

23. The criterion of independence: NGOs should not therefore be subject to any government control. So although NGOs are entitled to have governments and government officials as members and may be funded in part by such, these persons may in no way influence the organization’s ability to express its views independently.

24. The basic organization: The NGO must be able to guarantee a certain level of representativeness of its member base and a certain transparency with regard to its activities. Note, however, that many NGOs do not satisfy this condition, although this could be justified by the fact that they are private players and that, as such, democratic legitimacy is not necessarily required. This could also be the reason why many international organizations do not apply such a criterion.

25. A non-profit aim of international utility: This criterion excludes all private organizations with aims focusing on a State’s domestic issues or with aims incompatible with United Nations principles such as peace, respect for human rights, and economic, social and cultural progress. Yet this criterion does not exclude public-interest organizations made up of private for-profit legal entities. The aim of such organizations in this case is not actually to make a profit, but to participate in an international public-interest mission.³⁷

26. The support of the international organization: The purpose of this criterion is to prevent an institution’s opponents from using the institution’s structure to pursue their objectives. Although this criterion is justified for institutions of a constitutional nature, such as the Economic and Social Council, it is less so in the

³³ Y. Beigbeder, *Le rôle international des organisations non gouvernementales* (the international role of non-governmental organizations), Bruylant, Brussels, 1992, p. 7

³⁴ Draft ILI Convention on the conditions for attributing international status to associations, under the direction of S. Bastid in 1950.

³⁵ European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations, Council of Europe, No. 124, 24 April 1986, Article I.

³⁶ For more detailed information, see: S. Oberthür, J. Werksmann *et al.*, *Participation of Non-Governmental Organisations in International Environmental Co-operation: Legal Basis and Practical Experience*, Erich Schmidt Verlag, Berlin, 2002, p. 22 and following; G. Breton-Le Goff, *L’influence des organisations non gouvernementales (ONG) sur la négociation de quelques instruments internationaux* (The influence of non-governmental organisations (NGOs) on the negotiation of certain international instruments), Bruylant/Yvon Blais, Brussels, 2001.

³⁷ G. Breton-Le Goff, *op. cit.*, p. 14

case of institutions drafting rules on more specific subjects. It also bears the risk that governments could use it to prevent recognition of groups that criticize them.³⁸

27. Expertise: Many institutions require specific expertise, know-how and skills relevant to the subjects addressed by the international organization in question. However, this criterion is wide open to interpretation.

³⁸ S. Oberthür, J. Werksmann *et al.*, *op. cit.*, p. 23

3. The roles of the stakeholders in the formulation and implementation of international environmental policies

Analysis of the role played by the different civil society parties and the implications of this role for environmental governance

Alert role

28. The scientific community plays a vital role in environmental protection by identifying ecological problems with their causes and effects and drawing the attention of public opinion and political decision-makers to these problems. Although it is the scientists who provide the necessary information to develop national and international public policies, NGOs often play a warning role and serve as a link between the scientific community and public opinion and the governments. They spread new scientific knowledge, raise public awareness and ensure media coverage of the issues, thereby helping to place them on the political agenda and putting pressure on the public administrations and political decision-makers. Their grassroots presence also places them in a position to attract the attention of governments and international organizations to local situations symptomatic of the state of the environment, barriers to sustainable development and public policy failings.

Expertise and support to governments

29. The scientific and technological community's crucial role of expertise is widely recognized and often institutionalized both nationally and internationally. NGO expertise has a lower profile and is more informal. In general, a good number of NGOs provide governments with information to round out the information they already have on a given subject. NGOs therefore play a role of appraisal and analysis, proposing new, original ideas to the different governments in sometimes highly complex areas in which the official government representatives concerned often do not have the required specialist knowledge. These analyses and appraisals are based on the NGOs' experience, expertise and knowledge in the particular field in question. The NGOs' independence vis-à-vis governments and intergovernmental organizations means that they can get involved in situations generally not accessible to the latter for political or diplomatic reasons. NGOs can also help the poorest governments, which find it hard to participate in international environmental negotiations on an equal footing with other governments. It could prove useful, in this case, for NGOs to help offset these inequalities by providing these governments with information and analyses and keeping them up to date on negotiations that they are unable to attend due to lack of finances.

Legitimation

30. NGO expertise enhances the quality of the debates, lending greater legitimacy to the decisions made by the States in intergovernmental forums. This legitimation role was well perceived even before the Stockholm conference. In 1971, Maurice Strong, the conference's Secretary General, told a preparatory committee meeting that NGOs play a most important role due to the highly diverse contributions that they can provide the Conference *and also because governments need the support of public opinion*.³⁹

31. The perception of NGOs as representatives of a new "transnational civil society" has gained in strength ever since. They are seen as being there to ensure a certain "awareness" of the issues and to make up for the lack of legitimacy sometimes suffered by government action when public opinion suspects governments of having hidden agendas. For although governments and the international organizations they create can be said to have the authority to make decisions, they are not always perceived as having all the necessary legitimacy. As UN Secretary-General Boutros Boutros-Ghali said in September 1994, NGOs "are a basic form of popular participation in the present-day world. *Their participation in international organizations is, in a way, a guarantee of [their] political legitimacy*".

32. Although this role of legitimation is fully justified in terms of the NGOs' technical and scientific expertise, it does not escape criticism from certain quarters, which accuse NGOs of being undemocratic and unaccountable. However, such criticism needs to be qualified since although NGO governing bodies are indeed not often elected, they are held accountable by boards of directors, annual general meetings and/or the

³⁹ Doc. A/CONF.48/PC.9, 26 February 1971, p. 39, § 107 (our italics).

organization's members. They also have to win financial support from members and donors, unlike governments automatically financed by taxation.⁴⁰

Public awareness building, education and information

33. We have already mentioned the public awareness-raising campaigns conducted by NGOs to alert public opinion to the existence of an environmental problem. These campaigns are extremely important since they enable public opinion to put pressure on the public authorities to take action.

34. In addition to this awareness-building role, NGOs also form a link between the international negotiations they attend and the public. They routinely and broadly disseminate the information at their disposal, familiarizing citizens with the issues at stake in these negotiations. To this end, they have created efficient networks of contacts and exchanges with NGO partners and other stakeholders. Their task has been considerably facilitated by the emergence of new means of communication such as the Internet.

Contribution to the development of solutions and new environmental norms

35. A number of stakeholders actively contribute to the development of multilateral policies and international environmental law. The scientific and technological community does not stop at highlighting the problems, but is also proactive in seeking solutions. The private sector is variously involved depending on its technical expertise and economic interests. Its know-how and financial and technological resources can make a positive contribution to the design and formulation of practical solutions. Yet it can also use its economic power and political contacts to block the development of new environmental policies and norms that it sees as a threat to its interests. It is interesting to note that various private sector players increasingly have different strategies with respect to the issues on the international environmental governance agenda. Business coalitions can form to oppose public policies or alternatively support their development when this is seen as a new business opportunity for certain economic sectors.

36. The role played by NGOs increasingly often extends beyond the simple alert and awareness-building function to encompass the concrete definition of solutions and norms. NGOs are no longer limited to lobbying governments, but now propose solutions. They provide specific expertise and actively participate in negotiations, if not formally, at least via government intermediaries. A good number of policies and multilateral environmental conventions adopted by governments have been strongly influenced by the conceptual work and legal and scientific advice of certain specialist NGOs.

Contribution to policy implementation

37. As Agenda 21 points out, all the stakeholders have a role to play in the implementation of national and international policies. We have already referred to the specific contributions that the different "major groups" can and should make, so we will not repeat them here. We will simply mention a few specific mechanisms and instruments by means of which States and international organizations endeavour to involve other stakeholders in the implementation of their environmental protection and sustainable development policies.

38. Many intergovernmental organizations and institutions active in development cooperation and humanitarian assistance have long involved NGOs in their operational activities. Local, national and international NGOs are appointed to implement certain field projects and actions in keeping with procedures laid down by the international donors' governing bodies. For example, the United Nations Development Programme (UNDP) has a long-standing practice of working with mainly national NGOs as "executing agents" for its projects.⁴¹ More recently, this technique of having NGOs implement international policies on the ground has also been extended to environmental protection. Of note, in this regard, is NGO participation in many World Bank administered Global Environment Facility (GEF) projects. A GEF publication states that more than 700 NGOs currently participate in its activities as "co-executing agents or service contractors".⁴² This type of practice could lead to a certain amount of instrumentalization of and loss of independence for the NGOs concerned.

39. Another recent development is the involvement of the private sector in the implementation of multilateral environmental agreements. A typical example is the role that businesses ("legal entities") can play

⁴⁰ James A. Paul, "NGOs and Global Policy-Making", *Global Policy Forum*, June 2000.

⁴¹ See United Nations Development Programme, "UNDP Procedures for Project Execution by NGOs", 1998.

⁴² Global Environment Facility, *GEF...Dynamic Partnerships. Real Solutions*, Washington, 2002, p. 13.

in applying the Kyoto Protocol “flexible mechanisms”, such as Joint Implementation and the Clean Development Mechanism.

40. The 2002 Johannesburg World Summit on Sustainable Development established the emergence of “partnerships” between various governmental, intergovernmental and non-governmental players as a new way of implementing the sustainable development goals based on voluntary cooperation between different stakeholders. This new type of cooperation was hotly debated during the Summit’s preparatory process⁴³ and gave rise to guidelines and criteria laid down by the Commission on Sustainable Development at its 11th session, which were adopted by ECOSOC to improve the management of these partnerships and ensure their transparency.⁴⁴

Contribution to policy evaluation and review and compliance monitoring

41. The NGOs were quick to see what their objectives and strategies could gain from using the international forums to put pressure on States and especially from the systematic grassroots evaluation of State compliance with the international political and legal commitments they make in these forums. They therefore spontaneously took on the role of unofficial “inspectors” of compliance with these commitments and now routinely publish and communicate the results of their investigations to the relevant international bodies. Despite the absence of any official mandate, these generally unsolicited non-governmental reports help keep track of international policies and are seen as a source of useful information by both the governments and the intergovernmental organizations themselves. As we will see later, some international forums and instruments have even taken measures towards institutionalizing and formalizing this non-governmental contribution to their policy implementation monitoring by creating special procedures to this effect (see *The NGOs’ right to question and standing to initiate proceedings and intervene before compliance review and dispute settlement bodies*)

Contribution to financing the policies alongside or independently of the States

42. Although the tax resources mobilized by the States remain, directly or indirectly, the main source of financing for international public policies, the governments and intergovernmental organizations are keenly feeling the squeeze of their budgetary constraints on the actual implementation of these policies. They are therefore making increasing efforts to rally other sources of financing from the private sector and even certain NGOs. The use of different co-financing techniques is a long-established practice in the development cooperation sector. Similar financing methods are currently being developed in other sustainable development sectors, including environmental policies. One of the manifestations of this phenomenon is the emergence and intergovernmental legitimization of “Type II partnerships” between the public and private sectors to support multilateral policies negotiated in UN forums at the 2002 Johannesburg Summit.⁴⁵

The NGOs’ right to question and standing to initiate proceedings and intervene before compliance review and dispute settlement bodies

43. This NGO role is particularly well developed in the field of human rights, and is starting to take hold in environmental protection. The right to question in the political sense needs to be differentiated from the right to initiate proceedings and third party intervention in formal compliance review and dispute settlement procedures. The first is more common and more generally accepted than the second.

44. Many NGOs attending international meetings as observers take advantage of the opportunity to question governments about their national policies and international positions and sometimes even to speak out about some States’ non-compliance with certain international commitments. They do so in the hope that the pressure of international public opinion and “peers” (other governments involved in the forum in question) will influence the policy of the targeted States.

45. In a growing number of cases, the international – regional and global – environment regimes provide for more or less formal compliance review procedures for participating States. These procedures cannot generally be instigated by non-State entities, with the occasional exception of the secretariat of the organization

⁴³ See M. Pallemarts, “Is Multilateralism the Future? Sustainable Development or Globalisation as ‘A Comprehensive Vision of the Future of Humanity’”, *Environment, Development and Sustainability*, 2003, pp. 275-295.

⁴⁴ ECOSOC, Resolution 2003/61 of 25 July 2003, Doc. E/2003/INF/2/Add.4, p. 159, § 22-23.

⁴⁵ See J. Nelson, *Building Partnerships: Cooperation between the United Nations System and the Private Sector*, United Nations, New York, 2002.

or convention in question. However, in the field of human rights, provisions entitling these players to either initiate various types of State practice evaluation and review procedures or participate in various capacities in such procedures are increasingly common, both at regional and global level.

46. In the Council of Europe, for example,⁴⁶ NGOs can offer legal assistance and financial support and can also legally represent individuals or groups of individuals who would like to bring an action before the European Court of Human Rights. In certain circumstances, the NGOs may be asked to provide the Court with information to help analyze the questions raised. In addition, the European Convention for the Protection of Human Rights, as amended by Protocol No. 11, Article 36, paragraph 2, explicitly provides for the possibility for third parties, i.e. “any person concerned who is not the applicant”, to submit written comments and take part in hearings at the invitation of the President of the Court. Hence *amicus curiae* intervention whereby the “friend of the Court” has no personal interest in the outcome of the dispute and only offers his services to help the judge accomplish his task, is differentiated from intervention *sensu stricto* whereby the association intervenes to defend its own interest.⁴⁷

47. Another Council of Europe instrument, the European Social Charter, provides a further example of such participation. The Charter provides for a procedure to enable international NGOs with participative status on a list drawn up for this purpose, and certain other organizations, to lodge a complaint with the European Committee of Social Rights when they consider that the Charter has been violated.

48. As regards the United Nations, provisions in the Optional Protocol to the International Covenant on Civil and Political Rights authorize the Committee set up by this instrument to receive and consider “communications” from individuals and organizations. Similar procedures have been created by other UN human rights instruments. A more recent, but highly significant development is that certain multilateral environmental conventions have drawn on the human rights precedent to create innovative procedures enabling non-State entities to submit cases of non-compliance with commitments to international bodies.

49. For example, the Standing Committee of the Bern Convention on the Conservation of European Wildlife and Natural Habitats has a procedure to “open case files” enabling a natural person, NGO or group of individuals to send a letter containing a well-founded complaint regarding a breach of one or more of the Convention’s provisions by one or more States Parties to the Standing Committee, its Chairman or the Convention Secretariat. These complaints are examined by the Secretariat to determine, among other things, whether they are serious enough to be examined at international level. Following this examination, the Secretariat may decide, with the Bureau’s approval, to place the complaint on the agenda of the next Standing Committee meeting.⁴⁸

50. A more recent example is the procedure created pursuant to Article 15 of the Aarhus Convention, which provides for a committee of independent experts to consider “communications from members of the public” concerning the States Parties’ compliance with their commitments under the Convention. This procedure will be analyzed in more detail in Part 5 of this report.

51. As regards formal procedures for settling disputes between States, it is worth noting the interesting developments in World Trade Organization (WTO) case-law⁴⁹ concerning whether Panels and the Appellate Body can accept and take into consideration non-requested submissions sent to them by entities that are neither parties nor third parties to the dispute and that are generally called *amici curiae* briefs. Although the controversy is still raging, the WTO Appellate Body acknowledged the admissibility of *amici curiae* briefs before Panels in its “United States – Shrimp” ruling⁵⁰ regarding a dispute over unilateral trade measures to

⁴⁶ Council of Europe website, Non-Governmental Organisations, <http://www.coe.int/T/E/NGO/public/Presentation/>

⁴⁷ For a detailed analysis of associations’ intervention possibilities before the European Court of Human Rights, see O. De Schutter, “Sur l’émergence de la société civile en droit international : le rôle des associations devant la Cour européenne des droits de l’homme,” (On the emergence of civil society in international law: the role of associations before the European Court of Human Rights) *European Journal of International Law*, 1996, p. 372 and following.

⁴⁸ For more details on this procedure, see M. Déjeant-Pons, « La Convention de Berne relative à la conservation de la vie sauvage et du milieu naturel en Europe », in *Vers l’application renforcée du droit international de l’environnement/Towards strengthening application of international environmental law*, Frison-Roche, Paris, 1999, pp. 58-73.

⁴⁹ For more information on this subject, see Chapter 9 of the Dispute Settlement System Training Module on http://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/signin_e.htm

⁵⁰ Appellate Body Report, United States – Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/AB/R, adopted 6 November 1998, DSR 1998: VII, 2755, § 105 to 108.

protect the environment. The same possibility is provided for by the Appellate Body, which deems itself authorized to take into consideration the information it deems relevant and useful to rule on the appeal.⁵¹ However, WTO bodies have no *obligation* to accept and take into consideration these briefs.

Criticisms of the role of the NGOs

52. The role of the NGOs is not always exempt from criticism and some of their characteristics make their participation more controversial. The main objections raised in the debate are the following.

53. As already mentioned, some governments maintain that the NGOs lack representativeness and that they alone are best placed to represent public opinion since they have been elected. These governments consequently argue that there is no need for an alternative source of public representation. Moreover, although this is a minority opinion, some States continue to believe that they alone have the right to be represented and negotiate on the international scene.

54. Another criticism of NGOs is that they are not representative enough of Southern inhabitants. Being active on the international scene requires specific skills and a high level of mobility and good language skills, particularly in English. The lack of or poor participation by Southern NGOs is therefore liable to threaten the legitimacy of civil society. The fact that the financial resources of the most active NGOs on the international scene come mainly from the North is also an argument put forward by certain governments to contest their legitimacy as representatives of international civil society.⁵²

55. The truly international nature of NGO work is sometimes questioned from the point of view of the way they operate. A study or resolution is international when it is the result of collective and international consultations. The intergovernmental institutions have the advantage of having representatives from many different countries in their administrations, which in itself is likely to guarantee the international nature of their work. NGOs often do not have such an advantage.⁵³

56. Last but not least, the huge number of organizations and interests defended can also give reason for criticism, since this sometimes gives rise to duplication and competition resulting in rivalries between NGOs defending the same cause, which can undermine the credibility of their action.

Conclusion: Non-governmental players as a source of innovation

57. The analysis of the variety of roles played by civil society players in the development and implementation of international environmental policies shows that these players – especially international, national and even local non-governmental organizations – actively contribute to the emergence, development and effectiveness of public policies at all levels and are a real source of inspiration, political mobilization and innovation for governmental and intergovernmental practices. Since the early 1990s, awareness has grown of the role that can be played by non-governmental players other than NGOs, as established by the virtual institutionalization of the “major groups” identified in Rio. The recent Cardoso panel report on UN relations with civil society confirms the move underway towards an express recognition of the many different “stakeholders” in global governance, as much in the environmental and sustainable development fields as in other sectors where decision-making processes have traditionally been dominated, if not monopolized by national governments and their representatives. Yet aside from a few ad-hoc and ultimately rather symbolic measures, this recognition has not yet necessarily found concrete expression in an extensive reform of the intergovernmental organizations’ institutional rules and practices. In the following, this report will study these rules and practices and the advisability and feasibility of such a reform with a view to creating a United Nations Environment Organization.

⁵¹ Appellate Body Report, United States – Lead and Bismuth II: Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom, WT/DS138/AB/R, adopted 7 June 2000, DSR 2000: V, 2601, § 42.

⁵² Lisa Jordan, “Civil Society’s Role in Global Policymaking,” *Alliance*, March 2000.

⁵³ G.P. Speeckaert, “Les fonctions, les methodes et la valeur du travail international non gouvernemental” (Functions, methods and value of international non-governmental work), Conference given to the French Committee of Non-Governmental Organizations in Paris on 18 January 1955, *L’avenir des organisations non gouvernementales* (The future of non-governmental organizations), Union of International Associations, Brussels, 1956, pp. 39-40.

4. Existing United Nations practices and references

Practices in the main bodies established by the United Nations Charter

General Assembly and subsidiary body practice

58. On the whole, the General Assembly and its main committees increasingly include NGOs in their deliberations. They do so informally by means of round tables and discussion groups and formally with invitations to special sessions and conferences organized under their auspices.

NGO PARTICIPATION IN THE GENERAL ASSEMBLY ITSELF

59. Unlike the Economic and Social Council (ECOSOC), NGOs have no consultative status within the General Assembly (GA) itself. The Charter only mentions such a status in its provisions on ECOSOC (see below).

60. Yet discussions on NGO participation in GA work are underway prompted, among other things, by an Economic and Social Council Decision of 25 July 1996⁵⁴ recommending that the GA examine the question of NGO participation in all areas of UN work. Following this decision, the GA called upon the Secretary-General in Decision 52/453 to prepare a report on existing arrangements and practices for NGOs, and requested the Secretary-General in Decision 53/452 to seek the views of the Member States, specialized agencies, observers and intergovernmental organizations as well as the views of the non-governmental organizations on his report.⁵⁵ The question of NGO participation in the GA was further debated at a UN Civil Society Outreach Symposium with the NGOs in 2001.⁵⁶

61. Discussions were recently taken up again when the conclusions of the Panel of Eminent Persons headed by F.H. Cardoso were presented to the Secretary-General on 11 June 2004. This report analyzes, among other things, the need to “recognize the contribution others [than States] can make to General Assembly processes”. It recognizes the few participation possibilities that GA plenary meetings offer to stakeholders other than Member States due to their highly official nature, and affirms the need to reform the way the Assembly is run. The report also states that, “there is little logic for the United Nations to recognize civil society input into the Economic and Social Council but resist a similar input to the General Assembly committees that discuss the same subjects.”⁵⁷ In his report dated 13 September 2004⁵⁸ in response to the Cardoso report, Kofi Annan shared the same point of view, considering that there was nothing in Article 71 of the Charter to preclude the General Assembly from inviting NGOs to participate in its sessions and its work and that there is considerable merit in opening the regular work of the Assembly to increased participation by accredited NGOs. He suggested that one option could be to start with NGO accreditation to the main committees, leaving for consideration at a subsequent stage the question of accreditation to the plenary meetings. As regards consultations with NGOs, the Secretary-General proposed instituting the practice of “interactive” hearings between Member States and NGO representatives before General Assembly meetings.

⁵⁴ ECOSOC, Decision 1996/297 of 25 July 1996.

⁵⁵ A background paper states that, although the first report (A/53/170) was generally in favour of strengthening cooperation between the NGOs and the United Nations bodies, it was rather disappointing on the subject of participation in GA work. Although it proposed that the ECOSOC-accredited NGOs should have access to documents, it suggested that they should be allowed to attend meetings only where space was available. This paper also says that the second report requested by the GA was similarly unsatisfactory in that it simply listed the views and recommendations of the different stakeholders. “Background Paper for the Secretary-General’s Panel of Eminent Persons on UN Relations with Civil Society”, May 2003.

⁵⁶ See Report of the UN Civil Society Outreach Symposium, United Nations, New York, 2001.

⁵⁷ Report of the Panel of Eminent Persons on United Nations-Civil Society Relations, 11 June 2004, Doc. A/58/817, p. 44.

⁵⁸ Report of the Secretary-General in response to the report of the Panel of Eminent Persons on United Nations-Civil Society Relations, Doc. A/59/354, 13 September 2004, p. 7.

NGO PARTICIPATION IN GENERAL ASSEMBLY SUBSIDIARY BODIES AND CONFERENCES HELD AT ITS INITIATIVE

62. Such participation is not only temporary, but moreover organized in an ad-hoc and variable manner. Deadlines and formalities vary from one conference or special session to the next. Accreditation criteria are determined by a resolution of the GA or preparatory committee set up by the GA, which lays down the rules for the conference or special session in question. The Secretariat checks the conformity of accreditation applications with the criteria set by the ad-hoc resolution and then sends them to the governments for final approval.

- The United Nations Conference on the Human Environment (Stockholm, June 1972)

63. A background paper drawn up by the United Nations secretariat for the Cardoso panel members states that, “NGO participation in the 1972 Conference on the Human Environment (Stockholm) was in many ways as much of a turning point in UN-CS relations as its Rio counterpart 20 years later.”⁵⁹ In fact, right from the first resolution on convening the Stockholm conference, the GA declared that it was “aware of the important work being done on the problems of the human environment by [...] non-governmental organizations” and requested the Secretary-General to “draw on contributions from appropriate [...] non-governmental organizations” for a report on preparing for the conference.⁶⁰

64. Recognition of the NGOs’ important role was confirmed in subsequent resolutions to define preparatory process procedures and in the practice of the Preparatory Committee set up by the GA. In 1969, the GA confirmed the request to the Secretary-General to “draw on contributions from appropriate [...] non-governmental organizations” and expressly invited the “non-governmental organizations concerned to lend every possible assistance in the preparations for the Conference.”⁶¹ Following the work of the Preparatory Committee, which stated at its very first meeting that, “It looked forward to their [the NGOs] active cooperation in the preparatory work”⁶², the GA requested the Secretary-General to invite the NGOs “to be represented by observers at the Conference on the basis of the criteria recommended by the Preparatory Committee.”⁶³ These criteria were recommended by the Committee on a proposal from the Secretary-General. They provided that not only the international NGOs with ECOSOC consultative status and those on its “Roster” should be invited to take part in the Conference, but also that “*other NGOs of genuinely international character*” should be invited provided that the Secretary-General was satisfied that they were “*directly concerned with the subject matter of the Conference*” and could contribute to the achievement of its objectives.⁶⁴ In keeping with the scope of their specific responsibilities, the invited NGOs were broken down into two categories with different access rights to the conference’s and committees’ plenary meetings.

65. The conference’s rules of procedure granted the invited NGO observers the right to speak on issues within their competence, subject to approval from the body concerned.⁶⁵ Each NGO invited to take part in the Conference had two seats in each of the meeting rooms.⁶⁶ In addition to these formal participation possibilities for certain international NGOs, the Preparatory Committee, in association with the host country, also made arrangements for other civil society representatives to meet in Stockholm alongside the conference in an open, informal Environment Forum whose management was assigned to two Swedish NGOs.⁶⁷

66. Hence, right from the outset of the development of international environmental policies at the UN, the GA decided to depart somewhat from ECOSOC’s general rules on NGO “consultation” in the interest of promoting broader participation by civil society, seen as important in supporting the emergence and legitimacy of these policies. However, the involvement of civil society was envisaged within the confines of the classic NGO

⁵⁹ *UN System and Civil Society - An Inventory and Analysis of Practices*, background paper for the Secretary-General’s Panel Of Eminent Persons on United Nations Relations with Civil Society, New York, May 2003.

⁶⁰ Resolution 2398 (XXIII) of 3 December 1968.

⁶¹ Resolution 2581 (XXIV) of 15 December 1969, §§ 6 *in fine* & 8.

⁶² Doc. A/CONF.48/PC/6, 6 April 1970, p. 3, § 3.

⁶³ Resolution 2850 (XXVI) of 20 December 1971, § 5.

⁶⁴ Report from the Secretary-General, Doc. A/CONF.48/PC.11, 30 July 1971, p. 72, § 245 (our italics).

⁶⁵ Doc. A/CONF.48/PC.13, Annex IV, Art. 59

⁶⁶ Doc. A/CONF.48/PC/17, 15 March 1972, p. 24, § 96.

⁶⁷ Doc. A/CONF.48/PC/15, 14 February 1972, p. 29, § 120-121.

definition applied by ECOSOC, which made no formal distinction between the different types of non-governmental players. By the time the Rio conference came round twenty years later, the perception of civil society and UN practices had changed considerably.

- The United Nations Conference on Environment and Development (Rio de Janeiro, June 1992)⁶⁸

67. Accreditation and attendance at meetings: At its second session, the UNCED Preparatory Committee decided that both NGOs with ECOSOC consultative status and other NGOs could apply to the Conference for accreditation. In the case of already-accredited NGOs, no new information was necessary. These NGOs were merely required to express their interest to participate to the Secretariat. The NGOs not yet accredited needed to provide information on their relevance to and competence in the items on the UNCED agenda.

68. It was then the Secretariat's responsibility to evaluate the applications and recommend a list of NGOs for accreditation to the Preparatory Committee, which was to be made available at the beginning of each session. The Secretariat had to explain the reasons for any decision to omit an NGO from the list. The Preparatory Committee had to take a decision on accreditation within 24 hours. If this deadline was extended, interim accreditation was granted until a decision had been taken. The Preparatory Committee accredited a total of 1,378 NGOs by consensus, with only three cases of refusal for accreditation. The GA subsequently decided, in December 1991, that all NGOs that had been accredited to the Preparatory Committee were to be automatically invited to the Conference itself.

69. Active participation in the meetings: Relevant NGOs and NGOs in consultative status with ECOSOC were entitled to make oral statements, where appropriate through spokespersons if the number of requested statements was too high. These statements could be made at the discretion of the Chairman and with the consent of the Committee or the Working Group concerned.

70. At its fourth session, the Preparatory Committee decided on the Conference Rules of Procedure, according to which NGO representatives were entitled to attend the Conference meetings as observers. They were authorized to speak upon the invitation of the presiding officer and at the approval of the working group concerned.

71. Submission and distribution of documents and dissemination of information: The NGOs had the possibility of distributing written documents at both the Preparatory Committee meetings and the Conference.

72. Note that, in addition to the NGOs' acknowledged role, the Rio preparatory process also emphasized the contribution and participation of representatives of indigenous people and national liberation movements.

- The World Summit on Sustainable Development (Johannesburg, August-September 2002)

73. In Resolution 55/199, the GA asked the Commission on Sustainable Development (CSD), acting as the preparatory committee for the World Summit, to consider the conditions to be met by relevant NGOs not in consultative status with ECOSOC to take part in the preparatory process and the Summit. Decision 2001/PC/3 stipulating the arrangements for the accreditation of non-governmental organizations and other relevant major groups for the World Summit on Sustainable Development and their participation in the preparatory process defined these different participation modalities.⁶⁹

74. Accreditation and attendance at meetings: Both NGOs with ECOSOC consultative status and other NGOs could be accredited either after having informed the Secretariat and registering or after making an application.

⁶⁸ "Reference document on the participation of civil society in United Nations conferences and special sessions of the General Assembly during the 1990s", prepared by the Office of the President of the Millennium Assembly, 55th session of the United Nations General Assembly, Version 1 August 2001, pp. 8-17. See also Michael G. Schechter, "Making meaningful UN-sponsored world conferences of the 1990s: NGOs to the rescue?", in Michael G. Schechter (ed.), *United Nations Sponsored World Conferences: Focus on Impact and Follow-up*, United Nations University Press, Tokyo/New York/Paris, 2001, p. 184 and following.

⁶⁹ Decision contained in the "Report of the Commission on Sustainable Development acting as the preparatory committee for the World Summit on Sustainable Development", organisational session, 30 April-2 May 2001, Doc. A/56/19.

75. Accreditation applications had to be presented to the Secretariat four weeks at the latest before the start of each Preparatory Committee meeting. The Secretariat, in association with other relevant bodies, decided on the relevance of the NGO's activities and its competence in the field. It then recommended the organization for accreditation to the Preparatory Committee. Once accredited to a Preparatory Committee meeting, the NGO was entitled to take part in all the subsequent meetings and the Summit itself.

76. Active participation in the meetings, submission and distribution of documents and dissemination of information: The modalities for participation in the Preparatory Committee meetings had to be distinguished from those for the Summit itself.

77. As regards the modalities for participation in the Preparatory Committee, the major accredited groups, formed where appropriate into committees or coalitions depending on the number of applications for such, could present a brief statement. They could also, at their own expense, produce written reports that were published as official documents if they complied with the UN rules and procedures in effect. The possibility was provided for consultative meetings between stakeholders, as was the possibility for them to hold various information meetings alongside the Summit to exchange points of view with the governments.

78. As regards the modalities for participation in the Summit, the accredited groups had access to the meeting place, although arrangements had been made for the possibility of limiting this access for security reasons. A reduced, but representative sample of the major groups was invited to speak at the plenary session following the government representatives' statements. Provision was also made for a brief debate between the stakeholders at the World Summit along with other activities such as round tables on specific issues between stakeholders and governments. To this end, the plenary sessions in the first week of the Summit were organized in the form of multi-stakeholder dialogues in keeping with a formula developed by the CSD.

Economic and Social Council and subsidiary body practice

79. The Economic and Social Council (ECOSOC) is the only major UN body to expressly recognize consultative status for NGOs. This principle is laid down in Article 71 of the United Nations Charter.⁷⁰ Council Resolution 1996/31⁷¹, which updates Resolution 288 B(X) and Resolution 1296 (XLIV)⁷², establishes the practical modalities for such consultation.⁷³

80. Resolution 1996/31 stipulates that the following conditions must be met for an NGO to be attributed consultative status: the NGO need no longer necessarily be international, but may now be national, subregional or international (Art. 4); it must be concerned with matters falling within the competence of the Economic and Social Council and its subsidiary bodies (Art. 1); the organization's aims and purposes must conform with the principles of the Charter of the United Nations (Art. 2); the NGO must undertake to support the work of the UN (Art. 3), be of recognized standing within the particular field of its competence or be of a representative character (Art. 9), and have a democratic decision-making process (Art. 10); and the organization's basic resources must be derived mainly from contributions of its affiliates (Art. 13). In addition, NGOs with general and special consultative status are bound to submit a brief report on their contributions to UN work to the Council Committee on Non-Governmental Organizations every four years (Art. 61 (c)).⁷⁴

⁷⁰ Article 71: "The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its 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."

⁷¹ ECOSOC, Resolution 1996/31 of 25 July 1996.

⁷² ECOSOC, Resolution 288 B(X) of 27 February 1950, "Review of Consultative Arrangements with Non-Governmental Organizations", § 8, as amended by Resolution 1296 (XLIV) of 23 May 1968, "Arrangements for Consultation with Non-Governmental Organizations", § 7.

⁷³ Among the main changes made by this Resolution is the possibility for national, regional and sub-regional NGOs to apply for consultative status (Art. 4), official recognition that NGOs without ECOSOC consultative status can also take part in international conferences (Art. 42), and recognition of the need to further encourage Southern NGOs to take part in Council work (Art. 5, 6 & 7).

⁷⁴ Resolution 1996/31, Part IX. See also, "Guidelines for submission of quadrennial reports for non-governmental organizations in general and special consultative status with the Economic and Social Council", on <http://www.un.org/esa/coordination/ngo/>

81. Accreditation procedure and attendance at meetings:⁷⁵ The Economic and Social Council Committee on NGOs, which comprises 19 UN Member States meeting annually (Art. 61 (b)), receives NGO accreditation applications and recommends to the Council which organizations should be granted one of the three stipulated categories (see below). The Council then makes a unanimous decision.

82. Recognition of consultative status gives the NGOs a range of privileges, which depend mainly on the category in which they have been placed. There are three categories:

- NGOs granted general consultative status, defined as organizations concerned with most of the activities of ECOSOC and its subsidiary bodies;
- NGOs granted special consultative status, defined as those which have a special competence in, and are concerned specifically with, only a few of the fields of activity covered by ECOSOC and its subsidiary bodies;
- NGOs included in the Roster, which are those that can occasionally, on matters within their sphere of competence, make useful contributions to the work of ECOSOC, its subsidiary bodies or other UN bodies, or those in consultative status or working in a similar capacity with a specialized institution or body of the UN.

83. The consultation modalities and formalities required for this status differ depending on the category in which the NGO is placed and whether its consultations are with ECOSOC or with its commissions and other subsidiary bodies.

84. As regards consultations with the Council itself, in general, all the organizations, regardless of their category, are sent ECOSOC's provisional agenda. However, only organizations with general consultative status can propose placing an item of special interest to them on the agenda. The NGOs may appoint observers to attend public sessions of the Council and its subsidiary bodies. Likewise, they may, subject to compliance with certain rules, issue written observations of interest to the Council's work. Only the organizations with general consultative status can speak in session.

The following table summarizes the rules in effect⁷⁶

NGO status, rights and obligations	General	Special	Roster
Relevance to the work of ECOSOC	All areas	Some areas	Limited
Are in consultative status with ECOSOC	Yes	Yes	Yes
Attend UN meetings	Yes	Yes	Yes
Designate UN representatives	Yes	Yes	Yes
Invited to UN International Conferences	Yes	Yes	Yes
Propose items for ECOSOC agenda	Yes	No	No
Circulate statements at ECOSOC meetings	2,000 words	500 words	No
Can speak at ECOSOC	Yes	No	No
Circulate statements at ECOSOC subsidiary bodies' meetings	2,000 words	1,500 words	No
Can speak at ECOSOC subsidiary bodies' meetings	Yes	Yes	No
Must submit quadrennial reports	Yes	Yes	No

85. There are currently 2,531 NGOs in consultative status with ECOSOC.⁷⁷

⁷⁵ NGO-related frequently asked questions, <http://www.org/esa/coordination/ngo/>

⁷⁶ This table can be found in the Economic and Social Council website's NGO section at the following address: <http://www.un.org/esa/coordination/ngo/>

⁷⁷ NGO-related frequently asked questions, Economic and Social Council website, <http://www.un.org/esa/coordination/ngo/>

86. Economic and Social Council subsidiary bodies: The rules regarding consultations with ECOSOC commissions and other subsidiary bodies are contained in Part V (Consultation with Commissions and other Subsidiary Organs of the Council) of the abovementioned Resolution 1996/31 and in the Rules of Procedure of the Economic and Social Council technical commissions (Section XIII – Consultation with Non-Governmental Organizations and Representation of these Organizations).

87. The meeting agenda rules are the same, subject to certain provisions, as those applicable to the Council itself. The NGOs may also designate observers to attend meetings of the commissions and their subsidiary bodies, with the particularity for NGOs on the Roster that observers may only attend when the session is discussing matters within their field of competence. The same rules on written statements apply as for consultations with the Council. Yet the rules differ for speaking, where a distinction is made between the organizations in general and special consultative status (for which either a commission or another subsidiary group or the organization itself can ask to be consulted) and the organizations on the Roster, which are consulted only on request by a commission or other subsidiary body. Last but not least, a commission or other subsidiary body may ask an organization to undertake certain studies on its behalf.

88. These rules apply in principle to all the ECOSOC commissions and subsidiary bodies, especially as regards NGO participation in the work of the Commission on Human Rights (CHR), one of the Council's subsidiary bodies in which NGOs have expressed a particular interest in becoming involved.

89. However, different rules have been established for the Commission on Sustainable Development (CSD). The CSD was created in December 1992 to provide effective follow-up to the United Nations Conference on Environment and Development (UNCED). As an ECOSOC subsidiary body, the rules governing its meetings should, in principle, have been the same as those for the other subsidiary bodies, rules that provided merely for consultative status for the NGOs and did not therefore correspond to the aims of broadbased participation in the decision-making processes set in Agenda 21.

90. The GA Resolution that established the CSD as an ECOSOC technical commission stipulates that it must enable the NGOs to participate effectively in its work and contribute to its deliberations within the limits of their area of competence.⁷⁸ The procedural arrangements for the representation of and consultation with NGOs in the CSD were laid down in a later ECOSOC decision, Decision 1993/215. This Decision stipulates that an NGO may attend meetings of the Commission and its subsidiary bodies regardless of whether it is placed in the general, special or Roster category. It may also present written statements, at its own expense, and speak at meetings. The NGOs speak through a joint spokesperson if their number is too high, and always at the discretion of the meeting's Chairperson. They have no negotiating role whatsoever in these meetings. They may also be consulted by the meeting either directly or via a committee set up for this purpose. This Decision requires the Commission to encourage equitable representation of developing country NGOs and a balance between environmental NGOs and development NGOs.

Towards one-stop, depoliticized accreditation?

91. In its report of 11 June 2004, the Panel of Eminent Persons proposed merging all the existing UN accreditation procedures into a single mechanism under the authority of the General Assembly. It further proposed establishing a more thorough initial Secretariat review of accreditation applications and lessening the prominence of intergovernmental review in order to depoliticize the current process. This method is supposed to be faster, more merit-based and more transparent: the secretariats would have to give reasons for their recommendations. However, Member States would retain a final say on granting accreditations. The panel also suggested that, by reducing the time demands of intergovernmental deliberation on accreditation applications, one of the GA's subsidiary bodies (possibly the General Committee) could assume this role alongside its current functions, discussing applications only when objections were raised by Member States.⁷⁹

United Nations Environment Programme (UNEP) practice

92. Civil society – or at least NGO – participation in international environmental policy forms part of the roles and responsibilities defined at the 1972 Stockholm Conference and conferred upon UNEP by GA Resolution 2997 (XXVII) of 15 December 1972. This resolution invites NGOs "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

⁷⁸ Resolution 47/191 of 22 December 1992, § 7(b).

⁷⁹ Cardoso Report, *op. cit.*, p. 11 and 56 and following.

the largest possible degree of co-operation and co-ordination,”⁸⁰ and this in compliance with Recommendation 97 of the Stockholm Action Plan, which asked UNEP to “provide means of stimulating active participation by the citizens, and of eliciting interest and contributions from non-governmental organizations for the preservation and development of the environment.”

93. Point 69 of the UNEP Governing Council (GC) rules of procedure, adopted by UNEP at its second session in 1974,⁸¹ consequently lays down the rules applicable to NGO participation in its meetings. These rules, which are still in effect today, can be summed up as follows.

94. Attendance at meetings: International NGOs with an interest in the environment, as referred to in section IV, paragraph 5, of GA Resolution 2997 (XXVII), may designate observers to sit at public meetings of the Governing Council and its subsidiary organs.

95. Active participation in meetings: International NGOs may speak on matters within the scope of their activities. However, they can only do so upon the invitation of the President or Chairman and subject to the approval of the Governing Council or the subsidiary organ concerned. These NGOs may also, upon the invitation of the President or Chairman, make an additional statement for clarification purposes during a discussion on an item proposed by the said NGOs.

96. Submission and distribution of documents and dissemination of information: International NGOs may submit written statements on matters within the scope of their activities and related to items on the agenda of the Governing Council or its subsidiary organs. The UNEP Secretariat is then responsible for circulating these documents within UNEP and placing them on the organization's website. This said, these written documents must satisfy a certain number of conditions: be written in one of the official languages, be provided at least eight weeks before the meeting in question and in sufficient quantities, have taken into consideration the comments made, where appropriate, by the Executive Director and not exceed a total of 2,000 words.

97. Written additions to official UNEP documentation: In keeping with point 9.3 of the Rules of Procedure, the provisional agenda and preparatory documents for UNEP Governing Council meetings are sent, in their draft version, to accredited international NGOs at the same time as they are sent to the Committee of Permanent Representatives. Accredited international NGOs may “suggest” placing items on the Governing Council's provisional agenda. They may also make written observations about these documents regarding matters related to their competence and related to items on the agenda of the Governing Council or its subsidiary organs. Pursuant to a subsequent Governing Council decision (SS.VII.15), the Executive Director circulates such information so that it may be taken into consideration by the Committee of Permanent Representatives.

98. The special links formed between UNEP and NGOs from its inception have taken shape in different ways. For example, an NGO Section was created within the UNEP secretariat in 1973 and, in 1974, an independent coalition of NGOs was set up as the Environment Liaison Centre International to connect civil society groups around the world with UNEP's work. In 1992, the Agenda 21 programme adopted at the Rio Conference specifically requested UNEP to concentrate on “action in the area of environmental protection through collaboration with the general public [and] non-governmental entities.”⁸²

99. The UNEP Governing Council's successive decisions have, on several occasions, underscored the need to work with the greatest possible participation of civil society. One of these decisions is Decision 18/4 adopted in May 1995. It calls on UNEP to develop a policy and appropriate mechanisms for cooperation with the NGOs. In 1999, UNEP restructured its Secretariat, creating a new Civil Society & NGOs Unit within the Division of Policy Development and Law. In 2000, the Malmö Ministerial Declaration recognized the importance of civil society as an actor of international environmental policy alongside governments and the private sector. And in 2001, Decision 21/19 requested the Executive Director to submit a draft strategy for the active engagement of civil society, the private sector and other major groups in UNEP work to the Governing Council at its 7th special session in 2002. Decision SS.VII.5 adopted by the UNEP GC special session on international environmental governance in February 2002 asked UNEP to further develop, and revise as necessary, the strategy for engaging civil society in UNEP activities, and to consider the best way to include the views of civil society in the

⁸⁰ Resolution 2997 (XXVII) of 15 December 1972, § IV.5.

⁸¹ Decision 19(II) of 11 March 1974.

⁸² Agenda 21, § 38.22(g)

proceedings of the Governing Council and the Global Ministerial Environment Forum. This Decision also requested that a “regionally balanced and representative” global civil society forum be convened annually in conjunction with the GC sessions.

100. Following these decisions, recent years have seen an increased level of activity, in cooperation with civil society, on how UNEP should involve civil society and the private sector. Lastly, in its Decision 22/18 adopted in February 2003, the GC explicitly envisaged the possibility of amending its Rules of Procedure (and especially abovementioned Rule 69) on the participation of civil society organizations in UNEP work. However, negotiations on revising this arrangement are still in progress. At its last session in 2003, the GC invited the ad-hoc working group to pursue its work on this matter, taking account of recent developments in the relations between the UN as a whole and civil society.

101. Without waiting for a possible revision of its formal rules, UNEP has already developed a strategic plan⁸³ to enhance the engagement of civil society in its work and has recently published a guide for civil society organizations⁸⁴ in which it calls these organizations “natural allies”. Since 2000, the UNEP Secretariat has held a two-day forum before each GC meeting to inform civil society organizations of the items on the agenda and enable these organizations to coordinate their positions. This Global Forum is preceded by regional civil society meetings held by the regional UNEP offices. In 2004, the Civil Society & NGOs Unit was renamed the Major Groups and Stakeholders Branch and placed under the authority of a former minister from European Green circles.

102. It is interesting to look at the proposals in the Executive Director’s strategic note and how UNEP envisages the future evolution of its relations with civil society, which is presented in the guide published in 2004. Note, first of all, UNEP’s definition of the notion of “civil society organizations” (CSOs), which is deliberately broader than its definition of NGOs: “UNEP seeks to engage the full range of non-governmental actors: local, national or international; *for-profit or non-profit*; and advocacy, research, or *business* oriented. [...] *the term ‘civil society’ used throughout is inclusive and should be understood in the broadest sense possible.* In particular, it encompasses all the Major Groups defined at UNCED.”⁸⁵ The private sector is therefore seen as a fully-fledged part of civil society, whereas the Cardoso report tends to differentiate the private sector from civil society, albeit considering both of them to be select United Nations partners. UNEP’s particular approach derives from its GC’s will to include the private sector in the civil society engagement strategy, even though the Secretariat appears to be aware of certain consequent conceptual problems and the impossibility of dealing with all CSOs on the same footing.⁸⁶ In UNEP’s institutional practice, cooperation with the private sector also comes under a different division (Division of Technology, Industry and Economics (DTIE) based in Paris) to that for other stakeholders. This division’s activities are moreover largely co-financed by the private sector itself.⁸⁷ The DTIE holds an annual consultative meeting in Paris with organizations representing the business world, to which trade union representatives are also invited. In its strategic note, UNEP states its will to be “equitable” in its relations with the different elements of civil society.⁸⁸ Yet in her foreword to the *Natural Allies* guide, Vandana Shiva, an eminent representative of Southern civil society, laments the fact that, after Rio, “citizen leadership was set aside for corporate leadership.”⁸⁹

103. UNEP has set up an original procedure to select 100-150 civil society representatives invited to attend the annual Global Forum. This procedure has been defined to ensure a “balanced representation” of the different stakeholders. Whereas international NGOs accredited to the GC are invited directly by the Secretariat, regional CSO representatives are selected by the CSOs themselves at regional meetings preceding the Global Forum. The private sector and trade union representatives are selected in cooperation with the DTIE and the youth organization representatives are selected by a Youth Advisory Council made up of these organizations.

⁸³ “Enhancing civil society engagement in the work of the United Nations Environment Programme: Strategy Paper”, Note by the Executive Director, Doc. UNEP/GC.22/INF/13, 21 November 2002.

⁸⁴ UNEP, *Natural Allies: UNEP and Civil Society*, Doc. DPD-0528-NA, Nairobi, 2004, 84 pp.

⁸⁵ *Ibid.*, p. 12 (our italics).

⁸⁶ See Doc. UNEP/GC.22/INF/13, *op. cit.*, pp. 4-5.

⁸⁷ *Ibid.*, p. 14.

⁸⁸ *Ibid.*

⁸⁹ UNEP, *Natural Allies*, *op. cit.*, p 3.

The strategic note envisages setting up a small, standing Civil Society Advisory Group reporting directly to UNEP's Executive Director.⁹⁰

⁹⁰ Doc. UNEP/GC.22/INF/13, *op. cit.*, p 11.

5. The practice of specialized agencies with expertise in the environment and certain other fields associated with sustainable development.

The International Labour Organization (ILO)

104. The ILO is a specialized UN agency, which develops labour standards based on a tripartite structure made up of representatives of governments, employers and workers.

105. Stakeholders have a rather particular status in this organization in that non-State stakeholders, i.e. the employers' and workers' organizations, can also participate in ILO work as fully-fledged members of national delegations of the Organization's Member States. This status enables these non-governmental organizations representing the employers' and workers' interests to fully participate in the decision-making process and therefore vote. However, the representatives of these organizations are formally part of a Member State's delegation and must therefore be from this State. The ILO's funding of participation by these non-governmental delegates shows just how valuable it deems their participation to be.⁹¹

106. In addition to the participation of employers' and workers' representatives as members of national delegations, Article 12.3 of the ILO's Constitution also provides for a consultation procedure with "recognized" international NGOs including, alongside the employers' and workers' organizations, organizations of agriculturists and co-operators. The provisions for this participation are laid down in the Standing Orders of the International Labour Conference.

107. There are three categories of NGO entitled to this status:

- 1) NGOs with an important interest in a wide range of the ILO's activities: these NGOs are granted either general or regional consultative status⁹². The organizations that satisfy the "important interest" criterion and have this status are generally industrial and workers' associations.⁹³
- 2) NGOs on the Special List of International NGOs: This List was set up to establish working relations with *international NGOs other than employers' and workers' organizations* that also share the ILO's principles and objectives. The participation of NGOs in this category depends on their demonstrated interest in the ILO's programme of meetings and activities. The fact that an NGO is already in consultative status with ECOSOC or a specialized UN agency is relevant, but does not necessarily mean that it will be included in the Special List. There are currently more than 150 NGOs on the Special List⁹⁴ covering a wide variety of fields such as the promotion of human rights, poverty alleviation, social security and professional rehabilitation.
- 3) NGOs demonstrating their interest to attend ILO meetings: These NGOs must meet the following conditions: 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 Constitution of the ILO and the Declaration of Philadelphia; express a clearly defined interest in at least one of the items on the agenda of the Conference session to which they request to be invited; and submit their invitation requests, in writing, to the Director-General of the International Labour Office at least one month before the opening of the session of the Conference, following which the request is submitted to the ILO Governing Body for a decision if the Director-General is satisfied that the criteria are met.⁹⁵

108. Accreditation and attendance at meetings: As regards accreditation procedure, Article 2.4 of the Standing Orders of the Conference stipulates that NGOs' requests must be made to the Director-General of the

⁹¹ R.G. Sybesma-Knol, *The status of observers in the United Nations*, diss., Leiden, 1981, p. 314.

⁹² There are currently eight NGOs with general consultative status and 16 with regional consultative status.

⁹³ List of NGOs with special general consultative status: <http://www.ilo.org/public/english/comp/civil/ngo/ngogen.htm>

⁹⁴ List of NGOs on the Special List: <http://www.ilo.org/public/english/bureau/exrel/civil/ngo/index.htm>

⁹⁵ Deadline laid down by Article 2.4 of the Standing Orders of the Conference

ILO at least one month before the opening of the session of the Conference. These requests are then referred to the Governing Body for decision. Pursuant to Article 2.3(j) of the Standing Orders, admission to sittings is only granted to NGOs with consultative status and other NGOs that have been invited by the Governing Body to be represented at the Conference.

109. Active participation in meetings and submission and distribution of documents: Pursuant to Article 14.10 of the Standing Orders on Conference meetings and Article 56.9 of these same Standing Orders on committee meetings, the abovementioned NGOs granted admission to the sittings may be granted the right by the President of the meeting in question and in agreement with the Vice-Presidents of the said meeting to make or circulate written statements for the information of the Conference or committee upon matters included in its agenda. If agreement cannot be reached between the President and the Vice-Presidents, the matter is referred to the meeting for decision. These NGOs do not, therefore, have a right of active participation in the deliberations. They may only participate if they are authorized to do so.

110. Voting rights: Aside from the non-governmental delegates with national delegation member status⁹⁶, the other NGO representatives do not have the right to vote.

111. In addition to its abovementioned institutional relations with NGOs, the ILO also cooperates at operational level with many other civil society organizations. Among these are a range of local, national and regional organizations such as professional organizations, cooperatives and village development committees. All these organizations are involved in ILO technical cooperation activities.

112. Note, therefore, that the participation of the “major groups” in the ILO is generally dominated by two of them: industry and workers’ organizations. Some feel that this situation should change to allow for the participation of NGOs representing other elements of civil society.⁹⁷

The United Nations Education, Scientific and Cultural Organization (UNESCO)

113. The official text governing UNESCO relations with non-governmental partners⁹⁸ stipulates that, “Taking into account the non-governmental organization’s own objectives and the type of collaboration that is possible with UNESCO, two main types of relations will be established: the first will involve sustained cooperation both upstream and downstream from UNESCO’s programming and priorities (*formal relations*); the second will consist of a flexible and dynamic partnership in the implementation of UNESCO’s programmes (*operational relations*).”

114. The organizations liable to maintain formal relations with UNESCO include any international organization provided that it, “has not been established by intergovernmental agreement and that its purposes, functions and operation are non-governmental and non-profit-making in character.”

115. The following accreditation conditions must also be fulfilled: the NGO must be engaged in activities in one or more specific fields of UNESCO’s competence, and be able and willing to make an effective contribution to the achievement of its objectives; demonstrate a spirit of cooperation, tolerance and solidarity; have a regular active international membership; have a recognized legal status; have an established headquarters and be governed by democratically adopted statutes; and have been in existence and carrying out activities for at least four years.

116. Among the advantages of the “formal relations” status are the ability to send observers to sessions of the General Conference and its commissions and to make statements on matters within their respective competence in the commissions, committees and subsidiary bodies of the General Conference, with the consent of the presiding officer, and to submit written statements to the Director-General on UNESCO programme matters within their competence. The Director-General communicates the substance of these statements to the Executive Board or, if appropriate, to the General Conference.

⁹⁶ In this regard, Article 4.2 of the ILO Constitution stipulates that if a Member State fails to nominate one of the non-Government delegates whom it is entitled to nominate, the other non-Government delegate shall be allowed to sit and speak at the Conference, but not to vote. Note also that the non-Government delegates are free to vote as they wish and are not bound to support the positions of the Government delegate accompanying them (<http://www.ilo.org/public/english/about/index.htm>).

⁹⁷ S. Oberthür, J. Werksmann *et al.*, *op. cit.*, p. 100

⁹⁸ “Directives concerning UNESCO’s relations with non-governmental organizations,” adopted by the General Conference at its 28th session in 1995 and amended at its 31st session in 2001.

117. Moreover, depending on the structure and purposes of these organizations, the nature of their cooperation with UNESCO and the level of the contribution they can make, these formal relations come under two different categories: “consultative relations” and “associate relations”. These two types of relations bear different advantages.

118. The organizations that have established consultative relations receive, after agreement with the Secretariat, all appropriate documentation relating to the programme activities corresponding to the aims stated in their constitutions; they are consulted by the Director-General on UNESCO’s proposed programmes; they may address plenary meetings of the General Conference on particular matters of major importance that fall within their competence, in accordance with the provisions of the Rules of Procedure of the General Conference; they may be invited by the Director-General to send observers to meetings organized by UNESCO on matters within their competence (or may, if necessary, forward their views in writing); they are invited to attend periodic conferences of non-governmental organizations.

119. The organizations that have established associate relations benefit from all the advantages granted the organizations in consultative relations, with the added possibility of being associated as closely and regularly as possible with the various planning and execution stages of UNESCO’s activities within their own particular field and addressing General Conference plenary meetings in accordance with the provisions of the Rules of Procedure of the General Conference. Framework agreements for cooperation may be concluded for a renewable period of six years with such organizations, setting the joint priorities they and UNESCO undertake to pursue during that period.

120. Moreover, there is the possibility for the Director-General of UNESCO to propose, with regional non-governmental organizations in consultative relations with UNESCO that are “competent, effective and representative” in the regions concerned, the conclusion of cooperation agreements or plans of action “with a view to encouraging the emergence of organizations that are representative of civil society in those regions of the world where such organizations are still weak or isolated, and their inclusion in the network of international cooperation.” This possibility is subject to the same provisions as those that apply to NGOs in associate relations with UNESCO.

121. “Operational” relations are designed to “enable UNESCO to establish and maintain flexible and dynamic partnerships with any organization of civil society that is active in UNESCO’s fields of competence at whatever level, and to benefit from that organization’s operational capacities in the field and its networks for the dissemination of information.” The NGOs concerned may benefit from an exchange of information and documentation on matters of common interest, have access to certain forms of financing⁹⁹ and be invited, in certain circumstances, to attend certain meetings held by UNESCO.

122. Alongside these formal and operational relations, UNESCO has developed a practice of “collective consultations” with NGOs at specially held international and regional conferences to review the state of their cooperation with the Organization, consult them on the main lines of UNESCO’s programmes and facilitate cooperation between organizations with common interests.

The Food and Agriculture Organization of the United Nations (FAO)

123. Article XIII of FAO’s Constitution provides for the possibility for the Organization to cooperate with international organizations and private persons. Rule XVII.3 of the General Rules of the Organization also mentions the possibility for non-governmental organizations to participate in its work. Resolution No. 37, adopted by the FAO Conference at its 7th session in 1953, details FAO’s relations with non-governmental organizations.

124. There are three forms of relations between international NGOs and FAO. The form of these relations depends on the NGO’s sphere of activity and its importance with regard to FAO. The NGOs are hence classed in three separate categories.

125. NGOs with consultative status: In order to be eligible for consultative status, NGOs have to be international in their structure and scope of activity, be sufficiently representative and of a recognized standing in the field of interest in which they operate, be concerned with matters covering a substantial portion of FAO’s

⁹⁹ UNESCO may grant various forms of financial and material contributions to non-governmental organizations likely to make a particularly effective contribution to the achievement of UNESCO’s objectives.

field of activity, have aims and purposes in conformity with the general principles embodied in the Constitution of FAO, have a permanent directing body, and a democratically run structure.

126. The application for accreditation is examined by the Conference, which considers the proposals submitted by the Council at each session. In a year in which there is no Conference session, the Council may itself examine and take a decision on applications for consultative status, subject to review by the Conference at its next session. The following principles guide the granting of consultative status: a) an organization whose primary objectives are related to those of another specialized United Nations agency may only be admitted to consultative status after consultation with such agency, and b) consultative status will not be granted to individual organizations that are members of a larger organization authorized to represent them; and, when such an organization is formed after its member organizations have been admitted to consultative status, they shall cease individually to enjoy consultative status.

127. The advantages of this status can be summed up as follows: possibility of sending observers (without the right to vote) to Conference and Council sessions; receiving all documents bearing on policy or technical questions in advance of the session; circulating its views in writing; speaking before the technical committees of the Conference, but not participating in discussions unless requested by the Chairman; and speaking before the Conference itself, upon request addressed to the Director-General and with the consent of the General Committee of the Conference; participating in experts' meetings, technical conferences and seminars on subjects which fall within its fields of interest; receiving non-confidential documentation and information about coming meetings planned; submitting written statements on programme matters, not exceeding 2,000 words and in one of the official FAO languages, to the Director-General who may communicate them to the Council.

128. The obligations that the organization must fulfil can be summed up as follows: to cooperate fully with FAO for the furtherance of the objectives of the Organization; to coordinate its activities with FAO to avoid duplication and overlapping; for this purpose, to invite a representative of the Director-General to attend and participate in the meetings of its governing bodies, general assemblies and appropriate technical meetings; to contribute to a better knowledge and understanding of FAO's activities; to send FAO its reports and publications; to keep FAO informed of changes in its structure and membership, as well as of important changes in its secretariat.

129. NGOs with specialized consultative status: NGOs must satisfy the same conditions as those for general consultative status, except that they must be concerned with matters covering a particular portion of FAO's field of activity.

130. Accreditation may be granted these organizations at the Director-General's discretion. However, he must inform the Council of his decision and consult with it when he considers it necessary. When several NGOs are active in any field of FAO's activity, in principle only one should be granted specialized consultative status.

131. The advantages granted an organization with this status can be summed up as follows: The advantages are the same as those granted for ordinary consultative status, except that the possibility of sending observers is limited to technical committee meetings and the organization can be provisionally invited, subject to approval by the Conference and Council, to send an observer to Conference and Council sessions. In addition, the organization is entitled to submit memoranda on technical aspects of the FAO programme and to receive appropriate publications.

132. The obligations binding on the organization benefiting from this status are the same as those stipulated for ordinary consultative status.

133. NGOs with liaison status: The same conditions apply, except that the organization must be concerned with matters covering a portion of FAO's field of activity and be in a position to give practical assistance in that field.

134. Accreditation is granted in keeping with the same procedure as that provided for the specialized consultative status.

135. The methods and scope of cooperation between an organization with this status and FAO are determined and agreed by an exchange of correspondence between the organization in question and the Director-General. The Director-General may invite these organizations to send observers to specialized FAO meetings when he is satisfied that such participation may make a significant contribution to the meeting concerned. The advantages and rights of any such observers are determined in the aforementioned exchange of correspondence, but in no case may they exceed those accorded to observers of organizations in specialized consultative status. Moreover, these observers may be invited to Conference and Council sessions if, in the

judgement of the Director-General, there are concrete reasons for inviting them that would forward FAO's technical work.

The World Health Organization (WHO):

136. Several articles in the Constitution¹⁰⁰ mention the possibility of having civil society and, more specifically, NGO representatives take part in the organization's work. Rules 19 and 49 of the Rules of Procedure of the World Health Assembly also provide for the possibility of inviting NGO representatives to Assembly plenary meetings and meetings of its main committees. These representatives may participate without any voting rights in these meetings provided they have been invited to do so by the President or Chairman of the meeting. Rule 4.2 of the Rules of Procedure of the Executive Board also provide for NGO participation in its deliberations on the same conditions as those provided for participation in the Assembly.

137. The following general principles can be summed up from these articles: an organization may only be invited if its responsibilities have a connection with WHO's activities, and the consent of the government concerned is required to be able to invite national NGOs.

138. The principles governing relations between WHO and NGOs are detailed in a Resolution adopted by the World Health Assembly in 1987.¹⁰¹

139. As a general rule, the WHO system defines two sorts of relations: formal or official relations and working or informal relations. All relations begin informally. They may continue as such or it may be decided to step up cooperation and enter into "working relations". These relations generally last two years and lead to "official relations" if cooperation has been positive.

140. As regards formal or official relations: Only international NGOs can apply for these relations. The privileges are as follow: participation in WHO meetings, committees and conferences (§ 6.1.i)¹⁰² and the right to make a statement at these meetings (§ 6.1.i) and to submit memorandums (§ 6.1.iii). However, these privileges are subject to certain conditions. They are based on the principle that NGOs must help WHO accomplish its statutory aim. An NGO must therefore: establish a two-year minimum programme of work and a three-year plan with a WHO technical department, inform WHO as soon as possible in the event of changes of circumstances rendering its application difficult or impossible, and disseminate information on WHO programmes and policies. Admittance is authorized by a formal decision of the WHO Executive Board.

141. As regards working or informal relations: NGO representatives may attend technical meetings, but may not participate in the work of WHO's governing bodies and do not have the possibility of delivering a statement to them.

142. A new policy has been proposed for relations between WHO and the NGOs. The proposal for change is based on the "Review Report. WHO's Interactions with Civil Society and Nongovernmental Organizations."¹⁰³ A summary of and comments on this study can be found in the Director-General's report on policy for relations with NGOs.¹⁰⁴

¹⁰⁰ Especially articles 2(h); 33; 71 and 18(h).

¹⁰¹ Resolution WHA40.25 of 15 May 1987.

¹⁰² Principles Governing Relations with Nongovernmental Organizations, <http://www.who.int/civilsociety/relations/principles/en/>

¹⁰³ Doc. WHO/CSI/2002/WP6, available on request.

¹⁰⁴ Doc. A56/46 of 14 April 2003.

6. Current practices and references in certain non-UN intergovernmental organizations

*The Organization of American States (OAS)*¹⁰⁵

143. In 1971, the OAS Charter adopted standards on cooperative relations between the OAS and “national and international agencies.” Since then, General Assembly resolutions have been added to the relevant articles.

144. Participation methods are laid down by the Guidelines for the Participation of Civil Society Organizations in OAS Activities.¹⁰⁶ These guidelines define a civil society organization as any national or international institution, organization, or entity made up of natural or juridical persons of a nongovernmental nature.

145. Accreditation and attendance at meetings: The application must be made to the Secretary General, who refers it to a Committee on Civil Society Participation in OAS Activities. This Committee examines it and makes such recommendations as it sees fit before submitting it to the Council for a decision. Accredited organizations are then placed on a register. The main criteria for eligibility can be summed up as follows: the organization must “be of recognized standing within its particular field of competence and shall be of a representative nature”; it must have a democratic, transparent and independent structure; and its resources must be obtained primarily from its affiliates or individual members. In addition to these conditions, the Committee should seek to ensure balanced participation by all regions of the American Continent. The Member States also have the possibility of submitting comments, to which the organization may respond, and requesting information from the organizations in question when examining applications to participate.

146. A particularity is provided for as regards participation in OAS conferences: an organization that is not on the register may participate by means of a separate procedure (preliminary review by the Committee and then final decision and, if appropriate, accreditation issued by the committee or working group charged with preparing for the conference).

147. Active participation in meetings: In general, civil society organizations may attend the activities of the OAS, make presentations, provide information, and, at the request of the organs, agencies, and entities of the OAS, provide expert advice. They may also participate in operational activities relating to the design, financing and execution of cooperation programs.

148. Registered civil society organizations may designate representatives to attend public meetings of the Permanent Council, the Inter-American Council for Integral Development (CIDI) and their subsidiary bodies. Attendance by these civil society organization representatives at closed meetings must be authorized by the chair of the meeting in question, in consultation with the participating member states. Registered civil society organizations may present written documents, not exceeding 2,000 words and preferably in two of the official languages of the OAS, on questions that fall within their particular sphere of competence and appear on the meeting’s agenda.

149. The responsibilities of these organizations: By registering, the civil society organization undertakes to: answer inquiries from the organs, agencies and entities of the OAS, provide advisory services to them upon request, disseminate information on OAS activities to its members, and present an annual report on its participation in OAS activities, its financial situation and sources of funding, and the activities planned for the coming year.

150. A procedure is also provided for suspension or cancellation of registration should it be found that the organization has acted in a manner that is inconsistent with the essential aims and principles of the OAS, has failed to make a positive or effective contribution to the work of the OAS, has failed to submit reports for two consecutive years, or has furnished false or inaccurate information.

¹⁰⁵ For more information, see: <http://www.oas.org/consejo/cumbres/civilsociety.asp>

¹⁰⁶ These Guidelines were adopted on 15 December 1999 and are derived from the document [CP/RES.759 (I217/99)]

***The Council of Europe*¹⁰⁷**

151. The Council of Europe recognized the importance of NGOs back in 1952 when it opened up the possibility for NGOs to acquire consultative status. The rules for cooperation have been improved and updated over the years and are now laid down by the Committee of Ministers Resolution (2003)⁸¹⁰⁸, which provides for a “participatory status” for international NGOs (INGOs) with the Council of Europe.

152. Participatory status may be granted to INGOs that: are particularly representative in their field of competence; are represented at European level; are able, through their work, to support the achievement of the closer unity that the Member States of the Council of Europe have set themselves as a goal; are capable of contributing to and participating actively in Council of Europe deliberations and activities; and are able to make known the work of the Council of Europe among European citizens.

153. Attribution of this participatory status implies the following advantages for the INGO in question: the possibility of addressing memoranda to the Secretary General for submission to the committees (committees of governmental experts and other bodies of the Committee of Ministers, committees of the Parliamentary Assembly, committees of the Congress of Local and Regional Authorities of Europe, and the Secretary General) and to the Commissioner for Human Rights; receiving the agenda and public documents of the Parliamentary Assembly; being invited to provide expert advice on Council of Europe policies; being invited to public sittings of the Congress; being invited to activities organized for the INGOs by the Secretariat General; and being invited to attend seminars and conferences of interest to their work. In return, the NGOs granted this status undertake to keep themselves regularly informed of Council of Europe activities and developments in standards; give maximum publicity to the initiatives and achievements of the Council of Europe; furnish it with information, documents and opinions relating to their own field(s) of competence; work to promote the respect and implementation of these standards; report to the Secretary General every four years on their participation in the various Council of Europe bodies, in events organized by the Secretariat General, in meetings of INGO thematic groupings, and on the actions they have undertaken with a view to publicizing the Council of Europe’s work. Failure to comply with these obligations may result in the withdrawal of participatory status.

154. The Council of Europe also has a permanent cooperation structure with the international NGOs. The annual NGO Plenary Conference, to which all NGOs with participatory status are invited, determines the guidelines for action for the year to come and sets the goals for its Liaison Committee. The NGO Liaison Committee liaises with the Secretariat General, monitors sectoral NGO meetings in the various specialist areas, prepares the Plenary Conference and the annual work programme, and encourages the NGOs to cooperate with the Council of Europe and publicize its work.

***The World Trade Organization (WTO)*¹⁰⁹**

155. Non-governmental organizations are expressly mentioned in Article V, § 2¹¹⁰ of the Agreement establishing the WTO, signed in Marrakech in 1994.¹¹¹ On 18 July 1996, the Organization’s General Council further clarified the framework for relations with NGOs by adopting a set of guidelines.¹¹² Among other things, these guidelines recognize “the role NGOs can play to increase the awareness of the public in respect of WTO activities,” and aim to develop interaction between NGOs and the WTO through various means such as the organization of ad-hoc symposia on specific WTO-related issues, informal arrangements, and responding to requests for general information and briefings about the WTO. However, the guidelines also state that, “As a result of extensive discussions, there is currently a broadly held view that it would not be possible for NGOs to

¹⁰⁷ See the Council of Europe website on NGOs: <http://www.coe.int/T/E/NGO/Public/>

¹⁰⁸ Participatory status for international non-governmental organisations with the Council of Europe, adopted by the Committee of Ministers on 19 November 2003 at the 861st meeting of the Ministers’ Deputies

¹⁰⁹ WTO website on NGOs: http://www.wto.org/english/forums_e/ngo_e/ngo_e.htm. See also Rapport d’information déposé par la délégation de l’Assemblée nationale pour l’Union européenne sur la réforme de l’Organisation mondiale du commerce et son lien avec l’architecture des Nations Unies. (Information report by the National Assembly delegation for the European Union on the reform of the WTO and its link with the architecture of the United Nations), Paris, French National Assembly background paper, No. 2477, p. 187 and 188.

¹¹⁰ Art. V.2: “The General Council may make appropriate arrangements for consultation and cooperation with non-governmental organizations concerned with matters related to those of the WTO.”

¹¹¹ Marrakesh Agreement establishing the WTO, signed on 15 April 1994 with entry into force on 1 January 1995.

¹¹² Guidelines for arrangements on relations with Non-Governmental Organizations, adopted by the General Council on 18 July 1996. Doc. WT/L/162.

be directly involved in the work of the WTO or its meetings.” The General Council asserts that this is due to the special character of the WTO, which is both an intergovernmental treaty of rights and obligations among its Members and a forum for negotiations.

156. The effort to involve NGOs has focused mainly on attendance at Ministerial Conferences, for which WTO members have made special arrangements. For example, for the Singapore Ministerial Conference, it was decided that NGOs would be allowed to attend the Plenary Sessions of the Conference and that NGO applications to register would be accepted by the WTO Secretariat on the basis of Article V.2, i.e. the Secretariat would accept only those NGOs “concerned with matters related to those of the WTO.” Aside from this possibility of attending Conference plenary sessions, there are no possibilities for NGOs to obtain participatory status for the meetings of the councils and committees that manage WTO deliberations on a day-to-day basis.¹¹³

157. Outside of the Ministerial Conferences, subject-specific symposia have also provided NGOs with an opportunity to hold informal discussions with representatives of WTO member countries. In July 1998, the Director-General announced new steps to enhance WTO dialogue with NGOs. One of these initiatives is the creation of a special NGO Section on the WTO website and the circulation of a monthly list of NGO position papers received by the Secretariat.

158. It is also worth noting that, as already mentioned above, WTO dispute settlement case-law grants NGOs a certain role, by allowing the bodies in charge of examining the disputes to take into consideration information provided by NGOs in their capacity as *amici curiae*.

¹¹³ S. Oberthür, J. Werksmann *et al. op. cit.*, p. 82

7. Existing practices and references in certain multilateral environmental conventions

159. Within the limits of our brief, it is impossible to make an in-depth comparative analysis of practices in the bodies managing the many multilateral environmental conventions currently in existence. We have therefore decided to analyze just two global conventions and two regional conventions whose practices are of particular interest, without necessarily being representative of the wide range of practices that exist. For a more detailed analysis, readers are invited to refer to the more comprehensive studies by other authors.¹¹⁴

Global conventions

United Nations Framework Convention on Climate Change (UNFCCC)

160. NGO participation in the work of the Conference of the Parties (COP) and its subsidiary bodies is explicitly provided for in Article 7, § 6 of the UNFCCC, which allows for, “*Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by the Convention*” and which makes the relevant request to be admitted to attend sessions as an observer, unless at least one-third of the contracting parties object.

161. The draft Rules of Procedure for the Conference of the Parties and its subsidiary bodies¹¹⁵ – which have been “provisionally” applied since the COP’s 1st session even though they have never been formally adopted for reasons totally unrelated to the conditions for observer participation – contain provisions that specify the participation procedures for observers: “*Such observers may, upon invitation of the President, participate without the right to vote in the proceedings of any session in matters of direct concern to the body or agency they represent, unless at least one third of the Parties present at the session object*”¹¹⁶ In addition, the same draft Rules stipulate that, unless the Conference of the Parties decides otherwise, its meetings shall be held in public, whereas those of its subsidiary bodies shall be held in private.¹¹⁷

162. In practice, attendance at official meetings is often restricted for logistical reasons. In some cases, access to the meeting room by NGO representatives is only possible before the meetings open and after they close.

163. The practice as regards speaking at meetings is somewhat particular in that NGOs generally only have the possibility to speak once at meetings of the COP or its subsidiary bodies. In fact, NGO representatives speak at the end of the meeting and generally on behalf of a large category of NGOs. A “representative” group of NGOs is invited to make statements under a special agenda item entitled “Statements by NGOs”. NGOs may also speak at subsidiary body meetings where most of the substantial negotiations take place. Moreover, NGOs are sometimes invited to speak, via spokespeople for their “constituencies”, on certain substantive issues on the plenary session agenda.

164. UNFCCC Secretariat practice regarding written submissions has been to develop a procedure allowing NGOs to submit communications which, once accepted by the secretariat, are published on the Convention website.

165. Nothing is provided for in the draft Rules of Procedure as regards informal meetings, whose importance is nevertheless considerable in UNFCCC work practice. This said, the Conference of the Parties decided in its decision 18/CP.4 of 2 November 1998 to allow observers to attend open-ended contact groups, unless one-third of the parties present at the session setting up the contact group object. However, the contact group’s presiding officer may decide at any time to close the meeting to observers. The terms of Decision 18/CP.4 stipulate 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*

¹¹⁴ See, in particular, S. Oberthür, J. Werksmann *et al.*, *op. cit.*

¹¹⁵ Doc. FCCC/CP/1996/2, 22 May 1996.

¹¹⁶ *Ibid.*, Rule 7, § 2 (our italics).

¹¹⁷ *Ibid.*, Rule 30.

closed to intergovernmental and non-governmental organizations." Note that the wording of this decision formally upholds the presiding officers' discretionary power.

166. A debate has also been held on how to organize NGO participation in intersessional workshops, which are another key element of the negotiation practices developed under the UNFCCC. These workshops are held to enable an informal exchange of information between the Parties and help build a consensus on the direction to be given to the formal negotiations held at the official sessions of the Conference of the Parties and the subsidiary bodies. Although these workshops are not negotiating sessions, they definitely influence the decision-making process and therefore attract NGO interest. The workshops are only open to participants invited by the secretariat on behalf of the chairs of the subsidiary bodies. A "balanced" representation of admitted non-governmental experts is provided for. To this end, invitations to NGOs with observer status are sent to the "constituency" coordinators, who liaise with their group members to select the participants for the limited number of seats reserved for them. The secretariat deems that, "These procedures have generally worked in practice."¹¹⁸

167. Since its first meeting, the Conference of the Parties has admitted 619 NGOs as observers. Over 75% have their head offices in developed countries.¹¹⁹ In practice, nearly half of the participants in Convention body meetings are NGO representatives, with this proportion reaching 64% and 56% at COP3 (Kyoto) and COP6 (the Hague) respectively.¹²⁰ To organize and structure the participation of such a large number of non-governmental representatives, the UNFCCC secretariat has encouraged the development of an informal system of categories of stakeholders, called "constituencies". The NGOs themselves have got into the habit of forming themselves into "constituency groupings" to increase the effectiveness of their participation when they share the same interests. Environmental NGOs and business and industry NGOs are therefore classed in different categories, as are local authorities, indigenous peoples and research-oriented organizations. The secretariat has stipulated that, "*The criteria for considering a group of organizations as a constituency include: a critical mass of member organizations; creation of an operative channel (focal point) for communication with the secretariat; distribution of information to members; provision of consolidated/coordinated inputs on issues; and regular participation of the member organizations at sessions. Individual organizations may choose which constituency, if any, they wish to belong to. This choice is neither official nor binding.*"¹²¹

168. In general, the UNFCCC secretariat has a positive view of the role played by NGOs: "*The participation of NGOs is a fundamental element of the Convention process. It helps to bring transparency to the workings of a complex intergovernmental process, facilitates inputs from geographically diverse sources and from a wide spectrum of expertise and perspectives, improves popular understanding of the issues, and promotes accountability to the societies served. The participation of NGOs in the Convention process is both flexible, and active, supporting the global trend towards more informed, participatory and responsible societies.*"¹²²

169. However, further debates on the participation of the different stakeholders have arisen following the creation of new, closed specialized bodies and certain Parties' concerns about the possibilities for organizations to attend these bodies' meetings and intersessional workshops as observers and to access information. Some Parties regretted the lack of opportunity for observers to participate in practice in meetings of certain expert groups, including being physically present in the meeting rooms. A note from the secretariat stated that, "*Participation of observers in meetings of expert groups would raise two issues. First, expert groups should be able to carry out their work in an efficient and business-like atmosphere; open-ended participation by observers could affect this working environment. Second, the fact that not all Parties or observer organizations have the capacity to send observers to meetings would affect the balance of participation.*"¹²³

*The United Nations Convention to Combat Desertification (UNCCD)*¹²⁴

170. The possibility for NGOs to participate in Conference of the Parties (COP) work is provided for in Article 22 of the Convention to Combat Desertification. The relevant provisions are similar to those for the

¹¹⁸ Note by the Secretariat, Doc. FCCC/SBI/2002/13, 6 September 2002, §§ 12-13.

¹¹⁹ Doc. FCCC/SBI/2004/5, 16 April 2004, p. 5, § 18.

¹²⁰ *Ibid*, p. 8.

¹²¹ Doc. FCCC/SBI/2004/5, p. 6.

¹²² Doc. FCCC/SBI/2004/5, 16 April 2004, p. 4, § 12 (original italics)

¹²³ Note by the Secretariat, Doc. FCCC/SBI/2002/13, 6 September 2002.

¹²⁴ For more information, see: <http://www.unccd.entico.com/english/preface.htm>

UNFCCC. Article 22, § 7, stipulates that, “Any body or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by the Convention,” may be admitted to participate in Conference meetings as an observer, unless at least one-third of the Parties present object. Observer admission and participation procedures are laid down in the rules of procedure adopted by the Conference of the Parties, Article 7 of which stipulates that, upon the invitation of the President, observers may participate without the right to vote in the proceedings of any session in matters of direct concern to the organization they represent, unless at least one-third of the Parties present object. There is therefore nothing out of the ordinary about these provisions on NGO participation in intergovernmental meetings.

171. However, the UNCCD does contain some original provisions on stakeholder involvement in the implementation of measures to combat desertification at national and local level, to which it refers as “a spirit of partnership”. Article 3(c) of the Convention states that, “The Parties should develop, in a spirit of partnership, *cooperation among all levels of government, communities, non-governmental organizations and landholders* to establish a better understanding of the nature and value of land and scarce water resources in affected areas to work towards their sustainable use.” This principle of partnership with stakeholders other than the national governments is also reflected in the Convention provisions on participation in planning and decision-making, funding, information and technology as well as capacity building, education and public awareness. For example, Article 10 of the Convention stipulates that national action programmes should provide for the effective participation of non-governmental organizations and local populations in all stages of the planning process and at all levels of decision-making.

172. In the UNCCD, the governments also recognize that NGOs have access to important information, that they have built up relevant expertise and that they have developed channels to reach out to the target groups such that the governments have agreed to engage in partnerships with NGOs to make full use of their expertise in the areas of information dissemination and the promotion of appropriate technology. The Convention’s provisions on financing also refer to the necessary participation of NGOs, especially to set up financial mechanisms such as national desertification funds. A decision by the first session of the Conference of the Parties addresses NGOs as key partners in the implementation of the Convention and invites them to organize, within the official work programme of future COP sessions, special “open dialogue” sessions with the governments and to “give further consideration to institutional mechanisms for reinforcing partnerships” of all kinds.¹²⁵ The decision underscores the “major role” of the NGOs “in informing people at the community level and mobilizing community action” and, to this end, calls for the conclusion of “partnership arrangements between governments and NGOs.”

¹²⁵ Decision 27/COP.1, “Inclusion of activities of non-governmental organizations within the official programme of work of future sessions of the Conference of the Parties.”

Regional conventions

The Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR Convention)

173. Pursuant to Article 11, § 1(b) of the OSPAR Convention, the intergovernmental Commission established by the convention (OSPAR Commission), “may, by unanimous vote of the Contracting Parties, decide to admit as an observer [...] *any non-governmental organisation* the activities of which are related to the Convention.”

174. The OSPAR Commission’s Rules of Procedure lay down the conditions for the admittance and participation of observers. Paragraph 9(c) of these rules stipulates that the Commission may unanimously decide to admit to its meetings the observers of any *international* non-governmental organization. This therefore limits participation solely to international NGOs, whereas such a restriction is not explicitly provided for in the Convention itself. The participation of NGOs in the work of the Commission and its subsidiary bodies is governed by criteria and procedures appended to the Rules of Procedure.¹²⁶

175. Accreditation and attendance at meetings: Among the conditions required for this status are that the NGO in question must be capable of constructively contributing to the Commission’s aims and objectives, have specialized technical, scientific or other expertise pertinent to the Convention’s objectives, and must fulfil the following criteria: have an organized administration, be international¹²⁷ and be authorized under its constitution to speak for its members through duly accredited representatives.

176. Any application for observer status must be sent to the Executive Secretary at least 12 weeks before a meeting of the Commission. The application should include: a concise statement about the organization, detailing in particular its expertise and the experience it could bring to the Commission, the reasons why the NGO believes this contribution would assist the work of the Commission, and confirmation in writing that the NGO will respect the obligations imposed on it. Following receipt of the application, the Executive Secretary immediately distributes it to all Contracting Parties for comments and circulates a summary of the views of all the Contracting Parties on the application. Observer status is finally granted by a unanimous Commission meeting decision.

177. However, observer status is only granted for agenda items dealing with issues other than management issues internal to the Commission and the discussion of restricted documents.

178. Active participation in meetings, submission and distribution of documents and dissemination of information: Observer status granted an NGO authorizes it to submit, prior to Commission meetings, relevant information documents to be distributed at the discretion of the Executive Secretary and considered at the discretion of the meetings; to participate in discussions at the discretion of the Chairman at a meeting at which it has been allocated a seat; and to make proposals at such meetings. However, no proposal by an NGO is discussed unless such discussion is supported by at least one Contracting Party. Moreover, any NGO admitted as an observer to the Commission may ask to participate in an intersessional correspondence group, unless participation is limited.

179. The obligations arising from observer status: These obligations are laid down in Annex 2 of the OSPAR Commission’s Rules of Procedure. They are as follows: to recognize the basic purposes and principles of the Convention and not to hinder its work; to deliver only such information as is pertinent to the work of the Commission; to refrain from using the Commission meetings for the purpose of demonstrations; to respect the private character of the meetings and the restricted documents circulated for them; and to respect any specific requirements agreed to by the Contracting Parties relating to the participation of NGOs at the meetings of the Commission. Restrictions on observer status are provided for if an NGO’s conduct proves contrary to the criteria and procedures governing its observer status or if an NGO observer does not participate in the work of the Commission for two consecutive years.

¹²⁶ Criteria and Procedures Governing Observership of Non-Governmental Organisations at Meetings within the framework of the OSPAR Commission, Annex 2 of the Rules of Procedure of the OSPAR Commission, as amended by the 2001 and 2002 OSPAR meetings, Ref. No. 2002-21.

¹²⁷ An NGO is deemed international when it has members, component branches or affiliated bodies in a number of States covered by the Convention area.

Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)

180. The beginnings of the Aarhus Convention date back to the regional Ministerial Conference on Sustainable Development held by the United Nations Economic Commission for Europe (UNECE) as part of the UNCED preparatory process in Bergen, Norway, in May 1990. At this conference, the environment ministers of the UNECE Member States agreed to “contribute to the preparation of a document on environmental rights and obligations for possible adoption at the 1992 Conference on Environment and Development.”¹²⁸ Although this project was not completed by Rio, UNECE nevertheless decided to continue with its environmental rights work after UNCED, based on the procedural rights stated in Principle 10 of the Rio Declaration. Consequently, the “Environment for Europe” Ministerial Conference held in Sofia in October 1995 adopted “Guidelines on Access to Environmental Information and Public Participation in Environmental Decision-Making.”¹²⁹ Shortly after, the UNECE Committee on Environmental Policy decided to set up an ad-hoc working group to prepare a draft convention on access to environmental information and participation in environmental decision-making based on the Sofia Guidelines. The NGOs and other “major groups” (as defined by Agenda 21) were promptly invited to take part in the negotiating group’s work, in keeping with the practice adopted in the preparations for the Sofia Conference itself.¹³⁰

181. The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters was signed by 35 European States and the European Community at the next “Environment for Europe” Ministerial Conference in Aarhus, Denmark on 25 June 1998. The Aarhus Conference ministerial declaration hailed the new convention as, “A significant step forward both for the environment and for democracy.”¹³¹

182. The Aarhus Convention is the first multilateral environmental treaty whose main aim is to impose obligations on States as regards their own citizens. There is therefore a close connection between this new convention and the provisions of international law on the protection of human rights. By undertaking to guarantee a series of “citizens’ rights in relation to the environment”, of a procedural nature, the European States that signed the convention intended to encourage what they called in their ministerial declaration “responsible environmental citizenship” by recognizing that, “an engaged, critically aware public is essential to a healthy democracy.” This therefore entails, at the same time, increasing the transparency and democratic legitimacy of public environmental protection policies and empowering citizens by giving them the means to inform themselves, make their interests heard by participating in the decision-making process, monitor public authority decisions and take legal action to defend their environment. The “engaged, critically aware public” is seen as both as a player and a vital partner in the formulation and implementation of environmental policy.

183. Members of the “public” to whom the Convention guarantees participation rights are defined extremely broadly as comprising all “natural or legal persons, and [...] their associations, organizations or groups”¹³² This definition covers a much broader spectrum than just the NGOs and even goes beyond Agenda 21’s notion of “major groups”. It encompasses the whole of civil society and the private sector.

184. We have chosen to mention the Aarhus Convention here, because it could serve as a catalyst, if not a model, for the democratization of international environmental and sustainable development decision-making processes. The implications of this Convention transcend the pan-European framework since the contracting Parties also undertake in its Article 3, § 7 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.”

185. In a move to give “guidance to the Parties” to implement this provision, the first meeting of the Parties recommended considering “developing guidelines on this topic.”¹³³ This task was assigned, in October 2003, to a “small ad hoc expert group, composed of experts designated by governments, NGOs, relevant international

¹²⁸ Bergen Ministerial Declaration on Sustainable Development in the ECE Region, 16 May 1990, § 16(g).

¹²⁹ Doc. ECE/CEP/24, October 1995.

¹³⁰ Doc. ECE/CEP/18, 8 February 1996, Annex 1, § 2.

¹³¹ Declaration by the Ministers of the Environment of the region of the United Nations Economic Commission for Europe (UNECE), Aarhus, Denmark, 25 June 1998, § 40.

¹³² Aarhus Convention, Art. 2, § 4.

¹³³ Lucca Declaration, adopted at the first meeting of the Parties held in Lucca, Italy, from 21 to 23 October 2002, Doc. ECE/MP.PP/2/Add.1, 2 April 2004, § 31.

organizations, other UNECE environmental conventions and multilateral environmental agreements.”¹³⁴ In December 2004, this expert group submitted draft guidelines to the Working Group of the Parties to the Convention for consideration and possible adoption at the second meeting of the Parties to be held in Almaty in May 2005.

186. Right from the outset, the Aarhus Convention bodies have applied procedures that guarantee extensive civil society participation in their work. When the Meeting of the Parties to the Convention adopted its rules of procedure, which apply *mutatis mutandis* to all its subsidiary bodies, it explicitly acknowledged the “unique role that the Convention has in promoting the participation of civil society in international environmental decision-making processes” and the “special role for non-governmental organizations established for the purpose of and actively engaged in promoting environmental protection and sustainable development.”¹³⁵ The rules of procedure contain some remarkable provisions on participation of the public, as defined by the Convention, in meetings and public access to documents.

187. Probably the most significant example of the institutionalized role of civil society organizations in the Aarhus Convention bodies is the provision in the rules of procedure that requires an NGO representative to be invited to attend all the meetings of the Bureau of the Meeting of the Parties. This Bureau consists of government representatives elected by the Meeting of the Parties.¹³⁶ The rules also stipulate that all the meetings of the Convention bodies “shall be open to members of the public, unless the Meeting of the Parties, in exceptional circumstances, decides otherwise.”¹³⁷ The representatives of “relevant non-governmental organizations, qualified or having an interest in the fields to which the Convention relates,” are automatically “entitled to participate in the proceedings of any meeting governed by these rules, unless one third of the Parties present at that meeting objects to the participation of representatives of that organization.”¹³⁸ No formal accreditation procedure is provided for: an NGO needs simply to express its wish to attend. Although non-governmental representatives formally only have observer status without the right to vote, they do have the right to speak. In general, the Chairperson calls upon “speakers in the order in which they signify their desire to speak, but may at his or her discretion decide to call upon representatives of Parties before observers.”¹³⁹ All official Convention body documents must be “placed on the ECE web site when sent to the Parties” and “provided to members of the public on request.”¹⁴⁰

188. Another original element of the Convention’s institutional mechanism is the Compliance Committee. In a step unique in the annals of international environmental law, Article 15 of the Convention opens up the possibility to establish compliance reviewing arrangements involving not only the States Parties, but also individuals and NGOs. This provision authorizes the Meeting of the Parties to establish “arrangements” for reviewing compliance with the provisions of the convention, arrangements that should allow for “appropriate public involvement” and may “include the option of considering communications from members of the public on matters related to” the Convention. Despite many signatory governments’ misgivings about this possibility – which explains why the wording accentuates the “optional”, “non-confrontational”, “non-judicial” and “consultative” nature of the review mechanism – the Meeting of the Parties decided by consensus, at its first meeting, to set up this innovative mechanism. Decision I/7 of the meeting of the Parties¹⁴¹ established a Compliance Committee made up of independent experts and laid down its operating procedure. The system set up authorizes this Committee to consider communications “brought before the Committee by one or more members of the public concerning [a] Party’s compliance with the Convention.”¹⁴² Moreover, the Parties and the Convention’s secretariat may also make referrals to the Committee. The rules also provide for “the member of the public making a communication” to be entitled to “participate in the discussions of the Committee” with

¹³⁴ Report from the first meeting of the Working Group of the Parties to the Convention, Doc. MP.PP/WG.1/2003/2, 26 November 2003, p. 9, § 47.

¹³⁵ Rules of Procedure, Decision I/1 of the first Meeting of the Parties, Doc. ECE/MP.PP/2/Add.2, 2 April 2004, preamble.

¹³⁶ *Ibid*, Rule 22, § 2.

¹³⁷ *Ibid*, Rule 7, § 1.

¹³⁸ *Ibid*, Rule 6, § 2

¹³⁹ *Ibid*, Rule 27, § 1.

¹⁴⁰ *Ibid*, Rule 11.

¹⁴¹ Decision I/7 of the first Meeting of the Parties, Doc. ECE/MP.PP/2/Add.8, 2 April 2004.

¹⁴² *Ibid*, Annex, § 18.

respect to such communication.¹⁴³ Following the consultative process before the committee, the committee submits its observations and recommendations to the Meeting of the Parties, which may “decide upon appropriate measures to bring about full compliance with the Convention.”¹⁴⁴ To date, the Committee has considered a dozen communications from the public on which it is expected to report to the second Meeting of the Parties in May 2005.¹⁴⁵

¹⁴³ *Ibid.*, § 32.

¹⁴⁴ *Ibid.*, § 37.

¹⁴⁵ For more information on the Committee, its composition, its modus operandi and proceedings underway, see the Convention website: <http://www.unece.org/env/pp/compliance.htm>

8. Conclusion: Proposals to improve the involvement of non-governmental players in the global environmental governance system

Institutional arrangements whereby non-governmental players could contribute, alongside States, to the operations of a United Nations Environment Organization

189. Our analysis shows that non-governmental players have long played a definite role in the development and implementation of certain multilateral policies, including international environmental policies, and that this role is now formally recognized if not institutionalized by many intergovernmental forums such as UNEP, the CSD and most of the multilateral environmental agreements. This role started to develop right from the appearance of environmental policy on the UN agenda in the late 1960s, based on the Charter provisions on “consultation” with NGOs and the general system set up for this purpose by ECOSOC. Yet in the environmental field, especially in Stockholm and in UNEP, the new forum created following the Stockholm Conference, the classic approach to “consultation” gradually evolved into increasingly active participation by NGOs and then other stakeholders in the decision-making processes. The Rio Conference and its preparatory process in the early 1990s officially widened the circle of “stakeholders” and extended the field and forms of stakeholder participation.

190. The current debate in New York on UN relations with civil society, following the publication of the Cardoso report, is somewhat of a logical conclusion to this long development, which now appears to be spreading to most of the global governance areas and intergovernmental forums. This debate shows that government reluctance – or, at any rate, the reluctance of some governments – to accept the formal participation of civil society players in the traditionally intergovernmental multilateral decision-making processes is still strong. This is due more to a stand on principle against the erosion of the supremacy of States than any real rejection of participatory practices such as they exist in practice. However, this resistance is an obstacle that needs to be taken into account when making proposals to further develop and institutionalize these practices, especially in view of the possible creation of a UNEO. The most important element is to ensure that these proposals and the debate they will surely trigger do not jeopardize – in the name of “rationalization” and standardization – the established participation of civil society and the many institutional and procedural innovations that have come out of the different existing forums, admittedly in a rather uncoordinated, but nonetheless highly constructive manner.

191. The creation of a specialized United Nations environment agency as a fully-fledged intergovernmental organization would call for the negotiation of a multilateral convention to establish its status, responsibilities, structures, administration, and the rights and obligations of its Member States. The development of such an instrument would also provide the opportunity to establish the procedures for civil society representation and participation in the new organization’s activities, without civil society being *a priori* subject to already existing institutional constraints. Given that an intergovernmental organization’s constitutive instrument has the legal force of a treaty, as a primary source of international law, it can be used to innovate and introduce original rules should the founding States deem this advisable. Since the purpose of creating a UNEO is nonetheless to build on UNEP’s achievements and strengthen the existing governance structures – rather than break with them – it could be assumed that the international community would base its measures largely on existing practices and endeavour to improve on them. This therefore entails identifying the existing strengths and best practices so as to further develop and institutionalize them in the new organization. So measures should be based not only on current UNEP practices, but also on interesting practices developed by other forums such as the other United Nations organizations and agencies, non-UN intergovernmental organizations and the international and regional environmental conventions. In the quest for the most suitable institutional architecture, we should also seek to strike the best balance between formalization and thus guaranteed civil society participation rights on one side and flexibility and capacity for evolution and innovation on the other.

192. The example of the ILO shows that the institutionalization of the participation of certain non-governmental players in an intergovernmental organization’s decision-making procedures and bodies can be taken as far as to give these players the right to vote and hence participate in formal decisions. However, it is not that easy to transpose such institutional arrangements to international environmental policy, where the number and social and structural diversity of stakeholders aspiring to a decision-making role is greater and less well-defined than in labour relations policy, where a tripartite structure built on the governments and traditional labour-management players is well-established. How many and which parties should be included?

We could consider a tripartite structure comprising the governments, the environmental NGOs and the private sector, but the legitimacy of such a structure would most certainly – and not without reason – be challenged by the other “major groups” who would feel excluded. Involving a larger number of stakeholders on an equal footing would inevitably largely dilute the role of the States. This would be incompatible with the very concept of an intergovernmental organization and would therefore be unrealistic.

193. We hence feel it preferable to provide for a dual mechanism for the participation of civil society in the decision-making processes. This mechanism would combine the flexibility and openness to observers currently found in most of the environmental forums with a certain form of institutionalization to improve the structuring and weighting of the different stakeholders’ contributions using small, but representative advisory groups. In concrete terms, we recommend institutionalizing the participation of the “major groups” in the governance of a United Nations Environment Organization by means of its constitutive charter. This could provide for the creation of bodies representative of the stakeholders as an integral part of the organization’s institutional structures alongside the intergovernmental policy-making bodies with their decision-making powers. The former bodies would be granted consultative and deliberative responsibilities. Rather than one large “forum” encompassing all the elements of civil society, such as the Global Civil Society Forum currently organized by UNEP – a structure which tends to obfuscate the real divergences of interests and the diversity of civil society views and positions in an artificial consensus framework – we could draw on the UNFCCC’s system of “constituencies” and the institutional recognition of social players with different, but equal statuses such as found in the ILO structures. The utility of small advisory groups already appears to be recognized in certain informal practices developing in UNEP.

194. It would be conceivable to incorporate three separate consultative groups representing different stakeholder constituencies into the structures of a United Nations Environment Organization. For example, a group made up of representatives of environmental and social NGOs not connected with the defence of specific socio-economic interests, a group of representatives of the productive sectors (socio-economic sectors) and a group of representatives of the public sector and political authorities other than the central governments (members of parliament, local and regional elected representatives, and even indigenous communities).¹⁴⁶ It should be binding on the organization’s policy-making bodies to consult these bodies on certain matters to be defined. The bodies could also be involved more upstream in policy preparatory work, at the initiative of the organization’s secretariat. To be fully operational, such consultative groups would necessarily have to be small and their member selection procedures should be able to ensure their representativeness and accountability to the groups whose views and interests they would represent in the deliberative processes. Their meeting and operational costs should be covered by the organization’s ordinary budget so as to ensure balanced participation by civil society in all regions of the world. Although formal policy decisions would remain the sole responsibility of the intergovernmental bodies made up of representatives of the Member States’ governments, provision could be made to grant the bodies of non-governmental representatives certain procedural rights such as the right of initiative, the right to question the policy-making bodies and possibly even the right to designate a small number of delegates in these bodies and initiate compliance review procedures for certain commitments. Moreover, the different consultative groups could play a role in policy implementation by serving as intermediaries between the organization and the regional, national and local stakeholders whose participation is vital to the accomplishment of its operational objectives.

195. The creation of institutionalized consultative groups, as envisaged here, should not be seen as an alternative to opening up the intergovernmental meetings themselves to the participation of non-governmental observers. As we have seen, a range of practices encompassing a wealth of experience has developed as regards gradually opening up the intergovernmental forums on international environmental governance, and these practices are generally seen as contributing to the improvement of the governance processes. The move towards openness and transparency should therefore not be reversed, but consolidated. The institutionalized consultative procedures proposed above should be envisaged as complementary to the possibility for all civil society players to take part as observers in the work of the organization’s policy-making bodies in accordance with established practices; a possibility that should be maintained and maybe even extended. The experience of the Aarhus Convention shows that it is even conceivable, in principle, to achieve maximum transparency in intergovernmental decision-making processes by opening access to meetings and documents to all members of the public, and not just representatives of organized civil society. In this, we could usefully look to the principles

¹⁴⁶ Association possibilities for the scientific community are not developed in this report, since the mobilization of scientific expertise is a matter for a separate report.

and best practices reflected in the guidelines being developed by the Working Group of the Parties to the Aarhus Convention, which may be adopted by the Meeting of the Parties in 2005.¹⁴⁷

Conditions for accountability and international legitimacy of greater civil society participation

196. The comparative study of NGO accreditation and participation practices in the different forums reveals quite a wide range of procedures and criteria. Many organizations have a system based on placing NGOs in different categories using criteria whose pertinence is not always evident. Whereas the use of criteria regarding civil society player legitimacy, expertise and representativeness may be vital when creating small consultative groups, the advantage of a system of categories entailing different participation rights is less evident when it comes to simply granting observer status. The criteria used to divide NGOs into categories often seem to be rather arbitrary and their interpretation liable to give rise to accreditation decisions based on political advisability considerations rather than merit. This is why we share the Cardoso group's opinion that it would be useful to simplify and depoliticize the accreditation and access procedures and base them on a series of objective and uniform criteria. The quite simple practice developed for major conferences could serve as an example in this regard. We feel that the distinction still made by certain forums between international and national NGOs is outdated and contrary to the aim of broad-based civil society involvement in policy development and implementation, which is put forward as a condition for policy legitimacy and effectiveness. The principle of openness should therefore be made as widespread as possible and the pertinent criteria aim first and foremost to guarantee the accountability and integrity of the civil society players admitted to take part in the organization's deliberative processes.

197. More in-depth thinking is therefore called for, in consultation with the stakeholders, on the development of criteria and procedures able to provide the necessary guarantees in this regard. Among the pertinent criteria, we feel the transparency of interests represented and the procedures for accountability to be crucial. This is why an obligation should be considered for NGOs and other CSOs to divulge their sources of financing and publish information on the composition of their management bodies and their internal decision-making processes, the democratic nature of which they should be required to prove. This is already one of the criteria applied by ECOSOC and other intergovernmental organizations such as UNESCO, FAO and the OAS. Modern IT methods can easily put this information online, thereby guaranteeing its full accessibility and transparency at all times.

¹⁴⁷ See "Draft Guidelines on Promoting the Application of the Principles of the Aarhus Convention in International Forums", available on <http://www.unece.org/env/pp/ppif.htm>

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