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Civil Society Participation in International Governance: The UN and the WTO Compared

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No. 42

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ABSTRACT

Civil society participation has become a buzzword in the debate about the legitimacy and accountability of international governance. Many organizations, prominently among them the *World Trade Organization* (WTO), have come under considerable pressure to open up their policy-making process towards non-state actors. Although the WTO has become more transparent in recent years, direct stakeholder access to its policy making is still denied. This situation is often contrasted with that at the *United Nations* (UN), where there is (allegedly) much more formally regulated and more substantial participation of civil society. In this paper, we compare the patterns of participation in these two organizations and seek to identify some common dynamics. We present a general framework for analysis based on a model of the policy cycle that allows us to distinguish 'push' and 'pull' factors that determine cooperation in different phases of policy making.

In our empirical study, we find that in the WTO, there are few incentives for the organization itself to pull civil society actors into its policy-making process. Agenda-setting is the task of governments; research and analysis is delivered by the Secretariat; compliance control is undertaken jointly by the organization and its members. To push the door to trade policy making open, civil society can only rely on public shaming, that is, threatening to undermine the organization's legitimacy as it violates widely accepted standards of good governance. In the UN system, there is in fact more cooperation, but it remains largely limited to the policy phases of agenda-setting, research and analysis and compliance control. Quite like the WTO, the UN protects an *intergovernmental core* of policy making in which cooperation with civil society remains at the discretion of state parties. Evidence for this are informal and *ad hoc* ways of collaboration and a lack of participatory rights for non-state actors in the Security Council and the General Assembly.

We conclude that studying civil society participation in international public organizations through the lens of the policy cycle can give us a fine-grained picture of cooperative arrangements and enables us to identify potentials for cooperation as well as exclusion. Yet, we also observed two other factors at work that were not really grasped by the model of the policy cycle. First, the institutional culture of organizations can be more or less amenable to civil society. Second, organizations are susceptible to campaigns for 'good governance' that invoke standards of due process and may open the door to non-state actors.

CONTENTS

Civil Society Participation in International Governance: The UN and the WTO Compared[1]

I. INTERNATIONAL ORGANIZATIONS AND NON-STATE ACTORS: EXPLAINING PATTERNS OF COOPERATION

The existing literature about the interaction between international governmental organizations (IGOs) and civil society[2] follows two separate lines of inquiry. First, there is a bulk of literature from law and (broadly conceived) political theory that asks whether civil society *should* interact with IGOs. The answer here is often affirmative. Many authors argue that involving non-state actors into policy making can contribute to the legitimacy and accountability of international governance. This case has been made for the United Nations system and for global governance in general (*e.g.* Alger, 1999; Brühl and Rittberger, 2001; Scholte, 2004). It has been made likewise by authors who suggest enhanced participation of non-governmental organizations (NGOs)[3] in the WTO (Bellmann and Gerster, 1996; Charnovitz, 1996; Shell, 1996; Esty, 2002).

Three major arguments for the desirability of enhanced cooperation can be distinguished in this debate. *First*, NGOs may possess technical expertise that international organizations cannot acquire on their own. Widening their knowledge base through consultation with non-state actors, IGOs will take more informed and more effective policy decisions. NGO participation hence improves the effectiveness of global governance. *Second*, NGOs can channel citizens' values, interests and concerns into international policy making. They therefore enlarge the range of viewpoints and arguments present in political deliberation. At the same time, they give a voice to (minority) groups of stakeholders that are inadequately represented in a governance system based on the principle of 'one state, one vote'. NGO participation therefore is an asset to the

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[2] It is a contested question, who is or should be regarded as part of civil society (Castiglione 1998). The term international (or transnational) civil society has been in use only for a decade or so and usually has been related to ideals of democratization or citizen emancipation (Lipschutz, 1992; Anheier et al. 2001). We propose to define international civil society by its activity. Members of civil society are all those non-governmental, non-profit actors that seek to influence political deliberation about public norms by means of argumentation.

[3] Recently, the reference to NGOs has been at least partly supplanted by the term of civil society, which has been increasingly used in academic literature on global governance and in statements of IGOs. Technically speaking, however, most IGOs interact only with organized civil society, and hence non-governmental organizations. Therefore, in our analysis we use the term NGO to describe a non-state, non-profit making organization.

democratic legitimacy of global governance. *Third*, NGOs may also contribute to the creation of a public sphere of global governance (Nanz and Steffek, 2004). They communicate developments in international politics to the local basis of their own organizations or networks and bring them to the attention of the mass media. Through these channels, information on international policy making feeds into national public debates and is in that way able to reach citizens as the ultimate addressees of global governance. NGOs are often regarded as weaving a 'connecting tissue' (Esty, 2002:17) between a global citizenry and the institutions of international policy making. This, in brief, is why so many authors believe that civil society *should* interact (or interact more) with international organizations.

As a normative rationale, this is obviously highlighting potentials rather than reflecting present practice. Quite detached from the normative debate, we find a second strand of inquiry: an equally rich literature, mainly from political science, that asks why (and how) civil society actually *does* interact with IGOs.[4] These two strands of investigation rarely refer to each other. However, the empirical literature is relevant for normatively oriented scholars as well, because it seeks to explain dynamics and motivations behind current practice. If we plead for more collaboration of NGOs with IGOs from a normative point of view, we should also know why and how present patterns of interaction came about. Most authors interested in such empirical questions have adopted the perspective of NGOs or political activists, investigating their strategies and tactics in dealing with IGOs and state representatives, with the aim of discovering determinants of NGO success in influencing politics (*e.g.*, Arts, 1998: 55-61; Keck and Sikking, 1998: 25-29; Risse, 2002: 262-268). The title of an early work in this genre captures the approach well: '*International Non-Governmental Organizations: their Purposes, Methods and Accomplishments*' (White, 1968).

Yet, it seems equally interesting to reverse the perspective and ask why international organizations might wish to interact with NGOs. An appropriate analytical framework should take both perspectives into account. There is some literature which tackles the question of why IGOs – despite pressure put on them by NGOs – are reluctant to collaborate with civil society (Alger, 2002:esp. 98-100; UN 2003:18-19); or why certain IGOs are more or less susceptible to pressure by NGOs (Willets, 2000:193; Riggirozzi and Tussie, 2001). However, IGOs do not just fend NGOs off. IGOs in fact may have good reason to engage with non-state actors at their own initiative because they can expect certain advantages from collaboration. A variety of incentives for IGOs to collabo-

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[4] The literature on NGOs in international affairs is extensive. For an overview of the role of non-state actors in international relations (both NGOs and multinational corporations), see Risse, 2002; for civil society, see Anheier et al. 2001.

rate with non-state actors has been mentioned throughout the existing literature. Yet, to date there is no systematic overview of the relationship between the two types of actors.[5]

As a starting point of our own inquiry, we ask what motivations both types of actors might have for engaging in cooperation. The assumption is that collaboration between NGOs and IGOs can be the result of two different dynamics: NGOs might push into institutions of global governance; or IGOs might pull them in.[6] Hence, we deem it useful to distinguish between such 'push' factors and 'pull' factors that determine patterns of collaboration. To get a more fine-grained empirical picture, a second useful distinction can be made between different phases in the process of international policy making. As a heuristic framework, we adopt a model of the policy cycle with six phases to account for the fact that incentives for collaboration might change over time and on both sides.[7] They might also depend upon the specific tasks that an IGO or an NGO are pursuing with regard to the phases of the policy cycle. The first phase is called agenda-setting, since here IGOs try to define and structure their work plan and the issues to be discussed and decided upon during a cycle of policy making. Research and analysis characterizes the second phase which mainly deals with acquiring background information on the selected policy issues and drawing first conclusions from research results. This task mostly is assigned to IGO secretariats. Policy formulation and policy decision, the third and fourth phase, are reserved to politicians who formulate and take decisions on the pending issues on the agenda. Fifth, policy implementation takes place after decisions have been taken. The sixth and last phase relates to policy evaluation and offers an overall assessment of the implementation phase. It thus gives indications on success or failure of implementation strategies with regard to the relevant policy goals to be achieved, and as such spawns concerns to be fed in during the first two phases of the policy cycle again.

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[5] Albin (1999) comes closest to what we have in mind but she only touches upon many of these issues in her discussion of the roles that NGOs play in multilateral intergovernmental negotiations.

[6] When speaking of IGOs in this context, we refer to their governance structure controlled by governments, rather than to the Secretariat of the organization. During most policy phases, both actors are supposed to have more or less identical interests, since Secretariats have to implement governmental decisions, or their actions at least are expected not to run contrary to governmental intentions. However, this can be significantly different in the policy formulation and policy decision phases. Here, Secretariats might have an incentive to pull NGOs in order to influence the final policy decision in their own's interest.

[7] The policy cycle is a concept developed in public policy research that distinguishes certain phases in a standard procedure of policy making. Although the overall structure of the various 'policy cycles' in use is always similar, models vary with regard to the number and description of discrete phases.

Let us apply the idea of pull factors – or the interests of IGOs in collaborating with NGOs – to the different phases of the policy cycle. Based on the existing literature, we can identify four possible instances in which an IGO might be interested in collaboration with non-state actors. First, IGOs might seek NGO assistance in order to pinpoint new or upcoming issues which should be dealt with. This is presumably the case for 'forum organizations', such as the UN, whose task it is to identify and discuss rising problems in the international system. In this context, it has often been suggested that globalization and the corresponding increase in the scope, fora, and complexity of post-Cold War international negotiations have set conditions in which outside assistance for agenda-setting, and for informing the policy formulation in general, is useful (Albin, 1999:372). At a further stage, an IGO might seek NGO collaboration to acquire additional expertise for its own policy-making process (Charnovitz, 1997; Martens, 2003). This seems particularly useful when there is uncertainty about the problem that international governance is designed to resolve. This function of non-state actors has been highlighted, *inter alia*, in the literature on epistemic communities in international environmental governance (Haas, 1992). Yet, also the IMF, for example, keeps close ties with non-governmental research institutions and think tanks to tap into their macroeconomic expertise (Scholte, 2002:23/24).

Third, and most importantly, an IGO might seek NGO collaboration in the implementation phase of the policy cycle. Organizations active in the field of development, for example, rely heavily on non-state actors in implementing their policies (Chabbott, 1999). In the case of the *World Bank*, around 70% of all development projects are implemented in collaboration with non-governmental organizations.[8] Fourth, an IGO might seek NGO collaboration to monitor parties' compliance with international norms (UN, 2003:6). Some IGOs do not have sufficient staff and resources to effectively monitor compliance with their policies. They hence make use of information provided by non-state actors about the situation 'on the ground'. Human rights protection in the United Nations is an excellent example of such collaboration: the system of surveillance would simply not work without NGO input (Dupuy, 1986:259; Gaer, 1996:55).

Investigating push factors, we change the perspective and adopt the viewpoint of a civil society organization. What reasons might they have to seek interaction with an IGO? First, they might seek to bring a new issue on the international agenda. The campaign against landmines, for instance, was initiated by NGOs pushing for international recognition of these weapons as a problematic category in need of multilateral regulation (Price, 1998:619-623). Second, they might seek to influence the research process

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[8] Source: World Bank-Civil Society Collaboration – Progress Report for Fiscal Years 2000 and 2001, p. 4. On file electronically at http://siteresources.worldbank.org/CSO/Resources/ProgRptFY0001.pdf, accessed 22 July 2004.

that informs the definition of problems and political options. Much of NGO activity in the field of climate change for example falls into this category: environmental NGOs as well as business NGOs try to feed their assessment of the imminence and risks of man-made climate change into the fact-finding process of the international regime (Yamin and Depledge, 2004: 50-53). Third, and arguably in most cases, NGOs might try to influence an IGO's policy formulation and decision in an issue area, because the values or interests that the NGO pursues can only or best be realized by exerting political influence at the international level.

However, the wish to influence the process of policy making is not necessarily the only motivation for NGOs seeking collaboration with an IGO. Many international NGOs are in fact in continual search for money, and IGOs, in particular those active in the field of development and humanitarian aid, can be considerable sources of financing (Bichsel, 1996:236-238; Cooley and Ron, 2002). Therefore, an alternative explanation of why NGOs push towards collaboration with IGOs is organizational self-interest: the non-state actor needs funding to survive. Along the phases of the policy cycle, there are two situations in which financial self-interest may be of major importance: when NGOs provide studies or data to IGOs, *i.e.* commissioned expertise; second, when NGOs are paid for implementing the projects financed by an IGO. Finally, NGOs might also seek to monitor parties' compliance with rules or decisions of the IGO that they support. The following table now summarizes all explanatory factors examined so far.

***Table 1**:   Incentives for Collaboration between IGOs and NGOs*

Influencing factors / Policy phase	Pull factors (IGOs pulling NGOs in)	Push factors (NGOs pushing into IGOs)
Agenda-setting	IGOs seek NGO assistance in identifying new issues	NGOs seek to influence the IGO's agenda
Research and analysis	IGOs seek NGO collaboration to acquire additional expertise	NGOs seek to inform the research process and/or seek financing for the provision of expertise
Policy formulation	-	NGOs seek to influence the IGO's policy formulation
Policy decision	-	NGOs seek to influence the IGO's policy choices
Policy implementation	IGOs seek NGO collaboration to implement their own projects	NGOs seek financing for the implementation of projects
Policy evaluation	IGOs seek NGO data to monitor parties' compliance	NGOs wish to assure parties' compliance

This table reveals that, in general, there is potential for IGO/NGO cooperation in almost all phases of policy making, in particular in the agenda-setting and research phase, and during the implementation of projects. That there is potential does not mean that we will observe cooperation in all cases. Rather, the factors we identified should help us to un-

derstand why this potential is realized in some cases and not in others. Many IGOs, for example, do not need any data or information from NGOs because they can rely on their own staff or national experts, or a combination of both. Likewise, rule-making IGOs quite simply do not have any projects to implement and hence no funding to give to non-state actors. Conversely, NGOs might not be interested in some international organizations because they do not perceive their policies to affect their values, interests or those of their constituencies. The amount of *de facto* cooperation between IGOs and civil society in the different phases of policy making will hence depend on the specific circumstances of the case.

It is striking, however, that pull factors, according to the literature, seem to be absent in the central stage of the policy-making process: the formulation of decisions. Many NGOs, quite obviously, would like to influence these policy decisions. Yet, the IGO or the state representatives negotiating in it are not likely to reap any benefits from NGO presence at this stage.[9] On the contrary, public exposure threatens to obstruct package deals being made among diplomats and politicians (Stavasage, 2004). Thus, we can assume that IGOs will be eager to protect an *intergovernmental core* of decision-making against NGO influence and public scrutiny. By the metaphor intergovernmental core, we mean all those processes of negotiation in which a political decision is imminent and state representatives (and not bureaucrats or experts) are the driving force. In this case, incentives for liaising with non-governmental actors are presumably low. If non-state actors are present in this phase of the policy cycle, this can only be due to a massive push on the part of civil society.

In the following, we will use the analytical framework presented above to explain patterns of interaction between civil society and two IGOs: the UN and the WTO. In the case of the UN, a forum organization, we would expect incentives for the organization to consult with NGOs in four policy phases: agenda-setting, research and analysis, policy implementation, and policy evaluation. NGOs in turn presumably would try to exert influence at every stage of the policy cycle. With regard to the WTO, an organization that emerged from the 'club-model' of the GATT, we would expect rather little incentives on the part of the IGO, while NGOs should have an interest in collaboration. Applying our theoretical model to two IGOs with completely different characteristics, we expect insights into the explanatory power of the factors we identified. We also hope to

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[9] Individual state representatives, delegations, or IGO staff members might still collaborate in this phase with NGOs if they have a common position on the issues at stake. They might, for example, pass on selected information about the negotiation process to be made public by the NGO. However, it is unlikely that all state representatives will have a discernable interest in collaboration in the phase of decision-making.

learn more about the usefulness of distinguishing phases of policy making along the policy cycle.

II. Non-Governmental Actors and the UN

The UN encompasses a variety of bodies, institutions and policy fields and as such affords vast opportunities for research on IGO-NGO collaboration. In this paper, we restrict our analysis to the main policy-making bodies or organs of the United Nations and to the main institutional relationships of those organs with NGOs, namely, those of the Economic and Social Council (ECOSOC), UN Conferences, the General Assembly (GA), the Security Council (SC), and the Department of Public Information (DPI). We hence largely exclude the UN Specialized Agencies and the wider range of organizations which are part of the UN system.

a) The ECOSOC Prototype

ECOSOC consultative status of NGOs to this day is largely considered to be a prototype of NGO-IGO relations. Not only because it is one of the oldest, but also one of most broadly regulated and institutionalized UN-NGO relationships. However, what is less known is the fact that NGOs already participated widely in the initiation of their own status at ECOSOC. During the negotiation on a new general international organization, which was to become the United Nations, NGOs exerted a certain influence in this way. Here, the identification of a new general framework for international governance was at stake. Strictly speaking, this does not directly relate to our model of policy phases, but rather is situated at the outset of the model itself. However, it could be regarded as a separate policy cycle, in which, as will be seen, the phases of agenda-setting and research and analysis prominently emerged with regard to governments' readiness to co-operate with civil society. NGOs, on their part, successfully lobbied during the decision-making phase in order to push some of the issues affecting them through.

During the Dumbarton Oaks Conference, which took place from 21 August to 7 October 1944 und which adopted the Dumbarton Oaks 'Proposals for the Establishment of a General International Organization', the US governmental delegation closely worked with NGOs in so-called 'off-the-record' discussions (Stoecker, 2000:64-65). At that point, different policy options and their consequences had to be defined. Since this collaboration was fruitful, it prepared the ground for further NGO participation during the founding conference of the UN from 25 April to 26 June 1945 in San Francisco (Charnovitz, 1997: 250). The US delegation included 42 of the most important American organizations as consultants. Many of those NGOs were concerned with social problems, which might to some extent explain why consultative status in the end was accorded exclusively with regard to ECOSOC (Archer, 1983:306). In addition, 160 other American NGOs, represented by 'outstanding figures in American public life', were invited as

observers. Altogether, representatives of 1,200 voluntary organizations were present on the spot (Alger, 2002:93). However, at that time, governments, including the American, seem to have had less incentives to give NGOs a voice since different policy options already had been expounded and what was left was the final decision of how the new organization was supposed to work. Nevertheless, civil society, supported by US President Roosevelt, managed to be heard during the decision-making process. Thanks to the NGO representatives represented at San Francisco, rules about participation of NGOs found their way into the Charter of the United Nations, alongside with the first seven words of the Charter: 'We the peoples of the United Nations' (Alger, 2002:93). Instigated by a proposal of the Working Group on Agriculture, Business, Labour, and Education, consultative status for NGOs with ECOSOC and its subsidiary bodies was introduced into Article 71 of the UN Charter. This Article in fact was a compromise formula which was meant to delimit NGO consultative collaboration from 'participation without vote' accorded to specialized agencies (Article 70) and to non-member States of ECOSOC (Article 69) (Stoecker, 2000: 65-67).

The implementation of the new NGO consultative status then pointed to a preponderant interest of ECOSOC members in collaborating during the first two policy phases. A forum organization such as the UN seems to have some incentive to rely on NGO input in certain policy areas, especially social and humanitarian questions, during the agenda-setting and research phases. NGOs, however, appear to also have major interests in decision-making itself. Governments seem to have anticipated that opening ways for collaboration with NGOs might be used as a leverage for further civil society influence in policy making and therefore installed a tightened accreditation procedure forestalling too much – and unwelcome – impact of NGOs during the main decision-making phase. Since ECOSOC is situated at a high decision-making level within the UN hierarchy, project execution is left to lower level bodies and institutions. This explains the fact that, in the case of ECOSOC itself, policy implementation and evaluation hardly play a role.

After a first resolution adopted in 1948, ECOSOC in the course of the years agreed to three main resolutions, which shaped its relationship with NGOs and gave it an institutionalized structure[10]. The last, adopted in 1996, was meant to enhance the role of national NGOs and those from developing countries and economies in transition. As in the preceding resolutions, NGOs now have to pass an accreditation procedure through which they are classified into three categories. 'General consultative status' (G) is accorded to large, international NGOs that work on most of the issues on ECOSOC's

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[10] See ECOSOC resolution (288 (X)) of 27 February 1950, ECOSOC resolution 1296 (XLIV) on 23 May 1968, and ECOSOC resolution 1996/31 of 25 July 1996.

agenda; 'Special consultative status' (S) is granted to NGOs that have competence in a few of ECOSOC's issue areas; and 'roster consultative status' (R) is given to NGOs which ECOSOC considers to make occasional useful contributions to its work. Once accredited within one of those categories, NGOs can participate as observers at public meetings of the Council, its committees and sessional bodies (G/S), or at least be present at those meetings which are concerned with matters within their field of competence (R). They are notified of the date of the opening of each ECOSOC session, have large speaking and submission rights, and partly (G) can even put topics on the agenda, if agreed to by the NGO Committee or the relevant subsidiary organ of the Council. In sum, there might be some reason to argue that ECOSOC consultative status testifies to a certain need of the organization to acquire expert knowledge with regard to defining policy issues and formulating policy options (Dupuy, 1986:255). Since in the 1940s und 1950s the most active and effective international NGOs were those concerned with social and humanitarian concerns (Archer, 1983:306), their interests beneficially correlated with the issues to be dealt with by ECOSOC.

However, governments from the beginning kept a vigilant eye on no further rights being granted to NGOs. Thus, the privileges accorded to NGOs are contrasted by a tightly regulated system of accreditation. Eleven criteria have to be fulfilled, which, in addition, are regularly re-examined by mode of NGO activity reports every fourth year, possibly leading to suspension up to three years or withdrawal of status. In the case of national NGOs, the Member State concerned has to approve accreditation. Moreover, ECOSOC is the only UN domain where an inter-governmental committee is in charge of UN-NGO relations. The 19-member Committee on Non-Governmental Organizations has the final say on NGO accreditation, suspension, or withdrawal of status, even though NGOs dispose of some limited rights during the procedure. In 2006, it incorporated some members with a rather sceptical stand towards NGOs[11]. Furthermore, for NGOs in general consultative status, statements before the Council or its sessional committees are restricted to one per NGO, to be approved by the Council or its sessional committee on recommendation of the NGO Committee. NGOs in special consultative status are only heard by the Council in case there is no subsidiary body of the Council with jurisdiction in the field of their interest. At commissions or other subsidiary organs, speaking rights of NGOs are somewhat larger but in the case of roster NGOs are only accorded on the recommendation of the Secretary-General and at the request of the relevant body. For written contributions, restrictions as to the length of the statement, submission period, and to the comments of the Secretary-General to be included are of an even more complex nature. These complicated procedures seem to

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[11]   China, Cuba, Iran, Pakistan, Russian Federation, Turkey, USA, and Zimbabwe.

indicate that governments try to protect policy making against too much NGO impact and interference in decision-making. Moreover, the sheer number of criteria seems to be the reason for more and more NGOs preferring less formalized, but more flexible modes of participation, which at least give some leeway for partaking in the decision-making procedure[12] (UN, 2003:7). Nevertheless, the number of NGOs in consultative status has grown significantly throughout the years. Whereas in 1948, there was a total of 41 accredited NGOs, their number had grown to 377 in 1968, to 1,350 in 1998 (Alger, 2002:95), and to 2,719 in 2006[13].

b) Dynamic Developments Spreading in and around UN Conferences

The institutionalized procedures for NGO participation in ECOSOC constituted the main basis for UN-NGO relations during the first 20 years. They were also applicable to UN Conferences called by ECOSOC. However, from the 1970s onwards, UN Conferences were attended more and more frequently by NGOs, which leads us to the supposition that NGO interests – and hence their push factors – had changed significantly. As we will see, these push factors mainly related to agenda-setting and decision-making. Yet, governments' reluctance to open up policy formulation and decision-making only slightly changed, even though access for NGOs to Conferences in general and to the first two policy phases, agenda-setting and research in specific, improved.

After the 1968 ECOSOC reform, which had introduced new rules on financing of NGOs, on suspension and on withdrawal of consultative status, ECOSOC-NGO relations began to stagnate - some called it 'underachievement' (Charnovitz, 1997:258-261). At that time, development issues had come to the forefront, given the enormous number of developing countries having attained independence. This led to NGOs becoming more and more politically oriented - a role they had shunned before -, including also trade issues or economic and social justice on their action agenda. These new mandates in turn constituted a spur for NGOs to use UN Conferences, mostly focusing on development issues, as a catalyst for progress in civil society participation. More flexible rules of procedure, parallel conferences and NGO Fora allowed for easily obtainable possibilities of NGOs to shape the Conferences' agenda, even though this never resulted in giving NGOs a role in decision-making itself (Archer, 1983:309-311).

After the International Conference on Human Rights of 1968, the UN Conference on the Human Environment in Stockholm in 1972 was widely seen as a watershed in the engagement of NGOs in international conference diplomacy (Conca, 1996:105; 111). Supported by the Conference Secretary-General, NGOs that did not fit into the tradi-

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[12] This was also attested by the NGO liaison officer of OHCHR in an interview of 2004.

[13] See http://www.un.org/esa/coordination/ngo/about.htm, and for a list, http://www.un.org/esa/coordination/ngo/pdf/INF_List.pdf, both accessed 10 January 2006.

tional ECOSOC categories were admitted to the event. Moreover, it was the first conference with a major parallel NGO meeting taking place. An NGO statement was read in the plenary of the Conference. In addition, an NGO daily newspaper was published and gained credibility with delegations and the Secretariat. In the aftermath of the Stockholm Conference, the World Food Conference in Rome in 1974 even integrated NGOs in the inner workings, including committees, of a UN conference (Archer, 1983:314-317).

Almost twenty years later, the UN Conference on Environment and Development (UNCED), the 'Rio Conference' or 'Earth Summit' took place in 1992. It was considered to have been another turning point in NGO-UN relations (Alger, 2002:95). Meanwhile, an explosive growth in scale and scope of NGOs active in the field had taken place due to increasing concern with environmental matters since the 1980s. In Rio, NGO representatives which did not have consultative status with ECOSOC were involved in the meetings of the four Preparatory Committees (PrepComs). Five NGOs even were allowed to sit among the working parties of the PrepCom sessions (Conca, 1996:111). However, their input on agenda-setting at an early stage remained limited (Albin, 1999:374). After all, the result of the Conference, Agenda 21, devoted one chapter (Chapter 27) to the strengthening of the role of NGOs - as one of nine 'major groups' - as 'partners for sustainable development' (Stoecker, 2000:69). After the Conference, the General Assembly and ECOSOC set up a special category for participation of 550 NGOs, which had taken part in UNCED, in the work of the new Commission on Sustainable Development, a functional commission of ECOSOC (Willets, 2000:194).

As consultative status with ECOSOC had been bypassed, the Rio Conference created an important precedent and trend-setter for some creative mechanisms of NGO participation in subsequent world conferences, such as the World Conference on Human Rights (Vienna, 1993), the International Conference on Population and Development (Cairo, 1994), the World Summit for Social Development (Copenhagen, 1995), the World Conference on Women (Beijing, 1995), and Habitat II (Istanbul, 1996), but also in the follow-up to these conferences, especially the Rio Conference (Willets, 2000:194-196; 201; Alger, 2002:95-96). NGO involvement in some of these Conferences was said to have contributed significantly to reaching consensus in certain difficult policy areas, such as reproductive health and women's rights (UN, 2003:6). A new momentum was gained with the organization of part of the 2000 session of the UN General Assembly in form of a Millennium Summit, which was preceded by a large NGO forum, the Millennium Forum. The latter was judged by some to have constituted a potential prototype for an ongoing UN People's Assembly (Alger, 2002:95; 115). This was followed by new opening possibilities during the International Conference on Financing for Development (Monterrey, 2002), the World Summit on Sustainable Development (Johannes-

burg, 2002), and the World Summit on the Information Society (Geneva, 2003) (UN, 2003:11).

c) The Intrusion of Civil Society into New Policy-Making Bodies through the Back-Door

None of those Conferences was followed by an institutionalization[14] or an outreach of the new procedures to other main UN bodies, especially the GA or the SC[15]. At every event, NGOs had to start from zero to struggle for more participatory rights - or to accept, as one commentator put it: "two steps forward and one backwards"[16]. This seems to evidence the presumption that the higher the level of policy making, the more governments want to keep a final say on the policy decision and thus do not have any incentive to collaborate with NGOs, but rather vigorously struggle to keep them from further penetrating the policy cycle.

After the Earth Summit in 1992, UN reform proposals, worked out in response to the enthusiasm generated by NGO participation, mushroomed, but ultimately all failed. For example, ECOSOC decision 1996/297 of 25 July 1996 had recommended that the General Assembly examine the question of participation of NGOs in all areas of work of the UN. Its adoption was only made possible by adding an interpretative statement which restricted the scope of this paragraph to the competence of the General Assembly as set forth in Article 10 of the UN Charter, thus excluding peace and security matters dealt with by the Security Council. Subsequently, in the General Assembly Open-Ended Working Group on the Strengthening of the UN System, a sub-group on NGOs was formed in late 1996. However, it reached a deadlock following disagreement over the scope of work and was disbanded when the parent working group was wound up in July 1997 (Willets, 2000:198-200). The General Assembly instead requested the Secretary General, and later NGOs and others, to simply report on current arrangements for NGOs[17].

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[14] Apart from the changes adopted in ECOSOC resolution 1996/31 of 25 July 1996, which provided for a standard procedure for accreditation by conference preparatory committees encompassing all conferences convened by any organ of the UN.

[15] With the exception of the formal inclusion of some NGOs, together with voting rights, in the governance structures of a few UN-related bodies which focus on specific issues (UNAIDS; Global Alliance for Vaccines and Immunization; The Global Fund to Fight AIDS, Tuberculosis & Malaria). However, these new coalitions are organized on a UN inter-agency basis or outside the UN.

[16] NGO liaison officer of OHCHR in an interview of 2004.

[17] See UN GA decision 52/453 of 19 December 1997, UN Doc. A/53/170 of 10 July 1998, UN GA decision 53/452 of 17 December 1998, and UN Doc. A/54/329 of 8 September 1999. Even though the Secretary-General's report

c.1) The General Assembly's Politicized Decision-Making Power

With regard to the UN General Assembly, the picture has to be refined through looking at non-institutionalized working relations of NGOs with the GA. In fact, NGOs have worked with the GA since the earliest days of the United Nations, although in a purely informal way. In the beginning, this was rare but in recent years, 'off-the-record' participation indeed has been growing. On the one hand, this points to an increasing interest of NGOs in policy making of the GA. On the other hand, it indicates that reluctance of governments to pull civil society in continues, which in consequence forestalls any institutionalization of NGO-GA relations. Some governmental resistance seems to have been broken, however, since non-formal collaboration with NGOs is sought nevertheless. This lets us assume that our model of the policy cycle might have to be supplemented by some additional overarching indicators. One of those could be the fact that networking among different actors from civil society and governments might weaken resistance and create new pull or push incentives on one or the other part.

In fact, from the earliest days of the United Nations, some selected, mostly humanitarian NGOs attended meetings of GA Committees, usually the First or the Fourth Committee. Yet, their interest was low-key and directed towards ECOSOC rather than the GA. In the early 1960s, the Special Committee on Decolonization, the Special Committee Against Apartheid and the Committee on Palestinian Rights[18] developed special relations with NGOs. From the 1970s on, NGOs have taken part in the committee work of Special Sessions of the GA (development, disarmament, drugs, and apartheid). In 1971, the Subcommittee of the Committee on the Peaceful Uses of Outer Space even formally granted observer status at its meetings to a Category II NGO, the International Astronautical Federation (Willets, 2000:196-197). NGOs addressed a regular GA Committee (its 2nd) in November 1993 during its preparatory work for the International Conference on Population and Development. For this purpose, the official debate was adjourned (UN, 2003:11).

This collaboration later also involved the General Assembly itself. The first GA Special Session addressed by NGOs was the tenth on disarmament in 1978, and then the 19th on the five-year review of the Rio Conference in 1997[19]. At that time, the NGO community had expanded, included more national and southern NGOs, and was increasingly activist and issue based. The shift towards a de-compartmentalization and an integration of issues, such as the concept of sustainable development, resulted in a higher

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mainly focused on improvements of UN-NGO relations at the level of the UN Secretariat and to speed up NGO access to information and documents, this did not find the approval of governments in the end.

[18] No longer in existence.

[19] See UN GA decision 51/467 of 18 April 1997.

interest of NGOs in the overarching political affairs of the General Assembly and in major global negotiations[20]. After much discussion, NGOs also addressed most of the following GA Special Sessions (UN, 2003:11). Some NGO leaders even took the floor at the GA, which was then meeting as a committee of the whole, or during a formal suspension of the meeting to hear NGO representatives. In this context, NGO protests during the human rights five-year review in the regular GA session in 1998 led to an unofficial NGO meeting being convened (Willets, 2000:202). Apart from this, some selected NGOs have been given observer status in the General Assembly. However, this remains limited to NGOs with an exceptional status[21] and was at times highly controversial[22].

Progress towards NGO inclusion since has been very slow. The report of the Secretary-General of 1998, delivered in the context of the reform process, but not adopted in the end, had suggested that ECOSOC-accredited NGOs be allowed to occupy a number of seats in the General Assembly "as available"[23]. To this day, there is no official accreditation procedure, neither in the General Assembly itself nor in its sub-organs. However, there seem to be more and more avenues for informal contacts of civil society and GA members[24]. Indeed, the growing day-to-day encounters of governmental and civil society representatives might operate as a gateway for civil society participation, even by and by in a more formal way. In this line, a recent report of a Panel of Eminent Persons on United Nations-Civil Society Relations has even suggested joining all existing UN accreditation processes into a single mechanism under the authority of the General Assembly, which would mean to extend civil society engagement to this forum as well (UN, 2004:11; 53-54).

c.2) The Security Council and its Secretive Policy Matters

Similarly, the Security Council, through the action of individual members, opened itself towards more transparency during the last decade. There were neither formal nor any informal ways of NGO collaboration with Security Council members. The Council was a pretty closed policy circle, given the secretive nature of the security issues it dealt with. With the emergence of the notion of 'human security', which also embraces hu-

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[20] Archer showed this already for the 1980s; Archer, 1983:321.

[21] Such as the International Committee of the Red Cross, which enjoys international legal personality given its specific tasks with regard to humanitarian law, the International Federation of Red Cross and Red Crescent Societies, its international federation, and the International Union for the Conservation of Nature and Natural Resources, a hybrid organization consisting of governmental and NGO representatives.

[22] In 1994, the General Assembly, on the request of the United States, agreed to place a general block on any more NGOs being recognized; see UN GA decision 49/426 of 9 December 1994. Later, this was abandoned.

[23] See UN Doc. A/53/170 of 10 July 1998; see note 17.

[24] Donini already stated this in the mid-1990s; Donini, 1996:85.

manitarian and social issues as well as the concept of sustainable development, governmental actors seemed to be more inclined to let NGOs in 'through the cracks in the floor'. In addition to growing interests on both parts, also in this case networking and interaction has surmounted some reticence with regard to their cooperation.

In effect, in 1992/1993 during the membership of Ambassador Arria from Venezuela, press conferences and Council field trips were introduced, and more and more documents were not classified as confidential any more. In the course of the years, two *ad hoc* procedures have developed which give NGOs the possibility to consult with Council members and to be briefed on the one hand, and on the other hand to brief the Council on international peace and security issues (Paul, 2001a; 2001b).

The first *ad hoc* procedure was referred to as the Arria Formula. This Formula, devised by Ambassador Arria, enables a member of the Council to invite other Council members to an informal meeting, held outside of the Council chambers and chaired by the inviting member, for the purpose of a briefing of the Council given by one or more experts. It was first implemented in 1993 during the civil war in former Yugoslavia, when a Bosnian priest had asked for individual meetings with Council members. Only Arria agreed and invited Council members to gather over coffee together with the priest. After some dispute about the use of the formula to include NGOs and other non-state representatives from 1996 onwards, and after the testing of similar approaches, such as the so-called Somavía Formula[25] or the calling of '*ad hoc*' events, the question reached a deadlock, even though the 'Razali Proposal' for Security Council reform of the General Assembly President Razali Ismail of 20 March 1997 proposed 'greater use' of the Formula. Only two years later, when Council delegates had changed, the formula could be revived. On 12 April 2000, the Council held its first regular Arria Formula briefing with humanitarian NGO leaders. During that year, the Council also for the first time permitted other Member States to attend those meetings, without the right to speak and on condition that they wrote to the Council President asking for permission. Today, Arria Formula meetings take place virtually every month. They are announced as part of the regular Council schedule and are provided with full interpretation by the Secretariat. No Council meetings or consultations are scheduled in parallel. However, meetings remain informal, off-the-record and are held outside the official Council meeting and not in the regular formal or informal Council meeting rooms. They take place in a confidential setting. The meetings are presided over by a member of the Council as service facilitator for the discussion, but not by the President of the Council (Paul, 2001b). The

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[25] It included members of the ECOSOC bureau and the bureaus of the General Assembly Second and Third Committees and was chaired by the head of the UN Department of Humanitarian Affairs. This procedure was not used again, because delegations not on the three bureaus objected to being excluded.

Panel of Eminent Persons on United Nations-Civil Society Relations has suggested widening the Arria Formula by increasing the participation of actors from the field (UN, 2004:46).

The second *ad hoc* procedure is the NGO Working Group on the Security Council, which is directed towards briefings of NGOs by Council members. In May 1994, after NGOs had organized, a conference on Council reform in relation to ongoing reform discussions in the UN General Assembly, an informal 'NGO Working Group on the Security Council' outside the regular CONGO[26] Committee framework was set up in New York in order to discuss Council reform. This group, consisting only of a few NGOs[27], gathered several times with Council members and tried at the same time to attract as many NGOs as possible (at one point over 100). As General Assembly negotiations on Council reform froze, the group in early 1996 decided to shift its focus to an informal process of 'dialogue' with the Council. From the end of 1996, only a select group of NGO representatives was invited to the meetings with Council members[28]. This Group subsequently was allowed to have regular briefing meetings with Council members, it being understood that the Council President should never meet officially with NGOs and that other delegates could meet NGOs only in their national capacity. Thus, regular meetings were held twice a month, one with the outgoing President and the other with other delegates respectively. US Ambassador Bill Richardson in September 1997 was the first to overturn the arrangement when he met with NGOs during his presidency, even though in his national capacity. Today, the Group has a closed membership including some large international NGOs in the fields of humanitarian relief, human rights, disarmament, global governance and development. Briefings and meetings with Council members, Presidents and UN officials are always private and off-the-record, are held nearly every week and usually take place either in a mission or ambassador's residence, or in an NGO conference room. A twenty-minute presentation given by a Council member usually is followed by an hour question time. Typically, sixteen to twenty NGO representatives attend. NGOs from other regions that come to New York for special events often are invited to join briefings of the Group (Paul, 2001a).

Thus, the UN Security Council to this day does not accredit NGOs. However, it has developed a constant dialogue with civil society representatives, which is adapted, through its informality, to the secretive nature of the security issues dealt with. Given

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[26] The Conference on Non-Governmental Organizations in Consultative Status with the Economic and Social Council.

[27] The Global Policy Forum, Amnesty International, EarthAction, the Lawyers' Committee for Nuclear Policy, the World Council of Churches, and the World Federalist Movement.

[28] About thirty NGO representatives.

the sensitive issue of security, which was at the origin of exclusion of collaboration with NGOs in every policy phase during decades, it is astonishing that such an - although exclusive, since limited to some NGOs - exchange takes place today. There might be some reason to argue that the growing number of NGOs, their increasing access to headquarters facilities and to members of the Security Council in person have built up some confidence among the people involved. This 'pressure of everyday encounters' (Alger, 2002:114) might have spread a culture of 'pulling strings', of connections and networking, which in the end led to a quasi-institutionalization of informal participation structures.

d) Project Implementation below ECOSOC and the GA

The examples mentioned so far have mostly tackled the first four phases of the policy cycle model. However, governments as well as NGOs are also interested in the last two policy phases. Yet, policy implementation and evaluation at the UN mostly takes place at a level below the main decision-making bodies, especially below ECOSOC and under the GA. The vast variety of special programmes and funds operating under the GA, such as UNDP or UNHCR, can be mentioned in this context. Here, the UN definitely has some interest of working closely with NGOs. Being not only a forum, but also a service organization, since the 1980s it has increasingly relied on NGOs with regard to project implementation and evaluation. Until the 1970s, functional interaction between the UN and operational NGOs in the field was marginal. Given a general shift to a less state-centric and more market-driven approach towards development, a rise in the number of failed States, the emergence of political conditionality of support and of complex emergencies, and shortages of staff and money, the UN in the 1990s had to intensify transfer of money and services through NGOs (Donini, 1996:88-97; Alger, 2002:116). The inducement for civil society engaging with the UN in project implementation often is a financial one. Hence, some commentators warn NGOs against falling into the trap of subservience (Donini, 1996:97-100).

e) Public Support Activities Conducted by DPI

There is another institutionalized UN-NGO relationship which we have not addressed so far, namely, association with the Department of Public Information of the UN Secretariat. Similar to the ECOSOC procedure, it has been in existence since the early days of the UN in 1946. The trend of mounting figures of NGO accreditation likewise can be observed with regard to this association procedure: the number of NGOs associated with DPI has grown to 1,600 in 2003. However, DPI association does not touch on any phase of the governmental policy cycle. Here, we seem to meet another instance where our policy cycle model is not sufficient to explain different pull and push factors. At the core of DPI-NGO relations is the mutual interest of the partners in distributing and re-

ceiving information about the United Nations. In the view of the UN, DPI association is targeted towards fostering the UN image and the knowledge about its functioning throughout the world. In this way, it could be interpreted as an early approach of the world organisation to gain legitimacy in the view of public opinion.

DPI encourages associated national information services, educational institutions, and other non-governmental and interested groups in spreading information about the UN. In return, the DPI/NGO Section at UN Headquarters provides information services, such as the organization of an Annual DPI Conference for NGOs, weekly briefings, joint DPI/NGO information programs, yearly orientation courses and the publication of a DPI/NGO Annual Directory. Moreover, it maintains an NGO Resource Center, which offers access to current UN documents and press releases, regular mailings of UN information materials, a video lending library and a selection of UN system publications. DPI association does not give formal access to inter-governmental meetings, but it does provide ground passes that permit access to the buildings and meeting rooms. Decisions about association with DPI, which only take into account four different criteria, are taken by an in-house Secretariat Committee on Non-Governmental Organizations rather than by an inter-governmental body. The somewhat less regulated relationship can be explained by the mutual advantages both partners draw from it with regard to their public relations activities. Moreover, the operation of the association procedure beyond the political realm leaves governments less suspicious about NGO participation and might explain why they agree to delegate decision-making about association to a Secretariat Committee.

Finally, the UN also significantly improved its information policy beyond strict association. Meanwhile, most UN documents can be accessed online from the mid-1990s onwards. Moreover, the Official Documents System (ODS), which digitally stores all UN documents in all six official languages from 1993 to the present and selected documents from earlier periods, finally was opened to the public free of charge in 2004. This opening up surely was supported by a huge progress in information technology. However, the willingness to offer these possibilities - even not always on a voluntary basis – testifies to the fact that, apart from draft texts at their final stage, access to documents, especially to adopted texts, does not belong to a central phase of the policy cycle.

f) Analysis

We now turn to an analysis of the patterns of interaction between the UN and civil society observed with regard to the different main UN bodies. The results mostly confirm our hypotheses. Across all UN bodies, we could detect incentives for governments to pull in NGOs in the first two and the last two policy phases, namely, in agenda-setting, research and analysis, and – as far as projects were executed – in policy implementation and evaluation. Here, balanced push and pull factors seem to have brought about fruitful

cooperation, even though UN-NGO relations in the case of the GA and the SC remained purely informal. On the other hand, governments vigorously defended the core decision-making phase from formalized partaking of NGOs, although NGOs had growing interests in that phase the more an issue became pertinent to them. Yet, they could only influence a policy decision, be it of ECOSOC, of the GA or the SC, through classic lobbying. Only in the case of UN Conferences, we could discover some rare instances where governments also relied on NGO support with regard to policy formulation. The following table summarises the results.

Table 2:   *UN Bodies as per Incentive for Collaboration between Governments and NGOs According to the Policy Cycle Model*

UN bodies as per incentive / Policy phase	UN bodies interested in NGO collaboration (UN bodies pulling NGOs in)	UN bodies of interest to NGOs (NGOs pushing into UN bodies)
Agenda-setting	ECOSOC, UN Conferences, (GA), (SC)	ECOSOC, UN Conferences, GA, SC
Research and analysis	ECOSOC, UN Conferences, (GA), (SC)	ECOSOC, UN Conferences, GA, SC
Policy formulation	(UN Conferences)	ECOSOC, UN Conferences, GA, SC
Policy decision	-	ECOSOC, UN Conferences, GA, SC
Policy implementation	Project executing bodies	Project executing bodies
Policy evaluation	Project executing bodies	Project executing bodies

However, the table above shows that this picture does not enable us to account for the fact that "[t]here is no more dynamic area of growth and change through practice in the UN system than that involving NGOs and other aspects of 'civil society'" (Alger, 2002:93). Apparently, some new factors have emerged throughout the last decade, which have led to an intensification of IGO-NGO contacts in the classical policy phases, but also to interaction for which an explanation has to be sought beyond the model of traditional decision-making. As a UN expert paper phrases it: "[i]n truth, it is not the UN that has changed - but the world."(UN, 2003:22). This pointing to the catchword of 'globalisation' suggests three conclusions, the first giving an explication for the enormous increase in NGO participation in the classical UN policy phases, and the second and third clarifying the situation by going beyond the policy model:

   First, in a globalized world, there seems to be an increasing need for more expertise in order for a forum organization such as the UN to remain effective. Policy issues have to be identified within a much broader and more complex global setting, by "putting the

issues, not the institution, at the center" (UN, 2004:7-8). The UN Secretary General in 1999 expressed this in the following words: the UN "is keenly aware that if the global agenda is to be properly addressed, a partnership with civil society is not an option: it is a necessity… Solutions can be found only if we address global issues together – through better cooperation, closer alliances, increased commitment, and a renewed sense of solidarity."[29] This might be an explanation for the increased interaction of UN and NGOs at the agenda-setting, and research and analysis stage today.

Second, the emergence of a much larger and issue-oriented civil society, likewise the result of an integrating global environment, might have instigated a process of networking which in the end led to a new general pull-in factor on the part of governments. Thus, governmental resistance towards NGO participation started to crumble in formerly secretive or closed policy fora, such as the General Assembly and especially the Security Council. This 'networking mentality' of both the UN and civil society was largely acknowledged in the report of the UN Panel of Eminent Persons on United Nations-Civil Society Relations, which based its proposals, *inter alia*, on the principle of becoming 'an outward-looking organization', with an emphasis on "convening and facilitating rather than 'doing'" (see UN, 2004:8-9; 11).

However, there is a third wave, which seems to be at the origin of the new pull-in behaviour of the UN. The early relationship of DPI with civil society already was a first sign of this incentive. This third wave has to do with an increasing demand for more legitimacy and democracy within international organizations, conditioned by a stimulated concern of NGOs with procedural questions that they formerly ignored (Willets, 2000:203). In other words, "[t]here is increasing public dissatisfaction with the institutions of global governance [and] increasing public enchantment with traditional democracy" (UN, 2003: 22). In turn, the UN, in its self-perception as a forum organization outreaching to the public, seems to be less antipathetic towards NGO claims for more participatory rights.

III. PARTICIPATION OF NON-STATE ACTORS IN THE WTO

a) Rise and Decline of the Club Culture in GATT

The WTO constitutes an excellent case to contrast the forum-design of the UN-type with the club-model of intergovernmental cooperation. For a long time the WTO and its predecessor, the 1947 GATT, have been conceived as a stage for intergovernmental negotiation. In recent years the WTO has been charged by NGOs with being secretive and too reluctant to include non-state actors in its policy making. On the following

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[29]   Speech of Kofi Annan in Montreal, December 1999, at the World Civil Society Conference, Building Global Governance Partnerships, Dec. 7 – 11, 1999.

pages we analyze the evolution of the world trade regime with special regard to possible incentives for WTO-CSO interaction in all phases of its policy-cycle. As the WTO, unlike the UN, has a very slim institutional structure the discussion is not organized along distinct bodies of policy making but rather in a historical perspective.

From the perspective of non-state actors, international trade governance came to a promising start after World War II. From 1946 to 1948, the predecessor of today's WTO, the International Trade Organization (ITO), was negotiated, envisaged as an encompassing organization in the field of international economic cooperation and only *inter alia* concerned with trade. It was supposed to tackle a much wider range of issues, including full employment and economic development (Gardner, 1956; Graz, 1999). On the initiative of the United States, non-state actors were admitted to the meetings of the preparatory committee that was in charge of producing a Charter for the ITO. Thus, NGOs were able to follow the negotiation of the ITO Charter and to submit documentation to state representatives (Charnovitz and Wickham, 1995).

Provisions for an institutionalized consultation of NGOs were also made in the first draft of the ITO Charter that the U.S. had sponsored. Article 71, paragraph 3 of the draft envisaged that the ITO "may make suitable arrangements for consultation and co-operation" with NGOs and "may invite them to undertake specific tasks".[30] The rationale behind this formulation was that NGOs had research staff, expertise and facilities so that the ITO might ask them to carry out certain studies (Charnovitz and Wickham, 1995:114). In the course of the Charter negotiations, the reference to these "specific tasks" dropped out, but the call for consultation and co-operation remained.[31] In the 1940s, there seems to have been a clear demand for co-operation with regard to the 'research and analysis-phase' of the policy-cycle in the envisaged ITO.

The ITO Charter was adopted in March 1948 at the *United Nations Conference on Trade and Employment* in Havana, but was never ratified. What remained from the multilateral effort was the *General Agreement on Tariffs and Trade* (GATT) that had been already concluded in 1947. Due to its status as a mere tariff agreement, the GATT regime was not supposed to develop into a proper international organization. The original GATT was a Treaty that dealt almost exclusively with trade in products and which "was not intended to be a comprehensive world organization. It was a temporary side affair meant to serve the particular interests of the major commercial powers who wanted a

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[30] The Draft Charter is included in the Report of the First Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, London, October 1946, UN Doc. E/PC/T/33 (1946).

[31] Cf. Havana Charter for an International Trade Organization, Art. 87, Paragraph 2, UN Doc. E/Conf.2/78, 24 March 1948, published in: United Nations Conference on Trade and Employment, Final Act and Related Documents, Havana 1948.

prompt reduction of tariffs among themselves" (Hudec, 1990:57). Thus, the GATT was constructed following a 'club model' of international cooperation (Keohane and Nye, 2001). It relied on confidentiality of proceedings, excluded minor actors from them and was geared towards establishing '*faits accomplis*' that would bind national governments to multilateral agreements and limit the influence of domestic protectionist lobbies. Insulating the GATT from the dynamics of wider international relations was also useful in a different respect. It helped to shield the GATT from too much political interference motivated by geostrategic or other non-trade concerns. In turn, by resolving trade disputes within the GATT, economic tensions could be prevented from doing too much damage to 'high politics'.

Given its limited tasks and its institutional design, it is not surprising that the GATT did not develop arrangements for consultation or collaboration with non-governmental organizations. As a forum for tariff negotiation it focused on intergovernmental negotiation and decision-making. From the negotiators' point of view, there was little to gain from NGO presence in tariff bargaining. What crucial information could they have provided? Implementation of projects was not an issue at GATT either. Enhanced publicity of proceedings would not have been conducive to the smooth functioning of intergovernmental tariff negotiations or dispute settlement. From the NGO point of view, there was little interest in a direct presence at GATT. Tariff negotiations were of interest to industry associations that lobbied their national governments. General interest NGOs were not too much concerned with questions of trade. Moreover, media interest in the GATT was limited, due to the highly technical character of its agenda.

As actors within the GATT system did not see advantages in opening the regime, and actors external to it did not ask for it, trade governance became a secretive affair. In the early years of the GATT, not only pull factors, but also push factors were absent. Policy making and dispute settlement in GATT remained closed to the public and documents about its activity trickled scarcely. Not least because of its insulation, GATT also spawned a transnational community of trade experts and diplomats who cultivated a considerable team spirit and an ethos of problem solving (Weiler, 2001:337). Things changed at the beginning of the 1990s as attention turned to the GATT with the rise of the trade and environment debate. Unlike trade, environment was a field in which activist NGOs had a huge interest. Representatives of environmental NGOs as well as academic commentators started to argue that in resolving disputes such as *Tuna-Dolphin*, the GATT reached out beyond the scope of its trade facilitation mandate and *de facto* adjudicated environmental policies (Esty, 1999).

At the same time, negotiations of the Uruguay round were drawing to a close and the *World Trade Organization* with a much broader mandate than the GATT appeared at the horizon. The world trade regime entered a phase of enhanced (re-)politicization

(Howse, 2002). Non-state actors played an important part in this process as emerging transnational NGO networks started campaigning against the pitfalls of globalization and the neoliberal principles that guided the institutions of global governance, in particular the IMF and the World Bank. Not only did they expose international organizations to public scrutiny, they also knocked on their doors, demanding access, insight and a voice in their policy making. Recalling the model outlined above we can conclude that the rapid enlargement of the GATT's mandate and scope of activity in the 1990s led to a renewed interest by non-state actors to push into this international regime.

b) Transparency and Access to Information at the WTO

When the WTO was founded in 1994, NGOs were already pushing into the intergovernmental institutions of trade governance. From the perspective of the WTO, the question of how to deal with transparency and access for non-state actors became imminent (Charnovitz, 1996). In the *Agreement Establishing the World Trade Organization*, it is stated only that "[t]he General Council may make appropriate arrangements for consultation and cooperation with non-governmental organizations concerned with matters related to those of the WTO" (Art. V, Paragraph 2). The "may" in this paragraph leaves an ample discretion to policy-makers to determine what this might mean in practice.

The WTO General Council took a first step towards clarification in July 1996 when it adopted its "Guidelines for arrangements on relations with Non-Governmental Organizations".[32] In this document, Members pledge to enhance transparency of WTO policy making and state that "[t]he Secretariat should play a more active role in its direct contacts with NGOs who, as a valuable resource, can contribute to the accuracy and richness of the public debate."[33] Thus, the WTO officially views the main benefit of liaising with NGOs in their capacity to channel trade issues into public debate.[34] In this, the WTO seems to acknowledge that there is a deficit in its relations with its global constituency. Assigning NGOs the task to improve the "accuracy and richness of the public debate" sounds quite magnanimous, given that many vociferous NGOs campaign against WTO principles and policies. Yet, it documents that the WTO was responding here to a legitimacy challenge posed by non-state actors. The organization in fact acknowledged that there was insufficient public debate on its policy choices.

With regard to transparency and access to documents, the WTO made some remarkable progress over the years, at least if compared with the old GATT regime. The or-

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[32] Cf. WTO Doc. WT/L/162, 23 July 1996.

[33] Ibid., Paragraph IV.

[34] See also Paragraph II of the Declaration, in which "Members recognize the role NGOs can play to increase the awareness of the public in respect of WTO activities and agree in this regard to improve transparency and develop communication with NGOs".

ganization's website has been judged as being among the best in the field of international organizations (One World Trust, 2003:15). In fact, compared to the electronic jungle that the EU and the UN have created, the WTO's presence on the web is remarkably accessible, user-friendly, and reasonably up to date. On 14 May 2002, the General Council eventually revised its procedures for the circulation and derestriction of documents.[35] According to this decision, all official WTO documents shall be unrestricted and made available via the website in the organization's official languages.[36] This provision includes the minutes of meetings that will be derestricted automatically 45 days after their circulation.[37] Hence, with regard to the documentation of its policy process, the WTO has become a rather transparent international organization.

c) Access to WTO Meetings

The situation is completely different, however, with regard to direct access by observers to the policy-making process. In its 1996 guidelines on relations with NGOs, the General Council states "there is currently a broadly held view that it would not be possible for NGOs to be directly involved in the work of the WTO or its meetings."[38] Thus, NGOs are still excluded from almost all meetings of WTO bodies, even at the level of specialized committees. There is only one exception to this general rule. Since 1996, some sort of accreditation is possible for the Ministerial Conferences that are convened at least once every two years. Applications from NGOs are accepted "on the basis of Article V, paragraph 2 of the WTO Agreement".[39] This means in practice that, when filing their request for registration, NGOs must indicate in detail how they are "concerned with matters related to those of the WTO". Although participatory rights are confined to attending the Plenary Sessions of the Conference, numerous NGOs have sought accreditation to the Ministerials in recent years.[40] The following table illustrates this development.

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[35] Cf. 'Procedures for the Circulation and Derestriction of WTO Documents', WTO Doc. WT/L/452, 16 May 2002.

[36] Ibid., Paragraph 1 and 3.

[37] Ibid., Paragraph 2(c).

[38] WTO Doc. WT/L/162, 23 July 1996, Paragraph VI.

[39] Source: http://www.wto.org/english/forums_e/ngo_e/intro_e.htm, accessed 26 January 2006.

[40] The politically most interesting part of the negotiation at international conferences, however, does not take place in the plenary sessions but in official or non-official meetings of smaller groups of delegates.

Table 3:   *Participation of NGOs in WTO Ministerial Conferences since 1996*

Ministerial	Accredited NGOs	NGOs represented	Registered participants
Singapore 1996	159	108	235
Geneva 1998	153	128	362
Seattle 1999	776	686	1,500 approx
Doha 2001	651	370	370
Cancún 2003	961	795	1,578

Source: http://www.wto.org/english/news_e/news03_e/ngo_minconf_6oct03_e.htm (accessed 15 January 2006).

The possibility to watch Plenary Meetings is certainly not the main incentive for NGO representatives travelling to the Ministerials. Presence at the conference venue enables them to lobby national delegates, to contact journalists and to distribute information material in the designated NGO areas that the WTO provides at the sidelines of the conference. Yet, there is no way in which non-state actors could enter a regular and mutual dialogue with policy-makers or to exchange views with the assembly of delegates as a whole. Intergovernmental and non-state areas remain separated. As the WTO remains a member-driven organization with strong emphasis on intergovernmental negotiation and decision-making, the lack of NGO-access to meetings can be explained by the continuous absence of pull factors on the governmental side.

The clear separation and protection of the intergovernmental realm from NGO activities is characteristic of other forms of WTO outreach to civil society. The WTO organizes three kinds of outreach meetings. First, since 1997 there are large-scale public symposia to consult with NGO representatives on topics that are of particular concern to NGOs, such as environment and development. Symposia take place approximately once a year, and at times have been co-organized with other Geneva-based IGOs, such as UNCTAD.[41] These symposia *inter alia* are attended by government representatives. They are designed, however, to cover a wide range of trade topics and are rarely devoted to the discussion of specific proposals on the WTO agenda. Second, NGOs that have published trade-related studies or reports on issues falling within the WTO's mandate may be invited to the *Centre William Rappard* for an informal discussion of their work with interested delegations and Secretariat officials. NGOs are invited on the initiative of the WTO Secretariat or of a member state. There are also issue-specific discussions organized by the Secretariat for NGO representatives. Third, the Secretariat organizes briefings for NGO representatives by WTO staff on current issues of world

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[41]   In 1997, the WTO and UNCTAD co-sponsored an NGO meeting that preceded the 'High-Level Meeting on Integrated Initiatives for Least Developed Countries' Trade Development', see WTO Doc. WT/LDC/HL/16, 24 October 1997.

trade governance. Yet, none of these activities entails a political dialogue with national delegates. None of these activities can be allocated to a distinct phase in the policy-cycle. They rather seem to be a response to some general challenges to organizational legitimacy that the WTO faced in the 1990s.

Finally, in the WTO dispute settlement system there is the possibility for NGOs and private individuals to file *amicus curiae* briefs. There is no explicit reference to such a practice in the respective agreements so that the issue has spurred quite some controversy among WTO state parties and academic experts.[42] In several of its rulings, the WTO Appellate Body affirmed that it has the authority to accept unsolicited statements by non-governmental organizations or individuals, even if the latter do not have a legal right to make such submission or to be heard by the Appellate Body.[43] In one controversial case, the Appellate Body even devised an *ad hoc* Special Procedure, setting out modalities for the submission of *amicus curiae* briefs (without considering any of them in the end).[44] Given the legal uncertainty around current practice, it is difficult to assess if this is likely to become a valuable tool for non-state actors wishing to make their concerns heard in WTO dispute settlement. In this respect, much will depend on the outcome of the Doha round of negotiations whose agenda comprises a review of rules and procedures guiding WTO dispute settlement, aiming *inter alia* at a clarification of the *amicus curiae* issue.

d) Analysis

We have now outlined the rules and practice of the collaboration between the WTO and non-state actors. How can we explain this pattern of cooperation and in particular the recent advances in access and transparency? For WTO staff and policy-makers there should have been rather little changes in the incentive structure outlined in table 1 since

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[42] This controversy is focused inter alia on the interpretation of the Understanding on Rules and Procedures Governing the Settlement of Disputes which is Annex 2 to the WTO Agreement (DSU), and the Working Procedures for Appellate Review (WTO Doc. WT/AB/WP/7, 1 May 2003); see Appleton 2000, Mavroidis 2002, Howse 2003.

[43] For a discussion by the Appellate Body on the admissibility of briefings from non-governmental actors to the Dispute Settlement Panel, see United States-Import Prohibition of Certain Shrimp and Shrimp Products, Report of the Appellate Body, WTO Doc. WT/DS58/AB/R, 12 October 1998, para 104-110. For the right of the Appellate Body to receive and consider such briefs, see United States – Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products Originating in the United Kingdom, Report of the Appellate Body, WTO Doc. WT/DS138/AB/R, 10 May 2000, para 42; and European Communities – Trade Description of Sardines, Report of the Appellate Body, WTO Doc. WT/DS231/AB/R, 26 September 2002, para 164.

[44] This procedure was introduced by the Appellate Body in the Asbestos case, which was of great interest to environmental NGOs; see European Communities – Measures Affecting Asbestos and Asbestos-Containing Products, Communication from the Appellate Body, WTO Doc. WT/DS135/9, 8 November 2000.

the days of the old GATT. As the WTO still is a member-driven organization, its Secretariat and staff play a rather subordinate role in the identification of new issues. Given the degree of professionalization in the trade community, it seems unlikely that WTO staff or delegates from the industrialized world would have to rely on NGO expertise in research or policy formulation. In theory, developing country delegates at the WTO with a lack of support staff and technical expertise would have more reason to collaborate with non-state actors. So far, however, this potential for collaboration has not been realized. Many developing country delegates still distrust NGOs because they perceive them as pursuing the political agenda of industrialized societies (Türk, 2003). In fact, delegates from major developing countries such as India have been particularly opposed to conferring any official status to NGOs at the WTO (Zutshi, 2001:390).

With regard to the implementation of an organization's projects through non-state actors, there is equally little room for collaboration at the WTO. Unlike the World Bank, for example, the WTO is a rule-making organization and simply does not have any projects to implement. The monitoring of member States' compliance with WTO rules is carried out by the organization itself, for example, through its trade policy reviews. Moreover, member states can be expected to bring other parties' non-compliance before the dispute settlement body, at least if they suffer economic losses from deviant behaviour. In sum, there is little incentive for the organization itself to pull NGOs in. Thus, the pattern of collaboration seems to follow largely the pressure of NGOs pushing into the organization, limited by the resistance of the IGO in protecting its intergovernmental core on the other. The following table illustrates this:

Table 3: *The constellation of push and pull factors at the WTO*

Influencing factors / Policy phase	Pull factors (IGOs pulling NGOs in)	Push factors (NGOs pushing into IGOs)
Agenda-setting	-	NGOs seek to influence the WTO's agenda
Research and analysis	-	NGOs seek to inform the research process in WTO
Policy formulation	-	NGOs seek to influence the WTO's policy formulation
Policy decision	-	NGOs seek to influence the WTO's policy choices
Policy implementation	-	-
Policy evaluation	-	-

Given the complete absence of pull-factors in the WTO case, we need to explain how exactly NGO 'push' leads to cooperation without incentives on the IGO side. A rather

diffuse mechanism seems to be at work here – a mechanism that we have not captured in the range of factors identified in Table 1. In the 1990s, NGOs have challenged the legitimacy of the WTO by questioning its secretive and exclusionary policy style. They invoked transparency, stakeholder participation and inclusiveness as general standards of good governance (Woods and Narlikar, 2001). Like any other institution of global governance that relies on voluntary support, the WTO cannot be indifferent about its perceived legitimacy (Franck, 1990; Steffek, 2003). If an international organization violates standards of good governance that are widely viewed as appropriate, support from member governments might decline; at least if these governments are democratically elected and sensitive to street protests and shifts in public opinion. Moreover, it can be assumed that the often quite internationalist and committed staff at the organization is sensitive to shaming campaigns. This is why NGOs try to use public delegitimation as a lever to open the door to international governmental institutions. Neither governmental delegates nor the civil servants in the WTO would be well advised to completely ignore NGO campaigns against the organization.

Another factor that we had not accounted for in our initial scheme is a sociological one. International organizations are populated by people socialized in a certain environment and adherent to a specific set of values and principles (Barnett and Finnemore, 2004; Johnston, 2001). They hence develop an institutional culture which might be more or less favourable to collaboration with NGOs. The club culture of GATT that persists among delegates and officials in the WTO certainly contributes to the difficulties of NGOs in getting access to the organization (Wilkinson, 2001).

IV. CONCLUSION

In this paper, we have investigated patterns of civil society participation in the UN and the WTO. We developed an analytical framework that identified the motivations that IGOs and civil society actors might have for engaging in consultation and collaboration. In the two cases studied here, the model of a policy cycle proved quite useful to structure the empirical enquiry and to identify push and pull dynamics as determinants of cooperation. In particular, we found that collaboration is in fact extensive in all those fields of political activity where both IGOs and NGOs can derive clear-cut benefits from it. Cases in point were the identification of issues, research and fact finding in the case of the UN as a forum organization, as well as the joint implementation of projects.

In the case of the WTO, incentives for collaboration are much weaker on the side of the international organization, as there is little need for NGO expertise in research, assistance in the implementation of projects or monitoring of Parties' compliance. In both organizations, we found the tendency to protect an *intergovernmental core* of negotiation, that is, decision-making processes among state delegates. In the UN system, this is evidenced by the absence of a formalized negotiating role for NGOs in any of the main

UN bodies and fora, or of any institutionalized position at all, despite some informal developments in the last years. It seems that the intensity of efforts to protect this core is correlated with the political importance that member state governments attach to it; hence we should expect stronger protection when it comes to hard issues such as security, trade, and finance and lesser in other policy fields.

Yet, from the analysis of the two cases it also emerged that the factors envisaged in our initial framework might not be sufficient to account for all dynamics of collaboration between IGOs and NGOs. There seems to be a less concrete and tangible benefit for IGOs collaborating with NGOs that does not fit in any of the phases of policy making. It rather seems to be related to the more general public perception of the legitimacy of the organization. We found two instances of such a tendency. First, the UN Secretariat seeks assistance of NGOs in mobilizing public support for and a positive perception of the organization. Second, in the case of the WTO, we found civil society actors seeking to damage the image of the IGO, pointing to its deficits in transparency and public access to policy making. The WTO responded to these arguments, partly by trying to refute them, partly by adjusting its respective rules and policies. We should therefore add to our analytical framework a general interest of IGOs in maintaining the perceived legitimacy of the organization.

Another factor that we had initially not accounted for is a sociological one. International organizations are populated by people socialized in a certain environment and adherent to a specific set of values and principles. They hence develop an institutional culture which might be more or less favourable to collaboration with NGOs. The club culture of GATT that still persists among many delegates and officials in the WTO certainly contributes to the difficulties of NGOs in getting access to the organization. In the UN, in contrast, a sort of 'networking mentality' apparently has produced the opposite result. Encompassing also some selected and well-known NGO representatives, this specific institutional culture has come to burst the formerly closed doors of the *sancta sanctorum* of the General Assembly and the Security Council.

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