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States, NGOs, and International Environmental Institutions

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Nongovernmental organizations (NGOs) are increasingly important participants in international environmental institutions. NGOs have been formally—but not fully—incorporated into what were previously “states-only” activities. This article surveys these new participatory roles and offers an analytical framework for understanding the pattern, terms, and significance, for international theory, of NGO inclusion. NGOs are distinctive entities with important skills and resources to deploy in the process of international environmental cooperation. Rather than undermining state sovereignty, active NGO participation enhances the abilities of states to regulate globally. The empirical pattern of NGO participation has been structured across time and functional areas to reap these gains. Recent evidence from the restructuring of the World Bank’s Environment Facility is used to test these claims. That NGOs are now more pervasive in international environmental institutions illustrates the expansion, not the retreat, of the state in addressing global environmental problems.

The highly contested decision to ban international trade of the African elephant . . . exemplif[ies] the difficulties of constructing an effective international regime. . . . More significantly, perhaps, the entire episode highlights the increasing and crucial role played by the non-governmental actor in the international arena: participating in the decision-making process, monitoring and implementing the Convention, and, where possible, enforcing an effective interpretation of the law. (Sands and Bedecarre, 1990:821)

Nongovernmental organizations (NGOs) play an increasingly prominent role in international environmental institutions, participating in many activities—negotiation, monitoring, and implementation—traditionally reserved to states. These activities have received extensive attention from observers of international affairs. In this article I describe and analyze this new pattern of NGO participation, and address several key questions:

- What roles do NGOs play in the creation and operation of environmental institutions, and how have these roles changed over time?

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- What explains the development and pattern of these roles?
- What is their significance for the evolution of the international states system?

Of these questions, the most important and interesting for theorists of international relations and law is the last: what does it mean, for international politics and for the sovereign states system, that nonstate actors are now pervasive in international environmental institutions? Some suggest that the expansion of NGOs in these institutions “may signal an end or at least a fundamental challenge to the concept of state sovereignty and to the primacy of the state in international law and relations” (Cameron and Mackenzie, 1995). This article argues that NGO inclusion does not come at the expense of state centrality; rather it is to the advantage of states.

Building on neoliberal institutional theory (e.g., Keohane, 1984), I delineate a set of general benefits that makes structured NGO–state cooperation in environmental institutions attractive to governments. Increased awareness, complexity, and severity of transboundary environmental problems has led to increased international cooperation, and states in concert have expanded and coordinated their regulatory powers. NGOs have, in turn, demanded access to the panoply of new international environmental institutions. States have incorporated NGOs because their participation enhances the ability, both in technocratic and political terms, of states to regulate through the treaty process. The terms of that incorporation reflect the resources, skills, and domestic influence of NGOs: NGO participation provides policy advice, helps monitor commitments and delegations, minimizes ratification risk, and facilitates signaling between governments and constituents. By examining the specific forms of participation granted to NGOs—and states clearly grant the participation—this analysis highlights the services NGOs provide and the bases of their new-found roles. However, neither the effectiveness nor the democratic character of international cooperation is necessarily enhanced by expanded NGO participation (Raustiala, 1996a). While these effects are arguably the norm, increased participation may also impair regime effectiveness, create policy gridlock (Skolnikoff, 1990), and lead to poor outcomes from an environmental perspective.

Previous analyses of the “NGO phenomenon” either have been wholly descriptive or have failed to provide a coherent explanation for the new patterns of NGO participation in international law. A recent survey of international environmental politics notes that

only countries have official voting power within the UN treaty-making system, but on an *ad hoc* basis, NGOs have been given substantial roles—up to and including shared responsibility for managing working sessions, and speaking (though not voting) at formal plenary meetings at which final decisions are made. The rights accorded to NGOs, however, are unpredictable. (Susskind, 1994:48)

Yet NGO inclusion in environmental institutions is not unpredictable or random. It is based on the confluence of governmental incentives and NGO comparative advantages and resources. These incentives and benefits structure, across time and functions, the participation that NGOs are granted. As the substance of and political milieu surrounding international environmental regulation have changed, the processes of regime creation and operation have also changed. The dramatic change in NGO activity in the last fifteen years thus reflects the equally dramatic increase in the scope and strength of international environmental law. That NGOs

are more pervasive in environmental diplomacy illustrates the expansion, not the retreat, of the state in addressing global environmental problems.

I begin in the following section by surveying the activities NGOs have undertaken. The next section situates the argument within the general international relations literature as well as within the emerging literature on environmental NGOs, and develops the core claims of the article; the fourth section explores in some detail the recent inclusion of NGOs into the activities of the Global Environment Facility (GEF), an integral part of the UN Conference on Environment and Development (UNCED) legacy.

NGOs and International Environmental Cooperation: What Are the New Roles?

The increased prominence of NGOs in international environmental affairs is apparent to nearly all observers (e.g., Willets, 1982; Sands, 1989; Grubb et al., 1993; Hagerhall, 1993; Princen and Finger, 1994; Spiro, 1994; Wirth, 1994; Boli and Thomas, 1995). NGOs are now “an integral part of the negotiating process” (Enge and Malkenes, 1993:25), and have “changed the face of international environmental law” (Tolbert, 1992:108). NGOs have been increasingly incorporated into what were previously “states-only” governance activities. While NGOs have long been a part of the process of international environmental cooperation, the scope and scale of their activities are much greater today.¹

The total number of NGOs present in the world is enormous (Salamon, 1994; Boli and Thomas, 1995). Most of these NGOs are inconspicuous and seemingly mundane in their activities: professional organizations, standardization bodies, hobbyist groups, and the like. Politically active secular NGOs are but a tiny percentage of the total, yet their activities receive the lion’s share of scholarly and media attention.² NGOs vary widely in membership, goals, approach, and resources. The NGO forum held at UNCED, for example (attended primarily by “pro-environment” NGOs), was an often acrimonious affair, and attempts to negotiate “treaties” were very contentious (Hinchberger, 1993). I focus here on only one aspect of the vast universe of NGO activities: the changing role of NGOs in international environmental cooperation.

NGO Participation in International Environmental Law and Cooperation

All NGOs interested in participating in UN negotiations—which comprise nearly all of the most important environmental negotiations—must become formally accredited. The UN Charter permits the creation of suitable arrangements for consultation with NGOs, both “international organizations, and, where appropriate, with national organizations after consultation with the member of the United Nations concerned” (UN Charter, 10:71). The criteria for accreditation are not detailed, except that the home state of any group holds a veto over participation. In 1968 more specific criteria of germaneness, support for the work of the UN, an international scope, hierarchical structure, and established headquarters were developed.³ These new rules stressed the distinction between NGOs and states, noting that “[t]his distinction, deliberately made in the Charter, is *fundamental* and

¹ Some of these new roles have existed in some form within the UN since its inception. The International Labor Organization and the Permanent Court of International Justice both featured NGO involvement early in the century.

² Churches and other religious organizations are among the largest and most powerful NGOs. Indeed, the Catholic Church is treated almost as a sovereign state and has special status at the UN (“the Holy See”). For an excellent discussion of the broader efforts of environmental NGOs see Wapner (1995).

³ Resolution 1296 (XLIV) of the Economic and Social Council, May 23, 1968.

the arrangements for consultation should not be such as to accord the *same rights of participation as are accorded to States not members of the Council*" (Willems, 1982:14). Organizations must submit documents and information verifying membership, purpose, and location. Applicants have been subject to veto, though the exact rules and process are not common knowledge.⁴ Accreditation is the first gateway for NGO participation; international meetings are not "open-access regimes" (Tinker, 1994). Given the lack of transparency in the accreditation process, it is not surprising that many have called for a vast overhaul. A review is currently under way; in 1993 a working group was formed and NGOs were invited to participate in its deliberations—but not its negotiations.⁵

While accreditation allows for a limited role for NGOs in the UN cooperative process, many recent environmental treaties have gone much further by formally mandating, or permitting, NGO participation in some of their continuing activities.⁶ There are some 150 treaties listed in the UN Environment Programme (UNEP) register; all the major multilateral treaties of the last twenty years, and a sample of older treaties, are surveyed here.⁷ This survey, concentrated on treaties that address global problems, demonstrates that NGOs were only occasionally acknowledged in multilateral environmental treaties before the 1970s, and rarely granted access. The major environmental treaties negotiated in the last decade, however, contain expansive rules for NGO participation, and NGOs have become very active and visible participants in many regime activities.

NGO Rules in Environmental Treaties: A Brief Survey

Early international environmental treaties rarely contained provisions for NGOs. For example, the 1933 Convention Relative to the Preservation of Fauna and Flora in Their Natural State, typical of many early conservation agreements, says nothing about nonstate actors (except hunters, who are enjoined "not to use dazzling lights"). The International Convention for the Regulation of Whaling, established in 1946, did not initially permit NGOs access, though from 1977 onward NGOs were permitted to participate as observers. Within a few years more than fifty NGOs were participating (Skodvin and Underdal, 1994). A highly unusual case, there is evidence that in the whaling regime NGOs have increased state membership in accordance with their goals and have helped to transform the regime from one of conservation to one of preservation (Andresen, n.d.). The Antarctic Treaty (1959) allows the presence of NGOs only by the express invitation of the Consultative Parties.

Moving forward in history, the Ramsar Convention on Wetlands (1971) assigns "bureau duties" to the International Union for the Conservation of Nature (IUCN); essentially, it acts as a secretariat. However, the IUCN is special in that it is a distinctive government-nongovernment hybrid and relatively apolitical. No other NGO participation is discussed. The Convention for the Preservation of Marine Pollution from Land-based Sources (1974) is silent on issues of NGO access and participation. The 1973 Convention on International Trade in Endangered Species, known as CITES, has relatively strong language relating to NGO participation which has become the model for the language in many recent treaties. The Secretariat

⁴ The accreditation process for special meetings like UNGED, however, is distinct from the general ECOSOC process.

⁵ A/49/215.5 "Report of the Open-Ended Working Group on Review of Arrangements for Consultations with NGOs" (July 1994).

⁶ Hagerhall (1993) gives a more extensive survey. The ILO model has been proposed as a possible design for state-NGO interaction; see Palmer (1992).

⁷ These regimes exhibit wide participation by states; the conventions on endangered species, ozone depletion, biodiversity, climate change, and hazardous waste all have over 100 parties apiece.

may seek assistance from "suitable . . . non-governmental international or national agencies and bodies technically qualified in protection, conservation, and management of wild fauna and flora." NGOs can also act as observers, though again one third of the parties may object and admittance will be rescinded. NGOs have been active participants in CITES meetings; opinions of IUCN have been regularly sought by the CITES Secretariat (Sands and Bedecarre, 1989).

Although it was signed subsequent to CITES, the Convention on the Conservation of Migratory Species of Wild Animals (1979) allows only for the access of "national non-governmental bodies which have been approved for this purpose by the State in which they are located"—not a particularly high barrier for denial, and one that specifically follows the rules of Article 71 of the UN Charter. The Long-range Transboundary Air Pollution Convention (1979) does not mention NGO access, nor do the subsequent pollutant-specific (e.g., sulfur dioxide) protocols to LRTAP negotiated during the 1980s and 1990s. Though no formal mention is given, in recent years NGOs have been a regular part of LRTAP meetings (Levy, 1993:86-7).

The landmark Montreal Protocol on Substances That Deplete the Ozone Layer, negotiated in 1987, states:

Any body or agency, whether national or international, governmental or non-governmental, qualified in fields relating to the protection of the ozone layer . . . may be admitted unless at least one third of the Parties present object. The admission and participation of the observers shall be subject to the rules of procedure adopted by the Parties. (Article 11:5)

NGO participation is circumscribed here in particular ways. The first limitation is in the criteria for inclusion—"qualified in fields relating to the protection of the ozone layer"—which weeds out groups deemed unqualified, perhaps radical groups seeking major changes in international law. The second limitation is the need for a super-majority if NGO participation is challenged, though it is much less severe than the unitary veto contained in the UN Charter. At meetings of the Parties NGOs have been active participant-observers. They have given formal statements to the plenary, something only states could do previously. At the 1992 meetings, for example, four such formal statements were made (UNEP, 1992). The Framework Convention on Climate Change (1992) contains wording almost identical to that in the Montreal Protocol, as does the Convention on Biological Diversity (1992). The Basel Convention on Transboundary Trade in Hazardous Waste (1989) is also similar, with NGO participation limited to those NGOs with "qualifications in fields relating to hazardous waste."

While expressly regional in nature, the recently negotiated environmental side agreement to NAFTA, the North American Agreement on Environmental Cooperation, is an important new agreement (Reilly, 1993; Charnovitz, 1994; Raustiala, 1996b). It goes further than most environmental treaties in formally granting NGO access and participation. NGOs may submit claims to the Secretariat asserting that a NAECC party is failing to effectively enforce its environmental law, and thereby potentially trigger a formal investigation. NGO members may also serve on the arbitral panels created to assess the merits of and actions addressing such submissions.

In sum, most of the pre-1985 multilateral treaties are silent on the subject of NGO access or grant only the most limited and easily rescinded access. Most also demand little in the form of state action. More recent environmental regimes have granted NGOs much wider access. Language stipulating NGO participation is now a standard part of global environmental accords. NGOs have also been included in large UN meetings and the meetings of "sub-organizations" such as the multilateral

fund created to help developing country parties meet their CFC control obligations under the Montreal Protocol. The text of Agenda 21, the massive agenda for sustainable development created at UNCED, encourages NGO participation both directly, through the creation of a high-level advisory board, and indirectly, through the general focus on transparency, reporting, and access. Previously only states, or quasi-states like the Holy See, had the legal personality to address negotiations in a formal capacity. But NGOs are now provided with working drafts of documents and treaties, are allowed to address delegates with full simultaneous translation (at UN expense), and may circulate draft texts of their own design. Occasionally proposals from NGOs are introduced by sympathetic national delegations, and NGO members have become part of national delegations, even those of foreign countries.⁸ Yet exceptions still exist to expanded participation; within the International Maritime Organization, which handles several ocean regimes, observer status has been refused for Greenpeace and other NGOs with little explanation (Hagerhall, 1993:59). And as I discuss below, in many regimes states have developed "informal" forms of negotiation that allow for closed-door sessions.

In short, NGO access has been increasing, but has varied in degree and kind both across and within institutions. Not all NGOs can participate, but no longer can a single state block access as was often the case in the past—if NGOs were mentioned at all in the treaty. Nonetheless, the inalienable right of NGO access has yet to be accepted as a principle of international law; NGO participation remains a privilege granted and mediated by states.

Explaining NGO Participation

For better or worse NGOs are now a regular part of the cooperative process. Within limits, they address delegations as a state would. They participate actively in the corridor diplomacy which is so central to negotiations, receive documents, present proposals, and are consulted by and lobby delegations. These changes are all relatively new and have, as so many observers note, transformed the process of international environmental cooperation. In this section I present an analytic framework which helps to account for both the functional and temporal variation observed in the recent flourishing of NGO activities. It also sheds light on the central question of the significance of these changes for international cooperation and the evolution of the states system.

The international relations literature has explored the role of nonstate actors over the last several decades, and the perceived importance of these actors has ebbed and flowed. Where some analysts have perceived "sovereignty at bay," or the onset of a borderless world, others have discerned the continuing hegemony of the nation-state (see, e.g., Vernon, 1971; Keohane and Nye, 1972; Waltz, 1979; Ohmae, 1990, 1995; Kapstein, 1994; see also Risse-Kappen, 1995). This article, while demonstrating the robust power of states within traditional international fora, resists making a simple state-centric argument. The relationship between states and NGOs is sometimes depicted as inherently oppositional, even zero-sum in nature: an increase in power and importance by nonstate actors must necessarily come at the expense of state power. Yet states are inextricably linked to the societies within which NGOs flourish (Gourevitch, 1987; Evans, Jacobson, and Putnam, 1993; Risse-Kappen, 1995), and benefits may accrue to both parties when they cooperate in international fora. One of the core propositions of this article is that states do not necessarily lose and in fact often gain through the enhancement of NGO access and

⁸ See the discussion on FIELD and the climate negotiations below.

⁹ This is not to deny the *mutuality* of advantage. That states and societal actors mutually benefit from mutual interaction is rightly emphasized by Peterson (1992); see also Stopford and Strange (1991); Risse-Kappen (1995).

participation.⁹ Because states, and NGOs, are extremely varied, my argument proceeds at a high level of generality: the benefits to states of NGO participation are unevenly dispersed and unevenly received. Some states clearly oppose aspects of the new NGO participation, and some NGOs take no part in the activities described here. Nonetheless, the general pattern, established above, is clear: NGOs are far more active and far more common in international environmental institutions than ever before, yet their activities are systematically circumscribed in time and place. Why this general pattern obtains is the focus of my arguments.

The emerging literature on NGOs in international environmental affairs has been largely descriptive and often normative in focus, and few attempts have been made to analyze theoretically the profound changes ongoing in state-NGO relations. The perceived significance of the evolution in NGO activity remains contested. NGOs have sometimes been considered guardians of the environment, protecting values states will not protect (Sands, 1989:394; Tolbert, 1992:100). Others have suggested that the new roles of NGOs may be just "window-dressing" to satisfy vocal NGOs and public opinion (Hagerhall, 1993:75). And some interpret the rise of NGO activity as evidence of the emergence of a robust "global civil society" (Lipshutz, 1992; Wapner, 1995). This rapidly globalizing civil society, it has been proposed, could be formally incorporated into the UN system through a reconstituted General Assembly: one chamber for the governments ("Princes"), one for corporations ("Merchants"), and one for the "people and their associations" ("Citizens") (Nerfin, 1985:28-9). Such proposals, while extreme, reflect the increasingly common view that, for many areas of policy, states are obsolescing *de facto* if not *de jure* (e.g., Cerny, 1995).

In a recent volume, Princen and Finger (1994a) provide the most sustained and comprehensive overview of the environmental NGO phenomenon to date. Princen explores "political bargaining" (which bears a facial resemblance to the analytical framework proposed here) in which the central assets with which NGOs bargain are legitimacy, transparency, and transnationalism (Princen, 1994:34-8). An equally important facet of bargaining, Princen suggests, is the linkages NGOs create between global and local needs and actors. The incentives for states to engage in bargaining with NGOs, however, are not well specified. Finger explores the potential contribution of social movement theory. Extant social movement theories, he claims, usefully point toward the importance of NGOs as "agents of social learning" (Finger, 1994:60-5). However, both political bargaining and social movement theory "fail to fully capture the NGO phenomenon," and as a result the authors develop new concepts to account for it (Princen and Finger, 1994b:13). The core of their concluding argument is that NGOs "draw out the political implications of biophysical trends" and "challenge the limitations of the traditional state-centric system" (Princen and Finger, 1994b:217).

While NGOs may in fact do both of these things, as explanatory or analytic concepts they clarify little. If NGOs indeed challenge the state-centric system, why do states allow such wide access and participatory roles? If NGOs are successful at drawing out the political implications of environmental change, why have states developed new diplomatic innovations which exclude them from certain aspects of negotiations? Why are NGOs given some roles and not others? Characterizations of the new roles of NGO as "window-dressing," the actions of the guardians of the environment, or evidence of an emerging global civil society provide limited analytic purchase on the question of the importance of NGOs within traditionally state-centric modes of international cooperation.¹⁰

¹⁰ Indeed, the very point of civil society as a conceptual category is that it is analytically separable from the activities of the state; see Wapner (1995).

States control the terms of the state-NGO interaction because international relations and international law are built and predicated on a system of sovereign states. The state remains the leading form of political organization, and NGOs need the coercive power of states to realize the behavioral and policy changes they seek. But conversely, the political incentives modern governments face compel them to work with NGOs that possess specialized and useful resources and political power. The state stands at the juncture of the domestic and international systems, interdependent with its societal base (Nettl, 1968:57). Moreover, the evolving nature of international cooperation has given further impetus for states to involve private actors in international governance. Increasingly international regulation is a central part of international relations (Chayes and Chayes, 1995:1). States now regulate internationally a host of products and activities—often domestic—never before addressed. The complexity of these regulatory efforts, within environmental affairs, is a key driving force behind much of the expansion of NGO roles. As international regulatory efforts expand, the distinction between domestic and international environmental policies has blurred (Lawrence et al., 1996). NGOs active in domestic policy have reacted by targeting international policy. The result is extensive NGO demands for inclusion in international institutions, and strong incentives for states to grant, in specific ways, greater inclusion. While, as some suggest (e.g., Spiro, 1994), the end of the Cold War may have facilitated NGO inclusion, the central driving forces have been the accelerating fusion of international and domestic policy and the complexity of the resultant regulatory regimes.

Having described this phenomenon and its roots, in the remainder of this article I attempt to demonstrate *what*, in fact, states stand to gain from “the NGO phenomenon,” and *how* states have structured NGO roles to their advantage within multilateral processes.¹¹ The following sections develop an analytic framework, identifying several distinct services or benefits that accrue to governments from NGO participation. While I characterize these as benefits to states, not all states benefit, nor in the aggregate can NGO participation be considered an unmitigated good. Lobbyists in the U.S. Congress, for instance, provide many of the same services to legislators—information, political cover, monitoring of deals, and so forth—that I describe here.¹² Yet few applaud the role of lobbyists in American politics. NGOs are in many cases powerful interest groups in domestic politics. This power often accounts for their access in environmental diplomacy, as I discuss below. Civil society is not inherently “good” and state power “bad.” Enhanced participation by civil society in governance may enhance the power of self-interested groups that are already powerful—in resources, organization, political influence—and this may undermine the political processes and lead to low levels of regime effectiveness.

Policy Research and Development

Probably the paramount benefit NGO participation provides is information about policy options. The global environment is an issue-area plagued with uncertainty and complexity. The highly nonlinear nature of many environmental issues, the large number of common problems, and the poorly understood relationship between the natural world and the social world conspire to render global environmental problems difficult to solve (Choucri, 1993). Numerous cross-cutting issues

¹¹ What states stand to lose from NGO participation is control and legitimacy. The state is fundamentally an instrument of control and order: “an organization which controls the population occupying a definite territory” (Tilly, 1975:70).

¹² Lobbying is “the stimulation and transmission of a communication, by someone other than a citizen acting on his own behalf, directed at a governmental decisionmaker with the hope of influencing his decision” (Berry, 1977:11).

exist, and the interactions among trade, development, ecology, and scientific knowledge pose many difficult questions. Most transboundary environmental issues are relatively novel, and little experience exists to guide the policy-making process. New problems appear that had never been anticipated or contemplated—such as continental-size holes in the stratospheric ozone layer. This distinguishes environmental cooperation from, for example, cooperation in trade or security, both of which have long histories of international policy making that provide some guidance and benchmarks, if often inadequate.

Thus, possible policy options and effects are even less well understood in environmental issues than in more traditional arenas of cooperation. This lack of information is a major barrier to policy development. The existence of large, expertly staffed NGOs that devote considerable effort and resources to policy research and development helps alleviate these problems. NGOs commonly provide such information to government policy makers freely.¹³ Many such groups exist, and the plurality of sources provides a check on exaggeration, obfuscation, and poor logic and data. The biases of most major NGOs are fairly well known to the governments involved. The result is that governments gain reasonably accurate, efficacious, and creative policy advice from many independent sources, and are able to move these research costs “off-budget.”

Both the quality and quantity of this information vary considerably based on its NGO source. Some NGOs maintain large professional staffs and produce extensive, well-researched policy papers; others do little or no policy research. IUCN, an example of the former, either has helped draft or has provided a secretariat for several important conventions (McCormick, 1993). NGOs have acted to correct potential “mistakes” and missteps in the international cooperative process and to point out logical or procedural inconsistencies in proposals under consideration. These corrections can address both the general—for example, a failure to adequately recognize the importance of women—and the specific—for example, a misunderstanding of the relationship between agricultural subsidy policy and water pollution. Under LRTAP, for instance, the RAINS model of acid deposition, and the team at the International Institute for Applied Systems Analysis that developed it, has played a central role in the development of the regime. The IIASA team has even chaired official working groups within LRTAP (Levy, 1993, 1996). NGOs have also brought forward expert independent—though not necessarily objective—legal judgments in cases of ambiguous interpretation. Some arguably have been for the worse from a policy perspective. For example, in the controversial CITES ivory ban, WWF obtained and circulated an independent legal opinion that challenged several of the arguments proffered against the total ban. The critiques contained in this opinion appeared instrumental in discrediting those particular arguments against the proposed ban (Princen, 1994b). Southern African states, with well-managed herds of elephants, argued that they should be allowed to cull, and that indeed they could better protect their elephants with funds obtained from ivory sales. NGO influence, in this case, may have led to a poor and ultimately ineffective outcome (Bonner, 1994).

The chief result of the plethora of NGOs providing policy information and evaluation is that states can maximize policy information and research while minimizing expenditures. Much, but by no means all, of the world’s environmental policy expertise is in governments. But by providing extensive information, evaluations, and legal opinions, NGO policy research permits governments to redirect scarce resources elsewhere, and provides perspectives and ideas that may not have

¹³ While the tax breaks many NGOs receive may constitute a cost, that cost would be incurred whether or not the groups did anything to enhance the negotiation or development of international policy responses.

emerged from a bureaucratic review process. Like lobbyists in a domestic setting, NGOs act as conduits for ideas and political pressures. This is particularly important for developing countries, which often lack not only the resources but the intellectual infrastructure and expertise to allow adequate policy evaluation and creation.¹⁴ While Southern governments at UNCED were initially resistant to NGO inclusion, "as UNCED proceeded some of the most reluctant governments were to profit most from NGO input" (Enge and Malkenes, 1993:27). Perhaps the most prominent example of the gains for developing countries is the interaction between the NGO FIELD and the Alliance of Small Island States (AOSIS), in the context of the climate negotiations. FIELD was instrumental in providing AOSIS with advice and legal expertise. As a result, AOSIS has wielded unexpected influence in the climate negotiations, and recently proposed a major new protocol to the climate treaty developed with assistance from FIELD. States will always engage in some policy research and development, but the activities of NGOs minimize the optimal public allocation while (usually) improving the quality of the policy idea "pool."

Monitoring State Commitments

The doctrine of sovereignty creates barriers to intrusions into domestic affairs. States are resistant to information gathering within their borders by other states or by international organizations. As a result, nearly every international environmental agreement, and many other international agreements as well, rely on national self-reporting (Ausebel and Victor, 1992; GAO, 1992; Victor, Raustiala, and Skolnikoff, n.d.). States themselves report on their progress, compliance, or lack of compliance. In such situations, there are clear incentives for states not in full compliance to misrepresent, procrastinate, and otherwise fail to provide information in a timely and truthful fashion. Empirically, this has often been the case; states have routinely lied or distorted their information, and most commonly have simply failed to report it at all (Ausebel and Victor, 1992; GAO, 1992). This is often a result of a lack of capacity as much as a lack of good-faith effort; many states simply do not have the necessary tools, personnel, and resources to adequately gather the needed information (Chayes and Chayes, 1993; Keohane, Haas, and Levy, 1993; Mitchell, 1994).

Regardless of cause, however, information tends to be sorely underprovided—even when states are fully in compliance—and this underprovision is a major source of delay and ineffectiveness (Mitchell, 1994). A study by the U.S. General Accounting Office found that the percentage of parties actually reporting as required by various major international environmental agreements varied widely, but for many important agreements, such as the London Dumping Convention and CITES, the reporting compliance rate was well under 50 percent (GAO, 1992).

This lack of adequate and timely reporting poses a major problem, and concerns over sovereignty has been an obstacle to the creation of monitoring and verification systems. NGOs provide an alternate route for information about state behavior. As large, frequently transnational bodies with affiliates in many nations (WWF, for example, has major affiliates in twenty-eight key states), certain NGOs are well positioned to provide independent assessments of individual states' compliance records as well as other data useful or necessary for international environmental cooperation. Indeed, NGOs spend a significant amount of effort and resources on exactly this service. Greenpeace and others have devoted significant attention to monitoring the whaling accords. The Natural Resource Defense Council (NRDC)

¹⁴ For this reason small developing nations sometimes include foreign NGO members in their delegations, e.g., St. Lucia.

has published a 155-page volume providing state-by-state assessments of compliance with the pledges undertaken at UNCED. Both the Climate Action Network and Greenpeace have produced similar documents, containing careful, comprehensive discussions of governmental pledges and policies under the climate convention (e.g., Greenpeace, 1995). Within CITES, NGOs, in particular TRAFFIC,¹⁵ have been instrumental in tracking the wildlife trade and evaluating the progress of the regime.

As a result of NGO monitoring interested states obtain useful information and an independent check on the official self-reports given by the individual governments themselves. Clearly not all states welcome this. Yet as the human rights experience shows, it can be difficult for governments to oppose the creation of such decentralized systems. The doctrine of sovereignty makes it relatively easy to resist direct, formal "interference" by other states or international organizations. But due to their informal, decentralized nature, NGO efforts are less readily blocked; NGOs would have to be kept out of negotiation altogether, for even formal bans on compliance discussions or papers can be circumvented "in the corridors." And once NGOs are present within regime frameworks—even if they are welcomed for other reasons, like their expertise—they may gravitate toward monitoring efforts.

NGOs remain imperfect monitoring agents, however. NGO monitoring is often less concerned with compliance in the narrow sense—adherence to the letter of an agreement—than it is with NGO approval or disapproval of particular actions, even if those actions are not violations of the terms of the accord. The classic case is whaling; NGOs continued to criticize and monitor those nations engaged in legal research whaling or that had taken reservations to particular agreements, despite the legality of their actions.

"Fire Alarms"

While NGOs can monitor the actions of states vis-à-vis treaty commitments, they can also monitor the actions of state delegations during negotiations. International negotiations have been described via the metaphor of a two-level game (Putnam, 1993). Delegations are the agents of domestic principals, who must be satisfied with agreements struck at the international "table." Monitoring is one method by which principals can control agents (Kiewiet and McCubbins, 1991). Decentralized modes of monitoring that rely on interested outside parties to alert principals of agent actions have been dubbed "fire alarms" (McCubbins and Schwartz, 1984). The incorporation of modes of access and participation in the structures of political activity creates opportunities for private parties to "pull the fire alarm" when they observe certain actions. Fire alarms are both effective, in that they cover a wide area, and efficient, in that the costs associated with oversight are borne by the empowered outside parties.

In international negotiations, governments—in particular, legislatures—want to control the decisions of their national delegations. NGO participation is one means by which governments can create fire alarms and allow outside parties to alert them to undesired delegation actions. NGOs, as interested parties, have an incentive to both monitor delegates' actions and inform governmental principals of their findings. Because NGOs of many persuasions exist (e.g., "business" or "environment"), movement in many directions can be covered. This decentralized process is both effective and low-cost. Delegates that move too far away from the preferences of the governmental principals are thus more likely to be identified and checked. In the United States members of Congress have kept abreast of administration

¹⁵ TRAFFIC is an acronym of "Trade Records Analysis of Flora and Fauna in Commerce."

activities within international fora via NGO oversight: in recent congressional hearings, for example, NGO representatives castigated the U.S. delegation's actions and inactions at ongoing negotiations of the climate convention.¹⁶

Negotiations Reporting

Environmental regimes are marked by a high degree of institutionalized, long-term negotiation and adjustment. During the course of large-scale multilateral negotiations there is a numbing array of detail to be followed. Delegates often cannot keep track of everything that is going on, particularly if the negotiations occur through multiple working groups. NGOs have alleviated this problem of information overload by supplying daily bulletins. These bulletins, the *Earth Negotiations Bulletin* and *Eco*, provide detailed accounts of each day's statements, points of contention, proposals, and decisions. As one delegate stated at the 1972 Stockholm Environment Conference, "the crew that put out ECO should attend all international conferences so we'll know what the hell is going on" (Willems, 1982:166).

Ongoing negotiations reporting is something governments cannot do easily—or effectively—on their own. If any one government were to attempt to provide such reporting, the reports would be derided as biased and unrepresentative. If the UN itself, a UN subsidiary body, or a formal secretariat published daily reports, they would have the status of official documents, and member governments would likely find it difficult or impossible to agree on content, style, tone, and so forth. While the information the bulletins provide is useful and important, the above factors make it difficult for governments to collaborate in its provision. Most important, the NGO community is already supplying the information, in a fair manner and free of charge, creating little incentive for governments to step in.

Enhancing Domestic Signaling

While lowering negotiations costs and risk is clearly a reason for governments to incorporate NGOs in the cooperative process, bringing NGOs to the international table yields an additional benefit. NGOs allowed to participate in deliberations witness first-hand the positions of all the relevant parties. Specific areas of controversy are readily apparent, as are the areas where compromise is possible. Negotiating positions have been described in spatial terms, with various positions corresponding to points in a multidimensional "policy space." The set of points acceptable to all parties is the win-set (Meyer, 1992; Sebenius, 1992). By taking part as observers and as participants, NGOs become aware of the shape and location of the win-set.

Revealing the structure of the international bargaining game may diffuse domestic criticism and placate unsatisfied interests. NGOs will learn the positions and actions taken by different states; and NGO access may allow particular governments to signal to domestic groups and to credibly pass the blame for an unsatisfactory agreement to other states. Finally, in situations of negotiating deadlock, NGOs can initiate policy research and development activities with an eye toward uncovering compromise solutions, as well as lobby recalcitrant states and thereby enlarge the win-set or redirect its boundaries.

¹⁶ "Written Statement of the Global Climate Coalition" before the Subcommittee on Energy and Power, Committee on Commerce, House of Representatives, March 21, 1995.

Facilitating Ratification

Whether or not one fully endorses the two-level game metaphor, states must eventually agree to whatever accord their delegates have created, or renew the negotiations for another round. Initial signature means no more than that the delegates have agreed on the text and are willing to refer it to their governments for further action (Starke, 1989). This process is not pro forma; perhaps the most famous case of a denied ratification is the League of Nations, which Wilson painstakingly designed and negotiated only to have the U.S. Senate refuse to ratify it. Even if ratification occurs, it may be a long and protracted process, with high political costs.¹⁷ The failure to satisfy domestic interests can cause the rejection of a proposed accord: the Convention on the Regulation of Antarctic Mineral Resource Activities (CRAMRA), which took six years to negotiate, collapsed due to opposition from Greenpeace, EDF, and other NGOs (*Harvard Law Review*, 1991:1601–2).

One way to reduce the odds of denied ratification is to bring some of the important domestic players directly to the international table, thereby “bridging” the two levels. Problems with accords can be rectified early, during the negotiation process, rather than late, when renegotiation may be extremely difficult. The CRAMRA case, and more recently, the negotiation of the North American Agreement on Environmental Cooperation (the side agreement to NAFTA) are examples where NGOs flexed their political muscle and either ended (CRAMRA) or created (NAAEC) a new regime. Regimes must have domestic support to succeed, and NGOs, as interest groups, can provide this or withhold it. Bridging thus is an attractive strategy for minimizing ratification risk.

Environmental NGOs are powerful domestic actors in many advanced industrial states. The dozen leading environmental NGOs in the United States, for example, have a membership of nearly 11 million (Bramble and Porter, 1992). These members are predominantly middle-class voters and politically aware. Business NGOs represent firms that often bear the costs of new environmental rules and regulations most directly, and they are always important political players.

By bringing societal actors into the negotiations process directly, information flow is enhanced, and, more important, potential opponents may be turned into supporters (Walton and McKersie, 1965; Winham, 1986). NGO participation helps states gauge the likely outcome of the domestic-level game and adjust accordingly (Milner, 1994). The inclusion of NGOs in the negotiations also has the potential to coopt critical NGOs, analogous to the process of incorporating key firms into the Tokyo Round negotiations of the GATT (Winham, 1986). This potential for cooptation has not gone unnoticed by the NGOs themselves: as one NGO member has observed, “when so many different actors are drawn into the process, there is a danger that our demands may be blunted. . . . Consequently, we may end up with a ‘lowest common denominator’ which is no better than the kind of compromises . . . diplomats engage in” (Bernstein, 1992).

Patterns and Trends in NGO Participation

There is significant variation among international environmental institutions and even greater variation among NGOs. Also, states vary in their preferences toward the terms and modalities of environmental cooperation. Developing countries appear to have supported wide-scale NGO participation as part of the broader North–South environmental bargain, because they often are most in need of NGO

¹⁷ Costs here are defined as political costs; for example, to gain the ratification of NAFTA President Clinton had to cut side deals with specific members of Congress, use up a portion of his “political capital” to lean on other individuals and taste-makers, and forego the opportunity to work on other pressing issues.

expertise, and because NGOs frequently support developing country requests for resource transfers. Developed states face more direct political and technocratic pressures; many of the most prominent NGOs are based in liberal democracies. The aim of this article is to explain the *general* pattern and assess the significance of enhanced NGO participation. As John Ruggie noted in his analysis of the nineteenth century free trade order, shifts in collective state practice are not automatic or even: the move to free trade, for example,

occurred unevenly throughout Western Europe, and at uneven tempos. And of course nowhere did it take hold so deeply or for so long a period as in Great Britain. . . . But the authority relations that were instituted in the international regimes for money and trade reflected a new balance of state–society relations that expressed a *collective* reality. (Ruggie, 1982:202)

Not all NGOs participate in environmental diplomacy and not all states benefit at all times from NGO participation. But significant changes have occurred in the overall pattern of international environmental law—a new *collective* reality—which is explicable within the framework I have developed. This framework suggests that the specific rules governing NGO participation derive from the resources and skills of NGOs and the political and technocratic incentives of states. Above all, I have argued that state centrality is not diminished by enhanced NGO participation; on the contrary, NGOs assist governments in the process of “regulating the world” (Burley, 1993).

For this claim to be sustained the analytic framework I have developed must help explain current practice. It is important to explain not only the general trend (increasing NGO participation) but also the patterns within that trend: the variance among recent regimes and the variance in “day-to-day” NGO access.

General Patterns

The most basic pattern to explain is the difference in NGO participation between the pre-1980s regimes and those negotiated since. If NGO skills, resources, and political power are useful to states, demand for these resources should increase when the scope, complexity, and obligations of a regime grow. The major regimes of the 1980s and 1990s—ozone depletion, transboundary air pollution, hazardous wastes, climate change, and biodiversity—are more complex and more demanding than most of the earlier resource regimes. They require greater levels of implementation and adjustment, and address important, often central, economic activities. They are also the regimes that have the greatest NGO participation and the most inclusive rules governing participation. These rules are, moreover, quite uniform—the language on NGOs is virtually identical in these treaties, with exception of transboundary air pollution.

The transboundary air pollution regime (LRTAP) is an exception because, despite a lack of any sort of procedural rule for NGO participation, NGOs now participate, though not as widely as in the climate or ozone regimes. One reason for the lack of formal guarantees is temporal; LRTAP was negotiated in the late 1970s, a time when only the CITES regime contained explicit participatory guarantees for NGOs. LRTAP also had an important East–West focus, and the Soviet Union was not a proponent of civil society (Kotov and Nikitina, forthcoming). Later LRTAP protocols, containing the substantive commitments of interest, never adopted new formal procedural rules. The informal rules, which appear to govern NGO participation, seem virtually identical to those in other regimes.

NGOs participate in many of the same ways in LRTAP as in the ozone regime (Levy, 1993).

Another anomaly is CITES, the endangered species trade regime, which contains inclusive participatory rules yet dates from 1972. CITES created a very complex institutional structure—hundreds of species in various categories, and extensive rules governing their trade and movement. Hence what is anomalous is not that CITES contains inclusive participatory rules but rather that such a substantively demanding treaty appeared in the early 1970s. Its NGO rules fit comfortably within the framework presented above; indeed, many of the best examples of NGO participation come from CITES. Moreover, the historic mission of many environmental NGOs has been wildlife conservation; they fought hard for the creation of CITES and they possess substantial expertise in the area.

While treaty rules on participation are significant, practice matters most. A satisfactory explanation of NGO participation must also include the pattern of access NGOs actually experience once they are part of the negotiating process. The pattern of participation cannot be explained by generalized demands for access, since that access is not general.

NGOs possess many resources, but those resources and skills are not uniformly useful over time. Policy expertise is most useful at the early stages of negotiations, monitoring most useful in the implementation phase. When governments desire secrecy to air possible compromises, or are at the stage of logrolling once positions have solidified, they may find NGO participation undesirable or not useful. Hence states may face incentives to circumvent the participatory rules, even if some other benefits might be lost. In practice, states have achieved this through the proliferation of working groups and informal bureaus. The early preparatory meetings (“prep-coms”), preceding UNCED, for example, where basic positions were hashed out and the scope and shape of the negotiating space determined, were most open to NGO participation. “By the penultimate meeting, as the bargaining became heated . . . all governments agreed to close the doors, and the NGOs frequently suffered the humiliation of being turned out . . . the governments introduced a new type of forum: ‘informal informals’—too informal for NGOs to participate, but indeed where the decisions were made” (Enge and Malkenes, 1993:27).

NGO access also varied with the different working groups, which consisted of (1) formal meetings, open to NGOs, and (2) informal meetings, which are translated but not transcribed and are a bit more like negotiations. “NGO access is determined by the chair. . . informals have been open to NGOs in working group I, generally closed in working group II, and have sometimes been open in working group III.” (*Earth Negotiations Bulletin*, 1992).

Similarly, in the Montreal Protocol negotiations, the chairman of the negotiations “convened his informal consultative group of 10 delegation heads . . . out of the limelight and away from the crowds of industry and environmentalist observers” (Benedick, 1992; see also Grubb et al., 1993, on UNCED). The innovation of informals, and of informal-informals, is significant. Governments have adapted to the increased presence of NGOs by creating new, flexible institutional fora within which to conduct business. Informal-informals allow delegations to escape from NGO scrutiny when they address delicate issues. This innovation makes sense within the framework presented here. States have further parsed the diplomatic process in response to the newly granted participation of NGOs—gaining benefits while minimizing attendant political costs and retaining substantial control over outcomes. The overall pattern has been one of greater NGO access and participation early on—as the basic structure of the negotiating space is being defined and policy prescriptions debated—and less NGO access later, when the details of essentially fixed positions were being hammered out. When implementation and review is

the focus, NGOs are again often major participants (Victor, Raustiala, and Skolnik-off, n.d.).

In sum, the roles NGOs have played are not randomly determined, nor have NGOs been given all the roles they desire. The fact that states

- have empowered only a subset of environmental NGOs,
- have clearly restricted and determined the activities of that subset, and
- have introduced diplomatic innovations, such as informal-informals,

provides evidence for my claim that the specific forms of NGO participation granted are systematically linked to the specialized resources NGOs possess.

NGOs have long sought greater participation in the workings of the World Bank and its Global Environment Facility, or GEF (e.g., Rich, 1994). The expansion of NGO access in GEF is a concrete and recent example of NGOs being brought into what was previously a states-only forum. GEF is an international institution of paramount environmental importance, and NGOs have been eager to play a greater role in it. Because GEF addresses one of the most sensitive issues—finance—it is a “least-likely” case for NGO access. The GEF case thus provides a “plausibility probe” for the arguments made above: if the juxtaposition of state incentives and NGO resources explains the pattern of NGO participation, it should do so here.

A Closer Look: NGOs and GEF

GEF was established in 1990 as a pilot project within the World Bank, and as of 1994 is a permanent body. The World Bank came under intense criticism in the 1980s, and the creation of GEF was one part of the World Bank’s general strategy of “greening” (El-Ashry, 1993; Reed, 1993). GEF’s role is to provide grants and technical assistance to projects deemed to have positive global externalities. UNCED endorsed GEF as the principal mechanism for assisting developing countries in addressing climate change, ozone depletion, biodiversity loss, and maritime pollution. As such, GEF is a crucial actor in the implementation process of most major environmental accords. During the GEF pilot phase there was no direct NGO participation, but limited consultations were held prior to meetings.¹⁸

Openness and transparency were central demands of GEF critics. As a result, the possibility of NGO inclusion was included in the new rules of the GEF Council, which allowed the CEO (the head of GEF) to invite representatives of “other organizations, including NGOs,” to attend or observe the Council meetings (GEF, n.d.). The Council decided to invite five NGOs to participate in future meetings and five to observe (GEF/C. 3/5:1, GEF, 1994). It also asked the GEF Secretariat to prepare a draft document on the criteria for selection of NGO representatives, as well as the “scope, cost implications, and other modalities” concerning the organization of NGO consultations (GEF/PA 93.2; 1993). The Secretariat, in turn, solicited opinions from interested NGOs.

The Secretariat in its draft guidance defined NGOs as nonprofit organizations whose mandate and expertise is related to GEF activities (GEF/PA 93.2; 1993). It encouraged NGOs to “organize themselves in various constituencies, interest groups, and networks” so as to increase the effectiveness of their participation.

¹⁸ NGOs were excluded from both the Implementation Committee and the Scientific and Technical Advisory Panel (Reed, 1993:205-6). Some developing country NGOs had their travel costs covered by the GEF itself, out of the administrative budget. Interview, GEF Secretariat and Global Environment Facility, GEF Draft Paper, “Participation by Non-Governmental Organizations in the GEF” (GEF/PA.93.2) May 1993.

Finally, in choosing which NGOs to invite to participate, the GEF Secretariat suggested the following criteria:

- a broad-based geographic representation,
- competence and interest in the substantive agenda before the GEF Council,
- a wide range of views and expertise, and a balance between international, national, and local groups, and
- “specialized experience and expertise” for particular meeting agendas.

Under the GEF plan, NGOs themselves will offer up a list of accredited potential participants and observers for approval. To gain accreditation, an NGO must demonstrate competence and relevance to the work of the GEF. It must also provide information on the purpose, age, location, and states in which it is active; programs and activities in relevant areas, and in which countries these are carried out; an annual report and financial status, including a list of governing body members and their nationalities; and total membership and geographical distribution of that membership.

The Council approved the Secretariat’s proposal in 1995. NGO participation is now granted subject to the following comments and changes from the original draft (GEF, 1995):

- “the Council clearly retains the authority to review whether such criteria are being followed,”
- “aspects of relevancy to the work of the GEF should be stressed and . . . representatives of the business community should be included,”
- “NGOs should not be required to select their representatives until after they have received the proposed agenda for the Council meeting,”
- “continuity in representation should be emphasized,” as well as “balance . . . between non-recipient and recipient country NGOs,” and
- “specific employees who are authorized on behalf of that NGO to disseminate documents” should be designated.

Analysis

The actions and discussions of the GEF member governments are broadly consistent with the central claims of this article: NGO access is beneficial to states in particular ways, and those benefits, in turn, structured the terms of the NGO participation granted. GEF took pains to indicate that NGO participation was a privilege and not a right, and emphasized that it would set criteria for participation. Furthermore, GEF would determine whether subsequent participation was in conformity with those terms. The chosen criteria demonstrate that NGO expertise, experience, and competence are critical elements: GEF did not seek to include merely interested groups or large groups, but rather those NGOs that had valuable information and skills. GEF also insisted that the pool of potential participants include business groups, expanding politically the set of participants.

Under the new rules the selection of NGOs cannot occur before the agenda for a Council meeting is distributed. This requirement ties the particular experience of the organizations more closely to the substantive issues under consideration; rather than a standing group of participating NGOs, the GEF preferred a specialized, meeting-specific group. Finally, the NGOs are asked to organize themselves into “constituencies” to enhance “efficiency.” If such a move enhanced the power of the NGOs themselves they likely would do so voluntarily; it seems clear that the

efficiency being enhanced is that of the GEF Council. With NGOs neatly organized into coalitions the member states can deal with a few while gaining the benefits of many. In short, member states were concerned that participation only be granted to those NGOs that had something specific and valuable to offer to policy makers. The Secretariat notes that "NGO consultations provide a valuable opportunity for governments, the Secretariat and the Implementing Agencies to interact with the NGOs and to benefit from their views and comments on GEF activities" (GEF, 1993). This is not mere rhetoric; the evidence shows that GEF sought to incorporate those NGOs best able to supply high-quality advice.

The rules for inclusion also reflect a desire to allocate the political plums of NGO inclusion widely. The Council stressed that a balance must exist between donor and recipient states, and that business NGOs be included. Broad NGO representation both enhances the flow of information to states stemming from monitoring and brings critical domestic actors to an international forum. The accreditation process reiterates the requirements of competence and relevance, and also demands very detailed information about the physical location and nationality of the NGO, its members, and its activities. These all reveal a strong interest and concern in the national origin and locus of activity of NGOs, important factors if NGO access is to facilitate a bridging of domestic and international political concerns. Moreover, this information can be used to verify the distribution of NGO participants, ensuring that the preferences of the member states are met.

The move to incorporate NGOs into the activities of the GEF is in its early stages. But as a test of the plausibility of the positive claims made in this article, the terms and process of inclusion in the GEF case are broadly consistent with those claims: NGOs have particular resources, and the inclusion of NGOs has been structured by states in accordance with the expected benefits. Access and participation in the activities of the GEF will go not to the largest, loudest, or most severe critics, or to some random set of interested parties, but rather to a group of nonstate actors that is well positioned to benefit the member states through multiple pathways.

Conclusion

The special competence of the modern state is the resolution of collective dilemmas. It is only the state that presently has the power and legitimacy to regulate the actions of disparate actors who, in their pursuit of individual gain, might otherwise destroy shared environmental resources. The states system replicates this collective action problem at a global level; hence international cooperation is required to address transboundary and global environmental problems. In order to work, international environmental cooperation must rely on the legitimate coercion over private actors which only states, and their organizations, wield. That is why many NGOs that are deeply critical of the states system and sovereignty are nevertheless active participants in the creation and maintenance of international environmental institutions.

This article has sought to describe, explain, and interpret the new roles of NGOs in such institutions. I have argued that NGO inclusion does not come at the expense of state power or centrality. The participation of NGOs enhances the ability, in both technocratic and political terms, of states to regulate through the treaty process. As states in concert have expanded and coordinated their regulatory powers in recent decades they have incorporated NGOs; the terms of NGO participation reflect the resources and skills of NGOs as well as the political and technocratic incentives of states. Thus, the expansion of the substantive domain of international regulation has been accompanied by an expanded participatory system which, while strengthening the role of private actors, simultaneously tempers and legitimizes the arrogation of new state powers through new international accords. This change in the

substance, participants, and process of international environmental cooperation is significant despite its reliance on the core norms of the sovereign states system.

The long-term effects of NGO participation on the international system are not clear. Wider participation is not an unmitigated good. While NGO participation eases political pressures (often from the same groups) and enhances the ability of states to create and maintain international regulatory rules, such participation brings with it dangers of capture, missed opportunities, and slower, more complex negotiations. Enhanced participation may represent a Pandora's box that states will not be able—or may not want—to close. It is possible, as some analysts have suggested, that the changing strategic landscape has redounded to the benefit of NGOs. In this scenario the post-Cold War diffusion of international rivalry and the decrease in the likelihood of conflict will lead to a diminishment in the salience of national identity and the rise of a neomedievalist global structure that will enhance NGO power (Spiro, 1994:48). And much like the Champaign Fairs in early modern Europe (Ruggie, 1993), NGO participation may exist at the mercy of the dominant political actors, yet result over time in the transformation of those dominant actors and of the broader political landscape. Short-term benefits, such as those discussed in this article, may initiate processes with irreversible long-term costs and effects for the once leading actors.

Thus, NGO participation may in time become an acknowledged international legal right, and future global policy coordination may look quite different. The evolution of American administrative law provides an interesting potential precedent. As the ambit of federal administration exploded in the post-New Deal era, due process requirements were restricted to acknowledged rights and not to privileges ("gratuities") such as licenses or welfare benefits—despite the fact that the latter constituted the bulk of the increase in administrative activity (*Lynch v. United States*, 1934; see also Stewart, 1975). This distinction was later overturned, resulting in an enormous expansion of procedural due process claims (*Goldberg v. Kelly*, 1970). Acts once considered privileges bestowed by the state were transformed by shifting conceptions of the role of government and the state-society relation into a sort of entrenched property right, with an attendant right to due process under the Constitution. No longer privileges, the state could no longer rescind them at will.

Moreover, the vastly increased scope of regulation in the post-New Deal era encouraged the courts—and Congress—to facilitate and guarantee the participation of a wide range of stakeholders and interested parties in the regulatory process (see Stewart, 1975; Stewart and Sunstein, 1982; Shapiro, 1988; Glicksman and Schroeder, 1991). Citizen groups, firms, and associations became fixtures in regulatory governance, wielding seemingly great power. Yet one could hardly argue that the federal government in the United States began to wither away as a result. The power of the central government to regulate was never stronger; the very presence and participation of these groups indicated just where the power lay.

As international cooperation is increasingly aimed at the regulation of private actions rather than purely state actions, a similar dynamic of increased participation coupled with regulatory power may hold. Increased private sector participation and even the privatization of formerly state functions throughout the West have not inexorably resulted in the diminution of central governments' importance, centrality, or power. Rather, the diminution has primarily been in individual and corporate autonomy in favor of the broader societal interests engendered by an increasingly complex social and economic life. States, as the guarantors of diverse societal interests, remain vitally important.

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