
Engaging Non-Governmental Organizations with International Environmental Negotiations: Institutional Approaches to Reforming State-NGO Interactions

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Introduction

Non-governmental organizations (NGOsⁱ) have acknowledged potential to improve process and outcome in international environmental negotiations (IENs). Many workers in the field have dwelled at length upon their “transformative effects...in the world political economy” (Princen and Finger, 1994), “agent of change role” (*ibid*) and potentially “profound impact on international environmental negotiations” (Vanasselt, 2002). NGO ideational dynamism, campaigning fervour, lack of strong nationalistic ties or bureaucratic burdens, sheer number, global diversity and their novelty as a relatively new force in global environmental politics, are such that the basic case for their participation in international environmental negotiations has been frequently made (Alkoby, 2003; Sorensen, 2002; Willetts, 2000; Albin, 1999; Wapner, 1996; Susskind, 1994).

From a neoliberal perspective (Raustiala, 1997; Keohane, 1984), there is little doubt that NGOs *should* participate in international environmental negotiationsⁱⁱ. As the numbers and sophistication of NGOs globally grow, it could be argued that increased participation is inevitable; as Gorg and Hirsch point out, the international system is not representative of communities and their interests when governments and single individuals are the only participants. (Gorg and Hirsch, 1998). This increased sophistication implies an increased NGO capacity to benefit the IEN process. Alkoby describes the “instrumental benefits and democratic benefits” of NGOs, their “ability to promote environmental protection and sustainable development goals” and suggests that “their involvement enhances the legitimacy of international environmental regimes, and enhances the efficiency of the regimes as a result” (Alkoby, 2003: 41, 43). As States and domestic constituencies become more aware of environmental issues and their transboundary nature, and NGOs become more established and accepted as actors in the international arena, there is increasing NGO-State agenda convergence: “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” (Raustiala, 1997: 720). NGOs currently undertake an enormous diversity of humanitarian, developmental and environmental work around the world. Edwards and Fowler point to this as evidence that the NGO community practices what it preaches, and has achieved sufficient maturity to be assigned a more instrumental role in international fora (Edwards and Fowler, 2002).

NGOs may bring many theoretical and practical benefits to international environmental negotiations and in environmental and developmental projects, but this does not mean that the current status quo is ideal or without significant problems. In that regard the

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NGO community has over the past decade come under increasing criticism, especially NGOsⁱⁱⁱ and their work in the developing world. In 1997, South African President Nelson Mandela “attacked [NGOs]...for their critical stance on government and for carrying out the political agendas of foreign interests” (Tvedt, 2002). It is not even clear how effective NGOs are in international environmental negotiations, despite much rhetoric to the contrary (Carr et al., 2001). Albin (1999) points out that the increased presence of NGOs “has not altered the state-controlled nature of international negotiating fora.” Countering claims that NGOs enhance the international democratic process, Gorg and Hirsch (1998) have suggested “the inclusion of NGOs within the regulated structures of cooperation cannot per se be characterized as a democratic gain” (Gorg and Hirsch, 1998: 604). There are also “long-time practitioners and scholars in the field who advocate moving beyond seeing NGOs as “magic bullets” to thinking more concretely about issues of accountability” (Ebrahim, 2003: 813). Some workers blame NGOs for negative outcomes. Albin (1999) relates that NGOs attempted to sabotage the latter stages of talks on hazardous waste trading “once it became obvious to them that a convention would not produce a total ban” (Albin, 1999: 382). Kempel suggests that “the outcome of those negotiations as well as the role of all participants were significantly weakened in the course of this process” (Kempel, 1999: 411) due to the role that NGOs assumed at these negotiations.

NGO delegates have on rare occasions stepped outside the normative bounds of international relations. The Sudanese rebel leader John Garang once appeared at an international forum as a spokesman for Christian Solidarity International (Willets, 2000). Given that CSI describes itself as “a Christian human rights organization for religious liberty helping victims of religious repression, victimized children and victims of disaster” (CSI, 2005), the logic of giving publicity to a rebel movement at least partly responsible for considerable repression, victimization and disaster was questionable. Although CSI did lose its Economic and Social Council (ECOSOC) accreditation after Sudan filed a complaint (ECOSOC/5876, 1999), the damage was already done. Issues of effectiveness^{iv}, legitimacy of representation claims, accountability, conflicting messages (Edwards and Fowler, 2002) and poor behaviour have all risen onto the international stage.

Such incidents arise not necessarily from malicious intent on the part of NGOs, but from the traditional insider/outside paradigm (Richards and Heard, 2005). Confrontation and combat have been the traditional tools of NGO engagement with States over environmental issues, but that this has not always resulted in effective policy outcomes (Bellamy and Wilkinson, 2001). For example, where States succumb to intense publicity and stage-managed direct action, the criticism can be raised that a small organization or group of organizations are having an unjustifiable impact on international environmental negotiations. Where States resist this pressure, the whole process can be closed down even further, and the negotiations may lose any limited transparency there may have had before, with consequential impacts for the quality and inclusiveness of decision-making.

In the WTO transparency was not a founding principle, and resistance to change is so strong arguably because of the violent demonstrations seen at global rounds of trade talks

(Wolfe, 2004). A lack of WTO transparency has resulted in marginalization of major parties (The Nation, 2003), undemocratic decision-making processes, ineffective dispute resolution (FOEI, 2005) and violent responses from direct action NGOs (Wolfe, 2004). Whilst it is true that States must cede ground, “it is [also] incumbent on green organizations to grasp such opportunities that present themselves to allow confrontation to be replaced to some degree by co-operation, to allow positivity and solution-finding to replace negativity and suspicion” (*ibid*: 89). NGOs currently seek to influence environmental policy in domestic and international settings either by top-down consultative cooperation (Carter, 2001) or by bottom-up adversarial direct action (Rootes, 1999), but it is argued here that the most successful approach would integrate both approaches.

But it is not only NGOs that bear the blame for poor NGO-State interactions both inside and outside of IENs. The existing structures for NGO participation in IENs are redundant, and there are both normative and formal obstacles to more effective NGO work in many other arenas. For example, States have strong reactionary positions on NGO involvement in IENs, even where there are clear capacity benefits (Susskind, 1994); the ambiguous, poorly-defined role of NGOs in IENs results in haphazard ad hoc participatory arrangements in which it is difficult to ascertain any discernible influence on treaty outcome (Carr et al., 2001; Potter, 1996); and existing accreditation processes and logistical deficiencies fail to give voice to the vast number of grassroots organizations globally (Fisher, 1998; In: Thomas et al., 2001). The international system is sorely in need of a new framework for interaction, a new paradigm that would guide NGO-State interaction in a mutually productive way.

Kofi Annan once described NGOs as the “conscience of humanity” (Tvedt, 2002: 363), and UNCED Secretary-General Maurice Strong has argued that NGOs could “enrich and enhance the deliberations of the conference and its preparatory process” (Susskind, 1994: 47). In essence, whilst there is abundant and visionary rhetoric calling for increased NGO participation at a high level of negotiations, there remain significant questions and obstacles. We are presented with a situation in which a major group of transnational actors have great potential for making international environmental negotiations and treaties more effective, but whose own structure and participation in such arenas is internally flawed and externally hindered by international norms and procedures.

NGO participation in IENs – a brief history

The UN system has driven most formal attempts in recent history to facilitate NGO involvement in international negotiations. Given that the UN is generally involved in some way in most IENs whether they be State, IGO^v or UN-sponsored, it has made sense for NGOs to seek participatory rights through the UN. However, the 1945 UN Charter made only weak provision for the participation of NGOs in the UN system. In Article 71, it empowered the ECOSOC to “make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence” (UNDESA, 2005). NGO status in the UN institutions and fora was thereafter defined as consultative, effectively implying a secondary or observer status. The process of ECOSOC accreditation was initiated in 1946, with an initial 41 organizations granted

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“consultative status”; this has since risen to 2,719 (UNDESA, 2005). The process has a number of specific requirements. These include restricting membership to those organizations that are non-profit; that do not advocate the use of violence; that are not a school, university or political party; and are not acting on behalf of “a specific communal group, nationality or country” (Willetts, 2000: 2). Whatever the rights or wrongs of the limitations, ECOSOC accreditation remains the only official route to gaining access to UN deliberations.

Whilst there have been three significant reviews of NGO status at the UN in 1950, 1968 and 1996 (*ibid*), the 1996 review remains the most significant: it culminated in UNGA resolution 1996/31, which officially recognized the right of NGOs to participate in UN General Assembly sessions, although the US sponsored a blocking resolution on further recognitions beyond the already-admitted ICRC, IFRC/RC^{vi} and the Sovereign Order of Malta (*ibid*). In spirit, the resolution is remarkably progressive, explicitly recognizing the capacity for NGOs to support UN activities and calling upon other UN bodies to reconsider the participation of NGOs in their activities. For international conferences convened by UN agencies or organs, it gives NGOs the right to participate in all current and future plenary sessions (once accreditation is complete), and to make presentations during the process. It does however restrict participatory rights to presence and presentation, excluding NGOs from negotiations or voting.

Current status - ad hoc participatory norms

The UN does not convene all conferences and negotiations in which NGOs want to participate, nor do all conferences and negotiations either inside or outside the UN framework pay equal attention to ECOSOC principles and Resolution 1996/31. Forms of NGO participation are essentially ad hoc (Susskind, 1994) according to a number of factors, including the nature of the issue under consideration and the particular combination of participating States. There are few international fora left, however, which totally exclude NGOs from participating in the negotiation process. The last decade has been littered with conferences that called for commitment to increasing and formalizing NGO participation: UNCED^{vii}, 1992; the Cairo Conference on Population, 1994; Habitat II, 1996; and the WSSD^{viii}, 2002. A particularly progressive model emerged from the Bergen regional preparatory conference of the Economic Commission for Europe in 1990. At this conference, NGOs were “full partners with national delegates,” and “were allowed to address the [working] session.” The summit concluded with recommendations that NGOs be more fully incorporated into the deliberations of other commissions of the UN and in UNCED PrepComs (all: Susskind, 1994: 47). Whilst provisions in treaty texts that affirm national sovereignty and the lack of NGO voting rights are common, as are general, imprecise statements welcoming the participation of NGOs (Raustiala, 1997), explicit procedural guidelines for NGO participation are extremely rare. The body of “international participatory law” is therefore particularly soft (Abbott and Snidal, 2000), with normative practices and precedent shaping NGO roles and in staking out their legitimate field of operations. These normative practices have evolved into wide recognition of the need for NGO participation, and a generally receptive atmosphere to the presence of NGOs at negotiation sessions (Willetts, 2000). The official legal framework remains highly restrictive, however, and does not reflect the flux of actual

NGO-state relationships in IENs. According to Gordenker and Weiss, real NGO-state interactions range from dependency and interdependency to isolation and antagonistic opposition (Gordenker and Weiss, 1997).

Corell and Betsill's comparative analysis of NGO participation in negotiations during the Kyoto Protocol (UNFCCC^{ix}) and UN Convention on Combating Desertification (UNCCD) illustrates some of the variability in the form and shape of NGO participation in recent international environmental negotiations. At Kyoto, NGO representatives could not circulate on the floor during plenary sessions and were excluded from closed door meetings; they also found their informational capacity drowned out by a melee of other special interest groups and consultative organizations (Corell and Betsill, 2001). In stark contrast, at UNCCD conferences NGOs had considerable and continuous access, found themselves labelled "partners in development" with a primary and almost exclusive role in providing information to national delegates, and even managed to influence the final text language on the economic and social implications of desertification (*ibid*) as well as achieving inclusion of an NGO-sourced idea—the establishment of national desertification funds (Potter, 1996). However, even at the UNCCD, it was difficult to prove that the higher degree of legitimate NGO involvement had any impact on the outcome, and it seemed that the only benefit to either NGOs or States was that the participating NGOs learnt more about the international environmental treaty making process (Carr et al., 2001).

A proposal for new NGO institutions

The existing mish-mash of ad hoc protocols and restrictive official definitions helps neither NGOs, nor the effectiveness of international environmental negotiations and resulting treaties. There is an urgent need for a new international framework organization that will gather up the disparate threads of civil society and focus their energies and resources more effectively.

My first proposal, therefore, is a new *International Council of Non-Governmental organizations* (ICONGO). It would represent an inclusive, coordinated attempt to address both NGO and State concerns about the current system of NGO participation in international fora, through an institutional solution. It would package civil society in a manner amenable to the strong and enduring norms of the international political system, while attempting to distill the most effective and attractive qualities of NGOs and the NGO community into the institutional framework. In the interests of diversity and empowerment, it would be open to NGOs from all sectors and interests (including corporate-sponsored and educational groups barred by existing ECOSOC regulations), but would have a primary goal of enhancing NGO participation in international institutions and regimes – as these are becoming increasingly critical to the success of many areas of NGO activity. The organization would seek to maintain a very active advocacy role in international fora; it would develop and advance detailed positions on key environmental and developmental issues, and work continuously to further the cause of NGO participation in international environmental and developmental politics.

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My second proposal is the *Civil Society Resolution* (CSR). This would be designed to: give official sanction to ICONGO; provide funding for ICONGO; articulate the ways in which ICONGO would be permitted to engage with IENs; and establish a new normative framework for NGO-State interaction inside and outside of IENs. It would represent an attempt to place ICONGO on a hybrid hard/soft legal foundation, and inculcate new norms of interaction and advocacy in the arena of international environmental negotiations. It would require substantial concessions on the part of both NGO and State actors and significantly modify the edifice of NGO participation in IENs; it would not have immediate impact, since CSR visioning would call for incremental and consensus-based implementation. Over time its principles would pervade other non-environmental forms of international negotiation, and contribute to vastly more efficient and durable negotiation processes and outcomes.

The benefits of both organizations would not be restricted to NGO action within IENs. Many of the problematic elements of NGO-State interaction in an IEN context are derived from problems developed in other fields of NGO activity external to IENs. Indeed, there is feedback between the two arenas: large transnational ENGOs gain considerable authority and legitimacy in advocacy by the environmental work they undertake at a practical level. The remit of ICONGO would not be confined to enhancing the roles of NGOs in IENs, but would extend to contributing to improved NGO governance, accountability and legitimacy in general.

Approach justification

The Salzburg Initiative, a visionary 11-point series of recommendations for advancing the practice of international environmental negotiations, includes an emphasis on the need to expand the role of NGOs (Susskind, 1994). Other authors have echoed the call for “new institutions for global environmental change” (Jordan and O’Riordan, 2003: 1) or simply for enhancing NGO access and participation in international decision-making (Lord, 2001). A very recent series of recommendations on how to better engage NGOs with international environmental negotiations has called explicitly for an umbrella organization or organizations to increase the unity and coherence of world civil society (Parrot, 2005, pers. comm.) There have, however, been no detailed suggestions on how to realistically facilitate such enhancement or engagement. Koenig recently developed a practical guide for NGOs in how to engage themselves at international levels (Koenig, 2004), but this can be classified as more of a how-to manual focusing on educating NGOs in how to network better with other organizations and individuals in civil society, government circles, and international institutions.

Whilst there has been voluminous critical analysis from every angle of the current roles, activities, and responsibilities of NGOs in global environmental politics (Wapner, 2002), there remains considerable room for discussions about the future; not just analytical speculation, but concrete prescriptions for change. The introduction briefly discussed some of the problems surrounding the current norms and procedures of NGO-State and NGO-IEN interaction. This paper is an opportunity to address those and other problems by exploring new institutional and structural frameworks that might provide effective and viable solutions. It is fundamentally grounded in a collaborative view of global

environmental policymaking (van den Hove, 1999): institutionalized ENGOs, dynamic grassroots activists and State actors must all be brought together with the common purpose of enhancing NGO roles and influence within international environmental treaty negotiations. By being prescriptive to a high level of detail, this proposal could potentially have significant practical benefit. But whatever the practical prescriptions, perhaps a richer benefit of taking a creative and innovative approach is to contribute to a more open and productive debate surrounding civil society's roles in international environmental policymaking. The suggested new institutional framework is a point of departure for a much-needed debate devoted to the radical redefinition of NGO roles and responsibilities at an international level.

Institutional precedent

There is something of a glut in international associations that purport to represent NGOs, at least one for every sector and region of the globe. The Union of International Associations makes eight subdivisions of association type. These include but are not limited to "Independent federations of international NGOs;" "Coalitions focused on particular United Nations bodies;" and "Coalitions for civil society, citizen participation, or world government" (UIA, 2005). For "Independent federations of international NGOs" alone, there are 38 recorded coalition organizations, ranging from the Universal Esperanto Association (UEA) to the International Council of Scientific Unions (ICSU) and everything in between (*ibid*). The sheer number, limited membership, specialization, and lack of capacity for such organizations to influence IENs suggest that there is a need to move beyond such restricted and low-capacity coalitions.

Aside from a multitude of regional and international coalitions, there has been one well-organized attempt at an UN-linked international NGO organization: the Conference of NGOs in Consultative Relationship with the United Nations (CONGO). According to the organization's literature, CONGO has three goals: assist "a great variety of nongovernmental organizations in consultative status to promote their common aim of supporting the United Nations Charter"; work "on behalf of nongovernmental organizations in consultative status to develop that status and improve their relationship and cooperation with the United Nations and its various organs"; and provide "a forum for nongovernmental organizations with common interests to come together to study, plan, support, and act in relation to the principles and programmes of the United Nations" (CONGO, 2005). Whilst all these goals are laudable, the organization itself does not take campaigning, negotiating or even representative positions in international fora; nor is it inclusive, so its forum function is elitist. CONGO is also restricted by the ECOSOC accreditation system, which is not respected by all international fora or all NGO actors. Willetts reports that at UNCED, "there was a widespread feeling in the environmental movement that the ECOSOC procedures were bureaucratic, the idea of consultative status was patronizing, and the established NGOs were unrepresentative of grassroots popular opinion" (Willetts, 2000: 3). Whilst its principal goal is to facilitate NGO engagement in UN debates and decisions, CONGO has no officially recognized role in the eyes of UN member States. In short, CONGO is a loose framework designed to help NGOs interact with the UN system (and by extension, the international diplomatic system) but does not contribute much to making that interaction more effective.

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One further organization of note is the International Council of Voluntary Agencies. This group was founded in 1962 as a “global network of human rights, humanitarian, and development NGOs” (ICVA, 2005: 1). It focuses on information exchange and advocacy, and has strong ties with the UN Inter-Agency Standing Committee (the UN body concerned with humanitarian coordination) and UNHCR’s Standing and Executive Committees (*ibid*). It has a tightly focused mandate, mainly concerned with strengthening inter-NGO ties, facilitating access for NGOs to the humanitarian committees of the UN, and improving NGO representation by visibility. However, it is specific to developmental and humanitarian concerns, and has only 75 member organizations.

It is clear that there is not (and has never been) an existing international NGO coalition with a broad and balanced base of membership and a general remit to engage NGOs with international environmental negotiations. One of this paper’s proposals, ICONGO, would be an organization without one specific issue of interest, but with the capacity to react to and take positions on nearly any environmental, economic, or social issue related to international environmental negotiations. It would be a translation of the “world civic politics” (Wapner, 1996: 337) analytical concept into a meaningful and institutional expression of NGO power and influence in international fora. The proposal is not a suggestion that the existing world order of inter-State relations is unstable (Kothari, 1993) or losing legitimacy (Lash and Urry, 1994), but more a recognition that it is enduring, robust, and should be co-opted rather than opposed (Rosenau, 1990; In: Potter, 1996).

Why an institutional solution?

A recent report by the UN Secretary-General on engaging NGOs with the UN found that “The extent to which NGOs are able to organize themselves around broad networks focusing on specific issues will have a bearing on the form and impact of their involvement in the work of the Organization” (UNGA A/59/354, 2004). In other words, NGOs must organize to influence.

ICONGO as defined above falls into the definition of “institution” as a formal organization created and staffed for a particular purpose. The CSR concept, however, is the definition of an institution as a collection of laws, practices and norms relating to a particular arena of interaction. An institutional solution along the lines of the first definition has a number of intrinsic normative precedents in membership, structure, and governance that would give the global NGO community more of a palatable form from the State perspective, and enhance NGO activities by bringing the guiding hand of self-regulation and self-governance to bear. The institution would be modelled along the lines of existing UN organs, but the essential independence of the organization from the UN system would be explicitly stated. This would allow the organization to tap into the wealth of experience in designing and operating UN organs and IGOs whilst not compromising the independence of the NGO community. A further consideration is the proliferation and importance of formal institutions in international relations. The UN and the Bretton-Woods institutions are tremendously powerful organizations that oversee the formulation and implementation of vast tracts of international policy. In this regard, it seems sensible to try and engage NGOs with the international system by adopting such an

accepted and successful means of managing international policymaking. In many ways, the strongest argument for an institutional solution is the failure of the current system and the paucity of alternatives. There is little evidence that NGOs are currently having a regular discernible effect on the process and outcome of most IENs, apart from generating short-lived and ineffectual storms of public concern and crippling forum logistics.

A new institution along the lines of the second definition (a collection of laws, practices and norms) fits in with the established process of democratically creating and applying prescriptions for procedures of international relations. The UN General Assembly remains the only international body with sufficient capacity and influence to draft soft and hard international law (even though the soft approach is most commonly adopted). The UNGA therefore has a unique ability to develop and publish more explicit, formal and respected prescriptions for NGO/State interactions. It is the most direct and rapid way to force a change in norms of international relations. It would be critical to the success of ICONGO by providing the legal framework that ensures the viability of the ICONGO concept, and establishing funding mechanisms essential to its survival. It would generate a set of new participatory norms that would facilitate ICONGO's operation and promote a new model for NGO-State interactions inside or outside of IENs (whether or not they involve ICONGO or ICONGO members).

Many other alternatives exist in both regards. Fostering bottom-up development of grassroots NGO coalitions would go some way towards addressing issues of fragmentation and dissonance in NGO messages. But given the enormous and growing numbers and diversity of NGOs in all sectors and of all types, it seems unreasonable to suggest that informal coalition-building efforts would ever address the scale of the problem. Prescriptive guidelines (along the lines of the Salzburg Initiative; Susskind, 1994) for States and NGOs would promote similar progressive principles of interaction, but there is little guarantee that these prescriptions would be followed by any party and would indeed be adhered to without some sort of soft or hard legal framework in support. States and NGOs could attempt to reform the ECOSOC accreditation process to make the requirements more flexible and less dictatorial, and given accredited organizations more of a formal role at IENs; however, the massive institutional inertia of the UN system suggests it would be quicker and easier to build new institutions from the ground up than try and reform old ones. We could rely on a general progression towards improved NGO "rights" at many international fora to achieve an eventual ideal, but this would not address underlying issues of ambiguous official definitions of the NGO concept and NGO roles in IENs and beyond; in any case, the poor quality of many recent environmental treaties calls for much more efficient approaches.

This is not an exhaustive catalogue of potential alternatives to an institutional solution, but they are representative. All these alternatives address the problem either in a piecemeal fashion or only through one lens. They are either NGO or State-focused, and therefore ripe with potential to cause conflict. They are either so radical as to inspire instant rejection by State or non-State communities; or so long-term that the current pressing need for NGOs to contribute to international environmental policymaking would

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not be satisfied. Furthermore, they do not address a fundamental disconnect between forms of NGO action: many transnational NGOs have developed close consultative relationships with governments and IGOs (Grant, 2000), whilst many grassroots NGOs prefer direct, adversarial action. Both approaches have their theoretical benefits, but as Richards and Heard suggest, “there is a growing acceptance that long-term change may best be achieved through formal channels and the introduction of binding legislation to safeguard the environment” (Richards and Heard, 2005: 26). Equally, however, neither should the dynamism, independence, and creativity of grassroots direct action NGOs be subsumed into the excessively bureaucratic and potentially co-opted transnational ENGO model. The ideal would engage civil society in a formal way, whilst drawing on the radicalist energy of NGOs to cajole, encourage or even force practical change: an integrated approach that reconciles institution with individual, formal with informal, bureaucracy with adhococracy. Moyo (1991) suggested that NGO advocacy occurs in four modes: entryist, complementary, passive, resistance and oppositional (Moyo, 1991; In: Potter, 1996: 44). It would be a necessary function of any integrated solution to reconcile all these different advocacy functions.

This paper attempts to present just such an integrated solution: a set of new institutions working from both NGO and State perspectives, addressing the dual challenges of flaws in the NGO community, and flaws in the way the international system creates and implements environmental treaties.

ICONGO institutional goals

The overarching goals of ICONGO would be established as follows:

- To enhance the extent and effectiveness of NGO influence at international environmental negotiations, and so improve on the efficiency of such negotiations as well as the quality and sustainability of the outcome.
- To act for and on behalf of global civil society, in a partisan fashion where necessary but seeking at all times collaborative and consensual approaches to resolving internal conflict between NGOs and external conflict with State and IGO actors.
- To promote an institutional conceptualization of civil society, so as to more formally engage non-State and State actors.
- To provide a formal, organized, regular global forum for NGOs to interact and collaborate to share knowledge and ideas.
- To develop formal mechanisms for structured engagement of technically proficient NGO and NGO groupings in the implementation and monitoring of international environmental treaties.
- To improve the quality of NGO operations in environmental and developmental arenas.
- To address issues of global inequality between NGO groups through a mix of financial and procedural mechanisms.

The organization would have accountability, representation, NGO self-education and

NGO promotion as key guiding principles. The essential elements of ICONGO are outlined in the following sections on structure, procedure, funding, membership, and constitution.

Structure and procedure

ICONGO would be composed of executive and non-executive memberships. The non-executive membership would have unlimited size, and be open to any NGO organization worldwide that met the basic NGO definition^x and wished to participate. ICONGO non-executive affiliation would entitle an organization to nominate itself or be nominated for annual selection to the executive membership (the Lower and Upper Councils), as well as access to full details of all activities and decision-making at ICONGO sessions. The purpose of the non-executive membership would be twofold: to provide a pool of interested NGOs to draw on when selecting new members for the Lower Council; and to enhance the representative nature of ICONGO as the new institutional face of world civil society.

The executive membership would have a bicameral structure. The Lower Council would consist of up to 1,000 representatives from all NGO sectors (one representative per NGO), with a general classification for membership purposes following the World Bank system (Nalinakumari and Maclean, 2005: 6): top-level separation into operational and advocacy NGOs, with further division into community-based, national, and international NGOs. Those groups that do not fit into the WB categorization would be further classified using Salamon and Anheier's International Classification of Nonprofit Organizations (ICNPO; Salamon and Anheier, 1992a, 1992b) that breaks NGOs down into 12 groups based on primary economic activity (*ibid*: 6). The classification would be used as a basis for selecting the initial make-up of the Lower Council from the broad pool of non-executive membership. Independent officials from ECOSOC, CONGO and other disinterested NGO-related institutions would carry out the initial selection process.

The process would be predicated on the need to ensure balanced representation from all NGO sectors and all regions of the globe. Countries with exceptionally large numbers of NGOs (such as Bangladesh; Kahn, 2003) would have sub-ICONGO structures to ensure the essence of the diversity of that country's NGO community is maintained without exceeding regional or sectoral quotas. Subsequent recruitment to and demotion from the ICONGO would take place annually via initial nomination and voting in the Lower Council, followed by approval in the Upper Council. Membership would be restricted to those organizations that pledged to follow the particular ICONGO code of conduct relevant to their categorization. All codes of conduct would incorporate requirements that the applicant organization be non-violent; committed to racial, cultural, and gender equality; and similar generic concepts in line with established UN principles. Those Lower Council representatives who had not reached a certain minimum count of attendance and participation in plenary debate would be first to be rotated out of the Lower Council. A certain proportion of the Lower Council would be required to rotate out of the executive membership every two years, ensuring continual replenishment of the decision-making membership and giving non-executive NGOs even more of a chance to have their voice heard.

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The Lower Council would take responsibility for plenary debates, advancing strategy and action proposals and organizing and running subcommittees to undertake research and address specific issues. The Lower Council would, in general, represent an open and inclusive forum for NGOs to raise issues, discuss problems, and advance strategies and proposals for ICONGO actions. Decisions on any substantive issues would be achieved by two-thirds majority vote; each NGO representative would be entitled to one vote. Where NGOs have ceded representation to a grouping, the group would have one vote and members of the group would not be able to retain an individual vote, although as ICONGO members they would be entitled to participate in all Lower Council debates. Where complex transnational NGO networks are involved (such as WWF regional offices, and FOE-affiliated organizations), ad hoc procedures would be developed during initial selection to avoid allowing any single group to gain disproportionate presence or influence.

The Upper Council would be a body of 50 NGOs elected by majority vote from the Lower Council. Distribution of NGO sector and region would be equitable, using the Lower Council as a model. The Upper Council would be responsible for final approval of all Lower Council proposals, and would supply delegates to international conferences, negotiations, and other fora. It would provide the main point of contact for States, UN organs, and IGOs. The Upper Council would be headed on a tripartite rotational basis with leadership balanced across the sectors and regions represented in the Upper Council: previous, current and future heads (leadership being held for 6 month intervals) would “jointly” undertake leadership duties to ensure continuity and stability in executive decision-making (Moomaw and Susskind, pers. comm., 2005). The Upper Council would represent an executive decision-making body, with powers to submit delegates to international fora, guide ICONGO policy and advocacy approaches, and demote NGOs from either council level. It would, however, not be able to set the agenda for debate – this would be the role of the Lower Council – nor decide on particular strategies or actions if these have not been advanced in the Lower Council. The Upper Council’s main purposes would be in streamlining and speeding decision-making within the organization, and providing a manageable but still representative face to other international actors.

A separate International Oversight Council (IOC-ICONGO) would be established and charged with assessing and monitoring issues of compliance and representation, developing and disseminating concepts of NGO good practice, monitoring compliance with ICONGO Codes of Conduct, administering punitive measures for non-compliance, and offering its investigatory and arbitration services to States and other actors external to ICONGO- in order to address complaints over ICONGO-member malpractice or misbehaviour. It would be made up of a maximum of 25 NGO representatives elected by majority vote from the Lower Council, and a maximum of 25 individuals of relevant expertise and experience drawn from organizations, institutions, and governments external to ICONGO.

Membership

ICONGO non-executive membership would be laid open to all NGOs globally from the very start. An internal classification system would be operated: media class (information

dissemination, grassroots communication); technical class (information gathering and evaluating); participatory class (advocacy/lobbying, advisory), and practical class (treaty monitoring and implementation). Individual NGOs could belong to several classes, but to enhance the legitimacy of the organization, activities within each class would not be mixed with other classes. The organization would maintain an oversight council to ensure accountability and proper governance.

The most critical period for membership would be in the planning and implementation stages of the ICONGO concept. Prior to the creation of the executive arms of ICONGO, a UNEP/CSD/UNDESA joint commission would be charged with drawing up a global working group composed of members of the NGO community balanced across functional sectors and geographic regions. This initial “membership committee” would be funded and empowered to make the first selections for Lower Council membership. The UN joint commission and the global NGO working group would then develop a draft code of conduct for membership and guidelines for selecting NGOs for membership. The joint group would lay down the basic conditions for membership:

- Not-for-profit, non-violent activity and principles;
- Acceptance and adherence to the ICONGO code of conduct;
- External proof that the NGO has a membership, a governing structure and a base;
- Evidence that an NGO has operational independence from any funding or parent groups or organizations.

In practice, defining these apparently simple conditions will be a complex and controversial task. The working committee would take on this challenge, bearing in mind the principles of inclusion and equity on which ICONGO would be based, and past experience of the ECOSOC accreditation system which some NGOs have suggested is “too politicised and time consuming” (SARC, 2003: 1). In other words, the conditions must be sufficiently well defined as to filter out organizations that would not make a positive contribution to the operation of ICONGO, whilst keeping the bureaucratic load to a minimum. The balance of NGOs selected for the initial membership would be on the basis of sector and geographic quotas. The different sectors would be defined according to an amalgamated classification system along the lines of World Bank practice and the ICNPO developed by Salamon and Anheier (1992a, 1992b). There would be no weighting to quotas, since it makes no sense to favour any one sector or geographic region over another: the purpose of ICONGO extends well beyond simply submitting delegations to international environmental negotiations, and to restrict or weight membership towards specific advocacy or environmental organizations would detract from the other qualities and functions of ICONGO.

There is growing recognition of the interrelationships between environmental, developmental, humanitarian and other economic, social and cultural issues in dispute at an international level (Susskind, 1994; Hamalainen et al., 2001). Cross-sectoral membership would allow ICONGO to make the links and intra-ICONGO coalitions that might make NGOs more effective both within IENs and out in the field, as well as

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bringing to the attention of States the important linkages between issues (that have been used as a means to advance negotiations; Susskind, 1994; Conconi and Perroni, 2001).

The fluid, dynamic nature of civil society means that “NGO” resists definition, and most attempts to develop specific definitions fail to incorporate the diversity of the global NGO community, or otherwise attempt catch-all definitions that are too restrictive. The ECOSOC definition of NGOs, for example, shuts out a large proportion of the NGO community from the UN system: many NGOs are grassroots organizations representing the interests of a specific community, and ECOSOC rules mean that the concerns of these NGOs (however valid) are excluded. The World Bank definition laid out earlier encompasses much of the spirit of the popular NGO concept and is very wide-reaching, but has little specific detail that might allow a selection committee to set basic standards to streamline the selection process. Definition is dependent on the particular viewpoint of the organization or group providing the definition. The FAO, for example, defines an NGO as “an organization which seeks funding, hires staff, and undertakes programmes but does not realize a profit” (FAO, 2005); such a broad definition could conceivably include terrorist groups that are clearly not acting in the same spirit as international environmental organizations. On the other hand, the Jamaica Sustainable Development Network defines an NGO as “any organization that is not a part of federal, provincial, territorial, or municipal government. Unless otherwise indicated, NGO's include private voluntary organizations, corporations, educational institutions, and labour unions” (JSDN, 2005). This more explicit definition lays some classification ground rules, but fails to consider the assumption of not-for-profit activities traditionally associated with the NGO label. The variability in definition suggests that by the very nature of the NGO community, the exercise is fruitless. However, for practical purposes of membership selection, ICONGO would have to employ a definition. It is proposed to keep the definition loose, so as to avoid the ECOSOC problem of over-definition and alienation, but at the same time make clear certain non-negotiable requirements for type of NGO activity and behaviour acceptable to the spirit and mission of ICONGO.

A hybrid definition is thus proposed. This definition incorporates elements from the most widely accepted existing definitions, and attempts to balance depth and breadth. A totally objective definition is not possible, and so it must be made clear that the definition here is made with the ethos and procedures of ICONGO in mind and may not be applicable in other arenas.

“An NGO is a private, not-for-profit, non-governmental organization established and run for the sole purpose of advancing a position and/or undertaking activities designed to achieve any one or more of the following aims:

- *Improving the quality of life and/or standard of living of human communities.*
- *Addressing environmental problems on any scale.*
- *Addressing social and cultural problems on any scale.*

No distinction is made on the basis of funding source or parent organization ethos.”

This definition is far from perfect. For example, how does one define “social and cultural problems”? However, no definition will ever satisfy all. To move the debate beyond semantics it is more important to generate a definition that provides a basic framework, leaves room for interpretation based on changing circumstances and unusual cases, and thus serves the practical purposes and ongoing development of ICONGO. ICONGO would need a broad representative base built on a principle of equity between North and South, as well as between transnational and grassroots organizations. It would be incumbent on a working committee with sufficient experience and skill to build a practical normative framework of selection criteria on the basis of this broad definition.

General functions

ICONGO would fulfill a number of functions, but foremost among these would be the synthesis and advocacy of the range of NGO positions on a particular negotiating topic. It would be unrealistic to require consensus-based decision-making out of the large and diverse Lower Council, or even out of the Upper Council, and so the ICONGO delegation submitted to IENs would have sufficient capacity to bring a range of views to the table. However, much of the enhanced effectiveness of ICONGO would be in its ability to present coherent and unified NGO arguments on a particular issue; it would be undesirable to present diametrically opposing positions, and the collaborative processes within both councils of ICONGO would work to break down conflict and seek common ground. As Gordenker and Weiss (1997) point out, diversity is the very essence of civil society: “The dynamism and variety in the NGO universe ensures that no monolithic march in any direction may be expected. Yet it is that very untidiness, which can irritate diplomats and administrators, that opens opportunities for collaboration” (Gordenker and Weiss, 1997: 12). In other words, ICONGO would be predicated on institutionalizing NGOs without creating a monumental and unresponsive bureaucracy.

It is well acknowledged that NGOs have a variety of roles to play at international environmental negotiations. Albin suggests these include:

1. Problem definition
2. Agenda and goal setting
3. Enforcement of principles and norms
4. Provision of information and expertise
5. Public advocacy and mobilization
6. Lobbying
7. Direct participation in the formulation of international agreements
8. Monitoring and other assistance with compliance

(Albin, 1999)

To these we can add “implementation,” since the implementation provisions of many environmental treaties call for active initiation of projects on the ground that NGOs may be best placed to undertake.

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ICONGO's advocacy role and place at the negotiation table would allow the delegation to fulfill and enhance NGO roles in problem definition, agenda/goal setting and enforcement of principles and norms. ICONGO would also actively seek to promote awareness of environmental issues that could have potentially been addressed through an international environmental treaty, but which were not on the international agenda at that time. ICONGO could have a very powerful role in pre-IEN agenda setting. ICONGO's delegation would have a separate information support infrastructure, made up of representatives from ICONGO member organizations with the relevant technical know-how or experience. Negotiating members of the ICONGO delegation would feed back informational requirements (for their own purposes or for the purposes of any party at the negotiating table) to the support infrastructure; the informational capacity of NGOs at IENs would thus be systematized, enriched, and made more accountable. The pyramid structure of ICONGO, with a large grassroots base and a small representative delegation, implies enormous potential capacity to devote to public advocacy and mobilization; the institutional structure of the organization would mean that information could be rapidly and coherently disseminated to all member organizations, and advocacy activities external to IENs established rapidly with central coordination to improve their efficiency and effectiveness.

The ICONGO delegation, as the non-neutral face of civil society, would clearly have to perform a lobbying role at IENs: as discussed, this could be on a range of issues, in which case the resources of the delegation would be somewhat fragmented. More ideally, the collaborative processes within ICONGO would generate common or similar positions around which the delegation could rally and lobby. Delegation members would be restricted to a certain extent by the norms of behaviour in the kinds of closed-door meetings that the organization would have access to (see the discussion of CSR later); however, since ICONGO would indeed be granted "insider" status at all these negotiations, the traditional adversarial lobbying practices of the NGO community at IENs might be less appropriate or useful. This access, and the right to negotiate on an equal footing with States (minus voting rights), would facilitate the direct participation in formulation of treaty texts. The vast technical and experiential resources of ICONGO would set up the organization well in attempts to draw up parallel or alternative versions of treaty texts. ICONGO's enhanced legitimacy might force States to consider these alternatives more seriously.

Finally, ICONGO could perform useful functions in the monitoring and implementation stages. Monitoring responsibilities would be coordinated through the pre-existing international structure of ICONGO, allowing for synthesis of disparate and diverse data types and sources from monitoring activities globally. This would also allow for some data quality control and NGO 'peer-review' of the standards in monitoring being employed. The centralized administration of the group would have strong links with the treaty secretariat in this regard, and pass on reports based on international NGO monitoring activities directly to the secretariat or appropriate relevant international body. As regards implementation, ICONGO would develop a system of "contracts" (after Gordenker and Weiss, 1997) between the treaty secretariat and/or individual member states for ICONGO members who were seeking to undertake implementation work

related to the treaty. ICONGO would maintain an active register of information related to the resources and expertise of its members, and any additional non-ICONGO NGOs who wished to be included. The ICONGO delegation at an IEN would draw on this resource to suggest detailed implementation strategies involving the best well-qualified ICONGO members. ICONGO could then act as an official intermediary for direct contracts between donors and individual NGOs within the remit of the implementation recommendations of the treaty, and as a means to ensure accountability in both directions.

Funding

It is proposed that ICONGO would mainly draw funding from the UN and the Bretton-Woods Institutions. Membership dues would be levied on individual NGOs and NGO groupings as an additional but less significant source of income for the organization. Membership dues would be scaled according to ability to contribute, but would be capped so as to encourage participation and anticipate Northern NGO concerns in bearing the bulk of the funding burden. UN funds would be channeled through UNDESA, CSD or UNEP, but would be substantially increased in line with the CSR (see later discussion). Bretton-Woods Institutions would develop ad hoc funding channels to the organization, also according to guidelines laid out in the CSR. Funds would be used for administration, supporting delegates at international fora in their advocacy activities, and providing selective support for NGOs and NGO groups who would not be able to participate in plenary or executive sessions without financial assistance. A critical threshold of NGO resources would be established (subject to change), beyond which NGOs would be required to support their own presence at plenary sessions. No funds would be available for specific environmental or developmental projects, except where these involved research, were directly in the interests of the broader stated goals of ICONGO, and were carried out by member NGOs themselves or member NGO-affiliated academic institutions. The UN Panel of External Auditors would audit financial activities of the organization. Auditing standards would be as defined in the UN document, "Common Auditing Standards" (UN Board of Auditors, 2003).

Constitution

In order to expedite its creation, the organization should be established without a constitution. The UN-State-NGO working group would be charged by the CSR with drawing up the structural mechanisms and operational procedures necessary to take ICONGO from concept and practice. Early sessions of both ICONGO internal councils would then be devoted to writing and approving a constitution intended to define the role of the organization as well as confirm and establish protocols of internal voting, membership and operation. It would also articulate the governing principles of the organization, and its long-term goals.

Governing principles

Ideally, a set of governing principles should begin by stating non-exclusive membership except where this conflicts with representative equity and limitations on numbers. For ICONGO to be sufficiently representative to gain an aura of democratic legitimacy, every NGO must be given a chance to be involved but subject to overarching quotas designed

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to retain equal balance between North and South and across sectors. For logistical reasons, there must be an absolute limit on numbers.

A second principle should be a commitment to meshing democracy with collaborative decision-making processes. In practice this means all operational and strategy decisions in both internal councils would be formally passed by two-thirds majority vote. But informally, consensus would be the ideal: the realistic alternative would involve conducting general debate in the spirit of collaboration rather than adversarial point-scoring or attempts to dominate the process. ICONGO would have the negotiating capacity to advance and argue several NGO positions at any one IEN, but to maintain the influence of the ICONGO arguments these positions should be complementary or at least not directly in conflict. In exceptional circumstances, where the ICONGO membership was split into large blocs, the ICONGO delegation would withdraw and the individual blocs allowed to participate directly (but without the enhanced participatory rights enjoyed by ICONGO; see later discussion of CSR).

A third principle would be transparency and accountability in the decision-making processes of both internal councils. Any organization or State would have a right to the minutes of meetings immediately after their conclusion; non-ICONGO NGOs would be allowed to be present in Lower Council sessions as non-voting observers. ICONGO would need to show some degree of accountability to its UN funding agencies (according to a carefully defined set of criteria, laid out in the CSR); since this would not take the form of controlling oversight due to the need to maintain ICONGO independence, complete transparency is another way for the organization to meet its accountability requirements.

A fourth principle should be the requirement that members adhere to internal codes of conduct, and a recommendation that members adopt and abide by any external codes of conduct developed by ICONGO working groups. The articulation of these requirements and recommendations as a governing principle aims to promulgate a spirit of self-improvement and self-regulation within the NGO community. But there are practical benefits in internal codes of conduct for the purposes of conducting orderly and efficient council sessions.

A fifth principle would address the prioritization of issues within the internal councils. In essence, it would mean environmental issues that affected humans to the extent that they had potential to cause serious decreases in quality of life, or loss of life, would be placed at the top of the list for discussion and action. Whilst conservation-focused NGOs might object to the second class status of ecosystem or wildlife-focused issues, this is an approach that acknowledges the primacy and importance of human welfare to humans themselves and as such is more realistic: there are few governments or major international institutions that view the maintenance of an ecosystem as more critical than alleviating famine, for example. A caveat to this approach is that the link does not have to be direct, so a threat to an ecosystem can often translate into a threat to a human population. This principle is not discounting the importance of other ecosystem and biodiversity-related issues, simply providing some guidelines for prioritizing the

ICONGO agenda (necessary to avoid swamping the organization). In practice, such criteria would be complex to apply and fraught with uncertainty, so this framework should not be the only means of identifying what is a salient issue and worth devoting resources to. Such decisions would have to be made in context.

Long-term goals

The primary longer-term goal of ICONGO should be in advocacy: ensuring NGOs have a coherent and strongly influential voice at international environment and economic negotiating fora, and within the UN system. ICONGO can achieve this through example, by being discernibly influential in these fora. But it can also carry out work external to negotiations, including publicity and coalition building, to strengthen traditional channels of NGO influence in the international arena as well as seeking new ones.

A second longer-term goal would be promoting the benefits and qualities of NGOs and NGO activities at national and international levels. This could involve highlighting the critical nature of much NGO activity to human environmental and developmental concerns, especially in the humanitarian sector. A part of articulating the benefits and qualities of NGOs would be defining key NGO roles in the international arena. ICONGO could be at the forefront of identifying new areas where NGO activity could be brought to bear, for example.

A final, and particularly important longer-term goal would be in fostering good NGO governance. ICONGO research and education programmes would work towards enhancing NGO accountability (the understanding and practical implementation of accountability in the context of NGO work); promoting ethical and sustainable management practices; developing more rigorous and integrated approaches to project planning and implementation (e.g. ensuring technical, scientific, social, cultural and economic components of particular field projects are considered); and encouraging local, regional and national coalition building within the NGO community. A problem currently hindering the effectiveness of NGOs in IENs is the division within civil society between North and South. By providing a neutral environment in which a broad range of NGOs could come together on equal terms, as well as directly promoting collaboration and resource sharing across sectoral and geographic barriers, ICONGO would be working to overcome the North-South division both passively and actively.

Participation in international environmental negotiations

ICONGO would have the resources and decision-making structures to submit skilled and highly experienced delegates to IENs. The *Civil Society Resolution* (CSR) would provide guidelines and regulations to facilitate this submission. According to the CSR, ICONGO delegates would have full rights of access and representation to all plenary and closed-door debates at an IEN. At these debates, ICONGO delegates would have rights of negotiation equal to States up as far as voting: in other words, ICONGO delegates would be allowed to engage in active debate with State actors in all fora, make presentations to COPs, working parties and treaty committees, but not have the right to vote within any fora and regarding any binding decision made within the negotiation process. Choice of ICONGO delegates would be made through a combination of nominations and elections

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within ICONGO, designed to select a range of expertise and individual interests attuned to the needs of the issue at hand, but balanced in terms of NGO sectoral provenance and geographic origin. The substance of ICONGO negotiating positions would be drawn from the wider views, experience and resources of the ICONGO membership. Much of the procedural detail regarding ICONGO participation in IENs would be defined by the CSR, but assumed in the design of ICONGO.

It is crucial that no recommendation or provision be made in the CSR for any sort of voting rights. This would in the first instance be unrealistic. The majority of States still strongly cherish their sovereignty in international relations, and would be extremely resistant to any attempt to assign a non-State actor a voting right on a basis equal to other State actors. In any case, the argument for a voting right is difficult to make, and it might not be something in the best interests of NGOs. The ICONGO membership organizations would not have any claim to true democratic representation within their chosen issues or fields, and in modern international relations democratic representation is (at least in perception) crucial to having the right to vote. More practically, “because few votes are ever taken in such forums, and consensus is necessary to ensure meaningful commitments on the part of signatory countries...[not having a voting right]...is not a great sacrifice...[and]...the right to sit at the negotiating table is a far more significant influence on the process than granting...official voting rights” (Susskind, 1994: 130). The point here is that achieving the serious and challenging aim of creating the ICONGO institution and a new diplomatic protocol to engage this organization in IENs, would represent a much more meaningful step than any wrangling over voting rights could ever achieve. NGO organizations could contribute much more without a voting right: it would allow them to operate as equal but external actors in negotiations. State actors could accept and relate to them more easily in the knowledge that they were not potential enemies or allies with a vote to wield.

It is proposed that the principal link between ICONGO and the UN system would be through UNDESA and UNEP, in the form of formal institutional linkages and these organs acting as funding sources for ICONGO. This would give ICONGO legitimacy in the eyes of other UN members, and allow ICONGO access to the resources of the UN. However, ICONGO would not be under the aegis of UNDESA or any other UN organ. The independence of ICONGO in planning and operation would be affirmed in both the ICONGO constitution and the CSR; however, the ICONGO Oversight Committee (IOC) would be constitutionally bound to address any recommendations made by UN financial auditing teams, and respond with concrete action to any reported infringements of UN financial regulations. This would balance accountability to the UN funding sources with NGO financial control. The CSR would recommend that all secretariats for past UN-sponsored treaties consider developing formal links to ICONGO; the secretariat is the “most important point of contact for...transnational associations” (Feraru, 1974: 51), on the basis of the nature of the secretariat as a “communications channel, a pressure point, a source of information, an ally of some, an opponent or neutral to another, group representatives” (Blaisdell, in: Feraru, 1974: 51). Therefore the long process of building ICONGO acceptance and influence in international environmental negotiations could usefully begin by creating and strengthening ties with treaty secretariats. Under CSR,

UN-sponsored secretariats and text-drafting working groups would be required to write the official ICONGO role into procedural protocols. This would give the role of ICONGO official recognition and integrate its activities more fully into international proceedings.

The CSR would guarantee ICONGO delegations the right to participate in all UN-sponsored environmental negotiation fora. But ICONGO participation in these fora would be subject to a behavioural code of conduct embedded in the CSR. This code would simply ensure that the norms of behaviour at international negotiating fora were adhered to by ICONGO delegates, but would have to tread a delicate line between placing undue restrictions on the negotiating tactics of ICONGO delegates and respecting State sensibilities. The CSR discussion below lays out a tentative prescription.

The flaws of NGOs in concept and practice: justifications for a new institutional framework

Earlier sections have laid out a structural and procedural prescription for ICONGO. The following sections examine a range of problematic issues within the NGO community or intrinsic to the current conceptualization of the NGO concept, and discuss how ICONGO would work to resolve these issues.

NGO legitimacy

Suchman (1995) defined legitimacy as “a generalised perception or assumption that the actions of an entity are desirable, proper, or appropriate within the socially constructed system of norms, values and beliefs and definitions” (Suchman, 1995: 574). With regard to NGOs, Jepson suggests four broad definitions of legitimacy: pragmatic legitimacy, where the importance of NGOs from the point of view of other actors depends on the value they contribute to a particular debate, coalition or activity; regulatory legitimacy, where NGOs gain legitimacy by conforming to the laws and requirements of official regulatory bodies; normative legitimacy, where an NGO possesses legitimacy in proportion to wider social perceptions of the role of civil society in domestic and international arenas; and cognitive legitimacy, somewhat imprecisely defined as external individual perceptions of the motivations of NGO staff (Jepson, 2005). Many arguments made for NGO involvement in IENs draw on the pragmatic conception of legitimacy, in that NGO participation contributes to the democratic legitimacy of IENs. Alkoby weakens this argument by arguing that “NGOs cannot confer legitimacy on international organizations because they are unelected elite organizations, which are often without connection to broader segments of civil society” (Alkoby, 2004: 45, after Andersen, 2000).

NGOs should be devoting more resources to addressing concerns raised regarding their own legitimacy, since this is inextricably bound up with their authority and influence at IENs (Maragia, 2002). As Bodansky points out, “the more an institution is perceived as legitimate, the more stable and effective it is likely to be” (Bodansky, 1999: 61). Any way in which the institutional legitimacy of NGOs could be enhanced would impart greater influence to NGOs in international fora. Furthermore, the success of new international treaties and norms that have been generated with the participation of NGOs

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may depend at least in part on the perceptions of NGOs by State actors: “states comply with international law because they perceive its norms as legitimate...[and] there is a need to be concerned whether states may in certain instances feel reluctant to comply with those norms which have been heavily influenced by non-state actors, primarily NGOs” (Franck, 1990; in Maragia, 2002: 313).

Legitimacy in the context of IENs appears to be defined by the earlier concepts of pragmatic, regulatory, normative and cognitive legitimacy, but also by a nebulous concept of democratic legitimacy. Democratic legitimacy suggests an organization possesses a mandate bestowed by a voting public; pragmatic legitimacy in this context relates to what NGOs bring to the negotiating table in the eyes of State actors; regulatory legitimacy refers to the degree to which NGOs comply with established norms, practices and regulations of international relations (and is usually implied by formal recognition of a right to attend and negotiate); normative legitimacy is a broader issue of whether NGOs should be participating in international relations at all; and cognitive legitimacy relates to the perception of the motives of individuals within NGO delegations themselves. We should not forget the normative importance of primacy in the international setting: if an organization is the biggest or the most unique in a particular field, it tends to achieve a certain level of authority and hence legitimacy regardless of how it came to be big or unique.

The concept of legitimacy is essentially a social one, as argued by Hilhorst (2003) and Lister (2003). It is open to being manipulated and shaped by the organization seeking legitimacy. ICONGO could therefore work to actively address all the divisions of legitimacy discussed above, for the purposes of maximizing legitimacy and hence negotiating authority at IENs. Part of this would come through the primacy argument: ICONGO would be the only global NGO organization claiming to represent every major geographic region and most NGO sectors. It would be the organization with the largest resource base and the closest ties to the international system, and so would instantly possess increased legitimacy simply by virtue of its hegemonic position. ICONGO design and operation would address the other definitions of accountability in a number of ways:

1. Enhancing the *democratic legitimacy* of NGOs would be accomplished by transferring questions of democratic legitimacy away from individual organizations and onto the umbrella group. A single NGO actor has highly questionable legitimacy, since rarely would a real community endow it with a democratic mandate, and even more rarely do NGOs need or want to employ democratic decision-making processes. An NGO actor in the context of ICONGO should be seen as a ‘citizen’ of world civil society, participating in an international discussion and action forum. The benefit of this conceptualization is that ‘citizens’ do not need to prove their democratic legitimacy; they create it. If enough non-democratic ‘citizen’ groups gather together in a democratic system, the decision-making processes of that coalition can be structured democratically, are therefore less likely to be captured by individual interests and achieve enhanced legitimacy.

2. *Pragmatic legitimacy* would be based on the skills and knowledge base of ICONGO members, and the cumulative effect of all the individual NGO track-records in a huge variety of problematic environmental and developmental projects. An ICONGO delegation at the negotiating table would be supported in the technical content of their advocacy by this resource base; States would also perceive the global breadth and depth of knowledge and experience behind the delegation as a major contribution to proceedings. Additionally, such an ‘approved’ and integrated role for a civil society organization would impart democratic legitimacy (as perceived by the global media and public) to the other State actors and the forum.
3. *Regulatory legitimacy* would be improved through adherence of the ICONGO delegation to all norms, practices and procedural protocols associated with a particular IEN. This would include sticking to the prescriptions for NGO-State interaction as codified in the CSR. In some ways, the institutional face of ICONGO would achieve substantial regulatory legitimacy, since a formal institution implies rules and regulated behaviour.
4. *Normative legitimacy* would be built up by enhancements to all other forms of legitimacy, and is difficult to tackle directly. The CSR would state the participatory rights of ICONGO and NGOs in the IEN process, a statement involving implicit recognition that NGOs should have an official and engaged role in IENs. Once this were established as an international norm, issues of ICONGO normative legitimacy would be less significant.
5. *Cognitive legitimacy* would be enhanced by the clearly defined goals and motivations of ICONGO: its constitution would define the value basis of its operations. Opinion-making as to whether individual members of individual NGOs were particularly altruistic or merely self-serving can be damaging to the overall opinion of the legitimacy of the organization; the constitution would be designed to shift this focus away from individuals and individual NGOs, and more onto the quality and justification of the value statements of the constitution. Codes of conduct, internal and external audits, and high levels of transparency in all ICONGO operations would substantiate the rhetoric. The ICONGO Oversight Commission would apply accepted principles of good NGO governance to the operations of ICONGO members and the organization itself, along the lines of the Conservation Measures Partnership (CMP, 2005).

NGO accountability – *sed quis custodiet ipsos custodes?*^{xi}

Accountability has been defined as referring to the “process of holding actors accountable” (Fox and Brown, 2000: 12). Concepts of upward and downward accountability (Townsend et al., 2002) are commonly applied to NGO activities and projects outside of IENs: downward accountability referring to local communities or grassroots organizations holding larger NGOs accountable for their actions at the community or grassroots level. Upward accountability refers to donors, governments or umbrella organizations holding NGOs accountable for their actions at any level. Many

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attempts have been made to “operationalize the concept of accountability” (Fox and Brown, 2000: 13) for such large institutions as the World Bank and the IMF, but there exists no parallel concept for accountability of ENGOs or other non-state actors within IENs; in other words, “nobody knows to whom NGOs are accountable” (Gordenker and Weiss, 1997) when they lobby for a particular view point at an IEN. It is also unclear how to develop appropriate accountability mechanisms. As Jepson (2005) argues, one cannot simply transfer the mechanisms from the business and private sectors, since this might “undermine the independent change-agent role of ENGOs and therefore weaken aspects of the democratic system” (Jepson: 516, 2005). The global scale of problems that treaty conventions attempt to tackle means that NGOs find it difficult to represent a particular community – although there are rare cases of direct accountability: in the Kyoto phase of the UNFCCC negotiations, FIELD^{xiii} lawyers were accredited members of AOSIS delegations (Gulbrandsen and Andresen, 2004) and so were strictly responsible to the AOSIS^{xiii} governments for their behaviour and negotiating strategies. But NGOs, and ENGOs in particular, generally make little effort to be accountable to anyone since they often purport to act in the global interest (“saving the planet”; Wapner, 1996: 315). Accountability is bound up with democratic legitimacy. If NGOs are to challenge the accountability of other coalitions and actors in international environmental policymaking, they must themselves be accountable, otherwise their legitimacy and effectiveness in advocacy will be threatened (Edwards, 2004; Jordan and Van Tuijl, 2000).

Accountability issues go well beyond international environmental negotiations, into all aspects of NGO activities (Edwards and Hulme, 1995; Jepson, 2005). Major NGOs are increasingly working with large corporations and institutions that have their own strict accountability mechanisms, and if these organizations are to treat NGOs as equal partners in developmental or environmental projects then they must be able to see parallel NGO “accountability streams” (Jepson, 2005: 516). There have been serious incidences of NGO financial malpractice in large transnational NGOs (*ibid*), and it is this (at least in part) that is forcing a drive within the NGO community towards developing accountability mechanisms. This is by no means a particularly welcome debate: many transnational organizations worry that the accountability debate will be used by actors hostile to NGO activity to diminish public and donor trust in NGOs in all sectors (ECI/Juniper, 2004). Jepson points out, however, that “the way a sector defines accountability shapes its distinctive identity and role in society. Consequently, ENGOs must develop their own tools, processes and systems and convince the other sectors of their efficacy and merit. In short, the ENGO sector must design its own accountability regime” (Jepson, 2005: 518), if they want to have significant input into a process that is likely to be force on them anyway.

ICONGO would present a unique opportunity for NGOs to take charge of the accountability debate, developing mechanisms that address serious issues of accountability, governance and legitimacy whilst not sacrificing the essential independence and agent-of-change role NGOs have carved out for themselves in recent years. It is proposed that ICONGO would address issues of accountability in two ways:

1. It has been suggested that self-regulation refers to “efforts by NGO or nonprofit

networks to develop standards or codes of behavior and performance” (Ebrahim, 2003: 819). It represents a way for NGOs to maintain their own independence whilst attempting to “forestall potentially restrictive government regulation” (*ibid*), and it can both improve public image and performance (Ebrahim, 2003). The ICONGO councils would develop codes of conduct through a collaborative negotiation process; the exact content of these would be defined in the course of these negotiations, but in essence they would articulate principles of accountability for NGO activities outside of IENs or the ICONGO arena (dealing with purpose, leadership, internal management, responsibilities of managerial staff, financial accounting and so on; after Schweitz, 2001). Yaansah describes a 1997 attempt by the Inter-Africa Group of NGOs to develop a code which contained provisions for fairness, equality in NGO activities, moral and ethical integrity, transparency and accountability in dealings with governments, sound financial policies and systems, NGO autonomy and independence, communication and collaboration, gender equity, environmental consciousness, and mechanisms to monitor and evaluate NGO activities (Yaansah, 1997). An ICONGO Code of Conduct would attempt to incorporate such acceptable norms of behaviour into NGO actions at international fora, since agreeing to abide by the Code of Conduct provisions would be a condition of membership in ICONGO. For transnational ENGOs representing the global interest, and direct accountability to a particular community is a less relevant concept, broader code of conduct recommendations would apply. These would recommend that transnational advocacy NGOs sought wider civil society coalitions before advancing particular viewpoints, and scope the community-level relevancy of advocacy arguments. Simply enhancing the democratic nature of decision-making structures within large environmental NGOs or coalitions (and then publicizing such enhancements) can go a long way to allaying State concerns that particular organizations are communicating the interests of a few individuals – international norms require that individuals have no voice in international fora, even though the actions of powerful individuals can sometimes make this seem naïve.

2. A range of additional tools and processes would be applied to broad ICONGO activities and to the activities of member NGOs, to ensure accountability issues were addressed. Ebrahim (2003) has evaluated a range of common accountability tools, and it is suggested that modified versions of these tools should be applied to NGO activities under the ICONGO umbrella. No single tool addresses the complexity of NGO activity or even the unique requirements of NGOs as dynamic civil society actors, but the combined or selective application of different tools should address most concerns:
- > **Disclosure statements and reports:** ICONGO would be subject to auditing by official UN auditors on the same timetable as UN organs. But ICONGO would contribute towards broader issues of enhancing NGO attitudes and practices with regard to financial accountability. It would make auditing resources available to individual ICONGO members on a subsidized basis to help NGOs build concepts of

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regular and rigorous financial reporting into standard practice, regardless of the resource base of the NGO. These tools are somewhat limited however, since they do not encourage “organizations and individuals to take internal responsibility for shaping their organizational mission, values, and performance or for promoting ethical behaviour” (Ebrahim, 2003: 816), so should be used in conjunction with other approaches.

- > **Process and outcome evaluations:** Ebrahim (2003) suggests that these evaluations are difficult to undertake for NGO work where social outcomes are hard to quantify and analyse comparatively. They also require significant resources if they are to be conducted to international standards, resources that most NGOs do not have access to. He suggests the principal benefit of evaluations is an internal learning tool. Accordingly, it is proposed that ICONGO would tailor guidelines and practices for internal performance and outcome evaluations to the unique needs and resources of member NGOs, and recommend that these be carried out informally on a regular basis. A small number of ICONGO members each year would be offered the chance of full and fully subsidized evaluations. As Ebrahim suggests, for mission driven NGOs, “there is an urgent need to take performance assessment seriously in order to justify activities with substantiated evidence rather than with anecdote or rhetoric” (Ebrahim, 2003: 825), so even considering the difficulties associated with their implementation, ICONGO should devote some research resources to further developing the concept.
- > **Social auditing:** “a process through which an organization assesses, reports and improves upon its social performance and ethical behaviour” (Ebrahim, 2003: 822). A tool specifically designed to look at NGO stakeholder accountability, and useful in the ICONGO context to ensure that ICONGO members are successfully maintaining links to their ‘stakeholder communities’, but only where this concept is relevant. The practice of social auditing remains somewhat poorly defined and inconsistent, but ICONGO working groups could advance research into developing effective practice.

General issues of NGO governance

Much of this discussion touches on the issue of the complex and sensitive task of regulating the actual projects and activities of NGOs outside of IENs. NGOs must abide by individual country regulations on financial and administrative good practice (as for any official organizations), and some countries have attempted to institute specific regulations pertaining to the action of NGOs on the ground (Yaansah, 2005a, 2005b). But given that many NGOs are tied to transnational groups of international donor networks, there exists no relevant international framework of regulation that might improve on issues of bad behaviour, malpractice and harmful actions committed by NGOs in their myriad of active projects globally. ICONGO could potentially have a very significant role in addressing this deficiency.

Concerns expressed in the past have included corruption, mismanagement, lack of accountability, unjustifiable levels of responsibility, limited self-sustainability and insensitive political action. These diverse concerns can be summarized into issues of:

- > How aware NGOs are of links between their actions and the actions of other NGOs or other developmental/environmental forces (Nalinakumari and Maclean, 2005).
- > The relative merit of traditional 'top-down' approaches to project management in the developing world as practiced by many NGOs (Najam, 1996; Zaidi, 1999).
- > Risks and dangers when NGO activity weakens or replaces government authority in key social and economic areas, such as lack of funding stability and failure in service delivery (Yaansah and Harrell-Bond, 2000), sometimes causing vulnerable states to retaliate against all independent activity in these arenas (Fox and Brown, 2002).
- > Specific instances of miscellaneous NGO malpractice (Gibelman and Gelman, 2001).

ICONGO would specifically address these concerns and issues through a number of mechanisms and functions:

- > By bringing so many organizations which such diversity in remit and interest together in a major international organization with considerable legitimacy and funding, NGO communication, collaboration and mutual self-correction would be facilitated.
- > By creating opportunities for specific research into NGO managerial practices in the developing world, and providing a means by which more sensitive and effective practices could be disseminated (and even required, through membership codes of conduct), improvements could be made to the quality of NGO projects.
- > By linking particular NGOs to a strongly legitimate international body recognized at the highest levels of the UN, their activities would become more acceptable to particularly sensitive governments; the accountability structures in ICONGO would allow those governments with grievances to raise them through official channels (the ICONGO Oversight Committee). The IOC would be bound to investigate such concerns, but until a report was filed and the recommendations/requirements articulated, there would be no requirement for ICONGO to alter or halt any of its operations. In that way, filibustering States would not be able to hamper ICONGO activity until the IOC concluded that change or sanction was in fact required. ICONGO NGOs that through their own incompetence or malpractice failed to deliver on project remits, or caused harm in their theatre of operations, could be investigated by the IOC, and potentially sanctioned or excluded from the ICONGO councils.
- > Specific and peculiar instances of malpractice, such as sexual misconduct or embezzlement of donor funds, would be addressed through ad hoc extensions or modifications to internal and external codes of conduct. The IOC would once again have responsibility for investigating alleged instances of malpractice, and deciding on appropriate measures.

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Behaviour at international environmental negotiations

NGOs have not always been known to behave impeccably at IENs and more generally in the UN setting. Whether through frustration with the convoluted strictures of international relations, or ignorance of diplomatic niceties, there have been cases of unacceptable NGO behaviour at international fora. A particularly bizarre and unsettling case is that of Revered Sun Myung Moon's Unification Church, which has been seeking a more substantial role in the NGO community and at the UN, even going so far as to hold mass weddings in UN buildings and create the World Association of NGOs (WANGO) with claims to be an "authentic voice of the NGO community" (Tvedt, 2002). According to a US Congress report, the organization has an "overriding religious goal" and plans to "establish a worldwide theocracy"; three Moon groups have gained ECOSOC accreditation, even while the US Internal Revenue Service believes it to be an organization run substantially for-profit (*ibid*). Such worrying cases are very much the exception, but it serves to provide ammunition to anti-NGO state actors who would like to see NGOs removed from the negotiating process and international fora altogether. The lack of any internal punitive measures in the NGO community (a capacity for self-regulation) is a serious problem in the eyes of many state actors.

The ICONGO internal codes of conduct, and the norms embedded in the CSR as a condition of ICONGO participation would address issues of particularly unpalatable behaviour. In any case, since ICONGO delegates (bound by ICONGO behavioural protocols) would largely replace the rash of NGOs normally besieging IENs, many issues of behaviour by rogue organizations would be resolved. The most serious ICONGO mechanism of enforcement, since membership would be voluntary, would be exclusion from the councils. The benefits to NGOs of participation in ICONGO are detailed elsewhere in this paper; it suffices to say here that it would be strongly in the interests of NGOs to participate and maintain good standards of behaviour in doing so.

The internal nature of these codes of conduct would be far more effective than any amount of external regulation: IEN secretariats or COPs could impose external regulations, above and beyond the norms of behaviour already articulated in the CSR, but these would stand a good chance of antagonizing the NGO community and raising suspicions that the whole ICONGO/CSR edifice was merely a thinly-disguised attempt to regulate NGOs out of a role in international environmental policymaking. Internal mechanisms would weave principles of good conduct into the substance of NGO engagement with international fora, international organizations and national governments; the main aim, apart from improving the perception of NGOs by other IEN participants, would be to enhance an NGO's effectiveness as it sought to engage with 'authority' whether this takes place in the context of IENs or in seeking a permit for a project from a national government.

NGO numbers

The number and diversity of NGOs involved or wanting to be involved in IENs grows each year. The sheer quantitative weight of NGOs means that states can frequently feel overwhelmed and become even less inclined to listen to NGO arguments: "the vast number of NGOs makes deeper participation impractical" (Andersen, 2000; in Alkoby,

2004: 45). Albin affirms that “the number of NGOs that today claim a right to take part in international negotiations is already vast, and continues to grow rapidly” and that “the accreditation-for-all approach is untenable because, apart from being unprincipled, it will eventually overwhelm the process and undermine its effectiveness” (Albin, 1999: 374). Beyond the impracticalities of enabling all non-State actors to participate in an IEN, Gale points out that “global civil society is not a realm of free, harmonious association” (Gale 1996). There is clearly substantial dissonance in NGO messages. The NGO bloc is far from monolithic, and is split along ideological, organizational, financial, regional and strategic lines (Potter, 1996); in the ENGO arena, the North-South organizational split has long been acknowledged. As the participants in the Norwegian FORUM at the WSSD (1995) found, “within the global NGO or CSO “community” there are vast discrepancies of power between NGOS, frequently reflecting a North-South split, and there are strong differences in perception between Northern and Southern groups about the role of civil society” (Rojas, 1995). At major environmental summits, Southern NGO groups have seen Northern NGOs as “always prioritizing nature out of choice or due to Northern constituency concerns” (Potter, 1996: 72). These splits can be due to ideational hegemony, financial constraints, and the simple fact that Northern NGOs are often based in the capitals where the major treaties are negotiated and most UN organs and IGOs have their headquarters (Alkoby, 2003; Gulbrandsen and Andresen, 2004; Potter, 1996). In the case of World Bank-related NGO activism, Nelson makes the point that NGO “ability to fulfill much of the hope they inspire may depend on their ability to deal with these differences” (Nelson, 1997: 469), a conclusion equally applicable to the potential for NGO activity in international fora.

Part of the ICONGO institutional structure and mission would need to address what are two significant and interrelated issues of overwhelming NGO numbers and dissonant campaigning messages. Several key proposed elements of ICONGO would attempt to resolve problems of multiplicity/incoherence in NGO “voices,” discriminatory financial inequalities, and strongly opposing viewpoints in critical areas of environmental and developmental debate.

The primary means of addressing deep divisions in the NGO community, as articulated earlier, would be through a set of ICONGO normative principles encouraging collaborative rather than adversarial debate. The broad forum represented by ICONGO would bring groups of NGOs together who would not normally interact and would in most cases disagree over ideology, let alone negotiating strategy or specific positions. Over time, trust between the “blocs” would grow. For a non-coercive process to work, there must at some point be an acknowledgement among the NGOs themselves that adversarial or antagonistic behaviour results in ineffective NGO action at an international level and it would thus be in the best interest of the NGO community as a whole to cooperate in developing the most cogent and coherent arguments. Each decision-making process would begin with the establishment of an agenda for debate centered on the issues being treated in an upcoming international environmental negotiation. Debate would proceed using professional mediators trained to facilitate a collaborative decision-making process. It is a reality of the impassioned and diverse NGO community that no position would be unanimously supported: as in any large international organization that

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relies on democratic decision processes, ICONGO would experience significant areas of philosophical or practical division among its members. Such division would be damaging to the perception of ICONGO by outsiders (both State and non-State actors), and also the potential for success in the wider NGO community's efforts to participate in international debates in a meaningful way. ICONGO would have to make it a principal task to resolve the deeper divisions that exist within the NGO community. In that regard, consensus-based decision making would be written into the ICONGO constitution as a guiding principle which incoming members would have to affirm: this would make concepts such as practical collaboration and information sharing central to the procedural base of ICONGO – resulting in the use of professional mediators, for example.

Balancing a formal working atmosphere that gained the respect of outside observers, with an informality that encouraged creative and innovative approaches (so as not to stifle the energy and dynamics of NGOs), would be a major institutional goal. ICONGO would also devote considerable resources to spreading awareness of the participants, interests and relevant factual background associated with particular issues arising in debate in either council. It is to be hoped that simple networking processes would flourish in the safe and neutral environment of ICONGO, allowing NGOs to see each other's positive points and bridge ethnic, social, religious or developmental divides. The strict balance of NGO membership by geographic region and sector of activity would prevent dominance by any particular grouping.

Financial disparity, impacting as it does on the resources NGOs can bring to bear on lobbying activities, research and travel (in the context of IENs), is a major cause of the North-South NGO split. ICONGO's mechanism for evaluating the resources and making up shortfalls for under-resourced NGOs would be a way to redress this balance and ensure the regional quota system can function.

The ICONGO membership structure would be the main way to address the current problem of huge logistical pressures on IENs. The country-by-country ICONGO membership boards and nomination process would narrow down the participation to a more manageable body – the Lower Council. The participation of ICONGO as a single delegation would remove the thousand-plus ICONGO council NGOs from direct engagement with an IEN. However, given the vast number of NGOs globally, this would be a token gesture on its own. The real power of ICONGO to address this issue is in the perception of its effectiveness by the much larger pool of non-executive membership. If this worldwide body of NGOs perceived ICONGO to be effectively and efficiently influencing IENs and that at least some of their interests were being served, then they might be discouraged from investing the time and resources in attending the IEN and placing pressure on the limited resources of both the negotiating forum and the other participating actors.

Summary of ICONGO contributions to NGO effectiveness in the international arena

ICONGO would address multiple internal flaws of NGOs and the NGO community. Tackling such issues as NGO governance, legitimacy and accountability would improve

the quality of NGO operations, and make State actors much more likely to accept the contribution of civil society at a high diplomatic level. ICONGO would play a critical role in promoting NGO self-education in the arena of international relations; not all NGOs have equal experience and sophistication in acting at international fora (Feraru, 1974; Carr et al., 2001). Improved awareness in this regard can only be positive for the NGO cause and for the acceptance of NGOs in these arenas.

The concept and reality of ICONGO as institution would provide for many enhancements to NGO effectiveness. ICONGO would amalgamate the diverse resources and capabilities of the NGO community, allowing NGOs to more effectively leverage their message at IENs. ENGOs have traditionally been very effective at agenda-setting and problem definition, and NGDOs better at implementation (Gorg and Hirsch, 1998), so bringing these two poles of the NGO community together would allow a more integrated approach to the management of global environmental challenges. This same amalgamation and integration within ICONGO would go a long way towards unifying and simplifying the NGO message. If ICONGO presented a strong, relatively unified voice, it would undoubtedly have greater weight at international fora. Collaborative approaches to formulating NGO agendas would allow more sensitive and relational consideration of the best way to resolve environmental problems, and avoid perpetuating damaging splits within civil society along cultural, geographical or ideological lines: the ICONGO structures would give equal weight to the views of small grassroots organizations, and the transnational super-NGOs, as well as promoting collaborative approaches to conflict resolution within the organization. There have been advocates in the past for a multi-layered, multi-tooled organizational approach to integrating the different advocacy functions of NGOs (Potter, 1996; Fowler, 2002); ICONGO would in concept bridge the collaborative, complementary and consciousness-raising advocacy functions of NGOs (Potter, 1996: 44), whilst in practice distilling traditional confrontational tactics into more viable but equally forceful interaction with State actors.

ICONGO delegates would be able to lobby on crosscutting issues by drawing on the diverse resources at their disposal within the membership. ICONGO would also be a tremendous pool of resources, skills and contacts that individual member NGOs could draw upon in their own local scale projects; any one NGO focused on a particular theme, for example, could network with similarly focused organizations in the ICONGO corpus for advice and technical or financial support. The informational capacity of a large and well-resourced umbrella organization can be very effective, and it would be a principal ICONGO goal to develop open databases and advance critical research on the wide range of NGO activities globally.

A new institutional conceptualization of State-NGO interactions

ICONGO as a new institution would not survive if it were the only innovation in NGO-State relations. The obstacles to more effective NGO participation in IENs are not only sourced from within the NGO community; a variety of factors external to NGOs directly oppose or hinder better participatory norms.

In 1998, Chataway interviewed a selection of American diplomats for their views on the

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evolution of international diplomacy and negotiation in the context of conflict resolution. She exposes two general themes: first, the general consensus that (in the words of one diplomat) “the diplomatic role hasn't changed much, and won't as long as governments are the basic building blocks, even if we have to accommodate to unofficial bodies [and] interest groups more” (Chataway, 1998: 13). In other words, traditional structures and processes of international relations are deeply-rooted in the attitudes of primary actors – the State diplomats themselves. Second, diplomats appear to be increasingly receptive to expanded roles for civil society in international relations. There was no clear consensus among interviewees on the role of non-State actors in intergovernmental processes, but there appeared to be growing recognition that these actors are needed. They cited the danger of excessive demands being placed on diplomats that would detract from the quality of negotiations; demands that they suggested NGOs could help to meet. They also recognized the increased democratic legitimacy imparted to international negotiating processes by the presence of non-State actors. One diplomat expressed his interest in seeing non-State participation institutionalized, although not made official (Chataway, 1998). This study suggests that there is a receptive diplomatic atmosphere for innovative approaches to redefining and enhancing State-NGO interactions.

It is with this in mind that a new international diplomatic protocol is proposed. To give ICONGO the most effective institutional base, and integrate the organization into international diplomatic structures, a new form of NGO-State interaction would need to be officially articulated. It would be modeled on the classic concept of “Track II diplomacy”, as proposed by Montville (1990). This is defined as the “unofficial, non-structured interaction between members of adversarial groups or nations that is directed toward conflict resolution by addressing psychological factors” (Montville, 1990: 535). Track II is thus distinguished from Track I (official State relations) and Track III (business and private sector interventions). The concept of diplomatic tracks has been mostly applied to resolving internecine conflict, most notably in Northern Ireland (Murray, 1999), and Ferris suggests that it is important to recognize that “[the] Conflict Transformation [approach] involves not just a political settlement leading to conflict resolution but also a complete restructuring of the system which allowed the conflict to flourish” (Ferris, 2003: 1). Track II comes close to describing the current paradigm of NGO-State relations outside of military conflict, in that the current system is “unofficial” and “unstructured”, and that the psychological component (attitudes towards NGO actors and perceptions of their roles) is hugely important. Within the international community there is no strong and official (legalistic) recognition of the capacity of NGOs to contribute to IENs, and an antipathy is maintained by many State actors towards any enhancement to the existing vague collection of NGO-State norms of interaction.

The new concept of Track II diplomacy proposed in this paper would seek to retain the informal, creative and positive atmosphere of traditional Track II interactions, and use an overarching institutional framework to foster “psychological” change – engendering a deeper State actor acknowledgement of the NGO right to participation, and recognition of significant NGO capacity to contribute to IENs.

“The democratic legitimation of negotiation processes only has a chance when – from the perspective of the members of the negotiating corporations – the underlying relations are not those of enemies but represent a form of partnership. Possible conflicts of alignment and distribution [must be] resolved through the recognition of basic communal interests or, at the minimum, through empathy for the actual point of view of the other party.” (Scharpf, 1996; p. 43; In: Gorg and Hirsch, 1998).

International environmental negotiations at present often resemble conflict: civil society and State actors in diametric opposition, or a complex mix of NGO/State coalitions and exceptionally antagonistic individual actors. Attempts to resolve the conflict should incorporate the principles of collaborative approaches espoused in the conflict resolution literature (Ludwig, 2001; Ehrmann and Stinson, 1999; McKinney and Harmon, 2004). The current structures generally work against such efficient and effective “conflict” resolution in international environmental negotiations. A number of factors contribute to an adversarial atmosphere that is unconstructive, does not play to the strengths of NGOs and simply reinforces States’ unwillingness to engage formally with civil society: the restrictive and dictatorial ECOSOC accreditation process; the very small number of NGO-accessible debating fora at IENs; and a tradition of mutual distrust between the NGO and State communities. A formal institutional mechanism worked through an influential official channel of international policymaking (the UNGA) would be very effective at the very least in initiating the process of reconstructing the current paradigm of NGO-State interactions. Both ICONGO and a new, formal, explicit protocol that could be written into future IENs and retroactively applied to ongoing Conferences of the Parties (COPs), would go a long way to removing complexity and uncertainty from the interaction between State and non-State actors.

The Civil Society Resolution

The proposed *Civil Society Resolution* (CSR) would be a detailed and wide ranging document, a definitive, codified summary of NGO-State interactions, superceding the most recent relevant resolution (UNGA 1996/31). Its main components are laid out below. Most points are discussed in more detail in the following sections, although it would be the responsibility of the early working groups to flesh out the more controversial details collaboratively.

CSR content

1. Preparatory normative statements:
 - Recognition of NGO capacity to contribute to IENs
 - Articulation of capacity-based right of NGOs to more enhanced participatory rights at IENs
 - Recognition of the robust and durable nature of the current international system and a general call for institutional solutions to problems of NGO-State interaction
2. A specific call for a new international organization developed by and for the world community of NGOs.
3. Recognition of the independence of ICONGO from UN or other international governmental organizations.

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4. A new definition of NGO for the purposes of international environmental negotiations.
5. Specifications of the international legal framework for ICONGO-IEN interaction:
 - Status and rights of ICONGO delegations at IENs
 - Status and rights of non-ICONGO NGOs at IENs
 - Statement affirming non-voting rights for all NGOs at all negotiating fora
 - Description of a veto mechanism for participating States (excluding all NGOs from an IEN after two-thirds majority of participatory States sought to invoke the veto)
 - Description of a code of conduct for all NGOs at IENs (ICONGO and non-ICONGO)
6. Specifications of the international legal framework for ICONGO-UN interaction
 - Description of UN funding sources for ICONGO
 - An outline of formal ICONGO linkages to main UN organs (UNDESA, UNEP, CSD)
 - Description of level of UN jurisdiction over ICONGO (financial auditing, requirement for annual oversight reports)
 - Timetable for dismantling ECOSOC accreditation process and redirecting funds to ICONGO
7. Normative framework for NGO-State interactions
 - Articulation of four Track II-derived principles/recommendations for NGO-State interaction
8. CSR and ICONGO implementation procedure
 - Define make-up of joint UN-State-NGO institutional reform working group
 - Define make-up of initial ICONGO Lower Council selection committee
 - Outline suggested timetable for evaluation and implementation action with milestone requirements

Discussion of CSR content

An initial goal of the CSR would be to provide a more amenable political climate for the creation and viability of ICONGO. It would explicitly call for a new international NGO framework organization, and sanction a UN-convened committee of NGOs to begin the formal process of institutional creation. The CSR would thus provide official recognition and impetus that the NGO community could take as an indication that State actors were firmly committed to a new approach. Many NGO freedoms in IENs have been hard-won, and for NGOs to relinquish the current status quo they would have to perceive the new framework as relatively low risk and with clear benefits to their activities and goals. From the State perspective, the new protocol would lay concrete foundations for the elements of ICONGO that address their concerns over NGO involvement in IENs, and provide them with guidelines for dealing with NGOs in what would otherwise be an uncertain new landscape. From the treaty making perspective, the CSR would contribute to the effectiveness of the IEN process by codifying a vague and ineffective area of international norms. By making explicit new roles and a new definition for NGOs, it would remove much ambiguity from the process that has led to infringement on NGO rights in the past. But by being based on the principles of Track II diplomacy, it would

remain sufficiently flexible to accommodate the uniquely dynamic nature of civil society. It would provide the interface between ICONGO and the traditional IEN process, bringing two very different communities together within an institutional framework that recognizes the importance of mutual benefit and highlights the overarching goal – to enhance the efficiency and quality of the negotiating process, and the effectiveness of the treaty outcome.

The main innovations of the CSR would be in the new participatory rights extended to the ICONGO delegation, the changes to the participatory rights of non-ICONGO NGOs, and the new NGO codes of conduct operating at all UN-sponsored IENs. Under CSR, UN member States would recognize the right of a single ICONGO delegation to full (non-voting) participation in international environmental negotiations, with guaranteed access to all plenary and closed-door sessions: an official seat at the negotiating table, whether that table be literal or metaphorical. The definition of a right to participation would extend to all typical processes and practices employed in international environmental negotiations, including presentations, circulation of information among negotiating parties, direct debate with all State actors; essentially, everything up to but not including a voting right and signatory status on a treaty text. CSR would be specifically designed to facilitate the engagement of ICONGO with IENs, but there would also be enhanced provisions for non-ICONGO NGOs. These organizations would not have the same guaranteed rights, but would be allowed to attend plenary sessions unaccredited as long as logistical issues were not affecting the conduct of negotiations. Their behaviour would also be governed by the codes of conduct developed through ICONGO working groups and subsequently embedded in the CSR. In practice, there would not be many NGOs for whom this meant a radical change in behaviour, but it would provide some means to ensure that departures from this behaviour had clearly defined consequences.

The protocol would state strongly and explicitly that NGOs, part of ICONGO or otherwise, should have no right to vote in any international fora; by affirming that official State delegations should be the only actors entitled to determine international environmental policies, the CSR would address legitimate State concerns over NGO infringements on sovereignty. At the same time, the text would recognize that to improve the legitimacy, quality and efficiency of the negotiating process, civil society needs a strong and influential voice. It would furthermore affirm the strict independence of ICONGO from the UN, any particular negotiating forum, or any government; official recognition of ICONGO's strategic and operational independence would be crucial to allaying NGO fears of having their agenda co-opted by affiliation to international governmental organizations or States themselves.

From a more practical perspective, the CSR would officially sanction the creation of an ICONGO office jointly out of UNDESA and UNEP, to facilitate ICONGO-UN linkages. It would eliminate the ECOSOC accreditation process, and channel the funds saved into ICONGO. The CSR would establish a fund through UNDESA and UNEP, managed by the ICONGO Oversight Committee, as the principal source of the annual operational costs of ICONGO. The CSR would also provide the accountability mechanisms for funds sourced through non-UN donors. Finally, the CSR would create a veto option to allay

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State fears over NGO participation in particularly sensitive arenas: a two-thirds majority of States would be able to wield a veto on NGO participation (independent NGOs or ICONGO delegates) in any proceedings at a particular forum. Whilst this would alarm many NGOs, it would be highly unlikely that anti-NGO actors would ever build enough support to wield the veto. It would largely be a symbolic instrument, a useful concession to States to encourage their support for the new institutional proposals.

Civil Society Resolution - normative principles

The CSR would make three key statements on the current condition of NGO-State interaction:

First, it would make explicit the recognition that NGOs have a right to contribute to international environmental politics, and would define the key benefits of such participation from the perspective of both State and non-State actors (enhanced democratic legitimacy in international fora, additional technical expertise and implementation capacity, improvements to NGOs as organizations, and so on).

Second, it would stress that the current form of NGO participation in international negotiating fora is unproductive for both State and non-State interests: NGO groups are shut out of the more crucial phases of negotiations, whilst State actors are constantly besieged by campaigning groups acting in an adversarial manner.

Third, it would acknowledge the stability and maturity of the existing framework of international diplomacy: official State-to-State relations governing international policymaking, the importance of sovereignty concerns and formal diplomatic institutions, and so on. It could therefore be argued that a new paradigm of NGO participation should occur along accepted institutional lines. “In order to gain sufficient understanding of the chances for international democracy and of the role of NGOs within the framework of an “international civil society,” it is necessary to recognize the fact that the nation-state continues to be a precondition of globalization, though with a modified role” (Gorg and Hirsch, 1998: 1).

The CSR would also lay out four normative principles of productive NGO-State interaction embodied in the principles and practice of Track II diplomacy. These would be couched as soft law, more recommendations than requirements:

1. *Creative search for solutions*: the need to enhance creativity and innovation in the search for consensual solutions to challenging environmental problems. The CSR would stress that the ideational characteristics of NGOs set them up to effectively fulfill this function, and encouraging States to adopt a similar approach to problem-solving.
2. *Inclusive debating space*: the need to enhance the democratic legitimacy of international environmental negotiations, to increase both the durability and the quality of the treaty outcome and reduce the risk of power imbalances, community alienation and parochial international responses to complex and

interlinked global issues.

3. *Collaborative negotiation*: seeking to place the problem on one side of the table, and the negotiating parties on the other (Sarewitz and Pielke, 2000). The need to recognize that NGOs can play a strong role both as neutral facilitators and actual participants of collaborative approaches.
4. *Informal relationships*: formality in negotiation means trust is slower to build (Lewicki et al., 1994). Once within the protected and regulated environment guaranteed by ICONGO and the CSR, the State-NGO relationship should be relaxed and informal, with the focus on sharing information and multiple levels of interaction.

NGO definition – role and rights

In light of the increasing levels of ad hoc participation of NGOs in IENs, the existing formal statements of NGO roles and rights at these fora are reactionary and do not correspond to modern norms of international relations. The ad hoc structures themselves are unlikely to lead (on a reasonable timescale) to precedent of sufficient legal strength as to guarantee a certain degree of participation for NGOs at all future IENs. The flexibility in such structures leads to as much infringement of hard-won NGO rights as enhancement. The CSR would lay out definitions and limits for NGO roles and participation in IENs and other international fora. It is important that these are treated as an opportunity to enhance participation, not impose punitive limits on NGO roles that worsen the current situation. The definitions would be predicated on the argument that it is misguided to even consider NGO voting rights; this is both unrealistic and inappropriate in the current system of international relations (Willets, 2000). Any movements in that direction would obscure the more useful and acceptable elements of the CSR and ICONGO with a cloud of controversy and significantly stall proceedings for no obvious gain. Far better then, to define ICONGO delegates as equal to State actors in negotiations, except for voting rights.

A specific text is not proposed for a new definition of the rights and roles of NGO and civil society actors in the context of international fora and international environmental negotiations, but for optimal functioning of ICONGO, it is suggested that it incorporate the following points:

- > Non-governmental organizations should be recognized as legitimate representatives of global civil society, and ICONGO as the official mediating organization between global civil society and the international community of States.
- > NGOs should be defined, for the purposes of international environmental negotiations, according to the membership requirements of ICONGO. The text should recognize the range of potential constructive roles that NGOs have and can perform at IENs, and thereby demonstrate the logic of assigning an enhanced participatory right to NGOs.
- > The roles of the ICONGO delegations should not be specifically defined, except to say that they are granted full access to all plenary and closed-door sessions of IENs and no

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other activities are expressly proscribed except where they conflict with accepted norms of practice and behaviour, the CSR code for NGO conduct at IENs, and ICONGO's own codes of conduct governing the behaviour and remit of their delegations at IENs. Such full rights should not extend to non-ICONGO NGOs, but it should be made clear that they also have a right to participate at IENs as long as they are not already members of ICONGO (or have not requested an exemption for a particular negotiating forum).

- > All provisions and legal mechanisms in the CSR would only apply to UN-sponsored IENs.

A key passage in the resolution would recognize NGOs as useful contributors to international environmental politics, and require that all UN-sponsored international environmental negotiations accord ICONGO delegates official recognition and participatory rights as defined in the resolution. The new protocol would therefore be taking hard and soft approaches. It would, on the one hand, lay down strict and clearly defined rules for the participation of NGOs in international environmental fora, which both NGOs and participating States must adhere to. On the other hand, by obtaining UNGA approval for the resolution, and promoting use of the protocol in international environmental negotiations, the principles and practice of the resolution would slowly enter the harder body of accepted international law. The CSR and ICONGO would at first only make rules and guidelines for international environmental negotiations and environment-related fora, but if the new relationship were seen to be successful, it is possible that other negotiating arenas, such as trade, would adopt the CSR provisions and facilitate the engagement of ICONGO. Whilst CSR would be formulated specifically for international environmental negotiations, ICONGO membership would not be restricted to only environmental NGOs or environmental issues. This would leave considerable potential and capacity within the organization for engaging with other negotiating fora should the need and opportunity arise for an expanded ICONGO role. Aside from this consideration, developmental issues are interwoven with environmental problems so it makes little sense to develop artificial divisions. A broad-based NGO organization that encompasses a wide variety of NGO "types" would bring a much more diverse range of expertise and interest to bear on particular issues, and help IEN actors to make constructive linkages between issues.

Several components of the resolution are likely to encounter stiff resistance from State and Non-State actors. Under CSR, non-ICONGO NGOs would not have the same enhanced participatory rights as ICONGO delegations, and if they were members of ICONGO they would not have the right to participate at all (unless they requested a specific exemption, but there would be a limited number of these an NGO could request without losing its membership status in ICONGO). This differential treatment is crucial to giving ICONGO legitimacy, and forcing a radical tightening of the existing loose, ad hoc framework of participation. NGOs could, therefore, choose between joining ICONGO or remaining on the outside as individual actors. Joining ICONGO would essentially restrict NGO rights to participate on their own terms, but would see an expansion of their influence as part of the broader coalition, and access to all the other

benefits of ICONGO membership. Staying outside of ICONGO would give them the opportunity to decide on their own participation and lobbying strategy, but they would not then have the formal right of access and negotiation in any and all debates at an IEN. NGOs remaining outside of ICONGO would in effect still be operating under the current status quo, although this would be rendered increasingly irrelevant by the new structures.

From the State point of view, regardless of whether they might now be spared the cacophony of multiple NGO lobbying activities, and be henceforth dealing with a single highly professional, experienced and democratically-organized ICONGO delegation, many States would still balk at such new levels of NGO participation. The incremental phase-in process would also help to address these concerns. Trial sessions would be conducted at which State/non-State actor interactions under the new protocol would be evaluated and refined by a joint committee of State, non-State and UN official actors. The guidelines will also only initially apply to international environmental negotiations or environment-related fora, and can be extended to other fora as and when enthusiasm develops for such action. The State trade-off is accepting an international NGO group (*the* international NGO group, in this case) into the cosy confines of the club of nations, but in turn seeing their relationship with civil society dramatically simplified, clarified and systematized.

It must be emphasized that the key benefit of new and official recognition for an NGO coalition is in a normative sense. The current diversity in attitude amongst State actors towards different NGOs – from antipathy and suspicion, through neutrality, to strong empathy and support – needs to be replaced by a new “attitudinal framework” in which State actors automatically assign NGOs a more official, legitimate role by virtue of the fact that these previously unpredictable and wayward actors are now organizing themselves along institutional lines that are familiar to seasoned actors in international relations. Although this would be somewhat distasteful to some more radical NGOs, the transformation would be from “non-governmental” to “quasi-governmental.” It does not appear that the status quo can be usefully improved whilst preserving the current conceptualization of NGOs; in other words, the route to enhanced NGO participation in intergovernmental relations is through the creation of an IGO-type structure which both provides practical managerial improvements within the NGO community and the way it relates to international fora, as well as promoting a normative shift in State attitudes to NGOs.

External institutional flaws – justification for the CSR

The NGO community does not bear all the blame for a general lack of discernible NGO influence on international environmental negotiations. There are aspects of the institutions, procedures and norms of international negotiating fora that limit the capacity for effective NGO involvement. It is because of these aspects that a new form of State/non-State actor interaction is proposed, articulated by the provisions of the CSR.

Sovereignty

The first obstacle, and perhaps the most important, is the concept of sovereignty. At present, it is clear that sovereignty is indisputably a robust and enduring force in

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international relations (Waltz, 1979). As for how this will change in future, opinion is conflicting. Wapner claims that sovereignty is fast eroding in the face of pressure from civil society activity, globalization and an increasing body of both soft and hard international law (Wapner, 1996). Litfin argues that “the proliferation of environmental agreements has...led to a complex web of “sovereignty bargains” through which states have increased their sovereignty vis-à-vis certain dimensions even as they have suffered losses of sovereignty vis-à-vis others” (Litfin, 1997: 1).

In the context of NGO participation in international environmental negotiations there has been no apparent movement away from the restrictive definitions of negotiating and voting rights. States reserve the sovereign right to negotiate only with other states, and only sovereign states are granted a vote, whilst NGOs are formally restricted to a consultative role (Willetts, 2000). Sovereignty concerns are a powerful force keeping NGOs on the margins of the IEN process. Since ICONGO is a non-State actor, and would be attempting to participate as a delegate at international fora, it would encounter very stiff opposition without some sort of formal expression of a new relationship.

The CSR would provide for equal treatment of ICONGO delegates, whilst withholding the possibility of voting rights from the NGO community. This concession would avoid conflict with State conceptions of sovereignty. Since the CSR would make it explicit that ICONGO must be allowed access to all plenary and closed-door meetings, the organization would still be able to make the voice of civil society heard and increase the transparency of the whole process.

Logistics

An independent organization wishing to be present and advocate effectively at an IEN needs to make significant expenditures to achieve this. Since there are few NGOs with the necessary resources, international environmental negotiations are not amenable to broad civil society representation and tend to be dominated by large transnational NGOs from the North. Global environmental treaties need to be designed through a process that integrates the huge diversity of world cultures and societies; NGOs are an effective medium for translating sociocultural voices into a functional and influential form at international negotiating fora. But if the only NGOs present at IENs are from the North, the serious environmental and developmental needs and perspectives of the developing world go largely unheard, or even misrepresented. There is at present a conspicuous lack of funding support for grassroots movements or developing country NGOs who may feel a strong need to have their voice heard in international fora but cannot do so due to financial constraints.

ICONGO would therefore provide funding mechanisms (formally defined within the CSR) to enable less well-resourced executive members to attend ICONGO debating sessions. ICONGO would take the financial burden of representing and advocating at IENs, and so individual NGOs could devote their scarce financial resources to other projects in the knowledge that a strong actor was negotiating on their behalf in international fora. A single ICONGO delegation would, in that regard, be much more efficient: increased influence, but reduced expenditure.

Institutional definitions

There is a problem in the institutional conceptualization of NGO: accepted definitions of NGOs and NGO participation in IENs are derived from Article 71 of the UN Charter, ECOSOC resolutions and precedent from previous negotiations. All of these are vague and imprecise. Advocates for increased NGO participation do have some room to maneuver, but this space is limited since enhanced participation is at best recommended, whilst recognition is unequivocal that the NGO role is officially limited to consultative status: “a clear distinction is drawn in the charter of the United Nations between participation without vote in the deliberations of the council and the arrangements for consultation” (DESA/ECOSOC, Resolution 1996/31, para. 18; in Willetts, 2000). The unwritten perceptions of NGOs are historically rooted and often more clearly defined in State-actors’ minds according to individual ideological preference.

Article 71 of the UN Charter, and subsequent review processes and resolutions have done little to dispel the notion of NGOs as “unofficials” who do not really have any intrinsic right to participate. State perceptions of acceptable participants are largely predicated on existing norms and protocols, which are themselves influenced by state perceptions of acceptable participants: the vicious cycle is a problematic but very real aspect of the slow evolution of international relations. The common perception of NGOs is that they reside in “unofficialdom”; this allows States to continually present higher degrees of participation for NGOs as a gratuitous privilege that could be withdrawn at any moment. The vagueness of State perceptions is related to the general endurance and pervasiveness of traditional paradigms in international diplomacy, but it also varies in type and severity from state to state. Totalitarian regimes are nervous of giving unofficial groups at a domestic level more ammunition by recognizing these groups at an international level. Civil society appears as a dangerous, unpredictable force, and the rejection is often made on the basis of general principle rather than specific objections to the NGOs present. Other, more democratic states may have little problem with the general principle of NGO participation (often recognizing their use in manipulating domestic opinion) but may reject a more significant or innovative NGO role simply on reactionary instinct.

This ambiguous perception is deeply damaging to the effectiveness of NGOs in IENs, the inclusiveness of the negotiating process, and the stability and durability of the outcome: without NGO participation, the proceedings can be denounced as opaque and undemocratic. With NGO participation on such uncertain grounds, anti-NGO actors can reject the outcome on the basis of claims of excessive NGO influence. The highly variable perception that states may have of NGOs is an additional obstacle to reaching consensus on what is acceptable and how institutions should be improved. ICONGO would address all these concerns and issues by presenting in institutional form a simple, clearly defined concept of the “NGO community,” eminently predictable and quantifiable. It would be a major, direct point of contact for non-State interaction with its members, and provide the institutional mechanisms to deal with State complaints about NGO interference at a national level. Additionally, since the CSR would offer a single definition of the NGO concept, and make official the idea of “full” NGO participation in IENs, perceptions of NGOs as wayward and unpredictable “unofficials” would potentially shift to seeing ICONGO as a legitimate, monolithic and “official” body along

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the lines of a major IGO. The concurrent increase in perceived importance and influence of the body would go a long way to enhancing NGO participation.

Institutional capture of the NGO agenda

A final issue to consider is the danger inherent in the existing system that by building such strong links to the UN system, drawing funding from international governmental organizations and adopting an institutional framework, NGOs would then be co-opted by States within IENs. There is more perception than reality to this risk: NGO managers need to be sure that their investment and sacrifice in ICONGO would not mean reduced independence. Since providing an alternative approach to the traditional statist model is the *raison d'être* of many NGOs, this consideration is important. It is important to articulate how ICONGO would prevent co-optation.

The combination of the CSR and ICONGO would reduce the risk of co-optation by creating a large organization with formal and institutionalized independence less open to manipulation by States due to the absence of any figureheads and strong personal ties between State and non-State actors. The structure of ICONGO government would tie the ICONGO delegation at an IEN to strategies and actions previously agreed upon in the councils, making the negotiation process fully accountable to all members. The ICONGO delegation would function like a State actor, in that it would be able to act with more legitimacy and authority. ICONGO would therefore define a new concept of NGO “sovereignty” in decision-making that other State actors would find difficult to influence or infringe upon. The provision in the CSR for ICONGO access to all negotiating fora would prevent closed-door co-opting of vulnerable or ambitious individual NGOs by States planning to disrupt or stall the agenda. The informational structures within ICONGO would ensure transfer of all ICONGO actions to the entire executive and non-executive membership, and so any State attempts to co-opt, intimidate or otherwise influence would be rather rapidly visible to a very large group of activist organizations and the global public as a whole. The ICONGO Oversight Committee would be a neutral and regularly rotated group drawn on both official and “unofficial” communities, and insulate ICONGO from attempts by State actors to exert pressure on the organization.

In short, CSR provides both explicit and implicit recognition of the independence of ICONGO, whilst ICONGO’s strategic and operational structures provide the practical means to ensure that this independence is protected.

CSR contributions to enhancing the effectiveness of NGOs in IENs

The CSR would develop a political climate and norms of State/non-State actor interaction that would be more amenable to a higher degree of NGO participation in IENs. It would clear away the confusion and lack of clarity associated with the role of NGOs in IENs, by providing a detailed definition of the roles and rights of NGOs in all UN-sponsored IENs. It would provide an UNGA-approved set of guidelines for future UN-sponsored IENs and international conferences (and by progressive assimilation of norms, other non-UN-sponsored international fora as well) on how to integrate NGO actors and views into IENs, as well as in adopting innovative approaches to building consensus and overcoming ideological and practical obstacles to agreements. It would go a long way

towards circumventing, removing or reducing many of the external obstacles to improved NGO participation in IENs, such as sovereignty concerns and financial barriers. It would attempt to subtly change the conceptualization of NGOs by State actors, build mutual respect and trust, and so allow for greater communication, cooperation and collaboration between NGOs and State actors in arenas and on occasions beyond IENs or international fora.

Institutional viability

How realistic is it to imagine ICONGO coming into existence, and a CSR being passed by the UN General Assembly? Whilst this question is too complex to deal with fully here, a brief attempt will be made to discuss just why such institutions stand a good chance of first being created and then surviving for a reasonable period. The longer-term viability hinges on the weighing up of personal benefits and risks each community – of State and non-State actors – sees in participation.

State perspective

From a State point of view, part of the acceptability of ICONGO comes from its strong resemblance to existing institutions. There would be no structural mechanisms or aspects of organization in ICONGO that would be unfamiliar to the seasoned diplomats of UN member state delegations. The organization would be founded and operated on the basis of strict acceptance of the principles of accountability, legitimacy and democratic governance that most States would like to believe underlie their own right to participation in international fora. The organization would be tied into UN auditing and accounting procedures, and so at least in appearance would not be a totally independent and hence less predictable actor.

ICONGO's internal structure and protocols address many traditional State concerns about the participatory form and conduct of NGOs in international environmental negotiations. ICONGO would be logistically and conceptually easier to handle as a single delegation coherently and cogently representing the interests of a large group of civil society groups. Most importantly, ICONGO and CSR would explicitly and strongly reaffirm State sovereignty in areas of voting rights. These are controversial issues with States. By affirming the inviolability of these principles, State fears could be allayed whilst the much more powerful normative influence of ICONGO would be brought to bear.

The main risk of allowing ICONGO into the hallowed inner halls of IENs, from a State perspective, is in seeing the organization gain disproportionate influence over the international environmental policy agenda. This could conceivably result in individual State interests being overridden by NGO interests, and stateless non-democratic organizations influencing the economies and societies of sovereign states. In practical terms, however, it is difficult to see how a single NGO actor without a vote could achieve such heights of international influence. ICONGO delegations would be able to exert some pressure on individual State actors, but they would never have the resources and ability to coerce the entire voting corpus into aligning with NGO positions.

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NGO perspective

From the NGO perspective, the benefits of participating are several: a large resource to tap into for information sharing and project collaboration; the only route to really effective participation in international environmental negotiations officially recognized by the UNGA; financial incentives for individual NGO participation and development; membership quotas to ensure balanced regional and sectoral participation; opportunities for key individuals within NGOs to rise to positions of considerable power and influence within ICONGO and thus at an international level.

One serious issue as yet not discussed is that of participatory fatigue: "...the multiplication of intergovernmental negotiating fora has put new pressures on the already limited resources of NGOs. They are unable to afford a presence in international fora to the extent that government, industrial and other commercial actors can, and will face increasingly difficult decisions about where and when to participate" (Albin, 1999: 11). ICONGO would have sufficient resources to send delegations to each and every international environmental negotiation (with possible extensions into fora on other themes), ensuring continuity of NGO presence and increased awareness among States of the importance of the NGO role. The viability of ICONGO from the point of view of attracting members would depend partly on articulating clearly the benefits of ICONGO, as well as the trade-offs. The CSR would attempt to do this in an exhaustive and neutral fashion. NGOs would need some reassurance that State actors were also committed to the concept and the reality: passing the CSR would be a strong indication of that commitment, and significantly reduce NGOs' perception of the risk associated with investing resources and time in an organization. A principal determinant in the success of the organization at early, sensitive stages would be the behaviour of NGOs within ICONGO. If there is general adherence to the Codes of Conduct, and punitive measures to ensure compliance are wielded sensitively but effectively, then the legitimacy of the organization will be strengthened and its acceptability by nation-States enhanced.

Longer-term viability/stability

Longer-term viability and stability would depend critically on the way both ICONGO and CSR were designed and implemented. All components of the CSR and ICONGO would be evaluated incrementally, in order to avoid shocking State and NGO dissent into vehemently anti-ICONGO positions. Once a detailed theoretical appraisal had been formulated, a phased implementation process could begin.

A joint UN-State-NGO working group would break the CSR down into several stages of increasing complexity or perceived potential for controversy. This would allow the less radical components to be evaluated first, to build awareness, understanding and – ideally – acceptance of the broader principles. It would be useful to construct the phase-in process around a future environmental conference or negotiating forum: this would allow design and evaluation of the many different mechanisms within ICONGO in a practical context, and lay a timetable to streamline the design and evaluation process. Its presence at this forum would be followed by a hiatus period; the joint UN-State-NGO working group would in this period evaluate the effectiveness and influence of ICONGO at the forum, suggest any necessary modifications and produce a Secretary-General's report for

the UNGA. Ideally, serious objections or flaws in the new participatory framework would be addressed and resolved during this collaborative evaluative process. Once a favourable consensus report had been produced, the UNGA would then pass final approval for ICONGO and all provisions of the CSR would come into force.

Incentivizing participation

A critical factor impacting the viability of ICONGO is broad acceptance of its concept by both the NGO and State community. NGOs would be very quick to recognize the significant trade-offs they would be making by subscribing to the ICONGO model, and many States would see CSR and ICONGO as infringements on their sovereignty as well as simply untenable concepts on the basis of the inherently undemocratic nature of the NGO community.

The CSR would therefore need to articulate in a disinterested manner the trade-offs for each community, following a non-traditional incentivization model. This would be a form of structured persuasion, a SWOT analysis (Grant, 2002) designed to show each community the strengths of the new institutions from all perspectives; the weaknesses of both ICONGO and the CSR (and what the organization would not be able to achieve so as to avoid unrealistic expectations); opportunities for improvement that the organization would bring to the IEN process and for individual State and non-State actors; and the threats the organization and resolution would face in planning and implementation. By making all these concerns common knowledge, the process of designing and building the final institutions could take place in an open and reflective atmosphere. The CSR would therefore take some time to articulate what each actor would lose in participating, but emphasize more strongly what both communities and the treaty process would be gaining; and finally, how the new approach would have positive implications for human society and environment as a whole. These trade-offs are summarized below through a hypothetical Q&A session. The aim is to incentivize participation by disseminating a simple reasoning of the benefits to NGOs, States, the treaty process, the treaty outcome, and the perception and reality of international responses to serious international environmental and developmental challenges.

NGO concerns

A selection of potential NGO objections, questions and concerns are presented and answered or rebutted below. It is by no means an exhaustive list, but represents some of the more critical items that would have to be comprehensively addressed to reassure the NGO community of the viability of the ICONGO concept.

> *What would be the benefits accruing to any particular NGO by participating in and contributing to ICONGO?*

Access to a global pool of NGO resources and expertise; access to a forum for discussion and action on matters relating to interests of particular concern to NGOs; opportunities to submit individual NGO representatives to ICONGO delegations at a variety of international fora; a means to engage with high level officials, international

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institutions and donor community members through their formal links with ICONGO; opportunities for NGO staff training and participation in NGO-related research; a formal, institutionalized, independent and representative voice at all relevant international fora. NGOs have raised a concern in the past that they would need highly specialized and experienced staff to engage more effectively with the UN system, and when they devote time to such activities they tend to lose contact with their grassroots membership or community on whose behalf they are acting (SARC, 2003). ICONGO would provide a resource of expertise and high-level contact networks on which individual NGOs could make formal requests for assistance.

> *How would ICONGO ensure diversity and equity in the membership corpus?*

Quotas, democratic membership decisions and financial mechanisms would ensure North and South are equally represented. This would be a highly complex and sensitive operation, since “equity” is difficult to define concisely. The working group established through UNEP/UNDESA would address equity in terms of sector (balancing environmental and developmental NGOs), geographic provenance (North and South), resources (grassroots through to transnational), experience in and relevance to IENs (minimal through to extensive), and a number of other factors stemming from the enormous diversity in the global NGO community. There would obviously be a limit to how representative ICONGO could be: the sheer number of NGOs in civil society is beyond the integrative capabilities of any one institution, and consequently there would always be actors and sectors unintentionally left out of decision-making and denied access to IENs through ICONGO.

> *How would multiple strong or highly antagonistic views within the NGO community be reconciled and represented?*

The ICONGO delegation at an international forum would not have to represent a single view, so for NGO concerns in different areas being dealt with at a single forum ICONGO could advocate a range of actions relevant to each area. On the other hand, for the ICONGO delegation to be effective, it could not advance two or more antithetical positions in one sitting. Therefore there would be provision for a dispute resolution process within ICONGO. Modern collaborative, mediated public dispute negotiation techniques would be built into the operational structure of the institution, aiming to ensure differences were resolved before they grew into serious conflict. However, for major ideological or cultural differences where a significant minority is in disagreement with the broader ICONGO corpus’ views, even such modern dispute resolution techniques might fail. Two options would be available in these cases: couch the final ICONGO position in terms that make reference to a significant and dissenting minority view, but continue to place strongest emphasis on the generally agreed position; withdraw the ICONGO delegation entirely and allow the conflicting groups to attend the IENs as their own advocates (but without the special rights to participation and negotiation accorded ICONGO). This would clearly be a less than optimal outcome, but the risk of dissent leading to ICONGO fragmentation could never be totally eliminated

and as such constitutes a significant area of uncertainty in assessing ICONGO's potential effectiveness.

> *How would ICONGO make up for the loss of diversity in NGO views that comes from advancing a unified consensus position?*

By restricting NGO numbers and diversity at IENs, there would be a risk that the positive contributions of the current status quo would be negated. This criticism must be countered with a clear argument that the current status quo, whilst having undoubted advantages, is ineffective and therefore any new system that bears strong resemblance to it will be no great innovation and potentially have as little success. The point of the ICONGO forum is to help NGOs see the linkages between their positions and develop common positions that encompass as much of the diversity and richness in the NGO community as possible, but without presenting so many varied positions that the other actors at an IEN simply see the NGO contribution as dissonant and unhelpful.

> *How would rogue actors impact the influence of ICONGO and CSR?*

Rogue actors are here defined as direct action NGOs whose ideology conflicts profoundly and violently with the ethos of State-NGO cooperation and collaboration in resolving global environmental problems. If such actors had a history of direct action advocacy in international environmental negotiations, they would be unlikely to subscribe to the ICONGO model. These groups would be damaging to the influence and effectiveness of ICONGO and the CSR, since the presence of disruptive NGOs at an IEN would contradict the claim of the new institutions to be able to focus global NGO energies through more clearly and formally defined channels. The size and diversity of the global NGO community suggests it would never be possible to eliminate such actors from the international scene. Moreover, it would not be desirable. ICONGO is designed more as a soft instrument than one designed to force participation. The potential for rogue actors or groupings to operate antagonistically outside of the CSR structures and ICONGO could therefore never be negated. But if the ICONGO concept were embraced by a majority of NGO actors, it is to be hoped that mainstream civil society would become more self-regulating and work to minimize the impact of such rogue organizations; the ICONGO membership would in any case have a strong motivation to do so, since the actions of a few would be damaging the influence and effectiveness of the many.

> *How would ICONGO avoid being pressured by UN member States through the financial mechanisms?*

ICONGO funding would come substantially from the UN. Therefore, particularly strong governments could potentially influence ICONGO strategies and actions by putting pressure on the UNGA or the Security Council to reduce funding to the organization. This is a very difficult issue to resolve, since the importance of UN funding to the organization is critical, and there is no other source that has the same cachet of neutrality and carries with it such implied authority and legitimacy. Probably the best way to get

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around this problem would be through special powers and status being granted to the ICONGO Oversight Committee: this group would be composed of a range of NGO and non-NGO actors empowered to evaluate and respond to UN audits, making recommendations or issuing mandatory responses to the Upper Council. This committee would not be a UN body, and would be the only group empowered to reduce, increase or otherwise modify UN funding for ICONGO. This would disengage the UNGA from funding control, but still maintain strong independent oversight of ICONGO financial operations and work closely with UN auditing teams.

State concerns

Some potential questions and concerns from the community of States are raised and countered below. Once again, they are not exhaustive, but represent a sample of the most significant issues likely to be raised by States.

> *The enhanced rights of ICONGO constitute an infringement of sovereignty:*

As Willetts points out, “in general terms, the mythology of the special obligations, rights and privileges of the “great powers” would be challenged by allowing irreverent “powerless” entities to sit at the same table as the permanent members” (Willetts, 2000: 5). In reality, ICONGO does not infringe on any formal concept of sovereignty. ICONGO would not have a voting right in any forum, and for particularly sensitive issues an exclusion mechanism would be built into the CSR and IEN procedural protocols to enable a two-thirds majority of States to undertake negotiations without the presence of NGOs or ICONGO. The new approaches would however require a formal acknowledgement that NGOs have a right to participate in and influence the course of negotiations, which could be construed as an intrusion on State sovereignty. The strongest argument to counter this is to articulate the clear benefits to the treaty process and to States by enhancing NGO participation: NGOs would be able to shoulder much of the implementation and monitoring load that would otherwise fall on States, perform valuable informational functions during discussions, and assist greatly in capacity building at national and international levels. They would also enhance the legitimacy of the treaty-making process in the eyes of the global public, and therefore the power of the participating States to make final decisions that are credible and durable. As a final concession, the CSR would re-affirm the sovereign right of participating States to vote on substantive issues affecting their national jurisdictions.

> *Funding for ICONGO, it being an essentially independent NGO body, should not come from national or international coffers:*

It could be reasonably argued that no new and additional funding should be provided for an NGO organization that would potentially have comfortably well-resourced members among its corpus. As Thomas (2001) points out, by the mid-1990s NGOs were spending over US\$7 billion on overseas development work, “including over US\$1 billion of official aid channeled through NGOs” (Thomas, 2001; In: Thomas et al., 2001: 2). Princen and Finger report that WWF, Greenpeace, FOE, The Nature Conservancy and

The Sierra Club could cumulatively boast mid-1990s annual revenues in excess of US\$200 million (Princen and Finger, 1994). However, this is to ignore the reality that global NGO resources are not uniform, just as great economic disparities exist between States of the North and South. The big few transnational ENGOs represent a fraction of civil society; consequently, they should not be taken as representative of the financial needs of the NGO community, nor should they be expected to shoulder the financial burden of ICONGO. Membership dues would be required after ICONGO was established, but in practical terms, ICONGO would not be able to attract any initial membership without strong financial support from the international community. In any case, most definitions of NGOs stress their nonprofit status. Nonprofits seek support through the international donor community or through public donations. Gathering public donations for the ICONGO would be a serious challenge, given the complex nature of its function and role and the difficulties in communicating its benefits to the global good in a simple and accessible manner. But it would make little sense to channel such enormous amounts of government donor funding through individual NGOs without making some provision for an organization attempting to represent a very large number of NGOs at international levels.

UN funding for ICONGO must be argued for on the basis of NGO funding precedent, the existing funding mechanisms for IGOs (assuming ICONGO would be viewed as a quasi-IGO), and most importantly the global benefits ICONGO would bring to the IEN process and to individual State actors. There would not even necessarily need to be significant new and additional funding: by scrapping the existing ECOSOC accreditation system, savings could be channeled into ICONGO. Much of the diverse funding currently made available to facilitate NGO engagement with IENs and the UN system could also be re-focused, and so new demands on government donors could potentially be minimized.

> *How would the international community ensure that its money was not being misused?*

“Misused” in this regard essentially refers to financial malpractice. An independent UN auditing team would work closely with the ICONGO Oversight Committee to ensure that financial governance was transparent and well practiced. Regular reports would be produced for the Secretary-General; the ICONGO Oversight Committee would review any incidences of malpractice exposed by UN auditors, and make recommendations for appropriate measures.

> *How would ICONGO guarantee that its members would not continue to attend IENs and act in defiance of ICONGO and CSR protocols?*

As discussed under the NGO section, there would be no watertight way to ensure absolute compliance with ICONGO codes of conduct and procedural protocols. ICONGO would not be the only way to engage with IENs, but it would be the best way; conditions could not be imposed on general NGO interactions with environmental policymaking, but any interactions that NGOs sought to make through ICONGO would have conditions attached. The CSR would set out strict punitive measures for dealing with ICONGO or

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NGO infractions. NGOs linked to ICONGO but who still attended an IEN where an ICONGO delegation was present would first be suspended from ICONGO membership, and then donor-blacklisted if they persisted. If an ICONGO delegate were to step outside behavioural norms and ICONGO's own code of conduct for IENs, the delegate would be struck off the delegation and suspended from future participation for a set period of time. A number of similar mechanisms and normative presumptions would work to create an open but structured framework for State-NGO interaction.

Thought experiment: hypothetical ICONGO/CSR application to past IENs

Haufler points out that “a weak empirical base hinders extensive theoretical and conceptual development concerning the role of NGOs and transnational coalitions” (Haufler, 1993). This is a serious problem when making prescriptive recommendations for a new institutionalization of NGO concept and practice. The lack of any precedent to a global NGO institution means attempts to validate the proposed models are virtually impossible. However, by hypothesizing the application of the ICONGO and CSR concepts to a range of IENs from the past, a practical vision for the ICONGO/CSR role can be illustrated, and some of the potential problems with the approach identified.

A significant body of comparative analysis has been undertaken on two specific treaty-making efforts: the Kyoto Protocol (part of the UNFCCC) and the UN Convention to Combat Desertification (UNCCD). Recent work suggests that NGOs were far less engaged and effective at Kyoto than at the UNCCD (Potter, 1996; Corell and Betsill 2001; Carr et al., 2001, Gulbrandsen and Andresen, 2004, Lean, 1995). These two examples are selected for their properties as end-members for degrees of NGO influence on IENs.

UNCCD

Potter (1996) describes how the Secretariat of the International Negotiating Committee on Desertification (INCD) started out the UNCCD negotiations on a positive footing for NGOs. UN resolution 47/188 codified a higher degree of NGO engagement with the UNCCD, and since this resolution was passed through the UNGA rather than UNEP, Southern NGOs were explicitly recognized (Southern countries being in the majority in the General Assembly). Potter (1996) records that NGOs had access to meeting rooms and office facilities; were allowed to deliver full statements at plenary sessions; and could make briefer statements at working groups with the permission of the Chair (*ibid*). However, there was no access for NGOs to closed-door sessions. Despite this, the UNCCD was fairly unique among international environmental negotiations with regard to the high degree of participation that was written into the negotiation protocols and the post negotiation implementation recommendations. Lean summarized this as:

“The convention breaks new ground by enshrining a bottom-up approach in international law. It repeatedly emphasises the importance of full participation...[and]...stressed ‘the special role of non-governmental organisations’ and gives them an important role in ensuring implementation” (Lean, 1995: 15).

However, much of this enhanced participation was facilitated by the nature of the issue at

hand. States recognized that the existing body of developmental and environmental NGOs could very effectively undertake implementation of the treaty. Moreover, this implementation was highly specific, project and place-oriented in a way that the UNFCCC or similarly broad global environmental treaties could never be. In other words, a large degree of the relative success of NGOs at the UNCCD was due to the unique nature of the problem being addressed and the pre-treaty conditions established by the States themselves. This example represents a unique instance of high NGO participation that does not appear to have laid any precedent for more recent negotiations.

To take a critical line, participation is not the same as influence. As Carr et al (2001) point out, “on the evidence one cannot conclude that NGO influence during the negotiations was the driving force behind the new elements in the CCD, even those which formed part of the NGOs’ agenda” (Carr et al., 2001: 53). The full story of NGO participation at UNCCD suggests that the principal benefit of CSR would have been to open up the closed-door meetings, where ICONGO delegates could have had a direct window onto and potential role in the serious substance of negotiations.

ICONGO would also have had a significant impact. At the UNCCD, it took four INCD sessions for NGOs to become sufficiently organized so as to make an impact on the proceedings. Northern NGOs were absent for much of the proceedings and the divisions between North and South were especially strong. The vague positions of many groups made it hard for the NGO presence as a whole to have much influence (Potter, 1996, Carr et al., 2001). The subordinate NGO role within INCD sessions reflected State dominance of NGO-State interactions (after Haufler, 1993). The ICONGO approach would have addressed all four of these issues: a well-prepared and coherent range of NGO positions would have been presented from the first session by the ICONGO delegation; the broad geographic base to ICONGO would have forced both Northern and Southern groups to work together and develop joint or at the very least roughly complementary positions; the internal decision-making processes of ICONGO would have focused and refined NGO positions as much as was possible before advancing them at the forum; the strong, independent and accountable institutional face of ICONGO would have mitigated against co-optation and pressure exerted by States. In short, a more coherent, sharply defined, balanced and independent representation of the views of civil society would have been integrated into the development of the final text from a very early stage. As it was, an “NGO-suggested idea on establishment of national desertification funds was included in the final text, and general recognition on more than 30 occasions was given to NGO contributions” (Potter, 1996: 156); one can speculate on how much more impact the NGO community would have had with a concerted and unified articulation of civil society’s position from the very start.

Kyoto

The degree of NGO participation in the series of COPs leading to Kyoto was meager in comparison with UNCCD. According to Corell and Betsill (2001), NGOs had only limited access: they could not circulate on the floor during plenary sessions, and were excluded from the closed-door sessions that dominated towards the end of the negotiations. There was also little evidence of their impact on the final text. Corell and

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Betsill suggest that the most important function NGOs played at pre-Kyoto COPs was in publicity: governments appeared to pay significant attention to how NGOs portrayed their actions in the negotiations. It was also apparent that the power of NGOs within the negotiations depended largely on their ability to advance a unified position (Corell and Betsill, 2001).

CSR in this context would have forced the COP to acknowledge the right of ICONGO to participate in all plenary and closed door sessions, and so dramatically increased the number of occasions on which ICONGO could participate and attempt to influence the course of negotiations. In a highly charged, sensitive and restrictive negotiating atmosphere, the norms of Track II diplomacy embodied in the CSR (creative, open, collaborative approaches to seeking consensus) would have enhanced the brainstorming role of ICONGO and allowed the dynamic ideational efforts of world civil society to contribute the creative and innovative concepts that position-bound States are usually reluctant or unable to advance. The coherence and cohesion of the ICONGO position would have greatly increased the time and degree of attention States could devote to listening to the ICONGO arguments. The climate change problem is global; ICONGO as a global institution would be uniquely set up among all IGOs and other State or non-State coalitions to offer a voice balanced across the myriad of countries and cultures influenced by climate change. ICONGO's pyramidal structure would mean that any new information gleaned from the proceedings at which ICONGO delegates were present could be rapidly disseminated in common form through to grassroots organizations and the global community. This would generate the timely publicity on a sufficient scale needed to influence government positions.

In summary, the benefits of CSR and ICONGO to both the UNFCCC and UNCCD negotiations would have been to increase the consistency and definition of NGO views; prevent co-optation of NGOs by States or mitigate against undue pressure exerted by States on the NGO community; enhance the legitimacy and accountability of NGO positions in the eyes of States; allow rapid and coherent dissemination of COP proceedings to grassroots communities and the global public; encourage the NGO community to bridge the serious and enduring divide between North and South; enhance the creativity and informality of crucial stages in negotiations; enhance the democratic legitimacy of the negotiations in the eyes of States and the global public.

Limitations of the new institutional proposals

It is useful at this point to highlight what ICONGO and CSR would *not* have been able to achieve in these negotiations, and by extension, the where the general limits of these institutions can be drawn in terms of impact and influence at IENs. ICONGO and CSR should not have to bear unrealistic expectations; the failure of the institutions to meet these expectations would only detract from the more realistic work outlined in this proposal.

- Neither institution would have provided any absolute assurance that NGOs would have had any influence at all on the way negotiations were conducted, or on the

content of the final treaty text. The unique dynamics of each new international environmental negotiation means that, whilst ICONGO and CSR would endow the NGO and State community with an exceptional degree of preparedness and knowledge of the best tools to use to bring all voices to bear on negotiation, they would not be able to anticipate the implications of a particularly volatile mix of actors or an especially controversial issue.

- If the range of views of ICONGO members on the UNCCD or UNFCCC could not be reconciled using the mechanisms for collaborative consensus-based decision-making within the institution, ICONGO would be forced to represent equally a range of viewpoints, or even withdraw from the negotiations altogether. This problem could potentially arise in any negotiating fora involving ICONGO, but with time it is likely that the risk of serious divisions would diminish.
- The provision within CSR for a veto on NGO participation could potentially have been invoked at the Kyoto protocol negotiations, where the participation of NGOs was not welcome to begin with. However, the likelihood of the necessary majority of COP members taking such drastic action in the face of the extremely vociferous and experienced NGO climate change “bloc” would be very small; the severity of this option limits the opportunities for its use. As discussed earlier, its power is more symbolic as an assurance to State actors that they retain ultimate control of the proceedings.
- One of the principal functions of NGOs in many negotiations is disseminating information either unprovoked or fulfilling a consultative capacity for official delegations (Susskind, 1994; Willetts, 2000); ICONGO would enhance that function by widening the pool of expertise and experience, and formalizing the channels through which this could be brought to the notice of States in treaty negotiations. However, according to Corell and Betsill the informational function of NGOs at Kyoto was diminished by the fact that they had no monopoly on the source or dissemination of the information: this was due to the work of the IPCC and the presence of numerous business interests with equally good understanding of and access to scientific data and interpretations (Corell and Betsill, 2001). This lack of an “informational monopoly” extends to other aspects of ICONGO’s work. NGOs working outside of ICONGO would not have the degree of access to negotiations that ICONGO delegations would enjoy, but they would still potentially be able to get involved with other areas of interest to the institution – such as implementation and monitoring. This would result in functional redundancy within the NGO community either in perception or in reality, and this would be exceptionally damaging to an organization claiming to bring unique benefits to an IEN. ICONGO could overcome this to a certain extent by only claiming to act as a facilitator for NGO functions, but the risk cannot be eliminated entirely.

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- The failure of the informational function of NGOs at Kyoto illustrates another potential pitfall. ICONGO would work to enhance many of the traditional functions of NGOs. But in certain types of treaties where these traditional functions were less important to begin with, ICONGO would not be as effective.

Conclusions

This paper has taken a strongly prescriptive approach to the challenge of enhancing NGO participation in international environmental negotiations (IENs). It has described how the current status quo of NGO-State interaction is defunct: official UN structures for engaging NGOs in UN-sponsored international environmental negotiations bear little relation to the ad hoc mechanisms employed at many recent negotiating fora, only engage a very narrow slice of civil society and consequently garner little respect within both the State and non-State communities; NGOs frequently fail to either understand or take full advantage of the opportunities open to them through existing ad hoc and poorly defined participatory arrangements; as NGO numbers and sophistication increase, they will place more and more pressure on the existing inefficient mechanisms of engagement; as the number, diversity and complexity of international environmental treaties mounts, existing and officially sanctioned negotiating processes and actors will have less and less capacity to devote to each effort, with consequent reductions in treaty-making efficiency and treaty effectiveness; the current system forces many NGOs into direct adversarial action with even less productive outcomes than negotiated, cooperative processes; significant inequalities exist within the NGO community with regard to IEN access, due to the high costs of carrying out advocacy campaigns and maintaining a presence at IENs; there are also a range of general issues to do with NGO governance, legitimacy, accountability, and behaviour on the international stage that have long needed addressing. The institutional proposals laid out in this paper would directly address the issue of engaging NGOs for effectively with IENs, but would also have indirect effects on the operations of NGOs outside of IENs.

Even hard-bitten international diplomats appear to acknowledge that NGOs have significant capacity to contribute to all stages of IENs. It appears to be in the interests of the international community, NGOs and the treaty making process to facilitate enhanced NGO engagement with the negotiating process. This paper proposes that new institutional solutions would be most effective in achieving this goal. Institutions bring a formal structure that can enhance in both appearance and substance the legitimacy and weight of NGO views in international fora; institutional behavioural norms and formal codes of conduct can contribute to NGO good governance and more sustainable project work outside of IENs; institutions can engage more effectively and efficiently with the existing framework of international relations, since these relations are already based substantially upon large transnational institutions (the UN and the Bretton-Woods institutions); institutions provide a neutral ground on which to bring conflicting groups within the NGO community together.

This paper employs two meanings of “institution”: an institution as a formal organization that is founded and populated for a particular purpose; and an institution as a set of laws,

practices or customs pertaining to a particular forum or field of international relations. The first institution proposed is the *International Council for Non-Governmental Organizations* (ICONGO): an independent international body composed of a large number of NGOs selected from global civil society, with a formal procedure for interaction and decision-making, and a clearly-defined goal. The second institution, the *Civil Society Resolution* (CSR), is a new set of principles of soft and hard international law designed to redefine more explicitly the role of NGOs in IENs and the ideal forms of interaction between State and non-State actors.

ICONGO would attempt to synthesize the views of a broad, international NGO membership base through a bicameral decision-making framework, and represent and advocate these views at IENs through the work of a single delegation. This team would possess the requisite skills and experience necessary to engage fully and authoritatively with the particular issue under debate, but be balanced in composition to ensure equitable contributions from North and South within the NGO community. ICONGO would also act as a formal global forum for identifying and addressing NGO concerns, sharing information, expertise and other resources, as well as working towards more collaborative and integrated environmental and developmental projects. Membership to ICONGO would be on condition of adherence to codes of conduct developed to address issues of NGO accountability, legitimacy and behaviour in international negotiating fora. Candidates for ICONGO membership would be initially selected by a UN-convened international NGO panel, and thereafter nominated and selected by vote in plenary sessions. Membership would be structured through sector and geographic quotas, to ensure balance across the North and South. Financial mechanisms would also exist to enable less well-resourced grassroots organizations to attend. Funding for the organization would be drawn mainly from UN sources. Limited means-tested contributions from NGOs would be instituted to supplement funding when necessary.

The CSR would articulate a new paradigm of NGO-State relations, taking its inspiration from the pre-existing Track II diplomatic protocols for conflict resolution (concerned with non-State/State actor interaction). It would officially sanction the creation of a new international NGO organization (ICONGO); offer an innovative and flexible new definition of NGO roles in the context of IENs; and codify the enhanced participatory rights ICONGO delegations would be entitled to in international fora. Whilst ICONGO delegations would not be entitled to vote, they would otherwise be entitled to full participation and negotiation rights, involving access to all plenary and closed-door sessions and an equal right with State actors to make presentations to any working group within the IEN process. The same rights would not be granted to individual NGOs regardless of ICONGO membership, but the CSR's general principles of informal, open, creative and collaborative State-NGO interaction would still apply as recommendations of good negotiating conduct for all parties. The CSR would establish an ICONGO office jointly out of UNEP and UNDESA, whilst dismantling the existing ECOSOC accreditation process. The CSR would require that no NGO, regardless of accreditation, could be barred from the plenary sessions of UN-sponsored IENs (within reasonable logistical bounds), but stress that the most effective and influential channel of influence would be through ICONGO. ICONGO executive members would not be able to attend an

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IEN without official exemption, but there would be a strict limit to the number of exemptions granted an NGO before it would lose its ICONGO membership. The CSR would make provisions for funding of the organization, channeled through these UN organs. The CSR would map out the benefits of the two new institutions for all parties and to the environmental treaty making process itself; it would also lay out the concessions and sacrifices required on the part of State and non-State actors; finally, it would honestly and clearly acknowledge the potential failings and limitations of both institutions.

It has been argued in this paper that a dual institutional approach would address and remedy or overcome practical flaws within the general activities and structure of the NGO community; flaws in the current NGO modus operandi for engagement with IENs; obstacles presented by structural aspects of international relations; and obstacles presented by State actors and governmental institutions. The approach would represent a major innovation to the current form of NGO-State interactions, but would accordingly require significant commitments from State and non-State actors to be effective and achievable. Overcoming the objections of each community to the proposed innovations would be a significant challenge to the implementation of the CSR and ICONGO. This would be best approached through initial inclusive and collaborative evaluation of the proposal, and wide dissemination of its outline and substance. Implementation should also be carried out incrementally with periodic re-evaluations of the success and utility of each step. The overarching goal of these institutions would be to improve the efficiency of the IEN process, and the effectiveness of the IEN outcome: environmental treaties that are more effective will make real practical progress towards resolving some of the critical environmental challenges facing the global community.

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End Notes

- ⁱ Non-governmental organizations have been defined by the World Bank as “Private organizations that pursue activities to relieve suffering, promote the interests of the poor, protect the environment, provide basic services, or undertake community services” (World Bank, 1995: 7) and by Vakil as “A self-governing, private, not-for-profit organization geared toward improving the quality of life for disadvantaged people.” (Vakil, 1997: 2060).
- ⁱⁱ In line with the prescriptive quality of this exercise, this paper will not attempt to provide any detailed analysis of the specific advantages of NGO participation in international environmental negotiation, except where this is useful to justify a particular facet of the proposed new institutions. This paper bases its discussion on the assumption that international environmental treaties are the best available mechanism currently available for addressing environmental problems that have global or transboundary dynamics.
- ⁱⁱⁱ NGDOs – Non-governmental Development Organizations
- ^{iv} ‘Effectiveness’ is defined as “negotiations resulting in agreements that substantially reduce or eliminate the problem(s) at hand”; Albin, 1999
- ^v Intergovernmental Organization.
- ^{vi} ICRC – International Committee of the Red Cross; IFRC/RCS – International Federation of Red Cross/Red Crescent Societies.
- ^{vii} United Nations Conference on Environment and Development
- ^{viii} World Summit on Sustainable Development
- ^{ix} UN Framework Convention on Climate Change
- ^x see later definition under *Membership*
- ^{xi} “But who will watch the watchmen?” (Juvenal, Satires VI)
- ^{xii} Foundation for International Law and Development, UK-based NGO.
- ^{xiii} Association of Small Island States.