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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 lead 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 allow
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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 policies, 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 (Willett, 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 a 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
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 expected 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 international fora decide to expand ICONGO role. Above all, the new protocol is designed to make it easier 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 those 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 participation 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 cozy 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 (Waltr, 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). Lipton 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” (Lipton, 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 varied 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
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’etre 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 inevitability 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 theCSR 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 transactional), 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 NGOs concerned 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: crouch 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 address 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 some actors to organize 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 the 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). Princhen 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 (Princhen 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 a 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 though 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 quas-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 a 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

Hauffer points out that “a weak empirical base hinders extensive theoretical and conceptual development concerning the role of NGOs and transnational coalitions” (Hauffer, 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 brief 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 emphasizes 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 stance, 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 Hauffer, 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. Corel 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 unprompted or fulfilling a consultative capacity for official delegations (Sasskind, 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 is 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, and 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 institution 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

1 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).

2 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 negotiations, 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.

3 NGOs – Non-governmental Development Organizations

4 ‘Effectiveness’ is defined as “negotiations resulting in agreements that substantially reduce or eliminate the problem(s) at hand”; Albin, 1999

5 Intergovernmental Organization.

6 ICRC – International Committee of the Red Cross; IFRC/RCS – International Federation of Red Cross/Red Crescent Societies.

7 Inter-Governmental Organization on Sustainable Development

8 UN Framework Convention on Climate Change

9 see later definition of Membership

10 “But who will watch the watchmen?” (Juvenal, Satires VI)

11 Foundation for International Law and Development, UK-based NGO.

12 Association of Small Island States.