

The London School of Economics and Political Science

**THE ROLE OF CIVIL SOCIETY IN THE DEMOCRATISATION OF
GLOBAL GOVERNANCE INSTITUTIONS:**

From 'Soft Power' to Collective Decision-Making?

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Declaration

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Abstract

This dissertation analyses the problem of how to create more just and democratic global governing institutions, exploring the approach of a more formal system of collective decision-making by the three main actors in global society: governments, civil society and the business sector. The thesis seeks to make a contribution by presenting for discussion an addition to the system of international governance that is morally justified and potentially practicable, referred to as 'Collective Management'. The thesis focuses on the role of civil society, analysing arguments for and against a role for civil society that goes beyond 'soft power' to inclusion as voting members in inter-governmental decision-making structures in the United Nations (UN) system, the Bretton Woods institutions, the World Trade Organisation (WTO) and other institutions.

The thesis defends the argument that inclusion of elected representatives of non-governmental organisations (NGOs) in tripartite decision-making structures could potentially create a more democratic global governing system. This conclusion is supported by a specially-commissioned survey of leading figures in NGOs and IGO decision-making structures. The argument is developed in a case study of the WTO.

The thesis explains and adopts three philosophical foundations in support of the argument. The first is liberal individualism; the thesis argues that there are strong motivations for free individuals to seek fair terms of cooperation within the necessary constraints of being members of a global society. Drawing on the works of David Hume, John Rawls and Ned McClennen, it elaborates significant self-interested and moral motives that prompt individuals to seek cooperation on fair terms if they expect others to do so. Secondly, it supports a theory of global justice, rejecting the limits of Rawls's view of international justice based on what he calls 'peoples' rather than persons. Thirdly, the thesis adopts and applies David Held's eight cosmopolitan principles to support the concept and specific structures of 'Collective Management'.

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CHAPTER 1: INTRODUCTION

1.1 Focus of the thesis

This dissertation analyses the problems involved in creating global governing institutions that are more just and more democratic. It seeks to make a contribution by presenting for discussion a more formal system of collective decision-making by the three main actors in global society: governments, civil society and the business sector. The thesis develops the outlines of an addition to the system of international governance that is morally justified and potentially practicable, which I refer to as ‘Collective Management’. The thesis explores the potential of a tripartite system that includes civil society and the business sector formally as voting members in inter-governmental decision-making structures in the United Nations (UN) system, the Bretton Woods institutions, the World Trade Organisation (WTO) and other global governing institutions. It is consistent with the trend in the UN and the other inter-governmental organisations (IGOs) to develop new partnerships among the three main sectors of global society.

This trend over the past decade toward collective decision-making approaches has been particularly evident in the development of multi-stakeholder partnerships in the UN system.¹ I argue that this development reflects the failure of governments and existing IGOs to deal with the new challenges of managing global issues which are deeply interconnected and impact a range of stakeholders across multiple borders. These failures and the need for an inclusive democratic approach have been clearly identified by Kofi

¹ Fernando Henrique Cardoso and the High Level Panel on UN-Civil Society, ‘Civil Society and Global Governance’ (Contextual Paper prepared by the Panel’s Chairman, June 2005), <http://www.un-ngls.org/ecosoc%20HL%20Panel%20-%20Contextual%20paper%20by%20Mr%20Cardoso%20Chairman.doc>

Annan, who stated: ‘The United Nations once dealt only with Governments. By now we know that peace and prosperity cannot be achieved without partnerships involving Governments, international organisations, the business community and civil society. In today’s world, we depend on each other’.² It is for this reason, I shall argue, that today we must strive to adhere to the opening line of the UN Charter, ‘We the peoples’. Though the current UN Charter does begin with this phrase, I shall point out that it would more accurately read ‘We the States...’³

This new environment is characterised by fundamental changes in the international system, heightening the demand for democratic reform of global governing structures. The first change is the collapse of the Soviet Union and the Eastern bloc countries, leading to questions regarding the appropriateness of a UN shaped by post-World-War practicalities and sensibilities. The second is the emergence of the United States as the single dominant world military and economic power, and the argument that there is a growing influence of ‘Westernisation’ and ‘Americanisation’ embodied in the political and economic aspects of global governing institutions. Third, there are the universal globalisation processes in the world today that lead to a huge convergence of economies, cultures and civilizations. Globalisation calls the existing state-centric conception of world politics into question: as

² Kofi Annan’s address to the World Economic Forum, Davos, Switzerland, January 1999, cited by the BBC World Service, ‘What is Civil Society?’ *BBC World Service*, http://www.bbc.co.uk/worldservice/people/highlights/010705_civil.shtml

³ The founding charter of the United Nations opens with the phrase ‘We the peoples of the United Nations’, intending to illustrate the commitment of the UN to all the world’s citizens and individuals. However, it has been argued that the preamble may as well be changed to ‘We the states’, given how the approach of the UN is lacking attention to individuals, and it has become a club of states. It is true that civil society—representing the world’s citizens in a complementary and at times better way than either business or government—is becoming increasingly integrated and included in UN initiatives. But the formal arrangements for civil society participation are still insufficient, and civil society still does not have a vote. This thesis advocates an approach in which the United Nations preamble can proclaim ‘We the peoples’ in a true and meaningful way.

Anthony McGrew says, 'Taking globalisation seriously therefore requires a conceptual shift in the way we think about world politics.'⁴ There are new challenges, enemies, and threats that the current system of governance is unable to cope with. The new dilemmas that we are experiencing today require a new approach.

In this thesis I shall be primarily concerned with what I argue is the central failing of the current system of global governance in the new global environment: that it is highly undemocratic. IGOs have developed partly in response to collective security needs and partly as a result of the growing value placed on democracy, legitimacy, justice, self-determination, and other humanitarian concerns prominent since the end of the First World War. The post-War conferences oversaw the establishment of many IGOs, and set the precedent for new ones to be established later, with many international legal institutions now taking over responsibilities that were once firmly anchored within the national sphere. However, one of the gravest problems with the international system is the imbalance of power within IGOs. As they were founded and dominated by the Great Powers, there was an imbalance of power within these institutions at the time of their inception and, as membership of these IGOs has grown, this imbalance has remained, if not increased.

Representatives of civil society have argued that global governance institutions fail to represent the interests of the millions of people who are affected by their decisions but who have no access to the decision-making of these institutions.⁵ Citizens in undemocratic

⁴ Anthony McGrew, cited by Jan Aart Scholte, 'The Globalisation of World Politics', in John Baylis and Steve Smith, eds., *The Globalisation of World Politics: An Introduction to International Relations*, (Oxford University Press: Oxford, 2004), p. 29.

⁵ Kumi Naidoo, Secretary General of CIVICUS, World Alliance for Citizen Participation, argues: 'Supranational governance structures wield great power over the lives of ordinary people around the

states emphasise that they are not represented in the decision-making processes of the IGOs, even if their governments are represented in some capacity, because their governments are authoritarian, abusive and unrepresentative of their peoples' real interests.⁶ Others emphasise that even democratic states fail to consult adequately with their own citizens regarding their positions in international negotiations, and that this is the primary reason for the 'democracy deficit'.⁷

The arguments in this thesis draw on the results of a recent specially-commissioned survey of senior officials from IGOs and representatives of leading non-governmental organisations (NGOs) who have deep personal experience in IGO-NGO collaboration. (See Appendix 1 for details.) A statistically significant quantitative survey of over one hundred

world and should, in some way, meaningfully involve those people as participants and be accountable to them. Decisions about trade rules, intellectual property rights, macro-economic restructuring policies, privatisation of vital services and debt relief are too often made behind closed doors in ways that are largely perceived to be, and may often be in truth, undemocratic.' See Kumi Naidoo, 'What does democracy really mean today?' *CIVICUS* (4 April 2005), <http://www.civicus.org/new/content/deskofthesecretarygeneral11.htm>. Michael Zürn argues that: 'In *normative terms*, there is broad agreement that currently the functioning of international institutions such as the WTO or the UN does not meet democratic standards. Acknowledged democratic deficits include the lack of identifiable decision-makers who are directly accountable for wrong decisions made at the international level, as well as the inscrutability of international decision-making processes and thus the advantage the executive decision-makers have over others in terms of information. Furthermore, particularly the prime actors in international politics, such as multinational business and the superpowers, are at best only accountable to a fraction of the people affected by their activities.' Michael Zürn, 'Global Governance and Legitimacy Problems' in *Global Governance and Public Accountability*, eds. David Held and Mathias Koenig-Archibugi (Oxford: Blackwell, 2005) p. 136.

⁶ Francis Fukuyama writes, 'A major problem faced by the United Nations is the question of legitimacy. This problem arises from the fact that its membership is based on formal sovereignty rather than a substantive definition of justice—in particular, it makes no practical demands on its members to be democratic, or to respect the human rights of its citizens. This accommodation of the reality of world politics as it existed at the time of the organisation's founding has in many ways tainted the subsequent activities of that body, which from the beginning has been populated by authoritarian, abusive or unrepresentative states'. Francis Fukuyama, *America at the Crossroads: Democracy, Power, and the Neoconservative Legacy* (New Haven: Yale University Press, 2006), p. 158.

⁷ Peter Niggli and Andre Rothenbuhler, 'Do the NGOs have a Problem of Legitimacy?' (paper for the Global Policy Coalition, New York, 2003), <http://www.globalpolicy.org/ngos/credib/2003/1203problem.htm>. They write, '...the outcomes of [intergovernmental negotiations]...take precedence over national law without national public opinion interest groups and parliaments being able to exercise their substantive right of consultation and decision-

senior IGO and NGO respondents was conducted by Monitor Group, supplemented by over fifty qualitative interviews with leading figures in the NGO-IGO world. The survey report also included selected findings from additional secondary data sources, such as conferences and reports on the challenges and opportunities in the sphere of global governance. The NGO Survey shows that 91% of respondents believe there is a ‘democratic deficit’ in inter-governmental institutions, and 88% believe that NGO participation in IGOs can lead to better IGO decision-making, citing as key reasons that they can democratise IGOs by expressing the views of marginal and vulnerable populations and by asking difficult questions.⁸ The NGO Survey further shows that the majority of respondents believe that the ‘rules of the game’ were set by powerful developed countries and, further, that multinationals of the developed countries of the North are able to use their vast resources to lobby for their interests in decision-making, to the detriment of the developing countries.⁹

This sense among civil-society representatives of alienation from the UN and many associated IGOs has led to the increasing demand for a re-evaluation of current global governing institutions, and for ways to democratise these institutions through increased participation by civil society in the governing structures of IGOs. From the point of view of both the peoples and the states of the South, this sense of alienation is arguably a major reason for their violating the norms and rules of many of these institutions. I call the issue

making. The fact that governments are elected domestically is not enough to legitimise their extensive international legislative activities. That is the democracy deficit in international politics’. p. 3.

⁸ NGO Survey, The Monitor Group, June 2006. The NGO Survey and interviews were conducted by Monitor Group, between February and June 2006. A description of the methodology is included in Appendix 1.

⁹ NGO Survey, The Monitor Group, June 2006. It must be emphasised that that the North-South distinction or the North-South divide as it is sometimes called, is not a geographical, ethnic or cultural distinction but one of economic and industrial development. It has become the term of preference, particularly in the globalisation literature, for the peoples and states of the developed world (North) in contrast with those of the developing and under-developed world (South).

the ‘double aspect’ problem in which the citizens of undemocratic countries in the South see their own governments as illegitimate and unrepresentative of their real interests, and the states themselves see the IGOs as illegitimate, perceiving them to be dominated by Northern, developed countries who established the ‘rules of the game’ without the South’s participation. In this thesis I also suggest there is a ‘double voice’ problem in which multinational corporations exert undue influence by lobbying both their national governments and directly at the international level.

In examining reform approaches, this thesis focuses on an analysis and critique of the prospects for civil society to evolve from its current expert and advisory role in global governing institutions to a more formal role in new collective decision-making structures through a system of Collective Management. Some argue that civil society should only wield ‘soft power’, and that it should not move toward a formal collective decision-making role. This approach can be summarised in the statement by Fernando Cardoso, Chairman of the UN Panel on Civil Society and Global Governance: ‘The power of civil society is a soft one. It is their capacity to argue, to propose, to experiment, to denounce, to be exemplary. It is not the power to decide.’¹⁰

Those in the ‘soft power’ school argue that civil society still has an important role to play in democratising IGOs, but it should not have a formal decision-making role. Joseph Nye notes that increased participation by civil society can help to correct ‘globalisation’s democracy deficit’. But, he stresses, NGOs are currently ‘self-selected, not democratically

¹⁰ Fernando Henrique Cardoso and the High Level Panel on UN-Civil Society, ‘Civil Society and Global Governance’ (Contextual Paper prepared by the Panel’s Chairman, June 2005), <http://www.un-ngls.org/ecosoc%20HL%20Panel%20-%20Contextual%20paper%20by%20Mr%20Cardoso%20Chairman.doc>

elected' and therefore they 'deserve a voice but not a vote'.¹¹ Nye argues that a stronger sense of community is required for a global democratic system to work. He writes: 'In its absence, the extension of domestic voting procedures to the global level makes little practical or normative sense'. At the same time, Nye stresses the need to move ahead with experiments to increase the democratic accountability of global institutions, including experiments involving direct voting in certain cases, associating assemblies of parliamentarians with some IGOs, and other procedures.

There is currently broad support for the proposed reform to create a 'Civil Society Forum', which would be composed of accredited non-governmental organisations, trade unions, and business organisations, and would be an initiative parallel to the UN General Assembly.¹² Other analysts have elaborated reform scenarios that call for a 'Civil Chamber', which would have selected NGOs and private sector businesses in a second UN chamber,¹³ and a series of bodies of NGOs and business sector representatives formed into a World Financial Forum attached to the WTO, or another attached to the International Monetary Fund (IMF).¹⁴

¹¹ Joseph Nye, 'Globalisation's Democratic Deficit: How to Make International Institutions More Accountable', *Foreign Affairs* 80, no. 4 (Jul/Aug 2001).

¹² The Third Survey of the 2020 Global Stakeholder Panel asked over 1,000 global stakeholders about priorities for UN reform. 66% rated the creation of a Civil Society Forum as a priority. In a more recent survey of leading figures, 81% supported the concept of a Civil Society Forum (Monitor NGO Survey, June 2006).

¹³ See Simon Zadek, 'Civil Partnerships, Governance and the UN' (Background Paper for the Secretary-General's Panel of Eminent Person's on Civil Society and UN Relationships, in 'Multi-Stakeholder Partnerships and UN-Civil Society Relationships: Collection of Materials from the Multi-Stakeholder Workshop on Partnerships and UN-Civil Society Relationships,' New York, February 2004), http://www.un.org/reform/civilsociety/pdfs/pocantico_booklet.pdf, pp. 10–12.

¹⁴ Michael Edwards and Simon Zadek, 'Governing the Provision of Global Public Goods: The Role and Legitimacy of Non-State Actors', in *Providing Global Public Goods: Managing Globalisation*, eds. Inge Kaul, Pedro Conceicao, Katell Le Goulven and Ronald U. Mendoza (New York: Oxford University Press, 2003) p. 215.

The primary focus of this thesis is an analysis of the arguments for an enhanced role for civil society in a potential tripartite Collective Management system that involves government representation, civil society and the business sector, and under which all three groups are assigned formal voting rights. Collective Management envisages for business and civil society a role beyond the advisory roles that are currently available to them through existing soft power initiatives with IGOs. In this thesis, I present for discussion the Collective Management approach in which the three sectors of society—government, business and civil society—are allocated equal and formal decision-making rights through voting, and that these three sectors work together in a multi-level system of governance at the national, regional and global levels. The three sectors of the tripartite, multi-level system would then share responsibility for three important activities of global governance: 1) setting the criteria of global governance, i.e. the codes and standards of conduct, 2) implementing these standards, and 3) supervising this implementation, which includes the evolution of enforcement mechanisms. This results in what I term the ‘3x3=3’ system of international governance, as summarised in the figure below:

Figure 1.1 The ‘3x3=3’ system of international governance



A 2003 paper by Liesbet Hooghe and Gary Marks, studying recent work on multi-level governance systems, notes that the jurisdictional design features of multi-level governance systems mean they can be categorised as either ‘Type I’ or ‘Type II’ systems of governance.¹⁵ As I develop in detail in Chapter Five, ‘Type I’ systems tend to be grounded in the Westphalian notion of territoriality, and are characterised by a fixed number of non-intersecting governance jurisdictions that are responsible for all governance issues within their geographical boundaries. By contrast, ‘Type II’ systems are more responsive to the many varied needs of individual citizens: individuals may be members of as many task-specific jurisdictions as they wish to be, and that there is no limit to the number of these jurisdictions. ‘Type II’ systems are based on flexible designs that are able to adapt and respond to individuals’ needs, regardless of territorial boundaries. In this thesis I argue that Collective Management represents one form of a Type II system, further supported by principles of cosmopolitanism, and as such it would represent a system of international

¹⁵ Liesbet Hooghe and Gary Marks, ‘Unraveling the Central State, But How? Types of Multi-Level Governance’, *Vienna Institute for Advanced Studies Political Science Series 87* (March 2003), http://www.ihs.ac.at/publications/pol/pw_87.pdf

governance that has the potential to offer more just and more democratic governance that takes into account the needs of individuals.

For the purposes of this thesis I shall concentrate almost entirely on the role of civil society and the arguments for this role, and shall not endeavour to do more than identify the key arguments for considering a formal role for the business sector in global governing institutions.¹⁶

The core aim of the thesis, then, is to explore the potential for the concept of Collective Management to develop a more democratic, morally justified system of global governance that recognises and protects the rights of individuals in both the North and South, and is particularly focused on empowering civil society organisations (CSOs) to give a stronger voice to those currently under-represented in the existing system.

To provide a context for my analysis, in Chapter Two, I review the increasing role of NGOs in global governance and the potential of their greater involvement to ‘correct’ the problem of the democracy deficit. I analyse two schools of thought on the role of civil society—those who support the view that NGOs should only have ‘soft power’ and those who believe that NGOs could play a more formal role even to the point of election to formal

¹⁶ The formal involvement of the business sector in IGOs requires a major re-positioning of the role of business in the 21st century. This approach agrees with a number of authors who support a ‘stakeholder’ theory of business (as opposed to a shareholder theory) from a cosmopolitan perspective. According to the cosmopolitan stakeholder theory of business, modern transnational corporations have massive influence on global politics—on distribution of wealth, on issues of democracy, justice and freedom. Therefore all people affected by business actions globally are ‘stakeholders’ and have a right to have their interests respected—not just the shareholders of the company. The company therefore has a direct responsibility to address the interests of all affected stakeholders—not simply to comply with existing government regulations, which are incomplete at the global level. This approach suggests that private firms have a responsibility to be involved in global governance formally, because they are already in fact involved in global governance but outside existing formal governmental structures.

positions in IGO governing structures. I present arguments that greater involvement of NGOs that meet accepted standards of accountability and transparency could significantly help to democratise the formal governing structures of inter-governmental institutions. I also address the counter-arguments that inclusion of civil society is a misguided approach or that it will *not* correct the democracy deficit. For example, some argue that we should not try to make IGOs ‘democratic’ because they are bargaining mechanisms for states to advance their interests. Others argue that NGOs should remain outside formal government structures because they are unrepresentative and unaccountable, or that if they do participate in formal government decision-making they will cease to perform the function of civil society as outside critics, defenders of the vulnerable and voiceless, and will become part of an unresponsive government. Some argue that it is better to leave civil society organisations to compete in the free market of ideas outside of government, or that we should seek to pursue the more recent approach of creating a ‘fourth sector’ of hybrid non-profit/private organisations to advance social goals.

In Chapter Three I consider how a Collective Management system might address key objections through practical mechanisms to include transparent and accountable civil society organisations, thus potentially correcting major elements of the democracy deficit. The concrete mechanisms outlined in Chapter Three are designed to create more democratic and more just governing structures to protect individuals globally in ways that the current system does not, and provide inclusive collective decision-making structures that currently do not exist.

In Chapters Four and Five, I develop the philosophical and political dimensions of three key pillars that support the concept of Collective Management: liberal individualism, a

theory of global justice and a modern theory of cosmopolitanism. In Chapter Four, I explain and adopt the first pillar of liberal individualism that gives the moral philosophical underpinning for Collective Management. I adopt the definition of liberal individualism as a political ideal within which liberty is an inalienable right of individuals and a just government must protect individual liberties in its constitution and laws. It is based on the philosophical doctrine that individuals are prior to the collectives they constitute and are entitled to live and act by their own judgment, and so their equal liberty should be restricted only when necessary to secure the equal liberty of all. This view is commonly associated with Libertarianism and Rawlsian-type liberalism.¹⁷ I argue that there are strong motivations for free individuals to seek fair terms of cooperation within the necessary constraints of being members of a larger society. Drawing on the works of David Hume, John Rawls and Ned McClennen, I show that there are significant self-interested and moral motives that prompt individuals to seek cooperation on fair terms if others are also willing to do so. This provides a philosophical basis for my arguments that the Collective Management concept is a global idealist reform system based on instrumental morality and the coexistence of individuals and states. I further address the objections raised from communitarian points of view and emphasise the importance of designing global governance to minimise the risks of totalitarian and authoritarian structures.

I then present in Chapter Five the other two pillars supporting Collective Management: a liberal theory of justice and a theory of cosmopolitanism. I first extend a liberal theory of justice to the global level. I aim to provide evidence for the view that Collective

¹⁷ For a critical analysis of the term ‘liberal individualism’ see Colin Bird, *The Myth of Liberal Individualism* (Cambridge, UK: Cambridge University Press, 1999).

Management may offer an outline of fair, mutually beneficial arrangements on a global level. To do so, I argue for principles of global equality of opportunity and democratic participation. I reject the limits of Rawls's view of international justice based on what he calls 'peoples' rather than persons, and support the alternate view that extends Rawls's position in *A Theory of Justice* to the global context. This theory of global justice provides support for structures based on 'persons' rather than 'peoples', and thus gives the help needed to resolve the 'double aspect' problem that undermines the legitimacy of current global governing institutions. In a system of Collective Management, the just treatment of individual citizens is not an internal matter only for states; the interests of individuals in despotic, illiberal states is an issue to be addressed by the larger global community.

I explain and adopt the third pillar underlying the concept of Collective Management: the theory of cosmopolitanism whose core idea is that 'all human beings, regardless of their political affiliation, do (or at least can) belong to a single community, and that this community should be cultivated'.¹⁸ Cosmopolitanism is a theory that redraws the boundaries of communities right up to the global level, not necessarily including the abolishment of lower-level communities. Brian Barry, a distinguished contemporary moral and political philosopher, notes the Stoics' description of themselves as cosmopolitans: 'human beings living in a world of human beings and only incidentally members of

¹⁸ 'Cosmopolitanism', *Stanford Encyclopedia of Philosophy*, <http://plato.stanford.edu/entries/cosmopolitanism/>.

polities'.¹⁹ To develop the modern cosmopolitan basis of Collective Management I draw heavily on the work of David Held, who has elaborated on the multidimensional nature of cosmopolitanism in the modern interconnected world. He presents eight principles as a philosophical basis of modern-day cosmopolitanism. The first three principles establish a moral philosophy: each individual is a subject of equal moral concern, each person is capable of acting autonomously with respect to the range of choices before him or her, and each person is responsible and accountable for his or her actions. Held's individual-rights-based view is consistent with the liberal individualistic view I defend in Chapter Four that the human being is an autonomous and responsible agent capable of reason and choice that must be respected. Held's further principles involve the way political decisions are to be legitimately made. He argues that it requires the consent of those affected by the decision, and that the process of decision-making about public matters should be collective decision-making through voting procedures. The decision-making should include all those affected, and the level of decision-making should be based on subsidiarity. I adopt and apply these cosmopolitan principles to support the concept and specific structures of Collective Management.

The thesis presents these three pillars from multiple approaches—from the disciplines of philosophy, politics and international relations/global governance studies, using the best work done in each of the three areas. I believe this interdisciplinary approach is a major

¹⁹ Brian Barry, 'Statism and Nationalism: A Cosmopolitanism Critique', in *Global Justice*, eds. Ian Shapiro & Lea Brilmayer (New York: New York University Press, 1999), p. 35. Brian Barry is Lieber Professor Emeritus of Political Philosophy at Columbia University and Professor Emeritus of Political Science at the London School of Economics. He is widely credited with having fused analytic philosophy and political science. Barry also fused political theory and social choice theory. He has been a persistent and astute critic of public choice theory. Barry was awarded the Johan Skytte Prize in Political Science in 2001.

strength. As noted recently by Christian Barry and Thomas Pogge, relatively little scholarly work has been done to link the various philosophical conceptions of global justice to the specific procedures and structures needed to reform global institutions. They argue that without this link between theory and practice the philosophical discussions can remain abstract and ‘...competing principles can remain obscure if they cannot be shown to have different implications for concrete policy issues’.²⁰ They specifically emphasise that theorists of global justice have ‘...generally failed to illuminate difficult and pressing questions concerning specific responsibilities with respect to the design and conduct of such existing organisations as the World Bank, the International Monetary Fund, and the World Trade Organisation...’.²¹ This thesis seeks to help close the gap between theory and practice by making an explicit link between the three philosophical pillars supporting Collective Management—liberal individualism, a theory of global justice and cosmopolitanism—and the concrete policies regarding the role of NGOs in global governance in specific institutions, including an illustration of the IMF and a detailed case study of the WTO.

So my approach in this thesis is not only to provide a justification for a more democratic and just global governance system, but to show that it is potentially practicable and feasible. I believe it is possible to defend my normative and idealist arguments for Collective Management against basic counter-arguments in political science and realist theory in international relations.

²⁰ Christian Barry and Thomas W. Pogge, ‘Introduction: Global Institutions and Responsibilities’, *Metaphilosophy* 36, nos. 1-2 (Jan 2005) p. 2.

²¹ Christian Barry and Thomas W. Pogge, ‘Introduction: Global Institutions and Responsibilities’, *Metaphilosophy* 36, nos. 1-2 (Jan 2005) p. 1.

In particular, I believe this approach can be defended against the challenges raised by Robert Dahl, who argues that IGOs are not now and not likely to become democratic. Dahl argues that IGOs are best thought of as institutions for bargaining among states and therefore we should not consider them as legitimate based on their being 'democratic.' Dahl argues that IGOs are not democratic and not likely to become so. He bases this conclusion on a number of arguments: the inevitable delegation of power away from the individual citizen (even greater on the global level than the national level); the fact that individuals are known to be interested in international affairs only when activated by a serious threat to their interests; and the international community lacks the proper global political culture and common identity (in basic agreement with John Rawls and Joseph Nye that there currently is insufficient universal sense of justice or sense of community).²²

I do not dispute Dahl's arguments that realising democracy on the international level is a task that is extremely complex, difficult and would require many years to achieve. Rather I explore the Collective Management concept as a potential answer to what Dahl himself says *would be necessary* to achieve greater democracy at the international level. Dahl writes that 'it would be necessary to create an international equivalent to national political competition by parties and individuals seeking office.'²³ The Collective Management approach seeks to achieve this international equivalent through competitive election of NGO and private sector representatives seeking office in tripartite decision-making structures.

²² Robert Dahl, 'Can International Organizations be Democratic?' in *The Global Transformations Reader*, eds, David Held and Anthony McGrew (Cambridge, UK: Polity Press, 2000) pp. 530-541.

²³ Robert Dahl, 'Can International Organizations be Democratic?' in *The Global Transformations Reader*, eds, David Held and Anthony McGrew (Cambridge, UK: Polity Press, 2000) p. 538.

Dahl notes that it would ‘take time, perhaps many generations’ to develop ‘a political culture supportive of the specific institutions.’ I concede that it would take a great deal of time to develop the prerequisite Rawlsian ‘universal sentiment of justice.’ I outline in this thesis a set of institutions which *would* be just if they *could* be implemented, and for which there are arguments to support the hope that it would give rise to the sentiments of justice required to support them in people brought up and living under these institutions. Rawls argues in this way about his own national institutions: they would be supported by everyone’s conception of their interests—including their interests in acting fairly towards others if others do so as well—*once in place*.²⁴

So my approach in this thesis is similar to Rawls in that I develop an ‘ideal theory’ that would work once in place, an ideal theory of ‘Collective Management’ institutions. But I do not merely argue that the concept would work for a society once those institutions were in place. I go further to outline a number of arguments that support the case that it is potentially *feasible* to envision an implementation scenario from the current state—one in which the most powerful states have created IGOs based on their national interests—to one with more just and democratic Collective Management institutions.

I make this case in Chapter Four by arguing that it is in the self-interest of even powerful nations to cooperate and create more just and democratic global institutions. I further argue that global institutions acquire their own dynamic once rules and institutions are in place. In his discussion of *Political Liberalism*, Rawls notes that the way in which a state develops a liberal constitution is initially as a *modus vivendi* or compromise between competing forces

²⁴ John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971) pp. 497-498. See also John Rawls,

aligned with competing views of the good life, each willing to impose their views on others should the balance of power shift.²⁵ Rawls considers how it might *evolve* into a state in which everyone accepts liberal institutions as just—not merely as a compromise.

Even though the rules of the game in the international system initially favour the interests of the more powerful nations, a view held by many international experts as the NGO Survey affirms, powerful states have real motivations to cooperate and are subject to real pressures to apply the rules fairly and to revise them in ways that will make them more fair over time. I describe in detail in Chapter Six how the WTO has procedures and practices that favour those states with powerful economies. There are those affected by the WTO's actions that do not have the resources or opportunity to have a fair say in the decision-making process. However, I also argue that disadvantaged states and NGOs are exerting real pressures to reform the WTO and its Dispute Settlement Mechanism. Similar pressures exist with regard to the issue of how to weigh the votes of states in the World Bank or IMF, as I summarise in Chapter One. Thus, powerful states are subject to long-term pressures to apply rules in a manner that is more just. Moreover, as the reach of global institutions expands, people living under them can begin to acquire a sense of all being jointly subject to certain institutions and jointly influencing each other's lives through their participation in these institutions, and so begin to acquire a 'global sense of justice'.

Thus there is a long-term change process which gives rise to new types of interests, motivations and claims that could move the system over several generations in the direction of the more just Collective Management structures analysed in this thesis. Thomas Nagel

Political Liberalism (New York: Columbia University Press, 1993) pp.390-391.

argues that the very existence of illegitimate, unjust global institutions gives rise to a pressure for change in the interests of the governed. He argues that a change from current unjust global institutions, which reflect the inequalities of bargaining power among existing states, toward more legitimate institutions is a process whereby ‘gradually, there grows a demand for consideration of the interests of the governed, and for giving them a greater voice in the exercise of power.’²⁶ Nagel writes:

I believe the most likely path toward some version of global justice is through the creation of patently unjust and illegitimate global structures of power that are tolerable to the interests of the most powerful current nation-states. Only in that way will institutions come into being that are worth taking over in the service of more democratic purposes, and only in that way will there be something concrete for the demand for legitimacy to go to work on.²⁷

So there are a number of arguments available in the literature to support the claim that the existence of illegitimate institutions gives rises to pressures that can make them more legitimate in the longer term.

Current IGOs thus create indirectly, by their very existence, pressures for democratic change; but they can also directly assist the process of change to a more democratic world, as noted by Dahl, who writes that IGOs can

...sometimes assist a non-democratic country to make the difficult transition from a highly undemocratic to a more democratic government. In addition,

²⁵ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993) pp. 158-168.

²⁶ Thomas Nagel, ‘The Problem of Global Justice,’ *Philosophy and Public Affairs* 33, No. 2 (April 2005) p. 145.

²⁷ Thomas Nagel, ‘The Problem of Global Justice,’ *Philosophy and Public Affairs* 33, No. 2 (April 2005) p. 146.

international organisations can help to expand human rights and the rule of law...these are important potential gains.²⁸

In sum, I conclude there are reasonable counter-arguments to the main sceptical positions put forth by Dahl regarding potentially feasible scenarios by which current IGOs might become more democratic in the future.

I also argue that the Collective Management approach can stand up against realist arguments in international relations literature which argue that the major powers will always create institutional power, the 'rules of the game,' to their benefit and at the expense of the weaker developing countries—as they have done since the treaties of Westphalia and Versailles, the founding of the UN in San Francisco and the Bretton Woods Conference—or that the major powers will simply disregard international institutions if it is not in their national interests to comply with them.

Realists argue that the major powers are unlikely to support any new norms or institutions that lessen the advantages they have in the current system (they are not likely to give up their 'institutional power') or that they might just ignore those institutions if it suits them to do so. It would indeed be naïve and unrealistic (irrational) to expect that the US, the only military and economic superpower, which I have term the 'New Leviathan' in the current unipolar world, would simply cede power to international institutions in order to create greater international democracy and justice. It is unrealistic to expect the US or Russia to just give up its veto in the UN Security Council. Stephen Krasner provides an analysis that 'Power is asymmetrical. No rule or set of rules can cover all circumstances. Logics of

²⁸ Robert Dahl, 'Can International Organizations be Democratic?' in *The Global Transformations Reader*, eds, David

consequences can be compelling. Organised hypocrisy is the norm.’²⁹ Yet, at the same time, Krasner notes that legitimacy derives from conforming to accepted norms: ‘Certain kinds of actions are obligatory. Legitimacy derives from conformity with moral precepts. Conformity arises out of a sense of obligation to adhere to the norms of the community. Individuals internalise conceptions of self-interest that are generated by institutional structures. Institutional arrangements will persist if their norms are successfully inculcated.’³⁰ Thus, though power is asymmetrical, there are community norms, internalised by individuals, that may push even the most powerful states to take into account the interest of the community of states in a more democratic and just arrangement.

The decade of the 1990s provided significant evidence that the major powers would support stronger international institutions and norms. But the change in the US administration showed that this trend could be stopped by a change in leadership in the world’s strongest power and a new policy to ignore many international institutions and norms. As G. John Ikenberry notes:

the decade of the 1990s looks like a ‘liberal moment’ caught between two realist epochs. The Cold War ended, democracy and markets flourished around the world, globalisation was enshrined as a progressive historical force, and ideology, nationalism and war were at a low ebb. NAFTA, APEC, and the WTO signalled a strengthening of the rules and institutions of the world economy. NATO was expanded and the US-Japan alliance was renewed. Russia became a quasi-member of the West and China was a ‘strategic partner’ with Washington. Clinton’s grand strategy of building post-Cold War order around expanding markets, democracy, and institutions was the triumphant embodiment of the liberal vision of international order.

Held and Anthony McGrew (Cambridge, UK: Polity Press, 2000), p. 538.

²⁹ Stephen D. Krasner, *Sovereignty: Organised Hypocrisy*, (Princeton: Princeton University Press, 1999) p. 41.

³⁰ Stephen D. Krasner, *Sovereignty: Organised Hypocrisy*, (Princeton: Princeton University Press, 1999) p. 63.

But this 'liberal moment' seemed to come to an abrupt end with the election of George W. Bush, the September 11th terrorist attacks, and the invasion of Iraq. Basic liberal assumptions about world order were challenged...a grand strategy was introduced that combined a more assertive nationalism with a neo-conservative power-wielding vision that devalued the importance of the post-war system of allies, institutions, laws and norms.³¹

Ikenberry further notes the irony that the Bush Administration has embraced 'a liberal argument about security and the world order and [is] using it in a way that is subversive to the post-war liberal international order.' Ikenberry argues that the Bush Administration's actions are failing and there is a price to pay. He writes that 'there are limits to the ability of powerful states to operate outside the norms and institutional frameworks of liberal international order...Lost legitimacy, partnerships, cooperation and credibility do have consequences.'³² These very real costs, and the probability that the Bush Administration's policy will be repudiated in the 2008 US election, support my argument that there are real and important motivations for cooperation based on rational and reasonable premises, following the arguments of Hume, Rawls and McClennen outlined in Chapter Four, and *real costs for uncooperative behaviour*. This does not mean that all states and all individuals will always act rationally and reasonably and cooperate and there will be no conflicts. But it does mean that there are real incentives for states to act rationally and reasonably and to cooperate. There is also a real price to pay for uncooperative behaviour for the future relationship: loss of legitimacy, partnerships, reciprocal cooperative actions, and reduction of 'soft power.' Thus the behaviour of the Bush Administration does not

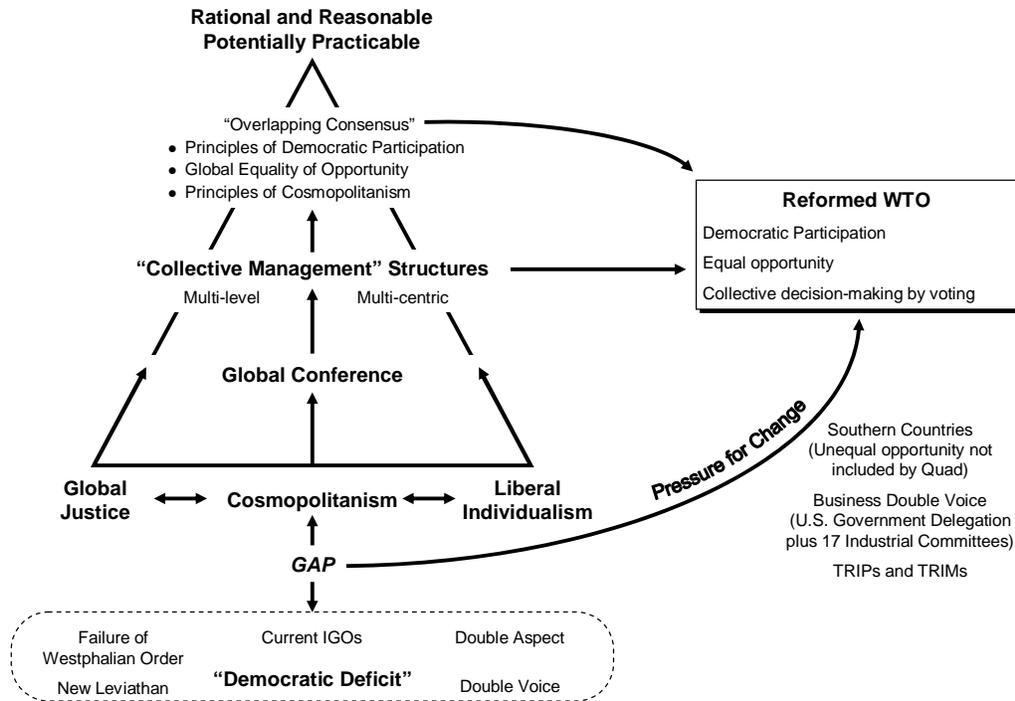
³¹ G. John Ikenberry, 'Liberal International Theory in the Wake of 911 and American Unipolarity,' paper prepared for the seminar on 'IR Theory, Unipolarity and September 11th—Five Years On,' NUPI, Oslo, Norway, 3-4 February 2006, p. 1.

³² G. John Ikenberry, 'Liberal International Theory in the Wake of 911 and American Unipolarity,' paper prepared for the seminar on 'IR Theory, Unipolarity and September 11th—Five Years On,' NUPI, Oslo, Norway, 3-4 February 2006, p. 2.

invalidate the liberal view that we can build meaningful international rule by law and institutions based on expectations and reciprocal obligations, as I discuss in Chapter Four. I agree with Ikenberry who argues that the current crisis in the international system cannot ‘be explained or solved by a return to realist thinking and action...[it] can only be solved by rethinking, rebuilding, and extending the liberal order.’³³

As an overview chart to summarize the arguments to come, I include below a schematic picture of the key elements of the Collective Management approach. The gap between its ideals and political principles (liberal individualism, global justice and cosmopolitanism) and the existing undemocratic IGOs (‘democratic deficit’) can lead to long-term pressures to reform existing IGOs to make them more democratic and just. I argue that there are real costs for uncooperative behaviour, making it irrational for a powerful state simply to pursue its interests unilaterally. The chart is based on the foundational liberal premises that individuals are capable of autonomous reason and have instrumental, rational and moral motivations to cooperate, supported in Chapter Four by my analysis of Hume (instrumental motivation), Rawls (basic moral psychology) and McClennen (rational instrumental choice). The chart outlines how Collective Management institutions could potentially assist in achieving an ‘overlapping consensus’ on basic norms and principles of distributive and cosmopolitan justice (developed in Chapter Five)—resulting in a potentially practicable, stable system that is rational and reasonable. Chapter Six provides the case study of the WTO and how it might be reformed to incorporate the key principles, structures and procedures of Collective Management.

³³ G. John Ikenberry, ‘Liberal International Theory in the Wake of 911 and American Unipolarity,’ paper prepared for the seminar on ‘IR Theory, Unipolarity and September 11th—Five Years On,’ NUPI, Oslo, Norway, 3–4 February 2006, p. 2.



This approach is based on the premises of liberal individualism where each individual has the right to a fair share of political power. As I elaborate in Chapter Five, I adopt Allen Buchanan’s principles of democratic participation in global governance, and global equality of opportunity. I do not, however, argue for any version of Rawls’ Difference Principle, or any other principles regarding limits on inequality. Instead I propose that further distributive principles be decided upon democratically, based on the fair context for individuals to participate in decision-making created by the Collective Management approach. I believe that there is room for reasonable disagreement on the correct principles of distribution; there are serious objections against all leading principles of distributive justice. Thus this thesis leaves further distributive issues to be worked out in a fair political system, ensured by the adoption of Buchanan’s two principles.

I argue in Chapter Five that there is reason to believe that, as the process of evolving more democratic IGOs proceeds, there would be potential to achieve global overlapping

consensus on the basic principles of cosmopolitanism as basic norms. There are already strong trends in international relations to support human rights (the equal worth and dignity of all individuals); to hold war criminals personally responsible (personal accountability); to term legitimate only those interventions that involve significant consent of other states (the US unilateral intervention in Iraq is increasingly seen as illegitimate); to cooperate to avoid serious damage to the environment through global warming (avoidance of serious harm) and other trends. These norms require states, including powerful ones, to constrain their actions (give up some power) if they wish to avoid the costs of uncooperative behaviour, which can include loss of legitimacy (soft power), partnerships, cooperative support as well as direct harm resulting from failure of collective action required to deal with serious threats such as global warming, uncontrolled immigration, terrorism and other global threats.

1.2 Review of Existing Studies Relevant to the Topic

As I noted, very little academic work has been done on the connection between the philosophical concepts of global justice and actual institutional reform of the global governance system, and there is especially a lack of published work based on formal participation in decision-making of the three sectors—government, civil society and business. An unpublished dissertation (2000) analyses the history of the concept of civil society and its relation to the state and the market, analyses the anti-globalisation movement, and makes some general comments on prospects for a ‘three-sector system of global governance’. The study’s main topic is what the author calls ‘Anti-Elite Globalisation Global CSOs’ with particular reference to the Seattle WTO protests; it concludes generally that a tripartite approach is ‘increasingly accepted and used in

contemporary political science studies' and that global governing institutions and CSOs are 'split regarding the desirability of a tripartite system of global governance'.³⁴ The study is useful as a historical analysis of civil society. The focus of my thesis is different, however; it analyses the philosophical and political support for a tripartite system based on liberal individualism, a theory of global justice and cosmopolitanism and provides a concrete case study of the WTO.

As background to my study I have used the relevant literature on the evolution of the international system, especially Krasner,³⁵ Simpson,³⁶ Huntington,³⁷ Fukuyama,³⁸ Dahl³⁹ and Ikenberry⁴⁰. Useful studies of the challenges of the post-Westphalian era include Archibugi,⁴¹ Held,⁴² Nye⁴³, Slaughter,⁴⁴ Brian Barry,⁴⁵ Florini,⁴⁶ Holton,⁴⁷ and Simmons.⁴⁸

³⁴ Robert J. Gilbert, 'Globalisation and the Emerging Power of Civil Society Organisations: Prospects for a Three-Sector System of Global Governance' (Doctoral Dissertation, University of South Carolina, 2000) pp. 212–218.

³⁵ Stephen D. Krasner, *Sovereignty: Organised Hypocrisy*, (Princeton: Princeton University Press, 1999).

³⁶ Gerry Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (Cambridge, UK: Cambridge University Press, 2004).

³⁷ Samuel P. Huntington, 'The Lonely Superpower', *Foreign Affairs* 78, no. 2 (Mar/Apr 1999).

³⁸ Francis Fukuyama, *America at the Crossroads: Democracy, Power, and the Neoconservative Legacy* (New Haven: Yale University Press, 2006).

³⁹ Robert Dahl, 'Can International Organizations be Democratic?' in *The Global Transformations Reader*, eds, David Held and Anthony McGrew (Cambridge, UK: Polity Press, 2000)

⁴⁰ G. John Ikenberry, 'Liberal International Theory in the Wake of 9/11 and American Unipolarity,' paper prepared for the seminar on 'IR Theory, Unipolarity and September 11th—Five Years On,' NUPI, Oslo, Norway, 3-4 February 2006

⁴¹ Daniele Archibugi, David Held and Martin Köhler, eds., *Re-imagining Political Community: Studies in Cosmopolitan Democracy* (Cambridge, UK: Polity Press, 1998).

⁴² David Held et al., *Global Transformations: Politics, Economics and Culture* (Cambridge, UK: Polity Press, 1999); David Held, 'Democracy and the International Order', *Institute for Public Policy Research* (1993): 1-30; David Held, *Global Covenant: The Social Democratic Alternative to the Washington Consensus* (Cambridge, UK: Polity Press, 2004); David Held and Anthony McGrew, eds., *The Global Transformations Reader: An Introduction to the Globalisation Debate*, (Cambridge, UK: Polity Press, 2000).

⁴³ Joseph S. Nye and John D. Donahue, eds., *Governance in a Globalising World* (Washington DC: Brookings Institution Press, 2000); Joseph Nye, 'Globalisation's Democratic Deficit: How to Make International Institutions More Accountable', *Foreign Affairs* 80, no. 4 (Jul/Aug 2001); Joseph S. Nye, Jr. et al, 'The 'Democracy Deficit' in the Global Economy: Enhancing the Legitimacy and Accountability of Global Institutions' (Task Force Report #57 (2003) for the Trilateral Commission),

In my explanation of liberal individualism I have used the classic works of Kant⁴⁹ and Strawson⁵⁰ and also those of more recent theorists including Rawls,⁵¹ Christian Barry,⁵² Beitz,⁵³ Dworkin,⁵⁴ Kelly,⁵⁵ and Pogge. I have provided my analysis of individual motivation based on analyses of the classical works of Hobbes, Locke and Hume as well as Rawls and McClennen, I have made use of the works of Barber,⁵⁶ Sandel,⁵⁷ and Gauthier⁵⁸

<http://www.trilateral.org/projwork/tfrsums/tfr57.htm>; Robert O. Keohane and Joseph S. Nye, 'The Club Model of Multilateral Cooperation and Problems of Democratic Legitimacy' (paper presented to the American Political Science Convention, Aug 31 – Sept 3, 2000, Washington DC), <http://www.ksg.harvard.edu/prg/nye/clubmodel.pdf>

- ⁴⁴ Anne-Marie Slaughter, *A New World Order* (Princeton: Princeton University Press, 1994).
- ⁴⁵ Brian Barry, 'Statism and Nationalism: A Cosmopolitanism Critique', in *Global Justice*, eds. Ian Shapiro & Lea Brilmayer (New York: New York University Press, 1999).
- ⁴⁶ Ann Florini, *The Coming Democracy: New Rules for Running a New World* (Washington: Island Press, 2003).
- ⁴⁷ Robert J. Holton, *Globalisation and the Nation-State* (London: Palgrave, 1998).
- ⁴⁸ P. J. Simmons, & Chantal de Jonge Oudraat, eds., *Managing Global Issues; Lessons Learned* (Washington: Carnegie Endowment for International Peace, 2001).
- ⁴⁹ Immanuel Kant, *Ethical Philosophy: Grounding for the Metaphysics of Morals and Metaphysical Principles of Virtue*, 2nd ed., trans. James W. Ellington (Indianapolis: Hackett Publishing Company, 1995)
- ⁵⁰ P. F. Strawson, 'Social Morality and Individual Ideal', *Philosophy* 36 (1961): 1-36.
- ⁵¹ John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971); John Rawls, *A Theory of Justice*, revised edition (Oxford: Oxford University Press, 1999); John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993); John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 2003); John Rawls, 'The Idea of Public Reason Revisited', *University of Chicago Law Review* 64 (Summer 1997): 765-807.
- ⁵² Christian Barry and Thomas W. Pogge, 'Introduction: Global Institutions and Responsibilities', *Metaphilosophy* 36, nos. 1-2 (Jan 2005): 1-2.
- ⁵³ Charles Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1979).
- ⁵⁴ Ronald Dworkin, *Law's Empire* (Cambridge, MA: Harvard University Press, 1986).
- ⁵⁵ Paul Kelly, *Liberalism* (Cambridge, UK: Polity Press, 2005).
- ⁵⁶ Benjamin Barber, *Strong Democracy: Participatory Politics for a New Age* (Berkeley: University of California Press, 1985); Benjamin Barber, 'Global Governance from Below' in *Debating Globalisation*, ed. Held et al. (Cambridge, UK: Polity Press, 2005) pp. 93-105.
- ⁵⁷ Michael Sandel, 'The Procedural Republic and the Unencumbered Self' in *Communitarianism and Individualism*, eds. Shlomo Avineri and Avner de-Shalit (Oxford: Oxford University Press, 1992) pp. 12-28.
- ⁵⁸ David Gauthier, 'The Liberal Individual' in *Communitarianism and Individualism*, eds. Shlomo Avineri and Avner de-Shalit (Oxford: Oxford University Press, 1992) pp. 151-164.; David Gauthier, *Morals By Agreement* (Oxford: Oxford University Press, 1986).

on communitarianism, Cohen⁵⁹ on deliberative democracy, and Kymlicka⁶⁰ on liberalism and minority rights.

Particularly important to my analysis is the literature on the democratisation of the international system, especially Held,⁶¹ Scholte,⁶² and Nye.⁶³ Also important was the literature on civil society, including the work of Kaldor,⁶⁴ and Scholte.⁶⁵ To provide data on the role of NGOs in global governance, I commissioned a new survey conducted by independent analysts at Monitor Group, based on my own research design. I utilise the findings of this survey in Chapter Two as an empirical basis for my analysis of the rise of NGOs and their appropriate role in a potential system of Collective Management.

Finally, my analysis makes use of existing studies on the general approaches to reforming the global governance system, especially analyses of UN tripartite partnerships, citizen

⁵⁹ Joshua Cohen, 'Deliberation and Democratic Legitimacy' in *Deliberative Democracy: Essays on Reason and Politics*, eds. James Bohman and William Rehg (Cambridge, MA: MIT Press, 1997) pp. 67-92.

⁶⁰ Will Kymlicka, 'Western Political Theory and Ethnic Relations in Eastern Europe' in *Can Liberal Pluralism be Exported? Western Political Theory and Ethnic Relations in Eastern Europe*, eds. Will Kymlicka & Magda Opalski (Oxford: Oxford University Press, 2001) pp. 13-106.; Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995); Will Kymlicka, ed., *The Rights of Minority Cultures* (Oxford: Oxford University Press, 1997).

⁶¹ David Held, 'Democratic Accountability and Political Effectiveness from a Cosmopolitan Perspective' *Government and Opposition* 39, no. 2 (Spring 2004): 364-391.

⁶² Jan Aart Scholte, 'Civil Society and Democratically Accountable Global Governance', *Government and Opposition* 39, no. 2 (2004): 211-233.

⁶³ Joseph Nye, 'Globalisation's Democratic Deficit: How to Make International Institutions More Accountable', *Foreign Affairs* 80, no. 4 (Jul/Aug 2001).

⁶⁴ Mary Kaldor, Helmut Anheier and Marlies Glasius, eds., *Global Civil Society 2003* (Oxford: Oxford University Press, 2003); Mary Kaldor, 'Cosmopolitanism and Organised Violence' (paper prepared for Conference on 'Conceiving Cosmopolitanism', Warwick, 27-29 April 2000), <http://www.theglobalsite.ac.uk/press/010kaldor.pdf>

⁶⁵ Jan Aart Scholte and Albrecht Schnabel, *Civil Society and Global Finance* (London: Routledge, 2002); Jan Aart Scholte, 'Global Civil Society' in *The Political Economy of Globalisation*, ed. Ngaire Woods (New York: Macmillan Press, 2000).

assemblies and NGO forums, and works by Bienen,⁶⁶ Edwards,⁶⁷ Zadek,⁶⁸ Held,⁶⁹ and Urquhart.⁷⁰

1.3 Definition of Civil Society

The term ‘civil society’ is used with different meanings by different authors in various contexts. The term is currently often used by critics and activists as a reference to sources of resistance and to that domain of social life which needs to be protected against globalisation. Within the United Nations context, the phrase ‘civil society’ has been a source of some controversy, as its meaning also includes both business and private voluntary organisations. Therefore it appears that the definition of the term ‘civil society’ is

⁶⁶ Derk Bienen, Volker Rittberger and Wolfgang Wagner, ‘Democracy in the United Nations System: Cosmopolitan and Communitarian Principles’ in *Re-imagining Political Community: Studies in Cosmopolitan Democracy*, eds. Daniele Archibugi, David Held and Martin Köhler (Cambridge, UK: Polity Press, 1998).

⁶⁷ Michael Edwards and David Hulme, ‘Too Close for Comfort? The Impact of Official Aid on Nongovernmental Organisations’, *World Development* 24 (1996): 961-973 Michael Edwards and Simon Zadek, ‘Governing the Provision of Global Public Goods: The Role and Legitimacy of Non-State Actors’ in *Providing Global Public Goods: Managing Globalisation*, eds. Inge Kaul, Pedro Conceicao, Katell Le Goulven and Ronald U. Mendoza (New York: Oxford University Press, 2003) pp. 200-224 Michael Edwards, *Future Positive: International Co-operation in the 21st Century* (London: Earthscan Publications, 2004).

⁶⁸ Simon Zadek, with Michael Edwards, ‘Governing the Provision of Global Public Goods: The Role and Legitimacy of Non-State Actors’ in *Providing Global Public Goods: Managing Globalisation*, eds. Inge Kaul, Pedro Conceicao, Katell Le Goulven and Ronald U. Mendoza (New York: Oxford University Press, 2003) pp. 200-224; Simon Zadek, ‘Civil Partnerships, Governance and the UN’ (Background Paper for the Secretary-General’s Panel of Eminent Person’s on Civil Society and UN Relationships, in ‘Multi-Stakeholder Partnerships and UN-Civil Society Relationships: Collection of Materials from the Multi-Stakeholder Workshop on Partnerships and UN-Civil Society Relationships,’), New York, February 2004), http://www.un.org/reform/civilsociety/pdfs/pocantico_booklet.pdf

⁶⁹ David Held and Barry Buzan, ‘Realism vs. Cosmopolitanism’ (a debate between Barry Buzan and David Held, conducted by Anthony McGrew), <http://www.polity.co.uk/global/realism-vs-cosmopolitanism.asp> David Held and Mathias Koenig-Archibugi, eds., *Global Governance and Public Accountability* (Oxford: Blackwell, 2005).

⁷⁰ Erskine Childers and Brian Urquhart, *Renewing the United Nations System* (Uppsala, Sweden: Dag Hammarskjöld Foundation, 1994), as summarised in Jeremy Heimans, ‘Reforming global economic and social governance: a critical review of recent programmatic thinking’, draft June 2003, available at the website of the United Nations University: <http://www.unu.edu/p&g/gesgp/workingpapers/Heimans2.pdf>.

constantly evolving, based on its dynamic role within society.⁷¹ The working definition of the London School of Economics Centre for Civil Society is illustrative and is considered to capture the multi-faceted nature of the concept, whilst also being empirically and analytically useful:

Civil Society refers to the arena of un-coerced collective action around shared interests, purposes and values. In theory, its institutional forms are distinct from those of state, family and market, though in practice, the boundaries between state, civil society, family and market are often complex, blurred and negotiated. Civil Society commonly embraces a diversity of spaces, actors and institutional forms, varying in their degree of formality, autonomy and power. Civil Societies are often populated by organisations such as registered charities, development non-governmental organisations, community groups, women's organisations, faith-based movements, professional associations, trade unions, self-help groups, social movements, business associations, and coalition and advocacy groups. (Updated March 2004)

Drawing on work by Mary Kaldor and the team at the London School of Economics, 'civil society' is taken to mean all non-governmental actors, including faith-based organisations, professional associations, trade unions, self-help groups, social movements and business associations. In theory, its institutional forms are distinct from those of the state, family and market. In practice, however, the boundaries between the state, family, market and civil society are often complex. Non-governmental organisations are but one form of civil society organisation. For the purposes of this thesis the terms 'civil society', 'civil society organisation' and 'non-governmental organisation' will be used interchangeably, unless otherwise specified.

⁷¹ Michael Bratton, 'Civil Society and Political Transition in Africa' in *Civil Society and the State in Africa*, eds. J. W. Harberson, D. Rothchild, N. Chazan (London: Lynne Rienner Publishers, 1994).

Jan Aart Scholte's definition of civil society builds on the concept presented above.⁷² It identifies civil society as non-official, non-governmental, and not the market. Activities are considered to be part of civil society when they involve a deliberate attempt—from outside the state and the market, in some other organised fashion—to shape politics, norms and/or deeper social structures. NGOs are one part of civil society; they are characterised by their non-profit status and, in some cases, a value-based orientation or a cadre of volunteers carrying out the organisations' mandates. The UN also has a working definition, as used by the UN's Economic and Social Council (ECOSOC), to select NGOs to work with: 'an NGO is a group of people engaging in collective action which is non-commercial, non-violent and not on behalf of a government.'

This thesis refers to the development of three branches of society: the state, the business sector and civil society. However, there have been many different ways than this of defining what actually comprises civil society and the state. This thesis can only briefly highlight some of the key philosophical arguments developed historically behind our current view. One of the major differences is over whether the state and society should be intrinsically linked to form a 'civil society'. For example, Aristotle saw civil society as one single entity comprising all social, economic and political aspects of life, a community of citizens who choose to live under an agreed system of law. In contrast, Hobbes saw civil society as being constructed by the state, which imposes enough control on society to allow citizens to live together. In this he opposed Aristotle, who thought that *society* constructed civil society, but both thought that society and the state were inextricably linked.

⁷² Jan Aart Scholte, 'Global Civil Society' in *The Political Economy of Globalisation*, ed. Ngaire Woods (New York: Macmillan Press, 2000).

However, in opposition to Hobbes's view, Locke argued that individuals are part of a society that pre-dates the existence of a state, and therefore society is not constructed by the state. Locke saw people as being able to live together in the state of nature under natural law, irrespective of the policies of the state. This self-sufficiency of society, outside the control of the state, was given weight by the growing power of the economic sphere which was considered part of civil society, not the state. The state is therefore constructed out of, and given legitimacy by, society, which also retains the authority to dissolve the government if it acted unjustly. Other writers continued with this distinction of civil society and government. The state kept its function of maintaining law and order that Hobbes had stressed, but was considered to be separate from society, and the relationship between the two of them was seen to be subject to laws that gained their legitimacy from society, not from the state. For example, Montesquieu saw the state as the governor and society as the governed, with civil law acting as the regulator of the relationship. The importance of law in regulating the way the state and society interacted was obvious to many writers who considered that a government that did not recognise the limitations of law would extend to become an over-reaching tyranny similar to that described by Hobbes in *Leviathan*. However, all these earlier definitions of civil society had one important factor in common: civil society was defined in contrast to 'uncivil society'—the state of nature, out of which humans had managed to rise by accepting a system of law as enforced by the state. The two therefore cannot exist without the other; the state controls society so that it may become a 'civil society'.

The concept of civil society as completely separate from and, indeed, contrasted with the state was started by Hegel and Marx. This separation was called by Hegel 'the achievement of the modern age'. However, the need for the state to regulate civil society—in order to

protect it from the less sociable instincts of people—continued. Hegel, who saw civil society as largely comprising the economic sphere of social life, considered that without the state to balance and order civil society it would become dominated by the pursuit of individual interests, specifically private acquisitiveness, to the harm of the common good. This vision of the state as a necessary guide to civil society was in contrast to Tocqueville, who saw civil society as comprising more than just economic functions, but instead held that it protected individual rights and freedoms, and not just economic interests. Tocqueville considered that the rights and freedoms of people, specifically the ‘democratic revolution’, were maintained only by a total separation of state and ‘civil society’, that intermediate layer between the individual and the state that had the power to police society and to enforce the law in order to maintain peace and order, and so provide a suitable environment for citizens to enjoy their freedoms. The state must be limited, to allow the emergence of voluntary associations that are completely independent of the government for the development of public opinion and the preservation of basic rights.

In this thesis I will consider ‘civil society’ in its modern form as *the non-economic parts of society that are separate from the state, with the economic aspects considered to be a third, profit-driven branch, the ‘business sector’*. The separate role of businesses and the free market in relationship to the rest of society has been considered by many recent theorists. David Gauthier, for example, shows that—similarly to traditional conceptions of civil society—the state has an important role to play in regulating the free market, in order to protect society from externalities and the dangers of a state of nature; however, the state should be limited in the extent of its control over this sector, in order to preserve the

freedom and choice that is crucial to the functioning of society as a whole.⁷³ This thesis therefore defines the state to be the institutions of the government and other bodies that operate the regulation, defence and judicial control of the society in question. Civil society is therefore comprised of NGOs and non-profit-making organisations who are completely independent of the state, and business are the organisations and associations whose primary activities are in the economic sphere of society.

1.4 The need for reform: the example of the International Monetary Fund as a brief illustration

To demonstrate concretely the need for new, more just and more democratic global governing institutions, and to illustrate how the concept of Collective Management might address current failures, I briefly review the IMF as an example of an IGO that clearly exhibits the imbalance of power that I described in the previous section. I summarise the main criticisms of the IMF, focusing on those relating to the justice/fairness, democracy, legitimacy, accountability and transparency failures of the institution. I focus especially on the need to democratise the IMF to insure a fairer representation of its member states, and concentrate on the need to reform the current voting power and quota system. I propose that a new Collective Management structure for governance of the Fund could present a more democratic and just alternative to the current structure.

1.4a The IMF: functions, procedures and processes

The IMF emerged at the end of World War II, as the leading Allied countries considered various plans to restore order to international monetary relations and to avoid a repetition of

⁷³ David Gauthier, *Morals By Agreement* (Oxford: Oxford University Press, 1986).

the disastrous economic policies that had contributed to the Great Depression of the 1930s. The IMF describes itself as ‘an organisation of 184 countries, working to foster global monetary cooperation, secure financial stability, facilitate international trade, promote high employment and sustainable economic growth, and reduce poverty’.⁷⁴ With the exception of North Korea, Cuba, Liechtenstein, Andorra, Monaco, Tuvalu and Nauru, all UN member states either participate directly in the IMF or are represented by other member states.

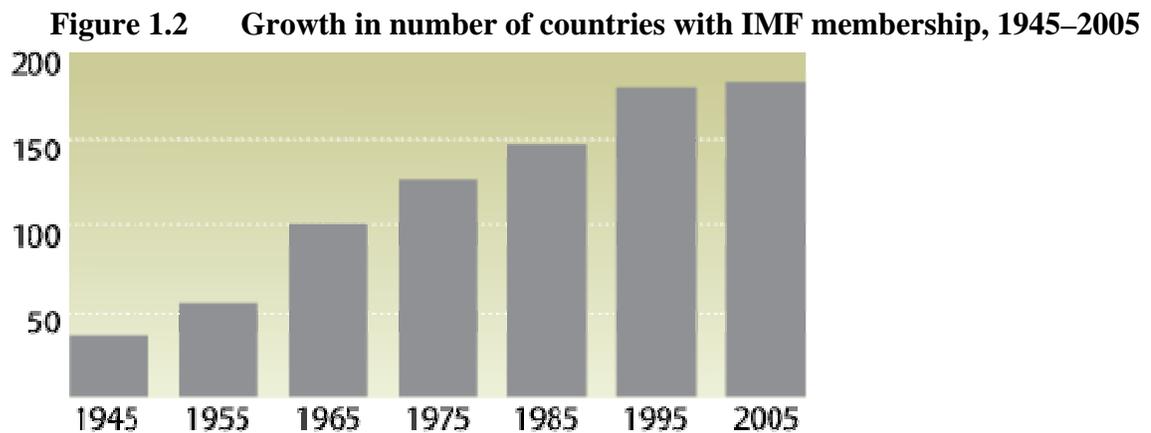
In the decades since World War II, the world economy and monetary system have undergone major changes, apart from rising prosperity, that have increased the importance and relevance of the purposes served by the IMF, but that have also required the IMF to adapt and reform. Rapid advances in technology and communications have contributed to the increasing international integration of markets and to closer linkages among national economies. As a result, financial crises, when they erupt, now tend to spread more rapidly among countries.

The IMF is the referee and, when the need arises, rescuer of the world’s financial system. It was established to supervise the newly-established fixed-exchange-rate system. After this collapsed in 1971–73, the IMF became more involved with its member countries’ economic policies, advising on fiscal policy and monetary policy as well as microeconomic changes such as privatisation, of which it became a forceful advocate. In the 1980s it played a leading part in addressing the problems of developing countries’ mounting debt. More recently it has several times coordinated and helped to finance assistance to countries with a

⁷⁴ www.imf.org

currency crisis. It employs three main functions—surveillance, technical assistance, and lending—to meet these objectives.

The IMF's influence in the global economy has steadily increased as it accumulates more members. The number of IMF member-countries has more than quadrupled from the 44 states involved in its establishment, which is accounted for in particular by the attainment of political independence by many developing countries and more recently by the collapse of the Soviet bloc.



Source: <http://www.imf.org/external/about.htm>

The expansions of the IMF's membership, together with the changes in the world economy, have required the IMF to adapt in a variety of ways to continue serving its purposes effectively. Since the IMF was established, its purposes have remained unchanged but its operations—involving surveillance, financial assistance, and technical assistance—have developed to meet the changing needs of its member countries in an evolving world economy.

1.4b PRSPs and conditionality: undermining democracy in developing states

In 1999 the IMF introduced the Poverty Reduction Strategy Paper (PRSP) which set new conditions for access to debt relief and the Fund's concessional loan programmes. This was a response to the criticism that policies were being forced upon countries.

A PRSP supposedly sets out a government's strategy for reducing poverty over a three-year period, a strategy that is developed in consultation with the civil society in a country. The international financial institutions (IFIs) and donor governments, such as the UK Department for International Development (DfID), suggest that PRSPs are 'country-owned' documents developed between governments, civil society and the private sector in countries, whose proposals donors then decide to fund: 'The IMF attaches great importance to country ownership. The recipient country is fully involved in the entire process of technical assistance, from identification of need, to implementation, monitoring, and evaluation'.⁷⁵

This would be an important step forward for the legitimacy of the IMF if it were indeed the case. However, in practice it has been extremely difficult—if not impossible—for the poorest countries to truly determine their own development strategies, for several key reasons. First, the content of a PRSP is influenced by already-existing IMF programme conditions. Rather than start afresh, these IMF-determined policies are generally 'cut and pasted' into the PRSP with no further analysis or scrutiny.⁷⁶ Second, even in the absence of

⁷⁵ Statement from IMF website <http://www.imf.org/external/np/exr/facts/prgf.htm>

⁷⁶ For example, in the Gambia, Ghana, Guinea, Malawi, Mali, Mozambique, Nicaragua and Yemen, water privatisation was already a condition of a Bank and/or Fund programme before being included in the PRSP. These countries had little choice but to include water privatisation within the document. (Tim Jones and Peter Hardstaff, 'Denying democracy: How the IMF and World Bank take power from people',

previous conditions, representatives of the IMF tend to have significant influence over the content of the PRSP. There are numerous examples of IFI staff telling country officials of policies that need to be included in, and changes that need to be made to, the final PRSP document. Third, and perhaps most tellingly, the final PRSPs are signed-off by the Boards of both the IMF and World Bank. If country directors on the Board do not like the content of a PRSP, they can just reject it. The PRSP will then need to be redrafted to meet the Board's expectations, and debt relief, aid and new loans will be withheld until it does. The G24 group of developing countries' Secretariat stated that PRSPs 'are imported rather than home-grown and are accepted under pressure as a means to obtain debt-relief and, as a result, often they do not succeed'.⁷⁷

Frances Stewart and Michael Wang note that 'The fact that the content of PRSPs is very similar to previous adjustment packages suggests that little real change has occurred through this process',⁷⁸ a view echoed by Tim Jones and Peter Hardstaff: 'the homogeneity across PRSPs in widely differing countries, and the dearth of alternative policy approaches on these key economic issues, suggests that ownership of the economic policies in such countries is still a pipedream'.⁷⁹

World Development Movement (May 2005),
<http://www.wdm.org.uk/resources/reports/debt/denyingdemocracy01052005.pdf>.

⁷⁷ G-24 Secretariat, 'G-24 Secretariat Briefing Paper on the Poverty Reduction Strategy Paper (PRSP) Approach' (March 2003), <http://www.g24.org/prsp.pdf>.

⁷⁸ Frances Stewart and Michael Wang, 'Do PRSPs empower poor countries and disempower the World Bank, or is it the other way round?', *Queen Elizabeth House Working Paper* 108 (Oct 2003).

⁷⁹ Tim Jones and Peter Hardstaff, 'Denying democracy: How the IMF and World Bank take power from people', *World Development Movement* (May 2005),
<http://www.wdm.org.uk/resources/reports/debt/denyingdemocracy01052005.pdf>.

One common complaint from civil society groups has been that the consultations have consisted primarily of publicising and explaining policies, rather than allowing the process to influence what is contained in the PRSP. Other common problems include a lack of involvement of poor people and a failure to use indigenous languages.

Elected parliaments are also notably absent from the process of influencing the content of PRSPs. Whilst PRSPs are meant to direct a country's policies for three years, in most countries parliamentary involvement has been limited to a few individual MPs participating in workshops. Parliaments have not been involved in debating or drafting the strategies, and in only five countries have they had a vote on the final document. Even when there is a formal vote, if this is the first official involvement of the parliament, they are left purely with the role of ratifying the document. With external aid being dependent on passing the document, parliaments are unable to insist on major changes at the end of the process. In Ethiopia, despite the fact that the constitution stipulates that any national development plan needs to be passed by Parliament, Parliament had no role in the PRSP process or any vote on the final document.⁸⁰ Jakayo Midiwo, a Kenyan MP notes:

Parliament is the connection between government and the people. And parliamentarians are the representatives of the people, and you cannot purport to be doing development to help the people they represent without their involvement. The only way to oversight government, to stop corruption, to have accountability, is to involve parliament.⁸¹

⁸⁰ Walter Eberlei and Heike Henn, 'Parliaments in sub-Saharan Africa: Actors in poverty reduction?' (Study commissioned by the German Federal Ministry for Economic Cooperation and Development, December 2003), <http://inef.uni-due.de/page/documents/Parliaments2003.pdf>

⁸¹ Jakayo Midiwo, Interview with Voice of America, Washington D.C., 14 April, 2005, cited on *World Development Movement*, <http://www.wdm.org.uk/news/dcdiary.htm>

The bypassing of parliaments in the PRSP process can be contrasted with the role of the IMF. Parliaments rarely have a say on the content of the PRSP, while the IMF has influence during the process as well as final sign-off. For a national development plan to be country-owned it is the national parliament, not international institutions, that should be intimately involved in debating and scrutinising the content during the process, and that should have final approval.

In countries in which processes to develop national development plans already existed prior to the introduction of PRSPs, the IMF usually insisted on a new strategy being developed, rather than working with the existing national strategy.⁸² There are also many examples of specific policies being imposed on countries by the Fund.⁸³ In Malawi, for example, the passing of a draft Land Law was a condition for reaching completion point. Civil society asked for this policy to be discussed in the PRSP process, as they thought changes were required, including enshrining the right to land in the final document.⁸⁴ Discussion of the Land Law was rejected by donors; a representative of one donor agency argued that the land policy was ‘quite solid’ so there was no need for it to be discussed in the PRSP.⁸⁵

⁸² Known donor imposition of the process followed has occurred in Cameroon, Ghana, Honduras, Mali, Mozambique, Tanzania, Zambia, Cambodia, Kenya, Kyrgyzstan, Vietnam (Tim Jones and Peter Hardstaff, ‘Denying democracy: How the IMF and World Bank take power from people’, *World Development Movement* (May 2005), <http://www.wdm.org.uk/resources/reports/debt/denyingdemocracy01052005.pdf>).

⁸³ Known donor imposition of policies has occurred in Benin, Bolivia, Burkina Faso, Ghana, Guinea, Honduras, Malawi, Mali, Mozambique, Nicaragua, Senegal, Tanzania, Zambia, Kenya, Pakistan, Sri Lanka, Tajikistan, and Vietnam (Tim Jones and Peter Hardstaff, ‘Denying democracy: How the IMF and World Bank take power from people’, *World Development Movement* (May 2005), <http://www.wdm.org.uk/resources/reports/debt/denyingdemocracy01052005.pdf>).

⁸⁴ Action Aid, USA, ‘Inclusive circles lost in exclusive cycles’ (a contribution to the first Global Poverty Reduction Strategies Comprehensive Review, 25 January, 2002), http://poverty2.forumone.com/files/9769_actionaid1.pdf.

⁸⁵ Rob Jenkins and Maxton Tsoka, ‘Malawi’ in *Fighting Poverty in Africa: Are PRSPs Making a Difference?* Ed. David Booth (London: Overseas Development Institute, 2003) pp. 119-152.

On example of successful civil society involvement in a PRSP occurred in Uganda.⁸⁶ Preparation of the PRSP for Uganda took place during January–April 2000. The consultation process had three dimensions—consultations between government and donors, consultations between government and civil society, and consultations within civil society—two of which allowed for significant civil society involvement. The government decided to open the preliminary phases of the PRSP up to civil society as well, and in December 1999 it invited representatives of CSOs to a consultative meeting to discuss the process of devising the PRSP. In January 2000, CSOs organised a consultative meeting with government and World Bank officials, and a Civil Society Task Force was formed with a mandate to organise an all-inclusive consultation process, involving as many sections of Ugandan civil society as possible. Through the Task Force, CSOs successfully mobilised representatives of their constituents through various forums and engaged them in discussions to solicit their inputs to the PRSP.

The Executive Boards of the World Bank and the IMF approved the Ugandan PRSP in May 2000, and the debt relief resulting from the Ugandan PRSP is producing savings of approximately \$90 million annually on Uganda’s repayment of foreign debts. All the savings from debt relief are being committed to the eradication of poverty through the Ugandan Poverty Action Fund (PAF). Through the PAF donors almost doubled their contribution to poverty programmes for the financial year 2000/1. This demonstrates how the Ugandan PRSP was one of the more successful PRSPs to come out of Africa. It also

⁸⁶ Data and example drawn from Zie Gariyo, ‘Civil Society and Global Finance in Africa’ in *Civil Society and Global Finance*, eds. Jan Aart Scholte and Albrecht Schnabel (London: Routledge, 2002), pp. 51-63.

remained truer to the original work done for the PRSP by the Ugandan government, unlike the many other countries' PRSPs that were significantly altered to reflect IMF policy.

This successful example of the Ugandan PRSP had special characteristics that could help account for its success, in particular the high level of civil society involvement in the preparation process at both grass-roots and international levels. The Civil Society Task Force that was formed included representatives of both national and international NGOs, including Oxfam and ActionAid from the UK, VECO Uganda from Belgium, SNV from the Netherlands and MS Uganda from Denmark. The Ugandan government provided the CSOs with as much information as they required, made available the draft copies of the PRSP for circulation, and even produced a four-page summary of the document as a facilitating guide for the consultative workshops. The government also allowed CSOs to attend as full members of the meetings of the National Task Force that comprised of senior government officials, and did not dictate the agenda of CSOs in PRSP consultations. In the final draft of the PRSP, the committee incorporated as much of the input from civil society as possible.

As Zie Gariyo, Coordinator of the Uganda Debt Network, notes: 'the Ugandan experience of civil society participation in the preparation of a PRSP shows that government commitment to these consultations is essential'.⁸⁷ As argued by Gariyo, at the local level CSOs need to build the capacity of grassroots people to monitor policy implementation.

⁸⁷ Zie Gariyo, 'Civil Society and Global Finance in Africa' in *Civil Society and Global Finance*, eds. Jan Aart Scholte and Albrecht Schnabel (London: Routledge, 2002), p. 58. Gariyo is Coordinator of the Uganda Debt Network, a leading civil society advocacy organisation based in Kampala, Uganda. Gariyo is also a Research Fellow of the Centre for Basic Research in Kampala. He has published on the NGO sector in East Africa, and is currently conducting research on the role of the Poverty Action Fund in poverty eradication in Uganda.

Local government must develop transparent and accountable systems that enable grassroots communities to have access to the information they need to perform effective monitoring. CSO inputs must also become part of the mainstream of policy planning.

The IMF cannot be blamed directly for all of the problems with the way PRSPs have been developed in particular countries; however, the fact that creating and implementing a PRSP has become a key mechanism for securing IMF finance means that these failures in the PRSP process take on an importance far beyond the problems with citizen participation in policy-making in those countries that are not subject to conditionality, e.g., the UK. The use of conditionality to enforce PRSPs makes the normal democratic process—whereby policies, once put in a plan by government, are subsequently scrutinised, changed and sometimes reversed—difficult, if not impossible, and is therefore fundamentally anti-democratic.

The IMF practice of requiring developing countries to produce PRSPs illustrates the double democracy deficit present in IGOs. Firstly, although PRSPs are intended to be ‘country-owned’ among the three sectors of the developing country in question, the PRSPs are in reality dominated by Fund influence, both during the process and with regard to the final sign-off. By contrast, parliaments rarely have a say on the content of the PRSP, and consultations with civil society have consisted primarily of publicising and explaining policies, rather than allowing the elements of civil society to contribute to what is contained in the PRSP. Secondly, even in cases demonstrating better interaction between the IMF and governments of developing countries, there can be poor coordination between the developing government and civil society. Whether intentional or not, this is often due to

lack of communication and meagre information flow between the two groups, preventing CSOs from contributing effectively.

The Ugandan example is one of the rare cases of a more democratic, inclusive process. As such it demonstrates that the inclusion of civil society knowledge and a close coordination between government and civil society can bring significant benefits in terms of savings on foreign debt, the eradication of poverty, and the value of future donations to poverty-eradication programmes.

The Collective Management system intends to promote the positive processes illustrated in the Ugandan case by allocating a formal role to civil society and business, alongside government. Furthermore, through its foundation on the three pillars of liberal individualism, global justice and cosmopolitanism (developed in Chapters Four and Five) the Collective Management approach seeks to reduce the current democracy deficit in IGOs. The combination of these three pillars would be embodied in a multi-level system of overlapping authorities, made legitimate by the public decision-making and voting structures open to all constituents, and thus promoting democracy at all levels and sectors of governance.

1.4c Voting shares and contributions

In Chapter Five I explain and adopt several cosmopolitan principles that must be fulfilled to ensure legitimate governance. These include the ability of constituents to express consent and to engage in collective decision-making on public matters through voting. Furthermore, legitimate systems of governance must demonstrate both inclusiveness and subsidiarity, i.e., they must have processes of collective decision-making and consent through voting by

all citizens whose lives would be affected by these decisions, who delegate responsibility for these processes to the most appropriate subsidiary level of governance. In order to satisfy these principles, it is necessary that member government representation in IGOs be both fair and effective, and that there are systems by which citizens of member states can hold these representatives to account.

Key elements of democratic decision-making in the case of the IMF's operation would then need to include several new features: fair representation on the Board of the IMF for those countries affected by IMF decisions; transparent decision-making, so that affected citizens can know how their governments have acted and can therefore (at least theoretically) hold them accountable via their national democratic processes; transparent methods of working, so that the bureaucracy functions in the public interest; and accountability, so that citizens can have some form of recourse against IMF actions when necessary.

One of the gravest problems with any IMF claim to legitimacy is that developing countries are effectively excluded from its decision-making bodies. Although the world has evolved since the establishment of the IMF, the structures of governance have not kept pace with the changes. The countries of the South and their citizens are effectively handicapped because they lack an equitable proportion of the votes. This means that the countries themselves have little influence on some of the greatest decisions that will affect the people of these countries, and their peoples are inadequately represented. Joseph Stiglitz, former Chief Economist at the World Bank, emphasises that:

[T]he behaviour of an organisation is affected by the interests of those to whom the organisation is accountable. In the case of the IMF, its direct

accountability to central banks and finance ministries can explain much of its poor behaviour. Today, the majority of the IMF votes are in the hands of the G7, a small minority of the world's population. This must change.⁸⁸

In practice, voting shares in the IMF are arranged such that the industrialised countries have disproportionate control of the institution. The G8 states hold 48 percent of votes in the IMF, and industrialised countries as a whole hold 64 percent. When combined with the voting shares of the World Bank, it can be seen that the developed world effectively controls the international financial institutions:

⁸⁸ Joseph E. Stiglitz, (2003) 'Democratising the International Monetary Fund and the World Bank: Governance and Accountability', *Governance* 16, no. 1 (Jan. 2003) p. 132

Table 1.1 IMF and World Bank voting shares

Region	IMF and IBRD ⁸⁹ voting share, averaged (%)	World population (%)	Voting share to population: difference
EU States	29.9	7.1	+ 22.8
North America	19.7	5.2	+ 14.5
Middle East and North Africa	8.6	4.9	+ 3.7
Latin America and Caribbean	7.7	8.5	- 0.8
East Asia (ex. Japan)	7.1	30.9	- 23.8
Japan	7.0	2.0	+ 5.0
Eastern Europe and Central Asia	6.5	6.7	- 0.2
Sub-Saharan Africa	5.5	10.3	- 4.8
South Asia	3.5	23.8	- 20.3
Non-EU Western Europe	2.5	0.2	+ 2.3
Australasia	2.0	0.4	+ 1.6
Developed	61.2	20.7	+ 40.5
Developing and transition	38.8	79.3	- 40.5

Source: Tim Jones and Peter Hardstaff, 'Denying democracy: How the IMF and World Bank take power from people', *World Development Movement* (May 2005)

Looking at the difference between various regions' percentage share of IFI votes and percentage share of the world's population, the EU states, the US, Canada and Japan are the most over-represented within the IFIs, with the Middle East and North Africa, non-EU Western Europe and Australasia also over-represented. East Asia and South Asia are most under-represented, whilst sub-Saharan Africa, Latin America, Eastern Europe and Central Asia also receive less than their fair share of votes.

⁸⁹ The International Bank for Reconstruction and Development (IBRD) is one of five institutions that comprise the World Bank Group. The IBRD is an international organisation whose original mission was to finance the reconstruction of nations devastated by WWII. Now, its mission has expanded to fight poverty by means of financing states. Its operation is maintained through payments as regulated by member states.

In order to understand the inequalities of the voting system, I now examine how voting shares are allocated according to each member country's financial commitment, and where the IMF's financing comes from. The IMF's resources are provided by its member countries, primarily through payment of quota subscriptions.⁹⁰ Each member country of the IMF is assigned a quota, based broadly on its relative size in the world economy. A member's quota determines its maximum financial commitment to the IMF and its voting power, and has a bearing on its access to IMF financing.

Each member's quota is broadly determined by its economic position relative to other members. Various economic factors are considered in determining changes in quotas, including GDP, current account transactions, and official reserves. When a country joins the IMF, it is assigned an initial quota in the same range as the quotas of those existing members considered by the IMF to be broadly comparable in economic size and characteristics. The IMF uses a set of quota formulas to guide the assessment of a member's relative position.

Quotas are denominated in Special Drawing Rights (SDRs), the IMF's unit of account. The largest member of the IMF is the United States, with a quota of SDR 37.1 billion (about \$55.1 billion), and the smallest member is Palau, with a quota of SDR 3.1 million (about \$4.6 million).

⁹⁰ The total amount of quotas is the most important factor determining the IMF's lending capacity. The annual expenses of running the Fund are met mainly by the difference between interest receipts (on outstanding loans) and interest payments (on quota 'deposits').

A member's quota subscription determines the maximum amount of financial resources the member is obliged to provide to the IMF. The quota also largely determines a member's voting power in IMF decisions. Accordingly, the United States has 371,743 votes (17.08 percent of the total), and Palau has 281 votes (0.01 percent of the total). Concessional lending and debt relief for low-income countries are financed through separate contribution-based funds. The amount of financing a member can obtain from the IMF (its access limit) is also based on its quota.

Quotas are reviewed at least every five years, with varying results. The quota review that was concluded in 1998 led to a 45 percent increase in IMF quotas to SDR 213 billion (about \$317 billion as of end-July 2006). The review that was concluded in January 2003 resulted in no change in quotas. The last country to get an increase in its quota, and thus its vote, was China in 2001.

The dominant Northern countries and other supporters of the current IMF system of quotas and voting shares justify the level of control held by a few developed countries on the basis that these countries contribute the greatest financial share. They argue that voting in the IMF is based on a quota system that links voting weight to financial contributions, a system which favours the countries that contribute the most. Since the IMF's mandate was to secure financial stability, rather than to act as a philanthropic development fund, it is not unreasonable for power to remain in the hands of the financiers, rather than be divided according to population mass. Thus only the wealthiest nations have permanent seats on the Fund's Board and on the International Monetary and Finance Committee (much as on a bank board) because they claim to make the greatest contribution and to have the most importance in maintaining the stability of the global economy. However, their widely

publicised mishandling of the Asian and Russian financial crises is a *reductio ad absurdum* of this argument,⁹¹ in addition to which it must be realised that even small countries can have a major impact on the global economy.

A more compelling rebuttal of the argument rests on the economics of the quota system. In theory, voting power is linked to financial quota contributions, which are determined broadly according to economic size of each member state. Thus the larger the economic size of the member state, the more it ought to contribute, and hence be allocated a larger share of voting power. However, the current distribution of voting power does not accurately reflect economic size. As the BBC's Asia Report notes: 'Despite India's economy being about twice the size of Belgium's and it having a population of over one billion compared to Belgium's ten million, the European country wields more influence at the IMF. This is why many think the IMF is ripe for reform—including the IMF itself.'⁹² The Report refers to the difference in formal influence that derives from Belgium's holding 2.10% of the total votes and 2.12% of total quotas of the IMF, whereas India holds 1.89% and 1.92% respectively.⁹³ The Report documents that the IMF's Managing Director,

⁹¹ For details and arguments see See Joseph E. Stiglitz, 'Some Lessons From The East Asian Miracle', *Oxford Journals/World Bank Research Observer* 11, no. 2 (Aug. 1996): 151-177; Joseph E. Stiglitz, 'Capital Market Liberalisation, Economic Growth, and Instability', *World Development* 28, no. 6 (2000): 1075-1086; Joseph E. Stiglitz, *Globalisation and its Discontents* (London: Penguin Books, 2002); Stephan Haggard, *The Political Economy of the Asian Financial Crisis* (Washington, D.C.: Institute for International Economics, 2000); Paul Blustein, *The Chastening: Inside the Crisis that Rocked the Global Financial System and Humbled the IMF* (New York: Public Affairs, 2001); Steven Radelet and Jeffrey Sachs, 'The East Asian Financial Crisis: Diagnosis, Remedies, Prospects', *Brookings Papers on Economic Activity*, no. 1 (1998): 1-69; Nigel Gould-Davies and Ngaire Woods, 'Russia and the IMF', *International Affairs* 75, no. 1 (Jan. 1999): 1-22; Paul Krugman, 'What Happened to Asia?' (Manuscript, MIT, January 1998), <http://web.mit.edu/krugman/www/DISINTER.html>

⁹² Malcolm Borthwick, 'Reform on the cards for the IMF', *BBC Asia Business Report*, 28 August, 2006.

⁹³ Data available from: <http://www.imf.org/external/np/sec/memdir/members.htm>. It has also been argued, as noted in this section on the IMF, that there are numerous channels of informal influence that are open to exploitation by developed countries—to the US and Europe in particular. Belgium is well placed in the EU to take advantage of these informal influences and thus, although the difference in voting power

Rodrigo de Rato, wants the Fund to address and reflect the growing economic importance of countries such as South Korea and China.⁹⁴ Similarly, IMF External Relations Department Director, Masood Ahmed, had expressed hopes that the IMF's 2006 annual meeting in Singapore would 'include an initial set of decisions on addressing the quota misalignments for some countries'—particularly emerging markets in Asia.⁹⁵

However, the results of the October 2006 meeting in Singapore were disappointing. Voting rights were increased to just four countries—China, South Korea, Turkey, and Mexico—and although there were calls for a small increase to basic votes and an overhaul of the way quotas are calculated, nothing was agreed upon to alter the imbalance of power in decision-making at the IMF or to give more 'voice' to developing countries. In reality, the *ad hoc* vote increases for four countries and a doubling of basic votes will only decrease the voting weight of advanced economies from 62% of the total to 60.5% of the total, while African countries will see their voting shares increase by a mere 0.5%. Furthermore the revision of the quota formula may negatively impact the voting rights of many low- and middle-income countries: if the US preference for a quota formula based almost entirely on GDP at market exchange-rates is accepted, then countries such as Nigeria, Indonesia, Venezuela, Malaysia, South Africa and nearly every other African country will suffer diminished voting rights in the organisation.

Nor is the financial argument as simple as the quota shares suggest. Developing countries do indeed contribute less in quotas to the IMF's general resources than developed countries.

between Belgium and India is fairly small, it is possible that Belgium derives some of its influence from other informal sources.

⁹⁴ Malcolm Borthwick, 'Reform on the cards for the IMF', *BBC Asia Business Report*, 28 August, 2006.

⁹⁵ Malcolm Borthwick, 'Reform on the cards for the IMF', *BBC Asia Business Report*, 28 August, 2006.

However, overall funding from developing countries is rapidly increasing through other channels. In addition to their quotas, developing countries make payments to the Poverty Reduction and Growth Facility (PRGF). Significantly, the PRGF is the only fund from which most of the poorest nations can borrow, and it is this facility that provides the majority of the IMF's programme work. In this way, then, the IMF can be compared to a savings account, into which regular payments are made by developing countries, to be used for withdrawals at a later date. There are a number of good arguments that the decisions about the way this money should be used ought to lie with the developing countries: firstly, because they have financed this fund; secondly, because they are the ones that will use it; and, finally, because—as has been illustrated by the experience with most PRSPs—the developed nations have not demonstrated a successful track-record in developing beneficial country-specific PRSPs.

Increasingly, it is the debtor nations—developing countries and economies in transition—who pay for the running of the IMF. As the IMF itself states, 'administrative expenses and target net income are effectively financed by debtors'.⁹⁶ Since the start of the 1980s, debtor nations have been covering an increasing proportion of the costs of the IMF:

⁹⁶ IMF, 'Financing the Fund's operations – Review of issues' (review prepared by the Treasurer's Department, Washington D.C., 11 April, 2001), <http://imf.org/external/np/tre/ffo/2001/fin3.pdf>.

Table 1.2 Relative contributions to the IMF

	Debtors (%)	Creditors (%)
1982	27.7	72.3
1992	44.9	55.1
2002	75.0	25.0

Source: Tim Jones and Peter Hardstaff, 'Denying democracy: How the IMF and World Bank take power from people', *World Development Movement* (May 2005)

Ngairé Woods notes that no national democracy is founded on a 'one dollar, one vote' system.⁹⁷ Although the IMF is obviously no national democracy (even if a 'one dollar, one vote' system were to operate), I have attempted to demonstrate that the financing of the IMF is not as straightforward as is first suggested by the quota system. I believe that the economic argument—that control of the IMF should lie with the developed countries—is significantly less robust than most developed nations would have us believe, and therefore deserves serious examination and reconsideration. Finally, I would like to suggest that there is significant evidence to suggest that, regardless of what economic arguments apparently justify the voting shares, the actual formulation of these shares has been designed to ensure power remains with the 'Great Powers'.

The history of the voting quota formulation illustrates that it was designed specifically to ensure that control of the institutions remained with the industrialised countries. When the IMF was established in 1944, most of the countries of what we now call the 'developing world' were colonies of European countries, and had no say in any negotiations that mainly concerned the United States, Europe and Japan. The US stood in the relation of banker,

⁹⁷ Ngairé Woods, 'Making the IMF and World Bank More Accountable', *International Affairs* 77, no. 1 (Jan. 2001): 83-100.

with the rest of the world as its customers. Ariel Buira, Director of the G24 Secretariat, outlines how, when the voting formula was developed in the aftermath of the War:

...[it] had the political objective of attaining the relative quota shares that the US President and Secretary of State had agreed to give the 'big four' wartime allies, with a ranking which they had decided: Thus, the US was to have the largest quota, approximately \$2.9 billion, the UK including colonies an amount about half the US quota, the Soviet Union a quota just under that of the UK; and China somewhat less.⁹⁸

This was achieved through a confusing formula that used various economic indicators. Raymond Mikesell, who developed the formula, states that when he was questioned on how the distribution of quotas had been reached:

I ... gave a rambling twenty-minute seminar on the factors taken into account in calculating the quotas, but I did not reveal the formula. I tried to make the process appear as scientific as possible, but the delegates were intelligent enough to know that the process was more political than scientific.⁹⁹

As noted by Jones and Hardstaff: 'It is clear then that the inequality of voting power that exists today is the result of a 60-year-old carve-out based on post-war politics and a world dominated by colonialism'.¹⁰⁰ Although the world has changed dramatically since that time, the power and governance structure of the IMF has remained virtually the same. Today the

⁹⁸ Ariel Buira, 'A new voting structure for the IMF', <http://www.g24.org/newvotig.pdf>. Buira draws on information published in Raymond Mikesell, adviser to Assistant Treasury Secretary Harry Dexter White during the Bretton Woods negotiations on the design of the IMF and World Bank. Mikesell writes that in mid-April, 1943, he was selected by the US Government to estimate the first IMF quotas based on the directions of White. Mikesell notes that regardless of the estimations of gold and dollar holdings he used, the final quotas were to conform to the predetermined values set out by White. Raymond F. Mikesell, 'The Bretton Woods Debates: A Memoir', *Princeton University Essays in International Finance* 192 (March 1994), pp. 21-23; 35-36, http://www.princeton.edu/~ies/IES_Essays/E192.pdf

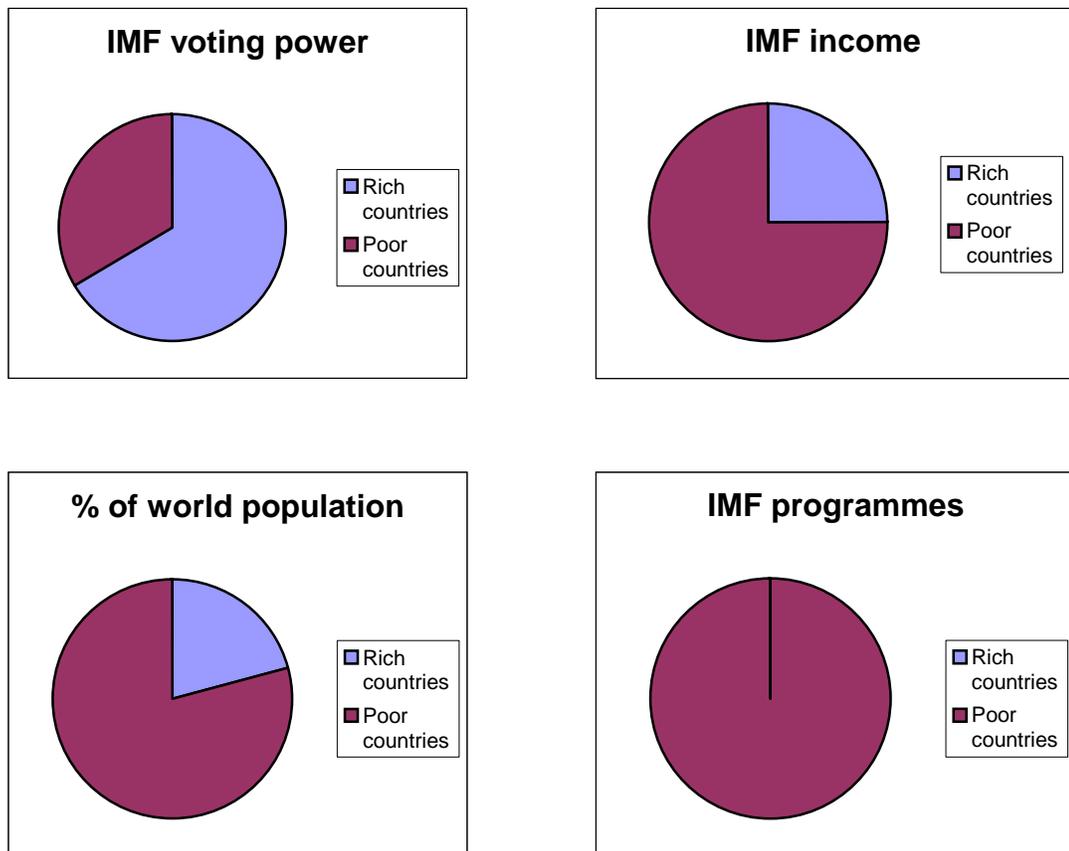
⁹⁹ Ariel Buira, 'The governance of the IMF', <http://www.g24.org/buiragva.pdf>

¹⁰⁰ Tim Jones and Peter Hardstaff, 'Denying democracy: How the IMF and World Bank take power from people', *World Development Movement* (May 2005), p. 26 <http://www.wdm.org.uk/resources/reports/debt/denyingdemocracy01052005.pdf>.

Northern countries monopolise the IMF borrowing system; the countries of the South borrow but have no effective input into decision-making.¹⁰¹

Figure 1.3 summarises the basic facts about the IMF and democracy:

Figure 1.3 The IMF and democracy



Source: Tim Jones and Peter Hardstaff, 'Denying democracy: How the IMF and World Bank take power from people', *World Development Movement* (May 2005)

Developing and transition countries have almost 80 percent of the world's population, provide 75 percent of IMF income, are subject to 100 percent of IMF programmes, yet only

have 36 percent of the votes on the IMF board. Thus, ‘in effect, the poor pay for an institution they have little say in controlling’.¹⁰²

1.4d Transparency and accountability

As Joseph Nye notes, ‘it is extremely important to increase transparency [in international institutions]. A more open process allows legislators, as well as the public at large, to know what’s happening’.¹⁰³ As I develop in Chapter Five, increased transparency is of vital importance if citizens are to be able to successfully engage in collective decision-making and consent through voting—two of the cosmopolitan principles that are necessary to ensure a just and legitimate system of international governance. This includes transparency in *what* decisions have been taken, *how* those decisions have been made, and for *what reasons*. All three aspects of transparency are necessary if the IMF and the countries running it are to be held accountable for their actions. The IMF itself states that:

Greater openness and clarity by the IMF about its own policies and the advice it provides to members...increases the Fund’s accountability for its policy recommendations... Over the years, the IMF has become more transparent and has sought to become more accountable, not only to the governments that own it, but also to the broader public... The IMF has taken a number of steps to provide more information on its own role and operations to its global audience.¹⁰⁴

¹⁰¹ Jose De Gregorio et al., ‘An Independent and Accountable IMF’, *Geneva Reports on the World Economy* 1 (1999), International Centre for Monetary and Bank Studies and Council for Economic Policy Research.

¹⁰² Tim Jones and Peter Hardstaff, ‘Denying democracy: How the IMF and World Bank take power from people’, *World Development Movement* (May 2005), p. 27, <http://www.wdm.org.uk/resources/reports/debt/denyingdemocracy01052005.pdf>

¹⁰³ Joseph S. Nye, Jr. et al, ‘The ‘Democracy Deficit’ in the Global Economy: Enhancing the Legitimacy and Accountability of Global Institutions’ (Task Force Report #57 (2003) for the Trilateral Commission), <http://www.trilateral.org/projwork/tfrsums/tfr57.htm>.

¹⁰⁴ IMF, ‘Transparency at the IMF’ (IMF Factsheet, October 2006), <http://www.imf.org/external/np/exr/facts/trans.htm>

Recently the IMF has begun to make programme documents for most countries publicly available, listing the conditions being set, and the IFI programme to which they are attached.

The Board of Governors, the highest decision-making body of the IMF, consists of one governor and one alternate governor for each member country. The governor is appointed by the member country and is usually the minister of finance or the governor of the central bank. All powers of the IMF are vested in the Board of Governors. As Nye points out, what has thus developed is a ‘club model’:

Think of the IMF: it’s a club of finance ministers... What you find are parts of governments working with similar parts of other governments but excluding other parts of their own governments... These clubs of ministers with similar interests in an issue often are not as responsive to the broader democratic public as some people would want... The basic point—that these institutions receive their legitimacy through delegation from governments is true, but not all parts of governments and the delegation lines are very long and some governments are not democratic.¹⁰⁵

Ann Florini echoes this opinion, asking: ‘Do these organisations really operate as clubs? In some cases the answer is clearly yes’, and cites the IMF and World Bank as clubs with unequal voting rights.¹⁰⁶

It is not unreasonable that the IMF should rely to such an extent on the contribution of finance ministers of member countries. After all, it is a financial institution charged with the important task of ensuring economic stability, and the finance sectors of each member

¹⁰⁵ Joseph S. Nye, Jr. et al, ‘The ‘Democracy Deficit’ in the Global Economy: Enhancing the Legitimacy and Accountability of Global Institutions’ (Task Force Report #57 (2003) for the Trilateral Commission), <http://www.trilateral.org/projwork/tfrsums/tfr57.htm>.

¹⁰⁶ Ann Florini, *The Coming Democracy: New Rules for Running a New World* (Washington: Island Press, 2003), p. 81.

governments are obviously well placed to advise and make decisions on such issues. However, I argue that financial issues can often have very substantial effects on other areas of government policy, especially when we consider that the IMF's mandate is also to 'promote high employment and sustainable economic growth, and reduce poverty'. These are areas that would be best informed by a variety of experts from financial and other areas, such as employment and development theory, and not only from government, but from business and especially from civil society in the areas that would be affected by decisions. I have already pointed out above that PRSPs often under-perform when controlled by industrialised countries and without sufficient input from local officials and local people, and that in many cases there are good arguments that the distant control by the industrialised countries is part of the reason for the poor performance.

I therefore argue that while it is not unreasonable for finance ministers to play a prominent role in the running of the Fund, their role alone is not sufficient for the creation of a well-rounded set of policies designed to promote economic growth and reduce poverty. And yet, despite the remit of IMF programmes affecting many government departments (such as education, health and trade), as well as the legislation passed by national parliaments, the Articles of Agreement of the Fund explicitly state that only Finance Ministries and Central Banks can have direct dealings with the IMF. This leaves the Fund open to the 'double aspect' problem—the Fund is only accountable to the populations it affects via their finance ministers. In some cases these finance ministers may not be answerable to their domestic populations, and in many cases Southern finance ministers may lose influence to those finance ministers representing the interests of powerful developed nations. To improve decision-making processes and feedback and response mechanisms, government ministers from sectors other than finance, as well as business and citizen interests must, at the very

least, have access to forums at which they can debate the issues and help finance ministers to make better-informed choices. With the ever-growing demands for more accountability and transparency from the IMF and its governors, it is difficult to restrain the obvious question about the undisclosed way that business is conducted in the IMF: why is it so? Stiglitz answers bluntly:

It seems peculiar that the IMF is unwilling to impose conditions that ensure more democratic accountability—that is, until one understands the underlying governance structure, which not only is based on a culture of lack of transparency but almost requires secrecy for it to continue in the way that it has in the past.¹⁰⁷

There is also a lack of formal voting on many issues, and a blurred distinction between majority voting and consensus that reduces direct accountability. For example, normally there is no formal vote on decisions taken by Executive Directors: the UK Treasury states that instead they ‘are taken on the basis of consensus’.¹⁰⁸ However, as Jones and Hardstaff note, in practice this does *not* mean that all Executive Directors come to agree on the decision to be taken but that, in reality, once the Chair of the Board meeting informally senses a majority of votes has been found on an issue, Executive Directors in opposition to the informal majority have little choice but to ‘join the consensus’.¹⁰⁹ Those countries with dominant voting positions on the Board can collectively impose decisions, whilst claiming a ‘consensus’ had been reached on the issue. Individual Executive Directors cannot be made accountable for their role in decisions that are taken. Formal votes are held by the

¹⁰⁷ Joseph E. Stiglitz, ‘Democratising the International Monetary Fund and the World Bank: Governance and Accountability’, *Governance* 16, no. 1 (Jan 2003), p. 134

¹⁰⁸ HM Treasury, ‘Growth For All—Towards a Stable and Fairer World: The UK and The IMF 2003’, *HM Treasury* (March 2004), http://www.hm-treasury.gov.uk/media/509/3C/imf_march04.pdf.

IMF Board of Governors, but only on a small number of organisational and administrative decisions.

Legal accountability is seriously damaged by the Articles of Association of the IMF granting the Fund legal immunity at both the national and global level, stating:

The Fund, its property and its assets, wherever located and by whomsoever held, shall enjoy immunity from every form of judicial process except to the extent that it expressly waives its immunity for the purpose of any proceedings or by the terms of any contract.¹¹⁰

As Jones and Hardstaff remark, all this amounts to ‘a gaping hole in the ability of citizens and parliamentarians in *all* IFI member countries to hold their representatives to account’.¹¹¹

1.5 Summary of thesis: chapter outline

In Chapter One I have presented the thesis topic, defined its original contribution, reviewed relevant literature, summarised the failings of the current international system and the need for reform (using the IMF as an illustration), and addressed potential criticisms of the idealist position that I adopt in this thesis. I conclude by outlining the structure and content of each of the seven chapters of the thesis.

Chapter Two provides the background context for my analysis with a review of the rise of civil society in global governing institutions. It shows the rise of civil society organisations

¹⁰⁹ Tim Jones and Peter Hardstaff, ‘Denying democracy: How the IMF and World Bank take power from people’, *World Development Movement* (May 2005), p. 30, <http://www.wdm.org.uk/resources/reports/debt/denyingdemocracy01052005.pdf>

¹¹⁰ IMF, ‘Articles of agreement: Article IX, Section 3’, <http://www.imf.org/external/pubs/ft/aa/aa05.htm#1>

¹¹¹ Tim Jones and Peter Hardstaff, ‘Denying democracy: How the IMF and World Bank take power from people’, *World Development Movement* (May 2005), p. 31, <http://www.wdm.org.uk/resources/reports/debt/denyingdemocracy01052005.pdf>

in response to the lack of democracy and fair representation in international governing structures and the failure to protect the individual in authoritarian states. The chapter develops the concept of the ‘democracy deficit’, and analyses existing practices designed to democratise IGOs, to increase their legitimacy through greater interaction with NGOs and private firms since 1993. It examines examples of demonstrated practice of IGOs’ formal involvement with NGOs and, in some cases, with both NGOs and the business sector. These examples are chosen to represent a range of NGO involvement from marginal to deep participation in decision-making: from outside critic, to inside observer status, to advisory role, to participation that directly informs the decision-making process (‘soft power’ only), to roles in the governance structure, including actual development, monitoring and implementation of policy (‘soft power plus’), to voting rights (formal decision rights)—the only example being the International Labour Organisation (ILO).

I then assess the potential for NGOs to exercise more formal decision rights, based on an examination of how NGOs have in some cases transformed into political parties. I follow with an analysis of the problem of internal NGO accountability and legitimacy, and ways to strengthen alliances between Northern and Southern NGOs and further strengthen NGOs’ capacity to assess their capability to participate in IGO decision-making processes.

Chapter Three presents in outline the ideal concept of Collective Management and shows how it seeks to address the challenges posed by the failings of the current international system by proposing a potentially more just and democratic governing structure. It first compares and contrasts Collective Management with six other concepts of global reform, according to differences in the type of democracy involved (participatory vs. representative) and the type of power exercised (‘soft power’ vs. formal decision-rights). It

describes the potential institutions and mechanisms needed to realise the ideal concept of Collective Management and the issues involved in developing terms of reference for a potential future tripartite system. (In addition, Appendix Two includes a scenario for a Global Conference of stakeholders to deliberate on the creation of such a system.)

Chapter Four explains the first of the three pillars supporting the concept of Collective Management—liberal individualism—and argues that there are strong motivations for individuals to seek fair terms of cooperation within the necessary constraints of being members of a larger society. I begin with an analysis of the fundamental problem of how individuals who are freely motivated to pursue their own ends—the core liberal ideal—can coexist within the necessary constraints that come with being members of a larger national or global society. Liberalism rests on the ideal that individuals should be free to pursue a diversity of ends of life. I explain and adopt liberal individualism as a key normative pillar supporting an ideal global Collective Management framework in which citizens are free to pursue their own ends as long as they do not infringe on the rights of others to do the same.

I examine the fundamental question of individual motivation and the question of whether there is reason to believe that individuals can coexist in a cooperative fashion. I reject a Hobbesian view, and instead follow Hume, Rawls and McClennen in arguing that there are significant self-interested and moral motives that prompt individuals to seek cooperation on fair terms if others do so, too. I start by discussing what Hume calls the ‘artificial’ virtue of justice (which for Hume is concerned with the rules governing property). Hume argues that while self-interest is the original motivation to establish justice, what he calls ‘sympathy with the public interest’ leads us to regard as a moral virtue the disposition to stick to the rules of justice when these rules serve the common good. This approval of the disposition

to be just ensures that individuals acquire additional, moral motives to abide by the rules of justice. I further consider Rawls's view that people have a 'reasonable moral psychology' that makes them ready to propose and abide by fair terms of cooperation if others do so, too. Finally, I review Ned McClennen's theory of motivation. McClennen argues that it will be rational for persons who have a real sense of their reciprocal dependencies on others to respond by trying to create and sustain this kind of normative reciprocity and mutual constraint between themselves and others. I argue that we can extract from these three accounts a theory of motivation from which it follows that if the system of Collective Management identifies a fair, mutually beneficial set of arrangements, then individuals will be motivated to abide by its rules if others also do so, even in the absence of a Hobbesian global Leviathan.

In the second part of the chapter I examine the challenges in realising the ideal of modern liberal individualism on a global level. The liberal vision of justice seeks to allow and protect a wide spectrum of diversity and plurality of opinion. Given the enormous diversity of interests and desires of people throughout the world, the dangers of promoting one vision of the 'good' can be seen in the numerous historical examples of the totalitarian states that have been set up to enforce a belief system such as Marxism; the repression of alternative values naturally leads to conflict.¹¹² I examine the challenges posed by communitarian and utilitarian viewpoints, and argue that liberal individualism is both a practical and worthy ideal that provides support for the concept of Collective Management structures.

¹¹² Paul Kelly, *Liberalism* (Cambridge, UK: Polity Press, 2005), p. 49.

In Chapter Five, I analyse in detail and adopt the final two pillars to support Collective Management—a liberal theory of justice and a modern theory of cosmopolitanism. I aim to provide evidence for the view that Collective Management indeed offers an outline of fair, mutually beneficial arrangements on a global level. To do so, I support principles of justice focused on global equal opportunity and political participation. I reject the limits of Rawls’s view of international justice based on what he calls ‘peoples’ rather than persons, and support the alternative view that extends Rawls’s position in *A Theory of Justice* to the global context.

The third pillar of support for Collective Management—a theory of cosmopolitanism—builds on the theory of global justice by providing principles upon which tripartite collective decision-making structures can be built. As noted, I rely heavily on the eight principles defined by David Held to support my outline of Collective Management structures. I argue that these principles could provide a basis for an ‘overlapping consensus’ to be achieved through collective decision-making in multi-level governing structures.

Chapter Six presents a case study of the problems and prospects for reforming the WTO in accordance with the principles of Collective Management. It begins with an analysis of the workings of the WTO and assesses the claims that it is undemocratic and that developing countries are unable to participate effectively in decision-making. It summarises the history of WTO-NGO initiatives and argues for greater involvement of civil society. It then elaborates on the challenges and problems of NGO inclusion in WTO decision-making processes and proposes a specific approach to reform based on Collective Management principles.

In Chapter Seven, the thesis summarises its conclusions on the prospects and problems for further democratisation of global institutions through NGO participation. It notes that reform toward the Collective Management approach is a long-term process that must begin with many of the initiatives that are already in existence and provide lessons, such as the mechanisms of the ILO, the Global Compact, the World Bank, where the three sectors are attempting to work together. It concludes by summarising the ways in which the global community has clearly recognised the importance of collaboration among the three sectors, and presents for discussion a more formalized collaboration that would be institutionalised in Collective Management structures.

CHAPTER 2: A FRAMEWORK TO EVALUATE THE ROLE OF CIVIL SOCIETY IN GLOBAL GOVERNING INSTITUTIONS

2.1 Introduction

According to the NGO Survey of leading IGO and NGO representatives, key reasons for the ‘democracy deficit’ in IGOs are that multinational corporations have too strong a voice and civil society organisations have too weak a voice.¹¹³ This suggests that the voice of civil society needs to be strengthened to balance the influence of the other two sectors. In this chapter, I analyse the potential benefits and challenges involved in the approach of democratising IGOs—‘correcting’ the democracy deficit—through a greater formal decision-making role for civil society organisations in IGOs. I evaluate the NGO role within the framework of the type of power they exert, from a purely ‘soft-power’ approach to that of formal decision-making power in IGO governing structures. I argue that, given proper accreditation, greater accountability and the use of certain election procedures, NGOs could potentially make IGOs more democratic if they are allowed to exert power formally in collective decision-making structures.

At the same time, I address very serious objections to this view. Robert Dahl has argued that the effort to make IGOs ‘democratic’ is misguided because IGOs simply cannot become ‘democratic’ in the way that nation-states can.¹¹⁴ From this perspective, IGOs should be seen as a bargaining forum for states to advance their interests and should not pretend to be ‘democratic’. Another important objection is that, if NGOs were to have

¹¹³ The Monitor NGO Survey, June 2006, commissioned especially for this thesis. See Appendix 1 for details of the purpose and methodology of the survey, and information on the field of respondents.

¹¹⁴ Robert A. Dahl, ‘Can International Organisations Be Democratic? A Sceptic’s View’ in *Democracy’s Edges*, eds. Ian Shapiro and Casiano Hacker-Cordon (Cambridge: Cambridge University Press, 1999) pp. 33-34.

formal roles in IGOs, they might lose their essential nature as government critics, as defenders of the vulnerable and voiceless, and just become part of an unresponsive government. In this chapter I address these arguments that suggest that it is better to leave civil society organisations with soft power only, to let them compete in the free market of ideas outside of government or experiment with different approaches such as that of creating a ‘fourth sector’ of hybrid non-profit/private organisations to advance social goals.

To have an empirical basis for my arguments in support of the Collective Management concept, I draw on the findings of the Monitor NGO Survey on the subject of NGOs and global governance. This is original work that I commissioned especially for this thesis, and for which I provided the design and focus of the questions (hereafter referred to as ‘NGO Survey’). Responses and opinions were gathered from a wide field of leading members of Northern and Southern NGOs and IGOs, selected to be as representative as possible. As such they provide a valid and original source of material in examining the role of civil society in global governance. Details of the methodology of the NGO Survey are presented in Appendix 1.

This chapter begins with a section to provide historical context on the rise of civil society in global governance. I follow this with a summary of the current role played by NGOs in global governance. I then include three sections based on the type of power that NGOs use to influence policy-making in the current global governing system. These examples are chosen to represent a range of NGO involvement in decision-making from minimal to deep participation. I define these as 1) Purely ‘Soft Power’, which includes the role of outside

critic, to inside observer status, to advisory role, to participation that directly informs the decision-making process; 2) 'Soft Power Plus', which includes examples where NGOs have roles in the governance structure of IGOs, including actual development, monitoring and implementation of policy, but no vote (e.g., UNAIDs); and 3) Formal Decision Rights/Vote and significant—if not equal—representation (the only example is the ILO).

2.2 Historical context: the rise of civil society participation in IGOs

Civil society has for centuries played a major role in pushing governments to reform. The case of civil society influence on developing labour standards does not begin with membership in the ILO; for example, the Quakers position against slavery developed by 1787 into a non-sectarian trans-Atlantic movement to abolish slavery.¹¹⁵

From 1945 to the present day, the role and presence of civil society alongside the processes of international governance has progressed significantly. James Rosenau notes that recent years 'have witnessed a veritable explosion in the number of voluntary associations that have crowded onto the global stage. In all parts of the world and at every level of community, people—ordinary people as well as elites and activists—are coming together to concert their efforts on behalf of shared needs and goals'.¹¹⁶ For example, twenty years ago Indonesia had only a single environmental organisation that was independent of the government, whereas now there are more than 2,000 that are linked to an environmental network based in Jakarta; registered non-profit organisations in the Philippines grew from

¹¹⁵ John Braithwaite and Peter Drahos, *Global Business Regulation* (Cambridge, UK: Cambridge University Press, 2000), pp. 223–224.

¹¹⁶ James N. Rosenau, *Distant Proximities: Dynamics Beyond Globalisation* (Princeton: Princeton University Press, 2003), pp. 56–57.

18,000 to 58,000 between 1989 and 1996; in Slovakia the figure went from a handful in the 1980s to more than 10,000 today; and in the United States 70 percent of the non-profit organisations—not counting religious groups and private foundations—filing tax returns with the Treasury Department are less than thirty years old, and a third are less than fifteen years old.¹¹⁷ ‘By one estimate, there are now two million [NGOs] in America alone... In Russia, where almost none existed before the fall of communism, there are at least 65,000. Dozens are created daily; in Kenya alone, some 240 NGOs are now created every year.’¹¹⁸ Malaysia is another example of a country that has witnessed the establishment of an increasing number of NGOs, and their ‘institutionalisation’ and ‘professionalisation’ as a result of entering as partners into national social welfare strategies.¹¹⁹

This growth rate of CSOs and the increased force with which they spread their messages has meant that their impact on global governance is increasing greatly, even if through largely informal channels. The relationship between civil society and IGOs shows an increasing tendency towards aggressive protests, as illustrated by the demonstrations at the 1999 Seattle WTO Ministerial Meetings and similar instances at World Bank conventions. In these cases, representatives of civil society assert that that the policy and procedures of IGOs are unjust, and not accountable to those affected by the decisions.

In historical perspective, the largest IGO—the United Nations—began as a group of states that had very little concern for civil society. Although the basis of NGO involvement in the UN was already set out at the inception of the UN itself in 1945, it was only as a result of

¹¹⁷ Data taken from David Bornstein, ‘A Force Now in the World, Citizens Flex Social Muscle’, *New York Times*, 10 July, 1999.

¹¹⁸ ‘Sins of the Secular Missionaries’, *The Economist*, January 29, 2000.

strong NGO lobbying that NGOs were permitted to apply for accreditation to ‘consultative status’ with the UN Economic and Social Council (ECOSOC). According to Chapter X, Article 71 of the UN Charter, ‘The Economical and Social Council may make suitable arrangements for consultations with non-governmental organisations which are concerned with matters within its competence’.¹²⁰ Such arrangements could be made with international organisations and, where appropriate, with national organisations after consultations with the Member of the UN concerned. Although Article 71 gave ECOSOC the advantage in determining what the NGO-UN relationship should be, a growing number of organisations have gained consultative status, as evidenced by the data on NGO accreditation since 1945:

Table 2.1 Growth in number of NGOs gaining consultative status in ECOSOC

Year	No. of NGOs Accredited
1946	4
1949	90
1950	197
1968	377
1969	377
1992	928
1996	1226
1998	1519

Source: Antti Pentikäinen, ‘Creating Global Governance: The Role of Non-Governmental Organisations in the United Nations’ (paper prepared for the Finnish UN Association, Helsinki, 2000), p. 42

Up until the late 1980s there was little actual engagement of international NGOs in the UN’s work. Tony Hill notes that NGO forums were organised around UN Conferences, but

¹¹⁹ Raymond K H Chan, ‘The Welfare System in Southeast Asia: Development and Challenges’, *South East Asia Research Centre Working Paper Series* 13 (Oct 2001), p. 17.

¹²⁰ The Constitutional Provision for arrangements with NGOs is found in Chapter X, Article 71 of the UN Charter, <http://www.un.org/aboutun/charter/chapt10.htm>.

they remained largely autonomous.¹²¹ Hill argues that relations between the UN and NGOs during this period were more of a ‘formal and ceremonial nature’ rather than of a political nature, although they did succeed in bringing ‘new ideas and eloquent spokespersons to the work of the UN’. These developments were important in that they ‘established the right of non-governmental actors to participate in UN deliberations, and gave real, practical expression to the possibilities opened up by Article 71 of the UN Charter.’¹²²

During this period the increasingly tense relations between East and West prompted a review of ECOSOC’s relations with civil society, in order that the UN might use relations with NGOs as a means of monitoring international activity. The result was Resolution 1296 (XLIV) of May 1968, which specifically encouraged UN engagement with developing-country NGOs. Resolution 1296 also granted to consultative NGOs the right to give consultations in the ECOSOC, to be accredited to the UN’s international conferences and to have the right of consultation with the UN secretariat.¹²³ These privileges of consultative membership gave accredited NGOs an important advantage: it gave them the right to attend an area of delegations where they could lobby the representatives of governments and UN officials. Access to UN international conferences was another key step in the development

¹²¹ Tony Hill, ‘Three Generations of UN-Civil Society Relations’, *UN Non-Governmental Liaison Service* (April 2004), <http://www.un-ngls.org/Three%20Generations%20of%20UN-Civil%20Society%20Relations-%20A%20Quick%20Sketch.doc>. Notable exceptions include the Stockholm Conference on the Human Environment in 1972, and the work of International Coalition for Development Action (ICDA) and others engaging in the North-South Dialogue for a NIEO (under UNCTAD auspices) through the 1970s and early 1980s.

¹²² Tony Hill, ‘Three Generations of UN-Civil Society Relations’, *UN Non-Governmental Liaison Service* (April 2004), <http://www.un-ngls.org/Three%20Generations%20of%20UN-Civil%20Society%20Relations-%20A%20Quick%20Sketch.doc>

¹²³ United Nations, ‘Economic and Social Council Resolution 1296 (XLIV) on Consultative Arrangements: Arrangements for Consultation with Non-governmental Organisations’, <http://habitat.igc.org/ngo-rev/1296.html>, Part I, 1968, pp. 621–630

in the UN-NGO relationship, and from 1968 onwards UN international conferences attracted increasing numbers of NGOs, both accredited and as part of parallel forums:

Table 2.2 Numbers of NGOs participating in international UN conferences

Year	Venue	Conference Issue	New NGOs Accredited	Parallel NGO Forum Participants
1968	Tehran	Human Rights	57	None
1972	Stockholm	Human Environment	>300	Not Known
1975	Mexico City	International Women's Year	114	6,000
1985	Nairobi	End of Women's Decade	163	13,500
1992	Rio de Janeiro	Environment & Development	1378	18,000
1993	Vienna	Human Rights	841	?
1994	Cairo	Population & Development	934	?
1995	Copenhagen	Social Development	1138	c.a. 30,000
1995	Beijing	4th World Conf. On Women	2600	300,000
2001	Durban	Racism	1290	c.a. 15,000
2002	Monterrey	Financing for Development	107	?
2002	Johannesburg	Sustainable Development	737	35,000

Source: 'UN System and Civil Society—An Inventory and Analysis of Practices' (Background Paper for the Secretary-General's Panel of Eminent Persons on United Nations Relations with Civil Society), May 2003, p. 6

The 1968 Tehran Conference marked the start of a steady rise in NGO participation in UN activities, and the 1972 (Stockholm) and 1992 (Rio) Conferences were similar turning points in UN/civil society relations.

Partly in response to the experience of NGO participation at the 1992 Rio Earth Summit, a working group was established by ECOSOC in 1993 to begin a review and evaluation of relations with civil society, leading three years later to the adoption of Resolution 1996/31 as the formal, legal framework for UN-NGO relations. Resolution 1996/31 replaced Resolution 1296 of 1968, and advanced on it by explicitly opening up UN consultative status to national, regional and sub-regional NGOs, and setting out a standard procedure for accreditation to and participation in international conferences. It formally recognised that non-ECOSOC-accredited NGOs could also participate in international conferences, and placed special emphasis on encouraging Southern NGO participation. The years following the adoption of Resolution 1996/31 have seen enormous growth in numbers of NGOs (many of them national) applying for consultative status, with the number of those acquiring it growing from 744 in 1992 to 2,350 in 2003. A growing backlog of applications (over 800, as of 2003) is waiting for review by ECOSOC's committee on NGOs.

In February 2003, the Secretary-General of the United Nations established a panel chaired by former president of Brazil, Mr. H. F. Cardoso (the 'Cardoso Panel'), as part of a broad set of reform measures to improve civil society access to the UN. The Panel was intended to make the United Nations 'more able to respond to the new demands of the 21st century, and highlights the growing interaction between civil society and the United Nations as one

of the areas that need improvements'.¹²⁴ In the course of its work, the Cardoso Panel advocated an improvement to the process of accrediting NGOs at the General Assembly, as well as within other IGOs, such as the WTO.¹²⁵ Although the Panel's specific recommendations were met with scepticism, its work has already introduced the topic of NGO inclusion in IGO decision-making. The Parliamentary Network responsible for scrutinising the affairs of the World Bank also provides a promising example, and has even led to negotiations on a similar body under the auspices of the WTO.¹²⁶

Processes are developing for including NGOs in international decision-making by means other than formal accreditation to ECOSOC. In 1995, the UN Secretariat had undertaken an initiative to include new definitions of major groups and social movements into the statutes for NGOs, but did not succeed. Then, in May 1997, UN Resolution 16/12 was passed, specifically encouraging the Secretariat to collaborate with 'social partners', defined as 'local authorities and relevant actors of civil society, particularly the private sector, non-governmental organisations and research organisations'. This was part of the UN's effort to make the UN more accessible to NGOs and other civic groups. Antti Pentikäinen noted in 2000 that 'the term 'social partners' has lately come into increasing use, even though it is

¹²⁴ United Nations, 'Cardoso Panel Holds Its First Meeting', <http://www.un.org/reform/pdfs/pr11june2003.htm>

¹²⁵ United Nations, 'Report of the Secretary-General on the implementation of the Report of the Panel of Eminent Persons on United Nations–Civil Society Relations' (report A/58/ prepared for 59th session of the UN General Assembly), <http://www.globalpolicy.org/reform/initiatives/panels/cardoso/0904sgreport.pdf>

¹²⁶ Kimmo Kiljunen, 'Global Governance and Parliamentary Influence' (background paper for the Helsinki Process on Globalisation and Democracy), http://www.helsinkiprocess.fi/netcomm/ImgLib/24/89/hp_track1_kiljunen.pdf

not yet clearly defined. In the world of diplomacy these terms aim to include more partners than just the NGOs recognised by ECOSOC'.¹²⁷

This extension of UN relations to a wider range of partners than ECOSOC-accredited NGOs has encouraged the development of a host of formal and informal arrangements between IGOs (or their representative committees) and civic organisations. I examine these in greater detail in Sections Four to Six of this chapter. First I consider in some depth the characteristics of the current role of NGOs in global governing institutions.

2.3 Current role of NGOs in global governing institutions

2.3a IGOs: are they 'undemocratic' and can they be 'democratic'?

As I have noted, some argue that IGOs should not try to be 'democratic'. This thesis explores the alternative view that they *can* be democratic, reformed to realise principles that are more just and more moral, and still be practicable. First, why do I argue that democracy is the term against which we judge global governance? Why have I chosen to analyse the question of whether IGOs can be made more democratic through participation of civil society and private sector representatives? One could argue that undemocratic and unjust global institutions may be quite acceptable and relatively effective at certain functions at the level of global governance. But I have set a different task. I use democracy as the standard against which to judge IGOs because this thesis adopts the premises of liberal

¹²⁷ Antti Pentikäinen, 'Creating Global Governance: The Role of Non-Governmental Organisations in the United Nations' (paper prepared for the Finnish UN Association, Helsinki, 2000), p. 59
<http://www.ykliitto.fi/uutta/gover.pdf>

individualism, global justice and cosmopolitanism and explores the challenges of their potential realisation in global governing institutions. I am interested in the question about the degree to which global governing institutions might realise a cosmopolitan moral philosophy according to which the individual is taken as the responsible and accountable agent, owed equal concern—in short, a liberal democratic order based on the cosmopolitan view that the individual should be the primary unit of analysis with priority over the collective, the sovereign state. Further, my second pillar of global justice is based on cosmopolitan premises that there is a duty of fairness that is owed all individuals by global governing institutions. I follow what Thomas Nagel refers to as the cosmopolitan moral conception as opposed to what he terms the ‘political’ conception about the relations of justice and institutions.¹²⁸

The thesis validates the democratic deficit on the basis of a number of sources. First, the NGO Survey of top experts both from IGOs and NGOs shows that the vast majority of respondents believe there is a clear democratic deficit on the basis of institutional power. A statistically significant overwhelming majority of both IGO and NGO representatives sampled believe that the ‘rules of the game’ of current institutions were created by the dominant Northern countries. Current international institutions are thus not democratic but designed to favour the interests of the post-war dominant countries. The thesis further defines a democratic deficit on the basis of the ‘double aspect’ and ‘double voice’ problems, also strongly supported by empirical evidence from the NGO Survey. In Chapter Six, I analyse examples of the ‘double voice’ problem, specifically of multinational

¹²⁸ Thomas Nagel, ‘The Problem of Global Justice,’ *Philosophy and Public Affairs* 33, No. 2 (April 2005) pp. 119-120. He defines two principal moral conceptions ‘of the relation between the value of justice and the existence of the institutions that sovereign authority makes possible.’

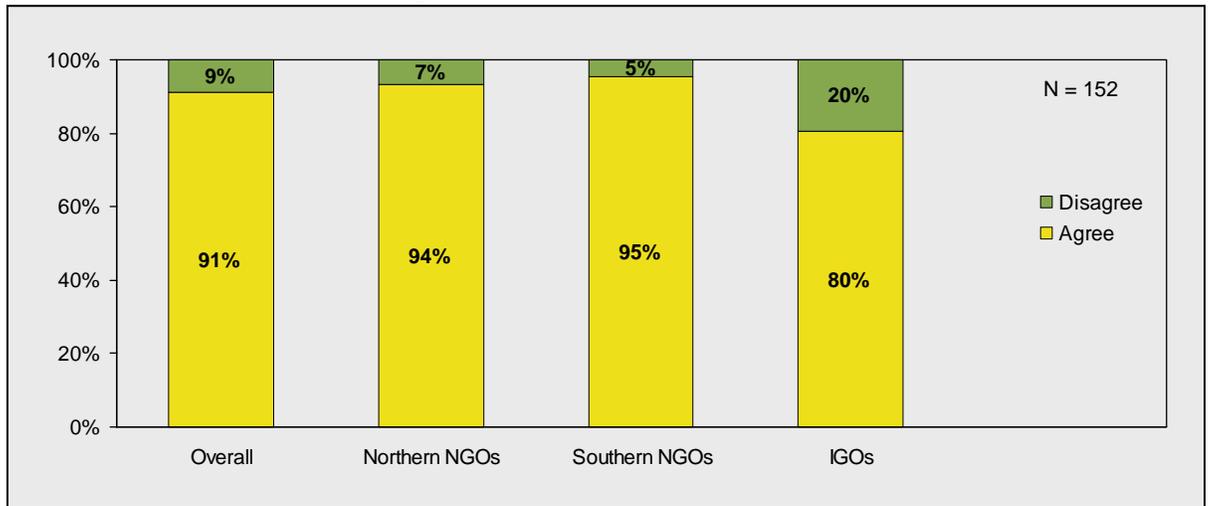
companies in the pharmaceutical industry using WTO agreements to their advantage while preventing the generic drug companies of less developed countries from benefiting equally from these agreements.

I further note that respected experts like Robert Dahl agree that current IGOs are not democratic. As noted before, however, I disagree with Dahl's sceptical position that IGOs can never be democratic. I argue that Collective Management structures could potentially create more democratic IGOs with greater popular control.

The fact that many believe that IGOs *should* be 'democratic' is evidenced by the number who criticise the 'democratic deficit' in global governing institutions and propose reform. When posed the question whether there is a 'democratic deficit' in inter-governmental institutions such as the UN, the Bretton Woods institutions and the WTO, 91% of the total field of respondents of the NGO Survey agreed that there was. Within the total field of respondents, 94% of Northern NGOs and 95% of Southern NGOs surveyed agreed that such a 'democratic deficit' existed. The average response for the total field was brought down slightly by the IGO group, 80% of which agreed that there exists a 'democratic deficit.' These results provide statistically significant majorities at the 90% confidence level in all fields of respondents.¹²⁹

¹²⁹ Monitor NGO Survey, June 2006. All majorities referred to in the analysis of the data provided by the NGO Survey are statistically significant at the 90% confidence level, unless explicitly noted in the text.

Figure 2.1 Level of agreement (%) that there is a ‘democratic deficit’ in inter-governmental institutions



Source: Monitor NGO Survey, June 2006

These results indicate that there is overall agreement with two reasons for the democratic deficit that, when combined, are representative of what I have called the ‘double aspect’ problem: 73% of respondents agreed that the rules of the game were created by powerful developed countries, and 66% of respondents agreed that governments do not adequately consult their citizens. These two problems combined mean that citizens of these countries do not have sufficient access to decision-making processes, either because their governments do not represent them, or because their governments have little influence in IGO decision-making. Evidence for the double aspect problem is further provided by the data from each separate field of respondents. Statistically significant majorities from every field of respondent—Northern NGOs, Southern NGOs and IGOs—were also found to agree with these two reasons for the democratic deficit. 67% of Northern NGO respondents agreed that the rules of the game were created by powerful developed countries, and 62%

of Northern NGO respondents agreed that governments do not adequately consult their citizens.¹³⁰

A very high percentage (84%) of Southern NGOs believe that the rules of the game were created by powerful developed countries, showing that representatives of the South are even more concerned about this dimension of the ‘double aspect’ problem, that Southern governments often have little influence in international decision-making. A large majority (68%) believe that governments do not adequately consult their citizens, representing the other side of the ‘double aspect’ problem.¹³¹ The data from both Northern and Southern NGOs thus indicates that this ‘double aspect’ problem is a very real concern for the majority of NGOs surveyed. IGOs believe that the power wielded by developed countries and inadequate government/citizen consultation are equally important reasons for the democracy deficit, with 72% of IGO respondents agreeing with each of these reasons.¹³²

What I have termed the ‘double voice’ problem is also represented in the data: 65% of Southern NGOs—a statistically significant majority—believe that multinational corporations lobbying for vested interests is one of the key reasons for the democracy deficit in IGOs. The data from the Survey also shows that 53% of Northern NGO respondents and 60% of IGO respondents were in agreement that multinational corporations lobby for vested interests. Although these latter two categories did not produce statistically significant majorities, the level of agreement within these groups was

¹³⁰ Data for Northern NGO respondents’ choice of reasons for the democratic deficit displays a variance of +/- 11.1 % at the 90% confidence level.

¹³¹ Data for Southern NGO respondents’ choice of reasons for the democratic deficit displays a variance of +/- 14.7% at the 90% confidence level.

¹³² Data for IGO respondents’ choice of reasons for the democratic deficit displays a variance of +/- 16.4% at the 90% confidence level.

sufficiently high to produce a statistically significant majority (58%) of the *total* field of respondents. This suggests that, as a *group*, members of Southern NGOs demonstrate the greatest recognition of the double voice problem, perhaps because members of Southern states fall victim to the double voice problem much more than members of Northern states, in which most of the multinational corporations are based. However, over the total field of respondents there is still a significant recognition of this problem of international governance.

The NGO Survey results show that another important reason for the democracy deficit is the lack of transparency of decision-making. Statistically significant majorities of the total field of respondents (72%), and of Northern NGO respondents (78%), Southern NGO respondents (65%) and IGO respondents (68%), were all in agreement with this suggested reason.

One of the main problems encountered when examining the ‘democratic deficit’ in IGOs and the potential for civil society to correct this failing is that many NGOs are themselves internally undemocratic. I deal with this concern and consider some possible means of addressing it in Section Six (on accountability and democratic legitimacy), below.

Most of my analysis of the Collective Management approach deals with what Michael Barnett and Raymond Duvall term ‘institutional power,’ that is, how ‘actors exercise indirect control over others, such as when states design international institutions in ways that work to their long-term advantage and to the disadvantage of others.’¹³³ In the NGO

¹³³ Michael Barnett and Raymond Duvall, eds, *Power in Global Governance* (Cambridge: Cambridge University Press, 2005) p. 3.

Survey, 73% of respondents agree that the rules of the game in current global governing institutions were created by the powerful developed countries, supporting my argument that there is a major democratic deficit from the point of view of institutional power. I have focused in this thesis on the justification for, and design of, a new global Collective Management system that would potentially create more just and democratic global governing *institutions*. I examine these institutions through the lens of the degree to which they are designed to give civil society simply ‘soft power’ or to exercise more formal voting rights.

It is important, however, to go further and to address other types of power, including ‘structural power,’ which, as Barnett and Duvall state, ‘concerns the constitution of social capacities and interests of actors in direct relation to one another. One expression of this form of power is the workings of the capitalist world-economy in producing social positions of capital and labour and their respective differential abilities to alter their circumstances and fortunes.’¹³⁴ Most of my analysis in this thesis focuses on institutions, which, as Barnett and Duvall note, look at ‘sets of rules, procedures and norms that constrain the action of already constituted actors with fixed preferences.’¹³⁵ But it is a fair question to ask *who* are those actors and how did they get their preferences? This view stresses that structural positions do not generate equal social privileges and they also shape self-understanding and subjective interests.

¹³⁴Michael Barnett and Raymond Duvall, eds, *Power in Global Governance* (Cambridge: Cambridge University Press, 2005), p. 3.

¹³⁵Michael Barnett and Raymond Duvall, eds, *Power in Global Governance* (Cambridge: Cambridge University Press, 2005), p. 18.

This thesis would not be complete, then, without briefly noting recent works that look at types of power beyond institutional power, which is the focus of my approach. Some authors argue that it is the class basis of neo-liberalism that is the current basis of economic globalisation. Ronnie Lipschutz argues that ‘globalist liberalism’ has created a self-perception of global civil society that produces a politics that supports the class interests of the dominant classes. In this thesis, I treat civil society organisations primarily on the basis of what Lipschutz calls the ‘agential’ rather than the ‘structural’ explanation. I treat CSOs as primarily independent of states and markets and seeking to ‘wield knowledge and norms, transmitted through the institutional procedures and politics of international regimes, in an effort to influence state and capital.’¹³⁶ The structural explanation, on the other hand, sees civil society organisations not as free agents independent of the state or market, but as dominantly emerging from the structural relations of state and market. In this regard, I follow Walzer (1995) rather than the structural explanation.

The Collective Management approach would arguably address many of the issues raised by the structural power explanation. Lipschutz argues that civil society organisations are currently too fragmented and diverse to wield significant structural power. But a Collective Management system would formalise the role for NGOs and give them a consistent, sustained power in a new governance structure, creating the potential for them to wield structural power. The Collective Management approach is not committed to what Lipschutz terms the ‘globalist liberalism’ that supports the class interests of dominant capitalist classes. It rests on the pillar of liberal political philosophy, but is not in any way

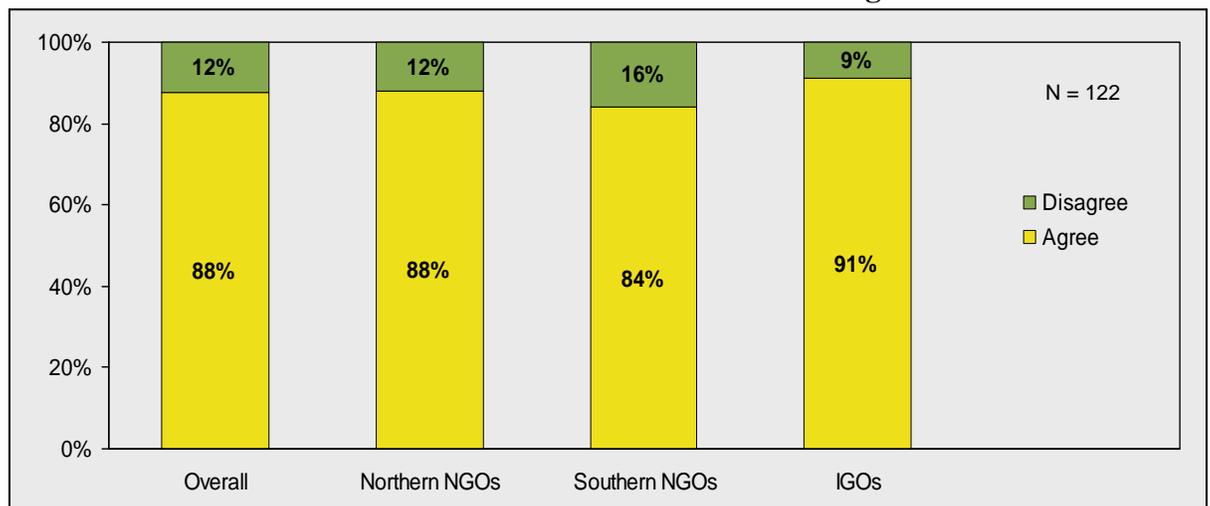
¹³⁶ Ronnie D. Lipschutz, ‘Global Civil Society and Global Governmentality: or, the search for politics and the state amidst the capillaries of social power,’ in *Power in Global Governance*, eds, Michael Barnett and Raymond Duvall (Cambridge: Cambridge University Press, 2005) p. 229.

committed to neo-liberalism’s economic agenda (The ‘Washington Consensus’), which has as a core premise the advancement of open and free (liberalised) global markets.

2.3b The contribution of NGOs to IGO decision-making

The NGO Survey shows that 88% of respondents believe that the participation of NGOs in IGOs ‘leads to better decisions being made by IGO governing bodies’.¹³⁷

Figure 2.2 Level of agreement (%) that NGO participation in inter-governmental institutions leads to better decision-making



Source: Monitor NGO Survey, June 2006

The results of the Survey show that both the total field of respondents, and respondents broken down by category, demonstrate statistically significant majorities in agreement with the view the NGO participation in IGOs can improve decision-making. This supports the principle that a more inclusive, democratic approach enables more informed, effective and

¹³⁷ Monitor NGO Survey, June 2006. Statistical significance calculated at the 90% confidence level; variance for the overall sample = +/- 7.4%.

legitimate decision-making. This principle is increasingly being put into practice, for example by the growing NGO presence in the WTO, illustrated in table 6.1 of Chapter Six. Analysts have offered various reasons for positive contributions made by NGOs. Some argue that NGOs possess a comparative advantage vis-à-vis government agencies in that they are able to reach the poor, are skilled at promoting local participation and at adapting to the surrounding environment.¹³⁸ This means that NGOs are better informed of the real issues and able to bring that knowledge to the decision-making process.

Lawrence Salmen and Paige Evans suggest that NGOs are more responsive to change than governments, and better able to adapt to shifting requirements by engaging with communities: ‘many NGOs today self-consciously invite communities to help shape NGO projects, and some NGOs see their main purpose as helping communities organise to exercise a wider influence’.¹³⁹ This corresponds to the cosmopolitan principles of inclusiveness and subsidiarity that are the basis of one of the supporting pillars of Collective Management, and which I examine further in Chapter Five. Similarly, David Lewis argues that NGOs are able to inspire and catalyse developmental changes at the organisational and individual levels, e.g., grass-roots organisation and group formation,¹⁴⁰ thus further promoting inclusiveness and public contribution to decision-making.

¹³⁸ Michael M. Cernea, ‘Non-Governmental Organisations and Local Development’, *World Bank Discussion Paper* 40, (April 1998), Washington D.C., World Bank.

¹³⁹ Lawrence Salmen and Paige Eaves, ‘Interaction Between Nongovernmental Organisations, Governments and the World Bank: Evidence from Bank Projects’, in *Nongovernmental Organisations and the World Bank: Cooperation for Development*, eds. Samuel Paul and Arturo Israel, eds. (Washington, D.C.: World Bank, 1991) pp. 150–151.

¹⁴⁰ David Lewis, *The Management of Non-Governmental Development Organisations: An Introduction* (London: Routledge, 2001) pp. 71–74.

In addition to being more responsive to the needs of individuals and communities, it has also been argued that—once important issues are identified—NGOs are better able to influence public opinion in support of these issues. P. J. Simmons and Chantal de Jonge Oudaat provide evidence that this success is due to NGOs’ greater freedom in framing issues and garnering support through partnerships, high-profile spokespeople, and the use of effective timing.¹⁴¹ In contrast, governments are hindered by political processes and bureaucracies. Similarly, NGOs are considered, in many cases, more efficient than government agencies in the area of providing services, reflecting an economic view based on the idea of efficiency. While NGOs are able to generate self-sufficiency, government agencies lack such efficiency because of a political agenda that is intended to win voters.

The NGO Survey suggests ways in which NGOs contribute to better decision-making. It shows that two important ways in which NGOs are believed to be able to improve IGO decision-making are by ‘asking difficult questions’ of governments and giving voice to ‘marginal and vulnerable populations’, which serves to increase inclusiveness and democracy, thus countering the democratic deficit identified in Figure 2.1 above.

That 68% of respondents believe NGOs can improve IGO decision-making by asking difficult questions and challenging governments, and 64% agree NGOs can express the views of the vulnerable,¹⁴² suggests civil society has a potentially very important role in balancing the power of the government sector, and the informal influence of the business sector. This potential role for civil society may go some way towards offsetting the ‘double

¹⁴¹ P. J. Simmons, & Chantal de Jonge Oudraat, eds., *Managing Global Issues; Lessons Learned* (Washington: Carnegie Endowment for International Peace, 2001).

¹⁴² Data for the total field of respondents’ choice of ways in which NGOs contribute to better decision-making displays a variance of +/- 9% at the 90% confidence level.

aspect' problem, which the field of respondents widely perceived to be a real failing of the IGO decision-making process, and also the 'double voice' problem, which was identified in particular by the Southern NGO respondents, as detailed above.

In addition to actively balancing the influence of the other two sectors, through questioning and challenging governments and expressing the opinions of the vulnerable and marginal groups, a majority of respondents (60%) also believe NGOs could be effective in monitoring roles, which would help to promote government accountability.

Breaking the responses down by category of respondents, we can see that statistically significant majorities of Northern NGO representatives identified three important roles for NGOs in terms of monitoring (67%), asking difficult questions (65%), and representing the views of vulnerable groups (63%).¹⁴³

76% of Southern NGO respondents agree that presenting the views of marginal and vulnerable populations is an important role played by NGOs.¹⁴⁴ That this was the only statistically significant agreement reached by Southern NGOs suggests that in the South/developing world, where the perceived lack of democracy is strong, the most important role for NGOs is believed to be helping give voice to the voiceless.

For the field of IGO respondents, a majority (76%) agreed that 'asking difficult questions' was an important way in which NGOs can improve IGO decision-making.¹⁴⁵ It is interesting

¹⁴³ Data for Northern NGO respondents' choice of ways in which NGOs contribute to better decision-making displays a variance of +/- 11.5% at the 90% confidence level.

¹⁴⁴ Data for Southern NGO respondents' choice of ways in which NGOs contribute to better decision-making displays a variance of +/- 16.4% at the 90% confidence level.

¹⁴⁵ Data for IGO respondents' choice of ways in which NGOs contribute to better decision-making displays a variance of +/- 15.2% at the 90% confidence level.

to note that the IGO community is strongly in favour of the suggestion that NGOs take part in IGO decision-making in order to test the established methods of IGOs. T. Richard Corcoran, Volunteer at Health GAP (Global Access Project) and Health GAP representative at the Programme Coordinating Board of UNAIDS (the joint UN Programme on HIV/AIDS) explained, 'Because we're not member states we're somewhat less beholden to diplomacy and we can get away with saying some things in the room that member states could not say'.¹⁴⁶

Similarly, Vina Nadjibulla, Advocacy and Knowledge Manager in the Governance, Peace and Security Section of UNIFEM, the UN Development Fund for Women, noted that NGOs raise difficult issues that governments might fail to address: '...civil society provides another voice. Often there are cross-border issues that member states may be unwilling to address. To have evidence-based arguments from civil society can make an important contribution to the debate. Civil society often creates reports that shadow official government reports. Thereby they add to the discussion, sharing information that otherwise may not have been made public...'.¹⁴⁷

However, there are numerous examples in which NGOs do not contribute well to decision-making. This may be as a result of shallow or insufficient communication between government and CSOs, for example, as in the majority of cases of PRSP development (as noted in Chapter One). In other cases, civil society may take an aggressive approach to influencing decision-making, thus harming the joint initiative as a whole. The violent

¹⁴⁶ Monitor interview with T. Richard Corcoran, Volunteer at Health GAP (Global Access Project) and Health GAP representative at the PCB of UNAIDS, March 10, 2006

¹⁴⁷ Monitor interview with Vina Nadjibulla, Advocacy and Knowledge Manager in the Governance, Peace and Security Section, UNIFEM, March 21, 2006

protests against genetically-modified rice plants by the militant civil group ATTAC did little to further their message, but generated significant bad feeling towards the organisation.

However, the most common reason for NGO ineffectiveness in contributing to decision-making processes is the lack of resources suffered by many NGOs, preventing them from undertaking the public campaigns necessary to make their views widespread. P. J. Simmons has also noted that lack of resources preventing proper research of issues may lead to NGOs ‘distorting public opinion with false or inaccurate information’,¹⁴⁸ thus turning the public against the possibility of their contributing formally to international decision-making.

Many NGOs need serious capacity-building to be in a position to contribute more effectively to IGO decision-making. This point is addressed in Section Six of this chapter, below, as is the objection that NGOs will no longer give voice to the vulnerable if they are formally included in official government structures.

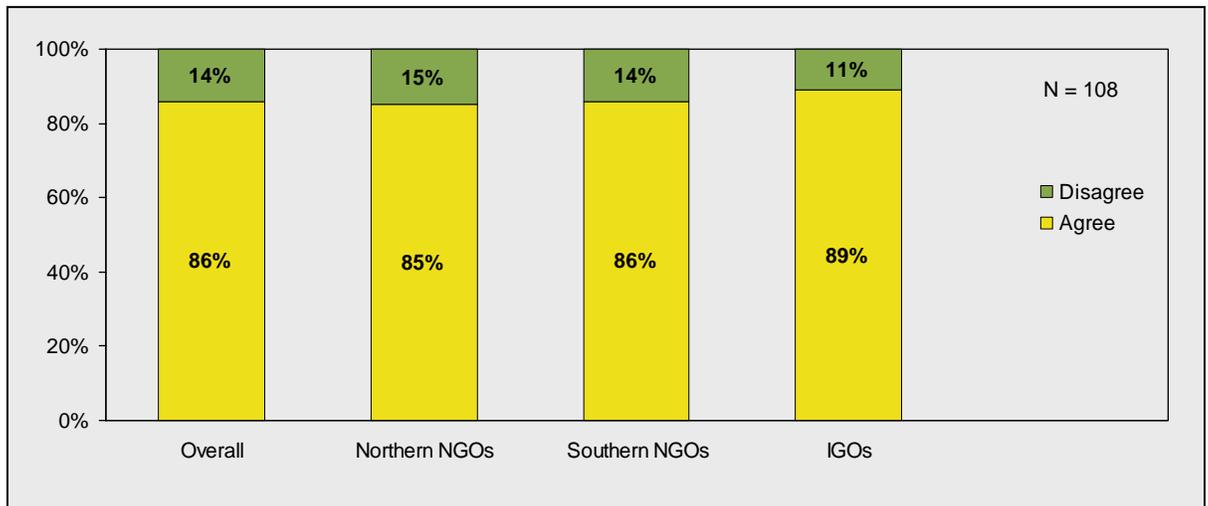
2.3c Northern and Southern NGOs: imbalance of power

The current state is one in which the contribution of NGOs to IGO decision-making is not balanced in terms of the participation of Northern and Southern NGOs. As the Chairperson of the UN Permanent Forum on Indigenous Issues and Director of Tebtebba (the Indigenous Peoples’ International Centre for Policy Research and Education) noted, ‘The imbalance between Northern organisations and Southern organisations is a big limitation.

Northern NGOs cannot really reflect the perspectives of the poorest countries of the world'.¹⁴⁹

Northern NGOs tend to have dominance over Southern NGOs in influencing IGO decision-making, and the absence of the full contribution of Southern NGOs is a weak element in the NGO contribution to IGO decision-making. A statistically significant majority of the respondents from the NGO Survey agree that Northern NGOs have a more dominant role than Southern NGOs in IGOs:

Figure 2.3 Level of agreement (%) among the respondents that Northern NGOs have a more dominant role than Southern NGOs in IGOs



Source: Monitor NGO Survey, June 2006

Nadjibulla has commented, 'In reality, decision-making by NGOs tends to be dominated by a fairly small number of powerful, Northern-based groups'.¹⁵⁰

¹⁴⁸ P. J. Simmons, 'Learning to Live with NGOs', *Foreign Policy*, Fall 1998, <http://www.globalpolicy.org/ngos/issues/simmons.htm>

¹⁴⁹ Interview with Executive Director of Tebtebba and Chairperson of UN Permanent Forum on Indigenous Issues, Monitor NGO Survey, June 2006.

To contribute in a full and balanced way to improve IGO decision-making, there must be increased involvement of Southern NGOs. As Vicente García-Delgado, the UN representative for CIVICUS (the World Alliance for Citizen Participation), commented:

Ways need to be found to minimise mutual suspicions between Northern and Southern NGOs in order to increase trust and effective collaboration. 'Demanding rights for others', as Northern NGOs often do, is sometimes seen with scepticism by some Southern NGOs ... IGOs have a moral duty not only to 'open the doors' but to seek out, reach out, fund and make technical and human resources available to Southern NGOs so that they can actually 'go through the door'.¹⁵¹

To this end, there is broad support for a Civil Society Fund that could assist NGOs from Southern countries in a number of ways so as to correct the current imbalance.¹⁵² These ways include basic funding to attend meetings held in expensive cities in Western Europe, as is the common practice. Developing alliances with Northern NGOs can be helpful, as developed in Section Six below.

2.4 The use of 'soft power' by NGOs: advantages and problems

There are many cases in which NGOs appear to have had significant impact on IGO decisions through the exercise of soft power. It is difficult to prove conclusively that the NGO soft power was decisive, given the numerous influences on IGO decisions that range from the changing motives of individual governments to a confluence of circumstances and international events. There are many examples, however, in which the influence of NGO

¹⁵⁰ Monitor interview with Vina Nadjibulla, Advocacy and Knowledge Manager in the Governance, Peace and Security Section, UNIFEM, March 21, 2006

¹⁵¹ Interview with UN Representative for CIVICUS, Monitor NGO Survey, June 2006.

¹⁵² Peter Willets, 'The Rules of the Game: The UN and the Civil Society' in *Whose World is it Anyway? Civil Society, the United Nations, and the Multilateral Future*, eds. John W. Foster and Anita Anand (Ottawa: United Nations Association in Canada, 1999) p. 279

soft power appears indisputably to have had a major influence. In terms of major public issues, the most obvious cases include the International Campaign to Ban Landmines (ICBL), which developed a coalition of 1,400 NGOs from 90 countries, and which succeeded in driving through a global protocol on landmines.¹⁵³ Similarly, the ‘Jubilee 2000’ campaign attracted participation from organisations in more than 60 countries, and led to the dismissal of \$34 billion of debt.¹⁵⁴

In terms of NGO participation directly in IGOs and use of soft power, success appears most likely on concrete topics where NGOs have special knowledge and can inform decision-making. One case is in the Arria Formula meetings. As a member of UNIFEM noted:

The impact of Arria Formula meetings comes from the fact that the scope of the meetings is quite limited. Meetings are usually set up around a concrete topic and are designed to prepare Security Council members to address the full Security Council on specific issues ... Because the topic is so precise, the NGO representatives are able to come with specific recommendations.¹⁵⁵

Similarly, NGOs can have a specific impact on the UN Commission on Human Rights through specific, informed recommendations. NGOs are treated almost the same as observer member states and have the right to submit written statements. One NGO participant commented, however, that many of the NGO papers and written comments were ignored and there should be a formal sub-committee established to read through all NGO comments and to respond to their specific recommendations.¹⁵⁶ In the case of the Commission on Human Rights, the impact of civil society is only as great as the ability of

¹⁵³ P. J. Simmons, & Chantal de Jonge Oudraat, eds., *Managing Global Issues; Lessons Learned* (Washington: Carnegie Endowment for International Peace, 2001).

¹⁵⁴ Lisa Jordan, ‘Civil Society’s Role in Global Policymaking’, *Alliance Magazine*, March 2003, <http://www.globalpolicy.org/ngos/intro/general/2003/0520role.htm>

¹⁵⁵ Monitor NGO Survey, June 2006.

the IGO itself to have impact. Robert Kushen, the Director of International Operations for the Open Society Institute, argues that ‘The Commission on Human Rights does not have the mandate to make decisions that are binding on member states, therefore its power is weak’.¹⁵⁷

Even when the inclusion of civil society and the business sector is maximised, and both exert their soft power, governments still make the decisions and the strongest governments decide what they want or do not want. This point is made clear in the case of the hearings of the General Assembly with NGOs and the business sector prior to the September 2005 UN Millennium +5 Summit. As noted by a representative of the Conference of NGOs (CONGO) in Consultative Relationship with the United Nations:

If we compare the draft document [prior to the Hearings] and the intermediate Document produced after the Hearings, we see that many of the proposals made by NGOs were incorporated. But shortly before the official meeting in September, one national delegation proposed several hundred amendments which watered down most of the text. Ultimately a compromise was found. ... This process showed that NGOs can advocate and lobby but, at the end of the day, it is governments—and the strongest ones in particular—who decide whether they want or do not want something to be included.¹⁵⁸

The NGO Survey clearly shows that NGOs do not believe that their exercise of soft power leads to consistent impact on final IGO documents and decisions. In fact, a statistically significant majority of the total field of respondents agrees that the influence of NGOs goes down in decisions that governments believe are the most important:¹⁵⁹

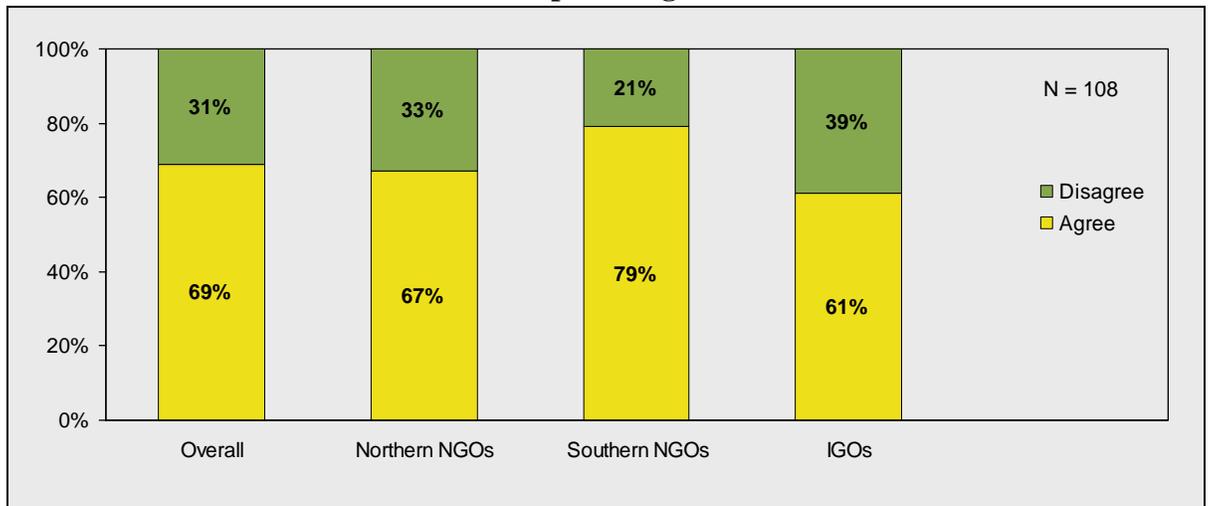
¹⁵⁶ Monitor Preliminary NGO Survey, February 2006

¹⁵⁷ Interview, Monitor NGO Survey, June 2006

¹⁵⁸ Interview, Monitor NGO Survey, June 2006.

¹⁵⁹ Data for the total field of respondents displays a variance of +/- 7.3% at a 90% confidence level.

Figure 2.4 Level of agreement (%) among the respondents that NGO influence decreases in the most important government decisions



Source: Monitor NGO Survey, June 2006

It is interesting to note that this finding is most strongly agreed with by Southern NGO respondents (79%).¹⁶⁰ A statistically significant majority of Northern NGO respondents (67%) also agreed with this finding.¹⁶¹ However, the IGO field of respondents did not produce a statistically significant majority in agreement that NGO influence declines in the most important government decisions.¹⁶²

Evidence cited by respondents in support of the view that NGO influence declines in the most important government decisions included the June 2005 meetings at which the General Assembly held its first-ever informal interactive hearings with NGOs, civil society and the private sector. These hearings provided an opportunity for participants to comment on the Secretary-General's report *In Larger Freedom* and the draft outcome document of the High-level Plenary Meeting of the General Assembly of the September 2005 Summit

¹⁶⁰ Data for Southern NGO respondents displays a variance of +/- 12.6% at a 90% confidence level

¹⁶¹ Data for Northern NGO respondents displays a variance of +/- 10.7% at a 90% confidence level.

¹⁶² Data for IGO respondents displays a variance of +/- 15.1% at a 90% confidence level.

(also known as the World Summit). The event involved over 230 participants, of which 35 delivered statements. At the opening of these Hearings Renate Bloem, President of the Conference of NGOs (CONGO) spoke optimistically: ‘Today is a historic moment in time: for the first time ever, since the founding of the United Nations, the General Assembly is holding hearings with civil society and the private sector’.¹⁶³

However, a number of people felt that those high hopes were not realised, either because key government delegations were absent from the room during the debate or because the recommendations deriving from the Hearings were subsequently overturned by powerful government delegations. Saradha Iyer, Legal and Research Consultant at the Third World Network noted: ‘These [Hearings] were historic and innovative but we talked to ourselves... We found that at some of the plenaries the chairs didn’t open up the debate – people just read three-minute speeches. The government representatives present were very junior ministers. The outcome document was very disappointing. And at the end of day only three people were allowed into the World Summit in September for which these Hearings were preparatory’.¹⁶⁴

2.5 NGO use of ‘soft power plus’: advantages and problems

The previous section suggests that soft power alone, while sometimes effective, is often not sufficient for NGOs to exert influence, particularly in the most important decisions. I identify two examples of what I call ‘soft power plus’, in which the power of civil society is

¹⁶³ Renate Bloem, Opening Statement to the General Assembly Hearings with Civil Society, New York, 23-24 June 2005.

¹⁶⁴ Monitor interview with Saradha Iyer, Legal and Research Consultant at the Third World Network, February 7, 2006

more than just soft power and positive results are achieved. The first is UNAIDS and the second is the Aarhus Convention.

In the case of UNAIDS, NGOs play a formal role in the governing mechanism of IGOs. UNAIDS has five NGO members on its governing board, though they currently have no voting rights. Based on an interview with a member of the Programme Coordinating Board (PCB) of UNAIDS, the Monitor Report of the findings of the NGO Survey notes:

There are limits to the formalisation of that influence; most notably NGO members of the PCB lack voting rights. However, the recommendation not to take on voting rights was actually made by those NGOs involved in the formation of UNAIDS because they preferred to focus on a ‘watchdog’ role. Moreover, as T. Richard Corcoran explained, this may well change in the near future. A broad-reaching review of the participation of NGOs and civil society in the PCB was initiated by the NGO delegation two years ago. Over 80 recommendations came out of the review, including the award of voting rights to NGOs. This issue will be debated at the June (2007) PCB meeting in Geneva and is expected to pass, giving future NGO delegates to the PCB voting rights.¹⁶⁵

Another example of ‘soft power plus’ is the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. Its compliance mechanism was, until January 2007, completely unprecedented in that it could be triggered by any member of the public who made a complaint. The Compliance Committee of the UN Economic Commission for Europe (UNECE) has to investigate any complaint. Since January 2007 it has set the precedent for a similar initiative by the

¹⁶⁵ Monitor Group, ‘NGO Engagement in International Governance: A Report of the Findings from a Survey and Interviews of Representatives of Civil Society and Inter-Governmental Organisations’, draft of March, 2007, based on interview with T. Richard Corcoran, member of the Programme Coordinating Board of UNAIDS, for the Monitor NGO Survey, June 2006.

UNECE Water Convention.¹⁶⁶ Furthermore, NGOs can nominate members to the Committee. Though appointment is done by the governments, several NGO nominations were elected.¹⁶⁷ In the main, the Aarhus Convention concerns Parties' obligations at the national level. However, Article 3, Paragraph 7 of the Convention requires each Party to promote the application of the principles of the Convention to international environmental decision-making processes and within the framework of international organisations in matters relating to the environment.¹⁶⁸

Experts have evaluated these two cases of 'soft-power-plus' positively; as noted above, in the case of UNAIDS, the NGO members on its governing board are likely to be given full voting rights in the near future.

2.6 Formal decision rights for NGOs: advantages and problems

As noted, there are major differences in the views of the 'soft power' versus 'collective decision-rights' schools of thought on the role of civil society in global governing institutions. In considering the potential for formal decision rights for NGOs, I address below several important criticisms of formal NGO inclusion in IGO decision-making structures.

¹⁶⁶ Jeremy Wates, Secretary to the Aarhus Convention notes in an interview for the Monitor NGO Survey: 'In January 2007, a second...compliance mechanism, that of the Water and Health Protocol (to the UNECE Water Convention), adopted a similar mechanism, at least as far as the public trigger, using the Aarhus Convention as a precedent'.

¹⁶⁷ Interview with Aarhus Convention official, Monitor Survey, April 2004.

¹⁶⁸ United Nations Economic Commission for Europe, 'Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters' (Articles of Agreement, Aarhus, Denmark, 25 June, 1998), p. 5,
<http://www.unece.org/env/pp/documents/cep43e.pdf>

Some argue that civil society activism does not represent ‘an actually existing global civil society,’ but that it is just a way to avoid the deeper challenge of establishing domestic political legitimacy. David Chandler argues that cosmopolitanism amounts to ‘a retreat to individualism’ and a disengagement from the challenge of building social ties and shared meaning at the domestic level:

The focus on morality and values in international relations is not the product of an actually existing global civil society, of the campaigns and work of NGOs, ‘moral entrepreneurs,’ or any other providers of information or ethical ideas. The ‘idealist turn’ in international relations, and global civil society theorising in particular, stems largely from the difficulty of finding shared meaning through the domestic political process.¹⁶⁹

Chandler argues that ‘the global civil society perspective tends to be an elitist and regulatory one which seeks to avoid establishing political legitimacy through democratic and representative means.’ Further:

leading global civil society activists...are on a self-centred journey of discovery, personally travelling the world to ‘make the links’ between the Israeli occupation of the West Bank, the WTO in Seattle and Cancun, and US privatisation in Iraq.¹⁷⁰

Chandler’s critique is powerful. I argue that the long-term development of Collective Management institutions could in fact address some of the real problems noted by Chandler. New Collective Management institutions could potentially provide a way for citizens and ‘self-centred’ activists to participate in politically legitimate, democratic and

¹⁶⁹ David Chandler, *Constructing Global Civil Society: Morality and Power in International Relations*, (London: Palgrave Macmillan, 2004) p. 208.

¹⁷⁰ David Chandler, *Constructing Global Civil Society: Morality and Power in International Relations*, (London: Palgrave Macmillan, 2004), p. 207 and citing Klein, p. 205.

representative collective structures, creating shared meaning on multiple levels, not just the domestic state level.

Other analysts have raised additional serious concerns about the potentially negative role of civil society in global governance. David Kennedy argues that the work of many well-meaning humanitarian activists has a ‘dark side’:

As international humanitarians, we have sought power, but have not accepted responsibility. We have claimed to know when we were unsure. We have advocated and denounced, while remaining content that others should govern. We have made policy while turning our eyes from the darker consequences of our work. Our professional biases and blind spots have eluded our most aggressive efforts to renew the vocabularies which maintain them...There is also a terrible responsibility—deciding for others, causing consequences which elude our knowledge but not our power.¹⁷¹

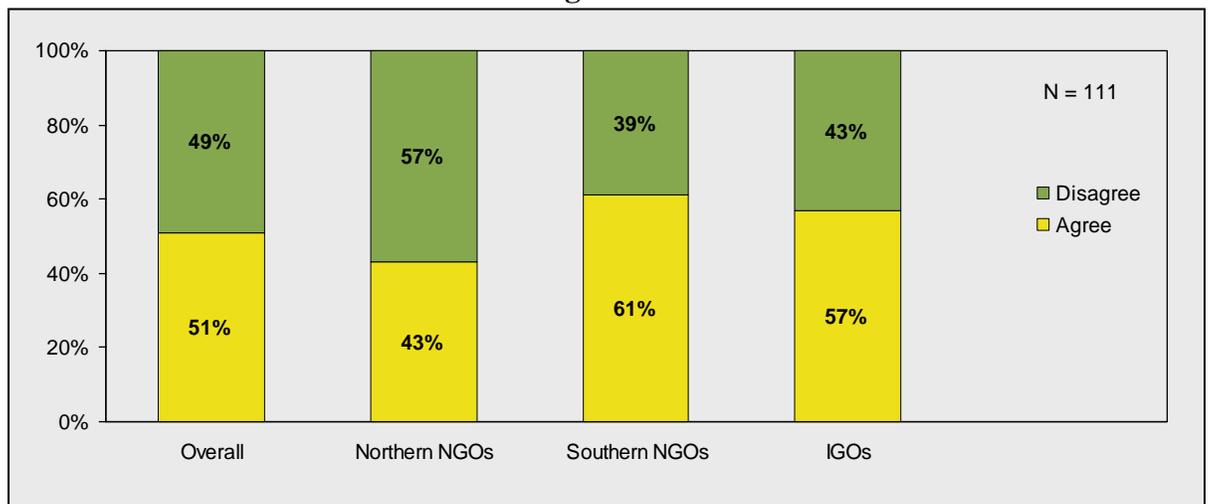
Interestingly, the concern raised by David Kennedy is actually one that would be addressed in a Collective Management system. Kennedy argues that civil society should know itself as ‘a participant in governance’ to overcome the current gap between power and responsibility. The Collective Management approach would actually give the individual humanitarian activist both power and responsibility for collective-decision making in IGOs. Kennedy writes that activists should ‘embrace the act of decision—allocating stakes, distributing resources, making politics, governing, ruling.’¹⁷² This is exactly what the Collective Management approach seeks to explore: the potential for correcting current problems of civil society participation in governance by giving NGO representatives formal decision-rights alongside government representatives.

¹⁷¹ David Kennedy, *The Dark Sides of Virtue: reassessing international humanitarianism* (Princeton: Princeton University Press, 2004) pp. 354-355

¹⁷² David Kennedy, *The Dark Sides of Virtue: reassessing international humanitarianism* (Princeton: Princeton University Press, 2004), p. 354.

Further data on the issue of formal voting rights for NGOs is provided by the NGO Survey, which asked respondents whether they supported ‘exploration of the concept by which citizens would democratically elect candidates from a number of accredited NGOs to seats in the governing structure with certain formal voting rights alongside government representatives’.

Figure 2.5 Level of agreement (%) among the respondents that ‘We should explore democratic election of NGOs to seats in IGO governance structures with voting rights’



Source: Monitor NGO Survey, June 2006

Although the idea that representatives of civil society should be given formal voting rights alongside government represents a radical reform direction, 51% of respondents in the NGO Survey support exploration of the concept of democratic election of NGOs to seats in IGO governance structures with voting rights. While this falls short of a statistically significant majority, it does show a strong polarisation of opinion among the respondents. Given the expert credentials of the field of respondents, and the almost equal divide in opinion, the Survey investigated further the qualitative evidence both for and against the

concept of democratic election of NGOs to seats in IGO governance structures with voting rights.

The data suggests that Southern NGOs and IGOs are most likely to agree with the concept, with 61% of Southern NGO respondents favouring further exploration of the concept. This is perhaps because the Southern NGO group has more actual experience of the ‘double aspect’ problem and perceives the need to increase the formal power of NGOs to compensate for undemocratic governments. NGO respondents of the Survey have noted that many marginalised members of Southern societies have very poor access to their Members of Parliament. Instead it becomes the members of the NGOs who deal with most of the concerns of those who live at grassroots level. These respondents note that, in these cases, NGOs in effect become ‘mini-governments’, upon which members of the community rely heavily.¹⁷³

There is further qualitative evidence from the interviews to support further exploration of granting voting rights to NGO representatives, as well as support from experts such as Joseph Nye cited earlier. Based on its practical experience with NGO representatives in its governing structures, which it has evaluated positively, UNAIDS is expected to give voting rights to NGO members of UNAIDS. To date, however, only one IGO has given formal voting rights in its governance structure to members of civil society. The only existing example of an IGO in which civil society representatives have a vote is the ILO. The number of government votes, however, is equal to the combined number of votes from employee and employer organisations. Each member state is represented at the International Labour Conference by two government delegates, an employer delegate and a

worker delegate. Most of the government representatives are cabinet ministers responsible for labour affairs in their own countries. The employer and worker delegates are usually chosen in agreement with the most representative national organisations of employers and workers. The civil society members vote in accordance with instructions from their trade union or industry federation organisation. The example of the ILO shows that a tripartite collective decision-making structure can be implemented and made effective in at least one case.

Yet sceptics may object that the case of the ILO is not a good model upon which to make generalisations about the potential role of NGOs in other tripartite governance structures. The ILO civil society delegates are from national business organisations and labour unions, and they vote according to instructions from their membership. They are accountable to a clear constituency. But what about the case of Greenpeace or Oxfam, who are not accountable to a clear constituency? Can such NGOs be made more accountable and transparent to internal and external stakeholders? And if such NGOs were made more accountable and allowed to participate formally in a tripartite government structure, would they then lose their special qualities of being government critics, defenders of the vulnerable and weak?

To address these objections, I begin with a brief examination of the way in which environmental NGOs transformed themselves into Green Parties that then participated formally in government decision-making. I then follow with an analysis of the problems of

¹⁷³ Monitor NGO Survey, June 2006

accountability and capacity-building that must be addressed if NGOs are to participate responsibly and effectively in more formal decision-making roles.

2.6a Evolution of environmental NGOs into the German Green Party

Analysis of the evolution of local NGOs into national political parties may reveal both problems and prospects for NGOs in putting forth candidates for election to inter-governmental organisations in a system of Collective Management. The successful evolution of environmental NGOs into the highly effective German Green Party shows that NGOs can organise, evolve and become formal political entities. As NGOs transform themselves into political parties, they generally have to become more transparent and accountable because they are compelled to comply with stronger legal guidelines and formal practices. As Rustam Ibrahim notes, 'Many NGOs do not have written standard operating procedures. ... Further, many do not have accounting systems in line with generally accepted principles'.¹⁷⁴ As NGOs become entities involved in the political process of recruiting candidates and campaigning to elect them to public office, they have to comply with laws and regulations and become organised, transparent, accountable and professional.

But as NGOs become more of a political entity, more involved in the political process of 'aggregating demands to facilitate compromise among diverse groups' (a key characteristic that distinguishes political parties from NGOs),¹⁷⁵ they risk losing the other characteristics

¹⁷⁴ Rustam Ibrahim, 'NGOs Need Standards to Improve Good Governance', *Jakarta Post*, 2 October, 2002, <http://www.globalpolicy.org/ngos/credib/2002/1002gov.htm>

¹⁷⁵ Pippa Norris, 'Building Political Parties: Reforming Legal Regulations and Internal Rules' (Report commissioned by International IDEA, 2004), http://www.idea.int/parties/upload/pippa%20norris%20ready%20for%20wev%20_3_.pdf. It is important

that made them successful as NGOs. As Hein-Anton van der Heijden argues, political parties often become effective managers but lose a sense of idealism and the ability to transform society:

Parties have become part of the state and increasingly are aimed at efficient and effective management, rather than at transforming society. This applies not only to the national level, but in particular also to the transnational (for example, the EU) and the global level. ... No longer simple brokers between civil society and the state, parties now become absorbed by the state.¹⁷⁶

He argues, further, that parties may become professional political entities interested in preserving their own power. An additional problem is that political parties may become less democratic as they lose the grassroots democratic processes they had as NGOs.

So, as the editor of *Foreign Affairs* has noted, many political parties now seek to recover their lost vigour by emulating some of the practices that have made NGOs successful:

to define what differentiates an NGO from a political party. In many countries, including Central and Eastern Europe, NGO figures are prominent opposition figures to the government; the regimes have therefore drawn clear lines between the activities of NGOs and political parties to reduce their political influence. NGOs cannot participate in political campaigns or put forth candidates for government office (Jean Garland, 'Regulation of NGO Public Policy Activities', *Social Economy and Law Journal*, Autumn 1999, Brussels: European Foundation Centre). USAID, on the other hand, defines a political party as 'any entity that competes for elected office, whether a political movement, party, electoral coalition or alliance'. The definition specifically includes 'nongovernmental organisations (NGOs) that operate as de facto political parties' (See USAID, 'Promoting More Genuine and Competitive Elections & Political Processes', *Democracy & Governance*, http://www.usaid.gov/our_work/democracy_and_governance/technical_areas/elections/). Pippa attempts to define the key characteristics that make a political party different from an NGO: 'The distinction among interest groups, new social movements, and political parties remains imprecise, as many functions are shared. There are also strong links between these types of political organisation, for example between leftwing parties and affiliated trade unions, as well as between Green parties and the environmental movement. *The key distinction, however, is that only political parties have the ability to aggregate demands facilitating compromise among diverse groups, to offer the electorate a programme of alternative policy proposals designed to meet these demands, to recruit candidates for elected office, and, if elected, to pass legislation and to oversee the implement of public policies.* In subsequent contests, citizens have the opportunity to evaluate the policy outcomes and to hold parties to account for their actions. Most importantly, *parties provide a means to hold elected officials collectively responsible for the success or failure of their decisions in power*' (emphasis added).

NGOs grew rapidly because they were less tainted by corruption, often belonged to a larger international network, and generally had clearer ideals, a less hierarchical structure, and a closer relationship with their members. NGOs also had the advantage of having a clear mission.¹⁷⁷

So the challenge for NGOs in a potential system of Collective Management is to become more like a political party in the sense of becoming more accountable and transparent, but to preserve such characteristics as their sense of clear mission and non-hierarchical structure.

To examine this question further, I take a brief look at the historical case of the transformation of NGOs to become political parties in the case of the German Green Party. It would also be possible to look at the case of the social movements that evolved into the Labour Party in Europe, but in this thesis I can only briefly review the case of the German Green Party. Analysis of the evolution of local NGOs to *national* political parties may reveal several lessons relevant to the potential for NGOs to run for election to *inter-governmental* organisations in a system of Collective Management.

The transition from NGO to political party involved strengthening their accountability and transparency as well as a real struggle to preserve their initial internal democratic practices. The evolution from NGO to political party has taken different paths in different countries, with Germany providing the clearest example of disparate civil society groups uniting to form the powerful German Green Party. The NGOs that formed in the 1960s, and

¹⁷⁶ Hein-Anton van der Heijden, 'Political Parties and NGOs in Global Environmental Politics', *International Political Science Review* 23, no. 2 (2002): 187–201, <http://ips.sagepub.com/cgi/content/refs/23/2/187>

¹⁷⁷ Moisés Naím, 'Al Qaeda, the NGO', *Foreign Policy* 129 (March/April 2002): 99–100, http://www.foreignpolicy.com/story/cms.php?story_id=1833

eventually became Green parties, emerged on the basis of new social movements supporting environmental and participatory democratic ideals.¹⁷⁸ There were important social issues to which they gave voice, and which existing governments failed to address. In today's global arena, many NGOs today are giving voice to matters that represent real issues in global society and that many argue are not being addressed adequately by existing inter-governmental organisations. These include global environmental issues addressed by NGOs such as Greenpeace, and human rights issues addressed by Amnesty and other organisations. In this sense, these international NGOs may be representing 'new social movements' on the global level in a way that is parallel to the way local environmental NGOs represented social movements inside Germany.

The development of Green parties has been characterised, however, by pragmatic compromise as the parties have sought to widen their electoral appeal. NGOs in a tripartite Collective Management structure may be tempted to make similar compromises. Michael O'Neill's analysis of Europe's most politically successful and conspicuous Green party, Die Grünen in Germany, found that Die Grünen:

...was deeply divided between those fundamentalists who disavowed any hint of compromise with first ideological principles; and those more pragmatic elements, or 'realists' as they came to be regarded, who increasingly averred that the route to electoral success and maximising political impact lay precisely through accommodations with that system ... The realists have, in the interim, won this particular argument and have come to dominate the party's structures and to shape its policy agenda.¹⁷⁹

¹⁷⁸ See Michael O'Neill, *Green Parties and Political Change in Contemporary Europe: New Politics, Old Predicaments* (Aldershot: Ashgate, 1997); and Jon Burchell, *The Evolution of Green Politics: Development and Change within European Green Parties* (London: Earthscan Publications Ltd, 2002).

¹⁷⁹ Michael O'Neill, *Green Parties and Political Change in Contemporary Europe: New Politics, Old Predicaments* (Aldershot: Ashgate, 1997), pp. 58–59.

Reflecting on patterns of development and change within European Green parties, Jon Burchell has observed, ‘Undoubtedly, at the heart of the process of transformation lies a pattern of pragmatic compromise within the Greens as they have grown into their roles as political parties’.¹⁸⁰

Thus there is a strong risk that, when presented with new structures including elected NGO representatives, NGOs might seek to widen their electoral appeal, compromising some of their core ideologies or their moral cause (a source of their legitimacy), and therefore becoming little better than government representatives. Emphasising this risk, William Pace, Executive Director of the World Federalist Movement-Institute for Global Policy argued, ‘As soon as NGOs say, ‘we want to vote or have a direct negotiating role in international legislation’ then NGOs will undermine the primary principles of independence and their consultative role. As direct voters and negotiators NGOs will become part of the process of concessions, trade-offs and compromise. I would argue that by NGOs assuming voting and negotiating roles they could add to the democratic deficit’.¹⁸¹ This point is one in which experts disagree, though all agree that there are real tensions between independence coupled with a clear moral mission, on the one hand, and a more effective, formal government role on the other. As noted above, political parties are now striving to regain the attributes of NGOs that they lost as they became more formalised. This suggests that NGOs would constantly face the challenge of preserving their essential moral mission

¹⁸⁰ Jon Burchell, *The Evolution of Green Politics: Development and Change within European Green Parties* (London: Earthscan Publications Ltd, 2002) pp. 163–164.

¹⁸¹ Interview with William Pace, Executive Director of the World Federalist Movement-Institute for Global Policy, for Monitor NGO Survey, for Monitor NGO Survey, 8 March 2006.

as they participate more formally in IGO decision-making. These challenges, as noted by many respondents to the NGO Survey, support further experimentation in this direction.

Another threat to the nature of NGOs, should they gain more formal voting rights in IGOs, is to their grassroots, participatory nature. Political effectiveness in Green parties has often come after internal reorganisation and, sometimes, a sacrifice of some participatory democratic practices. Faced with a role in Collective Management structures, NGOs would need to make internal changes in order to be ready for the responsibilities entailed.

Many of the organisations that joined to become Green parties had strong traditions of grassroots governance and participation. These core practices became harder to sustain in an environment of elected representatives, where it was essential to agree upon the negotiating positions of those representatives. Recounting the experiences of Die Grünen, Michael O'Neill observed: 'The 'realos' [realists], who largely dominated the Green parliamentary groups at both the Bundestag and Laender levels, became frustrated by the constant need to refer even relatively trivial decisions to the grass roots via the multiple channels of *Basisdemokratie*. Many Green parliamentarians quite simply were impatient with what they came to regard as an obsession with accountability—not to improve the quality of decisions but simply for its own sake'.¹⁸²

Many Green parties were formed as several small parties or civil society groups joined together to gain the critical mass necessary to put forward viable candidates for election. This brought benefits but exacerbated the challenge of agreeing common positions.

¹⁸² Michael O'Neill, *Green Parties and Political Change in Contemporary Europe: New Politics, Old Predicaments* (Aldershot: Ashgate, 1997), p. 66.

Coalitions of smaller NGOs may join together for election to Collective Management structures and have to tackle similar challenges.

The joining of many small organisations together can bring benefits: for example, extensive local and national networks that provide a base for organisation and some immediate credibility in the electoral stakes. However, coalitions also faced an increased challenge of reconciling divergent viewpoints, since they bring together established groups, each with their own priorities and objectives. Michael O'Neill detailed the internal struggles of Die Grünen: 'intense conflicts broke out...over the party's ideological and programmatic content... Nevertheless some semblance of organisational common sense did eventually prevail. Drawing on the negotiating and coalitional skills honed in the campaigning milieu of radical movement politics a party constitution was eventually agreed...This was followed...by the adoption of a national programme'.¹⁸³

In summary, the case of the transition of NGOs to Green political parties shows that NGOs can organise and become political parties with the key characteristics—accountability, transparency, the ability to put forth a successful candidate for election—but not without serious compromises. Though NGOs accredited in a system of Collective Management would not be formal political parties, they would have these attributes of political parties. They would face the same tensions that political parties face as outlined above.

¹⁸³ Michael O'Neill, *Green Parties and Political Change in Contemporary Europe: New Politics, Old Predicaments* (Aldershot: Ashgate, 1997), p. 57.

The section below deals more concretely with how NGOs might become more accountable—to both internal and external stakeholders—in order to be in position to assume a more formal decision-making role.

2.6b NGO accountability: accreditation and self-regulation

‘Accountability’ is normally understood to mean that individuals or organisations must be answerable for their actions and the consequences that follow from them. In the case of elected officials, they are accountable to eligible voters. Currently, NGOs are not elected by the public yet they claim to represent different public interests. To whom, then, are they accountable? In this section, I first examine the question of how to make NGOs more accountable through measures short of elections. I then address the question of the democratic legitimacy and accountability that NGOs would have if democratically elected in a Collective Management system.

Some argue that the right to hold an organisation or individual to account should be granted to ‘any group or individuals who can affect or is affected by...an organisation’.¹⁸⁴ The One World Trust (OWT), an organisation that has developed a methodology for determining the level of accountability of NGOs (the ‘Global Accountability Project’ or GAP), bases its approach on inclusion of both internal and external stakeholders. Accountability, in this sense, supports the principle that people should have an influence over decisions that affect their lives. This principle is not only just but, as I have argued earlier, can lead to better decisions being made in the longer term as a result of the involvement of people in

¹⁸⁴ R. Freeman, *Strategic Management—A Stakeholder Approach*, (Boston: Pitman, 1984)

decisions that affect them. The following table sets out the GAP framework and the eight dimensions:

Table 2.3 Dimensions of the One World Trust’s Global Accountability Project

Internal Stakeholder Accountability	External Stakeholder Accountability
Dimension 1: Member control	Dimension 5: External stakeholder consultation
<i>Reflected by how an organisation is governed and the degree of control its members have over its actions</i>	<i>Reflected by how an organisation involves external stakeholders in its decision-making processes</i>
Dimension 2: Appointment of senior staff	Dimension 6: Complaints mechanism
<i>Reflected by the procedures for recruiting and retaining senior staff within an organisation</i>	<i>Reflected by how an organisation enables those most affected by its decisions to register their complaints about its actions and the follow-up mechanisms in place to ensure that these complaints are acted upon</i>
Dimension 3: Compliance mechanisms	Dimension 7: Corporate social responsibility
<i>Applies only to IGOs and is reflected by the power an organisation has to enforce its decisions on member states</i>	<i>Reflected by how an organisation manages, evaluates and reports on its social and environmental impact</i>
Dimension 4: Evaluation processes	Dimension 8: Access to information
<i>Reflected by what aspects of an organisation's work are evaluated, and how this is done and reported to the public</i>	<i>Reflected by the degree of information provided by it to the public</i>

Source: One World Trust, ‘The Global Accountability Report’, 2003, p. 3.

The NGO Survey revealed a strong belief that IGOs should be accountable to stakeholders, and that NGOs who wish to participate must also be accountable. 95% of respondents believe that NGO accountability must be demonstrated on four dimensions: transparency,

participation, evaluation and complaint mechanisms—as included in the frameworks developed by such organisations as AccountAbility and the One World Trust.¹⁸⁵

There was widespread agreement that NGOs should be formally accredited to participate in IGO decision-making. One respondent of the NGO Survey recalled problems in the past with the selection of NGO representatives to UNAIDS (which is done by current NGO representatives to UNAIDS). This respondent noted that the selection of NGO delegates had not been very open and believed that in some cases NGO representatives on the PCB did not adequately represent the voice of the majority of NGOs. Nor was it clear what their mandate was. This respondent felt that the process had improved in recent years with the establishment of clear selection criteria.¹⁸⁶

There is less conclusive evidence regarding the groups of stakeholders that should be included in the process of NGO accreditation; the diversity of opinion on this matter suggests that further exploration of the subject would be both necessary and interesting.

The results of the NGO Survey suggest that possible groups of stakeholders to be included in the NGO accreditation process might include independent accreditation institutions (using a framework such as those developed by the One World Trust or AccountAbility), peers (i.e., other NGOs), groups of independent experts, or the secretariats of IGOs. While none of these options attracted a statistically significant majority from the field of respondents, the data does show that these four options ranked above three other options:

¹⁸⁵ Monitor NGO Survey, June 2006.

¹⁸⁶ Monitor NGO Survey, June 2006.

that accreditation should be the responsibility of government representatives or of private representatives, or that no accreditation is necessary.

While the IGO field of respondents failed to agree on any processes of accreditation by a statistically significant majority, the Northern and Southern NGO fields of respondents did yield some interesting results. The majority of Northern NGO respondents (65%) agreed that accreditation should be managed by an independent accreditation institution.¹⁸⁷ By contrast, the majority of respondents from Southern NGOs (66%) believed the accreditation process should be managed by NGOs themselves.¹⁸⁸

The Survey also illustrated that there was very little support for direct government involvement in the legislation of principles and procedures to enforce good practice among NGOs. Leon Irish and Karla Simon have suggested that the role of Government should be limited to creating an ‘enabling environment’ for NGOs, including identifying the duties and liabilities of an NGO governing body and those of its members, to establish rules for proper reporting, record-keeping and auditing; but the NGOs themselves should adopt appropriate self-regulation policies in addition to this minimum governance. Governments should permit NGOs to form associations so that umbrella organisations can enforce standards.¹⁸⁹

This can already be seen to be happening in practice; in the US and other Western democracies, where there is very little government regulation, several voluntary self-

¹⁸⁷ Variance +/- 11.2% at 90% confidence level.

¹⁸⁸ Variance +/- 15.2% at 90% confidence level.

¹⁸⁹ Leon Irish & Karla Simon, ‘Law and Governance—A Lesson in Limits’, *International Journal of Not-for-Profit Law* 2, no. 3 (Jul 2005), http://www.icnl.org/journal/vol2iss3/Arn_LK.htm

regulatory organisations have been formed. For example, there is the Accrediting Bureau for Charities (ABC) in London and the International Committee on Fund-Raising Organisations (IFCO) in Brussels. These umbrella groups provide information on NGOs and set standards of conduct for them.¹⁹⁰ Robert Lloyd of the One World Trust has identified significant growth in this use of voluntary codes of conduct and certification schemes, which now operate in over 40 countries worldwide. Lloyd identifies the self-regulatory initiatives with the NGOs' growing realisation that they need to be accountable to their peers, other CSOs in the same sector, in order to uphold the reputation of that sector. This has the benefit of strengthening the accountability of the CSOs towards other stakeholders: their donors, beneficiaries and employees. The main self-regulatory method of assessing this accountability that Lloyd identifies is through social audits that 'gauge the extent to which organisations live up to their values through systematically and regularly monitoring their performance and the views of their stakeholders'.¹⁹¹

Catherine Shea and Sandra Sitar have also identified several different methods being practised in different fields and on different levels.¹⁹² These include self-certification, where organisations voluntarily sign up to a set of standards and remain responsible for implementing these within their organisation, and accreditation by an accreditation agency, which is one of the most rigorous methods of ensuring a certain standard of operation.

¹⁹⁰ The Philippines Council for NGO Certification, 'Guide to Regulating Civil Society', <http://www.pcnc.com.ph/LeftLink4.php>

¹⁹¹ Robert Lloyd, 'The Role of NGO Self-Regulation in Increasing Stakeholder Accountability', *One World Trust* (July 2005), [http://www.oneworldtrust.org/documents/SelfReg%20\(final\)July05.pdf](http://www.oneworldtrust.org/documents/SelfReg%20(final)July05.pdf)

¹⁹² Catherine Shea & Sandra Sitar, 'NGO Accreditation and Certification: The Way Forward? An Evaluation of the Development Community's Experience' (report and recommendations for the *International Centre for Not-For-Profit Law*), http://www.usaid.gov/our_work/cross-cutting_programs/private_voluntary_cooperation/conf_icnl.pdf

Obviously, these methods vary considerably in cost and rigour and are also more or less beneficial depending on the target audience. For example, if a CSO is looking to attract more institutional donors, it needs to meet standards that are different from those that apply to attracting donations from members of the public. An institutional donor is more likely to require much more detailed proof of certain standards, such as information on social impact or community involvement, whereas a member of the public might simply wish to be reassured about the percentage of donated funds that is spent on administration. Lloyd also emphasises that these initiatives vary widely in scope; some are confined to a narrow sectoral niche of CSOs, whereas others aim to be universal in reach. For example, the World Association of NGOs (WANGO) has published a Code of Ethics and Conduct for NGOs that states, ‘The Code is applicable for organisations focused on international agendas as well as those seeking to improve local community affairs, and both ‘Northern’ and ‘Southern’ NGOs. The Code’s standards are applicable regardless of an NGO’s focus, whether it be humanitarian relief, advocacy, conflict prevention, research, education, human rights monitoring, health care, or environmental reform’.¹⁹³ An example of a less ambitious code would be the initiative by the International Federation of Red Cross and Red Crescent Societies, which have developed an ‘International Code of Practice for NGOs Responding to HIV/AIDS’. There are also purely national initiatives, such as the ‘NGO Code of Conduct for Botswana’ which applies across the entire NGO sector.¹⁹⁴

These differences can be seen in the procedures and codes of the various regulatory bodies. In Australia, for example, the Australian Council for International Development (ACFID)

¹⁹³ World Association of Non-Governmental Organisations, ‘Code of Ethics and Conduct for NGOs’ (2004), <http://www.wango.org/download/pdf/CodeOfEthicsV.5.p.pdf>

has established a Code of Conduct that sets out standards on how Australian aid and development organisations are managed, how they communicate with the public and, of course, how they spend their funds. This is designed to increase the accountability of the organisations to the general public, who donate funds to these CSOs. Accountability is maintained by the Code of Conduct Committee, a body consisting of elected representatives from aid and development agencies and representatives of donors, which has the authority to investigate complaints and monitor the annual reports that are one of the requirements of the code. Since any member of the public may make a complaint about a signatory, and since the Committee has the power to expel a below-standard organisation from signatory status—a move that would send a very strong signal to anyone contemplating a donation, as well as making the organisation ineligible to receive government funding—responsibility for ‘their actions and consequences that follow from them’ is established, and the organisations can be considered accountable to at least one set of stakeholders. In contrast to this, the NGO Code of Conduct for Ethiopia has concentrated on guiding NGOs to become more accountable to beneficiaries. The codes therefore specifically target the involvement of ‘all the men, women, young peoples and children of our target communities to the greatest possible extent, making them responsible for the conceptions, implementation and evaluation of projects and programmes’.¹⁹⁵

Despite this variety in aims and audience, Shea and Sitar found that there were several common standards that were applied in almost all cases. In 1996, the Commonwealth Foundation published a comprehensive report, ‘Non-Governmental Organisations:

¹⁹⁴ Robert Lloyd, ‘The Role of NGO Self-Regulation in Increasing Stakeholder Accountability’, *One World Trust* (July 2005), [http://www.oneworldtrust.org/documents/SelfReg%20\(final\)July05.pdf](http://www.oneworldtrust.org/documents/SelfReg%20(final)July05.pdf)

Guidelines for Good Policy and Practice’, which highlighted the areas that self-regulation should cover. These codes and standards are repeated in very similar ways through many different codes and regulating principles. They include:

- ‘Values, including high ethical standards both organisationally and individually.
- Transparency, including objectives and how the organisation is managed, controlled and financed
- Legal structure
- Governance, including accountability to the public, members and founders
- Management practices and financial management’¹⁹⁶
- The code should also contain ‘an obligation to be legally constituted with full disclosure of financial information, including sources of funding, application of funds and audited accounts’.
- Clearly identified aims and objectives, together with a commitment to operate within the law in pursuit of those objectives.
- Open democratic processes, including the election of officers, and the participation of members in decision-making, such as the establishment of broad policy.
- A commitment to avoid becoming involved in party politics while still being free to pursue legitimate public policy objectives.
- A code of ethics for all staff and members who engage in activities on behalf of the NGO.¹⁹⁷

The codes and standards also share a common goal of improving CSOs in their field, not merely creating an exclusive club. Expulsion is therefore generally considered to be the last resort and, instead, measures to improve a CSO that is failing to improve its

¹⁹⁵ Christian Relief and Development Association (CRDA), Ethiopia, ‘NGO Code of Conduct’, <http://www.crdaethiopia.org/Code%20of%20Conduct/CoC.htm>

¹⁹⁶ Anthony Adair, ‘Code of Conduct for NGOs—A Necessary Reform’ (report for the Institute of Economic Affairs, October 1999), <http://www.iea.org.uk/record.jsp?type=article&ID=1>

¹⁹⁷ Anthony Adair, ‘Code of Conduct for NGOs—A Necessary Reform’ (report for the Institute of Economic Affairs, October 1999), <http://www.iea.org.uk/record.jsp?type=article&ID=1>

accountability are widespread. For example, the NGO Code of Conduct from the Christian Relief and Development Association (CRDA) of Ethiopia recommends providing the necessary education for future compliance or assigning another signatory to help the CSO develop the necessary procedures to comply.

Despite this growth in self-regulatory initiatives, there remain serious problems with relying on these to maintain standards across civil society organisations. Many of these problems stem from the relatively new development of these codes and practices; for example, many of the available accreditation agencies are becoming overwhelmed by the sudden increase in NGOs that are seeking to improve their accountability.

The Collective Management approach would explore the potential to address this problem by expanding the accreditation and evaluator bodies. The voluntary nature of self-regulation has led to many abuses of the system. The self-certification method has proven to be extremely useful in developing CSOs' own awareness of good governance, but depends entirely on the commitment of the rated organisation. Although some organisations will be rigorous in evaluating themselves, others will fulfil the bare necessities of compliance and self-certify without implementing the standards to their full extent.

This problem can be seen in the Private Voluntary Organisation (PVO) Standards run by InterAction. Although the executive committee can dismiss a member from the association for not signing the Standards, the code emphasises that 'Adherence to all relevant laws (or conscientious non-adherence) is ultimately the responsibility of the boards of directors and staffs of member agencies'. Instead, the code emphasises the 'collective commitment to quality and integrity' that is necessary among voluntary associations for maintaining and

enhancing the public trust. Members are therefore reminded that ‘their reputations for programme quality and for individual and organisational integrity reflect upon the whole PVO community’.¹⁹⁸ The voluntary nature of the association has the positive effect of ensuring that those organisations that self-certify with InterAction will reap the benefits that will accrue from raising public trust in their sector. They therefore have an increased motivation to comply fully and actively with the Standards.

Another problem considered by Lloyd was the tendency for NGO self-regulatory initiatives to link increased accountability with provision of financial information. Although these two are certainly linked, this concentrates heavily on seeing the donors as the main stakeholders, and risks downgrading the priority of being accountable to the beneficiaries of the aid. He gives the example of India’s Credibility Alliance’s ‘norms and good practices’, which state that for ‘organisations to be accountable and transparent to internal stakeholders ... signed audited statements ... balance sheets, income, and expenditure statements, receipts and payment accounts, notes on accounts and the statutory auditors’ reports’ all need to be available. Lloyd warns that although financial transparency is of course necessary, it is not enough to ensure the organisation’s accountability to stakeholders.¹⁹⁹

The final problem faced by self-regulation is that of funding limitations. The more rigorous and independent the evaluation, the more expensive the process becomes. Shea and Sitar point out that funding for non-profit sector infrastructure support is declining, which is

¹⁹⁸ InterAction, ‘The Trend Toward NGO Transparency: Strengthening Governance and Accountability’ (InterAction’s Private Voluntary Organisations Standards, updated January 2007), http://www.interaction.org/files.cgi/3098_PVO_powerpoint_Kenupdated1-9-07.ppt#256,1,Slide 1

putting increasing pressure on the organisations that depend on this support to perform efficiently. These costs are either met by donated funds or, given the lack of availability of these, are met by the participating organisations through fees such as membership fees, audit costs and monitoring and evaluation costs. There are also often significant costs in staff time and resources to prepare the application and proof of compliance as well as the costs of compliance themselves. These costs often mean that small NGOs are simply unable to afford the accreditation or certification process and are therefore unable to benefit from the increased efficiency, publicity and donor awareness that such processes bring. This problem would become more acute as the self-regulation mechanisms become more sophisticated and broader in scope.

2.6c NGO accountability: election and democratic legitimacy

In a proposed Collective Management system, NGOs would be accountable not only in the sense discussed above (transparency, participation, evaluation and complaint mechanisms), but they would also gain democratic legitimacy by being accountable to an electorate. In Chapter Three I develop the argument for NGOs in a system of Collective Management to be a hybrid, having legitimacy from both participatory and representative democratic bases. In this section, I explore how current social auditing, accreditation or certification organisations (that already exist in every region of the world) might provide the backbone of the organisations that will be necessary to elect NGOs that will be suitable to represent civil society at various levels of the global structure in a system of Collective Management..

¹⁹⁹ Robert Lloyd, 'The Role of NGO Self-Regulation in Increasing Stakeholder Accountability', *One World Trust* (July 2005), [http://www.oneworldtrust.org/documents/SelfReg%20\(final\)July05.pdf](http://www.oneworldtrust.org/documents/SelfReg%20(final)July05.pdf)

Obviously, the current organisations will have to be significantly developed, as will the codes and standards with which the CSOs will be expected to comply. The current national organisations would have to be scaled up to cover all fields of CSO within their states, and the international ones will need to be extended to cover the whole of their region. The codes and standards can then be developed to have a clear charter and specific goals for each nation or region to specify exactly which sort of NGOs are suitable. From the pool of national CSOs, the regional boards can then elect the CSOs that are suitable for representing civil society at a regional level, and so on.

The procedures that have been developed for ensuring that the accreditation boards of the self-regulatory association remain representative of the CSOs they work with can be used as a basis on which to build to create election boards of Collective Management; these would remain focused on the priorities of the state or region that they are working with. These priorities include a commitment to openness in the election procedures. Current social auditing organisations also frequently have a commitment to upholding the law of the countries they operate in, with regard to their own scope and behaviour, and this principle can be developed to maintain the individual characteristics and priorities of each region. Collective Management does not involve looking to impose a uniform framework that CSOs must follow before being allowed a voice in the global arena. Instead, the election boards will work closely with local CSOs and stakeholders to establish what CSOs can best do to represent their particular policies and issues at the level above.

Regarding the business sector, there is also a basis to build upon for a future Collective Management system in the form of the numerous rating agencies that currently assess private firms throughout the world at national, regional and global levels. In the same way

as CSO regulating associations encourage a commitment to a clear set of codes and guidelines, these rating agencies encourage a compliance with similar standards and rules that govern the business community. Businesses are therefore already assessed for compliance with standards such as financial transparency and responsible credit management. These rating companies, in the same way as self-regulating associations in the NGO sector, can be expanded to fulfil the same function for the process of electing the relevant businesses to participate in the various levels of governance for Collective Management.

2.6d Capacity-building

A number of the criticisms made of NGOs would largely be resolved by increasing the capacity of these organisations. A main argument has been made in respect to the funding of NGOs. Observers note that NGOs risk 'losing their autonomy by increasingly relying on state funding'.²⁰⁰ With the increased use of NGOs in official development programmes and the practice of some governments to provide core funding, it is questionable whether some NGOs are little more than remote government agencies. Michael Edwards and David Hulme have suggested that by accepting foreign funds NGOs 'may diminish their legitimacy'.²⁰¹ When funding becomes the main goal of NGOs, and they become more involved in service provision, the result would be lack of independence. In this regard NGOs are considered to be part of the wide support for the roles of state.²⁰² In Section (i)

²⁰⁰ P. J. Simmons, 'Learning to Live with NGOs', *Foreign Policy*, Fall 1998, <http://www.globalpolicy.org/ngos/issues/simmons.htm>

²⁰¹ Michael Edwards and David Hulme, 'Too Close for Comfort? The Impact of Official Aid on Nongovernmental Organisations', *World Development* 24 (1996): 961-973.

²⁰² David Held and Anthony McGrew, eds., *The Global Transformations Reader: An Introduction to the Globalisation Debate*, (Cambridge, UK: Polity Press, 2000), p. 438.

below I consider the issue further, investigating the possibility that stronger alliances between Northern and Southern NGOs may increase the capacity of the Southern partners, thus decreasing the current need for government funding.

Another key failing of many NGOs is their weakness in economic and technical analysis. For example, nearly all NGOs active in international development feel that banks and governments in the industrial countries should assume more of the cost of overcoming problems of developing-country debt. Yet relatively few NGOs know the technical or financial details of the debt issue, or are actively involved in lobbying for more forthcoming debt policies. Drawing on the results of four impact studies, Alan Fowler and Kees Biekart reveal critical evidence against NGOs' ability to comprehend larger strategic issues.²⁰³

In other cases NGOs need to improve their management systems and structures in order to improve their effectiveness. It has often been found that NGOs are less inclined to adhere to basic management disciplines even when contracted to do so and are reluctant to train staff in these areas if it means reducing their time in the field.²⁰⁴ Promoting the capacity of NGOs could increase the resources devoted to gathering knowledge and developing more constructive proposals and organisational structures.

In view of these negative comments on NGO performance, but also in view of the almost certain requirement for increased NGO involvement with IGOs, including more scope for

²⁰³ Alan Fowler and Kees Biekart, 'Do Private Agencies Really Make a Difference?' in *Compassion and Calculation: The Business of Private Aid Agencies*, ed. D. Sogge (London: Pluto Press, 1996).

²⁰⁴ Paul J. Nelson, *The World Bank and Non-Governmental Organisations: The Limits of Apolitical Development* (New York: St. Martins Press, 1995)

NGOs to engage in development project execution and even broader policy formulation and decision-making, the following is a brief overview of capacity-building mechanisms to assist NGOs to take on new responsibilities.

Creating more influential and technically competent NGOs, particularly in the South, has proven to be a difficult and time-consuming task. In general, most capacity-building efforts have had very mixed results. The Soros experience of creating Open Society Foundations in many countries is very mixed. It is particularly difficult in developing countries where government perceive civil society as adversarial, if not subversive.

However, there has been some success in building the capacity of Southern NGOs through building partnerships with Northern NGOs, through the engagement of Southern NGOs in the execution of development projects and by the creation of development projects specifically designed to encourage the development and institutional strengthening of local Southern NGOs.

i) Building North-South NGO alliances

One of the main constraints on the capacity-building efforts of Southern NGOs is the need for financing. Activity on the international stage requires resources for research, analysis and representation. Alliance-building between Northern and Southern NGOs is one means of helping Southern partners with funding or the provision of hard-to-obtain resources. In return, Southern NGOs often have extensive grassroots networks from which Northern NGOs can benefit.

Northern NGOs are increasingly building permanent relations with Southern NGOs, often along sectoral lines and as a result of mutually-rewarding project associations. There are

some Northern NGOs that have a specific mandate to foster North-South cooperation, with the linking of NGOs a key part of their programmes. The Council of Europe North South Centre, for example, has a mandate to ‘help in maintaining and enhancing the process of communication and cooperation between governments, NGOs and local and regional authorities’.²⁰⁵ Other Northern NGOs are specifically mandated to facilitate overall understanding between North and South on a broad range of issues. The South Asian Partnership,²⁰⁶ for example, has strategically sought out Southern alliances to assist in its execution of development projects. A part of this alliance, the South Asian Partnership includes training and capacity-building of the Southern NGOs as part of its project implementation.

David Brown et al. detail the power of ‘inter-organisational learning and problem-solving’ of international NGOs and alliances.²⁰⁷ Their examples of successful alliances include the World Commission on Dams, the International Forum on NGO Capacity Building, and the Global Network on Violence against Women. Such alliances can promote the capacity of NGOs, not just in terms of their resources but also in terms of their ability to influence events on the international stage, by learning organisational and other skills, developing better channels of communication, or simply putting out a stronger voice as a result of uniting with the message of Northern NGOs.

²⁰⁵ Council of Europe, Committee on Economic Affairs and Development, July, 2003.

²⁰⁶ An NGO based in Canada with a broad mandate to execute rural development projects in South Asia.

²⁰⁷ L. David Brown, Sanjeev Khagram, Mark H. Moore, and Peter Frumkin, ‘Globalisation, NGOs, and Multisectoral Relations’ in *Governance in a Globalising World*, eds. Joseph S. Nye and John D. Donahue (Washington DC: Brookings Institution Press, 2000) pp. 271–296

Charles Kazibwe agrees, and notes that alliances between Northern and Southern NGOs bring benefits based on their comparative advantages.²⁰⁸ The benefits are seen in terms of improving local ownership, sustainability and poverty reach, as well as the mutual exchange of resources and ideas between the North and the South, helping to develop Southern capacity. ‘In working together, Northern and Southern NGOs combine their strengths and act as a link between their respective constituencies, strengthening their legitimacy. Thus, the sum of the whole partnership has the potential to be greater than the sum of the parts.’²⁰⁹

However, there have been a number of criticisms of North-South alliances and their ability to build Southern NGOs’ capacity effectively. The role of the Northern NGO as donor can be a major obstacle to achieving equality. The imbalance in the relationship created by Northern NGOs’ control over resources skews the power balance, and can prevent effective development of Southern capacity, instead keeping Southern NGOs in the shadow of their Northern partners. Ann Hudock warns that Southern NGOs that receive funding from Northern NGOs may suffer as they become ‘essentially contractors and are little more than extensions of the donor agencies’.²¹⁰ They are thus unable to exploit even those advantages they already have from their grassroots work. Hudock also notes that while more funding increases capacity, funding from the ‘wrong’ sources (such as from governments) can undermine an NGO’s legitimacy.²¹¹

²⁰⁸ C. Kazibwe, ‘NGO Partnerships: the Experience from Africa’, *Intrac* 16, (Oxford: INTRAC, 2000)

¹⁸⁶ V. Brehm, ‘NGOs and Partnership’, NGO Policy Briefing Paper 4 (April 2001), for the NGO Sector Analysis Programme, INTRAC

²¹⁰ Ann Hudock, *NGOs and Civil Society: Democracy by Proxy?* (Cambridge, UK: Polity Press, 1999), p. 2.

²¹¹ Ann Hudock, *NGOs and Civil Society: Democracy by Proxy?* (Cambridge, UK: Polity Press, 1999).

The imbalance in partnerships arising from funding issues is starting to be addressed by a considerable experimentation with Southern Partner ‘consultation’, as opposed to formal alliances, particularly in relation to country or regional strategies and thematic policies. Consultation policies limit the degree of power a Northern NGO can exert over its Southern Partners, while still potentially developing Southern capacity in terms of organisational learning and access to better channels of communication. However, the formal consultation of Southern Partners raises some very practical problems, given the sheer numbers of potential Partners involved; selecting only certain Partners to be involved in consultation can be very divisive within the NGO community.

Vicky Brehm argues that many of the problems of North-South partnerships can be addressed by all parties being clear about the purpose of the partnership, the mutual expectations and responsibilities.²¹² The results of Brehm’s 2001 study of North-South NGO partnerships suggest that successful alliances are largely based on the effectiveness of the work on both sides, the quality of the relationship, and the clarity about the purpose of the relationship. The findings suggest that Northern NGOs need to develop a more systematic and consistent approach to feedback mechanisms concerning individual alliance relationships, as well as greater mutuality in the negotiation of partnership agreements. Similarly, processes of partner consultation need to be strengthened and integrated into policy and planning processes to avoid Southern NGOs becoming the ‘contractors’ of the alliance. Given their power as ‘funders’, Northern NGOs should guard against the tendency to impose agendas on Southern Partners. This could be achieved through more

²¹² V. Brehm, ‘NGOs and Partnership’, NGO Policy Briefing Paper 4 (April 2001), for the NGO Sector Analysis Programme, INTRAC.

equitable negotiation processes. Southern NGOs must also work to make partnerships more balanced by become stronger in articulating their needs and what they can offer, resulting in partnerships based on policy dialogue between strong, autonomous organisations. Such partnerships would thus stand a better chance of developing NGO capacity, as opposed to partnerships in which one weak partner stands to gain very little.

ii) Using Southern NGOs as executing agencies

A growing trend apparent within international and bilateral development programmes is the involvement of NGOs in the planning and execution of projects. It may surprise many observers to learn that, in 1994, almost half of World Bank projects involved NGOs in the planning and execution phase.²¹³ This is a growing trend, and is also reflected in the execution of bilateral aid programmes and in the programmes of regional development banks. In the 1960s through to the early 1980s it was common for bilateral development programmes to utilise Northern consulting firms to undertake project execution responsibilities. Since that time, and corresponding to a shift in programme priorities to more poverty-focused activities, NGOs both from the North and the South have been increasingly engaged to implement projects. For example, the Canadian International Development Agency (CIDA) has made extensive use of the Aga Khan Foundation,²¹⁴ particularly in its implementation of rural development and health projects. Southern NGOs are also in high demand for implementing projects involving extensive rural work.

²¹³ World Bank, 'Cooperation Between the World Bank and NGOs: FY 1994 Progress Report', World Bank Operations Policy Department. Washington, D.C., February 1995.

²¹⁴ The development arm of this organisation has extensive health and rural development programmes in such countries as Pakistan and the East African area.

Bangladesh's Rural Agriculture Committee (BRAC) and its Grameen Bank are frequently used for this purpose by numerous Northern development agencies.

iii) Special funds for Southern NGO capacity-building

As well as directly partnering with Southern NGOs, there has been considerable success in setting up specific funds designed to strengthen the capacity of Southern NGOs. These funds may be the result of cooperative efforts of a group of like-minded international organisations, the efforts of a single bilateral programme, or as an outreach of a single inter-governmental organisation.

In the first instance, the International Forum on Capacity Building (IFCB) has been established by a group of development institutions including bilateral agencies such as the United States Agency for International Development (USAID) and the Swedish International Development and Cooperation Agency (SIDA), umbrella NGOs such as the Asian NGO Coalition for Agrarian Reform and Rural Development and international organisations such as the United Nations Development Programme (UNDP). The IFCB is basically 'a common platform for the interaction and engagement of players working to build the capacity of Southern NGOs in order to enhance their ability towards addressing issues of poverty, marginalisation, democratisation, strengthening civil society, human rights and sustainable human development'. Following consultation with Southern NGOs and exchanging their own experiences and successes in this area, this group focuses on the five priority areas of capacity building for Southern NGOs: leadership development; policy research and advocacy; information access, use and dissemination; the building of alliances, coalitions and networks as well as North-South sectoral partnerships; and financial stability.

An example of a bilateral programme setting up a Southern NGO institution-building programme is the Special Projects Office (SPO) programme established in Pakistan by the Canadian International Development Agency. This office, staffed by local and outside project specialists, provided a range of technical assistance (including project management, project evaluation, budgeting and monitoring skills) to nascent Pakistani NGOs as well as facilitating partnerships with Northern NGOs. Great care was taken to keep the host government fully informed of the activities of this centre; this included holding an annual meeting where a work plan was presented that outlined the nature of the technical assistance and the recipients. It was a completely open and transparent process that encouraged the trust of the government and allowed the programme to become involved in potentially sensitive areas, including human rights and women's programmes.

An example of the third type of Southern NGO institution-building is the creation of a specific inter-government organisation designed for this purpose. The Commonwealth Foundation is an organisation that has been established by Commonwealth Heads of State. The activities of this organisation complement the government-to-government assistance provided by its co-located sister organisation, the Commonwealth Secretariat. The Foundation has established regional offices in the Caribbean, in Africa and in Asia that operate along much the same lines as the previously mentioned SPO office. Particular areas of focus include capacity-building in women's entrepreneurship, youth business-development skills and project-planning and -execution skills, all carried out with indigenous southern NGOs of the 48 Commonwealth Developing Countries. The NGO 'Service Centre' in Egypt is another good example of a concentrated centre that helps build capacity in civil service organisations.

iv) Management issues

NGOs have been criticised for their lack of procedures and lack of understanding of more complex management issues. In response, there has been an evolution since the 1980s when the NGO management newsletter was produced from the International Council for Voluntary Agencies (ICVA) in Geneva; this ceased publication in the early 1990s. The International NGO Research and Training Centre was established in 1991. The Institute of Developments Research (IDR) in Boston, the Society of Participatory Research in India (PRIA) and El Taller in Tunisia have been the more prominent institutes involved in training and research agendas.

For NGOs to source funding and to partner on the delivery of international programmes, there will be a need for the NGOs to integrate into new management and accountability structures. This has already started; however, there continues to be a division between the Northern and Southern NGOs in terms of measurable progress.

2.7 Conclusion

I have argued that soft power, while important, is in itself not enough for NGOs to realise their potential input into IGOs and thereby create a more democratic and just global governance structure. I have summarised the factors both for and against the exercise of formal decision-making power by NGOs to democratise IGOs, and have shown that there is reason to believe this approach has unexplored potential and merit, though there exist significant risks to the moral mission and grassroots nature of NGOs as they acquire more formal decision-making roles.

As a final note, I would emphasise a dimension of soft power, which might be called ‘moral power,’ that can reinforce the proposed formal decision-making power envisaged in Collective Management. This relates to the concepts of moral motivation, commitment and potential for cooperation that are developed more fully in Chapter Four. It can be argued that many international conventions, such as that on land mines, came into existence through the cumulative pressures of shared public perception that led to an overlapping consensus on the need for certain conventions, standards or rules. Cumulative understanding of an issue may lead to moral obligation and commitment to that issue, and finally to consensus for action. This notion of ‘moral power’ is closely linked to ‘the politics of shame’, the importance of which is illustrated by Rosenau, who describes how Global Witness, a small NGO that employs 14 people with an annual budget of \$800,000, led a network of NGOs in a power-struggle with De Beers, the global diamond giant with a payroll of twenty thousand people in some twenty countries that annually sells diamonds worth billions of dollars.²¹⁵

As this chapter outlines, the world has gradually accepted civil society into more domains of international decision-making. It might be said that, as a result of their ‘moral power’,

²¹⁵ James N. Rosenau, *Distant Proximities: Dynamics Beyond Globalisation*, (Princeton University Press: Princeton, 2003) p. 298. By using the politics of shame and activating a network of like-minded NGOs, Global Witness succeeded in getting de Beers to reverse its strategy of marketing diamonds mined in areas that foster insurrection and exploitation. Indeed, De Beers began to cast itself as the champion of a cleaned-up world diamond trade. Nor was De Beers alone in succumbing to the politics of shame: BP Amoco, Nike, and Royal/Dutch Shell are also among corporations that revised their public posture on labour rights and the environment. Similarly, in November 2000, 263 consumer advocacy groups formed Consumer International to press international financial institutions for ‘social justice and consumer protection in the global markets’.²¹⁵ Partly in response to the politics of shame and an unwillingness to yield the high moral ground to NGOs exclusively, eight months later some fifty corporations joined with NGOs to sign a UN-sponsored Global Compact committed to promoting high standards in human rights, the environment, and labour practices on the part of transnational corporations. The successful efforts of numerous NGOs and some states to oppose apartheid in South Africa also exemplify the kind of powerful pressures that can be generated in the multi-centric world.

CSOs are gaining a louder voice, making them active participants in the international arena. It is now rare to find a UN programme without some form of active participation of civil society and the business community, and this would have been rare fifteen years ago. Alliances of NGOs might use their 'moral power' to build greater consensus on the issue of giving civil society (and business) a greater formal role in international affairs to 'correct' what they argue are gross failures in democratic practice. If the concept of Collective Management were to be implemented in practice, it would be likely to require a strategic action by NGOs to put pressure on governments to increase their role, as noted in the following chapter.

CHAPTER 3: THE CONCEPT OF ‘COLLECTIVE MANAGEMENT’

3.1 Introduction

In this thesis, I define the philosophical and political theory supporting the concept of Collective Management, while focusing on linking theory to real practice: that is, to the practical issues of implementation and institutionalisation. We can only ever realise our declared cosmopolitan, democratic and liberal values by linking them to an exploration of *concrete mechanisms* in an institutionalised system of reformed global governance. In this chapter, I develop the concept of Collective Management as an approach to reforming and democratising the decision-making processes of existing IGOs. The aim is to realise a practical system of international governance—supported by the three pillars of liberal individualism, a global theory of justice and cosmopolitan principles—through a heightened formal role for civil society that has, as noted in the previous chapter, historically led change.²¹⁶

I start by defining what I mean by the system of Collective Management. I then develop the concept, by comparing its proposed mechanisms and principles to the current system of international governance. I then analyse the existing reform proposals as potential preliminary steps to the actual realisation of a system of Collective Management.

²¹⁶ Willets notes: ‘The politics of an individual country cannot be understood without knowing what groups lobby the government and what debate there has been in the media. Similarly, international diplomacy does not operate on some separate planet, cut off from global civil society... Within both domestic and global politics, civil society is the source of change. Companies usually initiate economic change and NGOs are usually the source of new ideas for political action’. Peter Willets, ‘Transnational Actors and International Organisations in Global Politics’ in *The Globalisation of World Politics: An Introduction to International Relations*, eds. John Baylis and Steve Smith (Oxford: Oxford University Press, 2001), pp. 435 & 443.

Collective Management is based on involvement of the three sectors of society—government, the business sector, and civil society—and advocates that each sector be given an equal and formal role in the decision-making structures of IGOs.

As I described in the Introduction, the Collective Management system is what I term a ‘3x3=3’ system of governance. It proposes that the three sectors are allocated equal and formal decision-making rights through voting. These three sectors work together at three levels of governance—the national, regional and global levels. At each progressive level, representatives from each sector are democratically elected through a multi-level voting system to perform the governance duties required at that level. The result of the three sectors operating at three levels of governance is that each sector has equal influence in, and shares the responsibility for, three of the most important activities of global governance: 1) setting the criteria of global governance, i.e. the codes and standards of conduct, 2) implementing these standards, and 3) supervising this implementation, which includes the evolution of enforcement mechanisms. This ‘3x3=3’ system of international governance is summarised in the figure below:

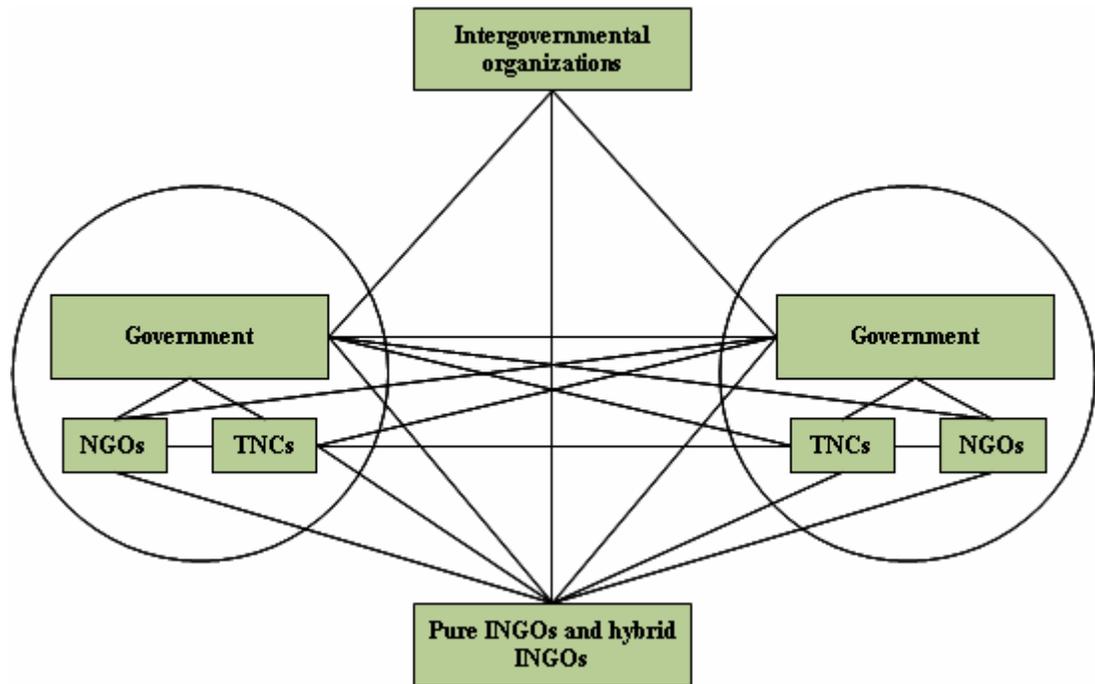
Figure 3.1 The ‘3x3=3’ system of international governance



The Collective Management system of international governance is supported by three philosophical ‘pillars’: liberal individualism, global justice, and cosmopolitanism. The first pillar, liberal individualism, provides the moral-philosophical underpinning for Collective Management. The second pillar, a liberal theory of justice, I extend to the global level, in order to provide evidence for the view that indeed Collective Management offers an outline of a more fair decision-making process on a global level. The final pillar underlying the concept of Collective Management, the theory of cosmopolitanism—whose core idea is that all human beings, regardless of their political affiliation, do (or at least can) belong to a single community, and that this community should be cultivated—provides the underlying rationale for Collective Management, which is that every individual has the right to a voice in democratic decision-making at the global level, regardless of national affiliations. I develop and adopt these three pillars in support of Collective Management in detail in Chapters Four and Five.

In order to understand the mechanisms of Collective Management fully, which would include the ways they would improve on the current system of international governance and be realised in practice, it is necessary to appreciate the realities of the present international system and its operation. In the current international system, the world is governed by three main players—governments/intergovernmental organisations, the business sector and civil society—and there are many interconnections in the relationships of these three main actors. The figure below demonstrates how national governments, IGOs, civil society (represented by NGOs and INGOs in the diagram) and business enterprise (represented by transnational corporations (TNCs) in the diagram) are all closely interconnected, as described by Peter Willets:

Figure 3.2 Interconnections between Governments/IGOs, multinational firms and NGOs



Source: Peter Willets, 'Transnational Actors and International Organisations in Global Politics' in *The Globalisation of World Politics: An Introduction to International Relations*, eds. John Baylis and Steve Smith, (Oxford: Oxford University Press, 2004), p. 443.

The concept of Collective Management recognises the critical role played by the three sectors, but it seeks to restructure their relationship so as to create more democratic, tripartite global governing institutions. The level of influence currently experienced by each sector is very unbalanced, not only between the government and non-government sectors, but also between both non-government sectors—the business sector and civil society. From my own research, I have constructed a matrix (below) in which I give examples of the three types of power these three sectors currently exercise on national, regional and international governance.

Figure 3.3 The 3 types of power of 3 sectors of society at 3 levels of governance

Level	Type of Power	Sector		
		Civil Society	Business Sector	Government
Global	Military	Militant protest / civil disobedience (at WTO meetings); Al Qaeda network	Private military companies (e.g., Sandline); corporate security firms	UN Peacekeeping
	Economic	Consumer boycott (Shell in Nigeria; Nike for child labour ‘sweatshops’ in Asia); shareholder activism	Business operations and lobbying of MNCs (Exxon-Mobil, Microsoft, etc.); MNC initiatives for TRIMs and TRIPs at WTO	IMF, World Bank, WTO
	Soft	Participation in IGOs; campaigns (landmines, AIDS medicines) published reports (Amnesty); public-relations wars (Greenpeace vs. McDonalds)	Public advertising (e.g., ‘Beyond Petroleum’); Code of Conduct of Global Compact or ICC	UN Universal Declaration of Human Rights; UN Commission on Sustainable Development Reports
Regional	Military	Militant protest / civil disobedience	Private military companies; MNC private security firms	NATO, African Union peacekeeping forces
	Economic	Regional consumer boycotts (Muslim boycott of Danish products); shareholder activism	Firms operating and lobbying in one or more regions	European Economic Commission; NAFTA; ASEAN; LAFTA
	Soft	African Association of Political Science; Dialogo centro Americano;	Advertising; regional firms’ own codes of ethics	Human rights and democracy provisions of Barcelona Declaration
National	Military	Animal Rights militants in UK; anti-government militants in US; Islamic militant groups	Commercial security firms; private armies	National military
	Economic	National consumer boycotts (US National Council of Churches against Taco Bell)	Local firms	National economic policies
	Soft	British Masters of Fox Hounds Association; American Legion	Advertising; National firms’ codes of ethics	Statements by President or PM; values exhibited in national policies and institutions

I have developed this matrix to compare civil society's ways of influencing the global, regional and national levels of governance, with those of society's other two sectors. Although it has a number of ways to exercise power, civil society has arguably the weakest voice of the three main players. The government voice is well established (though some governments have a stronger voice than others), and it is widely agreed that major global corporations exert massive lobbying influence at both the national and IGO level.

There is therefore a strong need for reform with regard to civil society, particularly in undemocratic states that may not be fairly represented by their governments in IGOs. Freedom House reports that 37% of the world's population lived under a 'not-free' state and a further 19% under a 'partly-free' one in 2004.²¹⁷

The need for an effective form of global governance is also acute with regard to the business sector. In contrast with the 'double aspect' problem in Southern states, which leads many representatives of civil society in Southern states to feel under-represented in IGOs, there is a growing trend towards 'private-interest government' increasing the strength of the business sector in IGOs.²¹⁸ Corporations spend increasing amounts of time and money campaigning to influence government organisations at all levels: local, national

²¹⁷ Adrian Karatnycky, 'Civic Power and Electoral Politics', *Freedom House*, <http://www.freedomhouse.org/template.cfm?page=130&year=2005>. In 2004, 44 percent of the globe's population (2.819 billion) lived in Free countries and territories, 19 percent (1.189 billion) lived in Partly Free settings, while 37 percent (2.387 billion) lived in Not Free polities—of these, 1.3 billion (nearly three-fifths) lived in China.

²¹⁸ Danaher notes that the growing power of the private sector is not a new phenomenon. As early as 1864 Abraham Lincoln (the 'father' of the Republican Party) warned of the growing power of corporations. He wrote: 'I see in the near future a crisis approaching that unnerves me and causes me to tremble for the safety of my country. As a result of the war, corporations have been enthroned and an era of corruption in high places will follow, and the money power of the country will endeavor to prolong its reign until all wealth is aggregated in a few hands, and the Republic is destroyed. I feel at this moment more anxiety for the safety of my country than ever before, even in the midst of the war'. Quoted in Kevin Danaher, *10 Reasons to Abolish the IMF & the World Bank* (New York: Seven Stories Press, 2001), p. 42.

and supranational. Powerful business interests are not only given attention by national governments, but they also directly influence international governance, thus generating again what I have called the problem of 'double voice'. A number of studies have demonstrated that trends towards the privatisation of governance are more pronounced at the international level than at the domestic level²¹⁹. As the voice of business enterprise is largely aligned with the interests of Northern states, and civil society is one of the few advocates of Southern interests, the imbalance in power that exists between the North and the South is further exaggerated. Gene Lyons and Michael Mastanduno argue, 'The legitimacy of the international community will continue to be questionable as long as there are fundamental differences between North and South with regard to whose values and interests the international community represents.'²²⁰

The approach of Collective Management thus seeks to provide an inclusive and accountable role for both civil society and the business sector in global governing institutions (though, as noted, it is within scope of this thesis to analyse in depth the role of civil society only). The philosophical approach underlying this inclusive approach is a cosmopolitan theory of global justice, which supports the legitimate exercise of political power on the basis of David Held's cosmopolitan principles of individual consent, collective decision-making

²¹⁹ For details see John Braithwaite and Peter Drahos, *Global Business Regulation* (Cambridge, UK: Cambridge University Press, 2000); A. Claire Cutler, Virginia Haufler and Tony Porter, eds., *Private Authority and International Affairs* (Albany: SUNY Press, 1999); Karsten Ronit and Volker Schneider, 'Private Organisations and their Contribution to Problem-Solving in the International Arena' in *Private Organisations in Global Politics*, eds. Karsten Ronit and Volker Schneider (London: Routledge, 2000); and A. Benz and Y. Papadopoulos, 'Is Network Governance Democratic? Different Assessments for the National and International Level' (paper presented for the Conference on Democratic Network Governance, Helsingoer, Denmark, May 22-23, 2003), <http://www.ruc.dk/upload/application/pdf/f51d6748/HelsingoerAB-YP1.pdf>.

²²⁰ Gene M. Lyons and Michael Mastanduno, eds., *Beyond Westphalia: State Sovereignty and International Intervention* (Baltimore: John Hopkins Press, 1995), p. 259.

about public matters through voting, and inclusiveness and subsidiarity (which I examine in greater detail in Chapter Five).²²¹ The Collective Management approach seeks to analyse how such ideal principles could be realised through reformed global institutions, recognising the practical constraints and challenges present in the current international system, in which new international norms and regimes have evolved well beyond the Westphalian system yet still rest on the legal sovereignty of nation-states. In particular, the Collective Management concept explores how to realise the cosmopolitan value of each person as an individual member of humanity, deserving of equal political treatment. It analyses the potential for NGOs and private institutions to provide access for the people, particularly of the South, to have a voice to balance governmental representation, especially in countries that lack basic democratic practices. In this sense, NGOs in a system of Collective Management could become the ‘voice of the voiceless’ and assist movement toward equal treatment of all individuals on the global level.

To realise these individualistic principles, Collective Management explores an approach that goes beyond participatory democracy to include not only a ‘voice’ for civil society and the business sector, but also a formal role and ideally a *vote*. It aims to outline and analyse the philosophical and political basis for a reformed system of global social and economic governance that is based on collective decision-making of the three sectors—government, civil society and the business sector. In this sense, the Collective Management approach seeks to develop a vision well beyond the ‘multi-stakeholder partnerships’ advocated by the UN Panel on Civil Society, which includes civil society and the private sector in

²²¹ David Held, *Global Covenant: The Social Democratic Alternative to the Washington Consensus* (Cambridge, UK: Polity Press, 2004), pp. 170–171.

participatory processes, with ultimate decision rights remaining with IGOs. In the previous chapter, I showed that significant progress has been made in the past decade to increase the voice of civil society and the private sector in the UN system; there are examples such as the Aarhus Convention, the UN Commission on Human Rights, the 'Arria Formula' or UNAIDS, in which civil society is widely recognised to have real impact on specific decisions. On the other hand, the thesis notes more cases where civil society representatives report that they give input to IGOs but their input does not find its way into the final document or agreement, as in the widely-publicised case of the Hearings of the UN General Assembly with NGOs and the private sector that were held prior to the UN Millennium Summit +5 in September 2005. Civil society representatives reported widely that, while they were given the chance to make three-minute speeches in the Hearings, they had little sense of having any impact on the outcome.²²²

Thus the approach of Collective Management seeks to explore a reformed system in which the input of civil society cannot easily be overridden by the interests of one or more nation-states. It explores a reformed system whose Charter could accurately read 'We the Peoples...' This aim of increasing the accountability of nation-states to civil society is shared by existing proposals to institutionalise the voice of civil society through citizen

²²² United Nations Non-Governmental Liaison Service and the Millennium NGO Network, 'Executive Summary: General Assembly Hearings, And the Survey Says...' (a survey of participants that took part in the informal interactive Hearings of the General Assembly with NGOs, civil society organisations and the private sector, New York, 23-24 June, 2005), p. 3, Table 5, <http://www.un-ngls.org/GA-Hearings-Summary-Survey.doc>.

assemblies (e.g., the UN Parliamentary Assembly and the Global Peoples' Assembly).²²³ These approaches lack formal powers, but seek to build on NGOs' soft power (and 'moral power') to hold existing IGOs to account and greater scrutiny. They involve democratic election on the global level for individual citizen representatives.

The Collective Management approach is most similar to existing proposals for NGO Assemblies, in that it sees the basic unit of reformed global governing institutions as including not individual citizens in assemblies, but non-state actors in the form of NGOs and private firms. Michael Edwards and Simon Zadek present a scenario featuring a series of bodies of NGOs and private sector representatives like a World Financial Forum attached to the WTO, or another attached to the IMF.²²⁴ These forums would debate the policy and decisions of these institutions. Zadek has developed a scenario for a UN 'Civil Assembly' composed of NGOs and private sector representatives that can focus debate, table amendments to General Assembly draft resolutions, and 'resist for a period of time the will of the General Assembly'.²²⁵ These proposals for NGO assemblies include no

²²³ Erskine Childers and Brian Urquhart, *Renewing the United Nations System* (Uppsala, Sweden: Dag Hammarskjöld Foundation, 1994), as summarised in Jeremy Heimans, 'Reforming global economic and social governance: a critical review of recent programmatic thinking', draft June, 2003, available at the website of the United Nations University: <http://www.unu.edu/p&g/gesgp/workingpapers/Heimans2.pdf>; Richard Falk and Andrew Strauss, 'On the creation of a global people's assembly: Legitimacy and the power of popular sovereignty', *Stanford Journal of International Law* 36 (Summer 2000): 191-220; Richard Falk and Andrew Strauss, 'Bridging the globalisation gap: Toward global parliament', *Foreign Affairs* 80, no. 1 (Jan/Feb 2001); Joseph Camilleri, Kamal Malhotra and Majid Tehranian, 'Reimagining the Future: Toward Democratic Governance' (Report of the Global Governance Reform Project, 2000), http://www.dhf.uu.se/pdffiler/reimagining_the_future.pdf.

²²⁴ Michael Edwards and Simon Zadek, 'Governing the Provision of Global Public Goods: The Role and Legitimacy of Non-State Actors', in *Providing Global Public Goods: Managing Globalisation*, eds. Inge Kaul, Pedro Conceicao, Katell Le Goulven and Ronald U. Mendoza (New York: Oxford University Press, 2003), p. 215.

²²⁵ Simon Zadek, 'Civil Partnerships, Governance and the UN' (Background Paper for the Secretary-General's Panel of Eminent Persons on Civil Society and UN Relationships, in 'Multi-Stakeholder Partnerships and UN-Civil Society Relationships: Collection of Materials from the Multi-Stakeholder Workshop on Partnerships and UN-Civil Society Relationships', New York, February 2004), p. 29, http://www.un.org/reform/civilsociety/pdfs/pocantico_booklet.pdf

formal vote, but they can exert soft power and can seek to push for further executive powers. There is widespread support for the concept of NGO forums, as evidenced by a recent survey. The Third Survey of the 2020 Global Stakeholder Panel asked over 1,000 global stakeholders about priorities for UN reform. 66% rated as a priority the creation of a Civil Society Forum composed of accredited NGOs, trade unions, and business organisations.²²⁶

The Collective Management approach is distinct, however, in that it explores the potential to realise cosmopolitan principles through integrated collective decision-making, where all three sectors have a formal vote in decision-making. In this sense, the most relevant existing model is the ILO, the only tripartite UN organisation that has representatives of governments, workers' organisations and employers' organisations participating in its administration and activities.²²⁷ In the case of the ILO, the civil society representatives are individuals from workers' organisations or labour unions, and the private sector representatives are not firms but individuals from employers' organisations or industry federations (I examine the case of the ILO in more detail in Section 3.4b below).

As in the case of other proposals for NGO assemblies, the Collective Management approach acknowledges the difficulties involved in devising a system for electing and ensuring the accountability of the NGO and private sector representatives. NGOs and

²²⁶ 2020 Fund, 'What Global Leaders Want' (report of the Third Survey of the 2020 Global Stakeholder Panel, Feb 2005), p. 11, http://www.2020fund.org/downloads/GSP_3_report.pdf.

²²⁷ It is composed of 56 titular members (28 Governments, 14 Employers and 14 Workers) and 66 deputy members (28 Governments, 19 Employers and 19 Workers). Ten of the titular government seats are permanently held by *States of chief industrial importance* (Brazil, China, France, Germany, India, Italy, Japan, the Russian Federation, the United Kingdom and the United States). The other Government members are elected by the Conference every three years (the last elections were held in June 2005) (www.ilo.org).

private firms are non-representative entities whose legitimacy currently derives from their competence and expertise, from their moral authority or public benefit. They cannot claim to be ‘representative’ of constituencies in the same way as directly-elected citizens in a global assembly or national government. Peter Willets argues, ‘NGOs cannot really claim to be more democratic, more representative or more legitimate as decision-makers than elected governments. Only when a government is authoritarian does the prospect arise of NGOs being more authentic as the voice of the people’.²²⁸

The Collective Management approach addresses this problem by proposing a system that combines elements of representative and participatory democracy. Under Collective Management, NGOs and private sector firms—though non-representative entities themselves—put forth candidates for democratic elections for voting membership in IGOs. All candidates must meet the entry requirement of high standards of transparency and accountability, and will acquire a greater degree of legitimacy on the basis of representing a constituency to whom they must be accountable. Zadek argues, ‘Civil society organisations in the UN may in the future have greater decision-making power, which will only be possible if the basis of their selection is reassessed along with the basis on which those selected can be held to account’.²²⁹ The Collective Management approach supports the use of an independent body (based on the methodology of One World Trust, AccountAbility or other expert organisations) to establish the good practices required for an NGO or firm

²²⁸ Peter Willets, ‘The Rules of the Game: The UN and the Civil Society’, in *Whose World is it Anyway? Civil Society, the United Nations, and the Multilateral Future*, eds. John W. Foster and Anita Anand (Ottawa: United Nations Association in Canada, 1999), p. 261.

²²⁹ Simon Zadek, ‘Civil Partnerships, Governance and the UN’ (Background Paper for the Secretary-General’s Panel of Eminent Persons on Civil Society and UN Relationships, in ‘Multi-Stakeholder Partnerships and UN-Civil Society Relationships: Collection of Materials from the Multi-Stakeholder

representative to be eligible to put forth candidates for election. Democratic elections for these NGO and private sector representative positions on the IGOs would then be organised globally by geographical region. In Section 3.4 I consider in more detail the requirements and processes of such an election mechanism.

The concept of Collective Management would thus give ordinary people globally the opportunity to cast their vote for the NGO and private sector representatives they want to serve on IGOs. This process could start by giving the civil society institutions an equal role, beside market institutions and governmental institutions, in setting global norms and codes that govern all nation states; these rules and norms would have a legitimacy recognised not just by the governments but also by their constituents and this would create a commitment towards these rules and norms.

To better understand the concept of Collective Management, I shall compare and contrast its proposals with existing proposals for major reforms of global governing institutions. I identify six major reform models and classify them based on the type of democracy they recommend and the type of power proposed. The chapter then elaborates both the distinctive characteristics of Collective Management and the practical institutions and mechanisms that follow from the concept and its underlying cosmopolitan principles.

3.2 Six approaches to reforming the role of civil society in global governance

In this section I examine six approaches that have been developed to include a greater role for civil society in global governance. None of the six proposes as formal a role for civil

Workshop on Partnerships and UN-Civil Society Relationships', New York, February 2004), p. 20,

society as Collective Management does, and so these six might be considered ‘pre-steps’ on the road to Collective Management. These approaches to basic reform of global governing institutions vary in terms of the type of democracy involved (the two main types being ‘participatory’ vs. ‘representative’) and the type of power they propose (‘soft power’ vs. formal decision-rights). The concept of participatory democracy includes several types: direct, deliberative and associative.²³⁰ Though some argue that participatory and representative democracy overlap, the basic distinction is clear and usable with regard to NGO involvement in IGOs. As Fernando Cardoso writes, ‘Traditional [representative] democracy aggregates citizens by communities of neighbourhood (their electoral districts), but in participatory democracy citizens aggregate by communities of interest’.²³¹

I identify (below) three reform approaches based on participatory democracy, and three based on representative democracy. Five of the six approaches involve only soft power, and one has formal decision-rights.

http://www.un.org/reform/civilsociety/pdfs/pocantico_booklet.pdf

²³⁰ See Piotr Perczynski, ‘Active citizenship and associative democracy’, in *Democratic Innovation: Deliberation, Representation and Association*, ed. Michael Saward (London: Routledge/ECPR European Political Science, 2000), pp.162-163. He writes that there are ‘two main types of democracy: representative and participatory democracy (Held 1993; Dekker 1994: 12-14; Pateman 1970). The borders between the two types of democracy are far from precise (see Budge, this volume). For example, participatory, active elements are present in less mechanistic variants of representative democracy. The process of voting for representatives must be regarded as a participatory action in itself, just like consultation of representatives by the represented (Andeweg 1985: 96-105). Likewise, one could list representative mechanisms in several models of participatory democracy (such as special ‘functional chambers’ of parliament in functional models). Both types of democracy are relevant for different aspects of active (neo-republican) citizenship....different models of the participatory type of democracy are especially important to analyse. One of the models...is associative democracy...the elements of two other major models of participatory democracy — direct and deliberative — are present in associative democracy...associative democracy is a model of participatory democracy based on self-governance of internally democratic, voluntary and functional groups (for a similar definition see also Streeck 1995:188)’.

²³¹ Fernando Cardoso, ‘We the Peoples: Civil Society, the United Nations and Global Governance’ (report of the Panel of Eminent Persons on United Nations-Civil Society Relations, A/58/817, June 2004), p. 8, <http://www.un-ngls.org/Final%20report%20-%20HLP.doc>.

3.2a *Multi-stakeholder partnerships*—participatory, soft power only

In 2003, UN General Secretary Kofi Annan appointed Fernando Cardoso, the former president of Brazil, to chair a panel of eminent persons to identify best practices in the UN system and other IGOs regarding NGO participation. Proposal 1 of the UN Panel on Civil Society (the ‘Cardoso Panel’) is that the UN should ‘emphasise the inclusion of all constituencies relevant to the issue, recognise that the key actors are different for different issues and foster multi-stakeholder partnerships’.²³² The multi-stakeholder partnerships include civil society and the private sector in participatory processes, with ultimate decision rights remaining with IGOs. UNAIDS does have five NGOs on the governing board, but they have no formal decision rights, no vote.

The Cardoso Report was received sceptically by a large number of NGOs and there is no General Assembly resolution on its recommendations. UN General Secretary Kofi Annan had specifically asked the Cardoso Panel to identify ways for NGOs from developing countries to participate fully in UN activities.

3.2b *Global Networks*—tripartite participatory/‘networked governance’, soft power only

This approach may be most broadly defined thus:

...networks are loose, self-governing structures involving governments, international organisations, business and the not-for-profit sector. They tend to form around specific issue-areas and can be initiated by any of the participating sectors. Unlike conventional government-led actions to further citizen participation, the scope of co-operation in networked governance is

²³² Fernando Cardoso, ‘We the Peoples: Civil Society, the United Nations and Global Governance’ (report of the Panel of Eminent Persons on United Nations-Civil Society Relations, A/58/817, June 2004), p. 16, <http://www.un-ngls.org/Final%20report%20-%20HLP.doc>.

not solely defined by government. Ideally, in networks all participants provide inputs to the identification of problems, the investigation of options and the development of solutions. In addition, networked governance relies on businesses and civil society groups often organised on a transnational scale. Networks are thus able to draw on the specific knowledge and expertise brought in by the participating institutions.²³³

This approach draws on the recent theory of ‘networked governance’ at the national level that sees government transforming from traditional notions of centralised control over public programs to a new model of facilitating services through networks of non-governmental entities.

Jean-François Rischard develops the notion of global issues networks (GINs). He argues that what we require is a distinct global issue network for each urgent policy problem.²³⁴ Each network would be initiated by a leading international actor working purely as a facilitator. The GIN’s membership would include representatives of governments affected by and experienced in the issue at hand, as well as knowledgeable people from business and international non-governmental organisations. In Rischard’s view, the GINs would go through three phases: a ‘constitutional phase’, when the network is convened and set in motion; a ‘norm-producing phase’, beginning with a rigorous evaluation of options and alternatives, and an ‘implementation phase’. It is in the final phase that Rischard defines the type of power and influence that GINs would exercise:

²³³ Julia Steets, Fellow, Global Public Policy Institute, ‘Networks: Engaging Governance? The Case of Transparency International’ (paper presented at the United Nations Interregional Workshop on ‘Engaged Governance’, Colombo, Sri Lanka, 9-11 December, 2003, organised by UN/DESA and the Government of Sri Lanka), p. 11, <http://unpan1.un.org/intradoc/groups/public/documents/UN/UNPAN024505.pdf>.

²³⁴ Jean-François Rischard, *High Noon: 20 Global Problems, 20 Years to Solve Them* (New York: Basic Books, 2002). See summary in David Held, *Global Covenant: The Social Democratic Alternative to the Washington Consensus* (Cambridge, UK: Polity Press, 2004), pp. 104–105.

In this third phase...each network would further increase its membership and turn into a rating vehicle—evaluating countries and other relevant players (such as businesses) on how well they follow the norms and standards, perhaps even along the lines of the ISO 9000 practices pioneered by the International Organisation for Standardisation. They would also regularly rate players for the strongest improvements from one year to the next. Reputational effects would now come into play: the network and electronic town meeting would now spend their time tracking how shareholders do or do not follow suit....

But remember: norms are not legislation. For the most part, their realisation would hinge on countries freely deciding—on their own or under the pressure of reputational effects—to enact conforming legislation. Nor would networks have regulatory authority over business or other civil society players. What they would have is moral authority, and they would have to come up with ways of wielding it—through exposure, disclosure, and reputation effects—in short, through naming-and-shaming ‘rogue players’ that violate or ignore the norms. This isn’t hard to do in our media age: the press loves league tables as much as those rated fear them—and global issues networks would provide a lot of copy...

Finally, besides engaging in rating activities and promoting reputational effects, the networks would also become a best practice exchange system, with their electronic town meeting adjuncts functioning as observatories and knowledge exchanges²³⁵

Thus GINs would have soft power only, relying on moral authority, rating of both businesses and NGOs, and exposure of violators.

3.2c *Global Forum of Civil Society*—tripartite participatory, soft power only

Edwards and Zadek advocate an approach to create a second UN Chamber as well as other forums in which NGOs would be the political units for grassroots participative democracy.

They propose: ‘a series of non-representative bodies designed to provide a space for debate on particular international institutions or regimes, with participants selected according to

²³⁵ Jean-François Rischard, *High Noon: 20 Global Problems, 20 Years to Solve Them* (New York: Basic Books, 2002), pp. 171–172.

expertise or material interest'.²³⁶ For example, a World Financial Forum could complement the IMF, to allow non-state actors to debate the Fund's policies and performance. A similar forum would be formed to complement the WTO. These forums would claim legitimacy not on basis of representation, but on basis of competence and expertise, moral legitimacy or public benefit.

Zadek elaborates a scenario of 'civil governance' in which a 'Civil Chamber' to complement the UN General Assembly is established in the coming decade, composed of about 800 elected organisational members including NGOs, religious and labour organisations and businesses.²³⁷ An NGO, organisation or business would be eligible to run for election to the Civil Chamber according to the way it was governed. One governance criterion for those organisations wishing to become elected members of the Civil Chamber is that each establish a Civil Council, elected by a non-paying membership of stakeholders affected by that organisation's activities. This Civil Council would then be responsible for overseeing the organisation's strategy.

²³⁶ Michael Edwards and Simon Zadek, 'Governing the Provision of Global Public Goods: The Role and Legitimacy of Non-State Actors' in *Providing Global Public Goods: Managing Globalisation*, eds. Inge Kaul, Pedro Conceicao, Katell Le Goulven and Ronald U. Mendoza (New York: Oxford University Press, 2003), p. 215.

²³⁷ Simon Zadek, 'Civil Partnerships, Governance and the UN' (Background Paper for the Secretary-General's Panel of Eminent Persons on Civil Society and UN Relationships, in 'Multi-Stakeholder Partnerships and UN-Civil Society Relationships: Collection of Materials from the Multi-Stakeholder Workshop on Partnerships and UN-Civil Society Relationships', New York, February 2004), pp. 20-31, http://www.un.org/reform/civilsociety/pdfs/pocantico_booklet.pdf

3.2d *Advisory Body of National Parliamentarians*—representative, soft power only

This approach includes versions of a global parliamentary body composed of existing elected parliamentarians from nation-states. Examples include the Inter-Parliamentary Union,²³⁸ or the e-Parliament.²³⁹

Some who support the parliamentary approach oppose including NGOs, which are seen as the voice of interest groups and would not promote their interpretation of representative democracy. Similarly, those who support such parliamentary bodies are against private sector membership. Some see an advisory parliamentary body as an interim step to a world parliament which it is, they argue, currently too soon to achieve, given the real problems of finance, of ensuring democratic elections, of managing the problem that people from developed countries would be much better informed and able to engage in debate, along with the risk that such a body would be hijacked by corporate interest groups.

3.2e *Elected Global Assembly*—representative, soft power only

The notion of a second assembly of citizens that is attached to a global assembly of state representatives has a long history; it was first raised in the context of the League of Nations

²³⁸ For details, see <http://www.ipu.org/english/whatipu.html>

²³⁹ See <http://www.e-parl.net>

and again in 1945 when the UN was founded.²⁴⁰ A number of proposals for a global assembly have been put forth in the past decade.

Erskine Childers and Brian Urquhart propose a popularly-elected UN Parliamentary assembly as the voice of global citizenry that would have broad responsibilities to act as a kind of house of review of other UN institutions and activities but with few formal powers.²⁴¹ They support election of individual citizens rather than NGOs, which they do not view as representative in the political sense. They argue that NGOs' 'best service in connection with the United Nations is to inform their particular constituencies and add voice through their particular professional, technical or humanitarian concerns'.

The Assembly that Childers and Urquhart propose would have the following main responsibilities: to express citizens' views on major international problems and crises, and on the UN's response to them; to influence governments' formulation of UN policies, to watch over the management and financing of the UN and to enhance the collective accountability of its member governments. It would need to be consulted by the General Assembly, could hold readings on major decisions before ECOSOC, convey opinions to

²⁴⁰ 'The idea of a People's Assembly had been proposed already in the 1920s to be a part of the League of Nations. In the 1945 Ernest Bevin said in the House of Commons that 'there should be a study of a house directly elected by the people of the world to whom the nations are accountable'. For example, the Coalition for a Strong United Nations called for 'gradual establishment of a People's Assembly or second chamber of General Assembly, representative of the people of the world, initially appointed by national parliaments and eventually directly elected by world citizens, as in the development of the European Parliament.' See Antti Pentikäinen, 'Creating Global Governance: The Role of Non-Governmental Organisations in the United Nations' (paper prepared for the Finnish UN Association, Helsinki, 2000), p. 72, <http://www.ykliitto.fi/uutta/gover.pdf>

²⁴¹ Erskine Childers and Brian Urquhart, *Renewing the United Nations System* (Uppsala, Sweden: Dag Hammarskjöld Foundation, 1994), as summarised in Jeremy Heimans, 'Reforming global economic and social governance: a critical review of recent programmatic thinking', draft June 2003, available at the website of the United Nations University: <http://www.unu.edu/p&g/gesgp/workingpapers/Heimans2.pdf> See also Joseph Camilleri, Kamal Malhotra and Majid Tehranian, *Reimagining the Future: Toward Democratic Governance*, Report of the Global Governance Reform Project, 2000, pp. 28–29.

other UN organs, hold question-times with the Secretary General and Presidents of the UN organs, and request amendments to policies, but would lack budgetary powers.²⁴² Given their massive populations, China and India would have huge influence over the Assembly. For this reason, Childers and Urquhart (above) propose a sliding scale, requiring increasing numbers of citizens for each additional representative.

Richard Falk and Andrew Strauss propose a 'Global People's Assembly' in addition to the UN General Assembly that would grow in prestige over time and become difficult to ignore.²⁴³ Strauss has written on the evolution of his and Falk's views, noting four plans for forming the parliament: amendment to the UN Charter, creation by the UN General Assembly as a Subsidiary Organ, civil-society-organised elections and inter-state treaty process. In 2000 they noted that the Global People's Assembly could be established by civil society:

[A] GPA need not be established by traditional interstate treaty arrangement. Globalisation has generated an emergent global civil society composed of transnational business, labour, media, religious and issue-oriented citizen advocacy networks with an expanding independent capacity to initiate and validate a GPA... Uniquely, a GPA would have a claim to authority

²⁴² The creation of such a body would require a UN charter amendment and involve lengthy political negotiations. They propose that the General Assembly would establish the UNPA under Article 22 as a subsidiary body made up of delegates selected by the national parliaments of member states. This body would then develop proposals for converting itself into a popularly elected world assembly, which would be followed by a period of 'several years' discussion at the national and international level, centred in the General Assembly, at the end of which agreement would be reached to amend the UN charter to establish the body as an additional Principal Organ.

²⁴³ Richard Falk and Andrew Strauss, 'On the creation of a global people's assembly: Legitimacy and the power of popular sovereignty', *Stanford Journal of International Law* 36 (Summer 2000): 191-220; Richard Falk and Andrew Strauss, 'Bridging the globalisation gap: Toward global parliament', *Foreign Affairs* 80, no. 1 (Jan/Feb 2001).

independent of whether or not it received the formal blessings of the state system...²⁴⁴

Strauss and Falk now favour the approach in which pioneer countries would establish the legal structures for elections through an inter-state treaty process.²⁴⁵

George Monbiot is another author who argues for a representative world parliament that would have only moral authority and whose purpose would be to use that moral weight to hold global and international powers to account (allowing the people of the world to influence decisions that affect their lives) and ‘an accelerated fusion of human interests’. He argues that the only genuinely representative global forum is a *directly* representative one.²⁴⁶ He favours civil-society-organised elections. Monbiot supports the approach that every adult on earth should have one vote. The forum could potentially have 600 representatives, each with a constituency of 10 million people. Many of the constituencies will have to straddle national borders. Monbiot sees this as an asset, arguing that the less

²⁴⁴ Richard Falk and Andrew Strauss, ‘On the creation of a global people’s assembly: Legitimacy and the power of popular sovereignty’, *Stanford Journal of International Law* 36 (Summer 2000), p. 194.

²⁴⁵ Andrew Strauss, ‘Taking Democracy Global: Assessing the Benefits and Challenges of a Global Parliamentary Assembly’ (prepared for the One World Trust pamphlet series *Global Responsibility—Reaching Beyond National Sovereignty*), <http://www.oneworldtrust.org/documents/taking%20democracy%20global.pdf>

²⁴⁶ ‘The assembly’s primary purpose would be to hold other powers to account. It would review the international decisions made by governments, by the big financial institutions and by bodies such as the United Nations and the World Trade Organisation. Through consultation with the world’s people and through debates within the chamber, it would establish the broad principles by which these other bodies should be run. It would study the decisions they make and hold them up to the light. When it discovers that they have breached the principles of good governance it has established, it would pass resolutions and publish critical reports. We have every reason to believe that, if properly constituted, our parliament, as the only body with a claim to represent the people of the world would force them to respond. Its main authority would be moral authority.’ George Monbiot, *The Age of Consent: A Manifesto for a New World Order*, (London: Flamingo, 2003) (see especially chapter 3).

representatives are bound to the demands of nationhood, the less parochial their outlook is likely to be.²⁴⁷

Derk Bienen et al. propose the creation of a United Nations second assembly and a change of the voting powers in the General Assembly that would balance the ‘one state, one vote’ principle with the ‘one person, one vote’ principle. He notes that ‘The reform proposals that we discuss...do not intend to replace states with individuals. Rather, they take their point of departure from the present United Nations which consists exclusively of states as its constituent parts and seeks to ‘democratise’ this state-centric system of rule by giving ‘the peoples of the United Nations’ (preamble of the UN Charter) a voice in the decision-making process of the United Nations’.²⁴⁸

Bienen et al. emphasise that even cosmopolitans do not propose to do away with state representation at the UN, and many communitarians such as Bienen himself agree that

²⁴⁷ Monbiot speculates on the need for future global governing bodies to acquire formal authority and powers. He argues that sometimes moral authority would not be enough. If there is to be a corrective to global governance by means of brute force he argues we will continue to require an international body which attempts to broker peace between armed states...the organisation responsible for global security should be as democratic as an international body can be. A democratic security system would be controlled not by five self-appointed governments, but by the entire General Assembly. Each nation’s vote would be weighted according to both the number of people it represents and the democratic legitimacy it possesses...Rigorous means of measuring democratisation are beginning to be developed by bodies such as the Centre for Business and Policy Studies in Sweden and Democratic Audit in the UK. It would not be hard, using their criteria, to compile an objective global index of democracy. Governments, under this system, would be presented with a powerful incentive to democratise: the more democratic they became, the greater would be their influence over world affairs...No nation would possess a veto. The most consequential decisions – to go to war for example – should require an overwhelming majority of the assembly’s weighted votes...This body and the world parliament are likely both to enhance each other’s legitimacy and to restrain each other’s actions. The incentive to democratise would discourage governments from banning elections to a world parliament. The parliament’s ability to review the decisions of the General Assembly would reinforce the Assembly’s democratic authority...We could begin, in other words, to see the development of a bicameral parliament for the planet, which starts to exercise some of the key functions of government.’

²⁴⁸ Derk Bienen, Volker Rittberger and Wolfgang Wagner, ‘Democracy in the United Nations System: Cosmopolitan and Communitarian Principles’ in *Re-imagining Political Community: Studies in Cosmopolitan Democracy*, eds. Daniele Archibugi, David Held and Martin Köhler (Cambridge, UK: Polity Press, 1998), p. 297.

rights derive from individuals but they believe that it is important to protect states' rights, since they are guardians of community. Thus, Bienen et al. agree that the most important reform at the UN would be to increase representation of individuals (a cosmopolitan reform). The more extreme communitarians say that there are no universal human rights, therefore democracy is a Western concept and not worth pursuing at the global level.

3.2f *World Parliament*—representative, with decision rights/legislative powers

The World Federalists are most well known for proposing a global world parliament with legislative powers²⁴⁹. The concept of federalism is often criticised as supportive of a large centralised super-state; counter-arguments are put forward by the One World Trust in publications on federalism and globalisation.²⁵⁰

David Held has proposed 'the formation of an authoritative assembly of all states and agencies—a reformed General Assembly of the United Nations, or a complement to it'.

Held explains that:

The focus of a global assembly would be the examination of those pressing global problems which are at the heart of concerns about life expectancy and life chances—concerns, for instance, about health and disease, food supply and distribution, the debt burden of the developing world, the instability of the hundreds of billions of dollars that circulate the globe daily, global warming and the reduction of the risks of nuclear, chemical and biological warfare. Its task would be to lay down, in framework-setting law, the standards and institutions required to embed the rule of law, democratic principles, and the minimum conditions for human agency to flourish... Consistent with this would be the creation of institutional capacities to initiate attempts—through a Social and Economic Security Council—to

²⁴⁹ <http://www.wfm.org/html/3x06wuef-3.html>

²⁵⁰ One World Trust, 'Global Responsibility: Reaching Beyond National Sovereignty' (a series of pamphlets by the One World Trust, 2003-2005), *One World Trust*, <http://www.oneworldtrust.org/?display=pmphsubc&tsid=3&page=1#pubs>

alleviate crises of urgent need that generate immediate life and death considerations. If non-global levels of governance were to fail to protect people in these circumstances, a *raison d'être* would exist for direct global intervention. Of course, political decision-making and implementation should remain, everything else being equal, as much as possible with those who are primarily and most immediately affected by them, in line with the principle of inclusiveness and subsidiarity.²⁵¹

Held notes that agreement on the terms of reference of a global assembly would be difficult, but refers to his own earlier work, Held (1995), as well as to the work of Archibugi (1995) and Monbiot (2003). He leaves open the question of whether the assembly would be composed of citizens or representatives of civil society organisations—though he does not include the private sector. Regarding the terms of reference for an assembly, he argues that they would best be generated in a stakeholder process of consensus-building—a global constitutional convention—involving states, IGOs, NGOs, citizen groups and social movements:

Three core issues would need to be addressed: Who is to be represented: governments or citizens? What is to be the principle of representation, one state one vote, proportional representation or a mixture of both? What are the proper scope and limits of action of a global assembly? These are demanding questions which admit of a number of sound theoretical answers. The case for each would have to be considered and weighed in the context of the diversity of interests which would be brought to a global constitutional convention, for example the inevitable differences that would emerge between the developed and developing countries on whether population size or economic strength or a mixture of both should count in the determination of the basis of representation. While the legitimacy and credibility of a new global assembly would depend on it being firmly grounded on the principle of consent and electoral inclusiveness, it is likely that any assembly in the foreseeable future would be constituted by compromises between theoretical ideals and practical constraints. Accordingly, rather than set out blueprints for the nature and form of a global assembly, it seems better to stress the

²⁵¹ David Held, *Global Covenant: The Social Democratic Alternative to the Washington Consensus* (Cambridge, UK: Polity Press, 2004), pp. 110–113.

importance of a legitimate process of consensus building in and through which these issues might be deliberated upon and settled.²⁵²

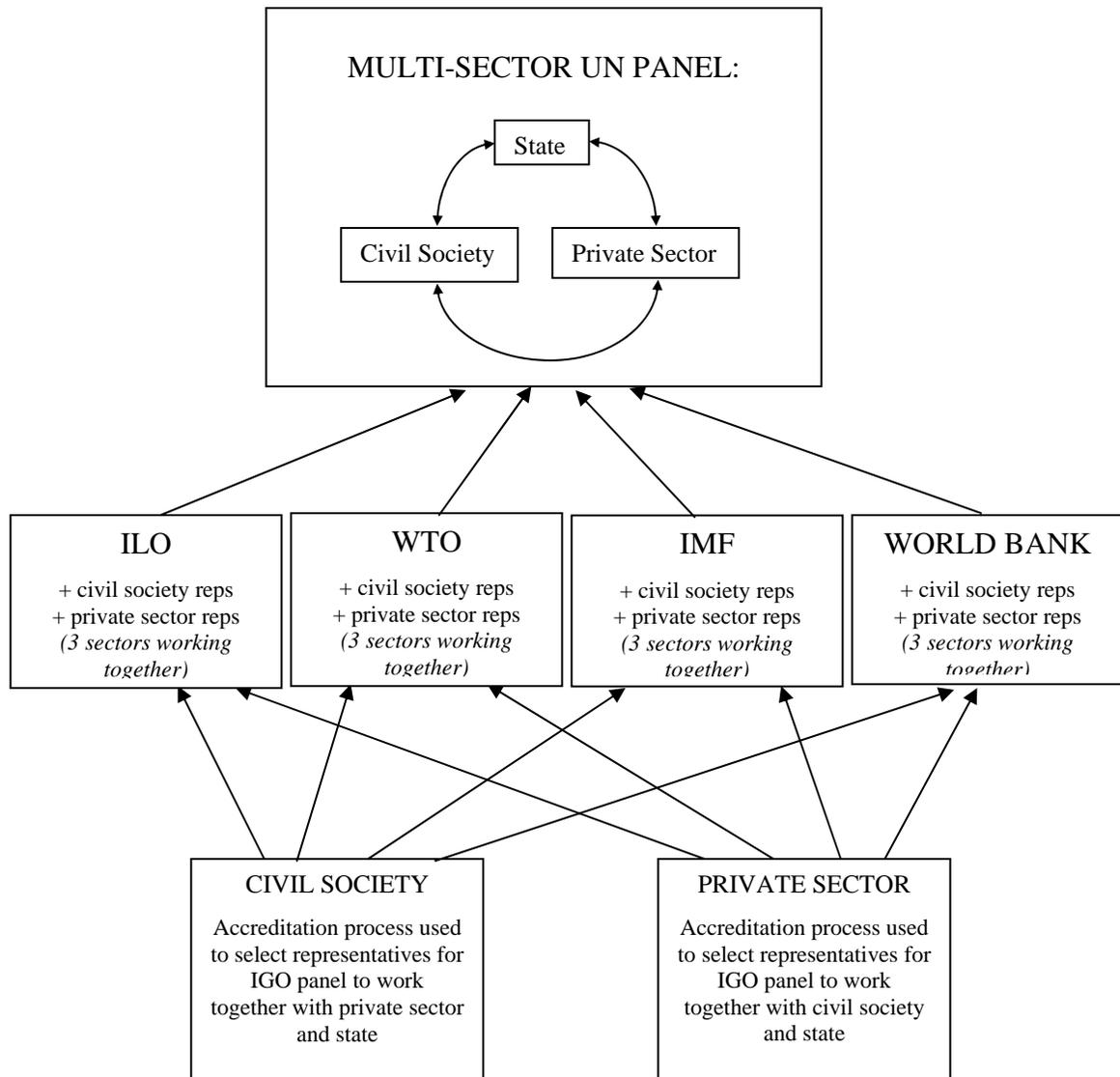
3.3 Collective Management: Elected NGO representatives with formal decision rights

The concept of Collective Management goes beyond the six models noted above to explore the potential to realise cosmopolitan principles of global justice through integrated collective decision-making where all three sectors—government, civil society and the business sector— have formal decision-rights.

Figure 3.4 (below) illustrates the interactions among the three sectors of society under a system of Collective Management. The system is headed by a tripartite panel, composed of representatives from all three sectors of society. This panel oversees all international institutions, such as the ILO, World Bank, IMF and WTO, which would now include accredited and elected representatives from civil society and business, all fully enfranchised with decision-making rights and a vote. (Only four IGOs are included in the diagram below because of space limitation, but the model extends to all IGOs in the UN system):

²⁵² David Held, *Global Covenant: The Social Democratic Alternative to the Washington Consensus* (Cambridge, UK: Polity Press, 2004), pp. 111–113.

Figure 3.4 Interaction among the three sectors of society under Collective Management



As I develop in detail in Chapter Five, the approach of Collective Management is that of a multi-level, liberal cosmopolitan direct system of democracy. It is supported by the liberal principle of individualism, including a formal decision-making role for citizens affected by decisions of global governing institutions, and promoting multi-level organisation across the national, regional and global levels. In this way, the responsibility for the exercise of soft, economic and military powers in international governance will be shared equally by all three sectors of society, across the three overlapping levels of governance. This system

is what I term the '3x3=3' system of international governance. It involves the three primary global actors operating on three levels and seeking to fulfil three functions—setting criteria, developing standards and supervising and enforcing implementation. I suggest that a multi-level Collective Management may have the potential to correct the existing imbalance of power in global governance, and bring greater legitimacy to international institutions.

Democracy is a necessary condition of just, legitimate governance; however, it is not a sufficient condition for Collective Management. We also require our institutions to be liberal. Liberalism is a widely discussed ideology; it is a way of thinking. It is also an evolving, open-ended process, on which theoretical work is still being undertaken. Liberalism is vitally important to our system because democracy alone has not been successful in promoting universal human rights. The key belief of liberalism—that the individual is the most important unit in society, over communities and states—is the principle that Collective Management adheres to, as it is only by returning the focus of international governance to the individual that we can create a system which is both fully legitimate and just, as described by the principles of justice in Chapter Five. Collective Management defines individuals as being members of one global society, rather than divided by state borders. In this way it is cosmopolitan. Cosmopolitanism recognises the sphere of morality. It identifies the areas of overlap between different belief systems and patterns of moral values, and advocates that we use these areas of overlap as the cement for coexistence. Cosmopolitanism argues that we cannot be utilitarian or communitarian, aggregating across broad communities and nations, because every individual has his or her own values. Instead, we must identify the areas of overlap between various individuals'

beliefs—the areas on which individuals can be in agreement—and we must use these areas of overlap as a basis for the rules of governance.

This thesis defines the philosophical and political theory basis of the concept of Collective Management, but it focuses on linking theory to real practice, to the practical issues of implementation and institutionalisation. As in the case of the other proposals for NGO assemblies noted above, the Collective Management approach acknowledges the difficulties involved in devising a system for electing the NGO and private sector representatives. NGOs and private firms are, at the moment, non-representative entities whose legitimacy currently derives from their competence and expertise, from their moral authority or public benefit. They currently cannot claim to be ‘representative’ to constituencies in the same way as directly elected citizens.²⁵³

The potential for elected NGOs having formal powers in global governing institutions has been raised by a number of analysts thinking about future reform options. Didier Jacobs has noted the potential attractiveness of NGOs elected to IGOs:

NGOs are increasingly criticised for not ‘representing’ anyone, unlike elected governments. That is why they have indeed no role to play at the decision stage of the policy process. If one or several global parliaments are eventually created, as recommended, then some NGOs might want to run for election, and if some World Bank staff decided to do so as well, we would finally see who is more representative than whom.²⁵⁴

²⁵³ The exception here is the ILO, in which a small portion of civil society, i.e. the employer and worker delegates, are indeed selected as representative. The World Bank is also improving the access the civil society has to its decision-making, but it has yet to reach the formal status of participation that employer and worker delegates enjoy at the ILO.

²⁵⁴ Didier Jacobs, ‘Democratising Global Economic Governance’ (presented at the Alternatives to Neoliberalism Conference, May 2002), <http://www.new-rules.org/docs/afterneolib/jacobs.pdf>

An elected NGO would acquire the legitimacy that comes from representative democracy in addition to the legitimacy that an NGO has due to its expertise, moral authority or performance. The institution of tripartite Collective Management would thus have the legitimacy that comes both from being composed of elected representatives of the three sectors ('representative democracy') and from the legitimacy that it has because of its formal participation of all three major stakeholder groups in deliberative decision-making ('participatory democracy' and one of its types, 'deliberative democracy'). Thus the Collective Management approach combines elements of representative and participatory democracy, particularly deliberative democracy. Further, it provides a way out of the 'legitimacy bind' faced by advocates of deliberative democracy who, as John Dryzek argues, believe that 'outcomes are legitimate to the extent that they receive reflective assent through participation in authentic deliberation by those subject to the decision in question'.²⁵⁵ As it is impossible, on a global level, with a population of over six billion people, to include everyone who is affected by decisions of IGOs to take part personally in the deliberative process, the world's population can be represented in the Collective Management system by a smaller group of elected (representative) deliberators from the three sectors.

The fact that a system of Collective Management would have aspects of both representative and participatory democracy is relevant to the argument put forth by some that NGOs are just interest groups that can change the outcome of democratic process by giving additional weight to the more intense preferences of those who support the particular interest group.

²⁵⁵ John Dryzek, *Deliberative Democracy and Beyond: Liberals, Critics, Contestations* (Oxford: Oxford University Press, 2000).

The lobbying of one interest group could potentially impose negative externalities on others and thus not necessarily lead to an improvement in welfare.²⁵⁶ In a system of Collective Management, however, the mandate would be for candidates elected from NGOs to represent their constituents in general as well as advance the interests of their particular organisation. Successful experience has been gained in this regard with NGO involvement in the multi-stakeholder dialogues of the UN Commission on Sustainable Development, in which representatives are encouraged to represent their sector as a whole rather than just their own organisation. The dialogue is ‘issue-driven as opposed to just organisation-driven’.²⁵⁷ A strong argument put forth in favour of deliberative practices, as would occur in the tripartite dialogues in the Collective Management decision-making process, is that deliberative democracy brings forward the public interest and helps limit the excessive influence of powerful groups in society. It is framed as an open discovery process, rather than just a ratification of existing positions (as is often the case in UN sessions). It has the potential to transform interests, rather than simply bargaining among fixed positions. Thus the philosophy of Collective Management, developed in Chapters Four and Five, puts emphasis on the deliberative democratic aspect—on the potential for public reason to emerge—in the process.²⁵⁸ In addition, NGOs would be grouped according to their area of expertise and zones. Thus all NGOs that are classified as undertaking work relevant to the area of trade would engage in debate and decision-making alongside the WTO, and all finance-related NGOs would engage with the World Bank or the IMF. Similar

²⁵⁶ Dennis C. Mueller, *Public Choice III* (Cambridge: Cambridge University Press, 2003), p. 497.

²⁵⁷ Interview with official of the UN Division for Sustainable Development, Monitor NGO Survey, June 2006.

²⁵⁸ See John Dryzek, *Deliberative Democracy and Beyond: Liberals, Critics, Contestations* (Oxford: Oxford University Press, 2000).

classification would occur to bring together the relevant NGOs and UN organisations in such fields as human rights, labour, the environment, etc.

The business sector, through the involvement of multinational corporations in the world economy and in the setting of global regulations, is also highly influential in shaping the global system. For example, Tony Blair notes that the Extractive Industries Transparency Initiative, where oil companies publish the payments they make to governments, allowed civil society in countries like Angola to start asking governments tough questions about corruption.²⁵⁹

A detailed study of the rights and duties of the private sector in the international arena would be a valuable and necessary endeavour if we are to fully debate the possibilities for a more just international system. I now introduce a few initial thoughts on the subject, but do not embark on a more comprehensive analysis of the subject, since this is beyond the scope of a thesis that concentrates on the potential role for civil society.

The approach of Collective Management—the inclusion of the private sector with formal rights in collective decision-making—differs fundamentally from the conventional 20th century view of the role of business. The conventional model views government as providing the legal and regulatory framework in which business freely operates as it seeks to increase profits/shareholder value; business only lobbies or advises governments, and does not have a formal role in making law or regulations. The shareholder philosophy of business is stated most directly by Milton Friedman: ‘There is one and only one social responsibility of business—to use its resources and engage in activities designed to increase

²⁵⁹ Comment from Tony Blair in private communication with the author of this thesis.

its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud'.²⁶⁰

An alternative view is proposed by a school of academics who write on international business ethics and the 'stakeholder' (vs. shareholder) philosophy of business from a cosmopolitan perspective.²⁶¹ Jane Collier of the Judge Institute, Cambridge University, writes:

The boundaries of 'society' are no longer coincident with those of the nation state, but rather extend in a cosmopolitan globality of transnational social spaces where individualisation supplants collectivity. Much political action is supplanted by world market forces (neo-liberalism) which determine global welfare, but other forms of globalism are manifested by the hegemony of Western nation states acting (dare one say it) as global cowboys. New contingencies, complexities, uncertainties, and risks arise: dangers caused by affluence (pollution, climate change, loss of biodiversity), dangers caused by poverty (crime, violence, political instability), and dangers caused by the arms trade which makes weapons available to states and bandits alike.

In the light of the 'cosmopolitan project' the division of function between business and politics changes. In transnational society there is no world state, and therefore no global political or regulatory entity. There is a vast new space, a vacuum of the moral and the subpolitical. Business becomes the location and the arm of transnational politics [Beck 2000b].

²⁶⁰ Milton Friedman, 'The Social Responsibility of Business is to Increase its Profits', *New York Times Magazine*, 13 September, 1970, <http://www.colorado.edu/studentgroups/libertarians/issues/friedman-soc-resp-business.html>.

²⁶¹ The stakeholder concept states that 'a company's responsibilities are to all of its stakeholders. Stakeholders are people who affect, and are affected by, the company. This means that a business has to fulfil the needs and wants of many different people ranging from the local population and customers to their own employees and owners. While this has an increased cost, many firms are now switching to this concept because it is perceived that the concept improves the image of a firm and makes them less likely to be targeted by pressure groups. The opposite of this is the shareholder concept'. 'The stakeholder view of strategy is an instrumental theory of the corporation, integrating both the resource-based view as well as the market-based view, and adding a socio-political level. It is opposed to the view where a company solely tries to increase value for the shareholders.' According to the stakeholder view, the focal firm can be defined as follows: 'The corporation is an organisation engaged in mobilising resources for productive uses in order to create wealth and other benefits (and not to intentionally destroy wealth, increase risk, or cause harm) for its multiple constituents, or stakeholders.' (http://en.wikipedia.org/wiki/Stakeholder_view).

Corporations determine the global division of labour and income through investment decisions, create the shape of inequality, justice, freedom and democracy worldwide. They also outmanoeuvre tax systems, evade regulatory systems, hold countries seeking investment to ransom, and externalise the costs of employment.²⁶²

From the cosmopolitan approach, there is a morality applicable to firms that operate in the market. Thomas Dunfee at the Wharton School writes, 'Marketplace morality relevant to the firm would justify a decision that cannot be shown to directly maximise shareholder wealth'.²⁶³ He argues that 'Managers must act consistently with hyper-norms (manifest universal norms and principles)'. Norman Bowie argues for a Kantian theory of capitalist firms that 'could provide a universal morality for business, provide meaningful work for employees, institute firms as moral communities, and help establish a more cosmopolitan and peaceful world'.²⁶⁴ These authors suggest that, in a globalised world, business has a responsibility to participate directly in global governance.

This approach emphasises that, given the massive resources available to modern multinational corporations, they are often able to pursue their shareholder interests in ways that involve out-manoeuvring government regulations, externalising costs and lobbying to achieve often highly vested interests. Their lobbying of both national governments and IGOs can, as noted, give them a 'double voice', whereas civil society in undemocratic countries does not even have a single voice. In cases where shareholder interests are

²⁶² Jane Collier, 'Thinking into the Future: Business Ethics in the Twenty-First Century' (paper presented at the Transatlantic Business Ethics Summit, September 15–17, 2000, Budapest University of Economic Sciences), <http://ethics.bkae.hu/html/documents/Abstractbook.pdf> pp. 12-15. Collier also cites Ulrich Beck, 'The cosmopolitan perspective: sociology of the second age of modernity', *British Journal of Sociology* 51, no. 1 (2000): 79-105.

²⁶³ Thomas W. Dunfee, 'Corporate Governance in a Market with Morality', *Law and Contemporary Problems* 62, no. 3 (Summer 1999): 129-158. Available at <http://www.law.duke.edu/journals/lcp/articles/lcp62dSummer1999p129.htm>

²⁶⁴ Norman E. Bowie, *Business Ethics: A Kantian Perspective* (Oxford: Blackwell, 1999), p. 174.

seriously affected, major multinationals have used their resources to lobby extensively, as in the case of the Kyoto Accords. US multinationals have huge resources to set up influential business NGOs, such as the Intellectual Property Committee (IPC), to do both the analytical work and the lobbying.²⁶⁵ Business has always sought to play a key role in setting up the rules by which it plays, and seeks to gain maximum advantage, whether it be the historical role of Lloyds of London in setting up global insurance contract law or the efforts of the International Chamber of Commerce in the 1920s to unify overall international commercial law.²⁶⁶ Some current multinational corporations, such as Rupert Murdoch's News International, have extraordinary access to centres of power, and capacity to shape the agenda. There are other routes by which powerful Northern multinationals are able to out-manoeuvre Southern countries and companies through use of the rules of the WTO, as in the case of Trade-Related Intellectual Property (TRIPs) and Trade-Related Investment Measures (TRIMs)—the latter being used by Northern businesses to exclude developing countries from potentially rewarding investments.²⁶⁷ I consider this issue further in Chapter Six.

²⁶⁵ John Braithwaite and Peter Drahos, *Global Business Regulation* (Cambridge, UK: Cambridge University Press, 2000), p. 69.

²⁶⁶ John Braithwaite and Peter Drahos, *Global Business Regulation* (Cambridge, UK: Cambridge University Press, 2000), pp. 69–70. The authors note that the ICC employs both an interest group strategy and a 'private ordering' strategy. With regard to the latter, the ICC would record its members' customary practices and release them in the form of global rules and agreements.

²⁶⁷ TRIPs and TRIMs are potentially useful tools for encouraging the development of innovation and investment in Southern countries. However, at present they are being abused by dominant Northern countries in the WTO. TRIPs has been argued to be to exclusionary, the minimum level of innovation being so high that many developing countries cannot reach the standard necessary for innovations to be protected by the TRIPs. Furthermore, TRIPs protects (it has been argued over-protects) Northern-developed drugs, especially AIDS/HIV drugs, to the degree that cheap generic varieties cannot be manufactured and distributed among the millions of AIDS sufferers in developing countries that the WTO is supposedly protecting. TRIMs is also abused by Northern businesses which use it to exclude developing countries from potentially-rewarding investment measures. It is one of the key ways in which businesses exploit their double voice, to the detriment of developing countries.

While not questioning that business has a legitimate right to express its voice, I argue that a fundamentally reformed global governance system would be required to achieve a cosmopolitan concept of global justice in the current globalised world. From the perspective of Collective Management, it is better that powerful multinationals are strictly regulated and given a single legitimate vote ‘in the open’ rather than a ‘double voice’ achieved by lobbying and operating ‘under the table’ in ways that may negatively affect the global community. In sum, not only do we need to regulate transnational business effectively, we need to regularise and formalise its participation in global governance.

The inclusion of private sector representatives in a tripartite system of Collective Management would require that firms included be screened for eligibility on the basis of the strictest standards of accountability, which includes the way they are governed. From the ‘stakeholder’ perspective, a business must be accountable to affected stakeholders in developing its strategy and operations. As already noted, Zadek has suggested that an NGO or business would be eligible to run for election to the proposed Civil Chamber on the basis of the way it was governed, requiring that it establish a ‘Civil Council’ elected by a non-paying membership of impacted stakeholders to oversee its strategy. From a cosmopolitan perspective, achieving global justice requires exploration of new roles for all three sectors, including a transformed role for business in a transformed global world. The new system would still have to deal with the range of challenging accountability issues. An example that many commentators worry about is the current case of non-transparent Russian companies that have very significant influence; they do not need to lobby their government because

they are arguably an instrument of the state and serve Russia's political interests in preference to those of either shareholders and stakeholders.²⁶⁸

Given the inadequacy of existing governance systems, both the business and the civil society sector will need to shoulder new responsibilities, including current problematic efforts like the UN Global Compact. Zadek makes this point, noting that there are

...a growing number of recently established partnerships that are seeking to redefine the terms on which non-state actors join with the UN and other public bodies in seeking to deliver public goods more effectively. These partnerships, while diverse in scope and form, share two core aims: to harness the competencies of business and civil society in pursuit of local and global public goods; to establish new governance arrangements over the growing political and economic power of non-state actors...the dilemma is that today's partnerships are little more than a glimmer of what is to come. For this reason, one cannot usefully assess partnership futures on the basis of their current performance. Instead, we need to more directly imagine the future to better understand how partnerships can or should fit into tomorrow's governance framework.²⁶⁹

From this perspective, we must see current efforts for multi-stakeholder partnerships (analysed in Section Two, above) as preliminary steps toward a future global governance system with new, more significant roles for civil society and the private sector.

We can only realise declared cosmopolitan, democratic and liberal values by linking them to an exploration of *concrete mechanisms* in an institutionalised system of reformed global governance. In Section 3.4 I examine in detail the practical questions of accreditation,

²⁶⁸ George Soros, 'Rosneft Flotation would spur Putin on', *Financial Times*, 26 April, 2006. He argues that European countries need to unite around a common energy policy and hold the Russians accountable for using oil and gas to exert political pressure, as in the case of Ukraine.

²⁶⁹ Simon Zadek, 'Civil Partnerships, Governance and the UN' (Background Paper for the Secretary-General's Panel of Eminent Persons on Civil Society and UN Relationships, in 'Multi-Stakeholder Partnerships and UN-Civil Society Relationships: Collection of Materials from the Multi-Stakeholder

electoral mechanisms, and enforcement in a potential Collective Management system, and develop methods of screening NGOs and electing them to international decision-making roles. I then use these ideas in Chapter Six, Section Four, when I discuss in more detail NGO representation in the WTO.

3.4 Screening and election mechanisms

Regarding screening and election mechanisms, there are several approaches to electing accountable and transparent representatives from the substantial number of NGOs. In 2000, there were reportedly 37,281 international NGOs.²⁷⁰ The total number of NGOs is several million—there reportedly are over 2 million NGOs in the US alone. If the resulting system of Collective Management is to be seen as credible and legitimate, it is necessary to have a credible system of screening, accreditation and election that caters to the full range of NGOs.

Important criteria for representative NGOs to display are transparency and accountability. It is necessary to emphasise that civil society is being included in the international decision-making process to raise the legitimacy and accountability of IGOs; civil society *must* therefore set the standard for these values. The screening and accreditation processes could be handled by an independent organisation, using the method developed by expert groups such as One World Trust or AccountAbility. The participation of NGOs in the decision-

Workshop on Partnerships and UN-Civil Society Relationships', New York, February 2004), http://www.un.org/reform/civilsociety/pdfs/pocantico_booklet.pdf.

²⁷⁰ Mary Kaldor, Helmut Anheier and Marlies Glasius, eds., *Global Civil Society 2001* (New York: Oxford University Press, 2001), cited in *Human Development Report 2002: Deepening Democracy in a Fragmented World*, Sakiko Fukuda-Parr, Director and Lead Author (New York: United Nations Development Programme/Oxford University Press, 2002), p. 117. Available at <http://hdr.undp.org/reports/global/2002/en/pdf/complete.pdf>.

making process in the UN institutions could be restricted to the NGOs that are concerned with social issues and moral hazards, including trade unions, social security organisations and other related organisations. The private sector must also select its delegates, and it has already adequate mechanisms in place to do so.

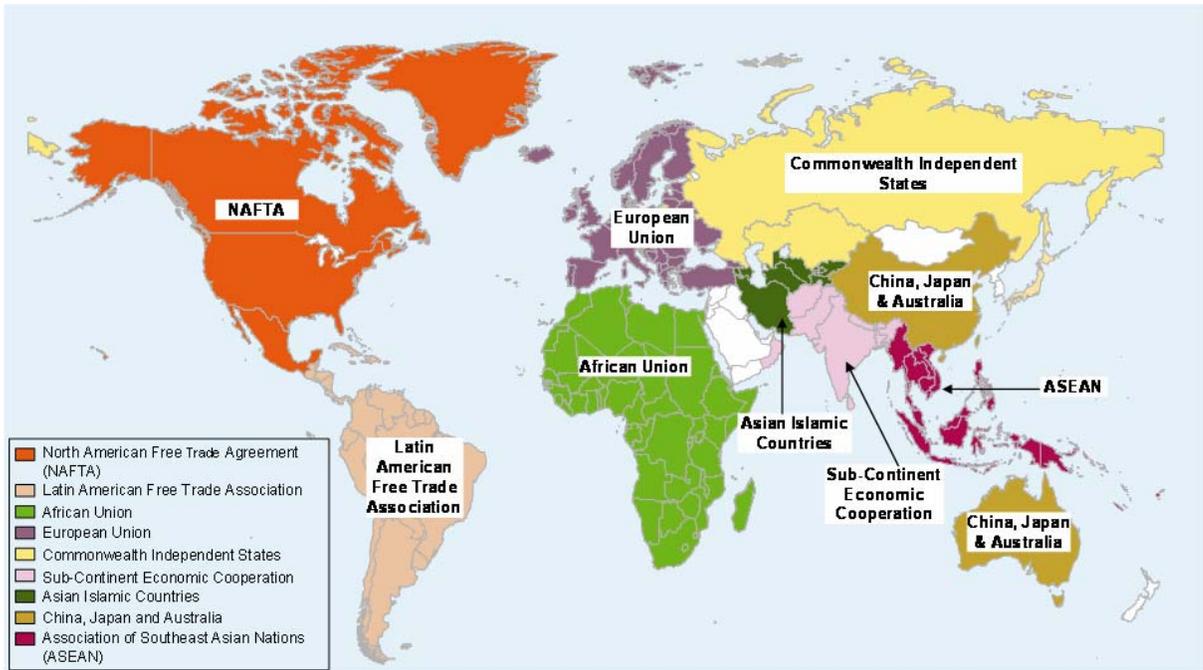
There are various options for the representation of these organisations. Having one NGO representative from each member country in each reformed institution is a straightforward approach but it has many problems—including the increased size, and the giving of the same weight to NGOs in all countries despite the huge divergences in the numbers, constituencies and effectiveness of NGOs in different countries. A second and a more feasible approach would be to develop electoral districts to represent geographical areas, and have NGOs elected in these constituencies. The NGO electoral process could have many of the same characteristics as current political systems, with NGOs having to define and describe themselves and their constituents much as a political party does. The main stages of such a system would be as follows:

- The world would be divided into seven or eight economic zones (e.g., EU, Africa, Latin America, etc, as illustrated in figure 3.5 below)
- The related NGOs in each country meet and elect their representatives for the respective zones according the weight given to them.
- The NGOs' delegates to each zone elect their representatives to attend a Global Conference (developed further in Appendix Two) according to their weight.
- The same procedures apply to the election of the representatives of state and private sectors.
- The three groups constitute a panel to oversee and monitor the decisions and policies of Collective Management and their implementation.
- The weight of each country and zone and the number of their representative (NGOs, States, and private sector) will depend on many criteria, including:
 - Population size and possibly GDP (for state representation)

- Size, viability and activities for business associations (private sector representation)
- Development level, number, constituency, independence and transparency of NGOs (for NGOs' representation)

Further details of the election process are included in Section 3.4c.

Figure 3.5 Map of potential electoral zones in the Collective Management system



There are numerous ways of electing the representatives for NGOs within this structure. Useful examples for representative election (which I develop below) can be found in both the International Chamber of Commerce (ICC) and the ILO. I relate these findings to the case of Collective Management in Section 3.4c.

3.4a Case Study of the electoral process and function of the ICC

The ICC's structure is as follows. Companies, corporations or even individuals wishing to participate in the ICC form or join a National Committee. These committees are the basis

for the organisation and send delegations to the World Council. The National Committees are instrumental in representing their members at the national level (i.e., to governments) and the International Secretariat represents the entire organisation at the international level. The ICC's voice comes from its Commissions, which are expert, focused groups staffed by ICC members who give their time freely. These commissions are influential on many international forums as a result of their having both expertise and a claim to represent international business. The organisation's voluntary nature means it has no need of enforcement structures.²⁷¹

3.4b Case study of the electoral process and function of the ILO

I include this brief case study of the ILO as it is the only existing example of a tripartite IGO with formal voting rights for government, business and civil society. However, the ILO lacks an enforcement mechanism and in this way it differs significantly from the Collective Management system. The main case study of the thesis is therefore that of the WTO in Chapter Six. The WTO is the only IGO with its own enforcement mechanism. It provides a good illustration of the democratic deficit in international governance and how the Collective Management system can address this deficit. Close examination of the problems associated with the WTO's Dispute Settlement Mechanism provide valuable lessons for the development of the Collective Management system.

The following example of the ILO demonstrates the key benefits and failings of the ILO, and is useful in drawing lessons for the construction of the Collective Management system. I also provide a very brief comparison of the ILO and the WTO.

²⁷¹ See http://www.iccwbo.org/home/menu_what_is_icc.asp.

The ILO is the best example that exists today of a tripartite system of governance.²⁷² The ILO's main advantage is that it succeeds in bringing all three sectors of society together in a decision-making process.²⁷³ Furthermore, it allocates formal decision-making rights to each sector; rights which are exercised by representatives of each sector who are democratically elected. In this way the ILO demonstrates major innovation on the existing decision-making powers of business and civil society in other UN organisations and initiatives that rely primarily on soft power and informal advocacy, as explained in Chapter Two.

However, in spite of formal decision-making rights for each of the three sectors, real power is often abused by governments that use forms of misleading representation or misrepresentation. States such as the former Soviet Union or Cuba have claimed to be sending a 'tripartite' delegation of elected representatives to the ILO when in fact the 'employee' representative was a government-controlled trade-union official and the 'employer' representative was a government official from the ministry of industry or

²⁷² Its structure is as follows: the General Conference consists of two government representatives, one employer representative and one worker representative from each nation (plus two technical advisors for each item on the agenda). This conference then elects the Executive Council that consists of 28 government representatives (10 from states of chief industrial importance and 18 from the others, taking into account geographical situations), 14 employer members and 14 worker members. These last are elected by all the employer or worker representatives in the General Conference: i.e. the employers in the conference elect the employers in the Executive Council and the workers in the conference elect the workers in the Executive Council. There is also a permanent Secretariat to offer support to the Council. The Council then decides policy, such as international labour standards, which is then passed back to the General Conference to approve. All employer and employee members vote according to instructions from their organisations.

²⁷³ As noted earlier, the Collective Management approach, and therefore the ILO approach, has some characteristics of corporatism, though they do not share many of the premises of consociationalism, an approach of guaranteeing group representation initially proposed by Arend Lijphart. The three sectors of society are not really 'minorities'—neither ethnic groups nor political parties—that need to share power in order to create stability in society, the fundamental premises of consociationalism (See Arend Lijphart, 'Constitutional Design for Divided Societies' *Journal of Democracy* 15 (2) pp. 96-109). The Collective Management approach also differs from functionalism in that I do not take a basic structural point of view, as in the functionalist approach of Talcott Parsons. This thesis does not analyse the problem of global democracy as how individuals are socialised into roles in the different economic, educational, legal or gender structures of a society (see Talcott Parsons., *Theories of Society: foundations of modern sociological theory* (Free Press: New York, 1961)).

trade. This illustrates the ‘double aspect’ problem once again.²⁷⁴ Such examples of the ‘double aspect’ problem in the ILO are also alleged to have occurred in China, Burma, the Middle East and North Korea.

The main disadvantage of the ILO is that it does not have the power to create binding laws, or enforce such binding rules. It relies on ‘conventions’ and ‘recommendations,’ to which it encourages countries to adhere. ILO recommendations are, as the word suggests, merely recommendations and there is no enforcement mechanism.²⁷⁵ There are numerous cases of ILO member-states violating ILO recommendations at severe cost to human rights. For example, in Burma, the International Confederation of Free Trade Unions (ICFTU) made a presentation under article 24(83) of the ILO Constitution, alleging that ‘the Government of Myanmar had failed to secure the observance of the forced labour Convention,

²⁷⁴ From the point of view of the citizen, members of civil society saw their (undemocratic) government representatives in the ILO as illegitimate. From the point of view of states, the governments disagreed with the philosophy of the Western-oriented IGOs and saw them as illegitimate.

²⁷⁵ ILO recommendations commit countries to minimum standards on child labour, unfair and unsafe working conditions, labour insurance, living conditions, migrant labourers, to name but a few areas. The complete list of ILO recommendations can be found at <http://www.ilo.org/ilolex/english/index.htm>. Although the ILO’s decisions are not binding on those states that do not ratify them, the statutes and by-laws allow for the issuing of special resolutions that condemn any member who violates or fails to implement what has been agreed upon.

institutionalising the use of forced labour by military commanders through the forced recruitment and abuse of porters'.²⁷⁶

ILO recommendations are frequently violated not only by governments but also by business. Sportswear companies such as Nike, Reebok and Adidas have a long history of exploitative labour practices, which the international anti-sweatshop campaign has periodically made public. Despite commitments by these companies to improve their practices, and some limited improvements, a 2004 report by Oxfam, Global Unions and the Clean Clothes Campaign demonstrates that abuses continue to occur. For example, at one factory that produced for Nike, Adidas and Reebok, as well as other brands, workers were found to regularly work from 7.30am to 2am during the peak season, without days off. They were also paid less than the minimum wage. Workers were coached to tell auditors that they had minimal overtime and one day off per week. The report notes: 'Many sportswear companies recognise that there are bad labour practices in their supply-chain. Their response to criticism has been to adopt codes of conduct covering labour practices, which have led to limited improvements. What is not acknowledged openly is the role that the company itself plays in causing the problem. Our research shows that driving the harsh,

²⁷⁶ International Labour Organisation, 'ILO Report on Forced Labour in Burma' (findings of the ILO Commission of Inquiry on Forced Labour in Burma, 25 January, 1993 representation under article 24 of the ILO Constitution), <http://www.burmalibrary.org/reg.burma/archives/199808/msg01303.html>. According to the complainant organisation, 'women and children as well as men were randomly rounded up by local police or the military from such public places as train stations and movie theatres or from their homes or places of work; in many cases, village headmen were responsible for filling porter quotas or providing large sums of money to the military instead. Porters were required to carry heavy loads of ammunition, food, and other supplies between army camps, generally back and forth over rugged mountains which were inaccessible to vehicles. They must often construct the camps for the military upon arrival. They were not paid for their work and allowed very little food, water, or rest. In many cases, porters were bound together in groups of 50 to 200 at night. They were denied medical care. Porters were subject to hostile fire as well as to abuse by the soldiers they served. They were routinely beaten by the soldiers and many of the women were raped repeatedly. Unarmed themselves, they were placed at the head of columns to detonate mines and booby-traps as well as to spring ambushes. According to credible sources, many of these porters died as a result of mistreatment, lack of adequate food and water, and use as human mine-sweepers'.

abusive, and exploitative working conditions in the sportswear industry is a business model designed to bring products to the marketplace speedily and cheaply.’²⁷⁷

These disadvantages illustrate that it is not sufficient for tripartite systems to include the three sectors in the decision-making process; any such tripartite organisation must also have the means to turn collectively-agreed decisions into binding rules and the enforcement mechanisms to uphold these rules. Recommendations, as opposed to regulations enforced by a punishment mechanism, still allow states to violate agreed codes of behaviour and a democracy deficit to persist. The ILO provides a good illustration of the need for an enforcement mechanism as part of the Collective Management system.

Drawing a brief comparison between the ILO and the WTO, it can be seen that both organisations exhibit a democratic deficit in part at least because the civic sector is poorly represented, and because there is an imbalance of power within the organisations. Even though the ILO is a formally tripartite organisation, the government sector has an officially larger share of the votes, and unofficially it may even control the business and civil society votes. Within the WTO civil society has no formal voting power, and many of the Southern government representatives have very weak influence vis-à-vis Northern government representatives. This issue is examined in detail in Chapter Six.

The second major difference between the two organisations is with regard to the enforcement mechanism. The ILO lacks any mechanism to make resolutions binding, and as demonstrated above, this allows member states and companies to violate resolutions without fear of punishment. The WTO includes a Dispute Settlement Mechanism which has

the power to impose penalties on WTO members proven to have violated WTO agreements. However, the use of this enforcement mechanism is subject to the same problems of imbalance of power that the WTO decision-making mechanism suffers. Chapter Six, Section Two considers this problem in some detail in order to inform the design of the Collective Management system. This thesis therefore recognises both the ILO and the WTO as valuable case studies in the development of the Collective Management system. It observes from the example of the ILO that lack of an enforcement mechanism can lead to rules being violated or ignored. It therefore provides a case study of the WTO in order to examine in more detail the causes of the democracy deficit, and whether they are also associated with the enforcement mechanism. Finally, it explores how the Collective Management approach could potentially address the democratic deficit and over time evolve an enforcement mechanism.

3.4c Representation in the new Collective Management structure and its institutionalisation

The Collective Management system requires a global panel of NGOs to fairly represent the activities of all NGOs from all countries and regions of the world, and from all fields of activity.²⁷⁸ To achieve this, a combination of the ICC and ILO systems could be used as the basic structure for NGO representation. National Councils could be set up to represent NGOs in each country, similar to the ICC's National Committees. These National Councils

²⁷⁸ Every NGO or INGO is centred around a 'field of activity', such as the environment, trade, women's rights, labour rights, human rights, finance, etc. Some NGOs have more than one field of activity. Other NGOs focus primarily on one field but may be drawn into others as issues overlap (for example, Greenpeace is primarily concerned with environmental protection but has become involved in trade, to the extent that trade has an impact on the environment). Other NGOs may share a field but specialise in different aspects: women's groups can be based around, e.g., women in the workplace in developed countries or women's rights in developing countries.

would send representatives to the Regional Council. The Regional Council would then elect representatives to attend the World Council in the same way. This would give three levels of representation to deal with issues that are national, regional or global. In Chapter Five, I analyse in more detail the structure of the overlapping levels of a tripartite system at the three levels. The representatives from each sector would be expected to represent the overall interests of those who elected them, as well as the interests of their particular organisation. Unlike the ILO model, they would not vote according to instructions from their organisations; they would not simply be advancing the aims of a single interest group.

The actual policy formation would be done by Sector Commissions at each level. Any policies decided on by these Commissions would need to be approved by the Sector Council. Policies decided on would therefore have the support of civil society at large and would be more influential and credible as a result. The ILO system of technical advisors could be used to give a voice to experts who would be allowed to speak but not to vote. This would allow bodies that have particularly relevant experience or technical expertise to be heard.

For business-representative structures, further study would be needed. Although the ICC already offers a starting-point that could be developed for the business sector, it would be necessary to undertake a detailed survey of business-sector organisations such as the ICC and also IGOs (first of all the ILO, a UN specialised agency) to study their current systems before a final answer could be given on how best to approach business representation.

I now look in more detail at a possible process for electing NGOs to the Global Panel for Civil Society, which will make up one third of the Collective Management governing body. The world could be divided into regional zones according to criteria such as trading blocs

(NAFTA, EU, Latin American Free Trade Association (LAFTA) etc.), continents, other geographical districts or, at the most basic level, countries. Each zone, whether based on patterns of trade or geography, will have distinctive characteristics or parameters, such as population, GDP, GDP per capita, land mass, location, etc.

The election would be a three-step process: first, national NGOs would be elected to the national-level panel of NGOs. The number of candidates any country could put forward for election to any panel (i.e., its quota) would depend on the country's parameters (i.e., population size, GDP, number of NGOs, etc.). Each country would fill its quota of candidates from the pool of domestic NGOs. There would need to be at least one NGO from every field of activity to ensure fair representation of all fields. Within each field of activity, the choice of one NGO over another would need to take into account the effectiveness, accountability, credibility and transparency of the NGOs—i.e., the very qualities that Collective Management hopes to bring to global governance. Other important election criteria might include the age and/or development of the NGO, the number of constituents, its links and associations to other NGOs, etc.

Second, members of the national panels would be elected to the regional level panel of NGOs. Each regional pool of candidates would be composed of the nationally-elected candidates of all the countries in the region, and also any INGOs that are unique to that region. The regional elections to identify candidates to go forward to the global panel elections would occur in a fashion similar to the national elections.

Finally, members of the regional panels would be elected to the Global Panel. Once again, a key requirement would be that at least one NGO from every field of activity be included. The election criteria should again be based on effectiveness, accountability, credibility,

transparency, size and outreach, age/development, etc. In addition to the regional candidates, INGOs that extend beyond the regional boundaries will at this point be included as candidates for election. Thus the final group of NGOs will have been carefully screened via two election processes; they will represent every field of activity, and they will be the best examples of effective, legitimate, accountable, transparent, well-developed organisations.

There are therefore three stages which all successful NGOs must pass through—the national-, regional- and global-level elections. Once the members of the global panel have been elected, they must be seamlessly integrated into a single cohesive group that will be able to represent civil society's interests at the global level. The fact that the participating NGOs have been proposed by their countries and have satisfied stringent election processes will make them the best prepared of all NGOs to manage a smooth transition to an international committee role.

There are problems and limitations that must be dealt with when trying to define and elect NGOs. Some of the main issues are how to include and represent:

- General-purpose-oriented NGOs (e.g., the Aga Khan Foundation) that work on a range of development projects, as opposed to thematically-driven NGOs (e.g., environmental NGOs);
- NGOs that have indicated that they prefer to remain out of the 'system' and may chose to remain so (e.g., Oxfam); and
- Highly-credible development NGOs that prefer on religious grounds to maintain their own agendas (e.g., Mennonite Central Committee) and may not want to be part of an electoral process.

Despite these challenges, the screening and electing of NGOs would have the advantage of correcting many of the present perceived weaknesses of NGOs. Election processes would

increase their transparency, and force them to be more accountable by requiring them to be articulate about their objectives, platforms and accomplishments. In being elected, NGOs would gain the legitimacy that derives from representing a specific constituency.

The voting method's precise details would probably be better left to the individual nations and regions to determine. However, given the need to give the representatives as great a mandate as possible, a transferable-vote system would probably be preferable to a simple first-past-the-post one. The Australian system of Instant Runoff might be more suitable, in which voters indicate their preference by ranking several candidates and the process of excluding the least popular candidates is done immediately. The voters will be a small number of well-educated representatives, who can be expected to understand a more complicated system. Alternatively a system of Approval Voting (often used in scientific societies) in which voters select the candidates they would be happy to be represented by, would reduce the combative nature of the voting and increase the likelihood that the delegates are elected for their skill and credibility, rather than on the basis of the unpopularity of an opposing candidate²⁷⁹.

There is also the method of assigning the weighting given to various representatives. This could be based on a method similar to that used by the ILO to select the 28 state representatives to the Executive Council. Although the ILO uses industrial performance to

²⁷⁹ Approval Voting is a voting system used for elections, in which voters can vote for as many or as few candidates as they choose, at most once per option. This is equivalent to saying that each voter may 'approve' or 'disapprove' each option by voting/not voting for it. The votes for each option are tallied. The option with the most votes wins. It is typically used for single-winner elections, but can be extended to multiple winners; however, multi-winner Approval Voting does not return proportional results. Approval Voting is a primitive form of range-voting, where the range that voters are allowed to express is extremely constrained: accept or not—it is equivalent to voting +1 or 0 in a range-voting system.

weight some nations above others, the method of having a certain number of seats reserved according to certain criteria could be adapted for use by NGOs. Of course, these matters could only be decided after a considerable amount of credible study of the possibilities had been made.

The principles aim to keep NGOs free from political or commercial interference and also to keep the issues that they represent as universal as possible. With very few exceptions (e.g., anti-apartheid), the causes they espouse must not be specific to one nation or race. However, the debates over the application of the National Rifle Association (NRA) and the ejection of Human Life International, an anti-abortion group, show the difficulty of choosing which groups should be allowed representation at the UN. The case of the NRA, which was accredited in 1996 by ECOSOC, created considerable controversy. Some argue that the aims of the American gun lobby are counter to the UN Charter. It is not clear how such an organisation as the NRA can be said to comply with the criterion for ECOSOC accreditation that NGOs must be 'concerned with matters falling within the competence of the Economic and Social Council and its subsidiary bodies'. The system of Collective Management ensures that NGOs match UN organisations by grouping related NGOs and organisations (and businesses) together. If an NGO's field of activity is not related to the work of any UN organisation then it will not be able to be included in the Collective Management decision-making system. In this way, NGOs that do not match the UN's classified fields of work will not be included, even if they have previously gained ECOSOC accreditation (as in the case of the NRA).

Approval Voting can also be compared to Plurality Voting, without the rule discarding ballots with overvotes.

There is considerable potential in the use of e-democracy tools to enable all people around the globe to participate in electing their own NGO representatives at the national, regional and global levels. Such tools may make elections considerably more feasible and workable than in the past, when they were reliant on more traditional methods. As Benjamin Barber writes, ‘The technological potential of the new digital media, while more ambivalent than early democratic enthusiasts had hoped, remains salient today’.²⁸⁰

3.4d The problem of enforcement

The Earth Summit’s two implementation summits, Rio +5 and Rio +10, illustrate how serious is the problem of enforcement in the current system. At Johannesburg in 2002 (Rio +10), Kofi Annan stated that the conferences were designed ‘to generate political commitment, momentum and energy for the attainment of the goals’.²⁸¹ As one of the main achievements stated was the creation of a large number of voluntary partnerships among NGOs, governments, inter-governmental organisations and business groups, many NGOs criticised the outcome for allowing voluntary commitments to replace compulsory and enforceable agreements. Although greater power was given to the Commission on Sustainable Development to track these initiatives, the UN has only positive reinforcement methods to ensure compliance.

²⁸⁰ Benjamin Barber, *Strong Democracy: Participatory Politics for a New Age* (Berkeley: University of California Press, 1985), p xiv.

²⁸¹ World Summit on Sustainable Development, Department of Public Information, News and Media Services Division, ‘Press Conference by Secretary-General, Kofi Annan, at conclusion of World Summit on Sustainable Development’ (September 4, 2002), <http://www.un.org/events/wssd/pressconf/020904conf4.htm>

The Summits also provide another example of the problem of business organisations being considerably more influential than NGOs. NGOs hailed with relief the failure of the plan to hold the WTO—which supports free trade—superior to current Environmental Treaties on issues such as the trade of GM crops. That the plan was suggested at all shows the power of the business community in the Northern countries; the USA strongly supported the plan, and it was only the effective intervention of the Ethiopian representative that changed the general opinion of the Summit.

Regarding a future Collective Management system, the potential to acquire formal enforcement powers would have to evolve over time. At present, as noted, the ILO recommendations are not binding and cannot be implemented without global enforcement. Were ILO recommendations, many of which are aligned directly with cosmopolitan values, to be implemented successfully, the lives of hundreds of millions of people would be affected. Similarly, the current efforts for multi-stakeholder partnerships recommended by the Cardoso Panel, the work of the ECOSOC Commissions (such as UN Commission on Sustainable Development, the Global Compact) are not adequate because of the lack any enforcement mechanisms or methods of punishing or rewarding those countries and businesses that are party to these agreements and conventions.

This raises the question of exactly how much power we believe that IGOs should be given. As Ann Florini emphasises, we would probably not want the current undemocratic structures to have too much power: ‘How much power do we want international organisations to have? Do we want intergovernmental organisations to use enforcement capabilities, such as loan conditionality or the ability to authorise trade sanctions, in support of such goals as labour and environmental standards? Given the current inequities in

institutional structures and practices, such steps seem a long way from democratic voice and accountability.’²⁸² Florini notes just how far the current system of international governance is from the democratic ideal of governing institutions that represent the peoples of the world:

The ultimate ‘principals’ for intergovernmental organisations are not governments—they are the citizens those governments are supposed to represent. To the degree that governance gets done through such international institutions, they depend for their effectiveness, and arguably for their moral right to exist, on a broad sense among the world’s peoples that they are acting appropriately. Look for example at the Charter of the United Nations. It does not say ‘We the governments of the world’; it says ‘We the peoples...’. The World Bank may have been constituted by national governments, but its avowed goal is to help the world’s poor, a group often ill served by national governments. Governments have been known to use World Bank funds in ways that are not in the interests of their citizens. Those citizens on occasion complain loudly and clearly to the Bank about those misuses. Is the World Bank then answerable to the affected citizens or only to their governments—the supposed agents of those citizens? And what are citizens of relatively powerless countries supposed to do when more powerful governments create and enforce rules to which they object?²⁸³

The Global Conference that I propose, and develop further in Appendix Two, would work to design a structure for the proposed Collective Management system that would seek to provide both democratic representation and accountability for the three sectors, thus being worthy of acquiring further powers—including the gradual acquisition of limited enforcement capabilities as the system developed and gained credibility over time.

The principles of cosmopolitan justice in theory support very strong enforcement capabilities for a system of Collective Management with regard to defending basic

²⁸² Ann Florini, *The Coming Democracy: New Rules for Running a New World* (Washington: Island Press, 2003), p. 83.

individual rights in illiberal states. In this sense, Collective Management can be said to make maximal use of soft power, which is morality-driven and instrumental but it also supports the use of ‘hard power’, of economic and ultimately military power to defend civil society in very restricted cases. Therefore it goes beyond pure soft power, which relies only on advocacy and persuasion to inform the decision-making of nation-states. The concept of Collective Management would support the use of hard power—the use of smart economic sanctions or ultimately military force to coerce or induce a nation-state to cease and desist from violation of individuals’ human rights. In Chapters Four and Five I develop the concept of the three pillars and explain the foundations for legitimate use of hard power in order to ensure adherence the three pillars of liberalism, justice and cosmopolitanism by participants in an international system of Collective Management. The use of hard power by a system of Collective Management would differ fundamentally from the exercise of hard power by individual states, such as the US’s action in invading Iraq, acting unilaterally without support from even major allies such as France, Germany and Russia. The core value of an ideal system of Collective Management would be ‘collective decision-making’ about such matters with voting rights rather than pre-emptive military action led by a single global superpower and a ‘coalition of the willing’ that included a very small quantity of states and global population.

²⁸³ Ann Florini, *The Coming Democracy: New Rules for Running a New World* (Washington: Island Press, 2003), p. 82.

3.5 Potential objections to the Collective Management system

I address below a number of potential general criticisms to the Collective Management approach. First, there are those who might interpret the tripartite Collective Management system as a type of corporatism that gives different social and industrial groups the power to make political decisions and raises the risks of control of IGOs by industrial and social interest groups, or the risk of social (top-down) control by the state (as in historical cases of corporatist policies in dictatorial Latin American states or fascist Italy in particular). Second, I address the potential objection of those who might see the Collective Management approach due to the ‘absence of the individual citizen’ given its focus on the role of NGOs in global governance, rather than the individual citizen.

First, regarding the corporatist critique. The Collective Management approach is similar to the traditional corporatist concept in that it seeks to include the major groups in society in the global governing process. In the modern world the most prominent groups are the three sectors—civil society, business and government—rather than guilds, trade unions, agrarian, estates and other groups of medieval or more recent historical periods. Further, the Collective Management approach has characteristics of associational democracy, defined as devolving down many regulatory functions to local groups and associations who can deliberate with detailed knowledge of the problems and possible solutions. As noted by Lucio Baccaro, associational democracy and corporatism share many traits.²⁸⁴

²⁸⁴ Lucio Baccaro, ‘Civil Society Meets the State: towards associational democracy?’ *Socio-Economic Review* (2006) 4, p. 194.

But it should be noted that the Collective Management system differs fundamentally from corporatism and associational democracy both in terms of the role of the state and in the role of civil society. The Collective Management approach is very different from the unelected corporatist civic assemblies in the Latin American and southern European states in the early twentieth century. The Collective Management approach involves election of representatives from civil society and business, with non-state accreditation bodies that would hold them to strict standards of accountability along the four dimensions of transparency, participation, evaluation and complaint mechanisms. Unlike corporatism, the state is not defined as a mediator between civil society and business interests. And unlike associational democratic models, the Collective Management approach does not redefine the role of the state to be responsible for ensuring that NGOs and business groups are internally democratic and accountable, redress representational asymmetries, promote the emergence of groups with organisational characteristics that are conducive to internalisation of externalities, and encourage groups to deliberate.²⁸⁵ Thus neither the state nor IGOs directly promote the emergence of accountable NGOs; the role of government is not to mediate, but to create the framework for elections and the non-governmental accreditation body. So the Collective Management approach limits the role of the state to its traditional functions and promotes institutions that could potentially allow civil society to perform those functions that associational democratic and corporatist theory would give to a redefined state.

A second potential objection is that there is ‘an absence of citizens’ in the Collective Management approach. Its political units are not individual citizens (as in a directly elected

²⁸⁵ For a summary of the role of the state in associational democratic models, see Lucio Baccaro, ‘Civil Society Meets the

citizen assembly or world parliament), but rather they are representatives of NGOs and private firms. But individual citizens are still represented through their states, to the degree that they are democratic, and they participate directly in deliberative discussions in NGOs and private firms, which will be accredited based on standards of accountability analysed in Chapters Two and Three (The NGO Survey found overwhelming support for the four dimensions of transparency, participation, evaluation and complaint mechanisms). Thus only NGOs that have high standards of internal democratic participation can put forth candidates for election to the tripartite decision-making structures of reformed IGOs. I argue that individual citizens do have a significant share of political power under the Collective Management approach even though it may appear that power is granted to NGOs and business institutions in decision-making. Only those NGOs and firms that have been accredited based on internal democratic practices, where individuals can participate in decision-making and governance would have the power to elect representatives.

Thus the Collective Management approach does incorporate individuals into those decisions that most closely affect their lives. Citizens can decide through their role in electing representatives on how to organise their collective decision-making institutions, including the ways laws and regulations should be made. Thus the citizen has his or her influence on how to organise decision-making, as well as there being those areas of global governance that are not appropriate for civic deliberation. Rules and regulations involving highly technical areas or specialist knowledge, for example, the laws of the seas, civil aviation or chemical weapons, cannot be deliberated upon by all citizens directly. Such issues must be dealt with by specialist committees associated with the appropriate

State: towards associational democracy?' *Socio-Economic Review* (2006) 4, p.188.

departments of IGOs. Why, for example, should we expect one of the Libyan Basic Peoples' Conferences (the town-meeting style deliberative bodies) to be competent to deliberate on the finer details of civil aviation laws?

As noted by Fareed Zakaria, too much democracy can be 'too much of a good thing.' He notes that many problems in California are the 'result of its extreme form of open, non-hierarchical, non-party-based, initiative-friendly democracy...Today 85 percent of the California state budget is outside of the legislature's or the governor's control. In the name of democracy, we have created a new layer of enormously powerful elites'—in the form of professional consultants, lobbyists, pollsters and activists.²⁸⁶ The Collective Management system proposes to formalise a role and make accountable NGOs whose representatives would seek election to balance the existing power of government in IGOs. Furthermore, the Collective Management system is just one part of the mosaic which is to become the reformed system of global governance. Other important initiatives in restructuring the international system might include enlarging the membership of the UN Security Council, instigating a bicameral General Assembly (one for the state and one for citizens), or creating an Economic and Social Security Council.

In the next chapter, I consider in more detail the first of the three pillars in support of the Collective Management system.

²⁸⁶Fareed Zakaria, *The Future of Freedom: Illiberal democracy at home and abroad* (New York: Norton, 2003) pp. 193-197

CHAPTER 4: LIBERAL INDIVIDUALISM

4.1 Introduction

In this chapter I explain the first of the three pillars supporting the concept of Collective Management—liberal individualism—and argue that there are strong motivations for free individuals to seek fair terms of cooperation within the necessary constraints of being members of a larger society. I analyse the fundamental problem of how individuals who are freely motivated to pursue their own ends—the core liberal ideal—can coexist within the necessary constraints that come with being members of both a larger national and a modern global society.

As a political theory, liberals see liberty as the primary political value. As John Stuart Mill state, ‘the *a priori* assumption is in favour of freedom’, and this what Gaus refers to as the ‘fundamental liberal principle: that liberty is the basic norm and those who would limit individual freedom must provide justification’.²⁸⁷ Kant developed the liberal position of respect for the autonomy of each individual human-being as holder of the capacity for self-governing reason. Kant argues that human freedom is realised by treating humanity as an end-in-itself within which no-one can be forced by another to adopt a particular end.²⁸⁸ Thus liberalism rests on the ideal that individuals should be free to pursue a diversity of

²⁸⁷ ‘Liberalism as a Political Theory’ in *Stanford Encyclopedia of Philosophy* Revised 29 September 2003 (<http://plato.stanford.edu/entries/liberalism>).

²⁸⁸ In the *Metaphysical Principles of Virtue*, Kant writes about the ‘duties of virtue’ which are ends ‘subject only to free self-constraint’. He writes that ‘making mankind in general one’s end is in itself a duty of every man’ (p. 54) and that ‘I can never be forced by others to have an end’ (p. 38) in Immanuel Kant, *Ethical Philosophy: Grounding for the Metaphysics of Morals and Metaphysical Principles of Virtue*, 2nd ed., trans. James W. Ellington (Indianapolis: Hackett Publishing Company, 1995).

ends of life. As Strawson writes, ‘any doctrine that the pattern of the ideal life should be the same for all is intolerable’.²⁸⁹

In this chapter I explain and adopt liberal individualism as the key moral philosophical underpinning of a global Collective Management framework in which citizens are free to pursue their own ends as long as they do not infringe on the rights of others to do the same. I adopt the definition of ‘liberal individualism’ based on the *liberal* political ideal that liberty is an inalienable right of individuals and that a just government must protect individual liberties in its constitution and laws. The *individualism* aspect is based on the view that individuals are prior to the collectives they constitute and are entitled to live and act by their own judgment, and their equal liberty should be restricted only when necessary to secure the equal liberty of all.²⁹⁰ Colin Bird argues that liberal individualism is commonly associated with Libertarianism and Rawlsian-type liberalism; he has further challenged the coherence of the term itself.

My aim in this thesis is not to provide a full defence or detailed study of the complexities of the debate in Anglo-American political philosophy about liberal individualism. My goal is to summarise and adopt the widely-accepted view of liberal individualism and develop one possible way to implement it in global governance, together with a theory of global justice and principles of cosmopolitanism, through Collective Management. I will then take up two issues about liberal individualism specifically relevant to my primary argument, showing how it supports the Collective Management approach: 1) the motives for free

²⁸⁹ P. F. Strawson, ‘Social Morality and Individual Ideal’, *Philosophy* 36 (1961), p. 3.

²⁹⁰ For a basic definition and critical analysis of the term ‘liberal individualism’ see Colin Bird, *The Myth of Liberal Individualism* (Cambridge, UK: Cambridge University Press, 1999).

individuals to engage in cooperation; and 2) the challenges of realising liberal individualism in the modern global world.

In Part 1, below, I examine the fundamental question of individual motivation. I reject a Hobbesian view, and instead follow Hume, Rawls and McClennen in arguing that there are significant self-interested and moral motives that prompt individuals to seek cooperation on fair terms if others do so too. I start by discussing what Hume calls the ‘artificial’ virtue of justice (which for Hume is concerned with the rules governing property). Hume argues that while self-interest is the original motivation to establish justice, what he calls ‘sympathy with the public interest’ leads us to regard as a moral virtue the disposition to stick to the rules of justice when these rules serve the common good. This approval of the disposition to be just ensures that individuals acquire additional, moral motives to abide by the rules of justice. Thus, Hume shows how selfish motivation and moral motives can converge.

Second, I consider Rawls’s view that people have a ‘reasonable moral psychology’ that makes them ready to propose and abide by fair terms of cooperation if others do so too.

Third, I review McClennen’s theory of motivation. McClennen argues that it will be rational for persons who have a real sense of their reciprocal dependencies on others to respond by trying to create and sustain this kind of normative reciprocity and mutual constraint between themselves and others. For if constraining one’s own demands leads others to do the same, and thus increases the total benefit, it is in one’s interest to do so.

I argue that we can extract from these three accounts a theory of motivation from which it follows that – if the system of Collective Management identifies a fair, mutually beneficial

set of arrangements – individuals will be motivated to abide by its rules if others are so motivated, even in the absence of a Hobbesian global Leviathan.

In the second part of the chapter I examine the challenges in realising the ideal of modern liberal individualism on a global level. The liberal vision of justice seeks to allow and protect a wide spectrum of diversity and plurality of opinion. Given the enormous diversity of interests and desires of people throughout the world, the dangers of promoting one vision of ‘good’ can be seen in the numerous historical examples of totalitarian states that have been set up to enforce a belief system (such as Marxism): the repression of alternative values naturally leads to conflict.²⁹¹ Rather than supporting a paternalist state, where a superior authority dictates how citizens behave, liberal individualism as a key pillar supporting Collective Management instead seeks to protect diversity and pluralism of views. In this part of the chapter I examine the challenges posed by communitarian and utilitarian viewpoints. I argue that individuals must have the right to opt out of communities that require one to restrain oneself in certain ways; this issue remains a matter of much debate which I cannot conclusively settle here. My aim is to argue that liberal individualism—based on a view of a ‘perpetually evolving liberalism’ as developed below—provides strong philosophical support for practical Collective Management structures.

²⁹¹ Paul Kelly, *Liberalism* (Cambridge, UK: Polity Press, 2005), p. 49.

PART 1: THE INDIVIDUAL AND MOTIVES FOR COOPERATION

4.2 Hobbes

The debate about the way political structures should be organised in order to produce a just and effective society has revolved around one fundamental question: what motivates individuals to form societies and so accept restrictions upon their liberty? One main type of answer to this question is based on Hobbes's *Leviathan* (1651), and assumes that all human behaviour is predominantly self-interested and competitive.

Hobbes analysed human behaviour by considering a hypothetical 'state of nature' in which humans lived without any society or its attendant rules and restrictions. Hobbes described the hypothetical state of nature as a state of anarchy and conflict, in which there was no government or other authority to prevent the oppression of individuals by other individuals. So unpleasant was the prospect of this state of nature that a society was bound to form, merely to offer some protection from 'a time of Warre, where every man is Enemy to everyman'²⁹² and the threats to personal safety and any fruits of an individual's labour that would result. The system that governed this society was the state—the Leviathan. Any actions that promoted or protected this system were motivated by the self-interested desire to avoid the anarchic state of nature, and with no consideration to what public good or harm would otherwise result. Hobbes saw what he called 'laws of nature' (justice, equity, modesty, mercy) as 'contrary' to natural passions²⁹³. Humans must therefore entrust social

²⁹² Thomas Hobbes, *Leviathan*, ed. Edwin Curley (Indianapolis: Hackett Publishing Company, 1994), p. 76.

²⁹³ 'For the Lawes of Nature (as Justice, Equity, Modesty, Mercy, and (in summe) *doing unto others, as wee would be done to,*) of themselves, without the terrour of some Power, to cause them to be observed, are contrary to our naturall Passions, that carry us to Partiality, Pride, Revenge, and the like.', Chap. XVII of *Common-Wealth* in Thomas Hobbes, *Leviathan*, eds. Flathman and Johnston (New York: W. W. Norton

order to the Leviathan. Only in the context of the state could morality, the 'laws of nature', be realised.

Drawing an analogy between national and international domains, it can be argued that there is a hypothetical 'global' state of nature in which states replace individuals in their roles of oppressed and oppressor. Instead of lacking an effective government to prevent murders and thefts on a personal level, the world now lacks an effective global government to stop exploitation and oppression on a national and regional scale. With the end of the Cold War and the resultant 'uni-polar' world, the US has emerged as an unregulated single superpower that under the Bush Administration is arguably seeking to play the role of a new 'global Leviathan', a scenario in which the strongest power decides what is to be considered just or unjust. This uncommissioned new Leviathan perpetuates many of the problems as it asserts its power, such as the oppression of the small and weak nations by the stronger, the disregard of alternative opinions by others, and the unwillingness to intervene in humanitarian disasters in regions that are not seen by the 'Leviathan' to be of primary importance. The new Leviathan operates based on the unilateral exercise of economic and military power, rather than by a system based on positive commitment to follow its precepts because of an appreciation of their justness. It is for this reason that I wish to consider the reform of global governance by developing a system of Collective Management that is based on cosmopolitan principles of global justice. I believe that, in developing this system, we should start from a broader set of human motives than those identified by Hobbes. I will now investigate three authors who have proposed such a

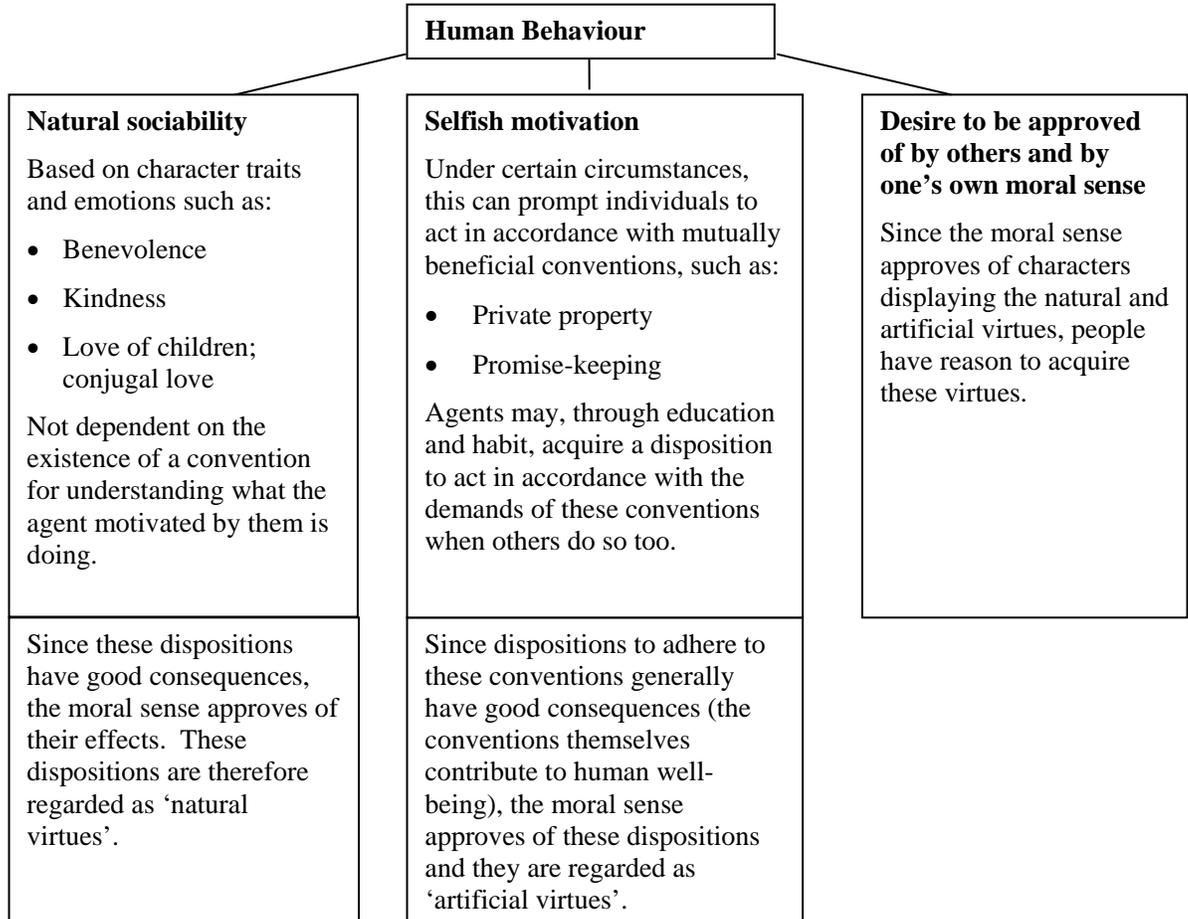
& Co., 1997), p. 93. See also Thomas Hobbes, *Leviathan*, ed. Edwin Curley (Indianapolis: Hackett Publishing Company, 1994), p. 106.

broadening of the understanding of human motives in the context of just institutions:
Hume, Rawls, and McClennen.

4.3 Hume

Hume argues that sociable behaviour occurs as a result of three types of behavioural motivation: innate sociability, including what he called 'limited benevolence', a benevolence that varied from being quite strong for family and friends to quite weak for strangers; selfish motivation; and a desire to be approved of by others and by one's own conscience. These three motivations, Hume argues, can all combine to motivate people towards reciprocal, sociable behaviour, as shown in Figure 4.1.

Figure 4.1 The three motivations of human behaviour



The character traits that are considered 'good' by Hume are classified as good because they produce beneficial or pleasing results for both society and the individual who possesses them. He therefore considers that morality should be instrumental: nothing can be considered good if it does not produce something that is useful or pleasing.

Instrumentality is important in extending the artificial virtues throughout society. Though, as Hume says, 'self-interest is the original motive to the establishment of justice [by which he means the rules of property]', since as these rules are to each person's benefit (when compared to a state in which there is no property), the beneficial effects of the disposition to stick to these rules are such that the moral sense will approve of it. As Hume says, 'a

sympathy with public interest is the source of the moral approbation which attends that virtue'.²⁹⁴ This will lead to approval of a just character by the person's own conscience and by others, which provides an additional incentive to develop such a character. The positive-feedback loop can then continue to work, keeping society stable.

4.4 Rawls

There are therefore significant motivations encouraging individuals to engage in cooperative, social behaviour. These motivations have been further explored by more recent contributors to the debate. Rawls argues that people have what he calls a 'sense of justice'. In *A Theory of Justice*, Rawls writes that 'a sense of justice is an effective desire to apply and to act from the principles of justice and so from the point of view of justice'.²⁹⁵ Later, in *Political Liberalism*, he elaborated in more detail his view of motivation of the person. Rational and reasonable persons who adhere to justice as fairness through use of the original position are Rawls's 'ideal citizens'. He writes, 'not only are citizens normal and fully cooperative members of society, but further they want to be, and to be recognised as, such members'.²⁹⁶ Thus, for Rawls, the sense of justice is a source of moral motivation for those guided by practical reasoning, who act from what he calls 'principle-dependent desires'. The first type of such desires are those relating to making rational choices about effective means to ends, preferring the greater good and to prioritise our objectives when they conflict. The second type of principle-dependent desires he defines as follows:

²⁹⁴ James Baillie, *Hume on Morality* (London: Routledge, 2000), p. 157.

²⁹⁵ John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), p. 567.

²⁹⁶ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. 84.

The second kind of principle-dependent desires are tied to reasonable principles: those that regulate how a plurality of agents (or a community or society of agents), whether of individual persons or groups, are to conduct themselves in their relations with one another. Principles of fairness and justice that define the fair terms of cooperation are canonical examples. So are principles associated with the moral virtues recognised by common sense such as truthfulness and fidelity.²⁹⁷

Rawls argues that people want to follow moral principles they judge to be reasonable as a result of a process of deliberation which culminates in what Rawls calls ‘wide, general, reflective equilibrium’, which he defines as a state of interpersonal agreement on a coherent set of beliefs reached through deliberation and mutual adjustment among general principles and particular judgments.²⁹⁸

Thus Rawls argues that people have a ‘reasonable moral psychology’ that features ‘their readiness to propose and abide by fair terms of cooperation, their recognising the burdens of judgment and affirming only reasonable comprehensive doctrines, and their wanting to be full citizens’.²⁹⁹ He argues that this view of the ideal citizen is justified because it is practical, and is ‘the most reasonable conception of the person that the general facts about human nature and society seem to allow’.³⁰⁰

This is the motivational basis of liberalism. Because people have this motivation, a system that is fair could become stable. After Rawls’s principles have been decided and put into effect, both the rationality and the reasonableness of the people in the society will continue to operate to keep the system stable. The benefits of the society to everybody means that there is a general motivation to keep the system functioning and to abide by the rules;

²⁹⁷ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. 83.

²⁹⁸ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. 8.

²⁹⁹ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. 86.

reasonable people do not break contracts they agreed to voluntarily, and knowing that will, in turn, increase the chances of other people abiding by their contracts. Similarly, because they are reasonable, people will not expect others to sacrifice their own self-interest for the greater benefit of others and so no unbearable demands will be placed on any members of society. This cycle of reciprocity — in which every person knows that the system benefits others, and so expects that everyone, including themselves, will comply with any obligations — will reinforce the cooperative nature of the society and people's commitment to it.

This view of people's commitment to a social system is tightly linked to Rawls's view of public reason, the common reason of all citizens. Public reason emerges from the grass-roots: it is the reason of all citizens, who are the ultimate source of political authority. Rawls argues that because citizens in a democracy have ultimate political authority, they are owed a justification in terms of 'public reasons', reasons that all reasonable citizens can accept for the exercise of coercive power, in spite of their various views of the good life.³⁰¹ He advocates that, as in constitutional arguments and justification within a democracy, certain kinds of considerations count as reasons, and others do not. It is therefore possible that morals and public reason diverge. For example, extracts from the Bible and other theological arguments may be reliable sources of moral truth, but they are inadmissible as evidence in the Supreme Court and they are sources that large numbers of democratic citizens reject as untenable. However, because of the instrumentality of many moral beliefs, in these cases the truth or behaviour endorsed by the morals may in fact be justifiable by

³⁰⁰ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. 87.

³⁰¹ John Rawls, 'The Idea of Public Reason Revisited', *University of Chicago Law Review* 64 (Summer 1997): 765-807.

public reasoning. Thus instrumentality of morals can lead to the acceptance of ‘public reasoning’ of morals that otherwise would not be considered suitable sources of justification for arguments or policies within democracy.

Rawls conceives of public reason as an idea only characteristic of a constitutional democracy. It should not be understood as the ‘reasons’ commonly affirmed by members of just any society of shared values and beliefs. Instead, public reason is defined against a backdrop of democratic institutions. However, even under the ideal conditions of a well-ordered and democratic society, in which everyone endorses free democratic institutions and a democratic constitution, it is inevitable that reasonable persons will support divergent and often conflicting ‘comprehensive doctrines’ that are themselves reasonable. Rawls calls this ‘the fact of reasonable pluralism’ and responds by arguing that public reason is not intended to eliminate political disagreement, but to provide democratic citizens with reasons and arguments that, if valid and sound, they can accept as justification for policy. Were laws and policies decided for purely non-public reasons, democratic citizens could not be said to be politically free, their political power then being used against their will in ways they could not endorse as citizens. Therefore, public reason is a condition of political autonomy and collective self-rule.

I elaborate in later sections of this chapter the notion that ‘reasonable pluralism’ can induce even rational and reasonable human beings to have different comprehensive doctrines. Areas of overlap and agreement are possible, and it is these areas of overlapping consensus that can form the basis of the principles of justice by which society should be governed. Deriving from the overlapping consensus those principles of justice that should govern global society creates commitment to abide by the rules that arise out of these principles.

4.5 McClennen

The undeniable benefits that accrue from self-restraint and cooperation are only enjoyed by everybody if there is a sufficiently high level of commitment to this social behaviour by everybody in society. Rawls deals with this when addressing the problem of the 'free rider' and the stability of society. If significant numbers of people in a society decide to default on their commitments (in order to enjoy the benefits of other people acting sociably whilst not doing so themselves) not only will the social parties not receive the benefits that they expected from their behaviour, but also their scope for trust by future cooperative partners will be damaged. If this continues then a growing proportion of people will decide that their self-interest is best served by defaulting on agreements rather than allowing their partners to default first, and the social commitment to cooperative behaviour will be lost.

Several authors have analysed one-shot and repeated rational choice models (e.g., 'prisoners' dilemma' games) to understand the problems of cooperation. Some authors criticise the rational-choice model as too narrow. Robert Frank argues moral emotions, such as sympathy, play an important role in facilitating commitment. He writes that 'cooperation in one-shot prisoners' dilemmas is sustained by bonds of sympathy among trading partners ... most people have the capacity to develop bonds of sympathy for specific trading partners under the right set of circumstances. The preference for cooperation is not an unconditional one, but rather one that depends strongly on the history of personal interaction between potential trading partners'. Frank further argues that the

narrow rational choice models may ‘actually do social harm by encouraging us to expect the worst from others’.³⁰²

Other authors have argued that people’s potential for cooperation and coordination has frequently been underestimated. If enough people make an inner-commitment to comply with the rules, cooperation could occur on a large scale and a social optimum can be reached. Ned McClennen supports this belief by arguing that people see the state of mutual cooperation as the most rational way to solve problems. He starts from the realisation that ‘persons can achieve extraordinary things by coordinating their actions’, and questions to what extent ‘a well-articulated theory of rational, instrumental choice can provide a case for specific kinds of coordination between persons—that is, to defend the place of certain institutional arrangements in a normative theory of rational interaction between persons’.³⁰³ In developing his theory of instrumental rationality, McClennen formulates a key principle: ‘It is instrumentally rational, *ceteris paribus*, for rational agents to cooperate with one another, if by doing so each can realise benefits that cannot be secured by each acting in a purely independent fashion’.³⁰⁴

McClennen argues that it is not only possible, but also that it will be rational, for persons who have a real sense of their reciprocal dependencies on others to respond by trying to create and sustain this kind of normative reciprocity and mutual constraint between themselves and others. For if constraining one’s own demands leads others to do the same, and thus increases the total benefit, it is in one’s interest to do so. In this case morality and

³⁰² Robert H. Frank, *What Price the Moral High Ground? Ethical Dilemmas in Competitive Environments* (Princeton: Princeton University Press, 2004), Chapter 1.

³⁰³ Ned McClennen, *forthcoming*, p. 2

³⁰⁴ Ned McClennen, *forthcoming*, p. 64.

adherence to social rules becomes instrumental. A stable cycle of positive reinforcement of this effect therefore becomes possible where each individual is aware that by acting in his own interest, he is acting in everybody else's and equally that when others are acting in their own interest, they are also acting in his.

Therefore, according to McClennen, it is possible to argue on the basis of rationality alone that an individual will cooperate with another if he understands that such an arrangement has instrumental value, is in his or her self-interest. In this view, a rich man might make some contribution to the least well-off people, simply because it is something he has to do to prevent negative events (since poverty may be a background condition leading to terrorism and loss of commitment to the system). He thus makes a financial contribution and remains committed to the arrangement, not because he is reasonable in Rawls's sense and wants to achieve a just society, improving the conditions of the least well-off, but because it is a rational, instrumental choice. McClennen refers neither to the rationality involved in choice behind Rawls's veil of ignorance, nor to the argument that citizens will accept restrictions if it is based on a 'reasonable conception of political justice' or the commitment generated by public reason in the larger society. McClennen argues that rationality alone provides a powerful explanation for cooperative behaviour, with no need for individuals to have a Rawlsian 'reasonable moral psychology' or to imagine themselves in an artificial situation behind a veil of ignorance. Like Hume, McClennen develops a theory of instrumental motivation that provides a powerful explanation for cooperative behaviour in the real world. As stakeholders become aware of the potential benefits of cooperating in a given system, they can develop an inner-commitment to abide by the rules.

If people believe that their interests have been considered, they develop a motivation to keep the system working and therefore to abide by the agreed restrictions. By knowing that others are of the same opinion, they are reassured that others are fulfilling their obligations and so are given further incentives to participate. This approach reassures participants that they are able to predict the future actions of other participants; if you are aware that your partner in an agreement decided voluntarily to make that agreement with you, you are reassured that he will fulfil that agreement and so your trust in his future behaviour reinforces the cooperative process.

4.6 Motives for adhering to the institutions of Collective Management

The three theories of motivation above are, I argue, consistent and complementary, providing strong support for the creation of the conditions for the positively-reinforcing cycle of cooperation among individuals at the global level. Hume and McClennen focus on the rational and instrumental explanations promoting cooperative behaviour. Providing complementary support to these self-interested motives, Rawls argues that people have a 'reasonable moral psychology' and that we can expect cooperative behaviour by free individuals who *want* to follow moral principles. Collective Management has the potential to realise this cycle because it creates governing structures in which rational, self-interested individuals can see the potential benefits of cooperation. But further, because it is based on a theory of global justice and includes a democratic and inclusive deliberative process, the 'ideal citizens' of a global Collective Management system will want to follow those moral principles that they judge to be reasonable as a result of a process of deliberation. Democratic legitimacy is ensured by the capacity of all individuals to influence the final result and, as Joshua Cohen argues, a motivation to comply with the outcome follows: 'the

participants suppose that they can act from the results, taking the fact that a certain decision is arrived at through their deliberations as a sufficient reason for complying with it'.³⁰⁵ Thus people feel a commitment that arises from having been involved in its development and establishment.

A Collective Management system therefore has the potential to inspire individuals to create and sustain the normative reciprocity and mutual restraint between themselves and others that is necessary for stable global governing institutions. It would constrain some players in the pursuit of their interests, but it has the potential to advance the long-term self-interest for all players, answering their prudential concerns as well. The challenge is to design the institutions of Collective Management to be inclusive and deliberative, and still efficient and practicable, so that they can maximise the cooperative tendencies inherent in human interaction analysed above: the instrumental motivation of Hume, the 'reasonable moral psychology' of Rawls, and the rational instrumental choice described by McClennen.

PART 2: LIBERAL INDIVIDUALISM IN A GLOBAL WORLD

4.7 Modern liberalism

There are many challenges to realising liberal individualism in the modern global world. Modern political liberalism emphasises the rule of law, the protection of individual rights, and democracy. Democracy alone is not a sufficient condition to realise liberal

³⁰⁵ Joshua Cohen, 'Deliberation and Democratic Legitimacy' in *Deliberative Democracy: Essays on Reason and Politics*, eds. James Bohman and William Rehg (Cambridge, MA: MIT Press, 1997), p. 74.

individualism; states or international institutions that are democratic are not necessarily legitimate from the point of view of protecting individual rights. Fareed Zakaria notes that even in ancient Greece—one of the earliest examples of democracy—an individual’s rights were ‘neither sacred in theory nor protected in fact. Greek democracy often meant, in Constant’s phrase, ‘the subjection of the individual to the authority of the community’. [I]n the fourth century B.C. in Athens, where Greek democracy is said to have found its truest expression, the popular assembly—by democratic vote—put to death the greatest philosopher of the age because of his teachings. The execution of Socrates was democratic but not liberal.’³⁰⁶ In our present age, Israel is democratic but it is not fully liberal. The communitarian approach of the Israelis arguably does not accord equal liberty to the Arab minority. America in the 1950s, 1960s and 1970s was democratic but not liberal-cosmopolitan, which caused serious racial conflict because the Anglo-Saxon culture overruled black minorities. These examples are reminders that democracy alone cannot secure an individual’s rights.

Liberal democracy is connected to what one might call economic liberalism’, which supports private property over government regulation. The connection between the two runs in both directions. First, economic liberalism tends to support liberal democracy. The rise of independent economic activity created a new group of wealthy individuals who ‘benefited greatly from capitalism, the rule of law, free markets, and the rise of professionalism and meritocracy’ and who therefore ‘supported gradual reforms that

³⁰⁶ Fareed Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad* (New York: W. W. Norton & Company, 2003), p. 20.

furthered these trends'. In the words of the Harvard scholar, Barrington Moore Jr., 'no bourgeoisie, no democracy'.

Zakaria observes that of the many non-Western transitions to liberal democracy over the last three decades, the countries that have moved furthest toward liberal democracy have followed a version of the European pattern: capitalism and the rule of law first, and then democracy. 'South Korea, Taiwan, Thailand, and Malaysia were all governed for decades by military juntas or single-party systems. These regimes liberalised the economy, the legal system, and rights of worship and travel, and then, decades later, held free elections.'³⁰⁷

Francis Fukuyama also notes the importance of economic liberalisation in driving political liberalism:

What is initially universal is not the desire for liberal democracy but rather the desire to live in a modern society, with its technology, high standards of living, health care, and access to the wider world. Economic modernisation, when successful, tends to drive demands for political participation by creating a middle class with property to protect, high levels of education, and greater concern for their recognition as individuals... Liberal democracy is one of the by-products of this modernisation process, something that becomes a universal aspiration only in the course of historical time.³⁰⁸

Second, liberal democracy supports economic development. Jeffrey Sachs argues that political liberalism allowed individualism to flourish, and this became one of the key factors that caused Britain to be the leader of the industrial revolutions within Europe:

³⁰⁷ Fareed Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad* (New York: W. W. Norton & Company, 2003), p. 55.

³⁰⁸ Francis Fukuyama, *America at the Crossroads: Democracy, Power, and the Neoconservative Legacy* (New Haven: Yale University Press, 2006), p. 54.

British society was relatively open with more scope for individual initiative and social mobility than most other societies in the world. The fixed social orders of the feudal era had weakened enormously or disappeared entirely by 1500... Britain had strengthening institutions of political liberty. Britain's parliament and its traditions of free speech and open debate were powerful contributors to the uptake of new ideas. They were also increasingly powerful protectors of property rights, which in turn underpinned individual initiative.³⁰⁹

Sachs, alongside many others, has also noted the key role of technological innovation in spurring industrial revolutions across Europe. But he argues that Britain was one of the leaders in scientific thinking and technological development, causing it to be the first in Europe to industrialise, largely because of its liberal political system: 'Britain became one of the leading centres of Europe's scientific revolution... With Britain's political openness, speculative scientific thinking was given opportunity to thrive, and the scientific advances on the Continent stimulated an explosion of scientific discovery in England.'³¹⁰ This further illustrates the importance of political liberalism to development.

Liberal democracy is also connected to what one might call 'cultural liberalism', which supports individual liberty over laws limiting liberty for patriotic or religious reasons. It is also connected to 'social liberalism', which supports equality over inequalities of opportunity.³¹¹ This is often closely linked to political liberalism, as in the case of the universal suffrage: extending the vote to women and minorities previously excluded is a move towards increasing equality of opportunities, and also promotes liberal democracy.

³⁰⁹ Jeffrey Sachs, *The End of Poverty: Economic Possibilities for Our Time* (New York: Penguin Press, 2005), p. 33.

³¹⁰ Jeffrey Sachs, *The End of Poverty: Economic Possibilities for Our Time* (New York: Penguin Press, 2005), pp. 33–34.

³¹¹ Fareed Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad* (New York: W. W. Norton & Company, 2003), pp. 149–150.

By ‘modern liberalism’, then, we mean the mixture of all these forms of liberalism found in most First World countries today. Modern liberalism differs from classical liberalism by asserting that government provision of some minimal level of material well-being takes priority over individual property rights.³¹² In the following chapter on global justice I will explore the implications of this view for redistribution at the international level as well as at the national level.

4.8 Individualism vs. communitarianism

The liberal approach is criticised by those who argue for governing principles to be based upon communitarian values rather than individual ones. Critics argue that liberalism separates the well-being of the individual to such an extent that the interests of the community in which the individuals are living are not given proper attention. Frances Svensson, for example, complains that, ‘liberal democratic theory, in its almost exclusive emphasis on individual rights and its neglect of communal interests, has created a context in which no balance has been possible between the claims of individuals and multidimensional communities’.³¹³ By linking the well-being of the community, in the moral, political and social sense, directly to the well-being of the individual living within it, communitarians consider that the actions of a member of a community have a direct impact on the others. Liberals assert the priority of the right to the good, and defend the right of individuals not to have a particular conception of the good—an ethical conviction—imposed on them by others. Communitarians, on the other hand, emphasise the ‘moral

³¹² See, for example, the discussion of liberalism in Wikipedia, <http://en.wikipedia.org/wiki/Liberal>.

³¹³ Frances Svensson, quoted in Chandran Kukathas, ‘Are there any Cultural Rights?’, *Political Theory* 20, no. 1, (Feb 1992): 105–139.

encumbrances and antecedent obligations' of individuals 'as members of this family or community or nation or people'.³¹⁴ Kymlicka describes communitarians as believing that 'members have a 'constitutive' bond to the group's values, and so no harm is done by limiting individual rights in order to promote shared values'.³¹⁵ The welfare of the community therefore directly impacts on the welfare of the individuals within it; it is in the interests of the individual to sacrifice their freedom in order to advance the interests of the community instead.

There are, however, many good arguments defending liberalism from these criticisms and identifying the major criticisms that communitarianism faces. There is considerable evidence that communities are actually more a product of their environment, particularly the legal and political institutions in which they are located, than permanent associations which should be taken as the basis for these institutions. For example, in Assam in the late 1960s, Bengali Muslims declared their language to be Assamese to take advantage of land that had been reserved by the government for indigenous peoples. As Kukathas states, 'groups are constantly forming and changing in response to political and institutional circumstances'.³¹⁶ Groups or cultural communities do not always exist prior to or independently of legal and political institutions but are themselves given shape by those institutions. As Donald Horowitz has put it., 'Ethnic identity is not static; it changes with the environment'.³¹⁷ A stable political environment could therefore not be based solely upon

³¹⁴ Michael Sandel, 'The Procedural Republic and the Unencumbered Self', in *Communitarianism and Individualism*, eds. Shlomo Avineri and Avner de-Shalit (Oxford: Oxford University Press, 1992), p. 23.

³¹⁵ Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995), p. 92

³¹⁶ Chandran Kukathas, 'Are there any Cultural Rights?', *Political Theory* 20, no. 1, (Feb 1992): 105–139.

³¹⁷ Donald L. Horowitz, *Ethnic Groups in Conflict* (Berkeley: University of California Press, 1985), p. 589.

the principles of a community at one time, but would instead have to take account of what it might become.

Communities also are composed of associations of individuals that typically have a range of different interests. Many African communities, such as the Yoruba of Nigeria and the Lozi of Zambia were able to present themselves as homogenous cultures only in response to the external pressure of colonialism. However, in the absence of this pressure, the subgroups' identities are reasserting themselves. Communitarianism takes no account of differentiation within cultures and so could lead to the persecution of these minorities, in the name of the good of the majority of members.³¹⁸ Communitarianism therefore risks stifling the growth of new communities within an established one, and enforcing a static and unchanging social construct on what should be a vibrant, flexible and ever developing form of association.

Another critical factor is that an individual rarely stays anymore with one community for the whole of his or her life. Increased globalisation has led to a growing number of people who move from one community to live in another. Following a communitarian structure, these individuals would be left without any inherent rights and would be open to exploitation. By concentrating on individual rights, liberalism allows people to move throughout the global society, carrying their basic rights with them. Communitarianism, in contrast, gives no credence to immigrant communities who would be expected to integrate totally into the host and majority community. This distinction also has major implications for economic progress, which requires such mobility.

³¹⁸ Chandran Kukathas, 'Are there any Cultural Rights?' *Political Theory* 20, no. 1, (Feb 1992): 105–139.

Communities often expect their members to give up considerable portions of their individual rights. For example, a Muslim community can claim the right to insist that all members must agree that there is no other god but Allah and that Muhammed is his messenger. No member would have the right to challenge this restriction of freedom of speech and yet remain a member. There is a conundrum for liberalism here: to insist that the community accept the principle of freedom of dissent would be illiberal behaviour that refused to accept Muslims' definition of their own good. As Kukathas states, 'For each social union to have any significant measure of integrity, it must to some extent be impervious to the values of the wider liberal society'.³¹⁹ There is a standard, if not uncontroversial, compromise between liberalism and communitarian values that I propose to adopt in advocating liberalism as a pillar to support Collective Management: communities can impose particular kinds of restrictions but they cannot force individuals to remain members. So, for instance, the Muslim community must also accept that every member has the right to 'opt out. No individual is obligated to give up a basic right, such as freedom of speech or religion, merely because of the circumstances of his or her birth. The acceptance of such a restriction must be a voluntary one, shown by the refusal to leave the community. The community can impose various rules as it wishes, as long as these rules are voluntarily accepted by every individual affected by them, and a reasonable exit-option exists. However, the community's interests are not protected at the expense of individual liberties. Just as the minority community needs to be protected against the different majority culture, so too do minorities within the community need to be protected. No community can therefore claim that practices such as slavery, for example, or the denial

³¹⁹ Chandran Kukathas, 'Are there any Cultural Rights?' *Political Theory* 20, no. 1, (Feb 1992): 105–139.

on the grounds of gender of equal access to education, are essential to the maintenance of their community and should be protected by law. The individuals involuntarily affected by these customs, the slaves themselves or female children, need to be protected by the wider liberal community and have their rights and liberties maintained.

There are delicate issues here that are much discussed (especially in thinking about autonomy, about what counts as genuine voluntary assent) and a full examination would take me far from my primary intention of developing a grounded version of an improved global governance system. For the purpose of this thesis I propose to use as the liberalism pillar for my proposed system of Collective Management an account of liberal individualism that calls for education and for freedom of expression and association in order to ensure that individuals should have what Kymlicka calls ‘the conditions necessary to acquire an awareness of different views about the good life’.³²⁰ Without education or the liberty to listen to alternative views, individuals are not able to form judgments about what is valuable, and to learn about other ways of life. This kind of liberalism therefore does not encourage individuals to leave their culture entirely, but instead to move within their culture and decide the aspects they believe to be are worth keeping and which should be considered to have no value. This approach accommodates individuals’ changing perceptions of the good over time without restricting either individual rights or community strength. This overlap of liberalism with the debate on reasonableness of basic rights leads to perpetual deliberation—a perpetually-evolving liberalism that seeks to define a set of

³²⁰ Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (Oxford: Oxford University Press, 1995), p. 81

basic rights, complicated by the need to accept some communitarian principles but not at the expense of other basic rights.

The liberal defence of minority rights also applies in the distinction between liberalism and populist democracy. In *Liberalism against Populism*, William Riker distinguishes the two concepts of democracy. He describes populism as the view that ‘the opinions of the majority must be right and must be respected because the will of the people is the liberty of the people’.³²¹ Elections, for the populist democrat, are the process by which the majority of the population can remove an official and so express their dissatisfaction with his policies. Riker objects to this, as a liberal who sees elections as fulfilling their function of a check on officials only within an institution that imposes checks upon the majority opinion. His view of populist elections is that they are no more moral than an assassination, a revolution or a military coup, all of which can similarly depose a hated official, but none of which guarantee greater liberty for citizens after the action. Riker points out that it is only in the case of institutional checks on majority opinions that it can be guaranteed that future elections should remain a fundamental part of the system. It is in this way that Riker defends the criticism that liberal institutions restrict possible political outcomes of the democratic process. Although it is true that liberal institutions may prevent the implementation of policies that are supported by the vast majority, it is in this manner that basic institutions can ensure that political deliberation produces outcomes that tend to advance the common good.

³²¹ William H. Riker, *Liberalism against Populism: A Confrontation between the Theory of Democracy and the Theory of Social Choice* (San Francisco: W H Freeman, 1982), p. 7.

Liberalism therefore maintains two types of protection. 'Inter-community rights ensure that the community is protected from attempts by the wider majority society to impose majority values upon it; 'intra-community rights' ensure that individuals within that community are protected from the community's violation of basic civil liberties. As Kelly explains, 'Liberal political theories do not deny the value of identity-conferring groups and associations or the value of group membership, but they do rule out conferring upon those groups sovereign authority in dealing with their members'.³²² Kelly emphasises that this 'precarious achievement' is maintained by 'divorcing political identity (citizenship) from group membership'.

The political sphere should therefore be kept rigorously separate from the cultural sphere. It can therefore be seen that communitarian values are as likely to be an imposition on minority cultures as a support for them. In contrast, individual principles allow people to exercise greater freedom over more aspects of their lives, including cultural and religious loyalties, than communitarian principles, which reach into every aspect of their members' lives. Communitarian principles can therefore be seen to hinder the assimilation of minorities and obstruct the emergence of a coherent society and this, in turn, hinders the development of a stable and productive society. Unassimilated minorities who do not feel that they have a full and equal stake in their society are not motivated to fully participate in cooperative enterprises that lead individuals to flourish.

³²² Paul Kelly, *Liberalism* (Cambridge, UK: Polity Press, 2005), p. 144

4.9 Utilitarianism vs. liberalism

As Collective Management seeks to address global injustice as well as injustice at the national and regional levels, its principles are based on cosmopolitan ideals: that is, the equal focus on individuals of all races, nations and genders. However, there are many ways of interpreting these ideals. For example, Brian Barry points out that the simplest form of cosmopolitanism is utilitarianism, which in its simplest form claims that the morally right act or policy is that which produces the greatest happiness for the greatest number of members of society, because it weighs the interests of everybody on the same scale: ‘everybody to count for one and nobody for more than one’.³²³

While the theory is correct to take into consideration the interests of the individual, not just the group, utilitarians do not adequately respect, in Rawls’s phrase, ‘the separateness of persons’. At the extreme this means that, for a utilitarian, rights and liberties may be taken away from one individual in order to satisfy the preferences of another group in society. Even disregarding the moral aspects of this, it would be unreasonable to expect the minority to willingly sacrifice themselves for the sake of others. As Rawls says, when he criticises utilitarianism for this ‘unfairness’, ‘In the absence of strong and lasting benevolent impulses, a rational man would not accept a basic structure merely because it maximised the algebraic sum of advantages irrespective of its permanent effects on his own basic rights and interests’.³²⁴

³²³ Brian Barry, ‘Statism and Nationalism: A Cosmopolitanism Critique’ in *Global Justice*, eds. Ian Shapiro & Lea Brilmayer (New York: New York University Press, 1999)

³²⁴ John Rawls, *A Theory of Justice*, revised edition (Oxford: Oxford University Press, 1999), p. 13

We adopt as a pillar for the Collective Management system the liberal position that individual rights cannot be overridden to achieve the general good. This position asserts that it is unacceptable to ‘aggregate’ individuals in the utilitarian manner, since many participants in the system would have their interests overridden by those of the majority. Instead, we adopt the liberal individualistic view as a pillar for the Collective Management system that seeks to promote collective decision-making in a manner that produces global justice based on cosmopolitan principles. This is the subject of the next chapter.

CHAPTER 5: GLOBAL JUSTICE AND COSMOPOLITANISM

PART 1: GLOBAL JUSTICE

5.1 Introduction

In this chapter I analyse and adopt the final two pillars that support Collective Management—a liberal theory of justice and a modern theory of cosmopolitanism. I aim to provide evidence for the view that Collective Management offers an outline of fair, mutually beneficial arrangements for individuals on a global level. To do so, I support principles of justice focused on global equal opportunity and political participation. I reject the limits of Rawls's view of international justice based on what he calls 'peoples' rather than persons, and support the alternative view that extends Rawls's position in *A Theory of Justice* to the global context.

I then show how the key principles of modern cosmopolitanism provide further support for a more just system of Collective Management, building directly on an extended global theory of justice based on liberal individualism.

5.2 Rawls's view on domestic justice

To establish a fair structure of international governance, we need to establish fair initial conditions. I now consider Rawls's concept of an original position in order to conceive of how such a structure would be constructed. Rawls approaches the problem of constructing a truly just system by considering the circumstances in which individuals can make fair decisions about what principles of justice should govern society.

To discover these principles he uses a hypothetical ‘original position’ in which impartiality ensures that the results are fair. If members of a society were placed behind a ‘veil of ignorance’ (i.e., that they did not know their skills, wealth or anything about their position in society, and also were ignorant of their own conception of the good) and were asked to construct institutions and rules for the governing of that society, the results would be the principles of a fair and reasonable conception of justice. The citizens would be concerned to protect their own interests but, as an effect of knowing neither the position in society they would fill after the veil was lifted nor the particular view of the good they would have, rationally they would have to protect everybody’s interests equally and so would choose appropriate rules for a fair and well-ordered society. Such a choice would take into consideration that the means of self-respect are attached to substantial and not merely formal rights, and would therefore lead to a relatively egalitarian society that makes economic inequality permissible only if the greater productivity so created causes the least well-off to be wealthier than if everyone had remained economically equal.³²⁵

The result of this original position is a set of principles that could be agreed on by all parties in the original position. Moreover, Rawls argues, reasonable actual people will agree to them too (where being reasonable implies, as we have seen, implies that they want to offer others fair terms of co-operation and that they accept the fact that social institutions must be justifiable to people with differing reasonable conceptions of the good). Rawls argues that such people will accept that the device of the original position represents the right way of finding fair principles that are justifiable to citizens who have ‘conflicting and

³²⁵ John Rawls, *A Theory of Justice*, revised edition (Oxford: Oxford University Press, 1999).

even incommensurable religions, philosophical and moral doctrines'.³²⁶ The principles of justice selected in the original position, Rawls concludes, gain the support of an overlapping consensus of differing reasonable views of the good.

Rawls specifies some criteria for an overlapping consensus for the society it covers to become committed to it. Firstly, he insists that all the doctrines covered by the consensus must be reasonable and rational. As I have discussed, by 'reasonable' he means that no doctrine would impose obligations on others that the proponents would not accept for themselves: for example, that of religious intolerance. Secondly, and leading on from the first, the system of justice finally decided on should be free from religious or philosophical doctrine as far as possible. If this were not the case, it would make it harder to be accepted by other reasonable citizens who do not subscribe to that particular doctrine. The political structure therefore must make no statement on religious or philosophic truths and must restrict its power to political matters only. Rawls elaborates on this, saying, 'Because religious, philosophical, or moral unity is neither possible nor necessary for social unity, if social stability is not merely a *modus vivendi*, it must be rooted in a reasonable political conception of right and justice affirmed by an overlapping consensus of comprehensive doctrines.'³²⁷

Thirdly, the society that the overlapping consensus covers must be stable. For this to be true, Rawls emphasises the differences between an overlapping consensus and a *modus vivendi*; whereas in the latter, one group within the society is merely using the precept of toleration to ensure its survival until it can seize power and impose its views on the rest of

³²⁶ John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 2003), pp. 134–135.

society, in the former, all members of society are sincerely happy with the concept of justice implemented.³²⁸

The overlapping consensus is therefore based on the concept that different opinions can hold something to be just and fair for different reasons—a religious citizen could approve of the concept of religious toleration because faith is not something that can be forced and a secular citizen could agree with the concept of religious toleration because they see the state has having no role in the personal faith of an individual. Slavery could also be rejected by both because the concept of equal political and civil liberties is core to both perspectives. Rawls emphasises that the overlapping consensus does not mean merely that different groups are agreeing to live together within one society because to do so is better than to fight fruitlessly over incompatible beliefs, which would merely be a *modus vivendi*. Instead, each citizen actively supports the concept of political liberalism because of a belief, for personal religious, philosophic or moral reasons, that the concepts expressed in the two principles of justice are just and that political liberalism is therefore necessary for a well-ordered society.³²⁹

This therefore leads to the conclusion that there cannot be a just conception of the whole of society growing together to form one ‘community’ in which everybody agrees with each other on a comprehensive political doctrine. The overlapping consensus is not a stepping-

³²⁷ John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 2003), p. 16.

³²⁸ John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 2003), pp. 134–150. One group within the society is merely using the precept of toleration to ensure its survival until it can seize power and impose its views on the rest of society. The significance of this distinction can be seen in Algeria, Africa's second largest country, which was plunged into war in early 1992 after the then military-backed authorities scrapped a parliamentary election that radical Islamists were poised to win. Eventually, the *modus vivendi* fell apart as the Islamists attempted to take control of the country and Algeria fell into civil war.

stone on the way to universal accord; instead it is an acceptance of the diversity of individualism and communities and the political expression of respect for other's opinions.

5.3 Rawls's views on global justice: (1) are decent, illiberal states to be tolerated?

Rawls's method of discovering the principles of international justice is similar to that for discovering domestic justice. However, instead of the participants representing individuals at a domestic level, he envisages representatives of various 'well-ordered' societies meeting at a second, global 'original position', under a new global veil of ignorance. This time they do not know the size of the territory, population, resources or relative strength of the people whose fundamental interests they represent, but they do know that they represent just societies. Rawls describes the representatives of liberal societies in this original position in much the same way as the representatives of individuals at the domestic level:

...liberal peoples have a certain moral character. Like citizens in domestic society, liberal peoples are both reasonable and rational, and their rational conduct, as organised and expressed in their elections and votes, and the laws and policies of their government, is similarly constrained by their sense of what is reasonable. As reasonable citizens in domestic society offer to cooperate on fair terms with other citizens, so (reasonable) liberal (or decent) peoples offer fair terms of cooperation to other peoples. A people will honour these terms when assured that other peoples will do so as well. This leads us to the principles of political justice...³³⁰

But Rawls emphasises that the liberal precepts used to develop justice as fairness means that states must be included in the global system of justice even if they are not liberal democracies:

³²⁹ John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 2003), p. 147.

³³⁰ John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 2003), p. 25.

Although tyrannical and dictatorial regimes cannot be accepted as members in good standing of a reasonable society of peoples, not all regimes can reasonably be required to be liberal. If so, the law of peoples would not express liberalism's own principle of toleration for other reasonable ways of ordering society. A liberal society must respect other societies organised by comprehensive doctrines, provided their political and social institutions meet certain conditions that lead the society to adhere to a reasonable law of peoples.³³¹

Rawls therefore divides societies into two categories: 'well-ordered' and 'outlaw' societies. The 'well-ordered' category is further divided into liberal societies, which must be reasonable (according to Rawls's special definition of the term), and decent (or non-liberal/hierarchical) societies.³³² The conditions of a 'well-ordered' society are specified as being 'peaceful and not expansionist; its legal system satisfies certain requisite conditions of legitimacy in the eyes of its own people; and, as a consequence of this, it honours basic human rights'.³³³ As Leif Wenar points out, this means that a society can be non-egalitarian and based on a doctrine such as a religious view, as seen in an Islamic society, and still be considered 'well-ordered' as long as the state is non-aggressive and its institutions legitimate. For example, people could be denied freedom of speech as long as they are able to have their interests heard through some means of representative association, and there can be a state religion as long as citizens who do not belong to it are not persecuted.³³⁴ These criteria are similar to David Beetham's three dimensions of legitimacy.³³⁵

³³¹ John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 2003), pp. 80–81.

³³² It is on this point that the global system of justice presented in this thesis most differs from Rawls'. In contrast with Rawls' position, Collective Management does not consider a non-liberal state to be an acceptable participant in the system of global justice unless it is a temporary acceptance of a decent society.

³³³ John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 2003), p. 43.

³³⁴ Leif Wenar, 'The Unity of Rawls's Work', *Journal of Moral Philosophy* 1, no. 3 (2004), p. 10.

³³⁵ David Beetham, *The Legitimation of Power* (London: Palgrave Macmillan, 1991). These criteria are that social institutions are considered legitimate if: i) they conform to established rules, and if the rules can be

In contrast, an unjust or 'outlaw' society is seen as one that 'refuse[s] to acknowledge a reasonable law of peoples...[and] affirm[s] comprehensive doctrines that recognise no geographical limits to the legitimate authority of their established religious or philosophical views'.³³⁶ Examples would be societies that are aggressive towards other societies or that violate the basic human rights of those within it. In this case, Rawls allows that intervention may be legitimate: 'the well-ordered peoples may pressure the outlaw regimes to change their ways; but by itself this pressure is unlikely to be effective. It must be backed up by the firm denial of all military aid, or economic and other assistance; nor should outlaw regimes be admitted by well-ordered peoples as members in good standing into their mutually beneficial cooperative practices'.³³⁷ Rawls insists that all intervention can be legitimate only when the exercise of power is in accordance with a constitution that can be supported by all the citizens as free and equal.³³⁸

In rejecting the idea that outlaw states should be allowed to continue unchecked, this thesis agrees with Rawls. The effect of a small area of instability on the global stage is obvious; for example, the conflict between Israel and the Palestinians not only draws the region into the conflict, as the wars with Egypt, Lebanon, etc., show, but also affects countries in completely different parts of the globe. The terrorist bombs that have, in recent years, exploded in non-Arab or Islamic parts of the world such as the US, the UK and Spain, show that a conflict can provide the motivation for crimes around the world. The original conflict also raises general levels of misunderstanding and mistrust between nations,

justified by reference to beliefs shared by the ruler and the ruled; ii) there is evidence of consent by the subordinate to the particular power relationship; and iii) the value pattern, which is a result of the outcome of the institutional interaction, is compatible with the value patterns of the society.

³³⁶ John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 2003), p. 72.

³³⁷ John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 2003), p. 74.

cultures and communities which leads to increased conflicts, whether of a military nature or not, elsewhere.

Radical and intolerant ideologies are among the primary causes of conflict in the world today. Because such ideologies can spread, via technology and immigration, throughout the world unhindered by national boundaries, they need to be fought on a similar playing field; looking at the motivations of the individuals that perpetuate the crimes that are committed in its name. Conflicts like those with Israel, and similar ones like the Chechnya conflict, that have a strong religious component fuel ideology and the ideology perpetuates the conflicts. Many argue that extreme ideologies such as Wahabism have played an enormous role in the conflicts in Chechnya and Afghanistan. Other extreme ideologies, such as those of the neo-conservatives in the George W. Bush Administration, have led to a pre-emptive military policy of spreading a US version of democracy, which led to the 2003 invasion of Iraq; arguably the reaction among Muslims globally has led to rise in terrorism in the world. Extreme political parties such as Likud in Israel, or BJP in India which was behind the incident in Gujarat, play a major role in current conflict.

The global problem of violence needs to be fought not just on the ideological front—for example, by promoting liberal Islam and by supporting the coexistence of Muslims and others in Western societies on the basis of the overlap in their values—but also by challenging conflicts and those states that continue to use military force as the sole way to resolve problems that tend not to be solved by simply sending in an army. The isolation and eventual transformation of outlaw states is of primary importance for global stability;

³³⁸ Leif Wenar, 'The Unity of Rawls's Work', *Journal of Moral Philosophy* 1, no. 3 (2004): 265-275.

otherwise the effect of violent, non-liberal ideologies and mentalities will continue to affect liberal states, whether in the same region or beyond.

Rawls claims that ‘it turns out that a well-ordered non-liberal society will accept the same law of peoples that well-ordered liberal societies accept’.³³⁹ Just as under the overlapping consensus of a domestic society, different philosophical and religious codes can come to agreement on the principles of government, so can different peoples agree on the principles of international governance.

Rawls considers that ‘the principles chosen would, I think, be familiar ones. The basic principle of the law of nations is a principle of equality. Independent people organised as states have certain fundamental equal rights. This principle is analogous to the equal rights of citizens in a constitutional regime’.³⁴⁰

This acceptance of non-liberal states as ‘decent’ has been heavily criticised by other writers. Wenar notes that Rawls’s willingness to tolerate illiberal societies has been called a ‘betrayal of liberalism’ and ‘blatantly inconsistent’.³⁴¹ In contrast with Rawls, Collective Management does not consider non-liberal states to be acceptable participants in the global

³³⁹ John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 2003), p. 43.

³⁴⁰ John Rawls, *A Theory of Justice*, revised edition (Oxford: Oxford University Press, 1999), p. 332. Rawls then defines the ‘familiar and traditional principles of justice among free and democratic peoples:

1. Peoples are free and independent, and their freedom and independence are to be respected by other peoples.
2. Peoples are to observe treaties and undertakings.
3. Peoples are equal and are parties to the agreements that bind them.
4. Peoples are to observe a duty of non-intervention.
5. Peoples have a right of self-defence but no right to instigate war for reasons other than self-defence.
6. Peoples are to honour human rights.
7. Peoples are to observe certain specified restrictions in the conduct of war.
8. Peoples have a duty to assist other peoples living under unfavourable conditions that prevent their having a just or decent political and social regime’. (John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 2003), p. 37.)

system of justice. The emphasis on individualism at the heart of Collective Management means that a hierarchical state that organises itself around communitarian values (without the requisite protections for individual ones) with all the potential for oppression of minorities and violations of human rights, can never be a participating member of a liberal global system. As Charles Beitz explains, ‘this leap from the national to the international arena using states as the representatives of their citizens is only possible if all the participatory states are just’.³⁴² There are many cases in which states are not just, as a result of executive branch tyranny, partisan media or the absence of media.³⁴³

I argue that decent regimes may indeed be rational, but cannot be considered reasonable, and so do not permit essential elements of the three strands of justice as fairness; those of fairness, freedom and equality. So instead of the toleration that Rawls prescribes towards states where regimes do not allow certain freedoms but maintain a veneer of political legitimacy, this thesis proposes that such regimes could become legitimate targets for intervention because of the violation of basic human rights implied in the denial of such freedoms as voting or free speech. Some authors challenge the illiberal system in Saudi Arabia and blame it for the 9/11 attack. Wahabism is behind the violent version of Islam that has now spread to fighting in Chechnya, America, Madrid, Libya and Casablanca. Other authors accuse illiberal Israel, because it is not cosmopolitan, of spreading terror not

³⁴¹ Leif Wenar, ‘The Unity of Rawls’s Work’, *Journal of Moral Philosophy* 1, no. 3 (2004), p.2.

³⁴² Charles Beitz, *Political Theory and International Relations* (Princeton: Princeton University Press, 1979), p. 132.

³⁴³ Though the US is a democratic state, it can be argued that the Administration of George W. Bush, elected by a relatively small percentage of the voting US population, used its executive power to manipulate the media to lead the American people to war in Iraq. See the critical approach of Edward S. Herman and Noam Chomsky, *Manufacturing Consent: The Political Economy of the Mass Media* (Vintage: London, 1994). They write in the case of the US escalation of the war in Vietnam, ‘through the mid-sixties, the media loyally fulfilled their function of service to state violence’. p. 237.

just in Palestine but in Europe (Munich), and throughout the Middle East. There is an interconnectedness that has a basis for justifying an intervention in domestic affairs, because the practice at home affects the security of those abroad.

Although I believe the right to wage war is rightly restricted to situations of self-defence, and that there is an obvious instrumental virtue to the principle of military non-intervention, there are other forms of intervention. Also, the right to wage a defensive war is based upon the belief that a state has the right to protect its citizens from military attack by another country. Under a global society, the international order also has a responsibility to protect the basic rights of those citizens who live under non-liberal governments. A society that denies the basic liberal rights of any of its members, be these people of a cultural or religious minority, or a particular gender or class, can be seen to be committing a grave injustice and this would provide grounds for some form of intervention. To deny the acceptability of 'decent' states is therefore not illiberal and intolerant but merely an appreciation that it is only under liberal government that individual rights can be protected. Intervention should in theory be based on the consent of the peoples affected plus the support of other people who share the same values and principles in the overlapping global consensus. In practice, this is a very complex issue with major risks to global stability involved. There may be an overlapping global consensus that the rights of Tibetans are being infringed by the Chinese government, or that the junta in Myanmar is violating human rights, but it is highly complex to understand the consequences of political, economic or military intervention in such cases. Thus the most common forms of intervention in such instances include political and economic sanctions by the international community.

The Collective Management system would provide an approach to cross-border intervention that involves the three sectors in both a bottom-up and a top-down system. It is a system with mechanisms to diminish power and influence deriving exclusively from the top levels. The electoral processes which guide the decision-making processes start at the grass-roots level and rise upwards through the tiers. This endeavours to create a legitimate and accountable structure of representatives so that global issues, such as human rights issues, can legitimately be managed from the top-down. In this way the individuals of the Collective Management system build together from the bottom levels to the top, and then benefit together from the decisions of the top to the bottom. To the extent that the mechanisms of the Collective Management system succeed in providing a way to give voice to the citizens of illiberal states, then interventions can be at the invitation of these individuals. When the top levels of the system decide to intervene in another state's affairs, it is therefore an action that has originated from the will of the people at the bottom-most levels. Yet the difficulties involved in any decision to intervene across borders, and the dangers of 'liberal imperialism,' remain and the likelihood that military interventions could be justified, given unpredictable consequences of such action, remains low.

5.4 Rawls's views on global justice: (2) global distributive justice

Rawls's principles for a just Law of Peoples are far less comprehensive than the principles he considered would be accepted by a just domestic society. In particular, Rawls does not believe that the Law of Peoples would result in a full system of global distributive justice, i.e., the implementation of the difference principle (that inequalities of social or economic welfare are only justified if they are consistent with the least advantaged being as well off

as possible).³⁴⁴ Rawls considered that the difference principle could not be maintained at a global level because, although global interdependence has increased, other requirements, such as the existence of political institutions or a capacity for a universal sense of justice are not yet developed enough in international relations. This means that although he would have supported progressive tax measures to ‘limit inequalities of wealth and to ensure that the political agenda is not controlled by the interests of economically and socially dominant groups’³⁴⁵ at the national level, this is not true at the international level. The principles of the Law of Peoples therefore are considerably different from the three standards of fairness, freedom and equality that defined Rawls’s well-ordered society at the domestic level.

In part, this is a consequence of Rawls’s focus on peoples rather than individuals at the second original position. By concentrating only on the way states can cooperate on the international scale, Rawls ignores the possibility that individuals can interact and cooperate on many different levels, both above and below the national, too. Rawls continues to see the international system as essentially Westphalian; he considers societies to be economically self-sufficient units that are also distributionally autonomous and politically homogenous, unified actors, without internal political differentiation. However, this is no longer true, if it ever was; individuals, businesses, governments and civil society organisations increasingly interact on various levels beyond the national.

³⁴⁴ John Rawls, *A Theory of Justice*, revised edition (Oxford: Oxford University Press, 1999), p. 266 and p. 54.

³⁴⁵ Joshua Cohen, ‘Deliberation and Democratic Legitimacy’ in *Deliberative Democracy: Essays on Reason and Politics*, eds. James Bohman and William Rehg (Cambridge, MA: MIT Press, 1997), p. 69.

As Kant first argued in *Perpetual Peace*, the ‘spirit of commerce’ creates a basis for international cooperation based on self-interest. If social cooperation is the foundation of distributive justice, then one might think that international economic interdependence lends support to a principle of global distributive justice similar to that which applies within domestic society. As Kok-Chor Tan says, ‘As the marketplace becomes one without borders, so should justice be without borders’.³⁴⁶ Although people will continue to favour compatriots over people of other nationalities, this does not mean that international dealings cannot be just. Indeed, because cooperation can be seen to bring a person increased benefits, it is in his or her interest to behave in a just manner to foreigners in order to maintain this system from which they themselves benefit. As human actors are both rational and reasonable, individuals can assume that foreigners can appreciate these benefits too and so will likewise treat them in a just manner. Many other philosophers such as Beitz and Pogge have taken Rawls’s domestic theory of justice and applied it at a global level. As Brian Barry explains, this means that they ‘are committed to universal civil and political rights and the redistribution of material resources for the benefit of those with the least, wherever on earth they may be living’.³⁴⁷

Rawls extends economic distributive justice to the global sphere only as far as necessary to allow a people to maintain a well-ordered society, as ‘the aim of the Law of Peoples would

³⁴⁶ Kok-Chor Tan, *Justice Without Borders: Cosmopolitanism, Nationalism and Patriotism* (Cambridge: Cambridge University Press, 2004), p. 33.

³⁴⁷ Brian Barry, ‘Statism and Nationalism: A Cosmopolitanism Critique’ in *Global Justice*, eds. Ian Shapiro & Lea Brilmayer (New York: New York University Press, 1999).

be fully achieved when all societies have been able to establish either a liberal or a decent regime, however unlikely that may be'.³⁴⁸ He states that:

...although no liberal principle of distributive justice would be adopted for dealing with unfavourable conditions, that certainly does not mean that the well-ordered and wealthier societies have no duties and obligations to societies burdened by such conditions. For the ideal conception of the society of peoples that well-ordered societies affirm direct that in due course all societies must reach, or be assisted to, the conditions that make a well-ordered society possible. This implies that human rights are to be recognised and secured everywhere, and that basic human needs are to be met. Thus the basis of the duty of assistance is not some liberal principle of distributive justice. Rather, it is the ideal conception of the society of peoples itself as consisting of well-ordered societies.³⁴⁹

He further claims:

The problem is often not the lack of natural resources. Many societies with unfavourable conditions don't lack for resources. Well-ordered societies can get on with very little; their wealth lies elsewhere; in their political and cultural traditions, in their human capital and knowledge, and in their capacity for political and economic organisations. Rather the problem is commonly the nature of the public political culture and the religious and philosophical traditions that underlie its institutions. The great social evils in poorer societies are likely to be oppressive government and corrupt elites.³⁵⁰

However, this downplays the issue of how the global system is currently set up; different societies are not starting from a level playing-field. It may be true that many poorer countries have significant resources that they are not fully utilising but the fact remains that corrupt and inefficient regimes prevent them from exploiting these resources fully.

³⁴⁸ John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 2003), p. 5.

³⁴⁹ John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 2003), p. 76.

³⁵⁰ John Rawls, 'The Law of Peoples' in *On Human Rights: The Oxford Amnesty Lectures*, eds. Stephen Shute and Susan Hurley (New York: Basic Books, 1993), pp. 76–77.

Allen Buchanan considers that Rawls ignores the potential for a global basic structure, similar to the one he imagined for his domestic society, where the creation of the basic structure was considered of the first importance. Unlike Rawls, Buchanan extends Rawls's duty of aid to a burdened society to three more principles of global distributive justice: 'a principle of global equality of opportunity, a principle of democratic participation in global governance institutions, and a principle designed to limit inequalities of wealth among societies'.³⁵¹ Buchanan argues that these principles would be a natural outcome of a second original position. These principles would obviously have drastic effects on the global system as it now stands; the UN Security Council, for example, is already under pressure for reform to make it more democratic. These second of Buchanan's principles would extend the reforms even further.

The approach of Collective Management would support the first two of Buchanan's principles, in extending the principles of justice to the global level. These principles would be formulated by the Global Conference, setting the framework within which legislative issues will be settled democratically. I do not, however, argue for Buchanan's third principle, or any version of Rawls' Difference Principle, or any principle regarding limits on inequality. Instead I propose that further distributive principles be decided upon democratically, based on the fair context for individuals to participate in decision-making created by the Collective Management approach. I believe that there is room for reasonable disagreement on the correct principles of distribution; there are serious objections against all leading principles of distributive justice. Thus this thesis leaves further distributive

³⁵¹ Allen Buchanan, 'Rawls' Law of Peoples: Rules for a Vanished Westphalian World', *Ethics* 110, no. 4 (Jul 2000), pp. 711–712.

issues to be worked out in a fair political system, ensured by the adoption of Buchanan's two principles.

It would suggest, however, that, simply as a result of self-interest, a significant redistribution of wealth would be likely if the global system democratically chose whatever international pattern of redistribution it prefers. In the case of the EU, we have seen only minor inter-state transfers—about 1.2% of total EU GDP, some of which goes to poorer regions but much of which goes to agricultural subsidies.³⁵² The most recent redistributive programme of Structural and Cohesion Funds, created to help those regions within the EU whose development is lagging, and due to run from 2007-2013, is expected to see significant redistribution in favour of the 12 new members of the EU which joined in the 2004 and 2007 accession rounds, and whose membership greatly increased the range of disparities within the EU.

This argues against the idea that richer countries would inevitably form a coalition against the poor countries to significantly limit wealth transfers. There are further arguments that suggest it can be in the interests of the rich countries to offer the poorer countries a mutually beneficial global system for the very real benefits that will accrue to themselves from such a system. For example, increasing global stability and reducing the enormous

³⁵² Commenting on fiscal redistribution in the EU, Mikko Mattila notes that the 2001 European Commission Report cites Germany as the biggest net contributor of the period 1995-2000, at 0.66% of GDP in 1995, and Ireland as the biggest net receiver, receiving 4.56% of GDP in 1996. Averaged over the period 1995-2000, Greece was the largest net beneficiary of transfers, receiving an annual average of 3.88% of GDP, equivalent to 391 Euros per capita. However, calculated on the basis of its smaller population, Ireland benefited over the period by an annual average of 598 Euros per capita. On a GDP basis, Germany remained the largest average annual contributor over the period (contributing 0.56% of GDP), but Luxembourg contributed the highest per capita amounts, reaching 169 Euros per capita, on average per annum. European Commission Report 2001, Table 6, Statistical Appendix, as referenced in Mikko Mattila, 'Fiscal Redistribution in the European Union and the Enlargement' (for the Department of

differences in wealth across the world would probably reduce international instability, alleviating the poverty that is the breeding ground for terrorism, and thus arguably making less likely such atrocities as occurred on September 11th, or the London or Madrid bombings, or those in Saudi Arabia, Libya, or Algeria. The United States arguably recognised the need to assist Asia after the Asian financial crash because of the negative effects not helping would have had on the American economy: not only would the region have been left financially weak but also the US would have suffered the potential loss in trading partners' consuming fewer American products, and the risk that a weakened ally would become more politically unstable and subject to subversion or overthrow by fanatical groups such as al Qaeda. The continuing enormous disparities of global wealth therefore do not hurt only the poorer countries. Illegal immigration is an example of how economic injustices can impose universal costs on every society. Not only do those large numbers of people who are not assimilated into the world economy waste a potential source of wealth for all global society, but also the activities they turn to—organised crime, smuggling and terrorism—impose significant costs, including an economic burden on the wealthier countries as well.

The goal of the concept of Collective Management is to explore a system able to produce global distributive justice with an emphasis on equal distribution of opportunities for political and economic participation to all individuals globally. The aim in terms of distribution of political opportunity is to enable individuals in all parts of the world to have their voice heard without being misrepresented or under-represented, to have a vote at the

level of global governance as well as at the regional and national levels. In terms of distribution of economic wealth and income, the approach of Collective Management is less oriented toward formal equal distribution of wealth but favours equality of opportunity to enable the currently less capable countries to choose their own methods of improving their wealth, and engaging in dialogue with the wealthier countries to decide collectively what stabilising transfers would be in the interests of all.

Collective Management therefore aims to reform the global basic structure, to give a say, a voice and weight to the over-ruled peoples in determining their affairs, rather than simply call for enormous redistribution of wealth. By admitting only liberal societies into the structure, and incorporating and transforming the rest, the global overlapping consensus will include the principles of democracy and equality of opportunity, which will allow for a voluntary and co-operative restructuring of opportunity throughout the world as chosen by parties involved. Because of the undeniable benefits that such a structure will bring, the system will be a true overlapping consensus, rather than a *modus vivendi*, and will inspire sincere motivation on the part of participants to comply with the principles agreed. As McClennen argues:

Stability, it could be argued, requires a willingness to restrain one's own demands with respect to distributive formulae if and in so far as one is assured that others are prepared to accept similar constraints... If persons mutually perceive each other to have such a disposition to reciprocity, this will enable them to stabilise their cooperative schemes and thereby remove a persistent form of conflict, conflict that in turn carries with it opportunity costs, and requires the expenditure of resources to resist the distributive moves of others.³⁵³

³⁵³ Ned McClennen, *forthcoming*, p. 301.

The basis of a fair distribution of wealth should therefore be based on the impartiality that the principles of liberalism are based on. As Paul Kelly clarifies, mutual advantage theories (and Collective Management) do not insist that everybody should benefit equally from the economic distribution system, just that they should do so fairly and impartially. Kelly argues that liberalism requires that no particular method of distribution be promoted, in the same way that no particular political system is considered better than another; to do so would be to place a particular ideology above others and would therefore be illiberal. Instead, he argues that liberalism should prevent the ‘wealthy or powerful using their wealth and property to distort the tax system or welfare provision to use economic power for their own sectional advantage’.³⁵⁴ His point, then, is that economic distribution should not undermine citizen equality. The only definite results of a fair economic distribution should therefore be that every individual has ‘access to a basic set of economic resources’.³⁵⁵

In Collective Management the political system ensures that every individual is free and equal with respect to their basic liberties and rights (freedom of speech and assembly, free media); that their basic needs (food, shelter, education) are protected, regardless of which community they live in and regardless of criteria such as colour, religion or gender; and that every individual has equal opportunity, i.e., there is a democratic environment that enables individuals to gain equal access to economic and political resources and power.

³⁵⁴ Paul Kelly, *Liberalism*, (Cambridge, UK: Polity Press, 2005), p. 70.

³⁵⁵ Paul Kelly, *Liberalism*, (Cambridge, UK: Polity Press, 2005), p. 71.

PART 2: COSMOPOLITANISM

5.5 Introduction

The third pillar supporting the concept of Collective Management is the theory of cosmopolitanism, whose core idea is that ‘all human beings, regardless of their political affiliation, do (or at least can) belong to a single community, and that this community should be cultivated’.³⁵⁶ To develop the modern cosmopolitan basis of Collective Management I draw heavily on the work of David Held, who has elaborated on the multidimensional nature of cosmopolitanism in the modern interconnected world. He presents eight principles as a philosophical basis of modern-day cosmopolitanism:

1. Equal worth and dignity
2. Active agency
3. Personal responsibility and accountability
4. Consent
5. Collective decision-making about public matters through voting procedures
6. Inclusiveness and subsidiarity
7. Avoidance of serious harm
8. Sustainability

The first three principles establish a moral philosophy: each individual is a subject of equal moral concern; each person is capable of acting autonomously with respect to the range of choices before them, and each person is responsible and accountable for his or her

³⁵⁶ ‘Cosmopolitanism’, *Stanford Encyclopedia of Philosophy*,
<http://plato.stanford.edu/entries/cosmopolitanism/>

actions.³⁵⁷ Held's individual-rights-based view is consistent with the first pillar of liberal individualism I have adopted, affirming that human beings are autonomous and responsible agents capable of reasoning and choices that must be respected.

Cosmopolitanism provides justification for a system of Collective Management, building directly on the second pillar, the extended theory of global justice developed in this chapter. I argue that the combination of all three pillars creates the potential for more just, global decision-making structures designed to reach an agreed framework of action through a legitimate process of inclusive collective decision-making at multiple levels.

The concept of Collective Management seeks to create more inclusive democratic structures at local, regional and global levels. As Held notes, this is not an easy task: 'if the agent at the heart of modern political discourse, be it a person, a group or a collectivity, is locked into a variety of overlapping communities—'domestic' and 'international'—then the proper 'home' of politics and democracy becomes a puzzling matter'.³⁵⁸ Held suggests it may be tackled by a 'double-democratisation' of political life: democracy will be enhanced within states and international organisations by extending it to the public realm through 'sub-national entities or trans-national communities, organisations and agencies' (i.e., through civil society and its representatives) between and across states. In the cosmopolitan democracy model, trans-national democracy and territorial democracy are conceived as mutually reinforcing rather than conflicting principles of political rule.

³⁵⁷ Held's first three principles correspond closely to what Ronald Dworkin refers to as the two principles of human dignity: the 'intrinsic value of a human life' and 'personal responsibility for a human life'. See pp. 9-10 in *Is Democracy Possible Here?: Principles for a New Political Debate* (Princeton and Oxford: Princeton University Press, 2006).

³⁵⁸ David Held et al., *Global Transformations: Politics, Economics and Culture* (Cambridge, UK: Polity Press, 1999), p. 225.

In presenting the arguments in support of the concept of Collective Management I will explain and adopt Held's three principles relating to legitimate exercise of public power in agreed frameworks of action or regulatory regimes—principles 4, 5 and 6 from the list above. These principles are consent, collective decision-making on public issues through voting procedures, and inclusiveness and subsidiarity, each of which I consider in more detail in Section Seven of this chapter. Cosmopolitanism can, Held writes, 'be taken to refer to those forms of political regulation and law-making that create powers, rights and constraints which go beyond the claims of nation-states and which have far-reaching consequences, in principle, for the nature and form of political power'.³⁵⁹

I will argue in the remaining part of this chapter that Collective Management can be called a 'cosmopolitan democracy' because it is based on the application of cosmopolitan principles: the consent of all citizens, globally expressed by direct voting to elect representatives from civil society and business sectors; the participation of these representatives in collective decision-making as formal members of regional and global IGOs; all within a multi-level inclusive governance structure where each level is assigned responsibility for the issues with which it is best equipped to deal.

Brock and Brighouse, having reviewed the work of many scholars in the field of cosmopolitanism, distinguish between *weak* and *strong* cosmopolitanism as follows:

The particular focus of cosmopolitan thinking is on the content and weight of obligations beyond national (or, sometimes, state) boundaries, relative to

³⁵⁹ David Held, *Global Covenant: The Social Democratic Alternative to the Washington Consensus* (Cambridge, UK: Polity Press, 2004), p. 170.

the content and weight of those obligations to which national and state boundaries give rise. Weak cosmopolitanism just says that there are *some* extra-national obligations that have some moral weight. Strong cosmopolitanism, by contrast, claims that, at the most fundamental level, there are no society-wide principles of distributive justice that are not also global principles of distributive justice; and that our fellow nationals not only have no claim on us, but we have no right to use nationality (in contrast with friendship, or familial love) as a trigger for our discretionary behaviour.³⁶⁰

They note that between these two extremes are various views concerning the content and relative weight of obligations and prerogatives relative to compatriots and non-compatriots.

Brock and Brighouse also suggest that this distinction between strong and weak cosmopolitanism, although useful, still requires a great deal more nuance.³⁶¹ It is beyond the scope of this thesis to attempt a full analysis of the relative positions of strong and weak cosmopolitanism. In this thesis I support the ‘elements’ of cosmopolitanism. However, adopting a strong cosmopolitan approach would limit the practicability of the Collective Management system. In order to present a proposal which is realistic and possible to implement, I therefore support the principle of cosmopolitanism, but I do not advocate that the Collective Management system must adhere to the full weight of obligations associated with strong cosmopolitanism.

I further argue that Collective Management is most consistent with what Liesbet Hooghe and Gary Marks have called ‘Type II’ multi-level governance, because this type gives most

³⁶⁰ Gillian Brock and Harry Brighouse, eds., *The Political Philosophy of Cosmopolitanism* (Cambridge: Cambridge University Press, 2005), p. 3.

³⁶¹ ‘For one thing, everyone has to be at least a weak cosmopolitan now if they are to maintain a defensible view, that is to say, it is hard to see how one can reject a view that all societies have *some* global responsibilities. Many theorists who conceive of themselves as anti-cosmopolitan endorse international obligations that are, at least in our real world context, quite demanding.’ (Gillian Brock and Harry Brighouse, eds., *The Political Philosophy of Cosmopolitanism* (Cambridge: Cambridge University Press, 2005), pp. 3-4.)

choice to the individual to participate in overlapping jurisdictions³⁶². As developed below, the Type II system of multi-level governance allows individuals to participate in task-specific jurisdictions, intersecting memberships with no limit to the number of jurisdictional levels.

5.6 Cosmopolitanism, liberal individualism and global justice

In this section, I show how cosmopolitanism is fully consistent with the first two pillars of liberal individualism and global justice, and how it provides additional philosophical support for the concept of Collective Management. Held's first three principles are fully consistent with the moral world-view of liberal individualism and liberal democratic values. He writes: 'in the first instance, cosmopolitanism refers to those basic values that set down standards or boundaries which no agent, whether a representative of a global body, state or civil association, should be able to violate'. Held's principle 'affirms that all human beings must be able to enjoy the pursuit of activity without the risk of arbitrary or unjust interference while recognising that this liberty applies to everyone'.³⁶³ This embodies the concept of human rights that each person can enjoy and must respect in each other person: 'each person has an equal interest in active agency or self-determination'.³⁶⁴ Thus cosmopolitanism, according to Held, can be taken as the moral and political outlook which builds on the strengths of the liberal multilateral order, particularly its commitment to universal standards, human rights and democratic values. They form the foundation for the

³⁶² Liesbet Hooghe and Gary Marks, 'Unraveling the Central State, But How? Types of Multi-Level Governance', *Vienna Institute for Advanced Studies Political Science Series* 87 (March 2003) http://www.ihs.ac.at/publications/pol/pw_87.pdf

³⁶³ David Held and Anthony McGrew, eds., *The Global Transformations Reader: An Introduction to the Globalisation Debate*, (Cambridge, UK: Polity Press, 2000), p. 516.

protection and nurturing of each person's equal interest in the determination of the institutions that govern their lives. Brian Barry writes: 'It is this spirit that animates contemporary cosmopolitanism, which is a moral stance consisting of three elements: individualism, equality, and universality'.³⁶⁵

These cosmopolitan principles create a moral stance that promotes tolerance of diversity and the importance of the individual identity over the nationalism or clan affiliation that I have stressed in Chapter Four Section Eight; this provides a favourable world-view for cooperation in a Collective Management system. As Pogge notes, cosmopolitanism supports 'the generality of the rights and obligations that fall on all religions, cultures and states, not just those that are considered acceptable'.³⁶⁶ A tolerant world-view promotes trust, as Thomas Friedman argues: 'one of the greatest virtues a country or community can have is a culture of tolerance. When tolerance is the norm, everyone flourishes—because tolerance breeds trust, and trust is the foundation of innovation and entrepreneurship. Increase the level of trust in any group, company, or society, and only good things happen.'³⁶⁷

³⁶⁴ David Held and Anthony McGrew, eds., *The Global Transformations Reader: An Introduction to the Globalisation Debate*, (Cambridge, UK: Polity Press, 2000), p. 516.

³⁶⁵ Brian Barry, 'Statism and Nationalism: A Cosmopolitanism Critique' in *Global Justice*, eds. Ian Shapiro & Lea Brilmayer (New York: New York University Press, 1999), p. 35.

³⁶⁶ However, if we accept the principle of universality and the generality of rights and obligations, then we must realise that this applies to *all* states, not just those that the West considers to be desirable trading partners. Even those states regarded by the West as 'rogue' states, or states that support Wahabism or Al-Qaeda, will still be part of the global idealist community, and therefore are entitled to share in the universal rights and obligations. Ideology that is considered by some to be 'unacceptable' does not change the fact that the states practising it exist; they are out there, and they are part of the universality of global idealism.

³⁶⁷ Thomas Friedman, *The World is Flat: A Brief History of the Twenty-first Century*, (London: Penguin Press, 2006), p. 414.

Cosmopolitanism starts from the focus on individuals, who are members of one global society,³⁶⁸ and, as Waldron emphasises, whose identity is not ultimately defined by national, hereditary or cultural factors.³⁶⁹

The fundamental principles of cosmopolitanism do not dictate a certain system of global governance to achieve global justice. Brian Barry argues: ‘there is no automatic move from the ethical premises to any particular conclusion about the ideal world constitution. Where moral cosmopolitanism shows itself to be more distinctive is in its denial that membership of a society is of deep moral significance when the claims that people can legitimately make on one another are assessed’.³⁷⁰ Cosmopolitanism supports the individual and the view that he or she must be constrained by principles of global justice. Samuel Scheffler writes:

... the cosmopolitan character of the moderate view lies in its insistence that there are, in fact, substantive norms of global justice in addition to the norms that apply within a single society, and in its denial that the content of social justice can be arrived at by considering the individual society as a closed system in isolation from all others. The principles of social justice,

³⁶⁸ The word ‘cosmopolitan’ itself derives from the Greek word *kosmopolitês* (‘citizen of the world’), and was widely used by ancient philosophers, such as the Stoics and Cynics, to describe a universal love of humankind as a whole, regardless of nation. Held and McGrew describe cosmopolitanism as representing ‘a faith in the idea that humankind is bound together morally, if not materially, in the politics of spaceship earth’. David Held and Anthony McGrew, eds., *The Global Transformations Reader: An Introduction to the Globalisation Debate*, (Cambridge, UK: Polity Press, 2000), p. 143.

³⁶⁹ Jeremy Waldron, ‘Minority Cultures and the Cosmopolitan Alternative’ in *The Rights of Minority Cultures*, ed. Will Kymlicka (Oxford: Oxford University Press, 1997), p. 95. He writes: ‘The cosmopolitan may live all his life in one city and maintain the same citizenship throughout. But he refuses to think of himself as *defined* by his location or his ancestry or his citizenship or his language. Though he may live in San Francisco and be of Irish ancestry, he does not take his identity to be compromised when he learns Spanish, eats Chinese, wears clothes made in Korea, listens to arias by Verdi sung by a Maori princess on Japanese equipment, follows Ukrainian politics, and practices Buddhist meditation techniques’.

³⁷⁰ Brian Barry, ‘International Society from a Cosmopolitan Perspective’ in *International Society: Diverse Ethical Perspectives*, eds. David R. Mapel and Terry Nardin (Princeton: Princeton University Press, 1998), p. 145.

according to the moderate cosmopolitan, are not replaced, but they are constrained, by the principles of global justice.³⁷¹

Cosmopolitanism is thus consistent with the view developed in Chapter Four that individuals can engage in fruitful cooperation due to their inherent moral nature (Rawls's 'reasonable moral psychology') and is supported further by the instrumental morality of Hume and by McClennen's theory of instrumental rationality. Brian Barry argues that 'universal morality consists largely in general prescriptions that, in the actual circumstances of everyday life, generate specific obligations: to keep promises, to reciprocate benefits, and to play our part in the social practices of our society'.³⁷² Thus cosmopolitanism lends supports to the view that humans can engage in fruitful cooperation,³⁷³ and that cooperative ventures can be a Pareto optimal equilibrium because of each person's inner-commitment to abide by the moral code.

By adopting Held's cosmopolitan principles of consent, collective decision-making and inclusiveness and subsidiarity, the system of Collective Management has a strong basis for legitimate exercise of political power. These principles support deliberation by all

³⁷¹ Samuel Scheffler, 'Conceptions of Cosmopolitanism', *Utilitas* 11, no. 3 (Nov 1999), p. 260. However, he also argues that 'moderate cosmopolitanism about justice will be a compelling position only if it proves possible to devise human institutions, practices, and ways of life that take seriously the equal worth of persons without undermining people's capacity to sustain their special loyalties and attachments'. (p. 275)

³⁷² Brian Barry, 'Statism and Nationalism: A Cosmopolitanism Critique' in *Global Justice*, eds. Ian Shapiro & Lea Brilmayer (New York: New York University Press, 1999), p. 59. He illustrates his point thus: 'If I ask why I am obliged to contribute to the old-age pension of somebody I have never met and have no particular interest in who lives in Rotherham, but not to the pension of somebody equally distant to me who lives in Rennes, the answer is that I belong to the same scheme of social insurance as the first but not the second.'

³⁷³ Examples of 'fruitful cooperation' range from Hume's account of two men in a rowing boat to the efforts of Canadian housewife Jody Williams working together with NGOs and Princess Diana to campaign against landmines. In other words, any outcome that is achieved by the cooperation of two or more individuals or groups that could not have been achieved, or that could not have been achieved as quickly, effectively or successfully, by one person/group alone.

stakeholders, which, as noted earlier, strengthens commitment to abide by the decisions reached. Because of the inclusion of affected stakeholders, particularly those in civil society (the least-heard voice), the approach gains legitimacy by being more democratic than most existing global governance structures.

Held's fourth principle recognises that 'a commitment to equal worth and personal responsibilities requires a non-coercive process in and through which people can pursue and negotiate their interconnections, interdependence and difference'.³⁷⁴ The concept of Collective Management supports collective decision-making processes based on the consent of individuals globally, where elected representatives engage in deliberation and decision-making about matters that affect them.

However, as noted in Chapter Three, the approach would include the development of enforcement mechanisms over time, so the process of collective decision-making would be based on consent but then an element of coercion would be required for enforcement of legitimate decisions. While the issue of enforcement is complex and controversial, and cannot be fully dealt with in this thesis, I support the view that this enforcement mechanism at the global level must be based on the principles of a democratic, cosmopolitan legal order. National boundaries have traditionally demarcated the basis on which individuals are included and excluded from participation in decisions affecting their lives. It is easier to put into practice the notion of consent legitimating governance at the national level. The system of Collective Management provides a possible solution to the problem of how to

³⁷⁴ David Held and Anthony McGrew, eds., *The Global Transformations Reader: An Introduction to the Globalisation Debate*, (Cambridge, UK: Polity Press, 2000), p. 517.

transfer this notion to the international level. The system gains legitimacy through the systems of voting and consent-giving—Held’s fourth and fifth principles—which take all individuals into account. Power is held to account through these systems of consent-giving, which must be entrenched and enforced through democratic public law. Thus the system of Collective Management relies not only on a democratic political order, but also on a democratic legal order—‘an order circumscribed by, and accounted for in relation to, democratic public law’.³⁷⁵ This legal order must penetrate all levels of the multi-level Collective Management system. Held writes, ‘if power is to be held accountable wherever it is located—in the state, the economy or cultural sphere—then a common structure of political action needs to be entrenched and enforced through a democratic public law’.³⁷⁶

The just nature of such a system promotes commitment to adhere to the rules of the system. Nevertheless, even within a well-defined system of overlapping, multi-level authorities that promotes commitment to the rules of the system, the more complex nature of global systems increases the chance that individuals or authorities are not held to account by the direct consent of their constituents—the very action that legitimates their rule. Indeed, as issues go beyond the national level the question of proper boundaries for constituencies becomes a complex matter in itself.

It is therefore necessary to have a form of enforcement mechanism overseeing the system to deal with cases in which the direct consent of the constituents, or lack thereof, is not sufficient to legitimate or remove the power centre. This enforcement mechanism at the

³⁵³ David Held, ‘Globalisation and the Future of Democracy’, Fathom Online Learning: <http://www.fathom.com/feature/122000/>

³⁷⁶ David Held, ‘Globalisation and the Future of Democracy’, Fathom Online Learning: <http://www.fathom.com/feature/122000/>

global level must be based on the principles of a democratic legal order. Furthermore, its scope should be limited to the implementation of basic cosmopolitan law, punishing transgressions in cosmopolitan law but otherwise delegating responsibility for enforcement to the subsidiary legal mechanisms at the appropriate level. In this way the Collective Management enforcement mechanism upholds the cosmopolitan laws on which the system is based, but also adheres to the principles of subsidiarity that is in itself one of the founding cosmopolitan principles. Collective Management thus becomes ‘a system of diverse and overlapping power centres, shaped and delimited by democratic law’.³⁷⁷

Held’s sixth principle emphasises ‘the necessity of both the decentralisation and centralisation of political power’.³⁷⁸ This principle is applied in the Collective Management system. The global IGOs that would be reformed to include the three main actors in global governance today—government, business and civil society—represent the centralised aspect of power. However, equally crucial to the running and success of the Collective Management system is the decentralisation to regional and local domestic authorities. Held notes that the sixth principle ‘should be taken to entail that decision-making should be decentralised as much as possible, maximising each person’s opportunity to influence the social conditions that shape his or her life’.³⁷⁹ That is, by decentralising power as much as possible, each individual has greater control to shape and influence the decisions that affect their daily life. Through efforts to achieve maximum decentralisation, the political system

³⁷⁷ David Held, ‘Globalisation and the Future of Democracy’, Fathom Online Learning: <http://www.fathom.com/feature/122000/>

³⁷⁸ David Held and Anthony McGrew, eds., *The Global Transformations Reader: An Introduction to the Globalisation Debate*, (Cambridge, UK: Polity Press, 2000), p. 518.

³⁷⁹ David Held and Anthony McGrew, eds., *The Global Transformations Reader: An Introduction to the Globalisation Debate*, (Cambridge, UK: Polity Press, 2000), p. 518.

tends as close as possible to the principles of individualism. I explain below how Collective Management would aim to realise a practical system of inclusive, collective decision-making based on both centralisation and decentralisation.

5.7 The '3x3=3' model as a system of multi-level governance

I argue below that the Collective Management model is a particular form of multi-level governance that effectively implements Held's 'double democratisation' through national democracy *and* regional and global levels, including civil society and other trans-national entities in global governance.

In their 2003 paper, Liesbet Hooghe and Gary Marks note that, despite the vast and increasing body of work on the subject of multi-level governance, there is no consensus about how multi-level governance should be structured.³⁸⁰ Debate revolves around questions of jurisdictional design: should jurisdictions be designed around communities or policy problems? Should they be functionally specific or bundle competencies together? Should they be limited in their number of levels or be allowed to proliferate limitlessly? Should they be designed to last or to be fluid? Hooghe and Marks propose that these fundamental issues of jurisdictional design can be conceptualised as two logically coherent but contrasting types of governance, as summarised in the table below.

Table 5.1 Comparison of Type I and Type II forms of multi-level governance

TYPE I	TYPE II
General-purpose jurisdictions	Task-specific jurisdictions
Non-intersecting memberships	Intersecting memberships
Jurisdictions organised in a limited number of levels	No limit to the number of jurisdictional levels
System-wide architecture	Flexible design

Source: Liesbet Hooghe and Gary Marks, 'Unraveling the Central State, But How? Types of Multi-Level Governance', *Vienna Institute for Advanced Studies Political Science Series 87* (March 2003), p. 7

I argue that Collective Management is one form of Type II multi-level governance supported by principles of cosmopolitanism. Because the Type II system favours task-specific jurisdictions at an unlimited number of jurisdictional levels, it provides all individuals with the opportunity to express consent at an appropriate level of governance on any issue relevant to them, fulfilling Held's fourth principle of consent. Because it is based on intersecting membership, the Type II system allows citizens to express consent on as many relevant issues of governance as there are task-specific jurisdictions. The combination of these three Type II characteristics also provides individuals with a full range of opportunities for collective decision-making about public matters—Held's fifth principle. The fourth characteristic of Type II systems—flexible design—means that if there is any issue for which there is not adequate opportunity for collective decision-making or giving consent, Type II systems are able to adapt to respond to the shortfall. The combination of all four characteristics provides sufficient access to all individuals to governance discussions and decision-making processes—regardless of nationality, areas of

³⁸⁰ Liesbet Hooghe and Gary Marks, 'Unraveling the Central State, But How? Types of Multi-Level Governance', *Vienna Institute for Advanced Studies Political Science Series 87* (March 2003), p. 1,

interest, or the governance levels under which these individuals fall—to secure Held’s sixth principle of inclusiveness and subsidiarity.

In contrast, Type I governance is a more rigid form of non-intersecting, multi-level governance that retains the primary importance of territorial borders over specific public matters and functions. Governments remain the fundamental unit of governance, and less emphasis is on individual choice regarding what issues jurisdictions ought to address. The system is less flexible, and thus less able to adapt to the changing needs of the international citizens it governs. Type I governance will therefore suffer similar failings of legitimacy and accountability, as well as of efficiency, as currently experienced by the Westphalian system of international relations. It also fails to achieve Held’s cosmopolitan principles. The non-intersection of a limited number of general-purpose jurisdictions cannot provide sufficient opportunity for citizens to express consent on all governance issues, and or allow all citizens access to the appropriate forums of collective decision-making. In addition, the inflexible, territorially-defined boundaries of the limited levels of governance jurisdictions will be unable to account for certain individuals, e.g. people in multi-ethnic states, stateless people, and ethnic minorities, just as the current Westphalian system is unable to. In this way it fails to achieve the cosmopolitan principle of inclusiveness and subsidiarity.

Collective Management proposes to follow a Type II approach to governance but it attempts to adhere even more rigorously to the cosmopolitan principles through its ‘3x3=3’ system of governance. The benefits of including greater participation by civil society in particular were discussed in Chapter Two, and the detailed mechanisms by which civil

society and business sector representatives can be included have been explained in Chapter Three. Building a global structure and increasing the voice of civil society will continue the trend already in evidence.

I argue in more detail below how Type II governance has the attributes necessary to uphold Held's cosmopolitan principles of consent, collective decision-making on public matters, and inclusiveness and subsidiarity, whereas Type I governance is more firmly grounded in inflexible Westphalian notions of territoriality. I then illustrate how Collective Management proposes a *global* multi-level system of governance, and that this global multi-level system of governance corresponds more closely to Type II governance and therefore to the cosmopolitan principles necessary for a system of international governance based on cosmopolitan norms of global justice.

I now further examine Held's cosmopolitan principles of consent, collective decision-making on public matters, and inclusiveness and subsidiarity, and I consider how each in turn corresponds to the Type II system of governance explained above.

Principle Four: Consent

Type II governance is fragmented into specialised jurisdictions, designed around specific functions and tasks, e.g. providing a particular local service, solving a particular common resource problem, monitoring water quality of a particular river, or adjudicating international trade disputes. This leads to a governance system in which 'each citizen...is

served not by ‘the’ government, but by a variety of different public service industries³⁸¹ and bears more resemblance to, for example, the Swiss system of governance than to the French system.

Thus Type II jurisdictions recognise the importance of the individual, of business and civic interests, and of both developed and developing interests, and as such may be formed around any issue, interest groups or individuals. As a result, the potential number of jurisdictions is vast, and jurisdictions are not aligned on just a few levels but operate at numerous territorial scales, unlike Type I jurisdictions. Type II governance is widely advocated by public choice theorists who argue that each public good or service should be provided by the jurisdiction that effectively internalises its benefits and cost.

Because Type II systems are formed in this way—from numerous, task-specific jurisdictions—they provide the individual citizen with many opportunities to identify and join those jurisdictions that are relevant to that individual, and to express consent on the issues at the heart of the jurisdiction, thus fulfilling the cosmopolitan principle of consent.

By contrast, Type I governance is based on theories of federalism and is centred on power-sharing among a limited number of governments operating at just a few levels. The unit of analysis remains the individual government rather than the individual policy (as in Type II governance) or the individual citizen (as in an ideal form of cosmopolitan direct democracy). Type I multi-level governance therefore only allows for jurisdictions at a limited number of levels. The levels of jurisdictions are ‘general-purpose’ rather than ‘task

³⁵⁹ Ostrom and Ostrom, in Liesbet Hooghe and Gary Marks, ‘Unraveling the Central State, But How? Types of Multi-Level Governance’, *Vienna Institute for Advanced Studies Political Science Series 87* (March 2003), p. 10, http://www.ihs.ac.at/publications/pol/pw_87.pdf

specific’—that is, they bundle together multiple functions, including a range of policy responsibilities and, in many cases, a court system and representative institutions. In Europe, for example, local governments often exercise ‘a wide spread of functions, reflecting the concept of general-purpose local authorities exercising comprehensive care for their communities’.³⁸² Limited numbers of general-purpose jurisdictions are unlikely to allocate sufficient time and resources to a full range of specific issues, thus depriving individuals of the opportunity to debate or give consent to these issues.

Principle Five: Collective decision-making about public matters through voting

Type II memberships of jurisdictions can, and commonly do, intersect and overlap. As noted by Alessandra Casella and Barry Weingast, ‘There is generally no reason why the smaller jurisdictions should be neatly contained within the borders of the larger ones. On the contrary, borders will be crossed, and jurisdictions will overlap. The ‘nested’, hierarchical structure of the nation-state has no obvious economic rationale and is opposed by economic forces’.³⁸³ The result of task-specific, overlapping jurisdictions is a system somewhat ‘akin to a marble cake’.³⁸⁴ Overlapping memberships of jurisdictions, which under Type II are also numerous and issue-specific, provides individuals with even more

³⁸² Alan Norton, in Liesbet Hooghe and Gary Marks, ‘Unraveling the Central State, But How? Types of Multi-Level Governance’, *Vienna Institute for Advanced Studies Political Science Series 87* (March 2003), p. 8, http://www.ihs.ac.at/publications/pol/pw_87.pdf

³⁸³ A. Casella and B. Weingast, in Liesbet Hooghe and Gary Marks, ‘Unraveling the Central State, But How? Types of Multi-Level Governance’, *Vienna Institute for Advanced Studies Political Science Series 87* (March 2003), p. 10, http://www.ihs.ac.at/publications/pol/pw_87.pdf

³⁸⁴ Liesbet Hooghe and Gary Marks, ‘Unraveling the Central State, But How? Types of Multi-Level Governance’, *Vienna Institute for Advanced Studies Political Science Series 87* (March 2003), p. 11, http://www.ihs.ac.at/publications/pol/pw_87.pdf

opportunities to achieve the cosmopolitan principles of collective decision-making and expressing consent.

Reiner Eichenberger and Bruno Frey argue that leaders of Type II jurisdictions are induced by two mechanisms to remain accountable to their members and to conform closely to their members' preferences.³⁸⁵ First, the possibility of entry to and exit and from jurisdictions and the possibility of overlapping jurisdictions and intersecting membership mimics market competition. Second, individuals have the *right* to vote on the public matters addressed by each jurisdiction, and multiple overlapping jurisdictions provide ample *opportunity* to vote, thus establishing *political competition*. The existence of opportunity for voting in the presence of jurisdictional competition not only achieves the fifth cosmopolitan principle—collective decision-making through voting—but it also contributes to efficiency and legitimacy within jurisdictions.

Eichenberger and Frey note that where the exit opportunity may not be sufficient to induce governments to act efficiently, citizens should directly elect the officials in charge of jurisdictions, and should be given the opportunity to initiate popular referenda on specific issues, as these democratic institutions are known to raise efficiency in the sense of caring well for individual preferences.³⁸⁶

³⁸⁵ As laid out in Reiner Eichenberger and Bruno Frey, 'Enlarging the Union in Europe and Beyond: Towards Flexible and Democratic Integration via FOCJ' (unpublished manuscript), p. 7, <http://www.unc.edu/depts/europe/comferences/mlg/papers/FOCJNCarol1.doc>

³⁸⁶ Reiner Eichenberger and Bruno Frey, 'Enlarging the Union in Europe and Beyond: Towards Flexible and Democratic Integration via FOCJ' (unpublished manuscript), p. 8, <http://www.unc.edu/depts/europe/comferences/mlg/papers/FOCJNCarol1.doc>

The membership boundaries for Type I governance do not intersect, either in the case of jurisdictions at any one level, or of jurisdictions across multiple levels. Membership boundaries are usually territorial, as in nation-states and local governments, but can also be communal as, for example, in communal self-governance in the Ottoman Empire or religious self-governance in India. Jurisdictions are defined by durable boundaries that are non-intersecting at any particular level, and memberships of jurisdictions at higher and lower tiers do not intersect. In this way the system extends the Westphalian principle of exclusivity into the domestic arena and every citizen is, in effect, 'located in a Russian Doll set of nested jurisdictions, where there is one and only one relevant jurisdiction at any particular territorial scale'.³⁸⁷ Unlike Type II systems, such territorially-limited, distinct jurisdictions are likely to limit any individual's access to collective decision-making forums. Unless there are sufficient, accessible forums for detailed discussion, then even such voting procedures as exist may produce outcomes that do not truly represent individuals' real interests.

Principle Six: Inclusiveness and subsidiarity

Type II jurisdictions are intended to respond flexibly to changing citizen preferences and functional requirements. In this way the mobility of citizens among multiple competing jurisdictions provides a functional equivalent to market competition, and ensures that jurisdictions remain accountable to the individuals and interests they represent. A flexible system is able to adapt in the face of changing citizen needs, or respond to lack of

³⁸⁷ Liesbet Hooghe and Gary Marks, 'Unraveling the Central State, But How? Types of Multi-Level Governance', *Vienna Institute for Advanced Studies Political Science Series 87* (March 2003), p. 7,

discussion forums on specific issues or at specific levels of governance. Type II jurisdictions are not only able to emerge at all levels of governance, but jurisdictions at different levels are also free to establish cooperation in those matters in which cooperation is important to success of public reforms, unlike Type I jurisdictions which are constrained by territorial borders and bureaucracy. This flexibility is very user-friendly: individuals need not be members of established communities in order to participate in discussion and decision-making processes, as new forums and processes will appear to cater to individuals. In this way, Type II flexibility is able to include all individuals in whatever capacity best suits them, and thus realises the cosmopolitan principle of inclusiveness and subsidiarity.

Examples of this Type II flexibility are visible in the responses to the demands for Catalan, Basque and Galician autonomy or independence in Spain, and nationalist challenges from Scottish, Welsh and Irish identities to the unitary United Kingdom. In both Spain and the UK a degree of devolution and decentralisation has been carried out in response to these demands. Increasing decentralisation in the United Kingdom has seen responsibility for many traditional government areas, such as health and education services, being given to local rather than national governments. If this Type II process were applied to the international structure, a great deal of diversity could be tolerated by a system that would otherwise tend towards the repressive uniformity of Type I governance. A Scot, attending a different school system from a Welshman or a Frenchman, would feel no less British or European, and so cultural preferences, local traditions and necessary differences arising from geography etc. could all be accommodated and even encouraged by a Type II multi-level system that allocated specific issues to the most appropriate jurisdictional level.

Unlike Type II governance, the Type I framework of territorial jurisdictions is rigid and inflexible throughout the system. Type I jurisdictions are intended to be, and usually are, stable for periods of several decades or more, although the allocation or policy competencies across jurisdictional levels is flexible. Type I jurisdictional reform—creating, abolishing, or radically adjusting new jurisdictions—is costly and unusual. The institutions responsible for governance are ‘sticky’ and usually outlive the conditions that brought them into being. Type I governance attributes can be seen in the institutions of both the US federal government and even small French towns (which allocate an important and formal role to local police forces, the *Marie*, etc.). Even though these two examples vary in scale, they have much more in common with each other than either one does with Type II governance arrangements.

The negative outcomes of such territorial inflexibility are evident in many areas of the world. The Israeli-Palestinian conflict demonstrates that a shared territory and common historical memories can be divisive rather than unifying. In many other cases, merely living together in the same territory and under the same government, or sharing economic and legal systems, is insufficient to merge different communities into one nation, as evidenced by the political reality in Canada, Belgium, the former Yugoslavia and the former Czechoslovakia.

By not basing jurisdictions around specific issues and functions, it is harder for individuals to find the appropriate forums of discussion and collective decision-making about public matters, and thus to give their consent via voting procedures. The lack of flexibility in the Type I system makes it additionally difficult to adapt and cater to all citizens’ needs. The territorial focus and general-purpose jurisdictions of Type I systems are unlikely to account

adequately for such issues as minority rights, multi-ethnic states, or stateless people that are current pressing issues. Thus Type I systems are unlikely to fulfil the cosmopolitan principle of inclusiveness and subsidiarity.

Like Type II governance systems, Collective Management and the '3x3=3' system of international governance establish the individual as the fundamental unit of political consideration, and advocate the active participation of civil society and business interests in international governance as the means by which individuals are best represented. The '3x3=3' system of Collective Management also advocates that responsibility be allocated to the three sectors at all three levels of governance. It emphasises the importance of interest-based groups of all types and sizes, from the individual celebrities working with the UN to the enormous tripartite membership of the ILO. In this way Collective Management conforms closely to Type II criteria of unlimited number of jurisdictional levels. It is also in favour of multiple and intersecting memberships between jurisdictions, as in Bull's example of the Scotsman who is also a member of the British and European jurisdictions.

From the local to the international level, Collective Management favours coalition-building between Northern and Southern NGOs on important issues. It advocates that democratically-elected representatives of all three sectors of society, from all levels of governance with specific interests (e.g. trade, labour issues, financial issues), gather together on the boards of the IGOs representing these interests. In these ways Collective Management identifies issue-specific jurisdictions, as do Type II systems. Finally, in Appendix Two I explain in detail my proposal for a Global Conference at which representatives of all three sectors from all levels of governance may jointly decide the rules to govern the international system, the methods by which to implement these rules,

and the systems through which to monitor and enforce them. This demonstrates that in designing the international system, Collective Management is flexible to the needs of all participants, unlike the territorially-based Type I models. By conforming to the criteria of the Type II systems of governance, Collective Management is therefore able to satisfy Held's cosmopolitan principles as described above. Multiple, overlapping, interest-based jurisdictions freely provide the individuals of the Collective Management system with access to collective decision-making about public matters. Voting at multiple levels and through multiple jurisdictions allows consent to be given, and voting for representatives creates political competition. Finally, flexibility of jurisdictions based around interest groups, e.g. regional-level NGO-business collaborations, and the possibility of entry and exit to and from these groups, creates the equivalent of market competition and provides the incentive for leaders of jurisdictions to remain accountable to the interests of their members.

5.8 Collective Management and cosmopolitan multi-level citizenship

The Collective Management approach as a Type II system immediately prompts a rethinking of the concepts of citizenship. It challenges the assumption that the 'political community' of which citizens are members is necessarily the nation-state, raising instead the cosmopolitan possibility of multi-level citizenship. Andrew Linklater sees an example of this in the concept of citizenship and sovereignty in the European Union: people are members of one state *and* citizens of the Union under Article 8 of the European Union

Treaty.³⁸⁸ They therefore have recourse to their rights as a European citizen, such as free movement and right of residence, while the states still maintain sovereignty in many areas. However, people are *also* members of regional and national societies. Therefore, as Bull describes it, a Scotsman will be part of ‘a Scottish authority in Edinburgh, a British authority in London, and a European authority in Brussels’.³⁸⁹ This structure of many loyalties and sources of authority is the post-Westphalian model of states, and would be embodied in Collective Management. It allows for the protection of minorities via representation by trans-national institutions and the right of appeal to a universally-accepted legal framework of rights.

Fukuyama recognises the need for a form of multi-level citizenship by identifying the opportunity for issue-specific diversity. He notes, ‘the world is far too diverse and complex to be overseen properly by a single global body. A true liberal principle would argue not for a single, overarching, enforceable liberal order but rather for a diversity of institutions and institutional forms to provide governance across a range of security, economic, environmental, and other issues’.³⁹⁰ He argues that many European countries have already succeeded in encasing their sovereignties in a series of overlapping institutions, including

³⁸⁸ Andrew Linklater, ‘Citizenship and Sovereignty in the Post-Westphalian European State’, in *Re-imagining Political Community: Studies in Cosmopolitan Democracy*, eds. Daniele Archibugi, David Held and Martin Kohler (Polity Press: Cambridge, 1998), p. 130.

³⁸⁹ Hedley Bull, ‘The State’s Positive Role in World Affairs’, *Daedalus* 108, no. 4 (1979), p. 114.

³⁹⁰ Francis Fukuyama, *America at the Crossroads: Democracy, Power, and the Neoconservative Legacy* (New Haven: Yale University Press, 2006), pp. 153, 158, and 162–3. He notes: ‘It is not surprising, then, that Europeans on the whole regard the United Nations as more legitimate than do Americans’. Given this conclusion, he argues that an appropriate agenda for American foreign policy would be to ‘promote a world populated by a large number of overlapping and sometimes competitive international institutions, what can be labelled multi-multilateralism’.

both the United Nations and the European Union. Bull is in agreement, describing the EU as ‘a system of overlapping authority and multiple loyalties’.³⁹¹

This concept has also been explored by Veit Bader, who notes that as migration increases and European unification continues there is a cultural and political pressure to separate citizenship from ethnicity and culture. Citizenship is therefore already developing into a ‘multiple and multi-layered concept: political citizenship is complemented by economic, industrial and social citizenship but the idea and practice of democratic self-determination is still linked to state membership’.³⁹² Non-citizens residing in a country are also increasingly given rights that used to be awarded only to citizens.

In sum, the old belief in congruence between national identity, territoriality, statehood and citizenship in the European Union is being challenged and undermined in three related ways. First, the supremacy of nation-states as institutions of governance is being eroded. Governance in Europe is becoming increasingly polycentric and multi-levelled. This involves the emergence of overlapping spheres of political authority at several spatial levels—local, regional, national and European.³⁹³

Second, in many parts of the world, state-based national identities are being challenged by regionalist or minority nationalist interests, undermining the alignment of identity and nation-state. Successful mobilisation behind regionalist goals can intensify the rate of reconfiguration of both governance and identity. Third, international migration has

³⁹¹ Hedley Bull, ‘The State’s Positive Role in World Affairs’, *Daedalus* 108, no. 4 (1979), p. 115.

³⁹² Veit Bader, ‘Citizenship and Exclusion: Radical Democracy, Community and Justice. Or, What is Wrong with Communitarianism?’ *Political Theory* 23, no. 2 (May 1995): 211-246.

increased cultural diversity. Members of diasporas may form distinct regional populations, such as Russians in North-East Estonia, or they may be dispersed more evenly. Both situations will undermine the link between citizenship and national identity. In Estonia, Russians are even denied formal citizenship on grounds of ethnicity.

Globalisation challenges the congruence between national identity, statehood and citizenship at the global level as well. There is therefore at the very least a possibility, and arguably an urgent need, to establish a new system that can administer just, effective decisions since the power of nation-states to do so is becoming eroded by forces of globalisation. On the bases of liberal individualism, a global theory of justice and cosmopolitanism, I argue that Collective Management is well-equipped to achieve this.

5.9 Collective Management and ‘overlapping consensus’

To conclude this chapter, I briefly examine the possibility that ‘overlapping consensus’ between the three sectors and multiple levels can produce outcomes (in terms of the rules and standards on international governance) that conform to the norms of global justice. The aim is to combine abstract philosophical concepts such as an extended Rawlsian concept of ‘overlapping consensus’ with work in international relations and global governance, to see whether it might provide practical guidance to develop a more just and practical system of global governing institutions.

³⁹³ James Anderson, ‘The shifting stages of politics: new medieval and postmodern territorialities?’ *Environment and Planning D: Society and Space* 14, no. 2 (1996): 133-153.

As Rawls argues, a result of ‘reasonable pluralism’ is that even rational and reasonable human beings will have different comprehensive doctrines. This does not exclude the possibility of some areas of overlap and agreement: these areas form the ‘overlapping consensus’. The ‘3x3=3’ model, based on overlapping jurisdictions and inclusive, collective decision-making processes, could arguably provide a context in which to find those areas in the multi-cultural, diverse global arena where an ‘overlapping consensus’ might exist, and provide a practical basis for a more just system of global governance on the three levels. I believe that the eight core cosmopolitan principles introduced at the start of this Chapter would form a strong basis of an overlapping consensus. At the same time, I argue that the international community is increasingly coming to agree on these principles because cooperation is increasingly in the self-interest of nations as they seek to pursue their separate interests.

Regarding areas where there may be overlap in ‘comprehensive doctrines’ currently on the international arena, a potential overlapping consensus appears to be emerging in the area of human rights. Individual human rights are increasingly seen as universal, and so they warrant intervention to ensure them, as seen in the NATO intervention in the Kosovo conflict to protect the ethnic Albanian population from Serb government forces, or in Iraq in 1991 to protect Kurds and Shiites, or in Darfur to protect the unarmed civilians belonging mainly to the Fur, Masaalit and Zaghawa ethnic groups. Human rights can indeed create a sense of international community and can stimulate a universal covenant, as in the case of UN human rights declarations, even across political and ideological boundaries. I argue that this growing agreement in the area of human rights is based on the existence of overlapping consensus on the first cosmopolitan principle—that every human being is deserving of equal worth and dignity. Human rights violations are a direct

violation of this principle and increasingly such violations have been declared unacceptable by states and individuals in the international system.

South African President Nelson Mandela articulated a broad defence of intervention at the 1998 OAU summit in Ouagadougou: ‘Africa has a right and a duty to intervene to root out tyranny... We must all accept that we cannot abuse the concept of national sovereignty to deny the rest of the continent the right and duty to intervene when behind those sovereign boundaries, people are being slaughtered to protect tyranny.’³⁹⁴

Similarly, an overlapping consensus on the third cosmopolitan principle of personal responsibility and accountability provides the basis for the growing trend in the international legal system to hold to account and punish those individuals responsible for human-rights violations, regardless of the state system they were members of, as in the case of war crimes in Serbia and Iraq.

The overlapping consensus is based on the concept that different opinions can hold something to be just and fair for different reasons—as noted in Chapter Four, a religious citizen could approve of the concept of religious toleration because faith is not something that can be forced and a secular citizen could agree with the concept of religious toleration because they see the state has having no role in the personal faith of an individual. As in the example of Chapter Four, slavery could also be rejected by both because the concept of equal political and civil liberties is core to both opinions.

³⁹⁴ Nelson Mandela, ‘Address of the President of the Republic of South Africa, Nelson Mandela to the Summit Meeting of the OAU Heads of State and Government’ (Ouagadougou, Burkina Faso, 8 June 1998), <http://www.anc.org.za/ancdocs/history/mandela/1998/sp980608.html>

The issue then becomes one of definition. Those in developed countries who attempt to abolish ‘slave-labour’ in developing countries—often associated with child labour—may not appreciate that young children working in textiles factories may be seen as an acceptable form of generating income for the family in these societies. International campaigns and standards prohibiting this form of ‘slave-labour’ may drive children into worse forms of employment, such as prostitution.

There may also be areas of overlapping consensus on substantive issues where there is a shared global threat leading to development of international standards: for example, to deal with the danger of global warming or other environmental crises, or with natural disasters such as tsunamis, bird flu or pandemics, or with illegal immigration. The common threat from such issues motivates individuals to collaborate to co-create solutions: that is, this overlapping consensus arises from the fourth and fifth cosmopolitan principles of consent and collective decision-making about public matters. In the environmental arena, as the world’s population grows, the need for resource conservation and sustainability (Held’s principle 8) will probably increasingly become a basis for an overlapping consensus globally. On the other hand, there is unlikely to be overlapping consensus on global threats such as terrorism that are subject to strongly divergent cultural or religious beliefs because it is unlikely that there will be universal consent given on matters relating to such contentious issues. Global institutions can only work where there is global consensus, and so aspects of life such as the impact of religion on civil law, in which there is wide global diversity, would be unable to be dealt with at higher levels.

So there is a need for multi-level, overlapping jurisdictions to increase the chances for overlapping consensus in certain levels where there cannot be agreement globally.³⁹⁵

³⁹⁵ A final point is that the prospect of achieving overlapping consensus is also complicated by the problem of 'cultural thinness': what Kymlicka calls 'a societal culture, centred on a shared language which is used in a wide range of societal institutions such as schools, media, law, economy, or government, rather than on common religious beliefs, family customs, or personal lifestyles'. This 'thinness' allows for a greater deal of diversity and pluralism in all aspects of life such as religion, customs, gender roles and sexuality, in contrast to in an illiberal state where there is far stronger form of cultural integration. See Will Kymlicka, 'Western Political Theory and Ethnic Relations in Eastern Europe' in *Can Liberal Pluralism be Exported? Western Political Theory and Ethnic Relations in Eastern Europe*, eds. Will Kymlicka & Magda Opalski (Oxford: Oxford University Press, 2001), pp. 55–57.

CHAPTER 6: THE WTO—A CASE STUDY

6.1 Introduction

This chapter evaluates the current decision-making processes and governing structure of the World Trade Organisation (WTO) and explores how it might be made more just and democratic by a more direct involvement of civil society and the private sector in accordance with the concept of Collective Management. I explore how the WTO might be reformed to embody the three pillars of liberal individualism, global justice and cosmopolitanism and thus meet the challenge of creating practical mechanisms to deal with complex and contentious trade issues among states.

Jan Aart Scholte has suggested that critics of the WTO fall broadly into one of three categories: ‘radicals’, who believe the institution is failing to such an extent that it ought to be abolished; ‘reformers’, who are still in favour of maintaining the WTO but believe it is in need of serious re-thinking; and ‘conformers’, who believe the current trading system and WTO need only minor adjustments.³⁹⁶ I clearly adopt the reformist viewpoint in my outline of how the WTO might be fundamentally changed to reflect the concept of Collective Management.

Criticisms of the WTO, within any of the three categories introduced above, can be divided further into two subject categories: criticisms of the underlying economic theory of the institution, and criticisms of the way in which the institution is run, that are separate from

³⁹⁶ See Jan Aart Scholte, with Robert O’Brien and Marc Williams, ‘The WTO and Civil Society,’ (Centre for the Study of Globalisation and Regionalisation, Working Paper No. 14/98, July 1998), <http://www2.warwick.ac.uk/fac/soc/csgr/research/workingpapers/1998/wp1498.pdf>

the economic debate surrounding the issue of free trade. This chapter does not examine the economic foundations of the WTO. It does not delve into the question of whether trade liberalisation is the best means of achieving higher standards of living in all countries, (especially developing countries), or what the economic conditions for a ‘fair’ multilateral trading system might be. I suggest in this chapter that, regardless of economic theory, the WTO needs an effective and more democratic governance structure. This is not to address the question of *economic* ‘fairness’, but rather the question whether *political* ‘fairness’ is upheld at the WTO—are WTO member countries all equally represented and influential within the organisation, or has a certain set of members illegitimately amassed an undemocratic, ‘unfair’ amount of influence.

As noted earlier, Robert Dahl argues that intergovernmental organisations probably can never become legitimate on the basis of having expressed consent of the governed, in the way one might expect from a democracy at the national level. Dahl does not believe that sufficient shared beliefs or common values exist to attain unanimity in global society, given conflicting individual and group interests. Dahl argues that IGOs should be thought of as bargaining systems, not democratic institutions.

We should be wary of ceding the legitimacy of democracy to non-democratic systems... I suggest that we treat them as bureaucratic bargaining systems... Leaders in [these systems] cannot indefinitely ignore the limits set by the opinions and desires of the governed.³⁹⁷

This view that IGOs should be seen as bargaining systems and not democratic institutions is shared by realist analysts of many IGOs, particularly those in the financial sphere. As

Emad Tinawi, a specialist in Middle Eastern and North African affairs, argues with regard to the WTO: ‘The US and other powerful economies will always drive the agenda in a way that favours their economic interests. This is not a secret. The WTO is exactly the place where each state needs to push for its economic interest—it is a place for deal-making among nations’.³⁹⁸

From this point of view, it does not matter if the WTO obviously suffers from a ‘legitimacy’ failure, in that it fails to refer to the beliefs of the ruled in a meaningful way. Evidence that many citizens do not accept the rule of the WTO manifests itself in popular protests against both its specific policies and its very existence. The value patterns of many international institutions, especially the WTO, are incompatible with the systems prevalent in many countries, and this is shown by the refusal of some countries to implement their recommendations as well as the steps taken by the institutions to punish this (such as the withdrawal of loans). From this point of view, the WTO is not meant to be democratic, and the voices of those not represented in the WTO should be expressed through public protests or the rejection of WTO policies by states who disagree with them.

This chapter opposes this view, advocating that the WTO both *should* and *can* develop an effective, more democratic, collective decision-making structure of governance and decision-making. In particular, the poorest of its members are disadvantaged by the governance system, which denies them the consideration and protection they require.

³⁹⁷ Robert A. Dahl, ‘Can International Organisations Be Democratic? A Skeptic’s View’ in *Democracy’s Edges*, eds. Ian Shapiro and Casiano Hacker-Cordon (Cambridge: Cambridge University Press, 1999) pp. 33-34.

³⁹⁸ Emad Tinawi, Comments to the author, June 2006. Mr. Tinawi is the Vice President of the Middle East and North African division of Monitor Group, and was previously an attorney in the International Department of the law firm of Arent Fox Kintner Plotkin and Kahn, PLLC in Washington.

Although the WTO espouses a decision-making protocol based on consensus, and holds itself to a ‘one member, one vote’ principle of participation, developing countries are poorly represented at the WTO. They are kept from participating fully in debate and discussion not only by their own inadequate resources but also by larger, more powerful nations who influence proceedings through coercion and incentives. Moreover, developing countries’ issues are not prioritised within the organisation, which tends to be dominated by the interests of those nations with the largest shares of world trade. Finally, the dispute-resolution mechanism at the WTO is based on a system of approved sanctions, which offers little consolation to those countries that lack sufficient weight in world trade to pose a threat to the interests of more powerful rivals.

Section Three, below, reviews the historical relationship between the WTO and NGOs, both within member nations and internationally, examining the ways in which collaboration has gradually increased. It identifies ways in which greater engagement of NGOs with the proceedings of the WTO can improve its transparency, accountability and legitimacy by ensuring its members are equally represented, and ensures that issues are appropriately prioritised and disputes resolved effectively. I argue that consultation is insufficient; rather, NGOs should be given a formal voice in the WTO, alongside the private sector, and be included in its decision-making processes. I explore ways in which both sectors might be given full voting rights and representative status within IGOs to match that of national governments. There are risks in including NGOs, however, and this section addresses the potential objections raised in Chapter Two by analysing possible ways in which NGOs can reach appropriate levels of transparency and accountability, with explicit reference to the WTO.

This chapter examines the potential for a new type of WTO: a transparent, inclusive, accountable and representative organisation, in which NGO influence is formalised and which can serve as a model for reform of other IGOs in alignment with to the Collective Management model.

6.2 The WTO: processes, procedures and the imbalance of power

The World Trade Organisation came into being on 1st January 1995. A result of the Uruguay Round of trade negotiations (1986-1994) and the Marrakech Agreement, it took over from the General Agreement on Tariffs and Trade (GATT) as the body that presides over the multilateral trading system. The rules of the international trading system had been established by the 1947 GATT, but it was with the birth of the WTO that the rules were extended to include a number of areas previously outside the GATT system: notably agriculture, textiles, trade in services and intellectual property rights. The changes gave the WTO much more power to influence people's lives than the GATT had ever had, especially in developing countries. Based in Geneva, the WTO is made up of 146 member countries, eighty percent of which are considered to be 'developing'.

When the WTO was established, countless benefits were envisaged for the whole world, but developing countries in particular were to expect vast improvements. Lori Wallach and Patrick Woodall summarise the assurances as follows: 'Rich countries and the GATT Secretariat staff promised developing countries that they would experience major gains as industrialised countries lowered and eventually eliminated tariffs on such items as textiles and apparel and cut agricultural subsidies that had enabled large agribusinesses to dominate

world commodity markets'.³⁹⁹ The Marrakech Agreement explicitly prioritises considerations of a nation's welfare, suggesting that 'relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living ... while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development.'

At the Singapore Ministerial Conference in 1996, the WTO recognised those important and unique needs of developing countries that are pertinent to trade negotiations. For that reason, the Ministerial committed to 'organise a meeting with UNCTAD and the International Trade Centre as soon as possible in 1997, with the participation of aid agencies, multilateral financial institutions and least-developed countries, to foster an integrated approach to assisting these countries in enhancing their trading opportunities'.⁴⁰⁰ This meeting resulted in the founding of the Integrated Framework for Trade-Related Technical Assistance to least-developed countries (IF), a multi-agency, multi-donor programme that assists the least developed countries (LDCs) to expand their participation in the global economy, thus enhancing their economic growth and poverty-reduction strategies.⁴⁰¹ It brings together the IMF, ITC (International Trade Centre), UNCTAD (United Nations Conference on Trade and Development), UNDP (United Nations

³⁹⁹ Lori Wallach and Patrick Woodall, *WTO: Whose Trade Organisation?* (New York: The New Press, 2003). Excerpts provided by Public Citizen, 'The WTO and the Developing World: Do as we say, not as we did' <http://www.tradewatch.org/trade/wto/articles.cfm?ID=10447>

⁴⁰⁰ World Trade Organisation, 'Singapore Ministerial Declaration', http://www.wto.org/english/thewto_e/minist_e/min96_e/wtodec_e.htm

⁴⁰¹ The group of least developed countries (LDCs) consists of the thirty WTO members, mostly low-income countries, defined by the UN as having a particularly low level of economic development. The thirty are: Djibouti, Maldives (classified as 'lower-middle-income' countries), Angola, Bangladesh, Benin, Burkina Faso, Burundi, Central African Republic, Chad, Democratic Republic of Congo, The Gambia, Guinea, Guinea Bissau, Haiti, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mozambique, Myanmar, Niger, Rwanda, Senegal, Sierra Leone, Solomon Islands, Tanzania, Togo, Uganda, and Zambia (classified as 'low-income' countries)

Development Programme), the World Bank and the WTO to provide targeted assistance to a group of countries that has now grown to number fifty. The IF is intended to provide planning and technical assistance to ‘meaningfully integrate LDCs into the multilateral trading system’⁴⁰² and ensure they have a voice within the system.

However, the WTO has not delivered all it has promised. Many of those subsidies and tariffs are still in place, with additional ones continuously being imposed, as countries find themselves unable to reach agreements on removing them within the existing paradigm.⁴⁰³ Furthermore, and crucial from the position of this chapter, the governance structure does not in reality offer the fairness that a ‘one country, one vote’ system ought to achieve, and many developing countries are severely under-represented in the decision-making processes. Rather than benefiting from the WTO, it seems developing countries may be losing out.

There are three main ways in which these countries are disadvantaged by the current governance structure and decision-making processes of the WTO. The first is that obstacles exist to their participation in agenda-setting, deliberation, and decision-making: larger countries restrict developing countries’ engagement with all facets of the WTO’s proceedings, thereby limiting their ability to influence outcomes. The second way is that developing countries’ issues are rarely prioritised by the WTO, and are often disregarded. This allows proceedings to be dominated by the agendas of large, developed countries, or

⁴⁰² World Trade Organisation, ‘Report by The Director-General To The Fifth Ministerial Conference’ <http://docsonline.wto.org/DDFDocuments/t/WT/Min03/1.doc>

⁴⁰³ Witness, for example, the European Union’s recent decision to impose a 16.5% tariff on imports of leather shoes from China for two years, announced 5 October 2006.

even multinational corporations, rather than by the pressing issues of smaller, poorer nations. Thirdly, when these countries are wronged, their access to avenues of recourse is ineffective and unreliable, and rarely resolves their disputes effectively. This section will consider each issue in turn, showing how the WTO is failing to provide developing countries with democratic governance and decision-making forums, and then suggest means of improvement.

6.2a Participation

(i) A core group of developed countries controls the issues under discussion in the WTO and makes key decisions before developing countries have entered the process

In a formal sense, the WTO is structured in a very democratic way. The official decision-making structures at the WTO are organised over four formal levels and a number of informal levels. The Ministerial Conference is at the top of the structure, meeting every two years and composed of representatives of all WTO members. The day-to-day business of the WTO is conducted at the second level of WTO decision-making by the General Council, which is also composed of representatives of all WTO Members. It meets on a regular basis (normally once every two months) and acts on behalf of the Ministerial Conference. Below the General Council, on the third level, are three sectoral councils that have been established for goods, services and Trade Related Intellectual Property Rights (TRIPs) matters respectively. These Councils operate under the guidance of the General Council, carry out the responsibilities assigned to them by their respective agreements and by the General Council, and meet as necessary to carry out their functions. They too are open to representatives of all WTO members. Six other bodies on the third level also report to the General Council. Their scope is smaller, so they are 'committees', but they are still

made up of all WTO members. They cover issues such as trade and development, the environment, regional trading arrangements, and administrative issues. On the fourth level of decision-making are the subsidiary bodies and committees of each of the higher level Councils. These bodies each deal with a specific issue important to their Council. Finally there is, as the WTO acknowledges, a large 'informal' level of decision-making. One step away from the formal meetings are the informal meetings that still include the full membership, such as those of the Heads of Delegations (HOD). However, more difficult issues have to be thrashed out in smaller groups. A common recent practice is for the chairperson of a negotiating group to attempt to forge a compromise by holding consultations with delegations individually, in twos or threes, or in groups of 20-30 of the most interested delegations. It is these informal practices that are particularly open to take-over by the more powerful members of the WTO.⁴⁰⁴

George Monbiot examines the subtleties of the global decision-making mechanisms and presents a practical approach to reforming the WTO.⁴⁰⁵ He has argued that 'the World Trade Organisation, which sets and enforces the rules under which nations trade, is in principle the most democratic of all the powerful international institutions. Every nation that belongs to it has one vote, and unpopular measures can, in theory, be blocked by a constitutional minority of its members. If the poor nations feel they are being treated

⁴⁰⁴ Information drawn from the WTO website: www.wto.org. A more detailed description of these official levels is included in Appendix 2.

⁴⁰⁵ George Monbiot is an academic, journalist and political activist. He has held visiting fellowships or professorships at the universities of Oxford (environmental policy), Bristol (philosophy), Keele (politics) and East London (environmental science). He is currently visiting professor of planning at Oxford Brookes University. In 1995 Nelson Mandela presented him with a United Nations Global 500 Award for outstanding environmental achievement. He writes a weekly column for the Guardian newspaper, and has won the OneWorld National Press Award for journalism.

unfairly, they can bring negotiations to a halt, just as they did, spectacularly, during the world trade talks in Seattle in 1999. As there are many more poor nations than rich ones, we could expect the poor to regularly outvote the rich'.⁴⁰⁶

However, he argues, a small group of rich countries drive the agenda and outcomes of WTO negotiations:

Before a new round of trade talks begins the agenda is first established by a group of nations called 'the Quad': the United States, the European Union, Canada and Japan. They and a small number of poorer countries – a different assortment every time – conduct a number of 'Green Room' meetings, during which all the principal business of the new trade round is decided. The Green Room, in other words, is the WTO's Security Council, and the Quad is its permanent membership. The WTO is as exclusive, in practice, as the United Nations. Those other countries which are permitted by the Quad to attend the Green Room negotiations are treated by the more powerful players just as the temporary members of the UN Security Council are treated by the residents....

By the time the formal, constitutional trade talks are ready to begin, the key decisions have already been made. An agenda has been set, a declaration has been drafted, and all the nations which were excluded from the Green Room meetings can do is seek to block the rich nations' proposals. They cannot make proposals of their own; they cannot set a new agenda. They are presented with a stark choice: either they accept the declaration drafted in their absence, more or less in its entirety, or they reject it....

In principle, the WTO grants the governments of the poor world more collective decision-making power than the governments of the rich world. In practice, it has permitted the realities of power to reassert themselves. The strong states have devised a means of bypassing collective decision-making, while the weak states have proved reluctant to use their constitutional powers to stop them, for fear of punishment.⁴⁰⁷

⁴⁰⁶ George Monbiot, *The Age of Consent: A Manifesto for a New World Order* (London: Flamingo Press, 2004), p. 205

⁴⁰⁷ George Monbiot, *The Age of Consent: A Manifesto for a New World Order* (London: Flamingo Press, 2004), pp. 205-207

Global Exchange, an international human rights organisation dedicated to promoting political, social and environmental justice globally, supports this view.⁴⁰⁸ Although their rhetoric tends to be inflammatory, they make some fair criticisms, sceptically pointing out that the WTO ‘supposedly operates on a consensus basis, with equal decision-making power for all. In reality, many important decisions get made in a process whereby poor countries’ negotiators are not even invited to closed-door meetings—and then ‘agreements’ are announced that poor countries didn’t even know were being discussed’.⁴⁰⁹

Some examples suggest that developing countries have been able to resist and even thwart the efforts of the dominant Northern countries. As mentioned above, the 1999 Seattle WTO meeting failed because the developing and least developed countries rejected the agenda set by the developed Northern countries. Indeed, for the Doha Development Round, it was the developing countries that were responsible for placing many issues on the agenda and not the developed countries, as in most of the past rounds. However, this made Doha’s subsequent collapse all the more significant. Doha was, in many respects, the ‘developing countries’ ministerial’; the representatives of the Least Developed Countries, in particular, were engaged ‘in almost all areas of the Doha Development Agenda work

⁴⁰⁸ Although Global Exchange does not always cite specific evidence to support the claims made in many of their pamphlets, their documents are supported by research efforts through their press room and their Public Education Programme, which produces books, videos, articles, and editorials; organises educational events and workshops; and works with the media to increase coverage of international issues from grassroots, citizens’ perspective. The programme also includes an International Speakers Bureau that brings community leaders from around the world to the United States to provide information on pressing global issues.

⁴⁰⁹ Global Exchange, ‘Top Reasons to Oppose the WTO,’ *Global Exchange*, <http://www.globalexchange.org/campaigns/wto/OpposeWTO.html>

programme and negotiations'.⁴¹⁰ The collapse of this critical round of multilateral discussions demonstrates that while there is such unequal influence within the WTO, the only way in which developing countries are able to take a stand is to halt proceedings. A legitimate, discussion-based system of Collective Management would manage to avoid the many breakdowns in negotiations that the WTO has witnessed recently.

(ii) Developed countries use formal and informal pressure tactics to channel and shape the participation of the developing countries

Despite the existence of decision-making mechanisms designed to promote equality in the WTO, a number of arguments have been made that a hierarchy has evolved. I shall consider the claims that the WTO provides equal opportunity for decision-making to all members, and then review several of the arguments that equality of decision-making is not realised in practice. Critics of the decision-making structure contend that it has allowed a hierarchical structure to develop such that 'the Quad' and other developed countries are at the top; on the second level are the upper-middle-income countries (and some lower-middle-income countries); and on the lowest level are the least-developed countries (LDCs). It is claimed that the current decision-making structures and processes allow the top tier of the hierarchy to develop an enormous ability to force the less developed countries and LDCs into decisions that will directly benefit the Quad, to the detriment of the Southern countries.

⁴¹⁰ World Trade Organisation, 'Report by The Director-General To The Fifth Ministerial Conference' <http://docsonline.wto.org/DDFDocuments/t/WT/Min03/1.doc>

Supporters of the WTO argue that there are a number of key mechanisms which make the WTO more fair in terms of all members' contributions. It is a member-run organisation that operates on a 'one member, one vote' system of decision-making, and thus it is unlike the IMF or the World Bank in which power is delegated to the Executive Boards. The Secretariat of the WTO, with 625 regular staff, is small compared with the IMF's over 2,500 staff and the nearly 6000 staff-members of the World Bank. The Secretariat has no decision-making powers, whereas the staff of the Fund and the Bank work directly with the governments in preparing, monitoring and enforcing conditionalities, with the approval of the Executive Boards that is seldom withheld. The WTO's members themselves take the decisions, and enforce them through the Dispute Settlement Body if need be, leaving the Secretariat to provide technical and administrative support.

However, as Amrita Narlikar notes, the member-driven character of the WTO means that the Secretariat is neither mandated to give developing countries the representation and assistance they need to be on par with the developed countries, nor capable of it. Resource limitations play a large part,⁴¹¹ and are discussed further later in this section. Ngaire Woods and Amrita Narlikar note that as a result of all these limitations the power hierarchies outside the WTO get transferred into the negotiating politics of the organisation, where the most powerful members (e.g., the Quad) are best-equipped and able to negotiate deals to their advantage. 'Developing countries, even if present at the meetings, are often reduced

⁴¹¹ For instance, at the time of the Brussels summit in 1990, the US delegation consisted of over 400 delegates, which was more than the combined total of the staff of the sub-Saharan African and Latin American trade missions. (Amrita Narlikar, 'WTO Decision-Making and Developing Countries', *South Centre T.R.A.D.E. working paper* no. 11 (Nov 2001), <http://www.southcentre.org/publications/workingpapers/wp11.pdf>)

to watching from the sidelines, as their small delegations are unable to make the informed choices that can present a match for the preparations of the developed countries'.⁴¹²

Article IX:1 of the Agreement establishing the WTO states that each member has one vote, thereby allowing equal status to all members irrespective of trade shares or general economic size. In this way it differs considerably from the IMF and the World Bank, where all decisions are based on weighted voting. Furthermore, the rule of taking most decisions by simple majority also offers a considerable potential advantage to developing countries: 'If anything, developing countries should have the advantage, numbering 100 of the 142 members.'⁴¹³ José de Gregorio et al. argue that compared with the developing countries' problems in influencing decision-making in the IMF, where many decisions require 85% majority (giving the US effective veto-power arising from its voting share of 17.56%), the WTO emerges as a terrain much more favourable to developing countries.⁴¹⁴ This is especially the case since the increase in developing-country coalitions in the WTO.⁴¹⁵

⁴¹² Amrita Narlikar, 'WTO Decision-Making and Developing Countries', *South Centre T.R.A.D.E. working paper* no. 11 (Nov 2001), <http://www.southcentre.org/publications/workingpapers/wp11.pdf>, p. 9.

⁴¹³ Amrita Narlikar, 'WTO Decision-Making and Developing Countries', *South Centre T.R.A.D.E. working paper* no. 11 (Nov 2001), <http://www.southcentre.org/publications/workingpapers/wp11.pdf>. (Since the time of writing membership of the WTO has increased to 150 members.)

⁴¹⁴ José De Gregorio, Barry Eichengreen, Takatoshi Ito, and Charles Wyplosz, 'An Independent and Accountable IMF', *Geneva Reports on the World Economy* 1 (Geneva: International Centre for Monetary and Banking Studies & Centre for Economic Policy Research, 1999).

⁴¹⁵ Amrita Narlikar, 'Bargaining Over the Doha Development Agenda: Coalitions in the World Trade Organisation', *Latin American Trade Network, Serie LATN Papers*, no. 34 (undated). Narlikar argues that countries are increasingly willing to invest resources in the creation and maintenance of coalitions at the WTO, and that the sheer numbers of developing-country WTO members with common interests puts them in a strong position to be able to develop successful coalitions. She notes: 'some coalitions involving developing countries have acquired unprecedented influence and bargaining power that goes beyond the sum of resources of the individual members'. p. 2.

However, other scholars argue that developing countries make themselves susceptible to developed-country pressure-tactics by their failure to utilise their relative power of majority votes. This can be partly explained by the norm of using consensus as the basis of decision-making, which has meant that the rule of majority-voting has never been used and possible majorities of developing countries remain unexploited. The WTO notes: 'Reaching decisions by consensus among some 150 members can be difficult. Its main advantage is that decisions made this way are more acceptable to all members. And despite the difficulty, some remarkable agreements have been reached'.⁴¹⁶ However, Bernard Hoekman and Michael Kostecki, as well as Richard Blackhurst et al., argue that the condition that *only the opinion of those present* at the meeting will count differs from the requirement of voting, where majority out of *all* the members of the WTO is required.⁴¹⁷ A study by Constantine Michalopoulos reveals the true extent of developing countries' inability to participate in consensus-based decision-making, thus leaving the processes open to capture by the Quad and other well-resourced developed countries.⁴¹⁸ I discuss the issue of consensus in more detail later in this section.

⁴¹⁶ http://www.wto.org/english/thewto_e/whatis_e/tif_e/org1_e.htm

⁴¹⁷ Bernard M. Hoekman, and Michael M. Kostecki, *The Political Economy of the World Trading System: the WTO and Beyond*, 2nd edition (Oxford: Oxford University Press, 2001); Richard Blackhurst, Bill Lyakurwa, and Ademola Oyejode, 'Improving African Participation in the WTO', paper commissioned by the World Bank for a Conference at the WTO on 20-21 September, 1999.

⁴¹⁸ Constantine Michalopoulos, 'The Developing Countries in the WTO', *World Economy* 22, no. 1 (Jan. 1999), pp. 117-143. Based on the year 2000, the study finds that 24 countries have no permanent presence in Geneva. These countries cannot object to the so-called consensus that various bodies of the WTO arrive at in their everyday workings. Even among the countries that enjoy diplomatic representation in Geneva, the size of their delegations is small. The average size of the developed-country delegation is 7.38 delegates per country. In contrast, the average size of the developing-country delegation is 3.51. This average masks significant differences amongst the actual sizes of developing country delegations e.g. from 1 for Bangladesh to 6 for India. This can pose major problems in responding to an international organisation such as the WTO where there are about 1200 events through the year, and often therefore overlaps of meetings.

It is the informal processes of discussion and decision-making that provide the greatest opportunity for developed countries to use various pressure tactics. The risks attached to informal processes are openly recognised by the WTO itself:

In the past delegations have sometimes felt that Green Room meetings could lead to compromises being struck behind their backs. So, extra efforts are made to ensure that the process is handled correctly, with regular reports back to the full membership. The way countries now negotiate has helped somewhat. In order to increase their bargaining power, countries have formed coalitions. In some subjects such as agriculture virtually all countries are members of at least one coalition—and in many cases, several coalitions. This means that all countries can be represented in the process if the coordinators and other key players are present. The coordinators also take responsibility for both ‘transparency’ and ‘inclusiveness’ by keeping their coalitions informed and by taking the positions negotiated within their alliances.⁴¹⁹

It has also been argued that there are advantages in informal decision-making processes⁴²⁰: countries can choose the level of involvement that they will maintain in a particular negotiation according to their relative interests in the issue, as opposed to predetermined executive boards that permanently include some members and exclude others (irrespective of their interests and immediate needs). The frequency of informal meetings and the number of members to be included can be determined according to the extent of disagreement between parties. Members can decide to hold meetings among themselves, both within and outside the auspices of the organisation, to build coalitions and conduct research initiatives. Even the weaker members of the WTO recognise the importance of flexibility of agenda and small group membership in reaching consensus among 150 members. Finally, the possibility of inclusion in key participatory processes—however *ad*

⁴¹⁹ http://www.wto.org/english/thewto_e/whatis_e/tif_e/org1_e.htm

⁴²⁰ As summarised in Amrita Narlikar, ‘WTO Decision-Making and Developing Countries’, *South Centre T.R.A.D.E. working paper* no. 11 (Nov 2001), <http://www.southcentre.org/publications/workingpapers/wp11.pdf>

hoc or informal—is preferable to being permanently excluded from a formally-constituted decision-making process that is consistently dominated by the same powerful members.

However, informal processes continue to produce additional penalties for developing countries. The first and most obvious problem with informal consultations is that they can lack transparency, despite the WTO's claims that efforts have been made to address this issue. Informal meetings are often by invitation only, or through a process of self-selection by a small clique within the WTO. Vinod Rege notes that the most infamous in this genre are the Green Room meetings, where the Secretariat often treats the list of the invitees as confidential in order to avoid a flood of requests for participation from the excluded.⁴²¹ The only way of tracing the proceedings of such meetings is through occasional briefings from the invited developing countries. Narlikar notes that where 'it was in the Green Room that consensus was negotiated, which was then presented as a *fait accompli* in the formal meetings, exclusion proved especially costly'.⁴²²

Jeffrey Schott and Jayashree Watal write: 'While it is unfair to characterise the Green Room process as 'medieval', it does need to be modernised'.⁴²³ They note that participation in the Green Room varies by issue and has increased over time: for instance, in the Tokyo Round, Green Room talks normally involved fewer than eight delegations, while by 2000 it was common to have up to 25-30 participants in a 'full' Green Room. Nevertheless, Green Room consultations typically include the same players: the Quad, Australia, New Zealand,

⁴²¹ Vinod Rege, 'WTO Procedures for Decision Making: Experience of Their Operation and Suggestions for Improvement' (Background Paper for the Commonwealth Secretariat, 21 January, 2000).

⁴²² Amrita Narlikar, 'WTO Decision-Making and Developing Countries', *South Centre T.R.A.D.E. working paper* no. 11 (Nov 2001), <http://www.southcentre.org/publications/workingpapers/wp11.pdf>

Switzerland, Norway, possibly one or two transition-economy countries, and a number of developing countries. Developing countries are often at a disadvantage in terms of participation: the ones that often participate in the Green Room include Argentina, Brazil, Chile, Colombia, Egypt, Hong Kong, China, India, Korea, Mexico, Pakistan, South Africa and at least one Association of South-East Asian Nations (ASEAN) country, but most smaller developing countries stay out for lack of adequate resources or capabilities. For instance, 18 of the WTO members from Africa have no representation in Geneva.⁴²⁴

In the absence of strict rules about the agenda, membership and frequency of the informal meetings, the informal protocols of interaction and culture of the WTO assume overwhelming importance. Rubens Ricupero notes that in this context, the ‘almost English Club atmosphere ... the codified language’, has made the Green Room consultative process daunting and inaccessible to some developing countries, even if they are present.⁴²⁵

The importance of informal processes in WTO decision-making results in substantial reliance on the role and discretion of the chairperson as the broker, mediator and facilitator of the negotiations. While the onus of decision-making falls on the members themselves, the importance of informal procedures means that the chairs at all levels have a major role to play in consensus-building. The chairperson enjoys considerably leeway in setting the parameters of the agenda and in deciding the frequency of, and invitees to, the informal

⁴²³ Jeffrey J. Schott and Jayashree Watal, ‘Decision-making in the WTO’ (*Institute for International Economics*, Policy Brief 00-2, March, 2000) p. 2,
<http://www.iie.com/publications/pb/pb.cfm?ResearchID=63>

⁴²⁴ Data from Jeffrey J. Schott and Jayashree Watal, ‘Decision-making in the WTO’ (*Institute for International Economics*, Policy Brief 00-2, March, 2000) p. 2,
<http://www.iie.com/publications/pb/pb.cfm?ResearchID=63>

meetings. Given the frantic pace of meetings and the over-taxed delegations, these decisions have more significance than mere procedure, and can exercise considerable impact on the *de facto* exclusion of certain members and their interests.

Michalopoulos notes to the credit of the WTO that a concerted attempt has been made to maintain a careful balance between developed and developing countries in the distribution of the top leadership positions.⁴²⁶ Nevertheless some LDCs face a different kind of exclusion. The WTO Guidelines for Appointment of Officers state that ‘Representatives of Members in financial arrears for over one full year cannot be considered for appointment’.⁴²⁷ This automatically disqualifies some of the LDCs. Similarly, a presence in Geneva is almost a necessary condition for appointment, although ‘Non-residents may be appointed in exceptional circumstances where the necessary expertise can only be found in capitals’.⁴²⁸ The Guidelines clearly state that ‘There should be no automaticity in succession to posts,’⁴²⁹ but are ambiguous on the actual procedure for appointment. Requirements such as ‘Appointments must be acceptable to the membership as a whole and not only to regions or groupings that may have proposed them’, and those regarding the importance of

⁴²⁵ Rubens Ricupero, ‘Integration of Developing Countries into the Multilateral Trading System’, in *The Uruguay Round and Beyond: Essays in Honour of Arthur Dunkel*, Studies in International Economics, eds. Jagdish Bhagwati and Mathias Hirsch, (Ann Arbor: University of Michigan Press, 1998), p. 15

⁴²⁶ Constantine Michalopoulos, ‘The Developing Countries in the WTO’, *World Economy* 22, no. 1 (Jan 1999): 117-143.

⁴²⁷ World Trade Organisation, ‘Guidelines for Appointment of Officers to WTO bodies’, (approved by the General Council on 31 January 1995, WT/L/31), http://www.wto.org/english/res_e/booksp_e/analytic_index_e/wto_agree_02_e.htm#fnt173

⁴²⁸ World Trade Organisation, ‘Guidelines for Appointment of Officers to WTO bodies’ (approved by the General Council on 31 January 1995, WT/L/31), http://www.wto.org/english/res_e/booksp_e/analytic_index_e/wto_agree_02_e.htm#fnt173

⁴²⁹ World Trade Organisation, ‘Guidelines for Appointment of Officers to WTO bodies’ (approved by the General Council on 31 January 1995, WT/L/31), http://www.wto.org/english/res_e/booksp_e/analytic_index_e/wto_agree_02_e.htm#fnt173

consultations on matters of appointment, leave considerable scope for manipulation of the process of appointment.

If these informal meetings and other decision-making processes are open to exploitation, Fatoumata Jawara and Aileen Kwa note that Quad representatives have the power and influence to use them. They argue that developed states exert strong pressure on developing country delegates, either by offering incentives (for example, rewarding bilateral trade deals or small compromises to existing agreements), or by threatening and pressuring delegates that do not acquiesce to developed-country wishes.⁴³⁰ They note that in some cases these bargaining chips may be artificially created in anticipation of difficult negotiations, or else an issue of particular importance to a developing country may be held up until the Quad wishes to play it in exchange for agreement in a particularly controversial area.⁴³¹

Evidence in support of Jawara and Kwa's arguments that Southern states are pressured to agree with developed country positions has been provided by both developing- and developed-country representatives. Richard Bernal, the Jamaican delegate in Doha, states with reference to the US at the Doha Ministerial: 'We have been approached bilaterally in capitals. We are approached in Geneva. We are made to feel that we are holding up the rescue of the global economy if we don't agree to a new round here'.⁴³²

⁴³⁰ Fatoumata Jawara and Aileen Kwa, *Behind the Scenes at the WTO: the Real World of International Trade Negotiations* (New York: Zed Books, 2003)

⁴³¹ Information based on interviews by Jawara and Kwa with both developing- and developed-country delegates from Geneva missions.

⁴³² Dr Richard Bernal, Jamaican delegate in Doha, cited in ActionAid's 'WTO Democracy and Reform', cited at http://www.actionaid.org.uk/doc_lib/54_1_wto_democracy_reform.pdf

Bhagirath Lal Das, the former Indian Ambassador to the GATT, has noted how, despite the strong initial intentions of developing countries, the pressure from Northern states usually proves strong enough to cause developing-country delegates to succumb to their wishes:

If [developing country negotiators] feel that any proposal is not in the interest of their country, they oppose it. Their opposition is quite firm sometimes, and they stick to their line almost till the very end. But finally when intense pressures are built up in the capitals or if all other countries have acquiesced in the proposal, they also drop their objection and remain sullenly silent. Decisions are taken to which they become parties even though they had earlier raised objections. And in this manner their countries get bound by the obligations imposed by the decisions. The immediate political cost of withholding consensus appears to them to be much heavier than the burden of these obligations in the future.⁴³³

Developed-country delegates have also admitted that power politics play a major role in the WTO. Former WTO Director General Mike Moore acknowledged that, despite formal equality between WTO members, ‘there is also no denying that some members are more equal than others when it comes to influence’,⁴³⁴ EU Trade Commissioner Pascal Lamy has confirmed what he calls the ‘arm-twisting and blackmailing practices’ that take place at the WTO. Speaking at a meeting with civil society representatives in Brussels in May 2003, Lamy acknowledged from his own experience as chief EU negotiator that such tactics are employed in WTO negotiations, and that, while the USA is accused of using the most blatant threats and inducements in order to get its way, there are also suggestions of the EU

⁴³³ B. L. Das, former Indian Ambassador to the GATT, cited in ActionAid’s ‘WTO Democracy and Reform’, cited at http://www.actionaid.org.uk/doc_lib/54_1_wto_democracy_reform.pdf

⁴³⁴ Michael Moore, ‘World Trade Needs Atlantic ‘Big Boys’ to Get Together’, *European Affairs* 1, no. 3 (Summer 2000)

adopting equally effective ‘negotiating techniques’ in order to overcome developing-country opposition.⁴³⁵

Similarly, Richards Eglin, WTO Director of Trade and Environment in Geneva and former Director of the WTO Trade and Finance Division, has stated: ‘How do you get some kind of agreement that 146 countries can sign on to, given they all have different views? In that process, people will get their arms twisted. If you want more textiles in my market, I may twist your arm to get more investment. There are trade-offs, arm-twisting, bullying and all the rest of it going on.’⁴³⁶

Jawara and Kwa claim that, in some cases, when faced with a determined ambassador, the major players at the WTO (members of the Quad) have gone over the head of the ambassador to the government of the country and applied direct political pressure for his or her removal. The authors assert that the Quad has a ‘black list of ambassadors’, that is, a list of ambassadors they would like to see removed from office.⁴³⁷ They also claim that soon after the Doha development round of negotiations, one Geneva-based ambassador was sacked following complaints from the US, at least four other ambassadors unpopular with the US were removed from their Geneva missions and relocated to less controversial posts

⁴³⁵ Pascal Lamy in a speech to civil society representatives, Brussels, May 2003, cited at: http://www.actionaid.org.uk/doc_lib/54_1_wto_democracy_reform.pdf

⁴³⁶ Richard Eglin, WTO Director of Trade and Environment in Geneva and former Director of the WTO Trade and Finance Division, cited at: http://www.janathakshan.org/gats_reforms/wtotrade/GATSPresentation.ppt#256,1,General Agreement on Trade in Services

⁴³⁷ Fatoumata Jawara and Aileen Kwa, *Behind the Scenes at the WTO: the Real World of International Trade Negotiations* (New York: Zed Books, 2003), p. 151

elsewhere, and at least two other Geneva-based representatives remained on the US blacklist, as of early 2003.⁴³⁸

Additionally, large countries can take advantage of events outside the WTO to put extreme pressure on members. For example, the Seattle debacle in 1999 created a strong imperative for the WTO to complete a successful trade round in Doha, the full extent of which became even more evident at the conclusion of the Doha Round. For example, Mike Moore, the Director General until 2002, thanked the Doha ministerial at the conclusion of the talks for ‘saving the WTO’.⁴³⁹ The September 11th attacks just prior to the Doha Ministerial brought more pressure on delegates to decide whether they were ‘with or against’ America. Evidence of the US’s campaign to link terrorism to trade became apparent with US Trade Representative Robert Zoellick’s article in the Washington Post, entitled ‘Countering Terror with Trade’, in which he used the September 11th attacks to urge Congress to ‘enact US trade promotion authority so America can negotiate agreements that advance the causes of openness, development and growth ... Open markets are vital for developing nations, many of them fragile democracies that rely on the international economy to overcome

⁴³⁸ Fatoumata Jawara and Aileen Kwa, *Behind the Scenes at the WTO: the Real World of International Trade Negotiations* (New York: Zed Books, 2003)

⁴³⁹ There is strong debate on whether the Doha Round represented a success or a failure. Much of the contention revolves around what constitutes ‘success’ and ‘failure’. Some commentators review the results in terms of the effect they had on supporting the continuation of the WTO; others judge the outcome on the compromises forced upon developing nations. Even within these two categories there is wide disagreement on what the outcome was. However, the general feeling after the Doha round was that developing countries were indeed forced into some concessions, and that these were necessary to keep the WTO alive. The US Trade Representative, Robert Zoellick, said the agreement meant that ‘we have removed the stain of Seattle... A second failure could have created a mortal wound to the WTO’. *The Economist* said the agreement to launch a new round of trade negotiations was both a ‘triumph and a relief’ as a second failure would have ‘sidelined the WTO and set back the multilateral trading system for years’. The *Financial Times* welcomed the deal, saying it had pulled the multilateral trading system ‘back from the brink’. Failure to begin, it said, would have ‘undermined confidence in global economic co-operation, just when it is indispensable’. But it raised concerns about the future pointing out that ‘reaching a deal required so many compromises and caveats that the final agenda is almost meaningless’.

poverty and create opportunity.’⁴⁴⁰ This, combined with President Bush’s public statements on the ‘War against Terrorism’ and the recurrent theme that ‘those who are not with us are against us’, put implicit and explicit pressure on developing countries at the Doha Round. As Amit Dasgupta, Director at the South Asian Association for Regional Cooperation (SAARC) Secretariat in Kathmandu, noted: ‘The September 11 card was overplayed: the US believed that the September 11 incidents could be a sort of rallying point for the global community even on trade issues’, as demonstrated when ‘the US Trade Representative, Mr. Robert B. Zoellick, dropped by in India and said that countries would ‘bite the dust’ if they opposed developed-country call for expanding the trade agenda’.⁴⁴¹

Based on evidence from in-depth interviews with a large number of Geneva-based missions to the WTO chosen from across the spectrum of WTO membership, and from interviews with WTO Secretariat staff members, Jawara and Kwa argue that there are flaws in the current system of meetings that are open to exploitation by better-resourced developed countries. They note that it is not uncommon for the over-worked, under-staffed delegates and ministers of less well-resourced developing countries to be subjected to all-night negotiating sessions, sometimes without translation into the language of the delegates, all of which often leads to mental exhaustion. At this point it becomes likely that minimal compromises offered by powerful developed countries to close the deal in the developed country’s favour will be accepted by developing countries, even if the concession is less than was initially hoped for. Jawara and Kwa also note the tendency for important meetings to be run concurrently, to be not widely publicised, or to be scheduled at short

⁴⁴⁰ Robert B. Zoellick, ‘Countering Terror with Trade’, *The Washington Post*, 20 September, 2001, <http://peacenowar.net/Corporation-1.htm>

notice. Since developing countries are hugely understaffed in comparison with developed-country delegations, this can force them to be ill-prepared for these meetings, or to miss meetings and never catch up because of the lack of published transcripts.⁴⁴²

Supporting Jawara and Kwa's arguments, Indian Commerce Minister, Murasoli Maran notes:

Even during discussions on the entire night of 13th-14th November, the non-stop session lasting for thirty-eight hours, texts were appearing by the hour for discussions without giving sufficient time to get them examined by the respective delegations. Who prepared the avalanche of Draft after Draft? Why? We do not know. In the eleventh hour—probably after thirty-seven hours forty-five minutes—they produced a Draft—like a magician producing a rabbit out of his hat—and said that it was the Final Draft. The tactics seemed to be to produce a draft in the wee hours and force others to accept that or come nearer to that...I would say that any system which in the last minute forces many developing countries to accept texts in areas of crucial importance to them cannot be a fair system. I would strongly suggest that the WTO Membership should have serious introspection about the fairness of the preparatory process for Ministerial Conferences.⁴⁴³

The sheer size and complexity of the WTO requires that many meetings be run concurrently, since otherwise nothing would be achieved. No country, whether a member of the Quad or an LDC, is able to attend all meetings and, as a result, countries must prioritise according to the resources they have and their own economic interests. Developing countries typically have far fewer resources, whether human, financial, legal or research (as discussed below). Therefore, they ought to devote even more care to

⁴⁴¹ Amit Dasgupta, 'Win-win at Doha', *The Hindu* (India), 22 November, 2001, <http://www.hinduonnet.com/2001/11/22/stories/05222524.htm>

⁴⁴² Fatoumata Jawara and Aileen Kwa, *Behind the Scenes at the WTO: the Real World of International Trade Negotiations* (New York: Zed Books, 2003).

⁴⁴³ Murasol Maran, 'WTO: A New Beginning After Doha' (speech at the Indian Economic Summit, 4 December, 2001), pp. 3-4, <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN003576.pdf>

prioritising the use of their limited resources. However, it is not uncommon for developing countries to fail to prioritise or even to decide how to allocate their attendances at the meetings. I believe it is necessary, as part of the reform of the WTO, to educate developing countries about the need for them to commit to prioritising their limited resources such that they are better prepared in the face of the Quad's tactics.

(iii) A formal system of 'consensus' masks a reality in which each country's voting power matches its weight in world trade

The Quad relies heavily on its ability to sway opinions and votes because the WTO is based on the controversial system of consensus. Amrita Narlikar, in a paper presented to the Agricultural Subsidies Conference at Oxford University,⁴⁴⁴ recalls Pascal Lamy's tirades after WTO meetings in Seattle and Cancun, where he referred to the WTO as a 'medieval organisation'. Narlikar emphasises the problems of reaching consensus, invoking a September 25, 2003 paper by the EC Directorate-General for Trade entitled 'The Doha Development Agenda after Cancun', which states that 'the first and fundamental question of organisation is whether it is possible to pursue any meaningful, comprehensive progress in the WTO only on the basis of consensus'. Lamy has proposed splitting the WTO into two categories—one organisation that includes everyone for classical areas and another that is optional. His proposal for a 'consultative' group to explore this idea was vigorously opposed by developing countries.

⁴⁴⁴ A. Narlikar, 'The WTO: A Case for G20 Action on Institutional Reform' (paper presented to the conference on 'Breaking the Deadlock in Agricultural Trade Reform and Development: How could a Leaders' Level G20 make a difference?' Oxford University, June 8-9, 2004), http://www.l20.org/publications/2_dt_A_S_Narlikar.pdf

In support of consensus, Ambassador John Weekes, former President of the WTO General Council, makes an elegantly-phrased statement in a forthcoming publication⁴⁴⁵: ‘There is some criticism that the consensus rule in the WTO makes progress difficult. However, it is hard to imagine how to reach agreement on a collective domestic reform agenda other than by consensus. Agreements entered into voluntarily will be much more durable and, importantly, easier to implement.’ Although the consensus system may retard progress, it is the best theoretical approach, since other systems would only further disadvantage developing countries.

While it sounds optimal in theory, Didier Jacobs, Special Advisor to the President at Oxfam America, asserts that ‘the WTO’s culture on consensus is deceptive’.⁴⁴⁶ Under WTO rules, states ‘must adopt all multi-lateral trade treaties in their entirety, or else secede from the WTO ... The lack of opt-out rights is what makes the WTO so much more powerful than most other IGOs’.⁴⁴⁷ The adoption of new treaties requires a strict consensus. But consensus introduces the concept of veto rights, which, as Jacobs explains, deprives Southern states of the effective ability either to block or opt out of trade treaties, leaving

⁴⁴⁵ John Weekes, ‘A Possible Scenario for a Deal on Agricultural Trade Reform’ (paper presented to the conference on ‘Breaking the Deadlock on Agricultural Trade and Development: How could a Leaders’ Level G20 make a difference?’ Oxford University, 8-9 June, 2004), http://www.I20.org/publications/2_C3_A_S_Weekes.pdf.

⁴⁴⁶ Didier Jacobs, ‘Democratising Global Economic Governance’ (presented at the Alternatives to Neoliberalism Conference, May 2002), <http://www.new-rules.org/docs/afterneolib/jacobs.pdf>. Didier Jacobs is Special Advisor to the President at Oxfam America, where he organises the Board of Directors and senior management team, coordinates relations with Oxfam International, advises the President on the strategic direction of programs, and works on special projects such as strategic planning, impact assessment and the ONE campaign. He was previously a researcher in Oxfam America’s Policy Department, specialising in global governance and international finance. Before joining Oxfam, Mr. Jacobs was a researcher at the London School of Economics and Catholic University of Louvain.

⁴⁴⁷ Didier Jacobs, ‘Democratising Global Economic Governance’ (presented at the Alternatives to Neoliberalism Conference, May 2002), <http://www.new-rules.org/docs/afterneolib/jacobs.pdf>

them instead with the option of secession, and favours the greater influence of more powerful Northern countries:

Consensus means that states have a veto right on any decision, suggesting that the WTO is a strong confederation. But the reality is not so commendable. Each state's real veto capacity is directly proportional to its weight in world trade. The United States, the European Union and Japan have the capacity to veto anything at the WTO, even though their negotiating positions can be severely affected by intransigence. That is because these three markets are so big that secession by any one of them would create huge competitive imbalances that global business could not tolerate. Votes do not take place at the WTO because if, say, the United States were put in minority on a treaty amendment, she would secede and the WTO would collapse ... By contrast, if 'small economies' were to reject treaty amendments, global business would not be overly disturbed and the WTO would move on, possibly expelling dissenting states in order to maintain the discipline that underpins its success. (Such scenarios are rarely mentioned publicly, but they are the big elephant in the middle of the WTO's negotiating room.) Hence, when a round of WTO negotiations comes to an end and it is clear that most states support a proposed deal, each Quad member faces two alternatives: accept the new deal or impose the status quo on everybody. The alternatives faced by any individual developing country are quite different: accept the new deal or be prepared to be pushed out of the WTO.⁴⁴⁸

To remedy this situation, Jacobs suggests that opt-out rights should be used more frequently to protect developing nations and that developed nations should reserve their secession threats for truly exceptional situations.

⁴⁴⁸ Didier Jacobs, 'Democratising Global Economic Governance' (presented at the Alternatives to Neoliberalism Conference, May 2002), <http://www.new-rules.org/docs/afterneolib/jacobs.pdf> p4. Although Jacobs uses strong language to suggest that weak states may be 'pushed out' or 'expelled' from the WTO, these conclusions refer to the possibility of forced secession in cases where there are no opt-out rights. Jacobs bases these conclusions on evidence from his study which compares the secession rights, veto rights, opt-out rights, constituencies, representation, voting rules and majority thresholds of different UN institutions, and which classifies them as 'strong confederations', 'weak confederations' and 'federations' accordingly. The details and results of his study were presented at the Alternatives to Neoliberalism Conference sponsored by the New Rules for Global Finance Coalition, May 23-24, 2002. Details of the study can also be found in his manuscript book, 'Globalising Democracy', available from the author upon request.

(iv) Chronically insufficient human resources create structural impediments to the participation of developing countries

Didier Jacobs has identified three requirements to influencing policy options: (1) have a seat at the negotiating table, (2) realise what one's national interests are, and (3) have the capacity to formulate highly-technical policy options to defend those interests. Many developing countries do not have the resources to meet these requirements, as Jacobs points out:

At the WTO, many Southern states do not meet any of these requirements. The filtering of policy options takes the shape of thousands of formal and informal meetings between representatives of national governments in Geneva. Some Southern states do not have any delegation in Geneva at all. Those that have one do typically not have enough people to physically attend all the meetings, many of which occur simultaneously. Even if they did, many of them are simply not invited to most informal meetings. Even when present at the table, the issues are so complex that it is often hard for small delegations to figure out what are the national interests at stake, let alone which proposals best fulfil those interests. Decisions are taken only after many compromises have been made across issues in numerous technical informal meetings. It is very hard for a delegation that has not participated in this process to voice objections at that stage.⁴⁴⁹

This problem is exacerbated by the strategy whereby developed countries schedule meetings concurrently or on extremely short notice. Whereas huge national delegations can afford to deploy delegates to many simultaneous meetings, teams from developing countries often can only manage a much smaller presence at the WTO. With their numbers limited, they are vulnerable to this tactic, and often miss important meetings and discussions.

There is no doubt that the developing countries themselves have some role in ameliorating these circumstances. Where their resources are constrained, there is a greater imperative for them to marshal those resources more effectively. To some degree, it makes sense that smaller countries with fewer vested interests in world trade will have more limited participation. However, futility is demotivating, and developing countries will need some possibility of success before it makes sense for them to invest further in the WTO: their participation needs to have some potential of being fruitful to make the expense of these constrained resources worthwhile. If the system is reformed to increase the responsiveness of WTO institutions to these smaller countries, they will be increasingly motivated to deploy their resources as effectively as possible. From there, the onus will be on them, and they will need to rise to the challenge; however, until the WTO creates a system wherein limited but targeted resources can have an impact, augmented by the voices of civil society joining together, developing countries will remain consigned to the background within the system.

(v) Developing countries also suffer from a lack of legal resources and research support

Michael Edwards highlights additional resource gaps faced by developing countries. ‘To participate effectively in a global economy, poor countries need a much stronger legal, regulatory and policy-research capacity. US trade negotiator Charlene Barshefsky takes an

⁴⁴⁹ Didier Jacobs, ‘Democratising Global Economic Governance’ (presented at the Alternatives to Neoliberalism Conference, May 2002), <http://www.new-rules.org/docs/afterneolib/jacobs.pdf>

army of experts with her to the World Trade Organisation (WTO) but Bangladesh can afford only one.’⁴⁵⁰

Marc L. Busch and Eric Reinhardt support this point of view, arguing that many developing countries suffer a lack of legal capacity that inhibits them from aggressively pursuing their rights in the increasingly complex legalities of the trade regime. ‘Experienced trade lawyers (are needed) to litigate a case, but also seasoned politicians and bureaucrats to decide whether it is worth litigating a case ... a staff to monitor trade practices abroad, but also the domestic institutions necessary to participate in international negotiations on complex issues, like health and safety standards, which figure so prominently on the WTO’s agenda.’⁴⁵¹

Busch and Reinhardt point out that this problem is one of which the WTO is aware. The situation has been recognised as inequitable and steps are being taken to compensate for it. As Busch and Reinhardt explain, ‘[i]nstitutions like the Agency for International Trade Information and Cooperation offer assistance to developing countries in interpreting trends in the global economy, and the Advisory Centre on WTO Law provides subsidised legal assistance’.⁴⁵² While these resources are well-intentioned, they cannot possibly correct the imbalance. Under-funded public agencies offering advice to all impoverished countries cannot compete with the armies of well-educated lawyers that each developed country

⁴⁵⁰ Michael Edwards, *Future Positive: International Co-operation in the 21st Century* (London: Earthscan Publications, 2004), p. 134.

⁴⁵¹ Marc L. Busch and Eric Reinhardt, ‘The WTO Dispute Settlement Mechanism and Developing Countries’, (Sida Trade Brief, Department for Infrastructure and Economic Cooperation, 2004), http://www.sida.se/shared/jsp/download.jsp?f=SIDA3600en_DisputeSettlement+web.pdf&a=3089

⁴⁵² Marc L. Busch and Eric Reinhardt, ‘The WTO Dispute Settlement Mechanism and Developing Countries’ (Sida Trade Brief, Department for Infrastructure and Economic Cooperation, 2004), http://www.sida.se/shared/jsp/download.jsp?f=SIDA3600en_DisputeSettlement+web.pdf&a=3089.

brings to the WTO, focused exclusively on their own interests and strategies. These resources are a step in the right direction, but the problems arising from huge differentials in legal expertise remain pervasive.

In Busch and Reinhardt's opinion, a key issue for developing countries is the dispute-settlement process, through which they are unlikely to get defendants to offer substantial concessions early in the process (i.e. before a ruling is issued), as will be discussed below. Conversely, developed countries use their legal know-how and savvy to take maximum advantage of the legal opportunities afforded by the system. They do this by resolving the majority of their disputes through negotiation at the consultation phase or at the panel stage rather than proceeding further in the process. 'Early settlement offers the greatest likelihood of securing full concessions from a defendant.'⁴⁵³ They add that 'if defendants do not settle early, they tend to dig in their heels, and thus lower the prospects for the successful resolution of disputes'.⁴⁵⁴

Similarly, Chad Bown states that the institutional bias in WTO dispute settlement is generated by the fact that countries require sufficient resources to monitor and recognise violations and to fund legal proceedings in which their rights have been violated. 'Richer countries have more access to the resources necessary to hire counsel to both monitor trading interests and to stand up for those interests through litigation.'⁴⁵⁵

⁴⁵³ Marc L. Busch and Eric Reinhardt, 'Developing Countries and GATT/WTO Dispute Settlement', *Journal of World Trade* 37, no. 4 (2003), p 720.

⁴⁵⁴ Marc L. Busch and Eric Reinhardt, 'Developing Countries and GATT/WTO Dispute Settlement', *Journal of World Trade* 37, no. 4 (2003), p. 720

⁴⁵⁵ Chad P. Bown, 'Participation in WTO Dispute Settlement: Complainants, Interested Parties, and Free Riders', *World Bank Economic Review* 19, no. 2 (2005), p. 301.

Gregory Shaffer, Senior Fellow at the Centre on World Affairs and the Global Economy and Associate Professor of Law for University of Wisconsin Law School, adds that in addition to a lack of legal resources, developing countries do not benefit from economies of scale since they use the system less frequently than developed countries⁴⁵⁶:

Developing countries often have high *per capita* stakes in individual cases, so that WTO law can be of potential benefit to them. Overall, however, developing countries simply export a vastly narrower array and limited value and volume of exports than do the United States and EC. Because developing countries are less active traders, they are less likely to be repeat players in WTO litigation. Because they are less likely to be repeat players, they have less incentive to deploy the necessary resources to develop sophisticated internal WTO legal expertise in order to participate in the first place. Irrespective of vast litigation resource asymmetries between developed and developing countries, developing countries also do not benefit from economies of scale because of their less frequent use of the system.⁴⁵⁷

(vi) The WTO itself is under-resourced and thus cannot protect less-developed-countries' interests

George Soros has suggested that part of the problem lies with the under-resourcing of the WTO: 'The WTO simply does not have the staff or the budget to maintain adequate

⁴⁵⁶ Gregory Shaffer, 'How to Make the Dispute Settlement System Work for Developing Countries: Some Proactive Developing Country Strategies', (ICTSD resource paper no. 5, 2003), http://www.ictsd.org/pubs/ictsd_series/resource_papers/DSU_2003.pdf.

⁴⁵⁷ Gregory Shaffer, 'How to Make the Dispute Settlement System Work for Developing Countries: Some Proactive Developing Country Strategies', (ICTSD resource paper no. 5, 2003), p. 16 http://www.ictsd.org/pubs/ictsd_series/resource_papers/DSU_2003.pdf. Shaffer bases his observations on data from the World Trade Organisation's *International Trade Statistics 2002*; reports by the Dispute Settlement Mechanism's Appellate Body on numerous cases; statistical analysis by Busch and Reinhardt, 'Testing International Trade Law: Empirical Studies of GATT/WTO Dispute Settlement' in *The Political Economy of International Trade Law: Essays in Honour of Robert E. Hudec*, eds. Daniel Kennedy and James Southwick (Cambridge: Cambridge University Press, 2002); and statistical analysis by Young Duk Park and Georg C. Umbrecht, 'WTO Dispute Settlement 1995-2000: A Statistical Analysis', *Journal of International Economic Law* 4 (2001): 213-230, among other sources. The term 'repeat players' is taken

communications or to protect the interests of all its members in the WTO, all negotiations are carried on between countries, and the less-developed countries often do not have the capacity to protect their interests. They did not have much say in designing the provisions of the Uruguay Round, yet they had to buy into them wholesale because under WTO rules a country must be party to all the negotiated agreements as a single package. This may have been necessary to get the Uruguay Round accomplished, but it has given rise to the complaint that many countries did not know what they were signing.⁴⁵⁸

This means that, even where the WTO recognises injustices or inefficiencies in its own system, it often lacks the means to effect change. An example of this was identified earlier, where the WTO cannot provide adequate legal assistance to smaller countries, even though it may wish to do so. The institution itself is subject to the interests of its most powerful members, and often cannot afford to help the ones who need it most.

6.2b Prioritisation

(i) Developed countries' issues and interests are prioritised over those of developing countries

Joseph Stiglitz, an outspoken critic of several IGOs, has argued that the WTO, along with the World Bank and the IMF, has served the interests of developed nations over those of the developing world: 'The problem is not with globalisation, but with how it has been managed. Part of the problem lies with the international economic institutions, with the

from Marc Galanter's classic piece, *Why the 'Haves' Come Out Ahead: Speculations on the Limits of Legal Change*, 9 L. & Soc'y Rev. 95 (1974)

⁴⁵⁸ George Soros, *On Globalisation* (Cambridge, MA: PublicAffairs, 2002), pp. 53-54.

IMF, World Bank, and WTO, which help set the rules of the game. They have done so in ways that, all too often, have served the interests of the more advanced industrialised countries – and particular interests within those countries—rather than those of the developing world'.⁴⁵⁹

George Soros cites an example of this in operation. 'As regards the misuse of the WTO mechanism, two issues stand out. The first, and in terms of the sheer volume of trade most important, is the disparity in the treatment of developed and developing countries' products. The removal of tariff and non-tariff restrictions on agricultural products, textiles, and footwear is phased in over a much longer period than on more advanced industrial goods. ... These features create a very uneven playing field.'⁴⁶⁰

Oxfam argues that rich countries twist development arguments to serve their own needs:

Developed country negotiators have become adept at cloaking their own interests in the language of development... Rich countries argue that what they call 'advanced developing countries'—such as China, India, Brazil, and South Africa—no longer need SDT measures to promote development ... However, such countries are being targeted not because they have reached a particular level of development, but because their middle-class consumers constitute potentially lucrative markets. The realpolitik is that the rich countries want 'blood on the floor' in the share of market access concessions by these countries as part of any deal.

Many of these countries still have large populations living in poverty and large uncompetitive sectors that could be wiped out by premature liberalisation, with severe consequences for poor farmers and industrial workers.⁴⁶¹

⁴⁵⁹ Joseph Stiglitz, *Globalisation and its Discontents* (London: Penguin Books, 2002), p. 214.

⁴⁶⁰ George Soros, *On Globalisation* (Cambridge, MA: PublicAffairs, 2002), p. 33

⁴⁶¹ Oxfam International, 'Blood on the floor,' Oxfam Briefing Paper, December 2004, p. 33.

Oxfam International's assessment of the ongoing WTO negotiations is far from favourable. According to Jeremy Hobbs, the Executive Director: 'When the Doha Development Agenda was launched in 2001 we welcomed the stated intention to put the needs of poor countries first ... But as the deadlines have come and gone, the development content of the Doha talks has diminished and poor countries' needs have been sidelined Oxfam's analysis shows that what is being demanded in the areas of non-agricultural-market access and services is far from balanced by the minimal gains in agriculture and the so-called development package. Without the promised special and differential treatment in all pillars of the talks, poor countries stand to lose more than they gain from a new trade deal.'⁴⁶²

When analysing the recently-failed Doha round, Oxfam added that:

The WTO may look like a 'one-country one-vote' democracy, but in practice the powerful players call the shots. In an exhausting war of attrition, rich countries have wielded the full arsenal of negotiating tricks, raising spurious issues, linking any movement to further concessions, and other arm-twisting tactics to force concessions.

Proposals and draft texts typically emerge from small groups of the more powerful countries and are presented on a 'take it or leave it' basis to other members. While these groups now routinely include powerful developing countries such as Brazil and India, most smaller countries remain on the margins of decision-making.⁴⁶³

⁴⁶² Jeremy Hobbs, 'Setting the record straight: Oxfam is not walking away from WTO talks' (Oxfam International Press Release, 1 May 2006), http://www.oxfam.org/en/programs/campaigns/maketrade/fair/hobbs060501_wto?searchterm=wto

⁴⁶³ Oxfam International, 'Blood on the floor', Oxfam Briefing Paper, December 2004, p. 11

(ii) The expectations of developing countries in terms of rewards for implementing their WTO obligations have not been met; in fact, their compliance has had disadvantages

A number of commentators have emphasised that the benefits developing countries expected, in return for substantial concessions, have simply not been realised. In a paper he wrote in 2002, shortly after the agreement of the Doha Development Agenda, Martin Khor, Director of Third World Network.⁴⁶⁴, reviewed the prevailing situation and identified priorities for action: ‘The developing countries’ main expectation of benefit from the Uruguay Round was that at last the two sectors which the developed countries had heavily protected (agriculture and textiles) would be opened up and that that the developing countries’ products would have greatly enhanced market access. However, these sectors in fact remain closed many years after the Round ended.’⁴⁶⁵

Khor pointed out that ‘Implementing their obligations under the WTO agreements has brought many problems for developing countries....These problems include:

- (a) the prohibition of investment measures and subsidies, making it harder to encourage domestic industry;
- (b) import liberalisation in agriculture, threatening the viability and livelihoods of small farmers whose products face competition from cheaper imported foods, many of which are artificially cheapened through massive subsidies;
- (c) the effects of a high-standard intellectual property right (IPR) regime that has led to exorbitant prices of medicines and other essentials, to the patenting by Northern corporations of biological materials originating in the South, and to higher

⁴⁶⁴ The Third World Network is an independent non-profit international network of organisations and individuals involved in issues relating to development, the Third World and North-South issues. Its objectives are to conduct research on economic, social and environmental issues pertaining to the South; to publish books and magazines; to organise and participate in seminars; and to provide a platform representing broadly Southern interests and perspectives at international forums such as the UN conferences and processes.

⁴⁶⁵ Martin Khor, ‘The WTO, the Post-Doha Agenda and the Future of the Trade System: A Development Perspective’, *Third World Network* (paper presented at WTO seminar held at the annual meeting of the Asian Development Bank, Shanghai, China, 10 May, 2002), <http://www.twinside.org.sg/title/mkadb.htm>

cost for and lower access by developing countries to industrial technology; and (d) increasing pressures on developing countries to open up their services sectors, which could result in local service providers being rendered non-viable.⁴⁶⁶

Thinking about the future, Khor emphasises that ‘The objective of development should become the overriding principle guiding the work of the WTO, whose rules and operations should be designed to produce development as the outcome. Since the developing countries form the majority of the WTO membership, the development of these countries should be the first and foremost concern of the WTO... The reorientation of the WTO towards this perspective and approach is essential if there is to be progress towards a fair and balanced multilateral trading system with more benefits rather than costs for developing countries. Such a reorientation would make the rules and judgment of future proposals more in line with empirical reality and practical necessities.’⁴⁶⁷

Monbiot supports the notion that developed countries have simply failed to honour their obligations: ‘Many of the concessions the United States and the European Union have extracted from the poorer nations during trade negotiations have been exchanged for the promise that the subsidies they give their farmers will be scaled down or eliminated. So ruinous are these subsidies to the lives and livelihoods of the people of the poor world that their governments have agreed to almost everything the powerful nations have demanded. They have been rewarded by a flat refusal on the part of the US and Europe to honour the

⁴⁶⁶ Martin Khor, ‘The WTO, the Post-Doha Agenda and the Future of the Trade System: A Development Perspective’, *Third World Network* (paper presented at WTO seminar held at the annual meeting of the Asian Development Bank, Shanghai, China, 10 May, 2002), <http://www.twinside.org.sg/title/mkadb.htm>.

⁴⁶⁷ Martin Khor, ‘The WTO, the Post-Doha Agenda and the Future of the Trade System: A Development Perspective’, *Third World Network* (paper presented at WTO seminar held at the annual meeting of the Asian Development Bank, Shanghai, China, 10 May, 2002), <http://www.twinside.org.sg/title/mkadb.htm>.

deals. Soon after the latest trade agreement was negotiated, for example, the United States raised the value of farm subsidies by eighty per cent.⁴⁶⁸

(iii) Developed countries focus excessively on trade, to the exclusion of appropriate consideration of human rights

It goes without saying that the World Trade Organisation should be primarily concerned with Trade. However, it should be critical to any IGO that its work is carried out within a context of other values and standards to which international actors are expected to adhere, such as the values and standards embodied in the three pillars which support Collective Management. As the WTO itself states, its ‘goal is to improve the welfare of the peoples of the member countries’⁴⁶⁹. Trade is viewed as an avenue to this goal, but the approach must be expanded to include additional priorities. However, the developed countries that dominate the WTO’s agenda do not regularly bear this in mind.

George Soros explains: ‘In the absence of equally binding regulations in other fields such as human rights, labour conditions, health and environmental protection, the WTO gives international trade supremacy over other social objectives... There ought to be a better balance between the WTO and the ILO. If the member states had the political will, they could ratify and enforce the ILO conventions.’⁴⁷⁰

⁴⁶⁸ George Monbiot, *The Age of Consent: A Manifesto for a New World Order*, (London: Flamingo Press, 2004) p. 191.

⁴⁶⁹ World Trade Organisation, ‘The WTO in Brief’
http://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr00_e.htm

⁴⁷⁰ George Soros, *On Globalisation* (Cambridge, MA: PublicAffairs, 2002), pp. 35-40.

Global Exchange identifies two examples of the excessive prioritisation of trade:

(i) The WTO encourages a ‘race to the bottom’ in wages by pitting workers against each other rather than promoting internationally recognised labour standards. The WTO has ruled that it is illegal for a government to ban a product based on the way it is produced, such as with child labour. It has also ruled that governments cannot take into account ‘non commercial values’ such as human rights, or the behaviour of companies that do business with vicious dictatorships such as Burma when making purchasing decisions....

(ii) The WTO’s fierce defence of ‘Trade Related Intellectual Property’ rights (TRIPs)—patents, copyrights and trademarks—comes at the expense of health and human lives. The WTO has protected pharmaceutical companies’ ‘right to profit’ against governments seeking to protect their people’s health by providing life-saving medicines in countries in areas such as sub-Saharan Africa, where thousands die every day from HIV/AIDS. Developing countries won an important victory in 2001 when they affirmed the right to produce generic drugs (or import them if they lacked production capacity), so that they could provide essential life-saving medicines to their populations less expensively. Unfortunately, in September 2003, many new conditions were agreed to that will make it more difficult for countries to produce those drugs. Once again, the WTO demonstrates that it favours corporate profit over saving human lives.⁴⁷¹

Developed countries emphasise that protection of patents through TRIPs is essential to encouraging further pharmaceutical research. It is a point of view that if these companies were prevented from profiting from the drugs they develop, there would be no incentive for them to keep researching new cures and vaccines, and both developed and developing countries would suffer. This argument is unconvincing, however, since it proves the wrong point. It may be important to protect patents and copyrights within developed countries, in order to ensure some profits accrue to the companies to compensate for their investment. However, if the WTO were to prioritise the issues of developing countries, it would

⁴⁷¹ Global Exchange, ‘Top Reasons to Oppose the WTO’, *Global Exchange*, <http://www.globalexchange.org/campaigns/wto/OpposeWTO.html>.

emphasise their interest in protecting their populations from disease over the additional increments of profit for the pharmaceutical companies of developed nations. Intellectual property rights could be enforced within the developed world, with exceptions drawn for developing nations. Alternatively, the WTO budget could subsidise the developing world's use of these drugs; it could fund research into new drugs to ensure continual development, even in the absence of profits from the developing world.

Oxfam adds that although developing countries have made progress in a number of areas, developed countries continue to push trade over human rights:

At Doha, developing countries successfully united against the USA and others to push through the Doha Declaration on TRIPS and Public Health, which said that health needs should outweigh private intellectual property rights, even though it did not formally amend TRIPS. Although the EU has since abided by the letter and spirit of the Declaration, the USA has systematically used its bilateral trade agreements, together with intense diplomatic pressure, to introduce 'TRIPS-plus' intellectual property protection in developing countries, which further reduces access to affordable generic medicines. The USA also invariably demands 'TRIPS-plus' laws from countries such as Vietnam as a condition for entry to the WTO.⁴⁷²

This ensures that developing countries will continue to pay a premium for the technologies and resources they need for their development, rather than giving them all the tools available to accelerate their growth.

Though the WTO has rarely become involved in issues related to 'human rights', those instances when it has have generally been in areas such as labour regulation rather than issues such as intellectual property that are critical to developing countries. One example

⁴⁷² Oxfam International, 'Blood on the floor', Oxfam Briefing Paper, December 2004, pp. 21-22.

of this is the expressed commitment in the 1996 Ministerial Declaration to ‘internationally recognised core labour standards’ and their observance by member countries. This commitment is occasionally used by the WTO’s supporters to show that developed nations are genuinely concerned about the quality of life around the world, and willing to put basic standards ahead of trade considerations. However, developing countries have vehemently rejected this, arguing that the notion of ‘labour standards’ is a thin veil behind which developed nations continue to push their own agenda. Their opposition to labour regulation is explained as follows:

Many developing and some developed nations believe the issue has no place in the WTO framework. These nations argue that efforts to bring labour standards into the arena of multilateral trade negotiations are little more than a smokescreen for protectionism. Many officials in developing countries believe the campaign to bring labour issues into the WTO is actually a bid by industrial nations to undermine the comparative advantage of lower-wage trading partners.⁴⁷³

Human rights should not be allowed to serve as another avenue by which developed nations secure their own interests. If the WTO is to take any point of view on these universal standards, as it seems it must, the appropriate areas and methods of intervention should be agreed by its members, with weighty influence given to the interests of developing nations, the members who most need the WTO’s protection within a multilateral system.

(iv) Multinational corporations have undue influence over the negotiations of the WTO

According to Global Exchange: ‘The WTO rules are written by and for corporations with inside access to the negotiations. For example, the US Trade Representative gets heavy

input for negotiations from 17 'Industry Sector Advisory Committees'. Citizen input by consumer, environmental, human rights and labour organisations is consistently ignored.'⁴⁷⁴ Because corporations are organised and wealthy enough to lobby government effectively, their voices are heard and channelled into WTO decisions, unlike those of individual citizens or civil society.

Oxfam adds that, during WTO negotiations, 'vested interests, from steel to the sugar lobby, excel in putting politicians under pressure to do the wrong thing. Negotiators revealed as much when they stated in one meeting that in order to sell any final deal back home, they had to be able to point to the 'blood on the floor'⁴⁷⁵ where the 'pain should be shared'.⁴⁷⁶

Michael Edwards has argued that 'free-trade agreements like NAFTA and the World Trade Organisation protect corporations but abandon workers'.⁴⁷⁷ They prioritise corporate interests but under-emphasise labour standards and job security. While they ensure that corporations' expectations are upheld, they ignore the demands of workers to have their own interests maintained, allowing corporations to manipulate their workforce as desired to achieve maximum profits.

George Soros criticises the favouring of corporate interests: 'There are agreements on Trade Related Intellectual Property Rights (TRIPs) and Trade Related Investment Measures

⁴⁷³ World Trade Organisation, 'Labour standards: highly controversial', http://www.wto.org/English/thewto_e/whatis_e/tif_e/bey5_e.htm

⁴⁷⁴ Global Exchange, 'Top Reasons to Oppose the WTO', *Global Exchange*, <http://www.globalexchange.org/campaigns/wto/OpposeWTO.html>.

⁴⁷⁵ The term 'blood on the floor' implies that economically painful concessions have been obtained from all countries, including poor ones

⁴⁷⁶ Oxfam International, 'Blood on the floor', Oxfam Briefing Paper, December 2004, p. 11.

⁴⁷⁷ Michael Edwards, *Future Positive. International Co-operation in the 21st Century*, (London: Earthscan Publications, 2004), p. 7.

(TRIMs), but there is no agreement on trade-related labour rights, except prison labour, or trade-related environmental issues. The choice of subjects clearly favours corporate interests.⁴⁷⁸

Noreena Hertz adds her voice to those lamenting the influence that multinational corporations have on the WTO, pointing out that this power can interfere with nations' ability to protect the interests of their people, even in the largest developed countries. 'At the headquarters of the World Trade Organisation on the banks of Lake Geneva we see rulings being made in the names of the free market that limit states' abilities to safeguard their people's interests. When the European Union tried to ban synthetic hormones from beef on the basis of strong evidence that they could cause cancer, reduce male fertility and in some cases result in the premature onset of puberty in young children, it found itself unable to do so thanks to a WTO ruling which put the interests of Monsanto, the US National Cattlemen's Association, the US Dairy Export Council and the National Milk Producers Federation first.'⁴⁷⁹

6.2c Resolution

(i) The Dispute Settlement mechanisms of the WTO do not provide effective avenues of recourse for developing countries

The terms of the WTO's founding charter are enforceable by sanctions on any member country, in the case of an impartial finding of non-compliance with the rules, through the

⁴⁷⁸ George Soros, *On Globalisation*, (Cambridge, MA: PublicAffairs, 2002), p. 33.

⁴⁷⁹ Noreena Hertz, 'Why we must stay silent no longer', *The Observer*, The Globalisation Debate Special, 8 April, 2001.

Dispute Settlement Mechanism. Former WTO Director General Mike Moore notes: ‘The Dispute Settlement Mechanism...is unique in the international architecture. WTO Member Governments bind themselves to the outcome from panels and, if necessary, the Appellate Body. That’s why the WTO has attracted so much attention from all sorts of groups who wish to use this mechanism to advance their interests’.⁴⁸⁰ The Dispute Settlement Mechanism (DSM) makes the WTO unlike any other IGO, the rest of which operate without formal enforcement mechanisms. This capacity of the WTO system to punish member countries often results in their giving precedence to the WTO over institutions that cannot penalise them for broken agreements. However, the mechanism for imposing sanctions in the WTO is asymmetric and favours the powerful developed countries.

In theory, any country can take trade disputes to the Dispute Settlement Body. In practice, however, this is a costly, time-consuming process. Punishment takes the form of approved sanctions, meaning the wronged country can impose sanctions on the other party to the dispute, but the asymmetry between countries makes sanctions an ineffective tool: trade restrictions by a Quad member would have a serious economic impact on any other country, yet trade restrictions by a small developing country would have almost no impact at all on the giants of international trade. This means that the Dispute Settlement Mechanism is less beneficial to smaller Southern countries than to larger Northern countries, and as a result, it is used less by Southern countries. The empirical evidence noted below supports this conclusion.

⁴⁸⁰ Former WTO Director General Mike Moore, June 2000, press release available at: http://www.wto.org/English/news_e/pres00_e/pr180_e.htm

Bernard Hoekman and Petros Mavroidis present data that the DSM was used more by developing countries in the first five years of the WTO than at any time under the General Agreement on Tariffs and Trade.⁴⁸¹ Over 160 requests for consultations were brought to the WTO in the first five years—three times more per annum than under the GATT. Nevertheless, the level of involvement by developing countries, either as complainant or defendant, was significantly less than by developed countries. The G4 appeared as complainant in 64.5% of all cases, and the developed world as a whole filed 76.5% of the cases. Developing countries filed a mere 23.5% of the cases as complainant. As defendant, the G4 were involved in 55% of cases, all developed countries were involved in 71.5% of cases and the developing countries in only 28.5%. Furthermore, least developed countries were not involved in the DSM at all: there have been no cases involving sub-Saharan countries.

Young Duk Park and Marion Panizzon extend the timeframe and provide statistical documentation of the WTO disputes initiated between 1995 and 2001. Less than one third of WTO disputes (80 out of 235) have involved developing countries as complainants, which is slightly higher than their share of disputes under the GATT period. On the other hand, developing country defendants have been the target of roughly 45% (109 out of 242 disputes) of WTO disputes, which is much higher than was the case under the GATT. Park and Panizzon agree with Hoekman and Mavroidis that most developing and all the least

⁴⁸¹ Bernard M. Hoekman and Petros C. Mavroidis, 'WTO Dispute Settlement, Transparency and Surveillance', in *Developing Countries and the WTO: A Pro-Active Agenda*, eds. Bernard Hoekman and Will Martin (Oxford: Blackwell, 2001) pp. 131-146.

developed countries have not used the system at all since its inception, whereas the Quad is overrepresented.⁴⁸²

Busch and Reinhardt provide empirical evidence that most WTO disputes are among a few members that account for the bulk of international trade, most notable the US and Europe.⁴⁸³ High and middle-income countries account for 40% of the WTO membership and 83.8% of WTO members' total exports. This group of countries filed 76% of cases as complainant from 1995 to 2002, and were involved in 81% of cases as defendant. In comparison, developing countries have had little experience of dispute settlement. The remaining 60% of countries that constitute the low-middle and low income groups contribute 16.2% of WTO members' total exports. This group of countries filed only 24% of the cases as complainant and were involved in 19% of cases as defendant. Even within the 20 cases that have been brought by low income countries between 1995 and 2002, very few countries have been involved—80% of these cases were filed by India alone, with the remaining 20% filed by Pakistan and Indonesia.

These problems were illustrated in 1997 when, following an outbreak of cholera around Lake Victoria, the European Union banned imports of the Nile perch fish, jointly harvested from the lake by Kenya, Tanzania and Uganda. These three East African partners protested

⁴⁸² Y. D. Park and M. Panizzon, 'WTO Dispute Settlement 1995-2000: A Statistical Analysis', *Journal of International Economic Law* 1 (2002): 221-244, cited in Fabien Besson and Racem Mehdi, 'Is WTO Dispute Settlement System Biased Against Developing Countries? An Empirical Analysis' (paper presented at the Second International Conference on 'European and International Political & Economic Affairs,' Athens, Greece, May 27-29, 2004), http://www.ecomod.net/conferences/ecomod2004/ecomod2004_papers/199.pdf

⁴⁸³ Marc L. Busch and Eric Reinhardt, 'The WTO Dispute Settlement Mechanism and Developing Countries', (Sida Trade Brief, Department for Infrastructure and Economic Cooperation, 2004), p. 5, http://www.sida.se/shared/jsp/download.jsp?f=SIDA3600en_DisputeSettlement+web.pdf&a=3089

to the EU that the ban was unjustified as there was no evidence that the fish were contaminated. Tanzania requested that the World Health Organisation carry out a risk analysis, the results of which concluded that fish from the lake did not pose a risk of cholera outbreak in Europe. The ban was finally lifted and the three African countries resumed exporting to the EU; however, the economies of these countries had suffered unrecoverable losses, as noted below.

Although the East African trading partners could have taken their case to the WTO DSM to address the issue of compensation for retrospective economic losses, they chose not to use the Dispute Settlement Mechanism. It is widely believed that the high cost to developing countries of using the DSM, combined with outcomes which are uncertain due to their lack of legal expertise, are largely responsible for deterring Southern countries from using the DSM.

With reference to this specific case, the report by the International Centre for Trade and Sustainable Development notes: ‘Lack of technical and legal expertise are some of the reasons for [Kenya] not considering litigation. However, cumulatively it is in doubt if the availability of the two could have seen Kenya litigate.’⁴⁸⁴ The report notes that a likely additional reason for Kenya’s not using the DSM following the Nile perch incident is the issue of cost: ‘it is not clear whether the costs associated with utilising the WTO DSM have been a hindrance to Kenya’s participation in the system. It must however be noted ... [that] in formulating national negotiating positions and in the ongoing process of

⁴⁸⁴ Ouma Ochieng and David S. Majanja, ‘International Trade Dispute Resolution: Case Study on the Possibility of Kenya Utilising the WTO Dispute Settlement System’ (working draft commissioned by ICTSD as part as part of ICTSD’s project on WTO Dispute Settlement and Sustainable Development, November, 2006), p. 16, http://www.ictsd.org/dlogue/2006-11-02/Ouma_Ocheing.pdf.

institutionalising international trade negotiations, funding of these processes has been a major problem. Indeed, the National Committee on WTO has had to depend on the Civil Society and donor organisations to fund most of its events. There is actually no separate budget for running trade negotiations.⁴⁸⁵

The South Centre, an intergovernmental organisation of developing countries established by Intergovernmental Agreement, also highlights that the cost of, and access to, the dispute settlement procedure as key areas which provides obstacles to developing countries using the mechanism effectively. The Centre also notes that problems in the implementation of decisions and compensation arising from the process can further deter developing countries from using the system.⁴⁸⁶

Jawara and Kwa report that a developing country's delegate stated of the Nile perch case: 'We could not afford to go through the dispute settlement process with the EC for various reasons ... Really, the power of enforcement of the rulings coming out of the dispute settlement system is based on your capacity to retaliate against a country that has bent the

⁴⁸⁵ Ouma Ochieng and David S. Majanja, 'International Trade Dispute Resolution: Case Study on the Possibility of Kenya Utilising the WTO Dispute Settlement System' (working draft commissioned by ICTSD as part of ICTSD's project on WTO Dispute Settlement and Sustainable Development, November, 2006), pp. 16-17, http://www.ictsd.org/dlogue/2006-11-02/Ouma_Ocheing.pdf

⁴⁸⁶ South Centre, 'Issues Regarding the Review of the WTO Dispute Settlement Mechanism' (Trade-Related Agenda, Development and Equity (T.R.A.D.E.) Working Paper No. 1, Feb 1999), <http://www.southcentre.org/publications/workingpapers/wp01.pdf>. The South Centre is an IGO established by International Treaty which came into force on 31 July 1995 with its headquarters in Geneva. It has grown out of the work and experience of the South Commission and its follow-up mechanism, and from recognition of the need for enhanced South-South co-operation. The South Centre is intended to meet the need for analysis of development problems and experience, as well as to provide intellectual and policy support required by developing countries for collective and individual action, particularly in the international arena.

rules. As a small country, however, the impact of retaliating against a big country is virtually nil.⁴⁸⁷

It is worth noting that developing countries have, on occasion, won cases through the DSM. Busch and Reinhardt cite several cases in which WTO panels have found in favour of developing countries in cases against much larger nations, in industries ranging from underwear (Costa Rica vs. US) to sardines (Peru vs. European Community).⁴⁸⁸ However, eliciting a favourable resolution is only half the battle. Because DSM decisions are enforceable by sanction, developed countries can afford to disregard the resolutions that are made in favour of smaller countries. When small countries constitute tiny fractions of trade weight, resolutions allowing them to impose sanctions are insufficiently worrisome, and can simply be ignored. Perhaps the best example of a developed country ignoring a WTO resolution is the recent case of cotton subsidies. Long a sore spot in the domain of international trade, American subsidies of the cotton industry cost the US Department of Agriculture over \$2 billion in 2001 alone, resulting in an estimated loss of \$600 million to Brazil that same year, with countless other countries burdened as well.⁴⁸⁹ When Brazil brought a case to the DSM in 2004, 'the panel found that the United States was maintaining prohibited export and import substitution subsidies as well as actionable subsidies that

⁴⁸⁷ Fatoumata Jawara and Aileen Kwa, *Behind the Scenes at the WTO: the Real World of International Trade Negotiations* (New York: Zed Books, 2003) p. 7. The authors interviewed numerous WTO delegates and ambassadors, but have kept names and country information anonymous for the protection of these parties.

⁴⁸⁸ Marc L. Busch and Eric Reinhardt, 'The WTO Dispute Settlement Mechanism and Developing Countries' (Sida Trade Brief, Department for Infrastructure and Economic Cooperation, 2004), p. 6, http://www.sida.se/shared/jsp/download.jsp?f=SIDA3600en_DisputeSettlement+web.pdf&a=3089.

⁴⁸⁹ 'Unpicking cotton subsidies', *The Economist*, 30 April, 2004

caused serious prejudice to the interests of Brazil.⁴⁹⁰ The American government has slowly taken steps towards meeting the literal requirements of the ruling, though they have been extremely hesitant to cut subsidies. The Brazil government ‘has continued to question whether the United States has fully complied in the case’, although they have ceased bringing pleas to the DSM, noting little progress following previous appeals.⁴⁹¹ These issues are of critical importance to developing countries, since a single industry can underpin an entire economy. The Director-General of the WTO has highlighted that the ‘importance of sectoral issues, such as the impact of cotton subsidies, has also been strongly emphasised by some LDCs at the highest political level’.⁴⁹² The lack of action on these issues, so weighty to developing countries, thereby highlights the degree to which WTO dispute resolution processes are unresponsive to their concerns.

(ii) Due to their weak ability to retaliate, developing countries are less likely to seek resolution by filing disputes

Chad Bown empirically examines the determinants of country’s decisions to participate in formal trade litigation arising under the WTO between 1995 and 2000.⁴⁹³ The typical

⁴⁹⁰ Jeanne J. Grimmett, ‘WTO Dispute Settlement: Status of US Compliance in Pending Cases’ (Congressional Research Service Report for Congress, Library of Congress: Washington DC., March 1, 2006), http://vienna.usembassy.gov/en/download/pdf/wto_uscompliance.pdf

⁴⁹¹ Jeanne J. Grimmett, ‘WTO Dispute Settlement: Status of US Compliance in Pending Cases’ (Congressional Research Service Report for Congress, Library of Congress: Washington DC., March 1, 2006), http://vienna.usembassy.gov/en/download/pdf/wto_uscompliance.pdf

⁴⁹² World Trade Organisation, ‘Report by The Director-General To The Fifth Ministerial Conference’, <http://docsonline.wto.org/DDFDocuments/t/WT/Min03/1.doc>

⁴⁹³ Chad P. Bown, ‘Participation in WTO Dispute Settlement: Complainants, Interested Parties, and Free Riders’, *World Bank Economic Review* 19, no. 2 (2005): 287-310. Bown establishes a set of potential litigants, and then develops an expected cost-benefit framework to guide an empirical examination of determinants of potential litigants’ decision to formally participate in the disputes. The empirical investigation looks at whether the expected benefits include increased market access in the disputed sector and the increased probability of an economically successful dispute outcome that may be tied to credible retaliatory threats. Also examined is whether the expected costs to formal participation include

outcome of rulings has a ‘multiplier’ effect on the possibility of success for developing countries, since it affects their predisposition to seek resolution in the first place. Bown finds that many developing countries will not file disputes against developed countries, not only because they do not expect resolution, but also because they fear retaliation. Two possible forms of retaliation exist. First, if developing countries are reliant on the respondent for bilateral aid, they are less likely to initiate a dispute against them for fear of losing this aid. Similarly, if developing countries have a preferential trade agreement with the developed country, they are less likely to take part in a dispute against another agreement member for fear of damaging relations.⁴⁹⁴

Bown argues that the level of a country’s retaliatory capacity is critical when a country is deciding whether to formally engage in the WTO dispute settlement or not. The system’s rules and incentives generate an ‘institutional bias’ that particularly affects developing economies’ participation in this process.⁴⁹⁵ In this system, ‘complainant countries must have the retaliatory capacity to threaten to impose economic costs on respondents that fail

either a country’s capacity to afford the substantial legal costs associated with WTO dispute settlement litigation or the political costs associated with a potential deterioration of international relations when confronting important trading partners. Any attempt to estimate the bias associated with the initiation of disputes is subject to data constraints. There is no obvious source for comprehensive information on government policies that are WTO-inconsistent and yet have not been formally confronted through the initiation of a trade dispute. To get around this data problem, the focus is on the pattern of participation in disputes that have already been initiated instead of attempting to examine whether there is a bias in the initiation of disputes. Previously unexploited information on the participation and non-participation of potential litigants adversely affected by member-implemented, WTO-inconsistent policies is used. The data are derived from initiated disputes and the observation that in many disputes the respondent’s WTO-inconsistent policy may have been imposed on a quasi-most favoured nation (MFN) basis that negatively affected the exports of multiple member countries, any number of which could have formally participated in the dispute.

⁴⁹⁴ Chad P. Bown, ‘Participation in WTO Dispute Settlement: Complainants, Interested Parties, and Free Riders’, *World Bank Economic Review* 19, no. 2 (2005), p. 301.

⁴⁹⁵ Chad P. Bown, ‘Participation in WTO Dispute Settlement: Complainants, Interested Parties, and Free Riders’, *World Bank Economic Review* 19, no. 2 (2005), p. 307.

to comply with WTO panel rulings’,⁴⁹⁶ He finds ‘substantial evidence that retaliation threats affect the likelihood and size of trade liberalisation undertaken by the respondent and weak evidence that panel rulings of guilty also induce economic compliance’.⁴⁹⁷ His evidence supports the fact that ‘the larger the exporter’s reliance on the respondent for bilateral aid, the less likely it is to intervene as a complainant’. In support of this, Fabien Besson and Racem Mehdi add that ‘when a developing country is reliant on a developed country for bilateral assistance, it is unlikely to win a dispute when opposed to the latter’.⁴⁹⁸

Kyle Bagwell and Robert Staiger also emphasise that retaliation threat is a central component of the WTO DS system. Retaliation threat provides an enforcement mechanism which deters violation of trade agreements. However, this mechanism is limited by the severity of credible threat of retaliation. Retaliation must be sufficiently severe to induce enough long-term losses in order to incite the defendant to conform its trade practice to

⁴⁹⁶ Chad P. Bown, ‘Participation in WTO Dispute Settlement: Complainants, Interested Parties, and Free Riders’, *World Bank Economic Review* 19, no. 2 (2005), p. 287.

⁴⁹⁷ Chad P. Bown, ‘Trade Disputes and the Implementation of Protection under the GATT: An Empirical Assessment’, *Journal of International Economics* 62, no. 2 (2004): 263–294. Bown (2004b) examines a sample of GATT trade dispute data for 1973–94 and finds that countries tend to implement GATT-inconsistent import protection leading to a trade dispute, as opposed to GATT-consistent safeguards protection, when the trading partner affected by the protection is bilaterally powerless. Also based on Bown (2004a), in which he empirically assesses determinants of successful economic outcomes in GATT/WTO trade dispute using econometric modelling and analysis. Unlike most other studies on the subject, Bown (2004a) takes advantage of the disaggregated trade data on the actual products under dispute, producing a wider, fuller data set to work from.

⁴⁹⁸ Fabien Besson and Racem Mehdi, ‘Is WTO Dispute Settlement System Biased Against Developing Countries? An Empirical Analysis’ (paper presented at the Second International Conference on ‘European and International Political & Economic Affairs,’ Athens, Greece, May 27–29, 2004), http://www.ecomod.net/conferences/ecomod2004/ecomod2004_papers/199.pdf. Besson and Mehdi’s observations constitute reliable testimony based on their econometric study which examines whether there are any biases against developing countries in the WTO DSM litigation procedure. They consider if there exists empirical evidence of DSM bias against developing countries using four categories of explanatory variables, which may or may not directly affect litigation outcomes: trade, legal resources, economic retaliation, and political retaliation. These variables are suggested by their initial theoretical research analysing the WTO DS procedure from an economic perspective, and also drawing on legal and world politics considerations which may affect trade dispute outcomes. They draw their data from numerous reliable sources including the WTO website, UN and UNCTAD websites, World Bank Database, and Stockholm International Peace Research Institute (SIPRI) website.

WTO rules. Therefore, the current rules of the DS procedure entail a bias against countries with weak capacity to retaliate.⁴⁹⁹

Contrary to the authors cited above, Busch and Reinhardt believe that developing countries benefit from the fact that ‘defendants worry about the normative condemnation that goes along with a legal defeat, rather than retaliation per se, because such a label may damage their prospects of gaining compliance when they, in turn, file as complainants’.⁵⁰⁰ They believe that it is this factor that contributes most to the effectiveness of the dispute process, rather than the fear of trade sanctions, which are rarely exercised, arguing that ‘threats of retaliation are not the key to the system’.⁵⁰¹ Although they may be correct in assuming that there is a normative stigma associated with negative rulings from the DSM, it cannot be a particularly compelling one; developed nations continue to maintain subsidies and tariffs that the WTO rejects in principle. If the fear of ‘normative condemnation’ were so

⁴⁹⁹ K. Bagwell and W. S. Staiger, ‘GATT-Think’, *NBER Working Paper*, No. 8005 (2000) cited in Fabien Besson and Racem Mehdi, ‘Is WTO Dispute Settlement System Biased Against Developing Countries? An Empirical Analysis’ (paper presented at the Second International Conference on ‘European and International Political & Economic Affairs’, Athens, Greece, May 27–29, 2004), http://www.ecomod.net/conferences/ecomod2004/ecomod2004_papers/199.pdf. Bagwell and Staiger describe recent work on the theory of trade agreements, reviewing the theoretical literature that interprets and evaluates the institutional features found in GATT. They consider in particular whether GATT articles can be interpreted as offering negotiation rules that help governments undo the inefficient restrictions in trade that are caused by the terms-of-trade externality.

⁵⁰⁰ Marc L. Busch and Eric Reinhardt, ‘The WTO Dispute Settlement Mechanism and Developing Countries’, (Sida Trade Brief, Department for Infrastructure and Economic Cooperation, 2004), http://www.sida.se/shared/jsp/download.jsp?f=SIDA3600en_DisputeSettlement+web.pdf&a=3089. Busch and Reinhardt use World Bank (2003) data on WTO disputes filed from 1995 to 2002, and trade figures from 2000, to compare developed and developing countries in their capacity as both complainants and defendants, and in relation to their proportion of total WTO member states’ exports. They also draw on results of empirical analysis by Robert E. Hudec, ‘The Adequacy of WTO Dispute Settlement Remedies’ in *Development, Trade, and the WTO*, eds. Bernard Hoekman, Aaditya Mattoo and Philip English (Washington, DC: World Bank, 2002); and Marc L. Busch and Eric Reinhardt, ‘Developing Countries and GATT/WTO Dispute Settlement,’ *Journal of World Trade* 37, no. 4 (2003): 719-735.

⁵⁰¹ Marc L. Busch and Eric Reinhardt, ‘The WTO Dispute Settlement Mechanism and Developing Countries’, (Sida Trade Brief, Department for Infrastructure and Economic Cooperation, 2004), http://www.sida.se/shared/jsp/download.jsp?f=SIDA3600en_DisputeSettlement+web.pdf&a=3089

persuasive, there would be no cotton or sugar subsidies in the US and no Common Agricultural Policy in the European Union.

Besson and Mehdi add one more way in which the WTO dispute settlement process favours developed countries, which is that the political power of a country has the potential to disadvantage its trading partner during litigation. The weaker a country is politically, the lower its probability of success. In their opinion, 'trade disputes are partly generated by political relationships and are the result of the structures of power and conflicts between countries'.⁵⁰² Their research shows that the 'DS (dispute settlement) procedure also fails to insulate developing countries from international political factors and hence contains a bias against weak developing countries ... our results seem to show that a developing country is unlikely to win a dispute against a developed country when it participates to a military alliance with the latter and the military expenditure gap is high.'⁵⁰³

⁵⁰² Fabien Besson and Racem Mehdi, 'Is WTO Dispute Settlement System Biased Against Developing Countries? An Empirical Analysis' (paper presented at the Second International Conference on 'European and International Political & Economic Affairs,' Athens, Greece, May 27–29, 2004), p. 12, http://www.ecomod.net/conferences/ecomod2004/ecomod2004_papers/199.pdf. Opinion based on Besson and Mehdi's theoretical research on the possibility of a DSM bias against developing countries, and the variables potentially responsible for this bias, and draws on the work of Robert O. Keohane, *International Institutions and State Power: Essays in International Relations Theory* (Boulder, CO: Westview Press, 1989); C. P. Kindleberger, 'Dominance and Leadership in the International Economy: Exploitation, Public Goods, and Free Rides', *International Studies Quarterly* 25 (1981): 242-254; Stephen D. Krasner, 'State Power and the Structure of International Trade', *World Politics* 28 (1976): 317-347; K. Iida, 'Between Power and Principle: Multilateral Trade Dispute Settlement Revisited', paper presented at the annual meeting of the American Political Science Association, Atlanta, September 2-5, 1999; and C. L. Griffin, 'The Political Economy of WTO Dispute Settlement: Toward a Synthesis of International Regime Theories', *University Avenue Undergraduate Journal of Economics* (2002), <http://www.econ.ilstu.edu/UAUJE/PDF%27s/CarrolRound/griffinpost.pdf>, among others.

⁵⁰³ Fabien Besson and Racem Mehdi, 'Is WTO Dispute Settlement System Biased Against Developing Countries? An Empirical Analysis' (paper presented at the Second International Conference on 'European and International Political & Economic Affairs,' Athens, Greece, May 27–29, 2004), p. 19, http://www.ecomod.net/conferences/ecomod2004/ecomod2004_papers/199.pdf. Based on empirical studies and reliable data sources as noted above.

In the face of these bleak prospects, developing countries are forced to look to other measures. When official resolution mechanisms fail to resolve their grievances, they can only implement or retain their own tariffs and quotas to help protect their nations from being entirely subject to the whims of larger nations. This approach perpetuates the existence of costly trade-barriers and it further limits the prospects for these impoverished countries. There is no doubt that these countries must play a role in removing these barriers, but they cannot be expected to open their borders unconditionally in the face of an unresponsive dispute resolution process. Before developing countries can confidently remove their remaining barriers to trade, they must have confidence in an effective multilateral trading system protected by a balanced resolution process.

All of these factors combine to render the dispute settlement mechanism of the WTO an ineffective and frustrating avenue of recourse for developing countries. Their suits are unlikely to be successful due to lack of legal expertise and political clout. Even when they are successful, the threat of sanctions from small countries is inadequate to alter the behaviour of large countries. Finally, the fact that resolutions are unlikely to result in gains for developing countries means their prosecution is not worth the money, time, or risk to preferential trade agreements that a suit would entail, and relying on their own barriers simply seems more appealing. Developing countries can expect little resolution from the DSM.

Though it is not possible in this chapter to provide a complete analysis of the problems with a detailed study of the evidence for each of the various claims, I argue that the studies cited show indisputably that there is a general imbalance of power in the WTO, the practical

reform of which I address in Section Six below after briefly reviewing the history of NGO-WTO relations.

6.3 Historical relations between the WTO and Non-Governmental Organisations

Attempts to increase the role of civil society in the multilateral trading system date back to the 1940s and a proposed intergovernmental group known as the International Trade Organisation (ITO). Item 5 of the ITO's provisional agenda specifically referred to paragraph 2 of article 87 of the Havana charter, which states that:

the Organisation may make suitable arrangements for consultation and co-operation with non-governmental organisations concerned with matters within the scope of this Charter.⁵⁰⁴

A report prepared by the Secretariat of the Interim Commission for the International Trade Organisation (ICITO) gave a brief overview of the arrangements made by the Economic and Social Council (ECOSOC) of the UN,⁵⁰⁵ and presented a set of conclusions and recommendations on procedures regarding how NGOs should be adapted to suit the ITO. Although the recommendations never materialised, they formed the basis of the current WTO guidelines regarding its relations with NGOs. At the time, there was a genuine belief that the ITO could benefit from the experience of issue-specific NGOs: as its proponents said, 'it is clearly desirable that the ITO should take full advantage of the

⁵⁰⁴ Interim Commission for the International Trade Organisation, 'Relations with Non-Governmental Organisations' (Note by the Secretariat of the Interim Commission for the International Trade Organisation, ICITO/EC.2/11, 15 July, 1948), http://www.wto.int/gatt_docs/English/SULPDF/90060204.pdf.

⁵⁰⁵ The Constitutional Provision for arrangements with NGOs is found in Chapter X, Article 71 of the UN Charter, <http://www.un.org/aboutun/charter/chapt10.htm>

knowledge and expertise of the non-governmental organisations in these various fields'.⁵⁰⁶ However, no formal procedure was adopted for consulting NGOs. It was decided that a flexible case-by-case scenario of consultations was preferable, thus failing to establish any formal set of rules according to which NGOs could be guaranteed certain treatment. At the 1994 Ministerial Meeting in Marrakech that established the WTO, no provisions existed for inviting NGOs, and those NGOs that did attend had to acquire press credentials and attend as members of the press. Nevertheless, the signing of the final act of the Uruguay Round and Marrakech Agreement heralded the beginning of the irreversible process of NGO recognition, as evidenced by Article V:2 of the Marrakech agreement:

The General Council may make appropriate arrangements for consultation and cooperation with non-governmental organisations concerned with matters relating to those of the WTO.⁵⁰⁷

Initially, article V:2 provided little guidance as to *how* NGOs could be more active in the WTO, but the July 1996 meeting of the General Council saw the introduction of the *1996 Guidelines for Relations with Non-Governmental Organisations*. Since then, the WTO has adjusted its language to recognise civil society, undertaken various outreach initiatives towards civic associations, increased its public dissemination of information, and made some alterations to policy that have partly met civil society demands.

⁵⁰⁶ Interim Commission for the International Trade Organisation, 'Relations with Non-Governmental Organisations' (Note by the Secretariat of the Interim Commission for the International Trade Organisation, ICITO/EC.2/11, 15 July, 1948), http://www.wto.int/gatt_docs/English/SULPDF/90060204.pdf

⁵⁰⁷ World Trade Organisation, *The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations* (Cambridge: Cambridge University Press, 1999), p. 9

In terms of its language, there are numerous examples of the WTO acknowledging the importance of civil society contributions. Previous Director-General Renato Ruggiero argued for the benefits of including NGOs, the business sector and the media in his address to the Singapore Ministerial Conference. Furthermore, at the Geneva Ministerial Conference, Ruggiero and several government leaders publicly endorsed the idea of improved relations between the WTO and civil society; this was followed by President Clinton's call for a 'forum where business, labour, environmental and consumer groups can speak out and help guide the further evolution of the WTO'⁵⁰⁸.

Going beyond rhetoric, the WTO has in fact undertaken numerous outreach programs, the most important of which have been the gestures towards civil society at the Ministerial Conferences and the Symposia on trade and sustainable development issues. It has been extremely difficult to raise the profile of NGOs at the WTO: the Secretariat faced huge practical difficulties when attempting to improve NGOs' access to the Singapore Ministerial Conference, for example, providing facilities, suitable meetings with and access to delegates, and task forces to deal with NGO problems and requests. Pedersen notes that the Secretariat undertook considerable work to achieve an effective and workable model for NGO involvement in Singapore that would also be acceptable to WTO member governments.⁵⁰⁹ The practical difficulties of hosting a multitude of NGOs were compounded by member governments remaining sharply divided over NGO attendance and their role in the context of the meeting. Nevertheless, the following three Ministerial Conferences

⁵⁰⁸ International Centre for Trade and Sustainable Development, 'Clinton Endorses Call for High-Level WTO Meeting on Trade-Environment and Calls for WTO Openness', *Bridges Weekly Trade News Digest* 2, no. 18, 18 May, 1998.

⁵⁰⁹ Peter N. Pederson, 'The World Trade Organisation and Non Governmental Organisations' <http://www.ictsd.org/dlogue/1998-sept/pedersen.pdf>

increasingly included NGOs whose activities were ‘concerned with those of the WTO’.

Table 6.1 summarises the increase in NGO presence and the improvements in the facilities devoted to NGOs.

Table 6.1 NGO presence at previous WTO conferences

Conference	Number of NGOs submitting requests to attend	Number of NGOs that attended	Number of individuals	Facilities provided for NGOs
Singapore, December 1996	159	108	235	<p>NGO centre (including conference room of capacity 250 with computer facilities, document distribution area, live TV feed from plenary sessions)</p> <p>5 small meeting rooms for NGO meetings</p> <p>2 rooms for informal meetings with WTO delegates</p> <p>Invitation to participate in all social events with delegates</p> <p>Access to a taskforce specially created to deal with NGO problems and requests</p>
Geneva, May 1998	152	128	362	<p>NGO centre (as above)</p> <p>Meeting rooms (as above)</p> <p>NGO facilities housed in the same building as Ministerial Conference which amounted to improved access to delegates</p> <p>Allocated tables near document distribution desk to deliver printed materials</p> <p>Special NGO Gallery (50 seats) for NGOs in General Assembly Hall</p> <p>Regular briefings by WTO Secretariat</p>
Seattle, USA, Nov/Dec 1999	776	686	1550	<p>NGO centre (as above)- within walking distance from main convention centre</p> <p>Meeting rooms (as above). In excess of 160 meetings were held</p> <p>Daily briefings by Secretariat</p> <p>Press area (equipped to follow and report on proceedings)</p> <p>Superior access to delegations and Secretariat staff</p>

Source: Peter N. Pederson, 'The World Trade Organisation and Non Governmental Organisations', <http://www.ictsd.org/dlogue/1998-sept/pedersen.pdf>

The number of NGOs associated with the WTO has continued to rise as the trend towards greater collaboration has accelerated. In advance of the most recent round of trade negotiations in Doha, 647 NGOs were invited to attend the central Ministerial, to which NGOs previously did not have access⁵¹⁰. Although there is no formal mechanism by which to define those officially associated and those not, the attendance list from the Cancun Ministerial Meeting reveals that the number of NGOs communicating with the WTO has risen to nearly 1000. These include everything from the Academic Council of the United Nations to the Zenshinren of Japan (the National Federation Forest Owners Cooperative Associations).

Since 1994, numerous issue-specific symposia have also been hosted by the WTO, covering such trade-related topics as the environment (1994, 1997, 1998, 1999), competition policy (four in the period 1997-1999), development (1997, 1999), and trade facilitation (1999).⁵¹¹ Designed to broaden and improve the dialogue between the WTO and NGOs, participants typically included representatives from NGOs, private corporations, academia and, of course, the WTO. In some cases, the heads of the United Nations Conference on Trade and Development (UNCTAD) and the United Nations Economic Programme (UNEP) were also present, and September 1997 saw a joint two-day WTO-UNCTAD NGO Symposium that took place in Geneva on Trade-Related Issues Affecting Least-Developed Countries. In addition, an outcome of the 1996 Singapore Ministerial Conference was the formation of the aforementioned Integrated Framework. Although the

⁵¹⁰ World Trade Organisation, '647 non-governmental organisations eligible to attend the Doha ministerial', (WTO Press Release, 13 August, 2001), http://www.wto.org/English/news_e/pres01_e/pr240_e.htm

⁵¹¹ Data and information drawn from Peter N. Pederson, 'The World Trade Organisation and Non Governmental Organisations', <http://www.ictsd.org/dlogue/1998-sept/pedersen.pdf>

IF is not mandated to deal with NGOs, its formation reflects willingness on behalf of individual IGOs to work together with other organisations in pursuit of shared goals.

The WTO responded to demands from civil society for a greater release of information on policy-making by launching an elaborate WTO website in 1995. Visitors to the site can access information about the WTO, request information, submit questions and download derestricted documents. In 1998, a special section for NGOs was added to the site via a direct link from the homepage. In 1996, the General Council adopted a protocol on *Procedures for the Circulation and De-Restriction of WTO Documents*, a direct result of which has been the publication of dispute panel reports as soon as they are adopted. The WTO also publishes completed trade policy review reports and summaries of the proceedings of the Committee on Trade and Environment.

However, although interaction between civil society and the WTO has increased noticeably since the early 1990s, there remains widespread distrust and dissatisfaction in the NGO community. This manifested itself in early 1996 at the Singapore WTO ministerial meeting, especially among environmental groups: 'expressing deep dissatisfaction with the accomplishments to date of the WTO's Committee on Trade and Environment (CTE), greens from developed countries yesterday sought ways to make the world's trading rules more sustainable',⁵¹² More recently, Food First posted a 'Joint NGO Statement on the

⁵¹² 'Greens Place Trading Rules under Spotlight', *The Nation*, December 11, 1996.

Untransparent and Manipulative Process Leading to the Draft WTO Doha Ministerial Declaration’ on November 7, 2001.⁵¹³

Michael Mason used a survey technique to study the relationship between (primarily environmental) NGOs and the WTO.⁵¹⁴ ‘Results from questionnaire surveys show a mixed response in terms of environmental NGOs’ assessment of WTO civil society initiatives. While high levels of satisfaction are recorded in terms of notification of meetings and opportunities for questions, the survey records a strong dissatisfaction with the current level of public access to WTO documents, calling for further de-restriction. In addition, NGOs collectively favour the creation of a WTO-civil society advisory group, formalisation of observer status for NGOs at the WTO, and the right of NGOs to submit briefs to the dispute settlement body.’

Jan Aart Scholte, Robert O’Brien and Marc Williams argue that there are several ways in which civil society can contribute to the decision-making of the global trade regime. They list several approaches by which civil society can influence the WTO, which are consistent with my analysis in Chapter Two about how civil society can exercise its ‘soft power’— including providing it with expertise that is ‘useful in policy formulation, implementation and review’; asking difficult questions (‘challenge the WTO to better clarify, explain, justify and perhaps rethink its positions’); providing channels through which stakeholders

⁵¹³ For more information, see Martin Khor, ‘NGOs condemn Doha draft Declaration and ‘biased’ process’, *Third World Network*, <http://www.twinside.org.sg/title/condemn2.htm>

⁵¹⁴ Centre for Environmental Policy and Governance, ‘Recent Civil Society Initiatives at the WTO’, *LSE Environment* (the Newsletter of the Centre for Environmental Policy and Governance), Issue 1 (Feb 2004): 1, <http://www.lse.ac.uk/collections/geographyAndEnvironment/CEPG/pdf/Issue1.pdf>.

may ‘voice their views on trade issues and have those opinions relayed to WTO staff; and serve as ‘agents of civil education.’⁵¹⁵

I now outline how the WTO might be reformed to be consistent with the Collective Management concept, giving NGOs a formal decision-making role in the WTO, and assessing the potential benefits as well as the risks and cautionary measures that need to be taken.

6.4 The WTO and Collective Management

The WTO is, in theory, an association of national governments. Non-state actors do have some influence in the decision-making processes. Groups and individuals put pressure on governments to represent their views and seek policies at the WTO that protect their interests. I argue below that the ‘second sector’, private enterprise, is implicitly present during WTO meetings and ministerials. As noted, the NGO Survey showed that a large majority of respondents believe that multinational corporations have an undue influence in IGOs. Business and corporate enterprise frequently have the resources to mount successful lobbying campaigns, swaying governments to see things in their preferred way. This may even result in the establishment of new WTO rules and conditions. For example, as noted by David Hartridge, former Director of the WTO’s Services Division: ‘Without the enormous pressure generated by the American financial services sector, particularly

⁵¹⁵ Jan Aart Scholte, with Robert O’Brien and Marc Williams, ‘The WTO and Civil Society’, (Centre for the Study of Globalisation and Regionalisation, Working Paper No. 14/98, July 1998), <http://www2.warwick.ac.uk/fac/soc/csgr/research/workingpapers/1998/wp1498.pdf>

companies like American Express and Citicorp, there would have been no services agreement'.⁵¹⁶

Prime examples of this 'proxy' phenomenon also occur in the pharmaceutical industry. As discussed above, multinational corporations (MNCs) based in the United States have placed significant pressure on the American government to ensure that their 'intellectual property rights' are protected, even at the expense of health and safety needs in the developing world. International health objectives could be achieved best if drugs were made readily available around the world. This would be facilitated by increases in production of 'copycat' versions of treatments and inoculations; Brazil, Thailand and India are all home to a number of companies that can produce generic versions of drugs. However, the US is trying to conclude bilateral trade deals that will prevent export of these drugs and force poor countries to buy them from the US pharmaceutical giants, ensuring that the interests of these corporations are articulated in the field of international trade. There is evidence that

⁵¹⁶ David Hartridge, former Director of the WTO's Services Division, cited at http://www.janathakshan.org/gats_reforms/wtotrade/GATSPresentation.ppt#256,1, General Agreement on Trade in Services

such bilateral trade deals have been or are being negotiated with Thailand, Korea, Peru, Panama, Colombia, South Africa, Botswana and Jordan, among others.⁵¹⁷

The second sector, then arguably has a strong influence in the WTO; but the third sector, civil society, has the weakest influence and the greatest potential according to the NGO Survey to reduce the democracy deficit. I now address how NGO participation in formal WTO decision-making might provide greater democratisation in the three areas identified in Section Two of this chapter: participation, prioritisation, and dispute resolution.

The most immediate focus for potential reform is expanding **participation** through structures based on the cosmopolitan principles of inclusive, collective decision-making. While NGOs have been invited to attend the Ministerial Conferences since 1996, they are

⁵¹⁷ In January 2006 the United States asked Thailand to sign a free trade agreement that would, on paper, dilute its right to break patents and use generics. As of April 2006, trade deals had already been signed with developing countries battling AIDS, including six in Central America. Bilateral trade deals are being negotiated with Peru, Panama and Colombia and negotiations are also beginning with several nations pivotal to the fight against the virus, from Thailand to five southern African countries, including South Africa and Botswana. (Anand Giridharadas, 'US pushes to limit generic-drug rights in trade pacts', *International Herald Tribune*, 19 April, 2006). In late 2006, US negotiators pressed for changes to Korea's national prescription drug reimbursement system to ensure that US drug-makers could offer brand-name drugs for sale in Korea at a competitive price. On the copyright side, the US also pressured Korea to lengthen copyright terms beyond the 50 years now protected by Korean law and sought greater rights for copyright owners to challenge infringements in civil court ('Democrats Could Slow US Trade Deals But May Change Little On IP,' Martin Vaughan for *Intellectual Property Watch*, 23 November 2006). More recently, the Oxfam report found that drug prices in Jordan have increased by 20 percent since 2001, when the bilateral deal with the United States was implemented, as a result of the strong intellectual property protections in the US free trade deal. Drug prices in Jordan are now up to six times higher than comparable drug prices in Egypt. ('US trade deals raising drug prices abroad', Oxfam, reported by Reuters, 3 April 2007). Dilip Shah, Head of the Indian Pharmaceutical Alliance, which represents generic makers, states that because of trade agreements with the US, India's generics industry, the world's largest, is reining in plans to supply poor countries and refocusing on richer ones (cited in Anand Giridharadas, 'US pushes to limit generic-drug rights in trade pacts', *International Herald Tribune*, 19 April, 2006). An examination by the International Herald Tribune of several free trade agreements reveals provisions that appear to limit the freedom to use generics. Several agreements, for example, prolong a patent monopoly beyond 20 years if the developing country's regulators show 'unreasonable delays' in approving a patent. This provision, absent from WTO rules, sustains higher prices. Many agreements also serve to prolong patents by requiring generics to be retested as if they were new inventions. Retesting a drug biologically equivalent to one already approved takes time and may be unethical, since infected patients must be given placebos (results cited in Anand Giridharadas, 'US pushes to limit generic-drug rights in trade pacts', *International Herald Tribune*, 19 April, 2006).

only passive observers and still have no voice in the actual decision-making process. The current relationship between the WTO and NGOs, while improving, remains an *informal* relationship at best. The WTO lacks clearly-formulated objectives and carefully-constructed channels of communication for its NGO relations. Unlike the World Bank, the WTO has established no liaison committee with civic groups, nor has the WTO made arrangements for permanent accreditation of civic organisations, as the UN has, but relies instead on *ad hoc* admission to specific events. The superficial nature of WTO-NGO interchanges may be indicative of a response to NGO calls for greater access that is dominated by developed countries, protecting their interests. WTO members call attention to the 23 July 1996 Guidelines for the Arrangements on Relations with the NGOs (WT/L/162):

Members have pointed to the special character of the WTO, which is both a legally binding intergovernmental treaty of rights and obligations among its Members and a forum for negotiations. As a result of extensive discussions, there is currently a broadly held view that *it would not be possible for NGOs to be directly involved in the work of the WTO* or its meetings. Closer consultation and cooperation with NGOs can also be met constructively through appropriate processes at the national level where lies primary responsibility for taking into account the different elements of public interest which are brought to bear on trade policy-making.⁵¹⁸

That is, the WTO argues that NGO concerns should be addressed to national governments, whose representatives will then take these issues forward to WTO debate. However, this returns us to our initial ‘double aspect’ problem.

⁵¹⁸ World Trade Organisation, ‘Guidelines for arrangements on relations with Non-Governmental Organisations’ (WT/L/162, 23 July 1996), http://www.wto.org/English/forums_e/ngo_e/guide_e.htm

As Robert Keohane and Joseph Nye explain, the participation of NGOs at the WTO can help to mitigate the democracy deficit by making discussions more representative and inclusive: 'greater cooperation with NGOs might help to alleviate the concern about accountability'.⁵¹⁹ Scholte and colleagues argue that civil society can promote democratisation by encouraging citizens' groups that are 'denied access to their national governments' to gain a voice through 'global channels such as the WTO'.⁵²⁰ This approach would serve the cosmopolitan principle that all individuals should give consent and participate in decision-making that affects them, especially those in authoritarian states, alleviating the 'double aspect' problem.

The formal inclusion of informed, organised NGO representatives could potentially provide a counter-balance to the power of the Quad, holding the WTO accountable and supporting its principles and ideals. As more actors become engaged, it would probably become increasingly difficult for small groups of nations to dominate the WTO's agenda and meetings. This could create more opportunity for developing countries to engage with the issues, and help ensure that the decisions that prevail serve the interests of global justice and all affected individuals, rather than the interests of the most powerful nations and business lobbies.

These interests could also be furthered by greater coalition-building and solidarity among developing countries, and by better education of developing countries about the potential benefits of countering developed-country factions. Developing countries need to build and

⁵¹⁹ Robert O. Keohane and Joseph S. Nye, 'The Club Model of Multilateral Cooperation and Problems of Democratic Legitimacy' (paper presented to the American Political Science Convention, Aug 31 – Sept 3, 2000, Washington DC), <http://www.ksg.harvard.edu/prg/nye/clubmodel.pdf>

⁵²⁰ Jan Aart Scholte, with Robert O'Brien and Marc Williams, 'The WTO and Civil Society' (Centre for the Study of Globalisation and Regionalisation, Working Paper No. 14/98, July 1998), <http://www2.warwick.ac.uk/fac/soc/csgr/research/workingpapers/1998/wp1498.pdf>

maintain strong coalitions if they are to resist pressures from the Quad. The Like-Minded Group (LMG) demonstrates the potential strength of such groups. It has a diverse membership that includes Cuba, the Dominican Republic, Egypt, Honduras, India, Indonesia, Jamaica, Kenya, Mauritius, Pakistan, Sri Lanka, Tanzania, Uganda and Zimbabwe. The group meets informally at the WTO, and has attained the reputation of being the grouping that most frequently voices pro-development issues there. It has played a major role in raising implementation issues and, after Doha, in putting procedural issues on the agenda. The Least Developed Country (LDC) Group consists of thirty WTO members, mostly low-income countries, and is already becoming a stronger and more coherent group⁵²¹. The LDC Group had a coordinator at the Doha Ministerial and succeeded in producing a joint declaration, the Zanzibar Declaration, beforehand. There is also scope for the African, Caribbean and Pacific (ACP) Group⁵²², and the African Group⁵²³ to form stronger alliances to push and support developing-country proposals.

The expansion of NGO participation to create a more just and democratic WTO is problematic if it is not based on a system of accreditation and election, as proposed in the Collective Management approach. At present, there is a problem of unequal access to the WTO, and the various elements of civil society have not enjoyed equal opportunities to engage with the WTO. NGOs have to compete with other non-governmental sectors, such

⁵²¹ Coalition builders must be aware that LDC interests are not always congruent amongst themselves; for example, Brazil's interests in agriculture are closer to the NDCs than to the poorest LDCs.

⁵²² The ACP Group comprises the 56 developing country WTO members in these regions that benefit from EC trade preferences under the EC-ACP Partnership Agreements. The group sometimes presents joint statements on trade matters, and had a coordinator at the Doha Ministerial.

⁵²³ The African Group comprises all the African countries at the WTO. It often produces joint statements and declarations, and it took the lead in threatening to walk out of the Seattle Ministerial if its members continued to be marginalised in the talks.

as business, for seats at Ministerial Conferences. The balance is highly skewed in favour of conformers, such as business associations, which were accredited with 65 percent of the seats available to civic organisations at the Singapore Ministerial Conference. Certain reformist groups such as trade unions, environmental NGOs and development NGOs came a ‘distant second’ and most grassroots associations had no direct entry at all.⁵²⁴ Michael Mason notes that at the Singapore Ministerial Conference business lobbying groups accounted for 48 of the 108 NGOs that turned up, while environment and/or development groups accounted for only 10 of the NGOs present.⁵²⁵ Soraya Hassanali has also made the case that there continues to be criticism from women’s groups that the WTO remains a male-led institution, blind to concerns of women and/or gender in international trade policy.⁵²⁶ However, it is difficult for NGOs to correct any of these biases, as it is the WTO staff who decide which organisations to accredit.

In reference to this problem of unequal access, Scholte has noted: ‘The collection of civic associations that develops relations with the WTO might not be fairly representative of the various constituencies with an interest in the global trade regime, and could enlarge

⁵²⁴ Jan Aart Scholte, with Robert O’Brien and Marc Williams, ‘The WTO and Civil Society’ (Centre for the Study of Globalisation and Regionalisation, Working Paper No. 14/98, July 1998), <http://www2.warwick.ac.uk/fac/soc/csgr/research/workingpapers/1998/wp1498.pdf>

⁵²⁵ Michael Mason, ‘The World Trade Regime and Non-Governmental Organisations: Addressing Transnational Environmental Concerns’, *LSE Research Papers in Environmental and Spatial Analysis* 84 (2003), p. 12, <http://www.lse.ac.uk/collections/geographyAndEnvironment/research/Researchpapers/rp84.pdf>

⁵²⁶ Soraya Hassanali, ‘International Trade: Putting Gender Into the Process Initiatives and Lessons Learned’ (discussion paper prepared for Status of Women Canada, December 2000), http://www.swc-cfc.gc.ca/pubs/0662661974/index_e.html p. 16, and citing evidence from Laura Macdonald, Forthcoming, ‘Trade with a Female Face: Women and the New International Trade Agenda’ in *Trade and the New Social Agenda*, eds. Caroline Thomas and Annie Taylor (London: Routledge, forthcoming) p. 1.

inequalities connected with nationality, class, gender, race, religion, etc.’⁵²⁷ Further, there is the issue of how to be democratic and not include ‘rogue’ NGOs, whose interests might stray far from the public good. For this reason, the Collective Management approach elaborates a system of NGO accreditation based on accountability, successful capacity-building and then democratic election, as outlined in Chapter Three. This would also serve to address further concerns raised by Scholte and colleagues—that ‘exchanges with supportive civil society groups can be favoured to the neglect of challengers’, thereby allowing the WTO to get a false sense of endorsement of its policies, or that WTO overtures to NGOs could turn primarily into public relations exercise without the benefits that NGOs can provide.⁵²⁸ Currently there is a practical issue of limited capacity at the WTO—they do not currently have the staff or resources to engage with the large numbers of NGOs that wish to participate. Thus there is a danger is that an external relations office, separate from actual decision-making processes, is set up as a buffer to quiet NGOs.

These reforms would address the important concerns raised, since the involvement of NGOs could be regulated to ensure focused, relevant and equal access for groups, including fair representation from both Northern and Southern countries. This could address the bias already noted that favours the more developed, better-financed organisations of the North. Michelle Ratton Sanchez notes that the majority of WTO events in which NGOs may participate occur only in Geneva, which ‘hampers WTO Secretariat contact with the

⁵²⁷ Jan Aart Scholte, with Robert O’Brien and Marc Williams, ‘The WTO and Civil Society’ (Centre for the Study of Globalisation and Regionalisation, Working Paper No. 14/98, July 1998), <http://www2.warwick.ac.uk/fac/soc/csgr/research/workingpapers/1998/wp1498.pdf>

⁵²⁸ Jan Aart Scholte, with Robert O’Brien and Marc Williams, ‘The WTO and Civil Society’ (Centre for the Study of Globalisation and Regionalisation, Working Paper No. 14/98, July 1998), <http://www2.warwick.ac.uk/fac/soc/csgr/research/workingpapers/1998/wp1498.pdf>

plurality of NGOs, considering their thematic and regional diversity⁵²⁹ and leads to over-representation by NGOs from the North (75%).

Formal NGO inclusion might also help to ensure fair and representative **prioritisation** of issues at the WTO. First of all, they are able to serve as credible and effective voices on issues that span national borders. Given their ability to focus on issues rather than domestic outcomes, 'NGOs are arguably more effective guardians of the public interest...than States preoccupied by national self-interest'.⁵³⁰ Additionally, since they are charged with representing citizens at large, often cutting across national borders, NGOs are concerned with those issues that are most important to the global populace. Immune from obligations to corporate interests or national electorates, NGOs can agitate on behalf of the issues that are truly important in the international arena. In this way, they can help prioritise the issues of importance to nations in the developing world, even if a few powerful countries would prefer to avoid them.

However, the member states of the WTO are not the only parties guilty of lacking structure to WTO-NGO interchanges and prioritisation of issues. Relatively few NGOs have pursued sustained, focused, carefully-researched efforts to understand and affect WTO policy. The radical groups, in particular, tend to form around sporadic short-term issues or conferences, rather than following a longer-term, well-thought-out plan of action. Those interchanges that have occurred between the WTO and civic groups, especially with reformist and radical groups, have lacked sufficient openness and reciprocity on both parts.

⁵²⁹ Michelle Ratton Sanchez, 'Brief Observations on the Mechanisms for NGO Participation in the WTO', *International Journal on Human Rights* 3, no. 4 (2006), p. 108, <http://www.globalpolicy.org/ngos/int/wto/2006/0612sursanchez.pdf>

⁵³⁰ Jacqueline Peel, 'Giving the Public a Voice in the Protection of the Global Environment: Avenues for Participation by Environmental NGOs in Dispute Resolution at the ECJ and WTO', *Colorado Journal of*

Often the WTO has appeared not to take in what NGOs have said, or has implemented policies to restrict the NGOs' abilities to express opinions. For their part, NGOs have also been unprepared to compromise or to prioritise the issues and requests they wish to address with the WTO. For example, although Michael Mason notes that the majority of NGOs favour the creation of a WTO-civil society Advisory Group, certain NGOs, usually members of the radical group who would prefer to see the collapse of the WTO than promote its relations with civil society, reject this move by the WTO towards greater interaction, harming the process of building greater interaction as a whole. It is just as necessary then to encourage suitable methods of prioritisation among the NGO community, as it is among WTO members.⁵³¹

Finally, the involvement of NGOs in the WTO can help ensure that all countries have access to effective dispute **resolution** mechanisms. First, NGOs can help offset the inequities in legal expertise that make it difficult for developing countries to prevail through the DSM. Because NGOs are 'increasingly sophisticated international actors with

International Environmental Law and Policy 12, no. 1, (Winter 2001),
<http://www.globalpolicy.org/ngos/role/globdem/globgov/2001/peel-wto.htm>

⁵³¹ For example, Scholte et al. note the case of a loose worldwide network called the People's Global Action (PGA) against Free Trade and the World Trade Organisation, which has openly called for the 'disappearance of the WTO' (PGA press release, 18 May 1998), as well as some environmentalists such as Greenpeace, who refuse to talk at all with the WTO. (Jan Aart Scholte, with Robert O'Brien and Marc Williams, 'The WTO and Civil Society', (Centre for the Study of Globalisation and Regionalisation, Working Paper No. 14/98, July 1998), <http://www2.warwick.ac.uk/fac/soc/csgr/research/workingpapers/1998/wp1498.pdf>.) Mason has also noted (in the aforementioned survey) that some business associations argue that WTO-civil society relations 'should not be formalised but nurtured at a national level between the public/private sectors and NGOs', citing reasons of legitimacy: 'otherwise a panel structure seeking input into the WTO is created that has neither a legitimate, coherent knowledge base, nor a meaningful mandate'. (From results of Michael Mason's survey, detailed in Michael Mason, 'The World Trade Regime and Non-Governmental Organisations: Addressing Transnational Environmental Concerns', *LSE Research Papers in Environmental and Spatial Analysis* 84 (2003), p. 19, <http://www.lse.ac.uk/collections/geographyAndEnvironment/research/Researchpapers/rp84.pdf>)

access to a wide range of resources and expertise',⁵³² they can help provide advice and insight to those smaller nations that need it. They can deploy their resources strategically to help redress the balance of legal and political power at the WTO. Some NGOs advocate for establishing databases within countries to give trade officials information on patterns of trade, growth and poverty. These databases can be used for the benefit of all groups within a country to study the likely short- and long-term economic costs and benefits resulting from proposed WTO rules and agreements, and may also provide an easily-accessible and inexpensive source of information when preparing cases for the dispute resolution mechanism.

Second, the presence of NGOs could help augment the spectre of the 'normative condemnation' that Busch and Reinhardt identify, and make its threat more of a deterrent to violating trade rules. By shedding light on disreputable practices by governments and bringing them to the public's attention, NGOs can make unethical conduct an important issue on the global stage. Keohane and Nye point out that 'the naming and shaming of governments engaged in corrupt practices by Transparency International helps create a type of accountability'.⁵³³ In this way, NGOs can help increase the efficacy of both formal and informal means of dispute resolution at the WTO.

The media can also play a role in publicly highlighting abuses in the decision-making mechanism, although this may not be as effective against the US as against smaller, less

⁵³² Jacqueline Peel, 'Giving the Public a Voice in the Protection of the Global Environment: Avenues for Participation by Environmental NGOs in Dispute Resolution at the ECJ and WTO', *Colorado Journal of International Environmental Law and Policy* 12, no. 1, (Winter 2001), <http://www.globalpolicy.org/ngos/role/globdem/globgov/2001/peel-wto.htm>

powerful developed countries. NGOs should act as a bridge between delegates and the media, since the media are often regarded with suspicion by developing-country delegates after such incidents as the vilification of India by the Western press when India was the strongest country opposing a new round. With the consent of those involved, cases of threats and actions taken against individual ambassadors can be brought to light. Publicising these instances is a step towards reducing them and bringing more scrutiny to the greyer areas of behind-the-scenes policy-making.

These arguments suggest that, though major challenges exist, there is reason to explore further the formal inclusion of NGOs in WTO decision-making as a way of addressing the current failings of the WTO in the areas of participation, prioritisation and dispute resolution. Such reform might reduce the current legitimacy deficit and potentially lead to a more just and more democratic WTO, empowered from below. Developing countries could be the first beneficiary of the new global architecture, as their people find new avenues of expression. For a global governance institution whose rules are still being written, NGO inclusion could help the WTO to increase transparency and accountability, all of which will help cement its role in world affairs. As Daniel Esty tells us: 'Because an NGO-enriched WTO would consider a diverse range of viewpoints and make decisions more democratically, it would gain legitimacy. Public participation in and understanding

⁵³³ Robert O. Keohane and Joseph S. Nye, 'The Club Model of Multilateral Cooperation and Problems of Democratic Legitimacy' (paper presented to the American Political Science Convention, Aug 31 – Sept 3, 2000, Washington DC), <http://www.ksg.harvard.edu/prg/nye/clubmodel.pdf>

of the trade regime's decision processes is critical to the acceptance of its political outcomes as fair and worthy of respect'.⁵³⁴

6.5 Conclusion

This chapter has charted the history of WTO-NGO initiatives, demonstrating the increasing numbers of NGOs attending WTO ministerial meetings as observers and the rising numbers of issue-specific symposia hosted since 1994, all designed to improve NGO-WTO dialogue. Increasing transparency and public speeches acknowledging the importance of civil society have also been features of the WTO's efforts to cooperate with civil-society demands. These steps alone, however, have not been sufficient to solve the problem of declining legitimacy, nor have they been able to redress the balance of power within the WTO. At present, power in the WTO is concentrated among a select few Northern states. Any proposal that attempts to solve the legitimacy problem must start by redressing the balance of power, to the extent that reform is indeed possible. Civil society can be involved in these efforts, while still external to the formal decision-making processes, through strategic lobbying and pressuring the Southern representatives to resist Northern demands.

There are strong moral reasons to explore a reform of the WTO to include Collective Management mechanisms, and an initial assessment shows that it might be possible to address the many serious objections. The WTO's decision-making bodies would then include representatives from business and civil society groups, subject to the rules agreed upon during the founding debate of the Global Conference, outlined in Appendix Two. The

⁵³⁴ Daniel Esty, 'Public Participation in the International Trading System: Why the World Trade Organisation Needs Environmental NGOs' (report for the International Centre for Trade and Sustainable

UN organs would oversee the implementation of the new system and monitor participants, ensuring that all members keep to the codes and standards set, as well as overseeing the use of the dispute settlement mechanism in cases of non-compliance. Such a scenario would involve a series of complex and difficult tasks and could only be implemented in a long-term process involving extensive preparation.

Development, 1997), <http://www.ictsd.org/English/esty.pdf>

CHAPTER 7: CONCLUSION—PROBLEMS AND PROSPECTS FOR CIVIL SOCIETY PARTICIPATION IN INTERNATIONAL GOVERNANCE

I have sought in this thesis to use an interdisciplinary approach to formulate a liberal-cosmopolitan view and derive from it some proposals for the design and reform of current global institutions. This project has required integration of many different concepts across philosophy, political science and international relations and development of an integrated analysis of the potential for global reform by giving civil society a more formal role in global governance.

I have argued that this approach is not only supported by strong normative arguments but that it is also potentially *realistic*—that there are both rational and reasonable motivations for individuals and states to support such an ‘idealist’ approach, based on the political ideals of liberal individualism, a global theory of justice and cosmopolitan principles, and there are real costs for failure to do so. I have argued that it is rational for even the major powers in the international system, who dominate in terms of institutional power, to take cooperative steps toward more just and democratic global institutions, given the real cost of uncooperative behaviour in terms of lost alliances, reputation, partnerships and overall soft power—not to mention the real costs of unilateral action in a complex world where actions can have many unintended consequences, as those of the US invasion of Iraq, which arguably increased the very threat of terror and risk of use of weapons of mass destruction that it was designed to prevent.

I have further shown that the Collective Management approach is not unrealistic in that several key premises already have the support of leading stakeholders in IGOs (not just NGOs) as shown in the NGO Survey. The idea of NGO representatives with voting rights

alongside government representatives is not an unrealistic, utopian idea. Further exploration of the voting rights approach has the support of roughly half of the experts surveyed. Further, an overwhelming statistical majority of respondents believe that greater inclusion of civil society can improve decision-making and give voice to marginal and vulnerable groups, reducing the democratic deficit. This suggests that experts today recognise that the unprecedented challenges facing the international community require exploration of potentially new and radical approaches.

I have also argued that the prospects and problems for further democratisation of global institutions through NGO participation must be evaluated over the long-term. Reform in the direction of the Collective Management approach is dependent on a process of developing a sense of global community that, as Rawls, Dahl, Nye and others have noted, takes decades.

I have endeavoured in this thesis to generate concrete insight for the future by analysing existing global institutions and processes, such as the successes and failures of efforts to involve civil society in the UN system, the WTO, IMF and ILO. Further study should be made particularly of those cases of 'soft-power-plus' in which NGOs exert more formal power, as in the UNAIDS governing board, which has recently supported the prospect of giving NGO members formal voting rights, as well as the Aarhus Convention, where civil society has gained power that is more than just 'soft.'

Though I rely significantly on the normative arguments of the three 'pillars' of liberal individualism, global justice and cosmopolitanism to support the Collective Management approach, I have tried to deal with critical objections to the new role for civil society in a tripartite formal decision-making role. Powerful critiques by David Chandler, David

Kennedy and others have dispelled any illusions that civil society is always the good and honourable ‘conscience of mankind.’ It has a ‘dark side’ and there are real issues of how to include civil society constructively in the governing process. Unregulated influence of activists and lobbyists can reduce democracy. I have tried in my analysis to show that an approach of independent, nongovernmental accreditation of NGOs could potentially deal with the issues of accountability by ensuring its key dimensions of transparency, participation, evaluation and complaint mechanisms.

On the basis of the analysis in this thesis, is it now possible to answer the question that is the sub-title of this thesis—can we democratise global governing institutions by creating structures that move civil society ‘from soft power to collective decision-making?’ I believe that the evidence presented in this thesis suggests that the collective decision-making approach has real potential and deserves further examination. As IGOs engage in further experimentation with direct voting by NGOs, as they are currently doing, they will create a greater empirical basis on which to answer the question of which school—soft power or collective decision-making—will define the future of global governing institutions. Important questions do remain and will require further research and study. There should be further analysis of the challenges for NGOs, particularly the need to preserve their essential nature as independent critics and advocates of the marginal and vulnerable while becoming formal participants in IGOs, and the increased transaction costs of collective decision-making structures.

Defining Eligibility for Participation in the Survey

The goal of the NGO survey was to capture experience-based opinions and insights about the challenges and opportunities associated with NGO involvement in global governance. It was necessary to design a sample-selection strategy in order to identify the appropriate people to participate in the survey. There are millions of NGOs operating around the world—one source estimates two million in the US alone—and the UN system (including the World Bank and IMF) employs 63,500 people worldwide.⁵³⁵ Many NGOs do not interact with IGOs, and even within those NGOs that do engage with IGOs not all members have direct experience of it. Similarly, some staff of IGOs rarely—if ever—engage with NGOs. Of the vast pool of NGO and IGO staff internationally, only a very small proportion are the population of experienced, informed individuals whom we sought to reach.

The first step was to define a meaningful experience of NGO-IGO engagement. The starting point for this was analysis conducted to support the Cardoso Panel. In his report to the 57th General Assembly, the Secretary-General highlighted the engagement of civil society as an aspect of the UN Reform process and announced that he would ‘assemble a group of eminent persons representing a variety of perspectives and experiences to review past and current practices and recommend improvements for the future in order to make the

⁵³⁵ ‘Sins of the Secular Missionaries’, *The Economist*, January 29, 2000, UN website: <http://www.un.org/geninfo/ir/index.asp?id=160> and Duke University, Perkins Library, ‘Non-governmental Organisations Research Guide’, undated, available at: <http://docs.lib.duke.edu/igo/guides/ngo/>

interaction between civil society and the United Nations more meaningful'.⁵³⁶ The Secretary-General appointed Mr. Fernando Henrique Cardoso, former President of Brazil, to chair this group. To support the Cardoso Panel in its work, an inventory and analysis of practices for NGO participation was prepared. This report detailed a number of innovative practices.

The eleven practices were summarised in the report as follows:

- Practice One: Multi-stakeholder dialogues that directly inform the decision-making process with parliamentary rules put aside in favour of interactive discussion. This includes, for example, The Earth Summit Five+ recommendations developed based on Commission for Sustainable Development dialogues
- Practice Two: Regional mechanisms to increase NGO participation in drafting, implementing and monitoring conventions, such as the Economic Commission for Europe's Aarhus Convention, which was adopted and ratified quickly as a result of close collaboration between governments and civil society
- Practice Three: Inviting and utilising confidential reports from NGOs in decision-making including the Commission on Human Rights in dealing with human rights violations
- Practice Four: NGO addresses to the UN General Assembly—civil society organisations have spoken at a number of plenary meetings of General Assembly Special Sessions
- Practice Five: NGO direct input into members of the Security Council via the 'Arria Formula' Meetings of members of the Security Council with NGOs
- Practice Six: NGO participation in summits and special sessions. For example, Habitat II included NGOs in drafting decisions and local authorities as official participants. The Johannesburg Summit involved direct interaction between NGOs and officials.

⁵³⁶ See the Secretary General's introduction to the Report of the Panel of Eminent Persons on United Nations-Civil Society Relations, June 2004, available at: <http://www.un-ngls.org/Final%20report%20-%20HLP.doc>

- Practice Seven: NGOs' formal roles in inter-agency coordination such as The Inter-Agency Standing Committee, which coordinates humanitarian assistance and that includes three NGO consortia as well as UN agencies.
- Practice Eight: Information exchange and coordination through working group meetings, including NGO liaison officers of the UN ('focal points'), working across UN departments and programmes. Inter-Departmental Working Groups convened by the former Assistant Secretary-General for External Relations are included.
- Practice Nine: NGOs included in the governance structure such as the UNAIDS Programme Coordinating Body, which includes twenty-two governments, eight UN agencies and five NGOs.
- Practice Ten: Formation of NGO coalitions that provide information to, and accreditation of, other NGOs. The Coalition of the International Criminal Court, in which two thousand NGOs are currently represented, provided technical advice and handled accreditation of NGOs for the Rome Treaty Conference in 2001.
- Practice Eleven: Creation of an advisory body to UN such as the Permanent Forum for Indigenous Issues, which is comprised of sixteen experts operating in their individual capacity and reports directly to the ECOSOC.⁵³⁷

Following research, it was decided to also include one additional form of NGO-IGO engagement, namely:

- Practice Twelve: Informal NGO engagement with the World Bank, such as NGO-initiated meetings, workshops and conferences

⁵³⁷ 'UN System and Civil Society: An Inventory and Analysis of Practices -Background Paper for the Secretary-General's Panel of Eminent Persons on United Nations Relations with Civil Society', May 2003. See <http://www.un-ngls.org/ecosoc%20HL%20Panel%20-%20Background%20paper%20by%20Secretariat.doc>

Sizing the population

For each of the innovative practices we estimated the approximate number engaged in these practices. There are two sub-populations to consider. The first is the NGO population (which further divides into Northern and Southern NGOs). The second is the IGO population. The following data were used to calculate the size of the NGO population:

Table A1.1 Sizing the NGO population for the NGO Survey

Innovative Practice	Population Input	Notes	Source
1. Multi-stakeholder dialogues of Commission for Sustainable Development	9 NGOs	There are 9 NGO 'major groups' represented	Commission on Sustainable Development: http://www.un.org/esa/sustdev/csd/review.htm
2. Regional mechanisms such as Aarhus Convention	6 NGOs	Contact details for 6 NGOs are provided on the Convention website	UNECE: http://www.unece.org/env/pp/
3. Involving NGOs in decision-making, e.g., via Commission on Human Rights	200 NGOs	This is the approximate number of NGOs participating in the 2005 Commission on Human Rights	Interview with Laura Doci-Kanaan, NGO Liaison Officer, Office of UN High Commissioner for Human Rights, February 21, 2006
4. NGO addresses to the General Assembly	242 NGOs	The number of NGO representatives that participated in the Informal Hearings of General Assembly with Civil Society, 2005	UN NGLS publication <i>Roundup</i> , 'General Assembly Hearings with NGOs, Civil Society and the Private Sector', 123, August 2005.
5. 'Arria Formula' briefings of Security Council	3 NGOs	Based on Cardoso Panel research	'UN System and Civil Society: An Inventory and Analysis of Practices - Background Paper for the Secretary-General's Panel of Eminent Persons on United Nations Relations with Civil Society', May 2003

Innovative Practice	Population Input	Notes	Source
6. NGO participation in Summits and Special Sessions	1,290 107 737 NGOs	1,290 NGOs accredited for 2001 Durban Summit on Racism, 107 for the 2002 Monterrey Financing for Development, and 737 for the 2002 Johannesburg Summit on Sustainable Development. The largest figure is used.	'UN System and Civil Society' (as above)
7. NGO roles in Inter-Agency Consortium	3 NGOs	3 NGOs included as members of the Inter-Agency Standing Committee	'UN System and Civil Society' (as above)
8. Information exchange involving NGO liaison officers	N/A	This practice relates to sizing the IGO population—addressed below	
9. NGOs included in governance structure, e.g., UNAIDS	5 NGOs	Based on UN representatives to PCB of UNAIDS	'UN System and Civil Society' (as above)
10. Formation of NGO coalitions such as CICC	16 NGOs	The Coalition for the International Criminal Court has a Steering Committee of 16 members	CICC website: http://www.iccnw.org/ , http://www.iccnw.org/?mod=steering
11. Creation of advisory body to UN	16 experts	Based on number of experts in the Permanent Forum for Indigenous Issues	'UN System and Civil Society' (as above)
12. Informal NGO engagement with World Bank	28 NGOs	World Bank estimates it works with thousands of CSOs worldwide but only a small proportion engage on a global level. 28 NGOs are detailed on its Civil Society website.	World Bank Civil Society website: www.worldbank.org/civilsociety

If we sum the total number of NGOs (Practices 1-7 and 9-12), using the largest of the three numbers in the case of Practice Six, we have a total number of 1,818 NGOs with a deep, personal experience of NGO-IGO collaboration.

Within the population of NGOs it is useful to know what percentage are headquartered in the ‘South’ (i.e., developing countries) compared to the percentage headquartered in the ‘North’ (i.e., developed countries). To calculate this, the ECOSOC database of accredited NGOs was examined. Details of the locations of headquarters are provided for the NGOs in the database. Of these NGOs 31% are headquartered in the South and 69% headquartered in the North.⁵³⁸ These percentages were applied to the population estimate.

In order to size the IGO population we used the following data:

Table A1.2 Sizing the IGO population for the NGO Survey

IGO	Population Input	Notes	Source
UN system NGO and Civil Society experts	105	UN website details 35 ‘focal points’ for UN-NGO liaison. Some are listed as Chief of Staff / Head of Unit and are likely to have bigger teams working with them. The assumption is an additional 2 staff per focal point listed.	UN DPI NGO section: http://www.un.org/dpi/ngosection/focal-points.asp
World Bank NGO and Civil Society experts	133	The World Bank has 70 Civil Society liaison staff working at the country level, 40 at the regional level and 13 at the global level	World Bank Civil Society website: www.worldbank.org/civilsociety

Within IGOs, there are approximately 105 NGO focal points within the UN system, and an additional 133 Civil Society liaison staff in the World Bank. This produces a total of 238 staff.

⁵³⁸ ECOSOC: Worldwide list of accredited NGOs at:
<http://unpan1.un.org/intradoc/groups/public/documents/un-other/unpan014562.pdf>

Thus the population size of potential respondents with the knowledge and experience to comment on NGO-IGO collaboration in the context of global governance is estimated to be 2,056 of which 1,818 are NGO representatives. Among the NGO representatives approximately 1,254 are located in Northern NGOs and 564 in Southern organisations. The population includes an estimated 238 IGO staff.

Identifying and selecting the sample

The subsequent step was to identify and find contact details for individuals from the population of 2,056. A major constraint was that we were limited to information that was publicly available. For those innovative practices that involved relatively few NGO and IGO participants, Practices 1 and 9, it was possible to find names and contact details of most of those involved from the websites dedicated to these practices. For these with fewer than twenty named participants, all participants were invited to share their insights via the survey.

For practices that involved many more participants, such as Practice Six, it was more challenging to locate publicly-available information about names and contact details of participants. More information was typically available for the most recent Summits, so a sample were contacted from Summits including the World Summit on the Information Society (WSIS), Geneva 2003—Tunis 2005 and the 2002 Johannesburg Summit on Sustainable Development. The sample taken was random. Where email addresses were unavailable but the organisation name was provided we searched for contact details for the organisation via other online sources and telephoned the organisation to request contact details for the identified participant.

Members of IGOs were identified by two main routes. The first was the civil society sections of UN and World Bank websites which provided contact details for ‘focal points’. The second was via reports of proceedings of the interactive practices which listed speaking, actively-participating IGO figures.

Through these mechanisms, 653 individuals were identified to be invited to participate in the online survey.

Contacting the sample

An email invitation to participate in the online survey was sent to all 653 individuals. The email invitation was followed by a phone call to encourage participation. Participants were not offered any incentive—other than contributing to the body of knowledge on this important topic—to contribute to the survey.

Respondents were also assured that they had the option of exercising anonymity while participating in the survey. This was a particularly important consideration for members of IGOs.

Assessing the sample for representativeness and accuracy

Two main potential sources of bias appear. The first is that we contacted participants primarily by email and the survey itself was conducted online. We can expect this approach to have biased our sample towards the better-resourced, better connected NGOs. We tried to minimise this potential source of bias as far as possible: where respondents experienced difficulty accessing the internet survey (a problem which affected a small number of members of Southern NGOs) they were emailed a soft copy of the survey and

their responses were manually entered into the results database. However, these efforts will not have entirely removed the source of bias.

The second bias is that we were constrained by the availability of information. Part of the population whose opinions we sought is not clearly delineated and easily accessible. We only contacted those people for whom we could find contact details. Organisations that deliberately did not publish contact details or that sought a low profile may therefore be under-represented in the sample. This is more likely to be a source of bias for those innovative practices for which large numbers of organisations are involved, as typically for the practices involving fewer participants, all contact details were published.

108 individuals completed the survey. Note that several more respondents began a response to the survey and therefore sample sizes for each question have a minimum of 108 respondents. The breakdown, vs. the estimated population composition, of the 108 completed responses is shown below:

Table A1.3 Survey respondent breakdown vs. estimated population composition

Type of organisation	Estimated population composition (% of total)	Survey sample composition (% of total)
Northern NGO	1,254 (61%)	52 (48%)
Southern NGO	564 (27%)	28 (26%)
IGO	238 (12%)	28 (26%)
Total	2,056 (100%)	108 (100%)

It is seen that the survey sample over-indexes in respect IGO respondents (26% vs. 12% in the population under consideration) and under-indexes with respect Northern NGO (48% vs. 61%). The proportion of Southern NGOs is representative. With this sample size the total results are significant to +/- 7.7% at the 90% confidence level, +/-9.2% at the 95%

confidence level. These significance levels assume a 50% result and that the population is normally distributed.

Despite a relatively small sample size, it should be recognised that respondents represent the views of key opinion leaders in the field as defined by the criteria for inclusion in the survey. Given this, we would feel confident in making inferential arguments based upon the data and trends or differences that are suggested by the data. Information was supplemented and enhanced by the qualitative examination undertaken and outlined on the following pages.

Defining eligibility for participation in interview

The goal of the interviews was to tap into the knowledge and insights of a broad range of leading practitioners and thinkers in the field of NGO-IGO collaboration for global governance. The sample-selection methodology was aimed at incorporating as broad a range of opinions, experience and insight as possible. The first stage in identifying these people was to reference the innovative practices employed during the design of the NGO Survey. Individuals who played a key role in the innovative practices—such as a leading founder and Convenor of the Coalition for the International Criminal Court (Practice 10), NGO representatives to the governing body of UNAIDS (Practice 9), the Secretary to the Aarhus Convention (Practice 2) and individuals who had helped set up the ‘Arria Formula’ briefings of the Security Council (Practice 5) were identified and invited to participate in interviews.

Additional candidates for interview were identified. In addition to practitioners it was decided to include individuals with deep experience of observing and analysing NGO-IGO collaboration. We therefore included those experts who formed the twelve-person Cardoso Panel—a panel established by the UN Secretary General to ‘review past and current practices and recommend improvements for the future in order to make the interaction between civil society and the United Nations more meaningful’.⁵³⁹ In addition, academic experts who report on global governance were invited to share their insights, as were

⁵³⁹ See the Secretary General’s introduction to the Report of the Panel of Eminent Persons on United Nations-Civil Society Relations, June 2004, available at: <http://www.un-ngls.org/Final%20report%20-%20HLP.doc>

individuals from the NGO world who presented papers on discuss themes of global governance at international conferences.

A third category of individuals invited for interview consisted of those who were pushing the boundaries in testing new forms of NGO-IGO collaboration that had not been identified either by the Cardoso Panel or during our initial research. This category included, for example, the chair of the Steering Committee of the World Civil Society Forum, which first met in 2002 and which brings together NGOs and IGOs with a view to forming networks and strengthening international cooperation. It also included individuals with experience of collaboration between NGOs, IGOs and the private sector via dedicated structures such as The Global Fund to Fight AIDS, TB and Malaria.

Holding the interviews

Of those invited, forty-five individuals consented to share their insights via a full telephone interview and numerous other individuals contributed by adding comments or participating in off-the-record interviews.

The full telephone interviews ranged in length from thirty minutes to one hour, according to the time the interviewee had available. The interviews were structured around three main themes which formed a 'discussion guide', and the interview was permitted to flow according to the expertise and experience of the person being interviewed.

The first theme concerned the innovative practices for NGO-IGO collaboration. Interviewees were asked what forms of NGO-IGO engagement they have personal experience of and what they find works well/could work better with regard to that engagement.

The second theme involved interviewees' views on global governance today. Interviewees were asked whether they consider there to be a democratic deficit in global governance, and if so, where the roots of that deficit lie.

The third theme was what the future could hold in terms of better NGO-IGO collaboration. We tested with interviewees their appetite for an increased role of NGOs and IGOs in global governance, including voting rights. Interviewees were also asked about the issue of NGO accountability and how this should be ensured.

Characteristics of the interviewees

Of the forty-five who gave full telephone interviews, one insisted on complete anonymity.

Information about the other individuals interviewed is detailed below.

Table A1.4 Information on NGO Survey interviewees

Name	Role and organisation	Type of organisation	Innovative practice code / expertise
Aldo Caliarì	Director, Rethinking Bretton Woods Project, Center of Concern	Northern NGO	12
Ann Florini	Senior Fellow, Foreign Policy Studies at The Brookings Institution	Northern NGO	Expert on global governance
Bernard Gardinder	Unit Manager, HIV / AIDS Global Programme, International Federation of Red Cross and Red Crescent Societies	Northern NGO	9
Camilla Schippa	Chief of Office, UN Fund for International Partnerships	IGO	6
Charles Brown	President and CEO, Citizens for Global Solutions	Northern NGO	10
Craig Wilson	Economist at the International Finance Corporation of the World Bank	IGO	Expert on global governance
Cyril Ritchie	Chairman, Environment Liaison Centre International	Southern NGO	1
Didier Jacobs	Special Advisor to the President, Oxfam America	Northern NGO	Expert on global governance
Edwige Fortier	Civil Society Advisor, The Global Fund to Fight AIDS, TB and Malaria	IGO	Expert on new form of NGO-IGO collaboration
Federica Pietracci	Major Groups Programme Coordinator, UN Division for Sustainable Development, DESA	IGO	1, 8
Fernanda Teixeira	Secretary General, Mozambique Red Cross Society	IGO	9

Name	Role and organisation	Type of organisation	Innovative practice code / expertise
Harriet Busingye	Former Executive Board Member of the International Land Coalition (ILC)	Southern NGO	4
Isagani Serrano	Trustee and Senior Vice-president, Philippines Rural Reconstruction Movement	Southern NGO	1, 6
Isolda Agazzi Ben Attia	Senior Programme Officer, Conference of NGOs in Consultative Relationship with the United Nations (CONGO)	Northern NGO	4
Jacqueline Coté	Senior Advisor Advocacy & Partnerships, World Business Council for Sustainable Development	Northern NGO	4
Jan Aart Scholte	Co-Director of Centre for the Study of Globalisation and Regionalisation, University of Warwick	University	Expert
Jeremy Wates	Secretary to the Aarhus Convention, UN Economic Commission for Europe and former head of the NGO delegation during the negotiation of the Aarhus Convention	IGO	2
Jessica Matthews	President, Carnegie Endowment for International Peace	Northern NGO	6
John Garrison	Senior Civil Society Specialist, World Bank	IGO	12
John Stompor	Senior Associate, International Justice Program, Human Rights First	Northern NGO	10
Kumi Naidoo	Secretary General, CIVICUS: World Alliance for Citizen Participation	Southern NGO	Cardoso Panel
Laura Doci-Kanaan	NGO Liaison Officer, Office of UN High Commissioner for Human Rights	IGO	3
Malini Mehra	Former Member of Cardoso Panel and Founder and Director, Centre for Social Markets	Southern IGO	Cardoso Panel
Manuel Manonelles	Executive Officer, UBUNTU Forum Secretariat	Northern NGO	6

Name	Role and organisation	Type of organisation	Innovative practice code / expertise
Mary Racelis	Former Member of the Cardoso Panel, Research Scientist, Institute of Philippine Culture, Ateneo de Manila University	University	Cardoso Panel
Matthew Carroll	Coordinator for Commission on Sustainable Development Youth Coalition	Northern NGO	1
Michael Kelly	Policy Manager, ICC Commission on Environment and Energy, International Chamber of Commerce	Northern NGO	1
Paul van Seters	Executive Director of Globus, Institute for Globalisation and Sustainable Development	University	Expert on global governance
Peter Niggli	Director and Head of the Development Policy Unit, Alliance Sud	Northern NGO	Expert on theme: NGOs and legitimacy
Pradeep Mehta	Secretary General of the Jaipur-based Consumer Unity & Trust Society	Southern NGO	Expert on NGO-government collaboration
Robert Kushen	Director of International Operations, Open Society Institute	Northern NGO	3
Rudo Chitiga	Deputy Director of the Commonwealth Foundation	IGO	Expert
Sarada Iyer	Legal and Research Consultant, Third World Network	Southern IGO	1, 4
Sébastien Ziegler	President of Mandat International	Northern NGO	Expert on new form of NGO-IGO collaboration
Simon Burall	Executive Director of the One World Trust	Northern NGO	Expert on measuring accountability
T. Richard Corcoran	Volunteer at Health GAP (Global Access Project) and Health GAP representative at the PCB of UNAIDS	Northern NGO	9

Name	Role and organisation	Type of organisation	Innovative practice code / expertise
Tanya Cox	Advocacy Associate, Human Rights Watch	Northern NGO	Experience of NGO-EU collaboration
Todd Howland	Director of the RFK Memorial Centre for Human Rights	Northern NGO	5
Vicente García-Delgado	UN Representative (New York) for CIVICUS: World Alliance for Citizen Participation	Southern NGO	4
Vicky Tauli Corpuz	Executive Director of Tebtebba, Chairperson of UN Permanent Forum on Indigenous Issues	Southern NGO	11
Vina Nadjibulla	Advocacy and Knowledge Manager in the Governance, Peace and Security Section, UNIFEM	IGO	5
Lord William Brett	Director ILO London	IGO	Expert on trade union work with IGOs
William Kennedy	UN Fund for International Partnerships	IGO	Expert on UN partnerships and Global Compact
William Pace	Executive Director of the World Federalist Movement-Institute for Global Policy	Northern NGO	10

The interviewees were chosen to enable the airing of as broad a range of opinions and insights as possible. Ideally individuals with experience of all twelve innovative practices would have been interviewed. In actuality it proved possible to get the insights of individuals with personal experience of eleven of the twelve practices, as well as individuals with experience of two additional forms of collaboration that had not been identified during preliminary research. Importantly the three main categories of respondent—Northern NGO, Southern NGO and IGO—were all included in the sample.

44% of the sample represented Northern NGOs, 20% represented Southern NGOs and 27% represented IGOs.

APPENDIX 2: A Scenario for the Global Conference to Decide the Rules of the Collective Management System

To understand how a system of Collective Management might be developed, I elaborate below a scenario in which a Global Conference might establish the initial conditions for the creation of policies and institutions needed for a global democracy based on cosmopolitan justice. The Conference would be funded jointly by three sources—states, businesses and civil society—a funding model that is being used in a number of current global projects. The Conference would be attended by screened and accredited representatives from the three sectors of global society. The objective of the Conference would be to discuss the details of a potential Collective Management system that would incorporate all three sectors on an equal basis, each with formal voting rights in the decision-making processes that affect global governance at three levels: global, regional and national. By allowing each of the three sectors, at each of the three levels of governance, to have formal voting rights in regard to setting the rules of the system, the implementation of these rules, and the supervision of their enforcement once they are agreed upon, we will achieve the ‘3x3=3’ model of international governance that this thesis suggests may result in a more just and democratic international system.

The Conference should aim to achieve consensus among the parties on:

- 1) the need for a Collective Management system;
- 2) the structure of such a system;
- 3) mechanisms for construction and implementation, e.g., selection of representatives, voting rights, etc.;
- 4) the codes and standards that will govern the system; and
- 5) the means of monitoring behaviour and enforcing the codes and standards.

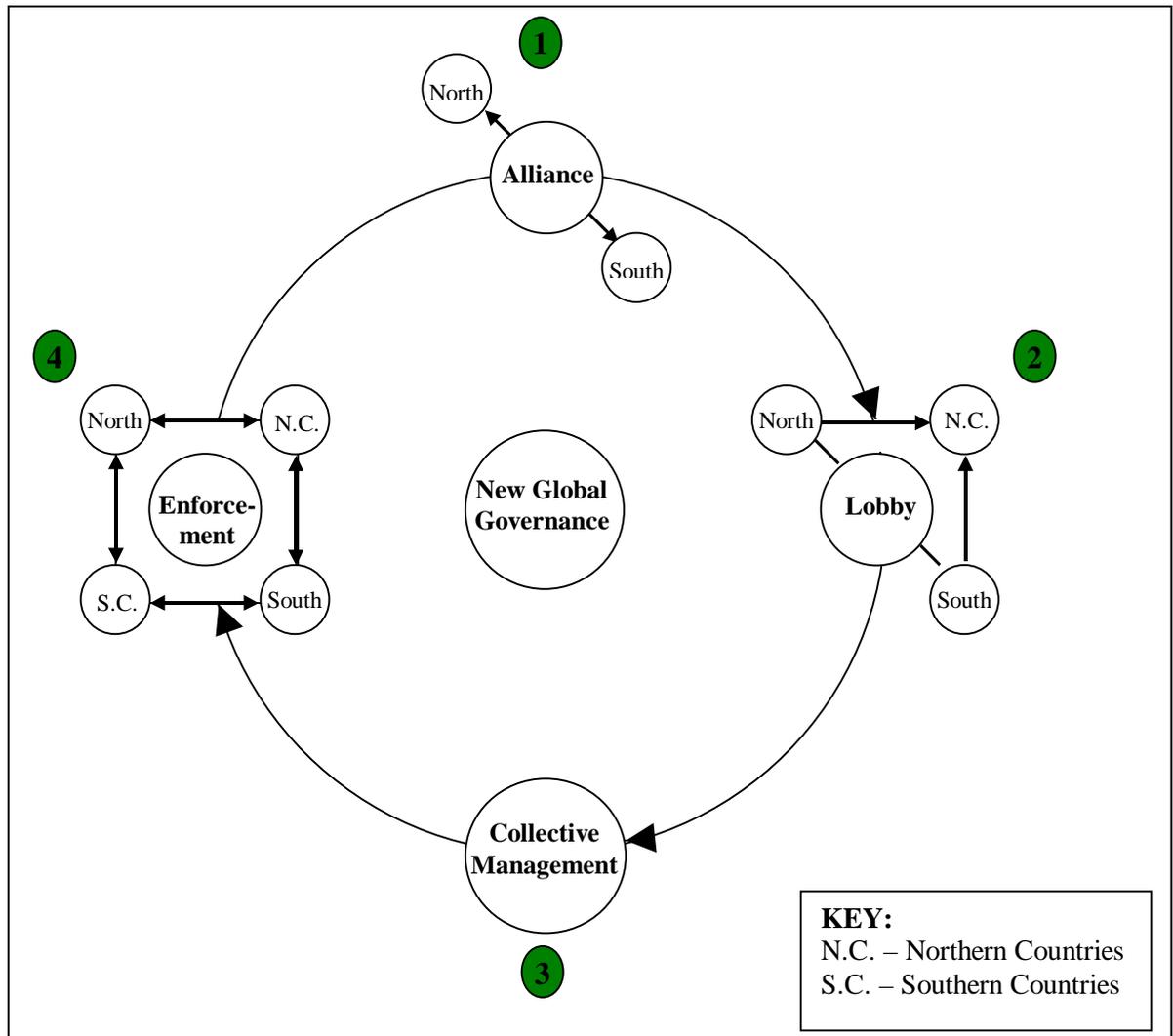
The Global Conference would take decisions and resolutions according to areas that have been discussed during its sessions. The Conference opening and closing sessions would be attended by all the delegates, but—in the interests of progress—for all other sessions the delegates will be separated according to their area of specialty, such as trade (the WTO and all trade-related NGOs and business groups), finance (the World Bank and finance-related NGOs and business groups, etc), labour relations (the ILO, labour-related NGOs and business groups), etc. Past successful global conferences, such as the Rio Conference on environment issues, can offer valuable insights during the planning and implementation stages. However, going beyond the scope and mandate of past conferences, the groups that the three sectors divide into for the main sessions (trade, finance, labour, environment, etc.) will form the basis of the new collectively managed IGOs. Following the Conference, existing IGOs will make the transition to include fully enfranchised members of civil society and private sector.

In the organisation of the Conference each phase of the preparation and execution must be rigorously planned and seamlessly carried out. The preparation phase must also forecast any potential obstacles and include plans for dealing with them. The Conference is to be the largest meeting to date of all three sectors of society, many of whose representatives will be averse to the idea of sharing power with civil-society groups. The sheer size of the delegations potentially presents a significant obstacle, as does the possibility of critics' efforts to block reforms. These obstacles can be minimised through careful preparation: for example, by setting the agenda in advance, by communicating fully with the attendees, etc. It is important to establish the credibility of the Conference well before any sessions are held.

Phase 1—Securing agreement from all parties to attend the Conference

The first step towards a system of Collective Management is securing the consent of the Northern countries to discuss such a system since, without such consent, powerful Northern interests can use their influence in UN institutions to block all reform initiatives. The diagram below illustrates how this can be achieved through the collaboration of Northern CSOs (represented on the diagram as ‘North’) and Southern CSOs (represented on the diagram as ‘South’) to exert pressure on the dominant Northern countries that control the IGOs. What the diagram represents is a continuous process of alliance-building by increasing numbers of CSOs (‘North’ and ‘South’ below), combined with lobbying by these alliances to secure agreement from the Northern countries (‘N.C.’ below) to participate in a system of Collective Management, resulting in an equal division of the responsibility for monitoring and enforcing the new system.

Figure A2.1 Virtuous circle of alliance-building, lobbying and Collective Management



The process can be explained in four stages:

- 1) Northern and Southern civil society organisations ('North' and 'South') come together in alliances.

Chapter Two has already addressed the issue of promoting alliances between Northern and Southern NGOs. Without cooperation and communication between the two, issues can often be misrepresented. Even more seriously, NGOs that are not properly educated about the issues they campaign for can potentially damage the welfare of the very groups they are

trying to help. This could be seen in the outcome of a campaign by Northern NGOs against a World Bank project to build a dam in China. Northern NGOs assumed that building the dam would have a negative impact on the welfare of the inhabitants of the region who might have to be made to move. Many argue, however, that the dam would have brought the benefit of electricity to thousands in the region, but as a result of the Northern NGOs' misinformed campaigning the project was aborted, and electricity was not introduced into the area. Alliance-building would have given the Northern NGOs access to the local grassroots organisations, and thus would have corrected their misinformation, with benefit for the local region. In Collective Management, alliance-building between Northern and Southern groups is of key importance as it would provide one of the few channels that Southern NGOs would have to express their views to Northern policy-makers on the proposed system and to lobby Northern states in support of Collective Management.

- 2) The Northern-Southern civil society alliances work together to lobby the Northern countries, e.g., Europe, Japan, and the USA, to convince them to adopt the new form of global governance.

Having formed alliances between Northern and Southern NGOs, civil society would then be in a stronger position to take the next step in the adoption of a Collective Management system—lobbying Northern countries to agree to such a system. This is a crucially important element of the process as it addresses the issue that without the consent of the Northern countries many or all reform initiatives will be blocked. Case-studies to date illustrate that success is a real possibility: in an enormous number of cases NGOs have successfully lobbied US state governments, as well as the US Congress and the EU Parliament, to pass or amend legislation. The campaign to set up the International Criminal Court to prosecute crimes against humanity involved NGOs' organising international conferences and meetings, supporting Southern CSOs and State participation in the process

through funding and information dissemination, and lobbying throughout many countries, including lobbying US Congress and the EU Parliament. The result was the Rome Statute of the International Criminal Court of 17 July 1998, ratified by 120 states and finally coming into force on 1 July 2002. The international system would not have been sufficiently equipped to bring to justice those, such as Slobodan Milosevic, responsible for human atrocities, without this success on the part of NGOs.

Other campaigns have been restricted to a single country or US state. Lobbying by the Oregon Health Groups on Smoking and Health (OHGOSH), the Tobacco Free Coalition of Oregon (TOFCO), the American Cancer Society (ACS), the American Heart Association (AHA), and the American Lung Association (ALA) resulted in the passing of a government-funded health plan in Oregon in 1996. The plan was passed unchanged by the Oregon Senate, House and Governor, and was designed to reduce tobacco-use by raising tobacco tax, the revenue providing health insurance for low-income individuals.

Tobacco and smoking have been the focus of many lobbying campaigns. In the EU, lobbying of numerous member-state governments as well as the EU Parliament for the prevention of smoking in public places throughout the EU has resulted in a wide variety of national legislation of varying strengths, with slightly different definitions of public places. Also in Europe, a campaign against the EBRO Transfer in Spain (a network of dams and pipes to carry water from the Ebro River to other river systems), involved lobbying of the EU Parliament by the World Wildlife Fund and other international NGOs to stop the funding of projects that do not meet EU standards. The result was that the EBRO Transfer legislation was repealed in 2004 and the Spanish National Hydrological Plan was reviewed.

Other successful examples of alliance-building and lobbying can be seen all over the world. Alliances and lobbying by black civil society and resident elites in South Africa contributed to the abolition of Apartheid. The improved human rights record in Libya is in part due to the campaign by the Gaddafi Foundation and other international human rights NGOs. The huge lobby in favour of the freedom to own firearms in the US, through the use of civil society campaigns, social movements and the media, mean the government is practically unable to introduce alternative legislation even though there is a high crime rate due to use of firearms.

These successes show the potential for strong, well-organised alliances between Southern grassroots NGOs and Northern NGOs to make a successful case for the adoption of Collective Management. It is important that civil society joins forces to lobby the powerful Northern countries for their consent to the project, for without it Northern interests may use their influence at the UN and other IGOs to block any reform efforts.

3) Having secured the consent of the Northern countries, the system of Collective Management can now be introduced.

With the consent of the Northern countries it becomes possible to put the concept of Collective Management on the table for discussion at the UN institutions, ensuring full participation by all three sectors of society from both Northern and Southern regions. These discussions would proceed according to the plans for the Global Conference, as described below in this Chapter. The important point to emphasise is that both business and civil society, from developed and developing countries, would have an equal say alongside government in the discussions.

The outcome of these discussions would be the rules for, and the establishment of, the international system of Collective Management. The discussions would also address the need for a monitoring and enforcement mechanism and the means by which responsibility for monitoring and enforcement would be shared among all participants of the system. This would then bring us to the final position in the above diagram.

- 4) The final position is one in which both North and South, in business, civil society and government, all equally share the responsibility for monitoring and enforcing the decisions made under the Collective Management system.

The power of the system is that the processes shown in the diagram can continue even after the adoption of the Collective Management system. In the next round of the campaign—after Collective Management has been installed in the international system—the diagram illustrates the use of (1) continuing alliance-building, and (2) lobbying, to bring increasing numbers of ‘outlaw’ states into the liberal system and the collectively managed institutions (3), whence their behaviour can be monitored by all three sectors of society (4). The diagram thus shows a ‘virtuous circle’ of international alliance-building.⁵⁴⁰

As the first two steps of the process, i.e., securing consent of the Northern countries for the Collective Management system, are so crucial, I now analyse in more depth the methods by which civil society can lobby the Northern countries.

⁵⁴⁰ To clarify: the first full cycle of the diagram describes the implementation of the Collective Management system. This initial implementation ends at position 4, which is why there is no arrow back to position 1 on this diagram. However, once Collective Management has been implemented, the parties involved in it can use their new-found influence to promote a new cycle of alliance-building, lobbying, and the exertion of moral power by civil society, as discussed in Chapter Two. Because Collective Management can promote new cycles of alliance-building and lobbying, I believe the system represents a virtuous circle, and there is still a link made between positions 4 and 1 on the diagram above.

External pressure includes all channels of communication that civil society already utilises: lobbying, campaigns and public protests, multi-stakeholder dialogues, formal interactions with national governments and multilateral institutions, etc. Professor Barry Carin notes that ‘the important point is to select a focused message. An example in the IMF context would be to convince Belgium to cede its totally undeserved seat on the IMF Executive Board to Africa.’⁵⁴¹ This could be done with a worldwide boycott of Belgian products and reminders of Belgian colonial crimes against humanity in the Congo. With respect to the WTO, the campaign theme could be to provide value to the retaliation rights of very small countries, by creating a market allowing them to sell such rights to a country that could use them. A less problematic approach would be to impose fines assessed by the WTO on the guilty country, the proceeds going to the injured small country. Another example of a campaign to capture and channel public opinion would be to pressure all countries to agree to enforce WTO decisions in their own courts.

These efforts will be much more influential if civil society is united in its message so that it is lobbying with a single, clear voice. One way of achieving this is to form a global organisation to act as the Voice of Global Civil Society (VGCS). In addition to coordinating civil society’s message, this organisation can collect data and statistics (crucial to a well-run campaign), promote greater North-South alliance-building. When the Global Conference planning is underway, the VGSC can act as civil society’s representative through the planning phases. The goals of Phase 1 and the initiatives necessary to achieve the Phase 1 goals are summarised in Table A2.1.

⁵⁴¹ Discussions with Professor Barry Carin, London, November 2004.

Table A2.1

PHASE 1: PROCEDURES AND OUTCOMES		
Objective	Action	Support Actions
Secure IGOs' agreement to participate in Conference; secure UN sponsorship	Internal pressure	Educate Southern IGO delegates
	External NGO pressure	Improve influence of NGOs: Accountability Transparency Capacity Effectiveness Legitimacy
	External non-NGO pressure	Establish VGCS to: Coordinate civil society's message Collect data and statistics Promote North-South alliances Represent civil society on the Conference Planning Committee

Phase 2—Screening and electing participants and organising the Conference

Having secured agreement from all parties to participate in the Conference, the next challenge is to screen applicants to the Conference so that all three sectors are represented fairly and legitimately. Government and businesses already have processes in place to do this, but NGOs do not. Obviously it will not be possible for every NGO to attend. However, the NGOs that do attend should represent every field of activity (e.g., environment, labour, gender, trade, finance, etc). There should also be representatives from every geographical area (the US, the EU, Eastern Europe, Australasia, etc), if not every

country. In order to achieve this, a multi-level selection process would be required with well-defined criteria.

There are numerous tasks involved in Phase 2, the planning stage of the Conference. The ECOSOC is well placed to act as a secretariat organisation at this stage: it could organise the Global Conference which will then set up codes and standards for NGOs.⁵⁴² The Global Conference will then take decisions and resolutions according to areas that have been discussed. The examples of similar successful global conferences, such as the Rio conference on the environment, can provide useful insights into successful planning and execution. Once all parties have committed to attending, provisional agendas can be collected from the three sectors, and the overall agenda can be set.

The planning stage also includes organising the financial and logistical support that will be needed to ensure a diverse, global representation of the three sectors. ECOSOC could help Southern NGOs to participate effectively in the Global Conference by organising financial assistance for them. This will not only help Southern NGOs to attend the Global Conference, but it will also be used to improve their skills through special training programmes. Because of the various and continuing impacts of globalisation, Southern NGOs should be involved in continuous training programmes that help them to adapt. This will require a permanent budget, and is a task that should be supervised by the ECOSOC.

⁵⁴² ECOSOC is an agency of the UN that oversees an enormous part of the UN's work: it covers over 70% of the human and financial resources of the UN. Although much of its work involves coordinating other UN agencies, such as the World Health Organisation and the World Bank, it also manages functional and regional commissions. ECOSOC's Committee on Non-Governmental Organisations has also been responsible for assessing the eligibility of NGOs to gain consultative status within the UN and for specifying their rights and obligations. Their experience in selecting NGOs for consultative status within the UN is obviously of great importance in helping decide how NGOs should be selected to represent civil society.

My earlier remarks drew attention to the relationship between states and NGOs becoming more dependent, thus calling into question NGOs' autonomy in the face of state pressures. Initially NGOs obtained financing from private voluntary sources but with the increased use of NGOs in official development programmes and the practice of some governments to provide core funding to them, it is questionable whether some NGOs are little more than remote government agencies. Donor agencies have recently channelled large amounts of funds to NGOs, resulting not only in drastic increases in the numbers of both Northern and Southern NGOs but also an over-dependence of most NGOs on official aid. Michael Edwards and David Hulme have suggested that, by accepting foreign funds, NGOs 'may diminish their legitimacy'.⁵⁴³ P. J. Simmons has also noted that NGOs 'lose their organisational autonomy by increasingly relying on state funding'.⁵⁴⁴ This latter point has come into play in recent years as a result of more and more NGOs' being used as executing agencies for the implementation of poverty-focused official development assistance.

It is therefore important that any financial assistance organised by ECOSOC is made completely transparent. Funding should be allocated for very particular purposes, such as travel expenses, and only after NGOs have proved their need according to specific, pre-agreed criteria.

⁵⁴³ Michael Edwards and David Hulme, 'Too Close for Comfort? The Impact of Official Aid on Nongovernmental Organisations', *World Development* 24 (1996): 961-973.

⁵⁴⁴ P. J. Simmons, 'Learning to Live with NGOs', *Foreign Policy*, Fall 1998, <http://www.globalpolicy.org/ngos/issues/simmons.htm>.

Table A2.2

PHASE 2: PROCEDURES AND OUTCOMES		
Objective	Action	Support Actions
Plan Global Conference (planning to be led by the Planning Committee)	Form a Planning Committee that includes representatives from all three sectors	Continue with establishment of VGCS; choose civil society's representative for the Planning Committee from the VGSC
	Select civil society delegates from accredited representatives	Establish standards and methods of accrediting international civil society's representatives Determine which IGO each civil society representative should be affiliated with
	Select private-enterprise delegates	<i>(Business and industry currently have adequate mechanisms to nominate their own representatives)</i>
	Secure ECOSOC's agreement to act as General Secretary	Consider how to reform ECOSOC to enable it to perform a largely secretarial role
	Set Conference agenda	Collect agendas from all three sectors
	Organise financial and logistical support	Prepare facilities for the Conference Determine what criteria entitle groups/individuals to financial aid (e.g., for travel arrangements etc.) <i>Continue with 'Support Actions' from Phase 1</i>

Although the initial stages of this programme will be lengthy and complicated, it is crucial to complete the organisation phases successfully if the Conference is to be credible and portray a well-respected effort to integrate IGOs and civil society. The time-frame may be as long as a decade. I emphasise the need to set the agenda *in advance* of hosting the Conference: lessons learnt from studying the WTO include realising the ease with which

global conferences can fall into stalemate and fail to make any progress if there is not prior consensus on the issues to be discussed.

Phase 3—Hosting the Conference

The main objective of the conference is to establish codes and standards that describe how the Collective Management mechanism will work and govern its operation. ECOSOC will act as the Secretary General throughout the proceedings.⁵⁴⁵ The opening and closing sessions will be attended by all the delegates from all three sectors: government, business and civil society. However, good progress is unlikely to be made on specific subjects with this many participants. Thus for all sessions other than the opening and closing ones, delegates will separate into groups according to their fields of interest. For example, the WTO and all trade-related NGOs and businesses will convene in one conference, while the ILO and all labour-related NGOs and businesses meet in another conference, and the IMF and all finance-related NGOs and businesses meet in yet another conference, etc.

Delegates should have access to high-quality facilities to aid the debating and decision-making processes. In particular, there should be several conference- and meeting-rooms so that delegates from each sector of society can meet outside the scheduled conference times to decide the strategies and subjects for discussion in the following day's sessions. There should be an NGO centre, a private-enterprise centre and an IGO centre where delegates from these groups can meet privately and store their materials. Each of these centres

⁵⁴⁵ The ECOSOC also has the potential to be extended over all the Collective Management structures and to provide a valuable source of established credibility for the new systems. The human resources that it commands, especially in its Secretariat, could potentially provide support to all three branches of the Collective Management system, and its experience could be used to finalise the details of Committee and

should be fully equipped with computers, printers, faxes, internet access and email facilities, etc. There should also be a press area, and a communal document-distribution area for documents that any participant has produced and wishes to circulate to all delegates. Additionally, there should be a large taskforce dedicated to dealing with delegates' problems and requests. Any social events organised during the conference period should be open to all delegates from all sectors.

It is crucial that an environment of transparency and openness is cultivated throughout both formal and informal proceedings. This means that full minutes of all conference sessions and proceedings should be taken, and made quickly and easily available to all delegates. Minutes of subject-specific meetings should also be made available to delegates from different subject areas. For example, trade-related delegates should have access to the minutes of environment-related meetings, if they so wish. Informal meetings, social events and other activities outside the formal sessions should be open to all. It is important to avoid any of the clandestine meetings that IGOs are criticised for, such as WTO green-room meetings (as discussed in some detail in Chapter Six).

Commission procedures. ECOSOC could also continue to set the agenda for the Councils as it currently does, but with all three branches recommending items rather than just NGOs as currently happens.

Table A2.3

PHASE 3: PROCEDURES AND OUTCOMES		
Objective	Action	Support Actions
Set codes and standards for Collective Management	Hold Global Conference	ECOSOC acts as Secretary General
Establish mechanism for supervision and regulation		Opening and closing sessions attended by all delegates from all three sectors
Consider issue of Dispute Settlement Mechanism and how to amend it		For all other sessions delegates are separated into their areas of specialty
Identify and secure a global facility to adequately finance and support global civil society representation in IGOs		Full minutes taken and published

Phase 4—Implementing and monitoring the codes and standards

When the Global Conference has reached a set of recommendations on codes and standards, the final stage is to implement them and monitor compliance. Implementation amounts to transferring some of the IGOs’ power to the relevant NGOs and businesses: that is, to putting in place the collectively-managed governing bodies of the IGOs. Once in place, it is necessary to monitor them to ensure that all members abide by the rules of conduct agreed to in the Conference. A reformed dispute-settlement mechanism similar to that operated by the WTO (as explained in Chapter Six) will threaten punishment to rule-breakers.

The question of who should fulfil the monitoring role must be answered at the Conference and agreed to in advance of the implementation stage. There are a number of candidates for this role. ECOSOC has the potential to fulfil such a function, since it possesses human,

financial and technical resources. However, Professor Carin argues in favour of a well-resourced Independent Inspection Panel to review and publicly report on compliance, and a new arbitration process (like a Small Claims Court) designed to give the poorest countries inexpensive, expedited and binding arbitration.

Table A2.4

PHASE 4: PROCEDURES AND OUTCOMES		
Objective	Action	Support Actions
Implement agreed-on codes and standards	Monitor all three sectors and their actions	Improve transparency; make minutes of meetings, working papers, etc., publicly available
	Enforce codes and standards when necessary	

While this thesis outlines the framework for the Collective Management mechanism, and notes the cautionary measures that need to be taken in advance of implementing the mechanism (e.g., screening applicant NGOs), much more detail and investigation is needed before the proposal could be implemented. The planning stages are critical to the project's success, and must be rigorously prepared and executed: the importance of preparation cannot be overstated. In order for the Conference to succeed, it must be perceived as a credible undertaking and this depends, in large part, on the planning phases.

APPENDIX 3: Official Decision-Making Processes at the WTO⁵⁴⁶

The WTO is ‘member-driven’: it is run by its member governments and all major decisions are made by the membership as a whole, either by ministers (who meet at least once every two years) or by their ambassadors or delegates (who meet regularly in Geneva). The WTO continues the practice of decision-making by consensus among all member governments, following the example of the GATT since 1947. Consensus is defined as the situation in which no member, present at a meeting where a decision is taken, formally objects to the proposed decision. However, it is recognised that there may be situations where a consensus cannot be reached, in which case the matter may be decided by voting. Voting rules are set out in the WTO Agreement.

Member countries make their decisions through various councils and committees, whose membership consists of all WTO members, and at a number of different levels. These are explained below, and illustrated in the chart at the end of this section.

The top level

Topmost is the Ministerial Conference, which is the supreme body of the WTO, composed of representatives of all members, with the authority to carry out the functions of the WTO, take the actions necessary to this effect, and take decisions on matters under any of the Multilateral Trade Agreements if so requested by a member. The Ministerial Conference is to meet at least once every two years. The first WTO Ministerial Conference was held in Singapore in December 1996, the second in Geneva in May 1998, the third in Seattle in

⁵⁴⁶ Information drawn from the WTO website, www.wto.org.

November-December 1999, the fourth in Doha in November 2001, the fifth in Cancún in September 2003, and the sixth in Hong Kong in December 2005.

The second level

The day-to-day business of the WTO is conducted at the second level of WTO decision-making, which is the General Council, also composed of representatives of all WTO members. It meets on a regular basis, normally once every two months. The General Council acts on behalf of the Ministerial Conference in the periods between its meetings, and reports directly to it.

The General Council convenes also as the Dispute Settlement Body (DSB), which has its own Chairman and its own rules of procedure to discharge the functions assigned to the DSB under the Dispute Settlement Understanding.

The General Council meets also as the Trade Policy Review Body, which again has its own Chairman and rules of procedure to carry out the review of members' trade policies and practices, as provided for in the Trade Policy Review Mechanism.

All three of these functions—the General Council, the DSB and the Trade Policy Review Body—consist of all WTO members. They report to the Ministerial Conference. The General Council acts on behalf of the Ministerial Conference on all WTO affairs.

The third level

Three sectoral councils have been established for goods, services and TRIPs matters, respectively. These councils, operating under the guidance of the General Council, carry out the responsibilities assigned to them by their respective agreements and by the General

Council. They meet as necessary to carry out their functions, and they are open to representatives of all WTO Members. They may also establish subsidiary bodies, such as committees and working parties.

The Council for Trade in Goods oversees the functioning of the multilateral agreements on trade in goods. These include the GATT and related Understandings, and twelve other agreements, as contained in Annex 1A to the WTO Agreement.

The Council for Trade in Services oversees the functioning of the General Agreement on Trade in Services (GATS).

The Council for TRIPs oversees the functioning of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement).

All three Councils consist of all WTO members. The three also have subsidiary bodies (situated at the fourth level of decision-making.)

Six other bodies report to the General Council. Their scope is smaller, so they are merely 'committees', but they still consist of all WTO members. They cover issues such as trade and development, the environment, regional trading arrangements, and administrative issues. Three main committees, which are established by the WTO Agreement, are the Committee on Trade and Development, the Committee on Balance-of-Payments Restrictions, and the Committee on Budget, Finance and Administration. Membership of these committees is also open to all Members of the WTO. The General Council has established two other committees reporting to it: the Committee on Trade and Environment and the Committee on Regional Trade Agreements.

The Singapore Ministerial Conference in December 1996 decided to create new working groups to look at investment and competition policy, transparency in government procurement, and trade facilitation.

Two more subsidiary bodies dealing with the plurilateral agreements (which are not signed by all WTO members) keep the General Council informed of their activities regularly.

The fourth level:

Each of the higher level councils has subsidiary bodies. The Goods Council has eleven committees dealing with specific subjects (market access, agriculture, sanitary and phytosanitary measures, technical barriers to trade, subsidies and countervailing measures, anti-dumping measures, customs valuation, rules of origin, import licensing, trade-related investment measures, and safeguards). Again, these consist of all member countries. Also reporting to the Goods Council is the Textiles Monitoring Body, which consists of a chairman and ten members acting in their personal capacities, and groups dealing with notifications (governments informing the WTO about current and new policies or measures) and state trading enterprises.

The Services Council's subsidiary bodies deal with financial services, domestic regulations, GATS rules and specific commitments.

At the General Council level, the Dispute Settlement Body also has two subsidiaries: the dispute settlement 'panels' of experts appointed to adjudicate on unresolved disputes, and the Appellate Body that deals with appeals.

The informal level:

Important breakthroughs are rarely made in formal meetings of these bodies, least of all in the higher-level councils. Since decisions are made by consensus, without voting, informal consultations within the WTO play a vital role in bringing a vastly diverse membership to an agreement.

One step away from the formal meetings are informal meetings that still include the full membership, such as those of the Heads of Delegations (HOD). More difficult issues have to be thrashed out in smaller groups. A common recent practice is for the chairperson of a negotiating group to attempt to forge a compromise by holding consultations with delegations individually, in twos or threes, or in groups of 20-30 of the most interested delegations.

These smaller meetings have to be handled sensitively. It is necessary to ensure that everyone is kept informed about what is going on (the process must be 'transparent') even if they are not in a particular consultation or meeting, and that they have an opportunity to participate or provide input (the process must be 'inclusive').

One term has become controversial, but more among some outside observers than among delegations. The 'Green Room' is a phrase taken from the informal name of the director-general's conference room. It is used to refer to meetings of 20-40 delegations, usually at the level of heads of delegations. These meetings can take place elsewhere, such as at Ministerial Conferences, and can be called by the minister chairing the conference as well as the director-general. Similar smaller-group consultations can be organised by the chairs of committees negotiating individual subjects, although the term Green Room is not usually used for these.

In the past delegations have sometimes felt that Green Room meetings could lead to compromises being struck behind their backs, so extra efforts are made to ensure that the process is handled correctly, with regular reports back to the full membership.

The way countries now negotiate has helped somewhat. In order to increase their bargaining power, countries have formed coalitions. In some subjects such as agriculture virtually all countries are members of at least one coalition—and in many cases, several coalitions. This means that all countries can be represented in the process if the coordinators and other key players are present. The coordinators also take responsibility for both ‘transparency’ and ‘inclusiveness’ by keeping their coalitions informed and by taking the positions negotiated within their alliances.

In the end, decisions have to be taken by all members and by consensus. The membership as a whole would resist attempts to impose the will of a small group. No one has been able to find an alternative way of achieving consensus on difficult issues, because it is virtually impossible for members to change their positions voluntarily in meetings of the full membership.

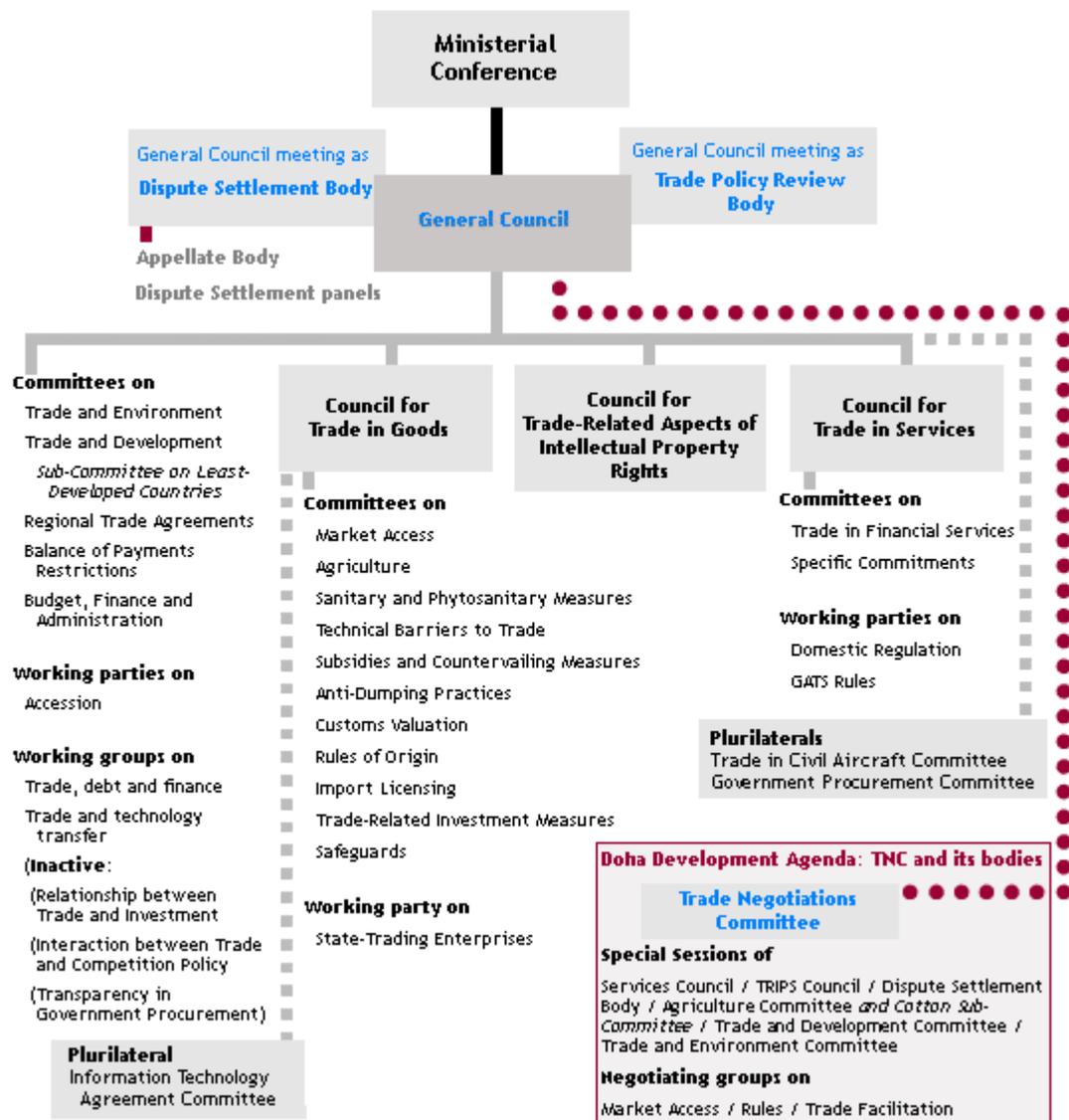
Market access negotiations also involve small groups, but for a completely different reason. The final outcome is a multilateral package of individual countries’ commitments, but those commitments are the result of numerous bilateral, informal bargaining sessions, which depend on individual countries’ interests. (Examples include the traditional tariff negotiations, and market access talks in services.)

Thus, informal consultations in various forms play a vital role in allowing consensus to be reached, but they do not appear in organisation charts, precisely because they are informal.

They are not separate from the formal meetings, however. They are necessary for making formal decisions in the councils and committees. Nor are the formal meetings unimportant. They are the forums for exchanging views, putting countries' positions on the record, and ultimately for confirming decisions. The art of achieving agreement among all WTO members is to strike an appropriate balance, so that a breakthrough achieved among only a few countries can be acceptable to the rest of the membership.

The chart below demonstrates the structures explained above. As noted by the WTO, the informal level is not included in the chart because of its 'unofficial' status.

Figure A3.1: Organisational chart of WTO decision-making mechanisms



Key

- Reporting to General Council (or a subsidiary)
- Reporting to Dispute Settlement Body
- ■ ■ Plurilateral committees inform the General Council or Goods Council of their activities, although these agreements are not signed by all WTO members
- ● ● Trade Negotiations Committee reports to General Council

The General Council also meets as the Trade Policy Review Body and Dispute Settlement Body.

(Source: WTO website, http://www.wto.org/english/thewto_e/whatis_e/tif_e/org2_e.htm)

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