

WORKSHOP PAPERS
of the
ORFALEA CENTER FOR GLOBAL & INTERNATIONAL STUDIES

Governance and Accountability in International NGOs



edited by
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GOVERNANCE AND ACCOUNTABILITY IN INTERNATIONAL NGOs

Introduction

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Who controls the international NGOs? Critics of international humanitarian and human rights organizations often refer to these non-profit non-government organizations (NGOs) as “self-appointed”—as if other organizations, such as international businesses and religious networks, were, by contrast, properly authorized and accountable to a democratic process. Still, the critics have their point. After all, international NGOs operate outside most governmental structures, and although they may be incorporated within the regulations of a particular country they operate around the world pretty much as they see fit. This organizational independence raises issues regarding their legitimacy and their constituencies of accountability; the way that they may be seen as competing with national governmental organizations; and the role they play among other international and transnational institutions.

The essays in this special issue speak to each of these issues, and are all related to the theme of governance and accountability in international NGOs. They were first presented at an international conference on this topic hosted by the Orfalea Center for Global and International Studies at the University of California, Santa Barbara, on

November 11-12, 2006. The stimulus for the topic was an idea originated by the Global History Initiative led by Bruce Mazlish of MIT and Akira Iriye of Harvard, both of whom participated in the conference. Several other participants, including Helmut Anheier and Marlies Glasius, were associated with the Center for Global Governance at the London School of Economics, which took a keen interest in the topic. Following the conference the papers were revised and honed in response to the discussion at Santa Barbara. The essays selected for this issue look at the issue of governance and accountability from several perspectives.

Richard Falk's essay deals with one of the broadest issues in the relationship of international NGOs to national authorities—the role of international NGOs in justifying humanitarian intervention across national boundaries. This is a topic explored in a different way in the essay by Krishan Kumar, which examines the context of these organizations within an emerging global civil society that provides both legitimization and a network of support for international NGOs.

Another important perspective on the role of international NGOs is the relationship—in some cases a rivalry—between agencies of national governments and transnational humanitarian organizations operating within national locales. The essay in this issue by George Thomas, Nalini Chhetri and Khaleel Hussaini raises the issue of the legitimacy of international NGO operations within the context of South Asia.

Yet another perspective is the role that international NGOs play within the global political and organizational arena. The essay by Marlies Glasius focuses on the International Criminal Court, and raises the question of whether NGO involvement makes international decision-making more democratic. Walden Bello's commentary

deals specifically with the role of international NGOs in the World Social Forum and the Globalist Project. A common theme running through all of the papers is the idea that, although the role of international NGOs are diverse and rapidly changing, they have become a significant and increasingly influential force on the global political scene.

This volume of papers was jointly published as a special edition of the *Journal of Civil Society* (ed. Helmut K. Anheier, Volume 4, Number 1, June 2008) <http://www.tandfonline.com/loi/rcis20#.VHzficm-NSk>

Civil Society Perspectives on Humanitarian Intervention

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ABSTRACT. This article explores the multiple roles played by civil society actors in relation to policy debates relating to whether to advocate or oppose humanitarian intervention under a variety of specific circumstances, or in general. There is no consistent civil society viewpoint, but rather a range of disagreements relating to whether there exists a genuine imminent threat of humanitarian catastrophe, whether the political will exists to intervene in a manner that protects a threatened population, and whether a reliance on force for humanitarian ends should ever be supported in the absence of a mandate from the United Nations Security Council. Most civil society voices prefer to assess each case on its own rather than to be for or against humanitarian intervention as a general proposition. A consensus would look favorably upon humanitarian intervention endorsed by the UNSC. The problems arise where such an endorsement is not obtainable. The NATO War of 1999 to safeguard the endangered Albanian population of Kosovo illustrates the positive case for humanitarian intervention as there appeared to be an imminent threat and there existed a sufficient political will to make it seem likely that an intervention could attain its goals. The absence of support from the UNSC in this instance was offset by the participation by the UN after the fact in the work of economic and political reconstruction, although the precedent set by this use of non-defensive force has kept the Kosovo undertaking controversial. In contrast to Kosovo, civil society actors throughout the world generally rejected the claimed humanitarian justifications for the Iraq War. At this time civil society is split on the question as to whether *ever* to encourage humanitarian intervention undertaken absent a green light in advance from the UN.

KEYWORDS: humanitarian intervention, civil society, United Nations, Kosovo War, Iraq War

Introduction

No issue was more divisive in global civil society since the end of the Cold War than the morality, legality, and politics of humanitarian intervention.¹ This divisiveness meant that civil society could not effectively in the most difficult instances serve as the global voice of conscience with respect to interventionary diplomacy. On the left were too many suspicions that humanitarian claims were invoked to conceal underlying geopolitical goals. On the right was an inherent distaste for uses of force that rested on moralistic justifications rather than on the basis of security interests. Even in the center there was debate as to whether intervention was likely to have a genuinely positive set of effects, and whether the intervening actors were sufficiently committed to devote resources and

energies to the project, especially in its post-conflict, reconstruction phase. In these senses, civil society was very active in promoting or opposing proposed humanitarian interventions, but without the sort of unified approach that would add clarity and coherence to the policy debates. In some instances, especially where the facts of extreme humanitarian crisis were stark and uncontested or where the grand strategy goals of the intervening actors were plain, civil society actors were in sufficient agreement to act as either a force for intervention or of opposition.

In many respects the 1990s represented the golden age of Westphalian geopolitics: with the completion of the process of decolonization, (including the collapse of the Soviet empire) the major premise of a world order based on the universality of territorial authority under the control of independent sovereign states belonging to the United Nations was substantially realized for the first time. Additionally after the Cold War, there was no serious prospect of a major international war between major sovereign states. Furthermore, the peoples of East Europe, the Soviet Union, and South Africa had been unexpectedly liberated from oppressive rule without significant accompanying violence, a near political miracle.

In such an atmosphere the ideological tensions that had underpinned the Cold War disappeared. Instead, an economic phase of international relations emphasizing trade, investment, and growth dominated the policy agendas of foreign offices. The emphasis on an integrated world economy was greatly facilitated by information technology and personal computers that were empowering private sector and civil society actors of all variety to participate in an increasingly networked world.²

It was also a historical moment that seemed highly receptive to a series of normative developments associated with law and morality.³ After decades of dormancy the Nuremberg idea of holding leaders accountable for crimes of states was revived by governmental initiative, and applied with high drama to such dictators as Pinochet and Milosevic. In this atmosphere action was taken by governments to establish by action of the United Nations Security Council a series of hoc international criminal tribunals. Such initiatives encouraged stimulated civil society ambitions, giving rise to an unexpectedly successful campaign based on collaboration with a coalition of moderate government to establish a permanent International Criminal Court that came into formal existence in 2002.

Also in this setting of heightened sensitivity historic wrongs, long ignored, were acknowledged by political leaders, producing high profile apologies, sentimental remembrances, sometimes accompanied by newly available remedies. After decades of denial, some of the gold confiscated from Holocaust victims was returned or produced compensation in such bastions of banking secrecy as Switzerland.⁴ To some extent, survivors of ordeals of forced labor in Europe and Asia received apologies, and in some instances, payments for work rendered long ago. In many settings, redress for past grievances was sought for recent and distant wrongs. One expression of this receptivity to redress was the formation of several commissions of peace and reconciliation. This approach was taken, especially in Latin American countries, in the midst of transitions from dictatorial rule to constitutional democracy. Such commissions acknowledged the wrong that had been perpetrated and looked to a future where such abuses would be

avoided, but avoided holding perpetrators accountable or instituting reparation arrangements for victims.⁵

One of the most persistent efforts was made by civil society representatives of indigenous peoples to seek vindication of their sovereign rights as nations that had long been violated. This led to a willingness of the United Nations, under the auspices of the UN Commission on Human Rights Sub-Commission on the Prevention of Discrimination and Protection of Minorities, to provide a forum that met annually to consider the grievances of indigenous peoples. This process continues, and has taken the principal form of articulating a Declaration of the Rights of Indigenous Peoples.⁶

In some ways analogous, descendants of African-American slaves and their representatives, for the first time developed serious arguments that demanded massive reparations for the abuse and suffering endured. These grievances received attention, and in some circles, sympathy, but did not lead to any kind of mass movement and did not produce any offers by accused societies to pay reparations.⁷

This global setting of heightened moral sensitivity was also reinforced by political innovation, especially the European Union that was in its way eclipsing the Westphalian era. The European experiment in regional governance, despite periodic difficulties, presented the world with an instance of the great benefits to be derived from pooled sovereignty, cooperation, and more relaxed border control. Most impressive, and often overlooked, as the transformation of Europe from being most afflicted war zone on the planet into a domain of peaceful inter-state relations with expectations of durable peace reaching a virtual certainty.

But this was not all. The international protection of human rights moved from the hinterland of world politics into a terrain of far greater policy prominence. This development was itself largely responsive to civil society activism, and especially to the work and influence of transnational human rights organizations. As a result, civil society actors became increasingly acknowledged as subjects of history to be included in any credible identification of the elements of world order. The United Nations Secretary General in most of the 1990s, Kofi Annan, repeatedly urged the inclusion of civil society actors in the work of the United Nations. In this period also there took place a series of elaborate UN world policy conferences on the environment, human rights, status of women, population, and social wellbeing.⁸ Within these arenas that attracted the global media, civil society representatives tended to congregate, both to exert influence on governmental activities and to build their own networks for the future. These conference arenas became impressive experiments in *global democracy* as a result of the participation and impact of civil society actors.

In light of this chain of events, it seemed misleading for scholars or even journalists to continue their reliance on a statist framework of inquiry and interpretation that regarded *only* sovereign states, and their interactions, as worthy of attention. At the same time, the building blocks for a hopeful future based on the rule of law, global justice, and the absence of international warfare seemed to provide the world community with many of the ingredients of a hopeful future. As subsequent events have unfortunately demonstrated, this optimistic outlook based on the global setting of the 1990s did not persist, and had overlooked some dark underlying forces that would soon surface in a variety of disturbing ways.

On Humanitarian Intervention

One precursor of this more pessimistic climate of opinion arose in relation to the controversial subject matter of “humanitarian intervention.” In a sense, this set of issues is a byproduct of globalization and an accompanying heightened sense of human solidarity. In the 1990s, there emerged what was described by its supporters as “humanitarian diplomacy.” This emergence has many overlapping explanations, and was viewed mainly as a natural incident of the rising attention given to human rights. More cynical observers were suspicious of this humanitarian turn, and treated it as a rather desperate set of moves to sustain military budgets and national security establishments in a global setting that lacked the sort of strategic threats that existed during the Cold War. There was some reason also to believe that media attention to humanitarian catastrophes in their unfolding was altering the political climate. It was common to refer to “the CNN factor” as putting pressure on politicians and publics to do something in response to the unfolding of humanitarian disasters. Some believed that responding to humanitarian disasters was a relatively inexpensive means to deflect the growing criticism of neoliberal globalization in the 1990s as a heartless, capital-driven restructuring of global economic relations.⁹

But humanitarian intervention was also inevitably always at the edge of diplomatic propriety, and likely to encounter sharp criticism in most specific instances. The centerpiece of such humanitarian diplomacy was the use of force, most advantageously with the formal blessings and participation of the United Nations, being justified as a means employed to protect victimized peoples, a dynamic discussed and

debated in various concrete circumstances under the rubric of “humanitarian intervention.”

The 1990s gave rise to several humanitarian interventions, each of which generated sharp debate in civil society circles and widely divergent academic commentary. This was especially so in connection with Somalia, Rwanda, Bosnia, East Timor, and especially, Kosovo, and later Iraq. The debate focused on three kinds of concerns: was the intervention under discussion legally, morally, and politically justified and feasible? Did a refusal to intervene in the face of a humanitarian catastrophe expose a serious weakness in the structure of world order and the quality of global leadership? Were the real reasons for the intervention associated with strategic, not humanitarian, concerns?

The voices of civil society were discordant. They clashed on the interpretation of facts, norms, and motives pertaining to each instance of humanitarian intervention. This clash was reflected in relation to the core questions, and first surfaced in a serious way after the high-profile reversal of the American approach to Somalia in 1993-1994, particularly the refusal of the Clinton presidency to sustain its dominant role in peacekeeping efforts due to armed resistance in Somalia producing American casualties. While Clinton had earlier promised by way of an embrace of “muscular multilateralism” to go beyond the George H. W. Bush approach in Somalia, the 1993 death of eighteen American soldiers in Mogadishu produced a domestic backlash, and a hasty retreat from Somalia.

This retreat led to a reassessment of humanitarian diplomacy by the United States. It spilled over in tragic ways to discourage in 1994 an international response by the

United Nations to an unfolding massive genocide in Rwanda. This seemed particularly lamentable in relation to Rwanda as most reliable observers believed that a small international commitment by way of humanitarian intervention could almost certainly have saved several hundred thousand Tutsi lives. This attitude of reluctance also accounted for the meagerness of the early commitment to oppose Serbian ethnic cleansing in Bosnia that culminated in the 1995 Srebrenica massacre of several thousand Muslim males.¹⁰ In relation to all three of these instances, the UN had formally acknowledged its responsibility to protect and in each there existed a demonstrated and imminent humanitarian emergency. The failures to protect effectively arose from the weakness of political will on the part of major states, especially the United States, exhibited by the unwillingness to make troops available or commit the necessary resources.¹¹

These cross-cutting issues assumed a much more contested form in relation to Kosovo in the late 1990s. On the one side, Kosovo was technically a sub-division of Serbia, or more accurately at the time, subject to the sovereignty of the Belgrade government of former Yugoslavia. Russia and China were geopolitical opponents of a humanitarian intervention authorized by the UNSC, and therefore no basis existed in international law to use force to protect the Albanians in Kosovo from a gathering threat of ethnic cleansing, a threat made credible by the events in Bosnia a few years earlier and as a result of several violent incidents in Kosovo. On the other side, the United States, in conjunction with the countries of Western Europe, possessed the political will and the logistical means to act effectively on behalf of the threatened Kosovars who made up about eighty five percent of the population. The strength of this political will was not

primarily an expression of a deeper humanitarian commitment in one instance rather than another, but seemed mainly to reflect mainly the presence in the Kosovo setting of a reinforcing American geopolitical motivation to reestablish Atlanticist solidarity in the aftermath of the Cold War. The United States was also eager to convey to Europe its continuing hegemony on the continent, especially in light of tensions arising in relation to foreign trade and investment. Washington was also eager to convince Europeans that NATO, then approaching its fiftieth anniversary, was still a viable alliance, that it could have a new life despite the collapse of the Soviet Union. The European locus of the humanitarian crisis was also a factor. European governments, with their memories of the Holocaust rekindled, exhibited a guilty conscience about their earlier failures to prevent violence in Bosnia, and did not want to reinforce this impression by acting passively in face of the worsening situation in Kosovo.

There were a number of factors present in the pre-intervention context in Kosovo that made recourse to force an attractive option. An initiative backed by the United States and NATO, although it had some downsides for Europe, did carry the promise of effectiveness that could not have existed if the response to Serb moves in Kosovo were once again dependent on international altruism. The success of the American-led coalition in the First Gulf War created a belief that the Kosovo War could be won quickly and decisively from the air without the risk of many casualties, which helped overcome the lingering memories of how quickly the UN peacekeeping mission in Somalia had been discredited. Finally, entrusting the operation to NATO rather than to the UN pleased American conservatives who never wanted to provide the UN with the sort of capabilities

or prominence required to be effective in situations where the territorial sovereign would not give consent for peacekeeping.

Cleavages in Civil Society

The Kosovo debate illuminated some deep divisions in civil society that were brought to the surface before, during, and after the Kosovo War. On the interventionist side were those who primarily identified with the endangered civilian population in Kosovo, and accorded highest priority to the humanitarian imperative of providing security for these potential victims along with the invalidation and criminalization of the Serbian leadership in Belgrade. It was this leadership, especially Milosevic, which was widely believed to be responsible for the genocidal events that had happened earlier in Bosnia.¹² For these advocates of intervention, their main goal was a timely and effective operation, and considerations of auspices and legality were distinctly secondary. Some argued that the UN Charter framework for the regulation of force had long since broken down, if not irrelevant.¹³ Charter norms governing the use of force had long lost their authoritative status, allowing interventionists to treat “a coalition of the willing” as an adequate legal grounding for a humanitarian intervention.¹⁴

On the anti-interventionist side civil society actors who advanced, two often overlapping arguments: an insistence that any international use of non-defensive force without a mandate from the Security Council would establish a bad and dangerous precedent that could jeopardize the sovereignty and independence of weaker states in the future. Furthermore, that entrusting NATO with such an undertaking was to embrace “military humanism” of a highly questionable variety, which concealed a series of non-

humanitarian goals ranging from the establishment of military bases to a show of readiness of the United States to use force overseas to uphold its strategic interests.¹⁵ In effect, extending NATO's writ beyond what was permissible by reference to the UN Charter, or even to the NATO treaty itself, amounted to the creation and endorsement of a new instrument of hegemonic geopolitics. It was on this basis that China and Russia let it be known that if approval were sought for this form of intervention, they would make use of their veto. The United States reacted to this eventuality by circumventing the UNSC, thereby avoiding the need to defy UN authority.

The Kosovo War commenced on February 14, 1999 and continued for seventy-four days, ending with a ceasefire agreement. During this period Slobodan Milosevic was indicted for crimes in Bosnia and Kosovo by the International ad hoc Tribunal for Former Yugoslavia.¹⁶ This tribunal had been set up in 1992 under the authority of the Security Council and was funded by and was accused by critics of being overly receptive to informal US pressures.¹⁷ The war was waged entirely from the air by NATO, and several civilian targets were selected for air strikes in Kosovo and Serbia. At the same time, the war had the effects of freeing Kosovo from oppressive Serb rule and a likely onslaught of ethnic cleansing. It also induced most of the refugees who had fled the country prior to or during the NATO attacks to return to Kosovo.

The supporters and critics focused on different aspects of the Kosovo experience. The supporters argued that only this NATO undertaking had the means and could summon the will to protect the civilian population of Kosovo, and that this was a successful example of humanitarian intervention. The critics allege that the bombing from high altitudes constituted a major violation of the laws of war that should have been

punished as a war crime. Further, that the UN presence in Kosovo after the fighting had stopped did not act promptly to ensure the safety of the now endangered Serbian minority, which resulted in what some critical observers called “reverse ethnic cleansing.” Such critics also contend that Kosovo was not truly “liberated,” but was made into a protectorate that includes a large, semi-permanent American military base, and that insufficient reconstruction aid was made available, which makes the situation in Kosovo verge on anarchy: widespread unemployment and crime, as well as inter-ethnic tensions, especially as between the now dominant Albanian Kosovars and the Serbian minority of ten percent or so.

The contested character of the Kosovo War encouraged assessments that were intended to influence future responses to unfolding humanitarian emergencies. The most influential assessments were made by independent groups of prominent individuals who investigated the issues in controversy, issuing reports summarizing conclusions and recommendations. Such groups performed as “independent commissions,” consisting of prominent citizens appointed on the initiative of governments that funded the exercise. The goal of these exercises was to present a report to the Secretary General of the United Nations and to influence public opinion by encouraging media coverage. The main intellectual objective was to provide a normative framework for humanitarian intervention in the future that would combine the effectiveness of Kosovo without generating so much controversy. The process is itself suggestive of a norm-creating role for civil society actors operating in a new space that is neither purely statist nor purely situated in civil society. These commissions are themselves hybrid actors that have played a special role of accommodating pressures on the Westphalian framework in this

historical period where the state system remains formally in place despite its inability to address certain practical challenges without some departures from international law.

The first of these commissions was the Independent International Commission on Kosovo. It was chaired by Richard Goldstone, a member of the South African Constitutional Court and the first prosecutor at the ICTY, and was funded by various governments, but mainly by Sweden. Its final report was submitted to the Secretary General.¹⁸ The main effort of the Commission was to find an adequate way to address the controversy surrounding the intervention. The report relied on a distinction between the “legality” and the “legitimacy” of humanitarian interventions in particular instances.¹⁹ The argument made was that the facts relating to Kosovo justified the apprehension of an impending humanitarian catastrophe, but that there existed no *legal* means to intervene without obtaining a prior Chapter VII mandate from the Security Council. At the same time, the urgency of the situation combined with the availability of an effective means to protect the endangered Kosovar population meant that the moral and political grounds for intervention were present making the operation *legitimate*. The report also recommended efforts by the UNSC to close this gap between legality and legitimacy either by instituting a voluntary practice of suspending the veto in circumstances of humanitarian emergency or by formally acknowledging a residual right of the General Assembly or regional institutions to authorize humanitarian intervention in the event that the Security Council is gridlocked.²⁰

The second effort was stimulated by the Canadian Government, and took the form of the International Commission on Intervention and State Sovereignty, chaired by Gareth Evans, a former Foreign Minister of Australia and by Mohamed Sahnoun, a

prominent diplomat and international civil servant from Algeria. The report of the Evans/Sahnoun Commission focused more on the generic problems posed by the Kosovo debate than on the Kosovo experience itself.²¹ It advocated a creative linguistic move to minimize the seeming inconsistency between humanitarian intervention and the idea and reality of state sovereignty. This move involved shifting the emphasis from the right of the intervenor to the duty of the international community to protect those who were threatened with imminent catastrophe. This duty was called “the responsibility to protect,” a challenge to the international community to act in the face of an impending humanitarian catastrophe. This responsibility to protect takes precedence in the event that a government of a state withholds its consent. Such a normative shift makes sovereignty conditional on protecting people within territorial boundaries, and is associated with efforts to achieve so-called “responsible sovereignty.” It repudiates classical views of sovereignty as unconditional, which has provided states with a haven for the perpetration of “human wrongs.” The UNSC has been influenced by this report, accepting the normative reorientation as a part of the reform package recommended by the Secretary General’s High-Level Panel on Threats, Challenges and Change, and formally endorsed by UNSC resolutions, including Security Council Resolution 1706 enunciating its new approach to the Darfur crisis.²²

Civil society actors made two major contributions: first, to illustrate very clearly the fault-lines of disagreement when it comes to specific instances of humanitarian intervention in which the territorial sovereign withholds consent and the UNSC is gridlocked, yet where the political will and logistical means are available to pursue urgent humanitarian goals, thereby seeking to avert massive human suffering; and secondly, to

shape a normative approach by way of law, morality, and politics that seeks to protect vulnerable peoples confronting an impending humanitarian catastrophe without undermining international law and the authority of the Security Council. My purpose here is not so much to argue the substantive merits of recasting the humanitarian intervention argument in the aftermath of Kosovo, but to show how civil society actors engaged in the debate both prior to and subsequent to the Kosovo War. A further observation is that the pre-intervention debate involved civil society activists and organizations from below while the post-intervention process was dominated by initiatives from above that relied on civil society elites with close and credible ties to the Westphalian system.²³

Post-Kosovo: 9/11, Iraq, and Darfur

Even before the 9/11 attacks, the neoconservative turn in American political life, especially foreign policy, meant that the dynamics of normative (moral and legal) globalization, so prominent in the 1990s, would no longer have the benefit of American leadership. The Bush presidency from its outset in January 2001 signaled its opposition to humanitarian diplomacy, its skepticism about international law and international institutions, and its particular doubts about funding UN peacekeeping operations. The new emphasis of American foreign policy would be on strategic priorities as defined by the entourage of neoconservative advisors at the White House and Pentagon, which translated into an increased defense budget, an unwillingness to constrain national security policy by arms control treaties, a preoccupation with the future of the Middle East, and a definite swing toward relying on unilateral initiatives. These features of American foreign policy were accentuated by the US response to the 9/11 attacks.²⁴ This

dramatically altered global setting had a major impact on the diplomacy relevant to humanitarian intervention, and heavily influenced the ongoing civil society debate.

There was some support among liberal hawks for extending the Kosovo precedent to Iraq in the lead up to the invasion of March 2003. Most notably, Michael Ignatieff, Christopher Hitchens, and Anne-Marie Slaughter supported the invasion of Iraq on partially humanitarian grounds of deposing a cruel tyrant, and were willing to overlook the absence of UNSC endorsement.²⁵ Slaughter invoked the distinction in the Kosovo Commission Report that stressed the legitimacy and legality reasoning, although extending its scope. She argued that the intervention could be legitimized *after* the fact, and was thus provisionally legitimate, due to the oppressive leadership and international criminality of the Baghdad regime as personified by Saddam Hussein. The official American emphasis prior to the invasion was on the strategic threat posed by Iraq due to its alleged possession of weapons of mass destruction, its supposed links to international terrorism, and only incidentally, its dictatorial and brutal governing process. After the invasion, as it became clear that there were no WMD to be found in Iraq and no significant links to terrorism, the official rationale in Washington shifted to the promotion of democracy and human rights by way of military intervention and occupation. And most recently, after years of denial, President Bush acknowledged that oil was a factor, and that if the United States were to withdraw from Iraq it would lose control over Iraqi oil pricing, which could drive the world price up to \$300-400 per barrel.

This attempted legal and moral rationalization for the Kosovo War in the context of the Iraq War was generally repudiated by civil society actors throughout the world. The American effort to mobilize international support for its invasion at the United

Nations and elsewhere gave rise to a worldwide anti-war movement that was completely unresponsive to the alleged humanitarian benefits of the proposed American-led intervention. On February 15, 2003, a few weeks before the invasion, there took place the largest expression of globalized anti-war sentiment in world history, with some twelve million demonstrators assembled in eighty countries and some 600 cities. These demonstrations also expressed the overwhelming outlook of public opinion, especially in the European democracies. Even in countries whose leaders were prepared to ignore their domestic public opinion and give support to American policy, such as the United Kingdom and Spain, the citizenry was opposed from the outset.

Of course, there was an abstract humanitarian justification for seeking regime change in Iraq, but the means chosen illustrate the dangers of humanitarian intervention being used as a pretext for aggressive warfare. Furthermore, even if UN authorization for the use of force had been obtained, military action of a non-defensive sort in the absence of any immediate threat of humanitarian catastrophe would have resulted in an outcome not very dissimilar from what has resulted. Humanitarian intervention may be effective as an emergency measure to protect a vulnerable population or minority, but it is rarely able to impose a new political structure on a country. The American failure in Vietnam despite its military dominance should have discouraged intervening in Iraq. This should also have been the lesson of Somalia, namely, that when the humanitarian effort was transformed by the Clinton presidency into a political restructuring operation, nationalist energies in Somalia were mobilized to resist the foreign presence. The Iraq experience should be interpreted throughout civil society to reinforce this lesson: in the absence of a humanitarian emergency, intervention is most unlikely to achieve humanitarian goals at

an acceptable cost. This is especially true if the main goal is to restructure the political life of the target country. Of course, Iraq was an extreme case, given the relative stability of political rule at the time of the invasion, considering the unwillingness of the UN to give its blessings, and in view of the unified and widespread opposition to the proposed war throughout global civil society.

This opposition has, of course, continued during the long and bloody occupation of Iraq. It has taken several forms, perhaps most notably a world tribunal process.²⁶ In at least twenty countries, civil society initiatives organized an informal tribunal composed of citizens who passed legal judgment on the invasion and occupation, concluding that the American and British leaders were criminally responsible for violating international law, and should be held personally accountable. The culminating expression of this global initiative was the World Tribunal on Iraq held in Istanbul in June 2005, with a distinguished panel of world citizens, presided over by the Indian novelist, Arundhati Roy. The panel, without pretending professional competence or governmental authority, issued a Declaration of Conscience that expressed the judgment that the Iraq War was a war of aggression and its perpetrators were indictable under international criminal law.

The WTI heard testimony from fifty four expert witnesses, including several Iraqis, as well as international law specialists and high ranking former UN officials. Although this anti-war consensus in civil society was ineffectual in altering American policy, it did contribute to a climate of *illegitimacy* associated with the occupation of Iraq. A main lesson of the Iraq War (reinforcing the lesson of the Vietnam War) is that a strategic intervention is likely to fail even if supported by a strong political will that can

mobilize impressive military capabilities; the UN will withhold authorization, civil society and public opinion will oppose, and nationalist forces will resist.

If Iraq shows that political will is insufficient to liberate an oppressed people, the persisting humanitarian crisis in Darfur, already accounting for between 300,000 and 400,000 deaths, with more than two million others displaced and at risk, shows that a requisite political will and an aroused public opinion is necessary to fashion an effective response. UNSC 1706 accepts the mandate of “the responsibility to protect” norm, but absent the consent of the government of Sudan and without the deep commitment of the United States and other important states, the deepening ordeal endured by the people of Darfur resembles the experience of Rwanda in 1994, except that in Darfur the mass lethality is exhibited in a more gradual process. Civil society is almost as unified as in relation to Iraq, but is unable to transform the clear moral and legal commitment into a political project without the participation of the main geopolitical forces on a sufficient basis. As East Timor show, where consent is present, and a regional actor with requisite capabilities is deeply engaged, the humanitarian mission can be effectively implemented.²⁷

Conclusion

In conclusion, it seems clear that “the responsibility to protect” norm is becoming an accepted as part of customary international law, but its implementation in specific instances is not a reflection of its status in law. It remains primarily dependent on mobilizing the political will of states, especially dominant states, which can be pushed just so far by an aroused public opinion calling for protective action. At present, such a

political will is not likely to be supportive of humanitarian intervention unless it coincides with significant strategic interests. Also, where the territorial sovereign refuses consent even geopolitical actors often cannot translate their interventionary commitment into viable political projects, and the attempt to do so can be exceedingly costly.

As far as the role of civil society actors is concerned, the legitimacy and legality matrix is instructive: where legitimacy and legality factors overlap, civil society will lend support to humanitarian intervention (as in Rwanda, Darfur, East Timor); where legitimacy supports a call for humanitarian intervention, but legality inhibits, civil society actors will be split (as in Kosovo); where legitimacy factors are negative or even ambiguous, and legality inhibits, then civil society will be overwhelmingly opposed to military forms of intervention (as in Iraq). In all instances, the depth of strategic interest of the intervening state(s) in changing conditions in the target society is the best predictor of whether a significant intervention will be undertaken, and if so, whether it will meet with success. But as Vietnam and Iraq show, even great strategic commitments will be insufficient in the face of mobilized resistance by the target society.

Because humanitarian intervention depends on the threat and use of force, it requires the participation of states, and usually of international institutions at the regional and global levels. Civil society actors play significant roles in shaping public attitudes, especially before and after the event. With respect to the operational aspects of humanitarian intervention, civil society actors are confined to the margins of policymaking and policy implementation. Aside from significant contributions by way of relief activities and truce observation roles on the ground, the main contributions of civil society actors has been to reframe the normative debate around legitimacy and legality

considerations, as well as with respect to the conditions surrounding a proper implementation of the responsibility to protect norm. Also, civil society activism, as in relation to the Iraq War, does influence perceptions as to the legitimacy of recourse to threats and uses of force, and subsequent occupation, especially in circumstances where the UNSC has withheld authorization. The civil society role can be one of mobilizing support for intervention, as is currently the case with respect to Darfur (e.g. George Clooney at the UN), as well as making an effort to build opposition to the use of force and military occupation as has been the case with respect to Iraq. Civil society actors can also play important roles in reporting upon compliance with or violations of international humanitarian law with respect to international military operations. Of course, these actors can only flourish in relation to constitutional democracies, and even in these their credibility depends on their degree of perceived independence and the integrity of their own internal structure, especially transparency of operations and accountability of officers.

Endnotes:

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Civil Society, Globalization and Global Civil Society

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ABSTRACT. There has been much discussion recently of "global civil society." This concept evidently draws on the more familiar civil society concept as related to national societies. What are the consequences of extending the concept in this way? Is global civil society simply civil society writ large, an extension to the international plane of basically the same kinds of institutions and practices as are found in national societies? Or do we need new tools of description and analysis? This article considers various theories of global civil society, and the extent to which they map onto traditional concepts of civil society. It concludes that global civil society may express the same mixture of strengths and weaknesses as the parent concept of civil society, but with additional features of its own that may—somewhat surprisingly—make it more robust than the earlier concept from which it derives.

KEY WORDS: civil society, globalization, cosmopolitanism, INGOs, human rights

“It is not straightforward to transpose the concept of civil society into the concept of global civil society, since ... the key to understanding what is new about contemporary meanings is precisely their global character.”

Mary Kaldor (2003: 7)

“It is not enough that thought should seek to realize itself; reality itself must also tend towards thought.”
Karl Marx ([1844] 1963: 54)

From Civil Society to Global Civil Society

What happens when “civil society” goes international, becomes “global civil society?”

Does it change its meaning along with its referent? Are we talking about the same structures and processes in both cases? Is global civil society simply an extension, on the international plane, of the institutions and practices of national civil society—civil society writ large, or global? Or does the move entail a disruption, both conceptually and practically, with (national) civil society as normally understood? Do we need new tools of description and analysis?

It is evident that the concept of global civil society derives from its “parent” concept, civil society. It is also clear that, as in the older term, global civil society mixes

descriptive and normative, politics and ethics, history and rhetoric, in almost equal measure, and with something of the same problematic consequences. Then there is the further concept, “globalization,” also freighted with several meanings, and—though less clearly or commonly so—also generally serving both as a description of contemporary reality and a certain aspiration for the future.

What is the connection between these three? How is the fate of the one—“civil society”—likely to affect the fate of the other—“global civil society?” Is global civil society an expression of globalization, a realization of its tendencies? Or is it better seen as a response to globalization, and in some measure a resistance towards it? It can be both, of course, and in much of the literature that seems to be the way it is portrayed. But it may be helpful, at least initially, to disentangle these two possible ways of seeing the relationship between globalization and global society. That might help us in our assessment of global civil society as a movement and a concept.

To take the original concept of civil society first. It is possible to argue that this has always been global in its connotation, even if not always so expressed. Such an understanding, for instance, is implicit in the Marxist concept, in which the market and economic relations generally have always lain at the heart of civil society under capitalism. Since, for Marx, capitalism was always global in its tendency, civil society too was always inherently global, though for practical purposes of the struggle it might be necessary to suppress that awareness for a later time (“the proletariat of each country must, of course, first of all settle matters with its own bourgeoisie”).¹

There is also a cosmopolitanism and internationalism in some other early concepts of civil society most notably that associated with such eighteenth century

writers as Kant, Vattel, and Paine.² For Kant, the freedom gained through membership of a law-governed civil society can only be secured by passage to a higher order, a “federation of peoples;” the original social contract between individuals that created civil society must be repeated at a higher level, so that states as well as individuals are taken out of the “state of nature.” Mere “international law”, the regulation of belligerent international relations, must be replaced by a “cosmopolitan law” (*das Recht der Weltbürger*), a global legal order, overseen by a “global public sphere,” that replicates the principles established within individual states, and makes both individuals and states “citizens of a universal state.”³ Such a conception, in the absence of a supranational supervisory authority, has its problems, as Habermas among others shows. But Habermas also argues that, shorn of its eighteenth century presuppositions, such a conception of cosmopolitan law, “appropriately reformulated for contemporary conditions,” might today find support from a variety of contemporary developments.

“The requisite revision of Kant’s basic conceptual framework is made easier by the fact that the cosmopolitan idea has not remained fixed: ever since President Wilson’s initiative and the founding of the League of Nations, it has been repeatedly taken up and implemented at political level. Since the end of the Second World War, the idea of perpetual peace has taken on more tangible form in the institutions, declarations, and policies of the UN (as well as those of other international organizations). The challenge posed by the unprecedented catastrophes of the twentieth century has also given new impetus to Kant’s idea. Against this somber background, the World Spirit, as Hegel would have put it, has lurched forward.”⁴

There are some, such as John Keane, who would wish to make a clear distinction between what they call these older visions of “world civil society” and the newer accounts of “global civil society.” Though unconvincing, their reasons are understandable, given the rather sorry history of cosmopolitanism in the century or so following Kant.⁵ And there is no doubt that civil society lost much of its connection with cosmopolitanism in the nineteenth and for most of the twentieth centuries. This has to do with the fundamental shift, initiated by Hegel, from considering civil society as essentially a species of polity—a law-governed state—to a view which saw civil society as the organizations and practices standing between the family and the state.⁶ Civil society came to have a largely domestic connotation. It related to the public sphere *within* states and societies. It lost the eighteenth century conviction that no citizen was safe in his or her rights, however carefully these were formulated and protected by national constitutions, so long as anarchy and the state of nature prevailed in the relations between states.

Such a history is one source of the difficulties, alluded to by Mary Kaldor,⁷ of attempting to move in an uncomplicated way from “civil society” to “global civil society.” Not only, if one wishes to establish a respectable pedigree, is there the problem of resuscitating a tradition that got largely buried under the rising tide of nationalism. There is also the difficulty of using analytical terms and categories, largely honed in a domestic, nation-state, context, for the analysis of civil society at the global level. From Hegel to Gramsci and beyond, theorists sought to define the nature and operations of a sphere of society where private citizens met in public to debate and discuss matters affecting their collective interest and well-being. It was also a sphere, in the eyes of at

least some theorists, where individuals freely engaged in manufactures, trade, and the exchange of services with one another, thereby acquiring qualities no less “civil” than those generated by free public discourse. All this was done largely within the confines of the nation-state, whose sovereignty was indeed seen as one of the guarantees of an effective and thriving civil society.

A particularly thorny question, coming out of the later civil society tradition, concerns the place of economic institutions and market relations in any concept of civil society, national or global. It seemed natural enough to both Kant and Marx, in their different ways, to include economic activities in their idea of civil society. For Marx indeed the economy, in its free-floating form, detached from the state and other communal institutions, was the defining essence of civil society; hence his comment that “the anatomy of civil society is to be sought in political economy.”⁸ Kant too waxed eloquent on the growth of commerce and industry, but unlike the case with Marx, it was their “civilizing” qualities that struck him. “The *spirit of commerce* sooner or later takes hold of every people, and it cannot exist side by side with war.”⁹ For Kant, as for many other thinkers of the early-modern period, what Montesquieu called *le doux commerce*—“which softens and polishes barbarian ways”—was one of the principal ingredients in the life of civil society, both national and internationally. Not only was commerce opposed to war; it stimulated qualities of trust, responsibility, and reciprocity, all qualities vital to a thriving civil society.¹⁰

Hegel also held to the view that the market, and economic life generally, were at the heart of civil society—it was indeed from him that Marx took over his own conception, though characteristically modifying it for his own purposes. But Hegel’s

account of civil society in the *Philosophy of Right* also stressed the important role of non-economic institutions, such as civic associations, welfare institutions, religious and educational bodies. It was on this wider conception that Gramsci drew in elaborating his own influential account, in which civil society was distinguished not just from the coercive apparatus of the state but also from the economic institutions of society.¹¹ One consequence of this was to confirm, with even greater force, the national context of the civil society idea. Trade and markets can be and usually are international; not so, or to a far lesser degree, trade unions, schools, churches and clubs.

Gramsci in effect set the terms of a Great Divide in the contemporary literature on civil society. There are those whom Victor Pérez-Díaz calls “generalists,” those who include within their concept of civil society not just markets but a whole range of liberal political institutions. The full-blooded generalists, such as Ernest Gellner and Pérez-Díaz himself, see themselves as followers of the Scottish thinkers of the eighteenth century in conceiving civil society as the ideal-typical liberal, commercial society in all its manifestations. More restricted generalists, such as John Keane, fully accept the importance of the market but are concerned to put the stress on non-governmentality: civil society decisively excludes the state.¹²

Keane, in his most recent work, inveighs against the neo-Gramscian “civil society purists” who would exclude the market from their concept.¹³ He has in his sights those whom Pérez-Díaz calls “minimalists,” and who include theorists such as Andrew Arato, Jean Cohen, and Jeffrey Alexander.¹⁴ Their most immediate inspiration is undoubtedly Jürgen Habermas, for whom the Hegelian-Marxist understanding of civil society, proper for its time, is now decidedly outmoded.

What is meant by ‘civil society’ today, in contrast to its usage in the Marxist tradition, no longer includes the economy as constituted by private law and steered through markets in labor, capital, and commodities. Rather, its institutional core comprises those non-governmental and non-economic connections and voluntary associations that anchor the communication structures of the public sphere in the society component of the lifeworld.¹⁵

But Keane’s more immediate concern is those global civil society theorists such as Helmut Anheier and Mary Kaldor, whom he feels are in danger of repeating the errors of the minimalists in rejecting the role of the market.¹⁶ Certainly Anheier seems to be intent on excluding the market:

Civil society refers to the set of institutions, organizations, and behaviors situated between the state, the business world, and the family. Specifically, this would include voluntary and non-profit organizations of many different kinds, philanthropic institutions, social and political movements, forms of social participation and engagement, the public sphere and the values and cultural patterns associated with them.¹⁷

Against this Keane urges the formula “no market, no civil society,” and argues that “among the principal energizers of global civil society are market forces, or what is here called ‘turbo-capitalism.’”¹⁸ Turbo capitalism is capitalism in its global, most dynamic, multi-national, form. If, as Kant held, the “spirit of commerce” was producing a world-wide community, for Keane the more recent stages of the globalization of capital have carried this forward to unprecedented lengths. What this means is that “markets are an intrinsic *empirical feature*, a functionally intertwined prerequisite, of the social relations of actually existing global society,” and that “global civil society as we know and experience it could not survive for more than a few days without the market forces unleashed by turbo capitalism.”¹⁹

Admittedly Keane immediately adds the caveat “no civil society, no market.” Following Karl Polanyi on the “embeddedness” of market relations, Keane argues that

capitalism and *a fortiori* global capitalism, depends and has always depended on “*other* civil society institutions, like households, charities, community associations and linguistically shared social norms like friendship, trust and cooperation.”²⁰ Here, as is the case with other generalists such as Gellner, one feels the concept of civil society to be stretched almost to the breaking point, such that one is not sure why the theorist does not simply settle for something like “liberal” or “welfare” capitalism and be done with it.²¹ This impression is powerfully reinforced by Keane’s alarmingly generous—and verbose—definition of the “ideal-type” of global civil society, which he says properly refers to

A dynamic non-governmental system of interconnected socio-economic institutions that straddle the whole earth, and that have complex effects that are felt in its four corners. Global civil society is neither a static object nor a *fait accompli*. It is an unfinished project that consists of sometimes thick, sometimes thinly stretched networks, pyramids and hub-and-spoke clusters of socio-economic institutions and actors who organize themselves across borders, with the deliberate aim of drawing the whole world together in new ways. These non-governmental institutions and actors tend to pluralize power and to problematize violence; consequently, their peaceful or ‘civil’ effects are felt everywhere, here and there, far and wide, to and from local areas, through wider regions, to the planetary level itself.²²

The saving thing here, presumably, is non-governmentality, and the “civilizing” effects of non-governmental institutions.²³ It is this that prevents the simple equation of global civil society with global capitalism or the global liberal state, as conceived in various schemes for world government. The destructive and divisive effects of global capitalism are to be countered, regulated or re-directed by the institutions and agents of global civil society, understood as a plethora of NGOs and INGOs, social movements—including the “anti-globalization movement”—and ideas of human rights and “transnational” citizenship. These will additionally resist or refuse incorporation into

state institutions, either at national or international level. Global civil society, like civil society of old, will to an extent erect a “parallel society,” though unlike East European conceptions of this term, it will not turn its back on “official” society but will confront it at every turn.²⁴ Indeed, given the range of interactions and involvements of global civil society institutions with national and international governmental institutions envisaged by some theorists—including Keane, who labels the resulting *mélange* “cosmocracy”—it might be better to speak of partnership rather than parallel construction.²⁵ But here we need to turn to the complex relationship between global civil society and globalization.

Globalization and Global Civil Society

It is said that one form of globalization is compelling evidence for the emergence of global civil society: the globalization of the discourse of civil society itself.

The globalization of the concept of civil society is one aspect of the emergent global civil society, for it shows how civil society ideas and languages and institutions are spreading beyond their place of origin into new contexts...Not only is talk of civil society now heard world-wide within circles of journalists, lawyers and academics. NGOs, business people, professionals, diplomats and politicians of various persuasions also like to speak the same language... Tomorrow’s historians may well conclude that the spreading talk of civil society was not just talk. They may highlight the fact that something new was born in the world—the unprecedented (if unevenly distributed) growth of the sense within NGOs and publics at large that civilians live in one world...²⁶

This is undoubtedly a significant phenomenon: language matters. But it is unclear what it signifies. The language of democracy and human rights has also diffused world-wide, but local adaptations and interpretations have been so varied and, it appears, so haphazard that it would be a bold person who identified the word with the thing.²⁷ What one can talk about with some confidence is a common socialization among certain groups

of professionals, particularly those involved in NGOs, which has created a common language. There is certainly a global civil society discourse; whether that is the same thing as global civil society, or even a major contribution to it, remains a matter for investigation.

In any case there are many globalizations, many forms and concepts of global society, of which global civil society may be only one, and not necessarily the most powerful or persuasive.²⁸ Global civil society itself has many guises: Keane notes its “unusual promiscuousness,”²⁹ a quality of course that characterizes the parent idea of civil society itself. Neither in the one case nor the other does this quality disqualify the concept—what social science concept does not exhibit a like promiscuity?—but it does impose upon us the need to be clear what we are talking about.

Mary Kaldor usefully provides us with five versions of the concept of global civil society, to each of which corresponds an understanding of contemporary globalization.³⁰ Two derive from classical or traditional versions of the civil society idea. “*Societas civilis*” is the oldest, and speaks to the concern for the formation of law-based states and societies which have abolished or reduced violence and arbitrary rule. In terms of contemporary concerns, such a Kantian concept views the task as the creation or completion of a cosmopolitan order or world state, strivings towards which are discerned in various developments such as the establishment of an international criminal court and the expansion of international peacekeeping. The absence, so far, of a world state is seen as a sign that global civil society is incomplete or inoperative.³¹

“Bourgeois society (*Bürgerliche Gesellschaft*)” is identified with the commercial vision of civil society elaborated by thinkers of the Scottish Enlightenment, such as

Adam Smith and Adam Ferguson. Contemporary practitioners would include Ernest Gellner and John Keane. “Transposed to a global level, civil society could be more or less equated with ‘globalization from below’—all those aspects of global developments below and beyond the state and international political institutions, including transnational corporations, foreign investment, migration, global culture, etc.”³²

The remaining three versions of global civil society relate to more contemporary developments, which inflect their meanings in newer ways... The “activist version”—with which Kaldor associates herself—is the heir of the civil society concept as it influentially expressed itself in the dissident movement in East-Central Europe in the 1970s and 1980s. Such a version may or may not include market institutions, but it is generally somewhat critical of market relations, both nationally and globally. Transposed to the global level, its focus is on the Habermasian public sphere of “transnational advocacy networks,” such as Greenpeace and Amnesty International, global social movements such as the protestors in Seattle, Prague and Genoa, and human rights and environmentalist activities and philosophies.

The “neoliberal version” might be seen as the heir of the “bourgeois society” version, updated to reflect the contemporary forms of capitalist globalization and markedly less critical of its impact on societies. It regards the extension of free trade and minimally regulated economic activities as the best way of promoting civil society, seen as the realm of largely voluntary and private initiatives and activities that in many cases substitute for traditional governmental functions, in such areas as health and welfare. “This definition,” says Kaldor “is perhaps the easiest to transpose to the global arena; it is viewed as the political or social counterpart of the process of globalization understood as

economic globalization, liberalization, privatization, deregulation and the growing mobility of capital and goods.”³³ Such a vision is associated with “end of history” theorists such as Francis Fukuyama and others who see an emerging global civil society in the worldwide triumph of liberal capitalism. Not surprisingly it is targeted as reactionary by several proponents of the activist and other more radical versions of global civil society.

Finally there is “postmodern” global civil society. Consonant with postmodern perspectives it emphasizes plurality and, to a degree, incommensurability. Postmodern views, with their stress on the breakup of traditional attributes of modernity, might seem somewhat inhospitable towards any concept of global civil society. But for many postmodern theorists, such as Zygmunt Bauman, globalization is an accelerator of postmodern tendencies. The massive migration of peoples, the interpenetration of cultures, the destabilizing of nation-states and other fixtures of modernity by international capital, are all producing a world marked both by fissures and a common understanding and acceptance of difference. Though there is contestation, which can sometimes be fierce and fanatical, there is also a growing common culture promoted by international tourism and travel as well as by the vast increase in communication made possible by the Internet. In the postmodern view, suggests Kaldor,³⁴ “one might talk about a plurality of global civil societies through different globally organized networks,” such as global Islam, nationalist Diasporic networks, and human rights networks. Each has its own characteristic emphasis, and conflict and contestation are almost necessarily built into the model, but they are all visions of globality and global civil society.

One of the values of Kaldor's typology is that it helps us to see which versions of global civil society go with the dominant forces of globalization and which, as it were, have to bend those forces to realize their visions. Some versions, in other words, see themselves as flowing with the tides of history, others see themselves as engaged in a dialogue or perhaps a dispute with contemporary trends, still others appear to be standing, Canute-like, against the dominant forces in the interests of a radically different vision of the future world order. None, it appears, can be accused of rampant utopianism, since they all pick on what are evidently real tendencies in the contemporary world. But we can attempt some assessment of the realism of the different versions, and hence comment on the balance of description and prescription that they show.

As Kaldor herself suggests, if there is one version of global civil society that carries undoubted conviction it is the neoliberal version. This, after all, is not very much more than a description of what is currently going on in the world. Deregulation and privatization are backed and promoted by some of the most powerful forces and agencies in the world, including the multinational corporations, the World Bank, the World Trade Organization, and global powers such as the United States. Such a future is also enthusiastically and influentially promoted by some powerful civil society think-tanks and advocacy groups, such as the American Enterprise Institute, the Cato Institute, and the Heritage Foundation. It generally finds strong expression at such summits of the great and powerful as the Davos World Economic Forum.

One might also mention in this context what one might call the "inflation" of a supportive civil society by the invention and funding of civil society organizations whose secret agenda is to promote the neoliberal version of global civil society. Thus for

example much of the opposition to the thesis of global warming today, it has been shown, has been led not only by oil giants such as Exxon (major supporters of the Cato Institute and the Heritage Foundation), who have set up such apparently scientific bodies as the “Center for the Study of Carbon Dioxide and Global Change,” and are major funders of the “Science and Environmental Policy Project” headed by Frederick Seitz, whose pronouncements are regularly quoted by critics of the global warming thesis. More surprisingly is the revelation that the tobacco giant Philip Morris has played a central role in the campaign to discredit the thesis. It set up an apparently grassroots citizens’ group with the name “The Advancement of Sound Science Coalition,” and engaged prominent scientists to promote “sound science” as against “junk science.” Such an outfit was useful not just in attempting to cast doubt on the research linking smoking and cancer but all forms of research—including that which suggested that global warming was occurring and needed urgently to be addressed—that seemed to strike at the interests of the big business corporations.³⁵

Clearly there are some civil society practices, and the claims that go with them, that we need to go behind. There is, in other words, “good” civil society and “bad” civil society, good NGOs and bad NGOs. There are groups and associations that promote the goals of “civility,” of democracy, equality and fair minded debate, and there are groups and associations that promote almost the opposite, hatred, bigotry and ignorance.³⁶ As Amy Gutmann has put it, “among its members, the Ku Klux Klan may cultivate solidarity and trust, reduce the incentives for opportunism, and develop some “I’s” into a “we” ...[but]...the associational premises of these solidaristic ties are hatred, degradation, and denigration of fellow citizens and fellow human being.”³⁷ *Pace* Robert Putnam and

other neo-Tocquevillians, association by itself is not necessarily a good thing.³⁸ Of course this involves taking a stand on values, but it is hard to think of any civil society concept that does not. Put another way, civil society contains both good and bad, and the problem is to distinguish the two in order to promote the good and suppress the bad.

The neoliberal concept of global civil society fails to distinguish at all carefully between neoliberal developments themselves and those attributes of these developments that might further the purposes of civil society. This is a business-as-usual kind of scenario, in which neoliberal capitalism will more or less deliver global civil society, though there will be some rough passages and some frayed edges, where there may have to be some tending and repair. There is something of the same kind in the commercial or “bourgeois society” version of global society. Here the stress on NGOs, on the need to keep one’s distance from the state, both link it to and separate this version from the neoliberal one. As in the neoliberal version, the state is seen as problematic. But while the neoliberals are quite happy to use the state to promote privatization and deregulation, and in general in most contemporary societies feel that the state is with them rather than against them, the advocates of “globalization from below,” such as Keane, remain highly conscious of the need to keep civil society in the hands of citizens and ordinary people. There will and has to be a degree of partnership with official regulatory and other state agencies, national and international, but it is vital that this encounter does not become too cozy and so end up in the virtual incorporation of NGOs into the official apparatus of governance. Keane’s “cosmocracy” treads a fine line here, but at least in principle he is clear on where it must be drawn.³⁹

Nevertheless the (qualified) endorsement of “turbo capitalism” as providing much of the substance and sustenance of “globalization from below” does make one wonder how far this version has managed to resist the embrace of actually existing global capitalism. The resolute determination to include the market in its conception, realistic as it is one sense, clearly runs the risk that the power of the market—greater and more global than at any time in its history—will overwhelm any of the checks and balances that non-market (and non-state) organizations can offer. When Adam Smith and Adam Ferguson hailed the civilizing force of commerce, they contemplated a world in which the wars of kings and the selfishness of the landed aristocracy threatened devastation and poverty on an alarming scale. War still remains as destructive a threat as ever, and the interdependencies of the global market undoubtedly act as some sort of check on too reckless an attitude on the part of states. But in other respects the market has succeeded only too well, and the problem for global civil society now is how to rein it in and restrain its depredations.

It is not so much its uncertainties with regard to the place of the market that make what Kaldor calls the “activist” version of global civil society also problematic. It is certainly possible to attempt to discriminate between market operations that seem to favor civil society as against those that do not. The market can indeed, as Keane claims, have “certain socializing or ‘civilizing’ effects,” promoting nonviolence, responsibility, trust and cooperation.⁴⁰ It can also ride roughshod over claims of compassion and community, threatening to annihilate, as Karl Polanyi warned, “the human and natural substance of society.”⁴¹ The difficulty comes in seeking to separate the good from the bad, in trying to harness the forces of the market on behalf of the stated values of civil society.

How to tame a tiger? This is surely the dilemma of the activists. By rejecting the market they run the risk of condemning themselves to powerlessness. By accepting it in part, or only on certain conditions, they risk being overwhelmed by its enormous force. That may be to put the matter too starkly. NGOs and social movements can clearly make a difference, as shown in the opposition movement in Central and Eastern Europe during the 1970s and 1980s. But then how far would those movements have succeeded without the support, explicit in many cases, of a reformer at the head of the Soviet Union? Markets are one form of power, states are another. To attempt to work outside both is a heroic enterprise where the cards are heavily stacked against success.

If that is all there is to say, there would be poor prospects indeed for the activist style of global civil society. As compared with the neoliberal and “commercial society” versions, their aims put them at some variance with the dominant forces in the world today. They are forced, to a degree, to adopt an oppositional stance. If Bruce Mazlish is right, one of the things that stands in their way is “Global America,” and the alternative vision of the world order that it currently champions.⁴² Given the history of relative indifference if not contempt shown by the US government for the institutions of global civil society, America presents a formidable obstacle to their development. “Global Islam”, another of Mazlish’s alternative globalities, is by comparison less of a threat, though here the questions may have to do with how far Islam is capable of incorporating the culture of civil society.⁴³

Against all this, the activist version, together with many other similar varieties of civil society discourse that wish to hold both state and market at arm’s length, can point to some striking successes. There is the remarkable growth of NGOS and INGOS in the

recent period, which partly explains why it was only in the 1990s that the concept of global civil society gained general currency.⁴⁴ A crucial threshold seems to have been reached and crossed in the sheer number of organizations that can reasonably claim to be fulfilling the aims of global civil society. There is also the wide, global diffusion of the discourse of humanitarianism and human rights, with global organizations to match.⁴⁵ There have been the international interventions in Bosnia and Kosovo, and the trials of Milosevic and other leaders in specially constituted tribunals for war crimes. The founding of the International Criminal Court is one significant outcome of these moves. The public glare turned on the deliberations of the World Trade Organization by the protestors in Seattle, Washington, and elsewhere, has created an enduring global form of debate and a persistent tradition of activism. This is an example of the “new social movements,” a distinguishing feature of which is their global perspective and the support of international NGOs, as shown in the importance of the European peace movement to the dissidents in Central and Eastern Europe in the 1970s and 1980s.⁴⁶ Social movements which normally would have little hope of survival, let alone success, such as the Zapatista movement for the rights of the indigenous people in Chiapas in southern Mexico, have shown the importance of the support of INGOs and the international community generally.⁴⁷ In both these cases the importance of the Internet, as a means of communication and for rallying support and creating international attention, has been manifest. So it was too in the coordination of the worldwide movements of protest against the American intervention in Iraq in 2003. Writing of these, and countering the Eurocentric claims of Habermas and others that these were expression of a distinctively “European public sphere,” Iris Marion Young commented that

According to the people to whom I have spoken, the worldwide coordination of these demonstrations was planned at the third meeting of the World Social Forum in Porto Alegre in January 2003. The worldwide coordination of these demonstrations may thus signal the emergence of a *global* public sphere, of which European publics are wings but whose heart may lie in the Southern Hemisphere.⁴⁸

Not all of these developments point in exactly the same direction. Some major countries, such as the United States, have so far refused to sign on to the International Criminal Court. Intervention on humanitarian grounds remains a hotly debated issue, and the shocking failures in Srebrenica, Rwanda and Somalia have provoked more questions than answers.⁴⁹ The unilateral thinking and acting of the United States remains a serious obstacle to the realization of much of the potential of global civil society. The language of human rights and some of its presuppositions, continue to create suspicions among some non-Western cultures of a new form of cultural imperialism. The democratic credentials of many NGOs and INGOs have been called into question.⁵⁰ But the record for all that is impressive. Global civil society undoubtedly has a fairly substantial reality. Conceptually of course “global civil society” depends on “civil society.” The difficulties and ambiguities surrounding the parent concept must continue to haunt its child as well. But, somewhat surprisingly, one might wish to say that global civil society has more conceptual clarity and greater institutional expression than many claimed instances of flourishing civil society. Perhaps what has taken place here is a valuable learning experience, in which some of the problems with the original civil society idea have been encountered and, if not resolved, at least reduced. At the same time there has been a much more self-conscious construction of global than of national civil society institutions. Many of the latter were so blessed and labeled *après la lettre*, and are sometimes dubious carriers of the honor. Global civil society organizations—NGOs and

INGOs—have been the work of people who in many cases are schooled in the civil society literature and highly conscious of what they must do to avoid both the “purism” and the over-generous embrace of some civil society conceptions. The problem now must be to convince some very powerful states of the need to attend to their aims and achievements.

Endnotes:

¹ Marx and Engels say that the bourgeoisie “creates a world after its own image,” they mean that in the literal sense that their activities are global in every dimension, and with respect to every area of life, moral and intellectual as well as material or practical. “The need of a constantly expanding market for its products chases the bourgeoisie over the whole surface of the globe. It must nestle everywhere, settle everywhere, and establish connections everywhere. The bourgeoisie has through its exploitation of the world-market given a cosmopolitan character to production and consumption in every country... In the place of old local and national seclusion and self-sufficiency, we have intercourse in every direction, universal inter-dependence of nations. And as in material, so in intellectual production. The intellectual creations of individual nations become common property. National one-sidedness and narrow-mindedness become more and more and more impossible, and from the numerous national and local literatures, there arises a world literature” (1962: 37-8). In this mixture of admiration and repulsion for the achievements of the bourgeoisie, we get a foretaste of the conflicting attitudes, born of the conflicting tendencies that go towards its shaping, that are held towards “global civil society” today. Puchner, M. *Poetry of the Revolution: Marx, Manifestos, & the Avant-Gard*. (Princeton University Press, 2006).

² Archibugi, D. “Models of international organization in perpetual peace projects,” *Review of International Studies* 18. (1992): 295-317. Mazlish, B. “Eighteenth-Century Cosmopolitanism in the Light of Twentieth-Century Globalism.” *Citizenship and Cosmopolitanism*. (Madison, Wisconsin, 1998). Rosenfeld, S. “Citizens of Nowhere in Particular: Cosmopolitanism, Writing, and Political Engagement in Eighteenth-Century Europe.” *National Identities* 4.1. (2002): 25-43. Fine, R. and R. Cohen. “Four Cosmopolitan Moments.” *Vertovec and Cohen*. (2002): 137-62.

³ Kant’s proposal for “perpetual peace” seems to envisage a hierarchy of rights, starting with “the *civil right* of individuals within a nation (*ius civitatis*),” moving up to the “*international right* of states in their relationships with one another (*ius gentium*),” and culminating in “*cosmopolitan right*, in so far as individuals and states, coexisting in an external relationship of mutual influences, may be regarded as citizens of a universal state

of mankind (*ius cosmopolitanum*).” There is, however, as Habermas points out, no provision for an authority to supervise and enforce these rights; Kant places his faith in the rationally understood self-interest of citizens in “constitutional republics.” But Kant himself seems to recognize that this is but a second best, temporary solution, one suited to the times but always precarious precisely because of the lack of an overarching public authority: “There is only one rational way in which states coexisting with other states can merge from the lawless condition of pure warfare. Just like individual men, they must renounce their savage and lawless freedom, adapt themselves to public coercive laws, and thus form an *international state (civitas gentium)*, which would necessarily continue to grow until it embraced all the peoples of the earth. But since this is not the will of nations, according to their present conception of international right (so that they reject *in hypothesi* what is true *in thesi*), the positive idea of a *world republic* cannot be realized. If all is not to be lost, this can at best find a negative substitute in the shape of an enduring and gradually expanding *federation* likely to prevent war. The latter may check the current of man’s inclination to defy the law and antagonize his fellows, although there will always be risk of it bursting forth anew.” Kant was more of a realist, and less of an idealist, than Habermas and others seem to allow. Kant, I., H. Reiss and H.B. Nisbet. “Perpetual Peace: A Philosophical Sketch.” *Kant: Political Writings*. (Cambridge: Cambridge University Press, 1991): 93-130.

⁴ The concept of a “global public sphere” is Habermas’s own gloss on Kant’s account of growing public awareness of human rights as a result of the growth in contact and communication across the globe: “The peoples of the earth have thus entered in varying degrees into a universal community, and it has developed to the point where a violation of rights in *one* part of the world is felt *everywhere*.” Kant, I., H. Reiss and H.B. Nisbet. “Perpetual Peace: A Philosophical Sketch.” *Kant: Political Writings*. (Cambridge: Cambridge University Press, 1991): 93-130. Habermas, J., C. Cronin and P. de Greiff. “Kant’s Idea of Perpetual Peace: At Two Hundred Years’ Historical Remove.” *The Inclusion of the Other: Studies in Political Theory*. (MA: MIT Press, 1998): 165-201. Kaldor, M. H. Anheier, and M. Glasius (Eds.). *Global Civil Society 2003*. (Oxford: Oxford University Press, 2003).

⁵ Keane’s main objections to the older concepts of “world civil society” and “international society” have to do with their “governmentality or state-centeredness.” By contrast “global civil society”—words which “may well sound old-fashioned, but today ... have an entirely new meaning and significance”—relates to “a non-governmental social sphere” (2003: 20-23). But the non-governmental concept of civil society certainly seems much older than Keane suggests, as his own discussion of Gramsci shows. It may take on a wider significance within the context of global civil society, but the continuities seem undeniable. On the decline of cosmopolitanism in the nineteenth century, see Mazlish, B. “Eighteenth-Century Cosmopolitanism in the Light of Twentieth-Century Globalism.” *Citizenship and Cosmopolitanism*. (Madison, Wisconsin, 1998).

⁶ Keane, J. “Remembering the Dead: Civil Society and the State from Hobbes to Marx and Beyond,” in *Democracy and Civil Society*. (London and New York: Verso, 1988a).

37-68. Keane, J. "Despotism and Democracy: The Origins and Development of the Distinction between State and Civil Society 1750-1850." (London and New York: Verso, 1988c). 35-71.

⁷ Kaldor, M, H. Anheier, and M. Glasius (Eds.). *Global Civil Society 2003*. (Oxford: Oxford University Press, 2003).

⁸ Marx, K. "Contribution to the Critique of Hegel's Philosophy of Right: Introduction." *Karl Marx: Early Writings*. (London: C. A. Watts, 1963). 43-59. Femia, J. "Civil Society and the Marxist Tradition." *Kaviraj and Khilnani*. (2001): 131-46.

⁹ Kant, I., H. Reiss and H.B. Nisbet. "Perpetual Peace: A Philosophical Sketch." *Kant: Political Writings*. (Cambridge: Cambridge University Press, 1991): 93-130.

¹⁰ For the early-modern arguments in favor of trade and commerce, especially as the antidote to the pernicious wars of the sixteenth and seventeenth centuries, see Hirschman, A. O. *The Passions and the Interests: Political Arguments for Capitalism before Its Triumph*. (Princeton: Princeton University Press, 1977). For the "facilitating inputs" into the "civil sphere" supplied by the qualities developed in economic life, see Alexander, J.C. "Introduction." *Real Civil Societies*. (London and Thousand Oaks, CA, 1998): 1-19. Alexander, J.C. *The Civil Sphere*. (Oxford and New York: Oxford University Press, 2006). 24-26, 205-7.

¹¹ Bobbio, N. "Gramsci and the Concept of Civil Society." *Civil Society and the State: New European Perspectives*. (1988): 73-99. Kumar, K. "Civil Society: An Inquiry into the Usefulness of a Historical Term." *Revolutionary Ideas and Ideals*. (Minneapolis: University of Minnesota Press, 2001). 142-70.

¹² Pérez-Díaz, V. "The Public Sphere and a European Civil Society." *Real Civil Societies: Dilemmas of Institutionalization*. (London and Thousand Oaks, CA: Sage, 1998). 211-238. For the Scottish Enlightenment view of civil society, see Seligman, A. *The Idea of Civil Society*. (New York: The Free Press, 1992) and Jensen, M.N. "Concepts and Conceptions of Civil society." *Journal of Civil Society* 2.1. (2006): 39-56. Pérez-Díaz characterizes his own "generalist" concept of civil society as follows: "By 'civil society' I mean an ideal type referring to a set of political and social institutions, characterized by limited, responsible government subject to the rule of law, free and open markets, a plurality of voluntary associations and a sphere of free public debate" (1998: 220). For Gellner's similar conception, see Gellner, E. *Conditions of Liberty: Civil Society and Its Rivals*. (London: Penguin Books, 1996). For both Pérez-Díaz and Gellner, "civil society" seems more or less equated with modern liberal society, and it is not clear why they need the concept of civil society at all (since they no longer have to fight the battles of the thinkers of the Scottish Enlightenment). For Keane's more restricted "generalist" view, see Keane, J. *Civil Society: Old Images, New Visions*. (Cambridge: Polity Press, 1998). 17-19

¹³ Keane, J. "Eleven Theses on Markets and Civil Society." *Journal of Civil Society* 1.1. (2005): 25-34.

¹⁴ See Cohen, J. and A. Arato. *Civil Society and Political Theory*. (Cambridge, MA: MIT Press, 1992). And, for a thoughtful critique, Hamilton, L. "'Civil Society': Critique and Alternative." *Global Civil Society and Its Limits*. (Houndmills, Basingstoke: Palgrave Macmillan, 2003). 63-81. For the latest statement of his position, see Alexander, J.C. *The Civil Sphere*. (Oxford and New York: Oxford University Press, 2006). 23-36. And an updating of his account in Alexander, J.C. "Introduction." *Real Civil Societies*. (London and Thousand Oaks, CA, 1998): 1-19.

Keane admits that Alexander cannot be so neatly pigeon-holed, though he still insists on his "purism" and his "heavily normative picture of civil society." Keane, J. *Global Civil Society?* (Cambridge: Cambridge University Press, 2003). 77-87.

¹⁵ Habermas, J. "Civil Society and the Political Public Sphere." *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*. (Cambridge, MA: MIT Press, 1996). 329-87.

¹⁶ Though in Kaldor's case at least the ire seems misplaced. See Kaldor, M. *Global Civil Society: An Answer to War*. (Cambridge: Polity Press, 2003). 6-14, 44-49. Kaldor seems to veer between the acceptance of markets and distaste for them, though in the final analysis her point is the changing historical context of the civil society idea. At one point she says "for civil society to exist there has to be a relationship with markets, which secure economic autonomy" (2003: 11). At the same time she says that, normatively, she is closest to the "activist version" of the civil society (and global civil society) idea: one that refers to "active citizenship, to growing self-organization outside formal political circles" and to a "space where non-instrumental communication can take place" (2003: 8). Later in the book she suggests that we have to see that there have been historical shifts in the meaning and content of civil society, and that while markets were relevant in the nineteenth-century context they have become decreasingly so in the twentieth and twenty first centuries. Much of this has to do with globalization, so that today "civil society has become trans-national. It remains distinct from profit organizations unless they provide a medium for public pressure but its focus is public affairs not the market" (2003: 48). The Habermasian perspective certainly seems dominant here. In a later contribution Kaldor writes of civil society as a "form of politics that cannot exist without the autonomous spaces offered by the existence of markets; nor can it exist without some form of constitutional order whether at national or global levels. But if we include either markets or constitutional order in the definition of civil society, I believe we lose the political utility of the term, and that is the role of new political groups, associations, movements and individuals in contributing to and being enabled by an emerging global regulatory framework." Kaldor, M. "Commentary on Keane: 'Eleven Theses on Markets and Civil Society.'" *Journal of Civil Society* 1.1. (2005): 43-44.

¹⁷ And cf. the following definition of global civil society given by Anheier, H., M. Glasius and M. Kaldor. "Introducing Global civil Society." *Global Civil Society 2001*.

(Oxford: Oxford University Press, 2001). 3-22 “the sphere of ideas, values, organizations, networks, and individuals located primarily outside the institutional complexes of family, market, and state, and beyond the confines of national societies, politics, and economies.” The conceptions of Anheier, Kaldor and their associates at LSE and UCLA are best studied in their co-edited annual yearbooks, *Global Civil Society* (2001).

¹⁸ Keane, J. *Global Civil Society?* (Cambridge: Cambridge University Press, 2003). 66. Mazlish, B. “The Hi-jacking of Global Society? An Essay”, *Journal of Civil Society* 1.1. (2005): 5-17.

¹⁹ Keane, J. *Global Civil Society?* (Cambridge: Cambridge University Press, 2003). 78.

²⁰ Keane, J. *Global Civil Society?* (Cambridge: Cambridge University Press, 2003). 78-9.

²¹ Glasius, M. “Commentary on Keane: ‘Eleven Theses on Markets and Civil Society.’” *Journal of Civil Society* 1.1. (2005): 39-42.

²² Keane, J. *Global Civil Society?* (Cambridge: Cambridge University Press, 2003). 35-36. Mazlish, B. “The Hi-jacking of Global Society? An Essay”, *Journal of Civil Society* 1.1. (2005): 5-17.

²³ This is even more apparent in another definition of global civil society given by Keane in the same work: it refers to “non-violent, legally sanctioned power-sharing arrangements among many different and interconnected forms of socio-economic life that are distinct from government institutions.” Keane, J. *Global Civil Society?* (Cambridge: Cambridge University Press, 2003). xi-xii.

²⁴ A similar conception of civil society—or the “civil sphere”—regulating, monitoring, and cajoling the “non-civil spheres” of the family, state, economy, religion, etc., is to be found in Alexander (2006). For Alexander as for Keane a key role is played in this by social movements, seen as the agents of the necessary process of “civil repair.” Alexander, J.C. *The Civil Sphere*. (Oxford and New York: Oxford University Press, 2006).

²⁵ “Global civil society,” warns Keane, “should not be thought of as the natural enemy of political institutions. The vast mosaic of groups, organizations and initiatives that comprise global civil society are variously related to governmental structures at the local, national, regional and supranational levels” (2003: 108). As an example of “public-private partnerships between sectors of global society and governing institutions” he gives the formation of the United Nations, which involved extensive consultation with civic groups, who went on to have considerable influence in the drafting of some crucial articles, such as those dealing with human rights, in the UN Charter. On the close relations between some NGOs and their official, governmental, counterparts, see also Scholte, J.A. *Globalization: A Critical Introduction*. (Houndmills: Palgrave Macmillan, 2005). 219-29

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- ²⁶ Keane, J. *Global Civil Society?* (Cambridge: Cambridge University Press, 2003). 35-36. Keane, J. *Civil Society: Old Images, New Visions*. (Cambridge: Polity Press, 1998). 32-41.
- ²⁷ Glasius, M. "Pipe Dream or Panacea? Global Civil Society and Economic and Social Rights." *Global Civil Society 2006/7*. (London and Thousand Oaks, CA: Sage Publications, 2007). 62-90.
- ²⁸ Mazlish, B. "The Hi-jacking of Global Society? An Essay," *Journal of Civil Society* 1.1. (2005): 5-17.
- ²⁹ Keane, J. *Global Civil Society?* (Cambridge: Cambridge University Press, 2003). 35-36.
- ³⁰ A different but equally interesting mapping is provided by Scholte, J.A. *Globalization: A Critical Introduction*. (Houndmills: Palgrave Macmillan, 2005). 13-48.
- ³¹ For this critique, see Brown, C. "Cosmopolitanism, World Citizenship and Global Civil Society." *Critical Review of International Social and Political Philosophy* 3.1. (2000): 7-26. Examples of contemporary global civil society theorists employing such a Kantian perspective would include the proponents of schemes of "cosmopolitan democracy: see, e.g. Archibugi, D. and Held, D. *Cosmopolitan Democracy: An Agenda for a New World Order*. (Cambridge: Polity Press, 1995).
- ³² Kaldor, M. *Global Civil Society: An Answer to War*. (Cambridge: Polity Press, 2003). 8.
- ³³ Kaldor, M. *Global Civil Society: An Answer to War*. (Cambridge: Polity Press, 2003). 9.
- ³⁴ Kaldor, M. *Global Civil Society: An Answer to War*. (Cambridge: Polity Press, 2003). 10.
- ³⁵ Monbiot, G. "The Denial Industry." *The Guardian*. (2006).
- ³⁶ Chambers, S. and J. Kopstein. "Bad Civil Society." *Political Theory* 29.6. (2001): 837-865.
- ³⁷ Gutmann, A. "Freedom of Association: An Introductory Essay," *Freedom of Association*. (Princeton: Princeton University Press, 1998). 1-15. Cohen, J. "Trust, Voluntary Association and Workable Democracy: The Contemporary American Discourse of Civil Society," *Democracy and Trust*. (Cambridge: Cambridge University Press, 1999). 208-48.

³⁸ See the illuminating account by Sheri Berman of how “too much civil society”, too active and extensive a degree of “associationism” in Germany in the 1920s, was partly responsible for the weakness of the Weimar Republic and the success of the Nazis. The failure of German political parties and other political institutions, both before and after 1918, to unify the nation, she argues, led many people into private associational activities, which were generally organized within rather than across group boundaries. “The vigor of civil society activities then continued to draw public interest and involvement away from parties and politics, further sapping their strength and significance. Eventually the Nazis seized the opportunities offered by such a situation, offering a unifying appeal and bold solutions to a nation in crisis. The NSDAP drew its critical cadres precisely from among bourgeois civil society activists with few ties to mainstream politics, and it was from the base of bourgeois civil society that the party launched its swift *Machtergreifung*. In short, one cannot understand the rise of the Nazis without an appreciation of the role played by German civil society...” Berman, S. “Civil Society and the Collapse of the Weimar Republic.” *World Politics* 49.3. (1997): 401-29.

³⁹ See also Hardt, M. and Negri, A. *Empire*. (Cambridge, MA: Harvard University Press, 2001). 313, who accept that the anti-state stance of NGOs can sometimes seem to line them up with global capital, in that “while global capital attacks the power of the nation state from above, ...the NGOs function as a ‘parallel strategy from below’ and present the ‘community face’ of neoliberalism.” But they argue that this is not the whole story of their function. “It may indeed be true that the activities of many NGOs serve the neoliberal project of global capital, but we should be careful to point out that this cannot adequately define the activities of NGOs categorically. The fact of being non-governmental or even opposed to the powers of the nation-state does not in itself line these organizations up with the interests of capital. There are many ways to be outside and opposed to the state of which the neoliberal project is only one.” In particular they praise the work of humanitarian organizations such as Amnesty International and Médecins sans Frontières. These “represent directly global and universal human interests.” For a more critical view, which see much NGO activity as being complicit with an “expanding global neoliberal regime of governmentality,” see Lipschutz, R.D. “Power, Politics and Global Civil Society.” *Millennium: Journal of International Studies* 33.3. (2005): 747-69.

⁴⁰ Keane, J. “Eleven Theses on Markets and Civil Society,” *Journal of Civil Society* 1.1. (2005): 25-34.

⁴¹ Polanyi, K. *The Great Transformation*. (Boston: Beacon Press, 1957). 3.

⁴² Mazlish, B. “The Hi-jacking of Global Society? An Essay.” *Journal of Civil Society* 1.1. (2005): 5-17.

⁴³ This is a controversial subject. For some helpful discussions, see Kamali, M. “Civil society and Islam: a sociological perspective.” *Archives Européennes de Sociologie* 42.3. (2001): 457-82. Zubaida, S. “Civil society, community, and democracy in the Middle

East.” in Kaviraj, S. and S. Khilnani. *Civil Society: History and Possibilities*. (Cambridge: Cambridge University Press, 2001). 232-49.

⁴⁴ Lipschutz, R.D. “Reconstructing World Politics: The Emergence of Global Civil Society.” *Millennium: Journal of International Studies* 21.3. (1992): 389-420. Boli, J. and G.M. Thomas. *Constructing World Culture: International Nongovernmental Organizations since 1875*. (Stanford, CA: Stanford University Press, 1999).

⁴⁵ On this I have learned much from Yates, J.J. *To Save the World: Humanitarian INGOs and World Culture*. (Ph.D. dissertation, Department of Sociology, University of Virginia, 2006). See also Twiss, S.B. “History, Human Rights, and Globalization.” *Journal of Religious Ethics* 32.1. (2004): 39-70. Glasius, M. “Pipe Dream or Panacea? Global Civil Society and Economic and Social Rights.” *Global Civil Society 2006/7*. (London and Thousand Oaks, CA: Sage Publications, 2007). 62-90. For the more general picture of NGOs, see Colás, A. *International Civil Society: Social Movements in World Politics*. (Cambridge: Polity Press, 2002).140-57. Kaldor, M. *Global Civil Society: An Answer to War*. (Cambridge: Polity Press, 2003). 78-108. Specifically on Europe see Tarrow, S. “The Europeanisation of Conflict: Reflections from a Social Movement Perspective”, *West European Politics* 18.2. (1995): 223-251, though Tarrow emphasizes the extent to which social movement activists continue to operate through their national states as a means of putting pressure on EU institutions, rather than creating cross-national movements in the strict sense.

⁴⁶ Kaldor, M. *Global Civil Society: An Answer to War*. (Cambridge: Polity Press, 2003). 50-77; Lipschutz, R.D. *Civil Societies and Social Movements: Domestic, Transnational, Global*. (Aldershot, Hampshire: Ashgate Publishing, 2006).

⁴⁷ Baker, G. *Civil Society and Democratic Theory: Alternative Voices*. London and New York: Routledge, 2002).130-44. Collier, G.A. and Collier, J.F. “The Zapatista rebellion in the context of globalization.” *The Future of Revolutions: Rethinking Radical Change in the Age of Globalization*. (London: Zed Books, 2003). 242-52. Johnston, J. “WE are All Marcos? Zapatismo, Solidarity and the Politics of Scale.” in G. Laxer and S. Halperin. *Global Civil society and Its Limits*. (Houndmills, Basingstoke: Palgrave Macmillan, 2003). 85-104. The Zapatista movement, which began in 1994 as a protest against the North American Free Trade Agreement, has proved astonishingly resilient, despite its relatively small size and its ill-equipped fighters. All observers agree on the importance of international public opinion in restraining the Mexican government—a “global public sphere” that the movement’s leader, “Subcomandante Marcos”, has proved highly skilful in addressing, especially through the use of the Internet. For some interesting reflections on the new “internetworked social movements,” see Langman, L. “From Virtual Public Spheres to Global Justice: A Critical Theory of Internetworked Social Movements.” *Sociological Theory* 23.1. (2005): 42-74.

⁴⁸ Young, I.M. "De-centering the Project of Global Democracy." in D. Levy, M. Pensky, and J. Torpey. *Old Europe, New Europe, Core Europe: Transatlantic Relations After the Iraq War*. (London and New York: Verso, 2005).154.

⁴⁹ Kaldor, M. *Global Civil Society: An Answer to War*. (Cambridge: Polity Press, 2003). 128-36.

⁵⁰ Baker, G. *Civil Society and Democratic Theory: Alternative Voices*. London and New York: Routledge, 2002).130-44. Colás, A. *International Civil Society: Social Movements in World Politics*. (Cambridge: Polity Press, 2002). 151-66. The same criticism has been applied to anti-globalization movements, on the grounds of their unrepresentativeness: see Ayres (2003). For a defense of the legitimacy of international organizations, focusing especially on the European Union, see Moravcsik, A. "Is there a 'Democratic Deficit' in World Politics? A Framework for Analysis." *Government and Opposition* 39.2. (2004): 336-63. Moravcsik argues that it is wrong to judge international organizations by the standard of "ideal democratic systems."

Legitimacy and the Rise of NGOs: The Global and Local in South Asia

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ABSTRACT. We extend sociological institutionalist theory and draw on evidence from South Asia to develop a research agenda for studying how NGO legitimacy plays out in national and local arenas. After first presenting a sociological institutionalist approach to nongovernmental organizing, we extend it into three areas: national laws governing international and domestic NGOs, growth in domestic NGOs, and the situated interactions among international organizations, nation-states, local organizations, and other actors. (1) International and domestic NGOs are governed by national laws, and we sketch the history of such laws in South Asia to hypothesize a pattern of legal change leading to the present social concern about accountability. (2) Sociological institutionalism suggests that domestic NGO growth is related to the presence of INGOs and can be interpreted as the diffusion of formal organization. (3) We conceptualize the situated interactions of the plethora of actors as a meso realm at the interface of the global and local. The interrelations of these actors are marked by tensions and conflict. There are many permutations of how they coalesce, not always along a global—local cleavage, and there is a need to examine the full range of interactions. We explore some of these and it seems that actors use accountability strategically in their conflicts with others. The “uses of accountability” in contesting legitimacy within such situations is proposed as a fruitful research direction.

KEYWORDS: world society, accountability, law, organizations

Introduction

International nongovernmental organizations (INGOs) operate with a type of authority based on voluntarism and a practical, rational approach to attaining goals. They claim as voluntary associations that they are democratic groups with no self-interest but only the common good. They adopt scientific, rational strategies and technologies to attain these goals. They thus claim to represent democratic principles in the world, to hold moral positions, and to have unbiased expert knowledge. Many operate with little public attention or controversy; these are the standards and rule setters in every social, economic, and professional arena imaginable. Others that engage public policy, confront state and corporation interests, and tackle global social problems are more recognizable. For decades they were written off as ineffectual do-gooders, but as their influence has been increasingly felt, their claims and legitimacy have become hotly contested. Even standards setters and professional organizations are gaining some notoriety as

they are accused of bypassing democratic processes. Criticisms revolve around debunking their claims and documenting abuses that would belie them. These criticisms over the last fifteen years or so have converged on demands for accountability. In short, the rational-moral authority of INGOs while firmly established worldwide is contested, and increasingly so.

We report on a research agenda designed to better understand the contested authority and legitimacy of INGOs. The research builds on that of sociological institutionalism¹ that analyzes the entire set of INGOs in the world—their goals, activities, memberships, and interconnections. We propose expanding this work on several levels, and in particular focusing on the interface between global and local, between international organizations and national and local organizing.

First, because INGOs are registered and operate within national legal structures, it is important to understand changing definitions and regulations governing INGOs and (domestic) NGOs. It thus is necessary to collect data over time on national laws, and to construct histories of the development of these laws. From these analyses of national laws can make inferences about the changing nature of INGOs in world society and the changing underlying political and cultural assumptions about them and civil society in general.

Second, we are interested in understanding the spectacular growth in domestic NGOs and within this growth the pattern of differential growth across national polities. One goal is to explain the worldwide growth and the degree of isomorphism among NGOs across regions and national polities. Another goal is to describe, within the global context of unprecedented growth, different growth rates in different nations. What accounts for the differential adoption of this particular form of civil society organization throughout the world? We can assess hypotheses that relate the relative activity of INGOs within countries to NGO growth rates and also the impact of different national legal contexts on NGO growth.

Third, we examine how INGOs operate and interact with other actors at the interface of the global, national, and local. National laws function as legal and symbolic frameworks for national contexts, and they set the rules of the game for these interactions. In these contexts we examine how INGOs, nation-state agencies, national NGOs, local governments, and community based organizations (CBOs or local NGOs) interact. These interactions are marked by varying levels of cooperation and conflict, and we especially focus on the way INGO authority helps cooperation or is contested within conflict. How is legitimacy enacted, contested, and used at the interface of the global and local?

The meso-social realm of the global and local is politically charged and plays a central symbolic role in contentious discourse. It even reverberates in normative threads in scholarly research. The global carries great legitimacy as authority external to the local—it is rooted in knowledge and authority “from a distance” or “from elsewhere,” but it also commonly is stigmatized for exactly the same reason. The local carries, according to this discourse, greater authenticity and is the source of resistance. Analyzing how actors contend with each other within political-cultural frames should shed light on this discourse, suggesting that demarcating the global and local is not easily done in reality and that outcomes are hybrids.

In this paper, we first discuss the conceptual framework. We then use initial work on South Asia, in particular Bangladesh, India, and Nepal, to discuss issues of definitions, national legal structures, the interaction of actors at the interface of the global and local, and the contesting of INGO legitimacy through the uses of accountability.

Conceptual Framework: Political Processes in World Culture/World Society

The modern world, marked by capitalist markets and the interstate system, has from the beginning been a global phenomenon² and can be understood as a world polity³ or world society.⁴ Transnational organizing is not new to this modern world. Flows of scientific and humanistic production (knowledge, art, literature) were prevalent early, and religious networks, associations, and organizations were prominent. Religious revivals throughout the Anglo-American world, for example, resulted from trans-Atlantic networks and exchanges.

Transnational movements in the eighteenth and early nineteenth centuries were largely interactions of national associations that while oriented to national identities and policies had an international orientation. The abolitionist, temperance, and other social reform movements in the nineteenth century were international in scope.

Christendom and the Enlightenment provided the cultural schema for the universalism of their authority and models for their organizing. As early as the eighteenth century, but especially in the nineteenth, religious associations and networks invoked the legacy of Christendom, largely through moral order, and thereby provided the dominant source of universalism. Enlightenment internationalism, formulated in the eighteenth century, became another major source of universalistic organizing in the nineteenth century. Roman Catholic orders and associations for the most part resisted modern, Enlightenment ideology whereas most Protestant, even revivalist and missionary, groups articulated in different ways with it. The Workers' International can be understood as a radical, more politically expedient version of the Enlightenment model, but it also arguably is a secularized version of Christianity. Social, moral reform movements were an early hybrid of Christian and Enlightenment universalism.

By the end of the nineteenth century, international organizing was dominated by internationalism itself something of a hybrid. It was secular and non-Christian at its core although it encompassed an interfaith approach to religion, one embraced by liberalizing Protestantism, as an expression of the highest aspirations of humanity. World peace, “one worldism,” common understanding, and the common aspirations of all humankind pervaded the discourse of INGOs in the early decades of the twentieth century. The creation of a global language, for example, is a somewhat pure expression of one worldism and INGOs for the dissemination of Esperanto and other languages flourished at the turn of the twentieth century.

This modernist internationalism, although it discursively included science and technology as essential for ushering in the new world order, quickly took on an aura of idealism—including its connotation of ineffectuality. Beginning after World War I and then universally after World War II, this style of internationalism was replaced with a more technical, functional rationality. Many INGOs like those espousing Esperanto declined as a proportion of the burgeoning number of INGOs.⁵ The discourse of one worldism and common understanding remained prevalent, but it no longer was enough. It was subsumed within practically rationality that demanded specialization, rational goals and strategies, and action.

This hybrid of morality and rationality, inherited from the nineteenth century, is central to the rational voluntaristic authority of INGOs of all types, whether professional standard setting organizations or activist ones or mainline service organizations in humanitarian aid, health, education, and development.

What all of these organizations have in common is that they are embedded in a cultural schema that authorizes, and indeed obligates, individuals to organize to pursue rational strategies for solving problems, meeting needs, and in general creating the common good. This

commonality is seen in organizational forms, discourse, and activities. Humanitarian INGOs, for example, moved from the dominant model in the 1950s of relief to that of development in the 1970s, taking on increased commitments to research,⁶ and more recently taking on advocacy. Common discourse is revealed in interviews of leaders: leaders in American humanitarian, activist, and professional INGOs (and corporations) show an implicit faith in progress, believe that their work is beneficial, and use social science and human rights discourse when talking about the world they are building.⁷

Informal and Legal Definitions

Informally, INGOs are taken to be any organization that is not run by states and is not for profit. There are formal, legal attempts to codify and make precise this common understanding of a third sector, and there are scholarly attempts to bring order to these diverse organizations. Scholars and practitioners have identified different types, but the most common distinction is between activist and all others. Not all activists groups take the form of formal organizations and not all formal INGOs are activist in nature. Nor do activists and INGOs exhaust the forms of participation in a global civil society.⁸ It would be useful to identify an issue area or a particular goal and then identify the different groups, networks, and organizational forms that diverse actors take surrounding this issue.⁹ The complementary focus taken here is to examine INGOs as a particular organizational form that encompasses diverse goals, issue areas, and normative positions.¹⁰ From the point of view of the organizational form, the distinction of being activist can be blurred. Service and especially development INGOs, for example, have increasingly taken on advocacy as a crucial style of action.¹¹

The dual core of the commonly understood definition of INGOs, their voluntary, not-for-profit nature, also can be ambiguous as witnessed by the large number of “hybrid” actors. In practice, many of what are commonly accepted as INGOs receive grants from states and corporations. Some organizations are ostensibly in the third sector but function as quasi-agents of the state. Others emerge out of agreements among states, corporations, and INGOs that establish standards, ethical codes, or agreed procedures about particular issues. Abbott et al. conceptualize states, NGOs, and firms as ideal types and any particular organization as a particular “mixture” of the three.¹² The Global Compact, for example, is a hybrid comprised of states and firms that was created at the initiative of the United Nations in response to concerns over accountability. The Kimberly Process was formed to govern the problems surrounding “blood” diamonds and is comprised of states, INGOs, and firms.

The UN recognizes any commonly and legally accepted organization as an INGO, but they are more selective when granting consultative status. The UN committee focuses, at least according to formal requirements and documentation, on the procedures of governance, the countries of members of the governing board and executive staff, general memberships, sources of funding, expenditures, activities, and any formal or financial relationships to governments.¹³ In short, the required information revolves around assessing the claims of democratic governance, independence from states and firms, expertise, and goals of the collective good.

In practice, INGOs are defined within national legal frameworks. National law defines what organizations qualify as NGOs and require some form of registration with a central agency. Increasingly these stipulate rules and procedures of accountability, all involving the handling of money, and more recent elaborations of these legal structures have become more regulatory. The

history of laws governing international and domestic NGOs in South Asia document this pattern of initial registration to financial accounting to heightened accountability and regulation.

Laws concerning voluntary associations in South Asia date back to colonial British India. The Societies Registration Act of 1860 established the requirement that voluntary associations register with the government. This and subsequent laws in the region focused on registration, expanding the scope to different types of associations. Throughout the period, specific laws singled out religious groups given their prominence. There was and remains special concern over the use of charitable organizations for proselytizing.

After political independence, there was increasing concern about foreign funds, and in the 1960s and 1970s a variety of acts and ordinances were promulgated that focused on finances. By the 1970s, laws required that NGOs give account to the government about the amount and source of all foreign money they received (e.g., in Bangladesh 1978 Foreign Donations Regulation Ordinance and the 1979 Foreign Donations Rules and Regulations; in India the 1976 Foreign Contribution and Regulation Act). Subsequently, these states expanded the bureaucracy to administer these requirements and added associated legislative measures. These laws also require that INGOs on their end also account for funds distributed. The general intent of the foreign contribution laws was to make sure that the organizations used the money for the declared purposes, but the immediate precipitating issues were political. There was great concern that foreign monies were being funneled through NGOs to influence political parties, elections, and officials.

By the 1990s, demands for accountability broader in scope emerged worldwide by a variety of actors including INGOs themselves. The amount of money flowing through INGOs and NGOs and the sheer number of NGOs was viewed as something of a crisis that needed to be

managed. This resulted in the now intense discussions by both practitioners and scholars about the nature of accountability and its centrality to the legitimacy of INGOs and NGOs.

Accountability currently dominates the discussions of INGOs and NGOs and of global civil society generally, but since September 11, 2001, there has been increased politicization. Recent laws and debates about potential laws revolve around much tighter regulations, taxes, and political affiliations. The recent Foreign Contributions Management and Control Bill of 2005 in India, for example, restricts foreign contributions in a much more stringent fashion and raises concerns about “anti-nationalistic” activities. INGOs and NGOs in all three countries have mobilized to contest what they consider a policy shift from the accounting of funds to regulating activities.

National histories of these laws clearly are affected by models and principles worldwide. We would thus expect to see similarities in these histories across nation states. These global processes interact with local and national cultures relating the state to civil society, and a major research agenda is to analyze the diffusion of legal frameworks and within that common context the particular hybrids that emerge within different regions and nation-states.

Organizational Forms and Isomorphism

Nongovernmental organizing is a particular organizational form rooted in particular assumptions about the individual, society, authority, and narratives of progress.¹⁴ Each national polity has its own cultural, political framework for the third sector.¹⁵ These vary from viewing voluntary associations as a form of participation crucial to democracy (e.g., USA) to those that are suspicious of such organizations (e.g., old communist states). In Macedonia the USA and INGOs

have cultivated NGOs as anti-state because they have continued to equate the state and communism, resulting in heightened state-NGO tensions.¹⁶

The growth worldwide of national and local NGOs takes place in these contexts. We would expect several factors to affect the different national rates of NGO growth. Legal requirements likely embody the broader political and cultural views of voluntary associations, and will encourage or discourage the establishment of NGOs. The level of INGO presence and activities within a country has, we would hypothesize, a positive effect on the growth of NGOs. There arguably are two mechanisms resulting in this relationship. First, a strong presence of INGOs would model this organizational form and civil society organizing generally. Second, to the extent that INGOs bring resources such as development dollars, they would attract much attention. A major impetus for forming NGOs associated with development projects is to tap into development money administered by INGOs. We consequently expect that the levels of development money available to the third sector affect NGO organizing and that NGOs would compete for these limited resources.

We have argued that INGOs are predicated on universalistic and individualistic organizing: individuals have the authority to organize for collective goals. The question arises whether this might be in tension with local communal organizing. It is common to see local groups and organizations as resistance to and in competition with large INGOs.¹⁷ If so, this would suggest that the strength of local communal associations (peasant groups, religious groups) would hinder the adoption of the NGO organizational form and hinder the growth of NGOs.

Local agency, however, is much more varied and much more of an engagement of INGOs. Evidence suggests that strong local communal groups are able to take advantage of the

NGO organizational form.¹⁸ INGOs, moreover, seem to temper their individualistic discourse when engaging local communal groups.¹⁹ Following this line of argument, we would hypothesize that the greater the number of INGOs active in a country, the greater the growth of NGOs within the country.

We can break down the aggregate number of NGOs within a country by local regions or states. It is possible to map the reach of INGOs within a country and relate it to local factors, including NGOs. For example, Chhetri related the presence of development INGOs in states within Nepal to social factors such as literacy.²⁰ The locations of INGO projects are identified by district, and these can be counted as one (present) or by actual number of projects or project per capita. INGO projects are in many sectors: community development, women and children, education, health and disabled, natural resources, and others. Different sectors can be mapped distinctly in one or more maps. The maps might be overlaid with different variables, such as poverty levels, number of local NGOs, or strength of local communal groups.

Competition, Conflict, and Contested Legitimacy at the Interface of the Global and Local

Several types of actors are involved in any service delivery or development project on the ground: large foreign INGOs, IGOs, the central state and its agents, national NGOs, local governments, and local community based organizations. And under closer scrutiny there are, of course, religious groups, neighborhoods, kinship groups and the like not organized as formal organizations. There might also be agents of foreign governments providing bilateral support.

These actors cooperate to a great extent, but they also compete or outright contend with each other. Conflict is over interests including resources, power, control over a sphere of social life or over a particular place, and attributions of responsibility for success.²¹ Conflict is also

over authority. Issues might symbolize nation-state sovereignty or local state authority within a federal system. In the same vein, conflict is over cultural schema and bases of knowledge: How is policy based on rational, scientific research articulated with local, common knowledge?

Actors use differences in bases of authority and knowledge in contentious discourse. Local actors might cast a particular development policy as the product of evil, often American, homogenizers and the local as the last stand of resistance; IGOs and states likely describe the policy in social scientific terms arguing that it is the best way of attaining a higher standard of living, security, and freedom against the entrenchment of local despotism, ignorance, and superstitions. Taking the global-local binary at face value oversimplifies the complex interactions and contentions of the actors within the situation. The global-local interface is in practice a meso-realm within which the binary discourse of global-local is used to contest authority.

There are many permutations of how the various actors line up and there are different patterns of cooperation and conflict. In the case where there is cooperation among the central state, IGOs, and INGOs, there is a unified pressure of a *global hyper-rationalism* applied to local actors. Local actors whether local governments, communal organizations such as peasant cooperatives, or CBOs, have little support, although even in this extreme case they generally are able to network with other INGOs.²² In a *nation-state centered* case, the national state and NGOs play INGOs for resources and legitimacy, resulting in a strong national/local versus global pattern of tension and conflict. Another case is when INGOs and national and local NGOs work together to attain goals. In this civil-society centered case, INGOs and NGOs leverage the state applying both external and domestic pressures. This is a common pattern in South Asia.

South Asian State Bureaucracies and INGOs

Public civil servants in Bangladesh, Nepal and India (and elsewhere in South Asia) historically have had high social status and bureaucratic positions were much sought after. They were granted based on merit and education, and only the cream of the educated elite became “public servants.” Through the 1980s when the industrial and service sectors were still in their infancy, the government sector was the largest employer of university graduates. With the cream of the intellectual prowess being employed by the government, it became generally “known” that only the “not-so-bright” became professionals within the private sector. For that reason, professionals in private and nongovernmental sectors had lower social status, despite their higher income. In other words, the higher social status of bureaucrats offset to some extent the relatively low salaries they received. The status of high level government bureaucrats is so ingrained in the psyche of South Asian intellectuals that even those who have migrated to the USA and have done very well for they refer nostalgically and enviously to those who have stayed behind and now occupy high government positions. In rural areas of Nepal parents still hope for their children to achieve the status of *hakim* (government official) and thereby bring prestige to the family.

Structural problems and tensions arise because many prominent INGOs though staffed by professionals of national origin have traditionally been headed by foreign professionals whose educational credentials do not match the comparatively high educational degrees of their counterparts in government circles. The lower educational attainment of INGO leaders is a significant shortcoming in the South Asian culture within which education is a strong determinant of status. Beyond social psychological resentment this might engender, this creates

structural issues. Within South Asian culture negotiations are presumed to be between equals. The social inequality between government bureaucrats and INGO leaders complicates interactions and negotiations.

The status of INGO staff has increased since the 1990s, and while this has solved issues of unequal statuses, it has threatened the status security of the still low paid government officials. A greater number of university graduates enter the private and nonprofit sector, and highly education professionals of national origin have gradually taken over the top INGO positions. The higher pay and now increasing relative social status of INGO professions and their increasing role as players in the service and development sector threaten the social status of government bureaucrats.

The Uses of Accountability in Contesting Legitimacy

Actors use accountability strategically in their conflicts with each other. There are good governance reasons for demanding the accountability of INGOs and NGOs, given their spectacular claims of having no self-interest but only the interest of the common good and given the large amounts of money they mediate in development and service sectors. Accountability is thus a powerful tool for assessing an INGO's or NGO's legitimacy and thus a powerful weapon for granting or withholding legitimacy. While states have the ethical high ground given the global consensus about the need for the accountability of putatively disinterested organizations handling a lot of money, they are not above using accountability procedures in their interactions and conflicts with INGOs and NGOs. Many organizations for their part resist the expansion of formal accounting as undo interference by states.²³

Paralleling the longitudinal study of national legal structures, it will be important to analyze the history of the demand for accountability. While the simple demand for accountability is imminently reasonable and thus not a puzzle, understanding its social and political construction is important. It also likely is an important context for interpreting patterns of change in national laws. Within a country, the accountability of INGOs and NGOs thus is a political process.

National laws and procedures since the early 1990s focus on the handling of money: from whom do NGOs receive money for what purpose and how is the money spent? These laws have been used to restrict and blacklist a large number of organizations. In India, for example, the Council for Advancement of People's Action and Rural Technology (CAPART), a semi-autonomous body under the aegis of Ministry of Rural Development, blacklisted 248 voluntary organizations to date and has placed several other organizations under financial restrictions.²⁴ The Public Action Committee of the Comptroller Auditor General of India submitted a report indicating lapses in administering grants by state agencies and NGOs.²⁵ The Ministry of Home Affairs has restricted receipt of foreign funds under the FCRA act of 1976 for 8,763 organizations in various states in India due to non-receipt of audited statement of accounts (as of October 26, 2005).

States since the 1990s increasingly attempt to hold NGOs accountable for practices in the field. They tend to focus on activities rather than outcomes because it is so difficult to assess program success, especially in development and service. They attempt to assess if an organization is doing what it is funded to do, whatever the success of those activities. This accounting relies heavily on the individual evaluator in the field. Individual evaluators might "look the other way" for a particular group whether because of bribes or solidarity with the local

group, and they might be overly strict enforcing the letter of the law to the point of guaranteeing noncompliance to other groups that are out of favor. State tensions with a particular NGO or with a type of organization or with the foreign source of their funds come into play, as does the competition among local groups.

Whatever the mechanism, patterns of blacklisted organizations are discernible and are shaped by factors such as religion, ethnicity, and language. In South Asia, for example, a larger proportion of humanitarian, relief, and development organizations are faith based. Some of the largest INGOs in Nepal and India are Christian and many INGOs and NGOs are Muslim. Both types of groups commonly are accused of using humanitarian aid and development projects to proselytize, especially the lower castes. Christian organizations throughout the world for decades made services a priority over proselytizing, claiming that they will “bear witness” or “share” only when those receiving the services ask. Many evangelical organizations get into trouble with their sponsoring churches (mostly in the USA) for elevating material needs over spiritual. At the same time, it makes them vulnerable to accusations of buying conversions. In India, Dalit conversions to Christianity, Islam, and Buddhism are taken as documentation of this strategy. These tensions are found locally and are mobilized nationally by religious leaders and political parties.²⁶ State officials, whether sensitive to popular opinion or acting more on their own tensions with such organizations, are not immune to using accounting practices for political ends.

Development INGOs and NGOs in general are more suspect than those in other sectors such as environment, health, and education. There are several likely reasons for this. For one thing, development organizations handle larger sums of money. For another, development organizations are involved in attaining goals that are the exclusive responsibility of states—nation-states are constituted by their mandate to attain societal goals, development being crucial.

It threatens the legitimacy of the state regime if not the state to have nongovernmental organizations, especially foreign ones or ones receiving foreign money, attaining these goals. Organizations in the education sector have the same potential competition, but they tend to support and advise the ministries of education and school systems or to work in areas of informal schooling that supplement not compete with public schools.

None of this analysis is meant to debunk the importance of accountability or to cultivate a cynicism about demands for it. Accountability is, nevertheless, part of the political process that encompasses the various actors at the interface of the global and local. Accountability taps into the identities and goals of the various actors, including states and their agents. We have noted just a few of the political factors involved.

Future Research on Law, Accountability, and INGOs

For organizations that have no authority to promulgate formal law and that directly command little political power or economic resources, it is important to understand the nature of their authority that enables them to interject themselves into power politics central to the mandate of the nation-state and to the structures of everyday life. The question of INGO authority gains even greater significance when we consider the extremely different types of INGOs: activists, mainline service organizations, and technical, professional standard-setters. INGO authority enables some to mobilize popular demonstrations and mass boycotts, enables others to mobilize resources of the middle class throughout the world for others throughout the world, and enables still other organizations to sit down with corporations and lawyers to work out standards to which states and businesses submit.

INGO authority is rooted in world cultural schema that enables them to claim that they have no self interest and have the sole purpose of the collective good, and those contesting INGOs focus on contesting their authority by debunking this claim. This is a rational-moral authority deriving in part from their voluntarism and demonstrated in the ethical and unbiased use of money and knowledge for the good of the targeted stakeholders. This is especially true for mainline service and developmental organizations that handle large amounts of money and that administer programs based on scientific research and technical knowledge. As INGOs have become more influential and development INGOs have been more open to taking on advocacy activities, the controversy over these claims has increased. Similarly, as the number of NGOs has burgeoned and the amount of service and develop money has increased the controversy over NGOs has increased.

We have in broad outline drawn attention to the need for research at several levels of this contested legitimacy. The proposition that cuts across these levels is that contesting INGO legitimacy takes the form of demanding and elaborating accountability. Demands for accountability are not reducible to this political process—there are good reasons independent of these conflicts for demanding accountability, but in practice accountability is implicated with the political process.

We have explored several levels of contested legitimacy that require further research. National laws have changed over time, from registration, to accounting of money, to stricter assessments of activities, linking the latter to national security interests. There is a need for broader longitudinal, cross-national analyses that relate changes in global discourse and in national legal contexts to changes in INGO/NGO influence, activities, and diffusion locally. Conflicts among actors at a meso-level are crucial for understanding the contesting of

INGO/NGO legitimacy. We have reported on very initial attempts to unpack the nature of the actors' interests and how legitimacy is contested. There is some support for our understanding of the nature of INGO/NGO authority because attempts to debunk that authority revolve around exposing self interest. Moreover, there is strong evidence that actors use global discourse and the legitimating nature of rational-voluntarism to attack INGOs and NGOs. Further work is necessary to understand how actors are shaped by and in turn shape global discourse.

Endnotes:

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Does the Involvement of Global Civil Society Make International Decision-Making More Democratic? The Case of the International Criminal Court

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ABSTRACT. The negotiation and contents of the Statute for an International Criminal Court were strongly influenced by global civil society actors. After examining definitions of global civil society, this article will consider whether and why such involvement of non-governmental actors in international negotiations should be considered desirable. In particular it will assess, in the light of the ICC negotiations, to what extent global civil society democratizes international decision-making processes, considering as elements of democracy: transparency, equality and deliberation, representation and participation. While concluding that this is only very partially the case, the final section will suggest that the tortured democracy question is not the only justification for global civil society involvement in international fora. It will discuss the much overlooked and by no means unproblematic “ethical contribution” of global civil society and offer a qualified defence of more international law, with more global civil society participation, on this basis.

KEYWORDS: democracy, global governance, civil society, international law

Introduction

The Rome Statute for an International Criminal Court, which was adopted on July 17, 1998, provides for the establishment, in The Hague, of an international court that can prosecute individuals, from common soldiers to heads of state, for genocide, war crimes and crimes against humanity. The Statute can be considered as a small revolution in international law and in the conduct of international relations, for two reasons. The first reason has been the main focus of attention in the writing of legal scholars, diplomats, activists and United Nations officials: the International Criminal Court will be an important step in the on-going transition towards an international legal order that is less based on state sovereignty, and more oriented towards the protection of all citizens of the world from abuse of power. The second reason is the process which led to the adoption of this Statute, in which global civil society had an input that was almost unprecedented in international treaty negotiations, eclipsed only by its contribution to the Landmines Ban Treaty, concluded six months earlier.

Civil society, let alone global civil society, is a confusing term. As even a brief glance at the literature would show, it has many meanings. There are as many definitions of civil society, and global civil society, as there are authors—in fact there are more.¹ Nevertheless, this term is used here, rather than other current ones such as global social movements,² advocacy networks in international politics,³ or global citizen action⁴ quite intentionally to characterise the ensemble of people and organizations described in this article.

The history of the term civil society is bound up with the notion of rules to protect citizens.⁵ While this was initially a nation-based ideal, the post-world war notion of universal human rights, coupled with a thickening network of international rules directly affecting citizens, has given birth to the utopia of a global rule-bound society. This history of humanitarian law and human rights law has been much more a product of the activities of people outside government than is commonly accepted.⁶ Hence, the idea of global civil society and humanitarian and human rights law are historically connected. This connection is of obvious relevance to the influence of civil society groups on the Statute for an International Criminal Court. Elsewhere I have described in great detail the groups and individuals involved in the negotiations.⁷ In short, these comprised individuals and groups including legal associations, human rights NGOs, women's rights activists, anti-abortionists, peace and conflict-resolution groups, religious organizations and associations generally interested in global governance.

What was Achieved

The first achievement of global civil society with respect to the Statute for an International Criminal Court, is that there should be such a Statute, and a Court, at all. The idea was first

invented in civil society, and was kept alive, developed and advocated in international legal associations for 125 years.⁸ Even a few years before the adoption of the Statute, CICC coordinator Bill Pace was told by a leading expert in international affairs to “keep working on this, but don’t get your hopes up too high for it isn’t going to happen in your lifetime, or your children’s lifetime, or your grandchildren’s lifetime.”⁹ Secretary-General Kofi Annan, too, emphasised in his ceremonial speech at the adoption of the Statute that it was “an achievement which, only a few years ago, nobody would have thought possible.”¹⁰

In terms of the content of the Statute, undoubtedly the most important achievement was the prosecutor’s authority to choose his own cases. By the admission of the key diplomats involved, this could not have been achieved without sustained and overwhelming NGO pressure. Beyond NGOs, the active involvement of the prosecutors of the Yugoslavia and Rwanda tribunals was another key factor in legitimising the idea of an independent prosecutor. Within a few years, global civil society succeeded, first, in persuading states that independent authority of the prosecutor was desirable, and second, in persuading them that it was achievable because they wanted it.¹¹

While the jurisdiction regime of the ICC is limited, the fact that states automatically accept the Court’s full jurisdiction for all the crimes in the Statute when they ratify it, is another achievement. It is a great advance over the “a la carte” jurisdiction regime originally proposed. Automatic jurisdiction was the consistent and unanimous position of civil society actors, and, like the prosecutor, gradually came to be accepted by states. The only provision that detracts from the achievement is a temporary loophole on war crimes, but so far this has only been taken advantage of by two states.

Largely due to the advocacy of a very large, active and expert civil society Gender Caucus, the Statute of the Court marks a great advance in the gender-sensitiveness of international law. In terms of crimes, it includes a comprehensive definition of gender-based war crimes and crimes against humanity, a gender dimension to the definition of slavery, and the inclusion of persecution on the basis of gender as a component of crimes against humanity. Other provisions include references to the gender balance and gender-specific expertise of the judges and other staff of the Court; a reference to gender in a general non-discrimination clause; and protection for and gender-sensitive treatment of victims and witnesses. On the other hand, partly due to pressure from “pro-family” groups, definitions of the term “gender” itself, and of “forced pregnancy” were forged in such a way that they should not be an obstacle to any state’s ratification of the Statute, regardless of its general gender policies.¹²

Intense pressure from civil society prevented war crimes committed in internal conflict situations from being excluded from the Statute. A special “Victims’ Rights Group” played an important role in forging rules that balance the need for fair and effective prosecutions against protection, sensitive treatment, and rights, of victims and witnesses. The “Child Rights Caucus” played a role in the criminalization of conscription of children under fifteen, a new element in humanitarian law.

Many state representatives in the ICC negotiations, including the successive chairs Bos and Kirsch, have remarked on, and praised, the strong involvement and indeed influence of global civil society in the process of negotiating the Statute for an International Criminal Court.¹³ Perhaps the strongest expression of this sentiment came from a diplomat who did not belong to the Like-Minded Group, Israeli Chief Counsel Alan Baker: “In all my years of international

work, I've never seen the NGOs play a more powerful role... They were in on nearly every meeting. They were in on everything."¹⁴

Why Let Global Civil Society In? The Democratic Deficit

As shown above, the influence of global civil society actors on the Statute is undeniable. But why should state representatives be so pleased to be sharing the stage with new actors whose mandate to be part of the negotiations is much less obvious than their own? Should we share their enthusiasm?

According to Adriaan Bos, the Dutch chair of the ICC negotiations until Rome, global civil society involvement "fills in gaps arising from a democratic deficit in the international decision-making process."¹⁵ Although international law-making has not traditionally been a democratic process, there is an increasing sense among national and international diplomats that, as more decisions have moved up to the international level, international decision-making, and international law-making in particular, ought to be (more) democratic.

This idea is related to a more general recognition by political thinkers that, while more states have been converted to parliamentary democracy, the onset of globalization has eroded the substance of democratic participation and choice.¹⁶ The enthusiasm for global civil society and the claim that it makes international decision-making "more democratic" should probably be seen in this context. But does it? This article will assess this claim with respect to the global civil society involvement in the ICC negotiations.

This requires, first of all, a brief enquiry into the meaning of democracy. Its Greek root means simply "rule by the people," but in its modern use, the term usually implies a system of governance whereby "the people" periodically elect representatives, whilst key civil and political

rights are observed. It is difficult to make a direct link between either of these meanings and the contribution of global civil society to international decision-making processes such as the ICC negotiations. In fact, Kenneth Anderson's strong objection to the idea of a global civil society is based precisely on what he believes to be a conflation between the role of elected representatives at the national level and NGOs at the global level. "But who elected the international NGOs?" he asks, and goes on to observe that most NGOs are 'not very often connected, in any direct way, to masses of "people."'17

This is true, but neither, many democratic theorists would point out, are political parties. Since the 1970s, there has been a severe drop in the number of party members, in the attendance at party conferences, and in voter turn-out in most established democracies. Like the electorate at large, democratic theorists became increasingly disillusioned with representative democracy, calling it "thin" or "procedural" democracy. While by and large continuing to advocate representation and civil and political rights as minimum conditions for democracy, they explored forms that would make citizens participate more actively in politics. They referred to such forms as strong,¹⁸ participatory¹⁹ and especially, as deliberative²⁰ democracy.

It is on such notions of democracy, rather than on classic representation, that the argument is built that global civil society democratizes international decision-making, or "global governance," as its proponents tend to call it. They agree that such processes are not democratic in their present form, but contend that global civil society participation makes them more so than they would otherwise be.²¹ Global civil society has been conceptualized as a "functional equivalent"²² or "alternative mechanism"²³ to the multi-party representational system, for democratizing global governance.

The next section will examine some of these supposed democratic functions of global civil society in the light of this study on the ICC Statute: contributions to transparency, equality and deliberation. The subsequent section will revisit the remaining problem areas, representation and participation, again in the light of the ICC negotiations, reassess to what extent global civil society does democratize international decision-making processes, and also make some recommendations regarding increased participation. The fourth section will suggest that the tortured democracy question is not the only justification for global civil society involvement in international fora. It will discuss the much overlooked and by no means unproblematic “ethical contribution” of global civil society and offer a qualified defence of more international law, with more global civil society participation, on this basis.

Democratizing Contributions

Transparency or openness is a necessary condition of all forms of democracy. Whether in direct or representative democracy, the process of deliberation and the eventual vote must take place openly. Even in experimental forms of democratic procedure that eschew the vote, public discussion is highly valued. Karl Popper considered “openness” the prime instrument to keep any form of government from usurping too much power.²⁴ More recently, Gutmann and Thompson²⁵ have drawn on such different philosophers as Jeremy Bentham and Immanuel Kant to construct publicity as a necessary condition for deliberative democracy, while also insisting (in line with human rights law) that certain forms of regulated secrecy are necessary in a democratic society.

Yet in international negotiations, secrecy has traditionally been the norm. All that became available to the public was the final product—sometimes, there were also secret treaties such as the infamous Molotov-Von Ribbentrop pact. This changed somewhat with the advent of

superpower summits and international UN conferences after the Second World War. Now, citizens would be informed via the media that negotiations were proceeding, politicians might make statements and journalists would speculate about the outcome.

Nonetheless, the substance of the negotiations would still take place behind closed doors. Global civil society coalitions have really changed this, and the Coalition for an International Criminal Court (CICC) is a prime example. Its working methods included forming twelve shadow teams to monitor negotiations on different parts of the Statute, debriefing friendly state delegates after closed meetings, and keeping “virtual vote” tallies on crucial issues. These mechanisms made official decision-making process more transparent: for its members, for journalists, and, through them, for a wider interested audience and even for state delegates. The entire texts of interim proposals, with an analysis, were reprinted in one of the special conference newspapers. Information was also sent to thousands of national activists and interested observers, by the Coalition itself, by some of its member NGOs, and by the press teams of two special news bulletins devoted to the conference’s proceedings.²⁶ The CICC took the potential for making international negotiations transparent to its limits, and in turn used this publicity as leverage on states: “Show the governments in Rome that the world is watching,” wrote Rik Panganiban, editor of the Coalition’s publication, four weeks into the Rome conference, “Email to us in Rome your messages for your government or for all governments, and we will try to publish as many as we can in the CICC Monitor.”²⁷

The fact that the final conference took place at a UN building in Rome with which most delegates were unfamiliar, the building of the Food and Agricultural Organization, contributed to this transparency, making it very difficult for them to slink off into remote rooms for secret meetings.²⁸

More importantly perhaps, many state representatives found these channels of publicity useful, to state their position or vent their frustration with other states or with the process of negotiation, in particular when they believed that public opinion might be on their side. An article in *On the Record*, for instance, records in detail on the proceedings of a closed meeting, where “according to one report,” twenty-seven of the twenty-nine delegates objected to the British chair’s proposal, “a growing number of delegates” felt that Britain was a stalking horse for the US, and one “Scandinavian delegate” is directly quoted venting frustration with the British position.²⁹ As the conference wore on, state delegates began to complain in the media about the lack of transparency of the process itself.³⁰ This is an interesting development, because state delegates thus addressed the interested wider public with an appeal to a norm of transparency which has no tradition in international negotiations.

Moreover, there seems to be a relation between the extent of transparency of negotiations and their final outcome. In the two instances in which final decisions were made in great secrecy, the outcomes were unsatisfactory to civil society actors: this applies to the jurisdiction regime as well as the omission of an explicit reference to biological weapons.³¹

The first of these cases is particularly interesting, because it is one of the very few instances in the ICC negotiations where the express preferences of the majority of states were overridden in favor of the preferences of a very few “powerful” states. The few Like-Minded states who were in on this secretive negotiation process chose not to go the route of publicity and appeal to public opinion, and suffered defeat. After the fact, a German delegate did write an article exposing exactly what had happened and defending his government’s record to the readers of the *European Journal of Crime, Criminal Law and Criminal Justice*.³²

Before and after the five frenetic weeks of the Rome conference, the public education aspect played a larger role than publicising the exact proceedings in the negotiations: explaining plainly in local languages what the International Criminal Court was, and why it should matter, for the benefit of a wider audience. In this respect, the ICC case typifies a more general strength of global civil society: with respect to rather esoteric topics like global warming, third world debt, or intellectual property rights, it opens up more general debates, in which active citizens can inform themselves and take part.

Like in national democracies, certain discussions and negotiations will continue to take place behind closed doors, but global civil society has been shown to play an important role in shifting the balance much further towards openness as the default setting in international negotiations.

Levelling the Playing Field

Another key condition of democracy, representative or deliberative, is equality. According to David Beetham, “a system of collective decision-making can be said to be democratic to the extent that it is subject to control by all members of the relevant association, or all those under its authority, considered as equals.”³³ Formally, there is such equality between the members of the association called the United Nations, at least in its General Assembly and Economic and Social Council if not in the Security Council. The ICC negotiations followed the General Assembly model in this respect: all states had an equal right to speak, and an equal vote. However, in practice some states are of course more equal than others. This is not just a question of perceived power, but also of capacity to be involved in multiple complex negotiations. Regardless whether one believes that citizens should somehow be able to have a direct involvement in global

processed that affect them, levelling the playing field between the formally equal players, the states, would contribute to democratizing international decision-making. Global civil society does at times play such a role. Most eye-catching has probably been the expert advice, and publicity, given to developing countries in the negotiations of the World Trade Organization in recent years.³⁴

In the ICC negotiations, civil society made various contributions to empowering smaller and poorer states in the process, and giving them a more equal footing with traditionally powerful states. The documents produced by individuals and NGOs helped to educate them with respect to the issues involved. The provision of interns and legal experts swelled their delegations in quality and quantity. The monitoring, by the NGOs, of both public and, as far as possible, secret, negotiations, both in terms of the substance of the debate and the numbers in favor of certain positions, made the process more transparent and easier to follow for such states.

But its method of recording the “virtual vote,”³⁵ was perhaps the most important, as it focused attention on absolute numbers of states in favor of particular positions. Without this effort, the fact that, for instance, more than eighty percent of the states favored an independent prosecutor would simply have gone unrecorded. Now, it became a topic of debate and a counterweight to the inevitable spotlight on the position of “important” states such as the five permanent members of the Security Council. Thus, the formal equality of states was given a little more substance by at least polling and publicising each state’s views, in circumstances where actual voting was avoided except at the very end.

The idea of deliberative democracy is that proposals can be debated on their merits through rational arguments rather than solely on the basis of representation of interests. This

aspect of democracy is therefore related to the ethical contribution discussed below. There are two components to this question: whether global civil society made the official state debates more deliberative and less focused on narrow interests, and whether there was a form of deliberative decision-making going on within global civil society. On the first count, the answer is clearly “yes.” As discussed in chapter two, numerous conferences, seminars and unofficial retreats were organised, not just all over Europe, but in Trinidad, in India, in Sierra Leone, in South Africa etc. There is no doubt that the numerous conferences and seminars, the Sicilian retreats, academic articles, and NGO position papers contributed to a global, albeit specialist, debate on the merits of the international criminal court, which informed and influenced the ultimate decision-making by state delegates.

Moreover, deliberative democracy entails giving and demanding reasons for each position, reasons that would at least theoretically be capable of swaying other participants in the debate. It also means participants should to some extent be prepared to be swayed by arguments that appear “reasonable.” This disposition on the part of states, fostered by the constant discussions with civil society representatives, clearly played a role in the negotiations over the independent prosecutor. When states expressed reasonable fears that the independent prosecutor could be overzealous if unrestrained, a reasonable proposal was made that all prosecutions should be subject to the permission of a pre-trial chamber. When states expressed reasonable concern that the Security Council’s mandate on peace and security would be hindered by prosecutions that might, for instance, upset peace negotiations, a reasonable proposal was made to give the Security Council an “inverted veto.” In the atmosphere created among other things by the presence of the former prosecutors Goldstone and Arbour, assertions of naked interest seemed simply inappropriate, and the United States in particular did make every effort to argue

its position. The “reasonable solutions” to meet ostensible objections therefore made it difficult to continue to object to the independent prosecutor—and in fact the US has based subsequent objections to the Court on the jurisdiction regime, not the prosecutor.

On the second count, of internal deliberation, there is rather more doubt. The NGO Coalition for an ICC was inclusive and tolerant in principle and in practice. A very wide range of groups who supported the broad goal of a “just, effective and independent court” joined the Coalition. This included even the small minority of “family-oriented” groups who were opposed to the aims of the Women’s Caucus, unless it became clear that they were generally hostile to the idea of a strong Court. They were met with irritation by most NGOs and many state delegates, but tolerated, accredited, and given access to the same facilities as others.³⁶

However, it must also be said that the Coalition did not favor extensive internal deliberation. As Burroughs and Cabasso write,

There was no thorough debate, still less any formal collective decision-making, among all participating NGOs. Partly this was for practical reasons, because of the number of NGOs, the cumbersome internal decision-making procedures of some NGOs, and the onslaught of events, and partly because it was deemed too divisive to get into controversial matters.³⁷ Partly, too, the NGO Coalition lacked the kind of culture of consensus reflecting commitments to social transformation, non-violence, and representation of popular demands.

The Coalition emphasised pluralism rather than internal democracy and chose to take few common positions. The Steering Committee, and the Coordinator in particular, had good reasons for such an approach, having “experienced the break-downs and break-ups of NGO steering committees” all too often, and it was a matter of “amazing grace” that this Coalition survived such pressures.³⁸ However, the few common positions taken, and even informal understandings about the priorities, were crucial, as leading state delegates often channelled their consultation with NGOs through the Coalition.³⁹

These positions, or non-positions, did not come about through genuine deliberation among all or most members of the Coalition, and it must be said that, in terms of internal deliberative democracy, the Coalition was wanting. Unlike Burroughs and Cabasso, I would argue this was not caused by a lack of a “culture of consensus,” but, on the contrary by an unspoken assumption that there was, and ought to be, a consensus.

There certainly appears to have been such an assumption on the part of some government officials. As the Dutch chair put it: “I was delighted with the way the Coalition succeeded in making all the NGO interests into a coherent unity, as I saw the importance of involving them, but I could not consult with every individual NGO.”⁴⁰ In its recent report, the Panel of Eminent Persons on United Nations-Civil Society Relations, expresses a similar desire for neat amalgamation of civil society views through “disciplined networking and peer review processes of the constituencies.”⁴¹

Alison Van Rooy goes even further in her recent book, suggesting—although not ultimately defending—the idea that a united front not only makes civil society campaigning more effective, but that a lack of it detracts from the moral authority of civil society: “[t]he rule here suggests that if activists cannot agree on a united position, there are fewer reasons to listen to what they have to say.”⁴²

But is such unity really the most desirable in terms of fostering deliberation? As Iris Marion Young puts it, deliberative democracy should not be “a comfortable place of conversation among those who share language, assumptions, and ways of looking at issues.”⁴³ On the contrary, “[c]onfrontation with different perspectives, interests, and cultural meanings teaches individuals the partiality of their own, and reveals to them their own experience as perspectival” and “[w]hile not abandoning their own perspectives, people who listen across

differences come to understand something about the ways that proposals and policies affect others differently situated.”⁴⁴

While precisely playing that role of bringing the experience of “others” to the attention of state representatives, the CICC did perhaps too much resemble a “comfortable place of conversation,” and fell into the trap of providing a convenient single “civil society perspective” to the UN and state officials, instead of reflecting a sometimes confusing, sometimes confrontational plurality of voices. While in the case of the ICC this does not seem to have detracted at all from its effectiveness, such lack of space and time for open and free deliberation can have consequences for the legitimacy as well as the creativity of global civil society, and hence for its influence, in the long term.

On the other hand, the confrontation between the women’s groups and pro-family groups over “forced pregnancy”⁴⁵ does not meet the requirements of “deliberative democracy” either, as listening to one another, and engaging in a rational set of arguments and counter-arguments, is also one of the characteristics of the idea of deliberation, and there was certainly no such listening process between these two types of groups. Nonetheless, one could argue that the presence of both perspectives contributed to the deliberative process of the negotiations as a whole. Certainly the resolution of the fraught issues of forced pregnancy and the definition of gender can be considered as school-book examples of a beneficial compromise outcome of a deliberative process.⁴⁶

If the UN is serious about the role of global civil society as fostering real deliberative processes, it should actively look for a *plurality* of civil society views, including starkly opposing ones, instead of trying to weed out such controversy before allowing civil society entry into its chambers. The ICC case has shown that networks are a powerful tool in strengthening the

potential influence of global civil society on state negotiations. However, it has also shown that they have a tendency to homogenize views, neglect minority views and of course exclude views that oppose their founding mission. Therefore, a heavy focus on networks is not conducive to the role of global civil society as fostering reasoned debate between different views.

This section has shown that global civil society can, as it has in the case of the ICC, contribute to the transparency of international negotiation processes, to greater equality of the participant states, and to deliberative debate. But is this enough to conclude that global civil society democratizes processes of international decision-making? The next section examines two further key areas that are considerably more problematic: representation and participation.

Voice not Vote: Representation and Participation

Representative democracy was invented because the decision-making constituencies, the *demos*, of nation-states were too large and too dispersed to allow every individual to take part in debates and voting. It is therefore natural that, when thinking about the possibility of a global democracy, or democratizing existing global institutions, representative mechanisms of democracy spring to mind. Some would argue that the United Nations General Assembly already functions as such: now that three quarters of the world's states are at least formally democratic, one could argue that citizens elect their governments, and the governments represent them in the United Nations.

However, there are various problems with this line of thinking: governments, unlike parliaments, are only formed out of the winning party or parties. The General Assembly is therefore not comparable to national parliaments, because only the national "winners" are represented. Moreover, complex international issues are not usually an important element in election campaigns. The ICC was not a major issue in any national election campaign. The fact

that it even appeared in the Labour party manifesto of the United Kingdom in 1997 was an anomaly. We still elect national governments primarily to govern us, not to represent us at the international level. So, as is often remarked, the United Nations do not, in fact, represent “We the people,” but “We the governments.”

So, can global civil society represent “We the peoples” instead? The Panel on UN Civil Society Relations certainly seems to suggest this by calling its report “We the Peoples: the United Nations, Civil Society and Global Governance.”⁴⁷ But how does this representation work? Some organizations have a mass membership. Amnesty International is considered a very large NGO, with more than 1.8 million members from 150 countries,⁴⁸ but this is nothing compared to the 148 million combined membership of the ICFTU family of trade unions.⁴⁹ Other influential organizations such as Greenpeace, Oxfam or the World Wide Fund for Nature do not have members, just financial “supporters”—although Greenpeace does claim to speak for its 2.8 million supporters.⁵⁰ As Van Rooy has pointed out, the geographical spread and depth of commitment of members differ vastly between organizations, as do procedures for internal democracy.⁵¹ There are also very small organizations, and in the negotiations on the International Criminal Court as elsewhere, there were many civil society actors who did not claim to represent anyone but themselves.

It becomes obvious very quickly that conceptualizing global civil society as a global equivalent of political parties, organising the global electorate into voting blocks whom they represent in international negotiations, is inaccurate and misleading. Having a large membership base may be a source of legitimacy and influence to particular organizations, but democratic representation in the traditional sense cannot be considered a functioning attribute of global civil society.

But are there other forms of representation? And who or what ought to be represented? David Held uses the phrase “overlapping communities of fate” to express the fact that those who are affected by certain decisions are, due to globalization, no longer always found neatly in a single political entity, controlled by a democratic process.⁵² Global civil society can sometimes be a solution to such situations where the decision-making is not where the voting is, through an informal form of representation. One could argue, for instance, that global civil society represented people in developing countries living with HIV/AIDS in its advocacy on the production of generic drugs surrounding the WTO negotiations on intellectual property. In the absence of any other form of representation, this may be helpful to those affected, and can certainly be argued to have been helpful in the example given.

But the fact that there is no agreed form for consulting those who are supposedly represented remains problematic. In the case of the Narmada dam, for instance, it has been argued that there was representation at the international level of those Indian villagers who opposed the dam, but no such representation of those who would benefit from it. But who would constitute the “community of fate” for the ICC negotiations? Who is affected, and should therefore be represented? Negotiation of such general rules of international law may affect all our futures, but it is impossible to pinpoint in advance exactly who will be affected, and how. Representation should therefore be conceptualized in a very different way in these situations. Global civil society can still make claims “on behalf of,” but claims on behalf of future victims of human rights violations, on behalf of the environment, or on behalf of the unborn child, have little or nothing to do with a parliamentarian’s work on behalf of his constituency. On the one hand, consultation mechanisms are not a necessary part of such claims. On the other hand, no formal voting rights can or should be based on it. Global civil society is

not, and should not be, seen as a kind of global parliament. Or as Mike Edwards puts it, civil society is “a voice not a vote.”⁵³

Another way of conceptualizing this is to say that participation, not representation, is the point of global civil society. As the Panel on UN Civil Society Relations puts it: “citizens increasingly act politically by participating directly, through civil society mechanisms, in policy debates that particularly interest them. This constitutes a broadening from representative to participatory democracy.”⁵⁴ But whose voices are, and should be, heard under the banner of global civil society? Who gets to participate?

Some actors, it should be said, do not wish to participate, or at least not on the invitation and according to the rules of the decision-makers. As Iris Marion Young puts it, they typically “make public noise outside while deliberation is supposedly taking place on the inside,” although sometimes they “invade the houses of deliberation and disrupt their business.”⁵⁵ The ICC negotiations saw a few such global civil society actors, such as the anti-capitalist Zapatista solidarity group Ya Basta, which demanded the indictment of Mexican president Zedillo,⁵⁶ and the Mothers of the Plaza de Mayo, who disrupted the speech of the Argentine Justice Minister.⁵⁷

In fact the differences between the Madres de la Plaza de Mayo and the Abuelas (grandmothers) de la Plaza de Mayo, both present at the ICC negotiations in Rome, typify the differences between “outsider” and “insider” activism. The Abuelas go through the courts in their efforts to find the children of their disappeared children and see the perpetrators punished. Through their efforts, Argentinean junta leader Jorge Videla was re-imprisoned in 1997.⁵⁸ Their president, Estela Barnes de Carlotto, came to the ICC negotiation in order to have forced disappearances included in the Statute as a crime against humanity.⁵⁹ The Madres “think that accepting financial compensation and exhumation of bodies are a ‘betrayal’ for their children—

because this, in a legal sense, stops what had been an ongoing crime.”⁶⁰ While there was some debate in the ICC negotiations on recognising past disappearances as an ongoing crime, the Madres did not have any faith in the negotiations and preferred to disrupt them instead.

But as Young points out, such outsiders do in fact “aim to communicate specific ideas to a wide public.”⁶¹ In this particular case, they attracted media attention to what they considered as the inadequacy of the ICC negotiations, which accepted the participation of the—in their eyes illegitimate—Argentinean and Mexican governments, and would not consider past disappearances as part of its agenda. One could argue that such actors do in fact participate in the process, if only from the outside and on their own terms.

Another group that was largely absent from the civil society scene were those conservatives or sovereignists who are sceptical and suspicious of international institutions such as the International Criminal Court. Undoubtedly, there is also such a constituency in civil society, in the United States but also elsewhere. But it did not mobilize to prevent the establishment of the Court—or rather it did not do so at the site of negotiations. The only manifestation of such groups was in relation to “gender clauses,” but it is clear from the documents, websites and newsletters of these groups that their misgivings about the Court went beyond gender alone. The subsequent “war on the Court” by the Bush administration, which also formed part of the 2004 re-election campaign, has made it clear that such views are not irrelevant, however.

The United Nations and the civil society groups themselves should not attempt to exclude such “nasty views” from their deliberations. On the contrary, procedures to invite and manage different and even opposing perspectives should be improved. This is a requirement for having serious deliberation, it is necessary in order to more closely approach the ideal of free and equal

participation, and finally it should in fact be considered as a victory for the United Nations and for multilateralism if such groups do devote energy to participating in its debates, rather than fighting the organization from the outside.

Thus far, I have discussed groups and individuals who were either just outside the gates, or entirely absent, by choice. But what of those who cannot participate? There was one indication—although accounts differ—that an NGO briefing involving a Chinese pediatrician and the French parents of two child AIDS victims was blocked by China and France.⁶² Such deliberate blockings, which were particularly characteristic of the 1995 Beijing Conference on Women, have become rarer, as the furore they cause tends to result in negative publicity for the state, and more publicity for the civil society organization and its cause than they might otherwise receive. Nonetheless, states still have the power to block accreditation to the UN's Economic and Social Council. During the Cold War, states would routinely deny accreditation to organizations they labelled either "communist" or "imperialist." While such practices receded in the 1990s, today there is a new label: "terrorist." Giving the accreditation process over to one of the civil society actors themselves, as was done in the ICC case, is not the solution. But neither is leaving it in the hands of states conducive to wide participation. The recommendation of the UN Panel, to give the UN secretariat a greater role in deciding on accreditation, is to be welcomed, although it is on the conservative side, still allowing for state vetoes, although not by a single state.

Beyond deliberate obstruction by states, there is a wider problem with participation. The UN Panel describes participatory democracy as a process in which "anyone can enter the debates that most interest them, through advocacy, protest, and in other ways."⁶³ But a few pages later it acknowledges that there are practical constraints: "if the United Nations brought everyone

relevant into each debate, it would have endless meetings without conclusion.”⁶⁴ As Ricardo Blaug puts it wryly, “Whether due to there being simply too many of us, to the excessive complexity and interdependence of the problems we face, to a perceived inefficiency of deliberation, or to a perceived lack of ability and motivation on the part of the *demos*, democratic theorists since Plato have taught us that the people, while being sovereign, require structures that limit their participation.”⁶⁵

Not only is participation limited, it is typically limited in ways that confirm existing power imbalances: “under conditions of structural inequality, normal processes of deliberation often in practice restrict access to agents with greater resources, knowledge, or connections to those with greater control over the forum.”⁶⁶ Even at the very local level, Young sums up a number of barriers to participation by “anyone with an interest:” “Even when a series of public hearings are announced for an issue, people who might wish to speak at them need to know about them, be able to arrange their work and child care schedule to be able to attend, be able to get to them, and have enough understanding of the hearing process to participate. Each of these abilities is unevenly present among members of a society.”⁶⁷ These constraints are of course multiplied at the global level.

Discussions of these inequalities often focus rather crudely on geographical representation. What is interesting about the ICC negotiations is that in terms of this issue of “Southern participation,” global civil society performed rather well. There were substantial numbers of African and Latin American groups, although fewer Asian ones and very few from the Middle East. Various “causes” or “issue areas,” sometimes at odds with each other, were represented, although human rights concerns dominated.⁶⁸

However, in other ways the group of global civil society participants was very homogeneous. Almost without exception, they belonged to an English-speaking, university-educated, computer-literate middle class. Perhaps this is inevitable. To a lesser extent, this is also true of national parliamentarians. But it does not reflect the diversity of the world population, nor does it necessarily reflect the profile of future victims of war crimes, crimes against humanity or genocide.

In fact, there appear to have been surprisingly few victims of past human rights violations involved in the negotiations. Barnes de Carlotto, the Abuela described above, was one of them, as was Raquel Edralin-Tigalo, an anti-torture activist from the Philippines who had herself been subject to torture.⁶⁹ Another participant with personal knowledge of one of the issues at stake was Robert Green, a former naval commander who had flown anti-submarine helicopters which carried nuclear weapons, and who had later become an anti-nuclear activist.⁷⁰ Others had worked closely with victims, but most of the legal experts present at the negotiations had primarily theoretical knowledge of the crimes at stake. It is of course not necessary to have suffered human rights violations, or to have insider knowledge of nuclear devastation, to have a viewpoint about the ICC, based for instance on legal expertise or on moral conviction. But if participation in global processes is necessarily selective on practical grounds, then a particular effort should be made, particularly within global civil society, but also by global institutions, to include the voices of “experiential experts:” on human rights violations, on HIV/AIDS, or on child soldiers, and not just technical ones. In other fora, such as trade negotiations, non-governmental organizations and networks have engaged in “accompaniment,” for instance of small farmers who would be affected by the negotiations.⁷¹ Such practices could aid inclusion of “experiential

experts,” provided they offer real participation, and not a symbolic trotting out of “the victim” to support the NGO’s already formed position.

This section has argued that the idea of “participation” as an alternative to representation is limited by exclusion. There are those who exclude themselves, those who are deliberately excluded by states, but the most intractable form of exclusion is that by class, means, education and information. Global institutions and global civil society should be able to do more to include the voices of poorer, less educated people with a clear stake in the negotiations than it did in the ICC case, but in the world as it is, it is very doubtful that such inclusion can ever be much more than symbolic.

Conclusion

On the basis of the ICC case, it can be argued that global civil society greatly contributed to strengthening certain features commonly associated with democratic procedure, in particular transparency, equality and deliberation. Global civil society should not be seen as offering a form of representation of the global *demos*, however, or at least not representation in its traditional form. It could be conceptualized as a form of participation, but in practice this participation is so limited and so uneven that global civil society cannot entirely be considered an adequate “functional equivalent” or “alternative mechanism” to parliamentary democracy, operating at the global level.

Global civil society in its present form cannot be considered a satisfactory substitute for democracy, and there is no reason to believe it will make great strides in that direction. It does contribute to making international decision-making processes more democratic than they were before, but a democratic deficit remains. However, it can be argued that another contribution is

made by global civil society to international decision-making processes, which has received much less attention than the democratizing aspect: that of moral values.

The hundreds of groups and individuals who engaged in the International Criminal Court negotiations, whether they were criminal law experts, pro-family groups or world federalists, all became involved because of their belief in, or concerns about, a particular kind of Court. For some, such as the law students of ELSA, career considerations may have played something of a role. For some NGO professionals, it was “their job” to be there. But their involvement went far beyond that of an ordinary job. Often, they had had to convince their own organizations of the importance of being there. The overriding motivation for being involved was based on ethical convictions.

But what of the state representatives, do they have ethical convictions? There are two classic theories in international relations on foreign policy and ethics. The first, and certainly the most influential until the 1990s, is realism. Based on a particular reading of Machiavelli, or alternatively a transposition of Hobbes’ “war of every man against every man” theory to the international plane,⁷² it teaches that international relations are an anarchical sphere, where each state pursues its national interest and there is no place for ethics. Liberal or idealist theory on the contrary teaches that there is a “society of states,” where rules in the common interest of mankind are constructed, and for the most part, obeyed.⁷³ According to the latter theory, there is a space for “ethics,” or enlightened self-interest, in foreign policy. It also gives more space to the conceptualization of intergovernmental organizations, and sometimes even civil society groups, as independent actors. But neither theory really understands the diplomats themselves as social actors subject to environmental influences (the social constructivist school does).⁷⁴ Whether it is “national interest” or a more cooperative stance, the policies of states are conceptualized as holy

writ, handed down from black-box foreign ministries. State representatives are not to have convictions, ethical or otherwise.

In reality, state representatives do, of course, have value dispositions of their own. Many of the diplomats of the influential Like-Minded Group were ardent supporters of the Court, not just professionally but also personally. Their prolific writing on the ICC⁷⁵ attests to this, as does the fact that four have since been elected as judges to the Court, and others now work in the Prosecutor's Office.⁷⁶

Nor are state positions on something like the International Criminal Court arrived at in isolation from those who negotiate on them. They are gradually formed, informed by inside expertise and outside information, and constantly re-adjusted. The atmosphere of the negotiations can influence the substance of the positions. As discussed above, global civil society transformed that atmosphere in terms of transparency and deliberation. But another aspect of the sustained presence of civil society actors was that they constantly invoked ethical considerations, claims about the needs of humankind. In Rome, their numbers swelled to approximately 450 people, collectively by far the largest delegation at the Rome conference.⁷⁷

International relations theories like realism and idealism do not just seek to explain state behavior—or as I would rather put it, the behavior of state representatives—they also end up informing such behavior. In domestic politics, it is not ethically acceptable for politicians to defend policies simply as being in the self-interest of a particular group: “this policy is good for the small businessmen, or for the Catholic minority, who vote for me.” They need to present such policies as being for the common good: “small businesses will kick-start the national economy,” “Catholic emancipation will make our society more equitable.” The dominance of realist theory made any such arguments for the general interest unnecessary in the international

sphere—it even characterized them as foolish. It legitimized the invocation of a (flexibly definable) “national interest” by diplomats as the sole motivation for this or that position.

Global civil society actors present themselves precisely as the champion of values beyond state interests, working towards a global common good. Having a majority of such actors around is like being accompanied to a brothel by a delegation of priests. Even without any formal status, they constrain behavior and change the terms of debate. Forthright statements that “this is not in our nation’s interest” can still be heard in international negotiations, but they jar in an environment where appeals to reason and to universal justice are increasingly common currency. States are therefore more motivated to frame their proposals in terms of appropriateness and justice in the presence of civil society actors. In some cases, state representatives themselves completely took over the moral high ground that usually belongs to civil society actors: the passionate appeals of Bosnian and Burundi delegates for various forms of gender justice, based on experiences in their own countries, in every way resembled activist advocacy.

If it is accepted that global civil society moves states towards appreciating, or at least appearing to appreciate, “ethical” or “common good” arguments over national interest arguments in international negotiations, the question remains which ethical projects make it to those fora, and get taken up. In the ICC negotiations, while there was some open (women verses pro-family groups) as well as some muted contestation (around weapons of mass destruction), there was clearly a dominant civil society project: to prise away from the exclusive domain of states the power to punish perpetrators of genocide, war crimes, and crimes against humanity. Those who do not like the project, will point to the democratic deficit of global civil society: the lack of representation and limits to participation. They are likely to point back to national democracy as the solution.

The existence of a democratic deficit at the global level, and the fact that global civil society cannot entirely fill it, should not be denied. But the number of victims made by human rights violating states in the last century is staggering. Some of these governments were flawed democracies, too. This is why it is worth giving up some national democratic supremacy in exchange for international law, firstly to frame norms on human rights, disarmament and the environment, and secondly to actually enforce them. And global civil society should be there to help make these laws and get them enforced, to strengthen transparency, equality, and deliberation in international decision-making processes, and to help inch states from narrow interests to global common interests. Those who think that this is not in fact in the interest of humanity, should come and join the debate with their own ethical project—become part of global civil society.

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Civil Society, the World Social Forum, and the Crisis of the Globalist Project—A Commentary

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In my comment, I will address the topic of civil society and the crisis of corporate-driven globalization and its key institutions.

Crisis of Multilateralism

Let me speak from personal experience. Ten years ago, in 1996, I attended the World Trade Organization's first ministerial meeting in Singapore as an NGO observer. There was an air of triumphalism, a sense among government delegates that corporate-driven globalization was the wave of the future. The newly established WTO was toasted as the "jewel in the crown of multilateralism," as one director general of the organization was later to put it,¹ and at the meeting, the officials of the WTO, International Monetary Fund, and the World Bank saw the remaining major task of global governance as the achievement of "coherence," that is, the coordination of the neoliberal policies of the three institutions in order to ensure the smooth technocratic management of the global economy. Those of us who dissented from this view of the future were definitely a minority at the conference. We were the token Luddites who had been allowed to crash the party so we could have a glimpse of the future.

Ten years later, just last month in fact, the World Bank and the IMF held their annual meeting in Singapore behind the heavy protective shield of the Singaporean government. The two institutions had chosen Singapore because they wanted to make sure there would be no protesters in the streets, and if there was anyone in the world that could ensure that, it was the Singaporean state. Twenty eight of us were banned from entering the country on various

pretexts. In my case, the government said that the reasons for keeping me out were that I had led protests against the WTO, that I had spearheaded the seizure of embassies and consulates, and that I had broken into the World Bank to steal documents. These were all peaceful activities to which I plead guilty, but my point here is that the crisis of legitimacy that has overtaken the two institutions is so profound that they had to hold their annual conference under armed guard! Seemingly triumphant a decade ago, corporate-driven globalization is now in very deep crisis. What are the indicators of this crisis?

Well, first of all, as noted above, the loss of legitimacy of the key multilateral institutions that serve as the political canopy of corporate-driven globalization. Sebastian Mallaby, the influential pro-globalization commentator of the *Washington Post*, writes the globalist project is in trouble because “trade liberalization has stalled, aid is less coherent than it should be, and the next financial conflagration will be managed by an injured fireman.”²

In fact, the situation is worse than he describes. The International Monetary Fund (IMF) is practically defunct. Knowing how the Fund precipitated and worsened the Asian financial crisis, more and more of the advanced developing countries are refusing to borrow from it or are paying ahead of schedule, with some declaring their intention never to borrow again. These include Thailand, Indonesia, Brazil, and Argentina. Since the Fund’s budget greatly depends on debt repayments from these big borrowers, this boycott is translating into a budget crisis. The upshot of these developments is that payments of charges and interests, according to Fund projections, will be cut by more than half, from \$3.19 billion in 2005 to \$1.39 billion in 2006 and again by half, to \$635 million in 2009. These reductions have created what Ngaire Woods, an Oxford University specialist on the Fund, describes as “a huge squeeze on the budget of the organization.”³

The World Bank may seem to be in better health than the Fund, but, having been central to the debacle of structural adjustment policies that left most developing and transitional economies that implemented them in greater poverty, with greater inequality, and in a state of stagnation, the Bank is also suffering a crisis of legitimacy. Robin Broad, one of the leading experts on the Bank, claims, in fact, that the crisis of the Bank is really more profound than that of the Fund, but that, unlike the IMF, the Bank has a well-oiled PR machine that transmogrifies questionable research into sound-bite friendly factoids.⁴ But even so, the Bank now finds that more and more governments are reluctant to borrow heavily from it. Since the Bank, like the Fund, is mainly supported from debt repayments, this is, as Woods points out, leading to a budget crisis as well.

But perhaps the crisis of legitimacy is most acute at the World Trade Organization, where the Doha Round of global negotiations for more trade liberalization unraveled abruptly last July, when the talks among the so-called Group of Six collapsed in acrimony. A key reason for this is that developing country governments, under pressure from their citizenries, no longer want to open their agricultural markets to dumped goods from the European Union and the United States and to allow their manufacturing industries and services to be bankrupted or taken over by transnational corporations. The pro-free trade American economist Fred Bergsten once compared trade liberalization and the WTO to a bicycle: they collapse when they are not moving forward. That point of collapse may be nearer than it seems.

Dimensions of the Crisis of Globalization

But the crisis of the multilateral system of world economic governance is but the most noticeable sign of the crisis of the globalist project. There are other, deeper indicators. A decade ago, the

writings of the globalists celebrated the emergence of a functionally integrated global economy, the so-called borderless world. Ten years later, despite runaway shops and outsourcing, what passes for an international economy is still a collection of national economies—interdependent no doubt, but economies whose dynamics are still largely determined by internal factors.

Ten years ago, we were told that state policies no longer mattered and that soon, corporations would dwarf states. In fact, states still do matter. The European Union, the United States government, and the Chinese state are today stronger than they were a decade ago as economic actors. Moreover, state policies, such as industrial policy and trade policy—that is, interfering with the market in order to build up industrial structures or promote welfare policies—still make a difference. Indeed, over the last ten years interventionist government policies have spelled the difference between development and underdevelopment, prosperity and poverty. Malaysia's imposition of capital controls during the Asian financial crisis in 1997-98 prevented it from unraveling like Thailand or Indonesia. It was also strict capital controls that insulated China from the economic collapse engulfing its neighbors.

A decade ago, we expected the emergence of a transnational capitalist elite that would manage the world economy. Indeed, this was a project of Bill Clinton and his Secretary of the Treasury Robert Rubin. The adoption of a strong dollar policy in the mid-nineties that would assist the recovery of the Japanese and German economies, even at the expense of US firms, was Washington's way of saying that it had the long-term strategic interests of global capital, not just US capital's interests, in mind. A strong dollar translated into cheaper Japanese and German products in the US and European markets relative to US products, thus acting as a boost to Japanese and German recovery, as Robert Brenner pointed out.⁵ But the Clinton project was aborted under Bush. The transnationalized fractions of the different national capitalist classes

have been overwhelmed by the nationalist fractions, and what we have today are national elites in sharp competition with one another, seeking to beggar one another's economy. For instance, the US elite does not sign the Kyoto Protocol in order to get the European and Japanese elites to absorb most of the costs of global environmental adjustment and thus make US industry more competitive against them.

Causes of the Crisis

Pointing to the stalling of globalization leads to the question: what are the factors responsible for this? I think we can identify three factors. One, already alluded to above, is the preference of national capitalist classes for a strategy of shifting the burden of adjusting to the global crisis of overproduction, stagnation and the environmental crisis to each other rather than forging one common, cooperative response. While cooperation may be the rational strategic choice from the point of view of the system, it may not be the case from the point of view of national capitalist interests.

A second factor has been the corrosive effects of the double standards brazenly displayed by the hegemonic power, the United States. While the Clinton administration did try to move the United States towards free trade, its successor, the Bush administration, has hypocritically preached free trade while practicing protectionism. Indeed, the trade policy of the Bush administration seems to be free trade for the rest of the world and protectionism for the United States.

A third reason is the gap between ideology and reality. There has been too much of a dissonance between the promise of globalization and free trade and the actual results of neoliberal policies, which have been more poverty, more inequality, and stagnation. One of the

very few places where poverty diminished over the last fifteen years is China, and it has not been neoliberal policies but interventionist state policies that managed market forces that were responsible for lifting 120 million Chinese out of poverty. There are, of course, many major problems with China's high-speed growth, but we will return to this issue later.

Another example of great dissonance was that between the prosperity promised by the elimination of capital controls and the actual collapse of the economies that took this policy to heart. The Asian financial crisis and the collapse of the economy of Argentina, which had been among the most doctrinaire practitioner of capital account liberalization, were two decisive moments in reality's revolt against theory.

But perhaps the most critical factor has been resistance, people's resistance. The battles of Seattle in 1999, Prague in 2000, Genoa in 2001, the massive global anti-war march on Feb. 15, 2003, when the anti-globalization movement morphed into the global anti-war movement, Cancun in 2003, and Hong Kong in 2005—these were critical junctures in the decade-long people's counteroffensive that has resulted in the equivalent of a Stalingrad for the neoliberal project. But they were merely the tip of the iceberg, the summation of thousands of struggles in thousands of communities throughout the world involving millions of peasants, workers, students, indigenous people and many sectors of the middle class. We should never overestimate our influence, but we must never underestimate ourselves either.

In this regard, let me say that action is a condition for the emergence of truth. What I mean to say is that for over a decade before Seattle, the United Nations Development Program and other agencies had been publishing data showing the negative impact of structural adjustment programs, neoliberal reforms, and corporate-driven globalization. However, these remained lifeless statistics that were largely ignored by the media, the academy, and policymakers that

held on to faith-based assumptions about the beneficial impact of these measures and processes. Seattle, by bringing the message of the protestors so forcefully to world attention, turned abstract statistics into brutal facts. It forced many influential actors to reconsider, then to backtrack on their assumptions.

In other words, to break through to world consciousness, truth needed a world-historic event like Seattle. It is doubtful if people like the Nobel Prize-winner Joseph Stiglitz or the star economist Jeffrey Sachs or financier George Soros would have detached themselves from the mainstream and begun to criticize corporate-driven globalization so forcefully had Seattle not occurred. Paradoxically, Seattle made anti-globalization opinions respectable. We were no longer Luddites. We had perhaps graduated to being barbarians at the gate—people you feared but had a healthy respect for—but we were no longer out-of-touch, out-of-synch Luddites.

Down but not Out

But while corporate-driven globalization may be down, it is not out. With things not moving at the WTO, the big trading powers are putting the emphasis on free trade agreements (FTAs) or economic partnership agreements (EPAs) with developing countries. These agreements are in many ways more dangerous than the WTO since they often require greater concessions in terms of market access and tighter enforcement of intellectual property rights. Moreover, the massive flow of corporate investment from the US, Japan, and Europe to China continues, with tremendously negative consequences for workers in these countries as well as workers in China.

However, things are no longer that easy for the trading powers and the corporations. When it comes to FTA's, people in the South are becoming aware of their dangers and they are beginning to resist. The Free Trade of the Americas (FTAA)—the grand plan of George W. Bush

for the Western Hemisphere—was derailed by the opposition of key South American governments—under pressure from their citizenries—during the Mar del Plata conference in November 2005. Also, it must be pointed out that one of the reasons many people came out to resist Prime Minister Thaksin Shinawatra in the months before the recent coup was his rush to conclude a free trade agreement between the United States and Thailand. In fact, some people would date the beginning of the end for Thaksin to January 9, 2006 when some 10,000 protesters tried to storm the building in Chiang Mai, Thailand, where negotiations were taking place between US and Thai officials.

When it comes to China, a superficial view is that the flow of labor from the rural areas, where some 700 million Chinese make an average of \$285 a year per capita, will ensure that wages will forever remain low and attractive to foreign capital. There is, however, another reality that is emerging: increasing resistance of migrant labor and peasants to the low wages, loss of land, and environmental poisoning that has accompanied the foreign–capital intensive export–oriented model of growth. In 2004, the Public Security Bureau reported that the number of "mass incidents" had risen to 74,000. In 2005, the number jumped another 13 percent. According to David Zweig, an expert on Chinese politics at Hong Kong University of Science and Technology, "A protest begins in China every five minutes. If the protests run longer than five minutes, then there are two going on at the same time."⁶ All this has the leadership worried, and it is now apparently turning one ear to the so-called "New Left," which is proposing a very different path. That path would be that of hitching China's growth to the internal market, and in order for that to happen, local wages would have to rise significantly to create consumers with purchasing power. That could mean the end of China as the nirvana of cheap labor and the haven

of transnational corporations. This could also be accompanied by measures to take China on a more environmentally sustainable path.

Of course, the odds are still against this sea change occurring, but it is by no means impossible, and our role is to support the voices within China urging this alternative path. Indeed, with the crisis of neoliberal globalization, an alternative path is a project that we urgently need to come up with not only for China but our own societies. For although neoliberal policies have become discredited all over, neoliberalism continues to be the default mode that technocrats and academics resort to because they do not perceive a credible alternative. We are in a situation akin to that familiar scene in the old western movies: the outlaws have shot the engineer, but his hand remains on the throttle of the train. We are like the passengers trying to break into the engine room in order to get his dead hand off that throttle. In the meantime, the train picks up speed and is going to round the bend at high speed. Will we be able to get in there in time and peel those fingers off that throttle? Neoliberal policies are like that dead hand of the engineer.

The World Social Forum

When it comes to alternatives to neoliberalism, among the names that immediately come to mind is the World Social Forum (WSF). Founded in Porto Alegre in January 2001 as a counterpoint to the World Economic Forum taking place in Davos, the WSF elicited widespread enthusiasm in its early years. Now international civil society seemed to have some sort of an institutional home. Proclaimed as an “open space,” the WSF in the next few years became a magnet for global networks on all sorts of issues, a place where they could come together, compare notes, and debate. Soon regional versions of the WSF were spun off, the most important being the European

Social Forum and the African Social Forum, and in scores of cities throughout the world local social fora blossomed.⁷

The WSF and its offspring were significant not only as sites of debate but as democracy in action. Agenda and meetings were planned with meticulous attention to process. But, through a combination of periodic face-to-face meetings and intense email and internet contact in between, the network was able to pull off events and arrive at consensus decisions. This could be very time consuming and also frustrating, and when you were at the center of organizing efforts involving hundreds of organizations (as Focus on the Global South was during the organizing of the 2004 Social Forum in Mumbai), it could be very frustrating. But this was direct democracy, and direct democracy was at its best in the WSF. One might say, parenthetically, that the direct democratic experiences of Seattle, Prague, Genoa and the other big mobilizations of the decade were institutionalized in the WSF or Porto Alegre process.

What is interesting is that there has hardly been an attempt by any group or network to “take over” the WSF process. Quite a number of “old movement” groups participate in the WSF, including old-line “democratic centralist” Marxist Leninist parties as well as traditional social democratic parties affiliated with the Socialist International. Yet none of these have tried to steer the WSF towards more centralized or hierarchical modes of organizing. Perhaps a sense that the new movement networks would never allow this to happen is the main deterrent. The closest there has been to a “takeover” is when a Trotskyite formation allegedly collaborated with Ken Livingstone, the mayor of London, to micromanage the 2005 European Social Forum in London. The reaction to that was so strong that it is doubtful that that kind of process will be repeated.

Yet there have been strong criticisms of the WSF from within its own ranks. One of them is that the WSF is unanchored in actual global political struggles, and this is turning it into an

annual festival with increasingly limited social impact. There is, in my view, some truth to this. Many of the founders of the WSF have interpreted the “open space” idea to the WSF not formally endorsing any particular struggle, though its constituent groups are free to do so. In the view of others, including Focus on the Global South, this is a mistake because the energy of civil society networks is their being engaged in political struggles. The WSF tries to stand above the fray, and this will increasingly lead to its becoming some sort of neutral forum, where discussion will be isolated from action. The reason that the Forum was so exciting in its early years was because of its affective impact: it provided an opportunity to recreate and reaffirm solidarity against injustice, against war, and for a world that was not subjected to the rule of empire and capital. The WSF’s not taking a stand on the Iraq War and on the WTO is making it less relevant and less inspiring to many of the networks it had brought together.

This is why the sixth World Social Forum held in Caracas on January 2006 was so bracing and reinvigorating, for it inserted some 50,000 delegates into the storm center of an ongoing struggle against the empire, where they mingled with militant Venezuelans engaged in the process of social transformation while observing other Venezuelans, mostly the elite and the middle class, engaged in bitter opposition. Chavez himself warned delegates about the dangers of it becoming simply a forum of ideas with no agenda for action. He also told participants that they had to address the question of power. “We must have a strategy of ‘counter-power.’ We, the social movements and political movements, must be able to move into spaces of power at the local, national and regional level.”⁸

A second criticism is that while the WSF has been critical in facilitating the exchange of ideas, especially on alternatives to neoliberalism, it has not been central in producing significant advances in this enterprise. A frequently repeated refrain is that the same ideas have been

circulating since 2001, and there is no cumulative build-up towards a breakthrough. This is a criticism that is less justified than the first because the elements of the alternative are already there, and how they are brought together will and is taking place in many contexts, in the WSF and beyond the WSF.

Deglobalization

The key thrusts of an alternative program, I submit, are not difficult to discern. They have been articulated in many contexts and in different ways by people who have done work on alternatives to global capitalism over the last thirty years. I have labeled this alternative approach “deglobalization.” Others have used other terms, such as the solidarity economy or economic democracy, but we have one thing in common: we have shamelessly borrowed and lifted ideas from one another in blatant disregard of intellectual property right. In my particular formulation, there are two levels at which what I call the process of “reconstruction” takes place: the global and the national or local.⁹

At the global level, the aim is to disempower the centralized neoliberal bureaucracies—meaning the WTO, IMF, and World Bank—and empowering such institutions as the United Nations Conference on Trade and Development (UNCTAD), multilateral environmental agreements, and regional economic associations such as a transformed MERCOSUR in order to create a multipolar system of global economic governance marked by checks and balances. The aim is to create the space for national economies to have space to devise strategies of development.

At the national or local level, the key elements for an alternative program would be:

- moving away from export-oriented production to production for the domestic market;

- maintaining production of vital agricultural and industrial products, as well as key services, at the local level instead of shipping them out elsewhere, if this can be done at reasonable cost; this is otherwise known as the principle of subsidiarity.
- undertaking income redistribution to create a vibrant internal market as well as promote ecologically sustainable development;
- institutionalizing fair, managed trade instead of free trade;
- democratizing economic decision making, that is, letting the electorate make the key economic decisions, such as creating or phasing out industries, and not leaving this process to the market and to corporations;
- creating a system of regulating the market and the private sector that involves not only the state but civil society.

These are general principles. How they get articulated by different societies into specific strategies and policies will depend on their needs, their values, and their rhythms as societies, and this is why there will be internationally a diversity of economies, just as there is a diversity of individuals within a species. Elimination of diversity is pathological—yet this is what neoliberal economics does, and this is why we must junk its dystopian dream of one functionally integrated global economy.

I think the best way of describing this process of moving toward the alternative is a movement from an arrangement where the market, to use the words of the great Hungarian economist Karl Polanyi, has been disembedded from society and drives society to one where the market is reembedded in society and is driven by society. We are talking about systematically subordinating the operations of the market to the higher values of justice, cooperation, and community. Often, when neoliberal economists and policymakers say we have no alternative to offer, they are really asking: what system can you offer that would be more effective than capitalism in promoting efficiency, that is reducing the unit cost of production? Well, no, that is not what we are offering. We are, in fact, talking about supplanting the economics of efficiency,

where the key criterion is the reduction of unit cost, with effective economics, one that, instead of disintegrating national and local economies, like globalization does, reintegrates them, thus promoting stability, the general welfare, and happiness.

I would like to end by saying that we live in a period of great contradictions, where there are signs of despair as well as signs of hope. The future is not fixed. It is, as Michel Foucault and the postmodernists have so rightly asserted, contingent. Corporate-driven globalization is not irreversible since it is the actions of human beings alienated from themselves by the dynamics of global capital that have made globalization possible. We must replace our alienated selves subjected to man-made laws with our real selves as agents that consciously create our economic and social worlds. With this liberated consciousness, we can work across borders to bring about a different but all too possible world built on cooperation and not on a race to the bottom, on diversity and not on what Vandana Shiva describes as global monoculture. Only then, as an interesting thinker told us over 150 years ago in a for-my-eyes only document known as the *1844 Manuscripts*, will we truly move from the realm of necessity to the realm of freedom.

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Endnotes:

- ¹ The description is that of Mike Moore, the second director general of the organization.
- ² Mallaby, S. "Why Globalization Has Stalled." *Washington Post*. (2006).
- ³ Woods, N. "The Globalizers in Search of a Future: Four Reasons Why the IMF and World Bank Must Change, and Four Ways They Can." *CDG (Center for Global Development) Brief*. (2006).
- ⁴ Broad, R. "Research, Knowledge, and the Art of Paradigm Maintenance: the World Bank's Development Economics Vice Presidency." *Review of International Political Economy* 13.3. (2006): 387-419.
- ⁵ Brenner, R. *The Boom and the Bubble: The U.S. in the World Economy*. (London: Verso, 2002). 127-133.
- ⁶ Kwong, P. "The Chinese Face of Neoliberalism." *Counterpunch*. (2006).
- ⁷ There are a number of articles on the WSF. Among the best is Rodríguez, G.C.A., and De Sousa, B. *Law and Globalization from Below: Towards a Cosmopolitan Legality*. (Cambridge, UK: Cambridge UP, 2005).
- ⁸ Bello, W. and Malig, M. "The Sixth WSF in Caracas: A Shot in the Arm for Global Civil Society." *Focus on the Global South*. (2006).
- ⁹ Bello, W. *Deglobalization: Ideas for a New World Economy*. (London: Zed, 2002).

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