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Democratizing Global Governance?
Non-State Participation in the World
Bank Inspection Panel and NAFTA

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Abstract

This article discusses the role non-state actors may play in the democratization of global governance. It is argued that the nature of international power in a globalizing world requires a redefinition of democracy that is more expansive than the traditional notion of electoral representative democracy. Within this context, non-state actors can play important roles in democratizing global governance because they can potentially represent a range of interests in ways that transcend national boundaries. Two case studies are considered: the World Bank Inspection Panel and non-state participation under NAFTA. These case studies demonstrate that while non-state participation can lead to more democratic governance, it can also lead to governance that is less democratic, particularly if corporate actors are allowed to dominate or if important stakeholders are excluded. While the participation of non-state actors in global governance is potentially problematic, the development and implementation of an appropriate policy framework could help to mitigate the potential risks of non-state actor involvement in international affairs. Framing the participation of non-states within the context of democracy is therefore important. Since democratic values are widely supported by powerful policy makers, understanding the participation of non-state actors within the context of democracy would lend support to government reforms to empower civil society actors in ways that could lead to more representative decision-making at the international level.

KEYWORDS: democracy, globalization, non-state actors

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Globalization can be defined broadly as “...a widening, deepening and speeding up of worldwide interconnectedness in all aspects of contemporary social life, from the cultural to the criminal, the financial to the spiritual.”¹ In short, globalization is about the diminution of spatial, economic, social and in some cases political boundaries across the world. In the words of Thomas Friedman, the new wave of globalization “is shrinking the world from a size ‘medium’ to a size ‘small.’”²

While such a description of globalization does help to get at the core of what globalization is, it also conceals the complex and sometimes contradictory nature of globalization. If globalization entails the increasing interconnectedness of the world, it also entails increasing contact between different groups of people who have different and sometimes competing interests. Such a situation requires a global power structure that can give representation to a range of groups with at least some degree of equity. Furthermore, while globalization may offer a range of potential benefits, both mundane and utopian, to humankind, globalization has also created the dire need to deal with important problems of global significance. Poverty, environmental degradation, terrorism, and the AIDS epidemic are just a few of the most important of these problems. Addressing these problems requires unprecedented global coordination. However, the development of international coordination to address pressing global problems is impeded by what has been referred to as the “democracy deficit” in international affairs.³ In sum, while democratic governance is greatly needed in transnational affairs, it is in very short supply. Expanding global forces exceed the bounds of the nation-state, yet there is currently no system or institution in the international sphere that offers the kind of representative democracy that is possible at the national level. What are the possibilities, then, of developing of a more democratic international system?

This article seeks to understand how the international system might be made more democratic by focusing on the participation of non-state actors in international governance.⁴ Non-state actors are of particular interest because they can potentially represent diverse groups in ways that transcend national boundaries. Further, while international affairs have traditionally been state dominated, new opportunities are now available to non-state actors to participate

1 DAVID HELD ET AL., *GLOBAL TRANSFORMATIONS: POLITICS, ECONOMICS, AND CULTURE* 2 (1999).

2 THOMAS L. FRIEDMAN, *THE LEXUS AND THE OLIVE TREE* xix (2000).

3 See, e.g., ALFRED C. AMAN, *THE DEMOCRACY DEFICIT: TAMING GLOBALIZATION THROUGH LAW REFORM* (2004).

4 The words international, transnational, and global have different connotations. However, for the purposes of this paper, these words will be used more or less synonymously.

in international politics and in multilateral institutions. These new opportunities for participation may have important implications for the democratization of global governance. Additionally, scholarship on international relations is increasingly considering the potentially important roles actors other than states can play in the international arena.⁵ In this context, it is especially important to consider the role non-state actors' participation in international politics may play in the democratization of global governance.

This paper argues that non-state participation in international affairs may present an important means of democratizing global governance. In particular, it is argued that non-state participation in traditionally state-centered multilateral institutions *could* make international decision-making more representative. Further, it is argued that the development of more pluralistic decision-making through the participation of non-state actors could be construed as democratization, because the diffuse nature of power in the international arena necessitates a more expansive definition of democracy than that merely of electoral representative democracy.⁶ However, the participation of non-state actors will not inherently lead to more representative global governance. At present, including non-state actors in international decision-making risks increasing corporate dominance, therefore potentially making global governance even less representative. Incipient players in the global arena, such as civil society organizations like non-profit non-governmental organizations (NGOs) may, however, be able to offer a counterbalance to corporate power. Unfortunately, participation by civil society organizations is also potentially problematic. NGOs themselves often have significant democracy deficits.⁷ Even in the case of NGO participation, non-state participation may lead to governance that is dominated by elites or that fails to include important stakeholders. These are serious concerns. It is argued here, however, that a policy framework could be developed to encourage greater equality of non-state participation thereby leading to more representative governance.

5 See generally THE EMERGENCE OF PRIVATE AUTHORITY IN GLOBAL GOVERNANCE (Rodney Bruce Hall & Thomas J. Biersteker eds., 2002); NON-STATE ACTORS IN INTERNATIONAL RELATIONS (Bas Arts et al. eds., 2001); NON-STATE ACTORS IN WORLD POLITICS (Daphne Josselin & William Wallace eds., 2001).

6 For related arguments, see, e.g., Christiana Ochoa, *The Relationship of Participatory Democracy to Participatory Law Formation*, 15 IND. J. GLOBAL LEGAL STUD. 5 (2008); Jan Aart Scholte, *Civil Society and Democracy in Global Governance*, 8 GLOBAL GOVERNANCE 281 (2002).

7 For a discussion of some of these issues, see, e.g., HENRY J. STEINER & PHILIP ALSTON, INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS 973-979 (2000); Paul Wapner, *Defending Accountability in NGOs*, 3 CHI. J. INT'L L. 197 (2002).

The first section of the article discusses four perspectives on the prospects of democracy in a globalizing world. These perspectives help to highlight the importance of three types of actors in the international sphere: governments and government-like international institutions, corporations, and civil society.⁸ These perspectives also highlight two underlying conceptions of democracy, one based on electoral representative democracy, the other based on a more participatory concept of democracy. Finally, these perspectives also point to the multifaceted and contingent nature of power in the international sphere. The second section offers a way of conceptualizing global democracy. This section argues that given the diffuse nature of power in the international sphere, a more expansive and more participatory conception of democracy is needed when thinking about global governance. This conception of democracy directs attention to the role of non-state actors. The third section discusses the roles often played by non-states in international decision-making, their evolving standing in international law, and their importance with respect to democracy.

The fourth section provides two case studies of non-state involvement in international affairs. These case studies focus on direct non-state participation in multilateral institutions. The first case discusses the World Bank Inspection Panel, while the second case discusses non-state participation in the context of the North American Free Trade Agreement (NAFTA). These cases offer some insight into how non-state participation may help to provide representation in international decision-making to underrepresented groups, though they also show the potential perils of non-state participation. In particular, the case of the World Bank Inspection Panel shows some clear, though limited, examples of how the participation of non-state actors may increase the representation of those who would otherwise be unrepresented in international decision-making. NAFTA, however, has greatly increased the ability of corporate actors to participate in transnational governance, without significantly empowering civil society actors. Given the already disproportionate influence of corporate actors, this has led to an overall decrease in representative decision-making under NAFTA. Together, these case studies show the potential benefits of non-state actor participation in multilateral institutions, while also highlighting the potential perils. The fifth section evaluates the role of non-state actors in light of the case studies and offers some policy implications. It is argued that the participation of non-state actors in international politics could be an important means of making international decision-making more democratic. However, non-state participation in international affairs could also make global governance even less democratic if a

8 "Governments and government-like institutions" would include states, intergovernmental institutions and possibly governance institutions organized around direct electoral democracy.

wide range of non-state actors, representing a range of views, are not allowed to participate with some degree of equality. Evolving international legal regimes that allow for increased non-state participation could therefore have a potentially negative effect on the democratization of global governance. It may be possible, however, to develop a set of policy guidelines to encourage a degree of equality in non-state participation.

The article concludes with some thoughts about the imperativeness of developing a more democratic global system and about the prospects for democratization within the complex power system of the international arena. It is argued that the participation of non-state actors could help to democratize global governance. However, civil society actors may need to be empowered in order to balance the excessive influence of corporations. The findings presented here suggest that government support may prove essential to empowering civil society actors in ways that could lead to more representative global governance. Framing the participation of non-state actors within the vocabulary of democracy may therefore prove especially important since democratic values are widely supported by policy makers in powerful democratic countries, such as the United States. Of equal importance, it must be remembered that the participation of civil society groups should reflect a wide range of views and interests, ideally serving as a proxy for the enfranchisement of affected interests.⁹

PERSPECTIVES ON GLOBALIZATION AND DEMOCRACY

Attitudes about the relationship between globalization and democracy can be divided in a number of ways. First, some commentators are pessimistic about the fate of democracy in a globalizing world, whereas others are more optimistic. Second, different authors focus to varying degrees on different types of power, and on different ways of organizing power democratically. In particular, some authors are oriented within the nation-state paradigm of representative democracy, whereas others emphasize more diffuse types of power and a conception of democracy that may focus more on participation than on representation through elected officials, though there is some overlap between these viewpoints. This section will review a small portion of the literature on democracy and globalization by discussing four perspectives on the subject.

9 On democracy and the enfranchisement of affected interests, *see, e.g.*, Robert E. Goodin, *Enfranchising All Affected Interests, and Its Alternatives*, 35 *PHI. & PUB. AFF.* 40 (2007).

The Retreat of the State Means the Retreat of Democracy

One perspective on the relationship between globalization and democracy views globalization as antithetical to democracy because globalization entails the weakening of the nation-state. In this perspective, the nation-state is seen as necessary for the preservation of democracy. Globalization leads to a weakening of the state because it entails the development of new forces that exceed the bounds of the state. Marc Plattner, for example, argues that globalization is limiting the possibilities for self-government.¹⁰ Plattner asserts that there are two main elements of democracy, or more specifically liberal democracy. First, democracy is predicated on “the freedom of the individual and the right to information,” which is the liberal aspect of democracy.¹¹ Second, democracy implies “that the people be the ultimate authors of the laws that they must obey.”¹² These two aspects of democracy respond differently to globalization. The liberal aspect of democracy is furthered by globalization, in part because “liberal democracy clearly favors the economic arrangements that foster globalization.”¹³ However, globalization weakens the second part of democracy because the nation-state is undermined by globalization and the nation-state is the primary area in which individuals can directly affect the laws that govern them. Susan Strange expresses a somewhat similar perspective. She argues that “the impersonal forces of world markets...are now more powerful than the states to whom ultimate political authority over society and economy are supposed to belong.”¹⁴ This shift in power from states to market actors means a shift in power away from democratically elected governments and to undemocratically governed corporations.¹⁵ Further, corporate dominated global governance lacks an opposition, which is a key component of the liberal democratic state.¹⁶

10 Marc F. Plattner, *Globalization and Self-Government*, 13(3) J. DEMOCRACY 54-67 (2002) [hereinafter Plattner, *Globalization*]; Marc F. Plattner, *Sovereignty and Democracy*, 122 POLICY REVIEW, January 2004, 1-12.

11 Plattner, *Globalization*, *supra* note 10, at 58.

12 *Id.* at 59. It is perhaps, however, somewhat problematic to consider these elements of democracy as separate, since an expansive definition of freedom would include at least a degree of self-government, and a minimum level of civil liberties is a prerequisite for self-rule.

13 *Id.* at 58.

14 SUSAN STRANGE, *THE RETREAT OF THE STATE* 4 (1996).

15 *Id.* at 197.

16 *Id.* at 198. Strange, though, does suggest that NGOs could create some balance of power *Id.*

Corporate Hegemony Undermines Democratic Governance

Jeff Faux,¹⁷ like Strange, argues that the power of market actors undermines democracy. Faux argues that the development of global democracy, with respect to international economic policies, has been undermined by a class division within global society. He asserts that there are two parties: the Party of Davos and the Party of Porto Alegre. The Party of Davos is the “global governing class,” while the Party of Porto Alegre is the class of workers in both rich and poor countries.¹⁸ The Party of Davos represents the interests of those who control large amounts of capital. According to Faux, these individuals, whether from rich or poor countries, share the same fundamental interests in protecting the rights of capital owners. Faux believes that global democracy has been undermined because the new “constitution”¹⁹ of the global economy is being written “piecemeal, in secret” because “there is no prior framework of democracy and accountability.”²⁰ Corporations and their representatives are therefore able to dominate global decision-making. This is a serious problem because it undermines the ability of the world’s citizens to ensure that social issues are addressed within the “constitution” of the new global economy.

Global Governance Can be Democratized by Building Institutions for Global Representative Democracy

One response to concerns about the waning of the state could be to build global democratic institutions that in some ways resemble the representative democracy of the nation-state. In contrast to Plattner, Andrew Strauss²¹ has argued that democratic world governance is possible within a global society. Strauss, along with Richard Falk, has proposed a specific mechanism for achieving democratic governance on a global scale.²² Strauss notes that globalization has resulted in a “large scale transfer of political decision making to international institutions.”²³

17 Jeff Faux, *Without Consent: Global Capital Mobility and Democracy*, DISSENT, Winter 2004, 43.

18 *Id.* at 44.

19 By “constitution,” Faux means the set of agreements that constitute the rules of global trade and finance.

20 *Id.* at 43.

21 Andrew L. Strauss, *Overcoming the Dysfunction of the Bifurcated Global System: The Promise of a Peoples Assembly*, in REFRAMING THE INTERNATIONAL 83 (Richard Falk et al. eds., 2002).

22 *Id.*; Richard Falk & Andrew Strauss, *On the Creation of a Global Peoples Assembly: Legitimacy and the Power of Popular Sovereignty*, 36 STAN. J INT’L L. 191 (2000).

23 Strauss, *supra* note 21, at 83.

Strauss asserts that this transfer has resulted in an “almost complete lack of democracy at the international level.”²⁴ To increase democracy at the international level, Strauss proposes the development of a Global Peoples Assembly (GPA). A GPA could develop, according to Strauss, through global civil society. At first, the GPA would have little direct power. Over time, however, Strauss asserts that the GPA could become accepted and earn substantial authority in international law.

Global Governance Can be Democratized through Public Participation

A fourth perspective on global democracy views the role of public participation in international decision-making as essential to encouraging democratic global governance. For example, Robert Housman²⁵ argues that the type of representative democracy practiced within nation states is largely inapplicable to international decision-making (Housman refers specifically to decision-making related to international trade). Therefore, Housman focuses on the aspect of democracy that provides “the...right of citizens to have knowledge of and participate in decisions that will affect their interests.”²⁶ Housman’s conception of democracy, therefore, is one more in line with participatory than representative democracy. Housman proposes a number of innovations that could make international decision-making more democratic, such as full observer status for NGOs, transparent procedures, and the public availability of documents during trade negotiations.

Other authors have also emphasized the importance of public participation, or the participation of civil society, though they have not necessarily applied this to democracy. Ronnie Lipschutz,²⁷ for example, has argued that the proliferation of NGOs can be seen as part of an emerging global civil society. Additionally, Keck and Sikkink²⁸ find that advocacy networks play an important role in international politics. They contend that the state remains an extremely important international actor, but that individuals and groups within advocacy networks can have a substantial influence. Additionally, Keck and Sikkink find that these advocacy networks represent a wide spectrum of different perspectives.

24 *Id.*

25 Robert F. Housman, *Democratizing International Trade Decision-making*, 27 CORNELL INT’L L.J. 699 (1994).

26 *Id.* at 703.

27 See Ronnie D. Lipschutz, *Reconstructing World Politics: The Emergence of Global Civil Society*, 21 MILLENNIUM 389 (1992).

28 See MARGARET KECK & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS* (1998).

Globalization and Democracy: Reframing the Debate

The four perspectives discussed above present different ways of thinking about democracy in a global context. The first perspective focuses on the role of the nation-state in providing the necessary conditions for democracy. The waning of the nation-state in a global age is therefore seen as problematic. The second perspective stresses the potentially detrimental effect the power of corporations can have on democracy. If corporate interests are allowed to dominate global decision-making, democratic governance is undermined because corporations are governed hierarchically rather than democratically and because they represent a relatively narrow set of affected interests. If corporations already have excessive influence, their increasing ability to wield power would undermine existing democratic governance structures. This perspective dovetails with the first perspective, therefore, because the increasing power of corporations can be seen as undermining the power of the state. The second two perspectives are somewhat more optimistic. The third perspective is that global governance can be democratized by building institutions for global representative democracy. This perspective is arguably aligned with the notion that the retreat of the state is detrimental to democracy, because it aims to create global institutions that would follow the nation-state model of representative democracy. This approach extends representative democracy beyond the nation-state, but still fits to some extent within the nation-state paradigm of electoral democracy. The final perspective presented sees the participation of non-state actors as key to reducing the democratic deficit in global governance. According to this perspective, global governance can be democratized through citizen participation in international affairs, either by direct participation of individuals, or by the participation of non-state organizations that could presumably represent stakeholders.

While understanding the distinctions between the perspectives presented above is important, it would be disingenuous to present these as four entirely distinct points of view. The perspectives overlap to a large extent. For instance, while Strauss focuses on the need to build institutions for representative democracy, civil society would play a crucial role in the development of such institutions. In addition, Strange sees the retreat of the state as being potentially detrimental to democracy but, according to her, the cause of the waning of the state is corporate power. Further, the fourth perspective, which emphasizes the role of non-state actors, intersects with the state-oriented perspective in so far as non-state actors can gain power by leveraging changes from states. These overlaps are indicative of the complex nature of power in the international sphere.

In the international arena, as will be seen in more detail, power is often contingent and multiple types of actors may exercise power.

The four perspectives presented herein offer important insights into how democracy and power can be understood in the international sphere. First, these perspectives illuminate three particularly important types of power holders in the international arena. These types of power holders are the state and state-like institutions, corporations, and civil society. All three of these types of power holders have important implications for the democratization of global governance. Second, the overlap and interaction between the four perspectives demonstrates the complex and contingent nature of power in the international sphere. Third, the four perspectives help to illuminate two different, though not entirely mutually-exclusive, ways of understanding democracy. One of these ways of understanding democracy focuses on traditional representative democracy, while the other focuses on a more participatory concept of democracy.

The four perspectives discussed here provide a context for the more detailed discussion of democracy and power in the international sphere that follows in the next section. It is argued that the diffuse and contingent nature of international power necessitates a rethinking of democracy that highlights the importance of non-state actors and a more participatory model of democracy. The concept of democracy and power that is advanced here, therefore, falls most closely in line with those perspectives that stress diffuse types of power, a more participatory concept of democracy, and the importance of non-state actors. More specifically, the concept of democracy and power is closely related to the second and fourth perspectives. In particular, it is argued that the participation of private (i.e., non-state) actors could democratize global governance, but that the private power of corporations could undermine the potential benefits of non-state actor participation if it is allowed to go unchecked, or worse, if corporations are empowered more than other types of non-state actors. Additionally, important stakeholders must not be excluded and there must be equality of participation among those with legitimate standing. Finally, given the contingent and complex nature of international power, it is important to consider multiple types of actors, both states and non-states, and the interaction between different types of power-holders.

CONCEPTUALIZING DEMOCRACY IN A GLOBALIZING WORLD

Defining democracy, even within a national context, is not an easy task. Webster's dictionary offers several different definitions, which have different implications. Democracy is defined as "government either directly by the people or through

elected representatives,” as well as “the populace, esp. as the primary source of political power,” and finally democracy is also defined as “the principles of social equality and respect for the individual within a community.”²⁹ Ultimately, the most useful definition of democracy would likely combine the three definitions listed above. Democracy, therefore, might be minimally defined as a system of governance that respects the rights and interests of affected individuals and their respective groups with some degree of equality through some form of self-rule.

‘One person, one vote’ is typically the way we think of achieving these democratic ideals. However, adapting the ‘one-person, one vote’ model of representative democracy to the international sphere is problematic for a number of reasons. First, the basic resources that are needed for electoral democracy are lacking in the international sphere. Apart from the logistical problems, the scale of global electoral governance is problematic. As Robert Keohane writes, “the very size of a global polity would create immense incentive problems for voters—in mass election campaigns it would seem pointless to most voters to invest in acquiring information when one’s vote would count, relatively speaking, for so little.”³⁰ While it is conceivable that this problem could be overcome at some point, electoral democracy on a global scale would likely exacerbate problems that can already be seen within national electoral democracies. For example, even within the nation-state, “some argue that representative democracy no longer exists, that it has been replaced by the polyarchy of bureaucracy and organized interests in an administrative state, with massive official bodies, ‘independent’ agencies, and central Banks.”³¹ Because of such problems, some prominent authors have argued that democracy cannot be provided within the international sphere and that efforts should be made to increase accountability, rather than to democratize global governance.³² However, such analyses often elide the possibility of reconceptualizing democracy for a globalizing world.

29 WEBSTER’S II NEW COLLEGE DICTIONARY, at 301 (1995). There are, of course, a wide range of academic sources on conceptions of democracy. I use an authoritative dictionary here in an attempt to find a basic or core conception of democracy. For a particularly useful, and far more detailed, discussion of conceptions of democracy, *see generally* DAVID HELD, *MODELS OF DEMOCRACY* (3d ed. 2006).

30 Robert O. Keohane, *Global Governance and Democratic Accountability*, in *TAMING GLOBALIZATION: FRONTIERS OF GOVERNANCE* 130, 136 (David Held & Mathias Koenig-Archibugi eds., 2003).

31 Eric Stein, *International Integration and Democracy: No Love at First Sight*, 95 AM. J. INT’L L. 489, 492 (2001).

32 *See, e.g.*, Ruth W. Grant and Robert O. Keohane, *Accountability and Abuses of Power in World Politics*, 99 AM. POL. SCI. REV. 29, 41 (2005) (emphasizing improvements in accountability rather than democratization because of democracy’s presumed infeasibility in the international sphere).

There are a number of reasons to think democracy could be usefully reconceptualized in the context of globalization. To begin, it is questionable whether the concept of representative democracy is true to the real meaning of democracy as it was conceived in ancient city-states. As Eric Stein writes, the rise of large states made direct democracy impractical, and “democracy was saved by the invention of representative government...”³³ It may be time to rethink democracy once again.

Perhaps the most persuasive reason for adopting a model of global democracy that goes beyond the strict requirements of electoral democracy is the diffuse nature of power in the international sphere, as argued by James Rosenau.³⁴ Rosenau asserts that globalization has led to a “disaggregation” of power that must change the way we think about democracy and global governance in general. Rosenau argues, for instance, that “...there is no single organizing principle on which global governance rests, no emergent order around which communities and nations are likely to converge.”³⁵ Therefore, “in terms of governance, the world is too disaggregated for grand logics that postulate a measure of global coherence.”³⁶ According to Rosenau the diffuse nature of power in the international sphere necessitates a new way of thinking about global governance that takes into account a wide range of actors and global governance’s continual state of flux. Conceptualizing democracy in a globalizing world must go beyond “conventional democratic procedures,” which are “ad-hoc, non-systematic, irregular and fragile,” to the extent that they exist in what Rosenau calls “Globalized Space.”³⁷ Despite the overall lack of traditional democratic procedures, Rosenau suggests that it is possible to envisage democracy in the international sphere. The diffuse nature of power in the international realm itself provides checks and balances that prevent authoritarian rule. As Rosenau writes, “...the functional equivalent of democracy is achieved through the absence of absolutist rule as a viable control mechanism, hardly the same as the maintenance of democratic procedures and yet not a trivial dimension of governance in Globalized Space.”³⁸

Globalization presents new challenges to traditional notions of democracy. Conventional democratic procedures are lacking in the international sphere, and

33 Stein, *supra* note 31 at 492.

34 James N. Rosenau, *Governance and Democracy in a Globalizing World*, in RE-IMAGINING POLITICAL COMMUNITY 28 (Daniele Archibugi et al. eds., 1998).

35 *Id.* at 32.

36 *Id.*

37 *Id.* at 39.

38 *Id.* at 41.

the Global Peoples Assembly proposed by Strauss and Falk, while a possibility at some point in the distant future, is not a likely development in the short-term. Moreover, if such a Peoples Assembly were to develop, it would likely become another player in the diffuse power system of the international sphere, rather than to achieve sovereign power, which might not be desirable in any case. What, then, are the prospects for global democracy? One possibility would be to abandon the quest for democratization at the international level: to insist on accountability and transparency, but to refrain from using the term 'democratization' for reforms that fall short of a 'one person, one vote' threshold. The vocabulary of democracy, however, is too powerful, both rhetorically and analytically, to abandon. Further, a purely representative and electoral definition of democracy is too limiting, and there is at least some reason to believe that reforms can be made to make the international system, if not wholly democratic, at least more democratic than it currently is, even without representative electoral democracy.

Ultimately, it is best to conceive of democracy as an 'ideal type,' in which governance can be imagined on a continuum from completely autocratic, to completely democratic.³⁹ Completely autocratic rule would involve decisions made only by one person, and the decisions would only reflect the interests of the decision maker. In completely democratic rule, all individuals' and groups' interests would be equally accounted for in every governance decision. Or perhaps more precisely, all affected individuals' and groups' interests would be accounted for in every governance decision in proportion to their affectedness. In reality, neither extreme has ever existed, and it is unlikely that either extreme will ever exist. Power imbalances influence decision-making in even the most democratic governments, and even a despot must account for at least some of the needs of at least some of his or her subjects if he or she wishes to stay in power. Thinking about global governance in this way enables us to strive for more democratic global governance, even in the absence of as yet impractical conventional democratic mechanisms. In this way, we can imagine more representative international decision-making in the present-day, while conceding that more conventional democratic procedures may ultimately be necessary to ensure the maximum level of democracy.

The analysis presented here suggests that democratic reforms in the international sphere are possible, even if traditional representative democracy cannot be achieved. Such reforms would emphasize a more participatory model of

39 This form of ideal type fits most closely with Lindbekk's description of a "limiting concept" form of ideal type, which is "something akin to the velocity of light or the temperature of absolute zero." Tore Lindbekk, *The Weberian Ideal-type: Development and Continuities*, 35 ACTA SOCIOLOGICA 285, 286 (1992).

democracy. More accurately, these reforms would likely emphasize a hybrid model of democracy, between the participatory and representative approaches. If individuals can participate in at least some aspects of international governance, a modicum of democracy may be provided. In many cases, this participation is likely to occur through groups, and to be mediated by organizations that collectively can represent a range of interests. Because non-state actors are in the unique position of being able to represent a wide range of views that may transcend national boundaries, their role is especially important to the prospects of democracy in a globalizing world. The role of non-state actors in international politics is considered below.

THE ROLE OF NON-STATE ACTORS IN INTERNATIONAL LAW AND POLITICS

Non-state actors play increasingly important roles in international law and politics. This section will discuss the role of non-state actors and how this role has evolved. I will begin by offering a definition of ‘non-state actor.’

The term ‘non-state actor’ has a necessarily broad meaning. In its broadest sense, it implies all actors that are not states. This would include, for instance, corporations, non-profits, criminal organizations, and even the individual. Social movements and diasporas might also be included. It is even possible to include subnational governments, which, while parts of states, function separately from the national government in international affairs.⁴⁰ The broadness of the non-state actor category is somewhat problematic given that many of these actors are very different from one another, in terms of, among other things, organizational structure, goals and access to resources. However, it is important to understand the significance of non-state actors within the changing nature of international law and international relations. In the past, international law and international relations were dominated by states. Currently, however, new avenues for non-state participation in the international arena are becoming available. Further, in what is still a developing area of scholarship, scholars have increasingly turned their attention to the role of non-state actors in international affairs. Given these developments, it is important to understand what effects the participation of non-state actors may have on global governance, and on the democratization of global governance in particular.

While the definition of ‘non-state actor’ is potentially very broad, two types of non-state actors participate most directly in international legal regimes:

40 Peter J. Spiro, *New Players on the International Stage*, 2 HOFSTRA L. & POL. SYMP. 19 (1997), reprinted in INTERNATIONAL LAW (Carter & Trimble eds., 3d ed., West 1999), and FUNDAMENTAL PERSPECTIVES ON INTERNATIONAL LAW (Slomanson ed., 2d ed., West 1999).

non-profit groups, often called NGOs, and corporations and the industry groups that represent them. These non-state actors have achieved the highest level of direct participation in intergovernmental organizations, and are the focus of this paper, along with individuals whose direct participation is much rarer, but perhaps particularly interesting with respect to the democratization of global governance.

The existence of international non-governmental institutions is not a new phenomenon. An increasing number of international non-governmental organizations were created beginning in the last half of the nineteenth century.⁴¹ As is still the case today, the growth in international organizations was driven in part by new technology that allowed for unprecedented degrees of international contact.⁴² During the twentieth century, the number of international non-governmental organizations continued to grow.⁴³ By 1993, according to the *Yearbook of International Organizations*, there were 631 international non-governmental social change organizations alone.⁴⁴ The growth in non-profit non-state actors has been accompanied by a dramatic increase in the activities of transnational corporations (TNCs). For example, during the 1960s, foreign direct investment “grew at twice the rate of global gross national product.”⁴⁵ After a brief decline in the early 1980s, foreign direct investment continued to grow dramatically. For instance, “between 1985 and 1990, the *average* annual increase in [foreign direct investment] was 34 percent.”⁴⁶ This increase in foreign direct investment indicates the heightened level of activity of transnational corporations.

A higher level of standing in international law has been associated with the growing numbers and increased activity of international non-state actors. Traditional international law was concerned solely with relationships between independent states. However, as Slomanson writes, “the proliferation of international organizations since World War II expanded the scope of International Law, which can no longer be defined *solely* in terms of State practice.”⁴⁷ While their role is still limited, non-state actors play important roles in international law, attending and participating in treaty deliberations, and filing ‘friends of the court’

41 AKIRA IRIYE, GLOBAL COMMUNITY: THE ROLE OF INTERNATIONAL ORGANIZATIONS IN THE MAKING OF THE CONTEMPORARY WORLD 11 (2002).

42 *Id.* at 12.

43 Though this growth was interrupted “by three marked dips at the time of the two world wars and during the 1980s.” Bob Reinalda, *Private in Form, Public in Purpose: NGOs in International Relations Theory*, in NON-STATE ACTORS IN INTERNATIONAL RELATIONS, *supra* note 5, at 11.

44 Keck and Sikkink, *supra* note 28, at 11.

45 PETER DICKEN, GLOBAL SHIFT: TRANSFORMING THE WORLD ECONOMY 42 (1998).

46 Strange, *supra* note 14, at 47.

47 WILLIAM R. SLOMANSON, FUNDAMENTAL PERSPECTIVES ON INTERNATIONAL LAW 5 (2003).

briefs at international courts. For example, Kal Raustiala⁴⁸ writes, “the major environmental treaties negotiated in the last decade...contain expansive rules for NGO participation, and NGOs have become very active and visible participants in many regime activities.”

Non-state actors have been able to exert important influence in the international sphere in part because of the development of what Manuel Castells⁴⁹ calls the “network society.” This new society is in large part the result of “the material transformation of our social fabric, as new information technologies allow the formation of new forms of social organization and social interaction...”⁵⁰ Castells also argues that in the new society “social conflicts take the shape of network-based struggles to reprogram opposite networks from the outside.”⁵¹ According to Castells, social conflicts no longer easily fit into hierarchical categories, but rather often exist within networks and nodes of power. This concept fits well with the notion of “disaggregated” power described by Rosenau.⁵² Network society allows non-state actors to have an increasingly important role in international politics. As discussed by Keck and Sikkink, non-state actors, in particular NGOs, can form transnational advocacy networks to enhance their abilities to affect transnational politics. Transnational advocacy networks, of which “international NGOs are key components,” can use four types of politics to extract change from other actors:

- (1) *information politics*, or the ability to quickly and credibly generate politically usable information and move it where it will have the most impact;
- (2) *symbolic politics*, or the ability to call upon symbols, actions, or stories that make sense of a situation for an audience that is frequently far away;
- (3) *leverage politics*, or the ability to call upon powerful actors to affect a situation where weaker members of a network are unlikely to have influence; and
- (4) *accountability politics*, or the

48 Kal Raustiala, *States, NGOs and International Environmental Institutions* 41 INT’L STUD. Q. 719, 722 (1997).

49 Manuel Castells, *Toward a Sociology of the Network Society* 5 CONTEMP. SOC. 693 (2000) [hereinafter Castells, *Toward*]; MANUEL CASTELLS, *THE RISE OF THE NETWORK SOCIETY* (1997).

50 Castells, *Toward*, *supra* note 49, at 693.

51 *Id.* at 695.

52 See Rosenau, *supra* note 34.

effort to hold powerful actors to their previously stated policies or principles.⁵³

In short, NGOs can leverage significant influence internationally using transnational advocacy networks, even though advocacy networks lack traditional forms of power.⁵⁴

In addition to their use of networks, non-governmental institutions play other important roles in international decision-making. For example, Peter Newell has shown how a variety of non-state actors, including corporations and NGOs, have influenced the political environment of greenhouse gas regulations by shaping the agenda-setting, negotiation-bargaining, and implementation phases of policy making.⁵⁵ Corporations also play important roles in international politics. Susan Strange, for instance, argues that “TNCs have come to play a significant role in determining who-gets-what in the world system,” because they engage in such key activities as labor-management relations and ‘tax-farming.’⁵⁶ In particular, Strange writes that “instead of wages and working conditions being fought over within the context of state laws on industrial relations, or within institutional arrangements of a neo-corporatist nature much more of the bargaining now takes place within the firm.”⁵⁷ Strange also argues that corporations are able to exercise power over taxation because of a lack of an international tax regime.⁵⁸

Furthermore, non-state organizations’ increased, though still limited, standing in international law opens up new avenues of influence. For example, Raustiala writes, “Nongovernmental organizations (NGOs) play an increasingly prominent role in international environmental institutions, participating in many activities—negotiating, monitoring, and implementation—traditionally reserved for states.”⁵⁹ One way non-state actors can affect international politics, therefore, is by directly participating in multilateral agreements and organizations. While non-state actors can influence international politics in a number of ways, this direct participation is the focus of the cases considered in this article.

Non-state actors clearly play important roles in the international sphere. What, however, are the normative consequences of this involvement? In other

53 Keck and Sikkink, *supra* note 28, at 16.

54 *Id.*

55 PETER NEWELL, CLIMATE FOR CHANGE: NON-STATE ACTORS AND THE GLOBAL POLITICS OF THE GREENHOUSE (2000).

56 Strange, *supra* note 14, at 54.

57 *Id.* at 59.

58 *Id.* at 62.

59 Raustiala, *supra* note 48, at 719.

words, is the participation of non-state actors in transnational politics good or bad? The answer to this question depends crucially on whether non-states contribute to the democratization of international institutions, or whether they are tools for already powerful elites. Although representativeness is a concern regardless of the type of non-state actor involved, the dominance of corporations may be the biggest risk with respect to increasing participation of non-state actors in international politics, because corporations already wield a disproportionate amount of influence and have significantly more access to resources than other non-state actors.

The next section provides two case studies of non-state actor involvement in multilateral institutions. While they by no means represent the full range of non-state involvement in international affairs, the following cases provide some insight into whether non-state actors can make international decision-making more democratic.

NON-STATE ACTORS AND INTERGOVERNMENTAL ORGANIZATIONS: TWO CASES

This section presents two case studies of direct non-state actor participation in intergovernmental organizations. The first case is the World Bank Inspection Panel, an innovative accountability mechanism that allows for individuals to request independent inspections when they believe they have been adversely affected by violations of World Bank policies. The second case discusses non-state participation under the North American Free Trade Agreement (NAFTA). These cases focus on a particular way in which non-state actors can participate in multilateral organizations: the filing of claims that allege wrongdoing by the organization or its member countries. While the cases presented here represent only a small portion of non-state involvement in international politics, they nonetheless provide an important window into the role of non-state actors in the international arena and the implications of this role for democracy.

The World Bank Inspection Panel⁶⁰

In response to pressure from civil society, and from the World Bank's largest lender, the United States, the Board created the Inspection Panel in 1993. The Panel is a particularly remarkable innovation because it allows for small groups of individuals to bring a request for inspection, an important innovation in traditionally state-oriented international law. Furthermore, "The Panel represented the first time any [international financial institution] had provided a direct link between its governing body—in this case the Board of Executive Directors—and the people whom its projects are intended to benefit."⁶¹ Another key feature of the Inspection Panel is its independence. While the World Bank funds the Panel, it is intended to "be completely independent from Bank Management."⁶² However, in the early years of the Inspection Panel, the independence of the Panel was compromised. Bank management filed 'Action Plans' to circumvent the Panel process, and the Panel was often confined to limited desk studies, rather than being allowed to conduct full investigations. The Inspection Panel's role was also undermined because Bank management converted "operational directives and policies which were binding on the staff into non-mandatory recommendations (or 'Best Practices') which would render them 'Panel-proof' by placing them beyond the jurisdiction of the Inspection Panel."⁶³ Some of these deficiencies, however, were addressed in clarifications passed by the Board in 1996 and 1999. Two requests for inspections, the NTPC Power Generating Project in Singrauli, India and the Qinghai component of the China Western Poverty Reduction Project, are particularly elucidating. These two requests are considered below.

The World Bank's involvement has been critical in the transformation of the Singrauli region into India's "energy capital."⁶⁴ Beginning in 1977, "the World Bank lent \$150 million to the National Thermal Power Corporation (NTPC) to

60 This section draws heavily on work by Jonathan Fox and his collaborators. In addition to the works cited below, *see generally* PAUL NELSON, *THE WORLD BANK AND NON-GOVERNMENTAL ORGANIZATIONS: THE LIMITS OF APOLITICAL DEVELOPMENT* (1995); *THE STRUGGLE FOR ACCOUNTABILITY: THE WORLD BANK, NGOS, AND GRASSROOTS MOVEMENTS* (JONATHAN A. FOX & L. DAVID BROWN eds., 1998); MICHAEL GOLDMAN, *IMPERIAL NATURE: THE WORLD BANK AND STRUGGLES FOR SOCIAL JUSTICE IN THE AGE OF GLOBALIZATION* (2005).

61 WORLD BANK, *ACCOUNTABILITY AT THE WORLD BANK: THE INSPECTION PANEL 10 YEARS ON* 2 (2003).

62 *Id.* at 4.

63 Shalini Randeria, *Glocalization of Law: Environmental Justice, World Bank, NGOs and the Cunning State in India* 51 *CURRENT SOC.* 305, 322 (2003).

64 Dana Clark, *Singrauli: An Unfulfilled Struggle for Justice*, in *DEMANDING ACCOUNTABILITY: CIVIL-SOCIETY CLAIMS AND THE WORLD BANK INSPECTION PANEL*, 167, 171 (Dana Clark et al. eds., 2003).

help finance the construction of the Singrauli Super Thermal Power Plant, the first coal-fired power plant in the region.”⁶⁵ The World Bank has since lent in excess of \$4 billion to NTPC.⁶⁶ A number of problems have been associated with NTPC’s activities in Singrauli. In particular, local people have been displaced and agricultural land destroyed to make room for ash dikes used to dispose of fly ash produced by coal burning power plants.⁶⁷ Prior to the participation of the Inspection Panel, a number of NGOs had been involved in Singrauli. According to Dana Clark, “In 1984, the Delhi-based NGO Lokayan helped launch the Srijan Lokhit Samiti, an NGO based in Singrauli, to focus on the displacement problems in the region.”⁶⁸ A 1987 report organized by Lokayan and the Environmental Defense Fund “triggered the NTPC and the World Bank to follow up with their own field investigations.”⁶⁹ Subsequently, project authorities made promises to improve the situation and engage in further study.⁷⁰ These promises, however, were of little help. By 1994, the struggle in Singrauli had achieved international attention, with the participation of additional NGOs, such as Greenpeace, AidWatch, and the National Alliance of Peoples’ Movements.⁷¹

Despite the involvement of a number of prominent NGOs, there was little improvement in the situation. The filing of a claim to the Inspection Panel ultimately prompted some improvement, though the problems in Singrauli remained largely unresolved. In 1997, Madhu Kohli, an independent activist, filed a claim with the Inspection Panel on behalf of a group of subsistence farmers who were likely to be displaced by a new Bank financed power plant expansion.⁷² The request claimed that “the costs of continued development and exploitation of the area were being disproportionately borne by the poor villagers whom [Kohli] represented, who were continually displaced to make way for the huge, coal-fired power generating plants,” and that “villagers were being forcibly removed from their homes and resettled in urban areas completely unsuited to their mode of living.”⁷³

In a preliminary field visit, the Panel found evidence of significant violations of Bank policy. However, the borrower country was reluctant to allow the Panel to return to complete a full investigation. Ultimately, the Board

65 *Id.* at 168.

66 *Id.* at 170.

67 World Bank, *supra* note 61, at 43.

68 Clark, *supra* note 64, at 169.

69 *Id.* at 169.

70 *Id.*

71 *Id.* at 173.

72 World Bank, *supra* note 61, at 43.

73 *Id.*

approved a revised management Action Plan and approved a limited investigation to be conducted by the Panel from Washington, D.C. In its investigation, the Panel drew in part on “supplemental information from claimants and NGOs.”⁷⁴ Meanwhile, filing the claim triggered more repression and a “retaliatory backlash from NTPC.”⁷⁵

While the Inspection Panel was not allowed to conduct a full study, an Independent Monitoring Panel (IMP) was appointed as part of management’s Action Plan. The IMP recommended a package that would partially compensate a number of the affected individuals, though NTPC agreed to compensate only some of those who had been displaced. Furthermore, “another problem with the NTPC’s response to the IMP process was the coercive manner in which some people were forced to accept its terms....”⁷⁶ While the resolution of the problems in Singrauli was partial at best, the appointment of outside experts was unprecedented and had significant results. Without the involvement of the Inspection Panel, it is unlikely that even these limited improvements would have occurred. Despite some improvement, the overall outcome of the Singrauli case was largely unsatisfactory. In the next case to be considered, the Inspection Panel’s involvement had more dramatic results.

The China Western Poverty Project, specifically the Qinghai component of the project, was “one of the most controversial projects ever handled by the World Bank.”⁷⁷ Ostensibly, the Qinghai component of the project was designed to reduce poverty “that plagued the remote and inaccessible villages” in the hillsides of eastern Qinghai.⁷⁸ High population pressures had led to an erosion of the hillsides, and the project sought to resettle the hillside farmers to “the dry land area of Dulan County in Haixi Prefecture, a Tibetan and Mongol Autonomous Prefecture.”⁷⁹ However, concerns arose about the violation of a number of World Bank policies and about the effects the relocation would have on ethnic minorities inhabiting the dry lowlands. Specifically, it was alleged that resettlement would disrupt the lives of the Tibetans and Mongols in the move-in area, and threaten their cultural survival.⁸⁰

When the World Bank’s funding of the project became known, a vigorous campaign against the project was launched. A coalition of Tibet-support

74 Clark, *supra* note 64, at 179.

75 *Id.* at 176.

76 *Id.* at 181.

77 World Bank, *supra* note 61, at 69.

78 *Id.*

79 *Id.*

80 *Id.* at 71.

organizations was formed.⁸¹ The groups that comprised this coalition “shared information, strategies, and resources, and brought a diverse set of skills and political contacts to the campaign.”⁸² The campaign lobbied politicians, contacted the World Bank, and engaged the public.⁸³ The Center for International Environmental Law (CIEL) provided information about the Inspection Panel process to a number of Tibet-support organizations.⁸⁴ The protest from civil society encouraged the Bank to engage in dialogues with NGOs representing the Tibet cause.⁸⁵

In June 1999, however, the Inspection Panel received a request from the International Campaign for Tibet (ICT), a U.S.-based NGO.⁸⁶ While the Inspection Panel is designed to accept claims directly from affected peoples and their local representatives, ICT stated that it was eligible to “represent the interests of the affected people per paragraph 12 of the Resolution establishing the Inspection Panel because many Tibetans and Mongols in the project area feared the consequences of speaking out against the Chinese government.”⁸⁷ Paragraph 12 allows non-local representatives to file a claim in exceptional cases where “appropriate representation is not available locally.”⁸⁸ In an unprecedented move, the Board bypassed the question of whether ICT had standing to bring the claim, and “requested the Panel to investigate on the Board’s behalf.”⁸⁹

The Inspection Panel’s report found that a number of violations in Bank policy had occurred. Specifically, the Panel “found the Bank in apparent violation of several provisions of the policies on environmental assessment, indigenous people, involuntary resettlement, natural habitats, pest management, investment lending-identification to the Board presentation, and disclosure of information.”⁹⁰ The Panel found, for instance, that surveys used in both the move-in and move-out area were not confidential, which is especially problematic given China’s political climate. The Panel also found problems with the way components of the project had been categorized and with the fact that distinct ethnic minorities “were

81 Dana Clark & Kay Treacle, *The China Western Poverty Reduction Project*, in DEMANDING ACCOUNTABILITY: CIVIL-SOCIETY CLAIMS AND THE WORLD BANK INSPECTION PANEL, 211, 216 (Dana Clark et al. eds., 2003).

82 *Id.* at 216.

83 *Id.* at 217.

84 *Id.* at 216.

85 World Bank, *supra* note 61, at 71.

86 *Id.*

87 World Bank, *supra* note 61, at 71.

88 *Id.* at 136.

89 Clark & Treacle, *supra* note 81, at 235.

90 World Bank, *supra* note 61, at 74.

lumped together in the project even though they were culturally different from each other....”⁹¹

In response to the Panel’s report, management submitted refinements aimed at saving the project. The Bank’s Board was not satisfied with management’s add-on modifications, and at this point China decided to pursue the project with its own funds rather than use funding from the World Bank.⁹² Although China decided to pursue the project without World Bank funding, activists considered the campaign a success. Thubten Samdup, for instance, a Tibetan exile and president of the Canada Tibet Committee stated, “The voiceless citizens of Dulan have been heard thanks to a wonderful coming together of non-governmental organizations, students and activists who have valiantly held their ground to represent the unrepresented.”⁹³ And while China did ultimately engage in a resettlement program, there is evidence that the project has been scaled down and that there have been some important design changes.⁹⁴ Furthermore, the experience with the China-Tibet project resulted in important institutional reforms at the World Bank, such as the establishment of the Bank’s Quality Assurance Group.⁹⁵

While activists considered the China-Tibet case a success, a more pessimistic analysis offered by Robert Wade⁹⁶ highlights the potential perils of NGO involvement if the NGOs do not clearly represent a broad spectrum of legitimate stakeholder interests. Wade argues, for example, that “the NGOs never produced evidence that local people did not want the project beyond a few very brief and anonymous letters sent to the Tibet NGOs by people claiming to live near the move-in area.”⁹⁷ Wade also argues that the Inspection Panel was:

predisposed to avoid placing the Qinghai project in the context of the larger development dilemmas facing the government of Qinghai province—which would have meant, for example, acknowledging that the interests of the 2000–3000 people whose livelihoods might in any way be disrupted by the project should be weighed against those of the more

91 *Id.* at 77.

92 *Id.* at 79.

93 This statement is quoted in Clark & Treackle, *supra* note 81, at 234.

94 Clark & Treackle, *supra* note 81, at 238.

95 World Bank, *supra* note 61, at 79.

96 Robert H. Wade, *Accountability Gone Wrong: The World Bank, Non-governmental Organizations and the US Government in a Fight over China*, 14 NEW POL. STUD. 25 (2009).

97 *Id.* at 32.

than 60,000 who stood to benefit (not only those who moved in but also those who stayed behind in the move-out area).⁹⁸

Perhaps most interestingly, Wade writes that the NGO influence in the China-Tibet case “was a northern voice, mainly a US voice.”⁹⁹ Thus while the Inspection Panel process may have given voice to some stakeholders, it may also have excluded others and enhanced the power of those who already have disproportionate influence. While the China-Tibet case is unique, this more pessimistic reading highlights the need to ensure that NGO participation is in fact representative of the broad range of legitimate stakeholders.

The World Bank Inspection Panel provides numerous important lessons about the role of non-state actors in international relations. First, the Inspection Panel demonstrates that there are multiple power holders in the international arena. In the cases examined here, nation-states, NGOs, the World Bank, and, in the Singrauli case, even an individual (Madhu Kohli), all exercised significant power. The degree to which each group was able to exercise power varied, though, depending on the situation. In the Singrauli case, for example, NGOs were able to prompt the World Bank to take some initial action. However, this action was insufficient. The activism of Madhu Kohli, acting as an individual on behalf of a larger group, was essential to achieving at least some resolution to the situation. Yet, the balance of the power rested with the World Bank and the borrowing country (India). India was able to thwart a full investigation by the Inspection Panel, and World Bank management was unwilling or unable to enforce significantly better compliance by NTPC. It is important to note, however, that following the Singrauli case important changes were made to the Inspection Panel process that have improved the Panel’s effectiveness. In particular, the Board passed clarifications in 1996 and 1999 that reasserted the independence of the Inspection Panel.

In the China-Tibet case, international NGOs were able to exert significantly more power than in the Singrauli case. Given the repressive political conditions in China, it is unlikely that a domestic NGO or activist could have or would have filed a request for inspection. In this instance, the work of international NGOs was essential to giving a voice to those who otherwise would have remained voiceless. The activism of the Tibet advocacy network, combined with the filing of the request for inspection achieved a very substantial result: the canceling of World Bank funding for the project. Nonetheless, state power is

98 *Id.* at 42.

99 *Id.* at 43.

evident in the China-Tibet case. Ultimately, China was able to proceed with the project using its own funds, though with some apparent modifications. Also, the opposition to the project of the United States and Japan, the two most powerful donor countries, likely influenced the outcome.¹⁰⁰ Finally, as Clark and Treakle note, “There are many aspects of the campaign that are not easily replicable...such as the intense media interest in issues involving Tibet and the international advocacy network of Tibetan exiles and supporters of the Tibetan cause.”¹⁰¹

The World Bank Inspection Panel provides an important lesson about the prospects of more representative global governance. In the two cases considered here, the Inspection Panel has given at least some voice to those whose voices usually go unheard in the international sphere, such as subsistence farmers and nomadic herders. The more pessimistic reading of the China-Tibet case offered by Wade,¹⁰² however, shows that non-state participation may not always lead to full representation of legitimate stakeholders. Nonetheless, despite the involvement of a US-based NGO in the China-Tibet case, “Most Panel claims have been led exclusively by directly affected people and their Southern allies, suggesting that the process has largely fulfilled its goal of being ‘citizen-driven.’”¹⁰³ The Inspection Panel, though, has other important limitations. Perhaps most importantly, the Inspection Panel can only be called into play when the violation of a World Bank policy is alleged; it cannot participate in the formation of policy. In addition, “the number of Panel claims so far represents only a fraction of potentially controversial projects, suggesting significant constraints on the Panel process.”¹⁰⁴

The cases considered here indicate the complexity of power relations in the international arena. In the international sphere, power is exercised by different actors—both states and non-states—to varying degrees, and is often contingent. Civil society groups are able to extract significant changes at times. This ability, however, depends on other contingent factors, such as the responsiveness of governments and public attention. This underscores that it is possible for civil society groups to exercise power in the international sphere, but that they may need the support of other actors. The dependence of NGOs on other power

100Clark & Treakle, *supra* note 81, at 232.

101*Id.* at 235.

102Wade, *supra* note 96.

103Jonathan Fox, *Can Multilateral Institutions be Made Publicly Accountable?*, GLOBAL POL’Y BRIEF (Center for Global, Int’l and Regional Stud., U.C. Santa Cruz), 2004, at 5, available at <http://repositories.cdlib.org/cgirs/gpb/GPB3/>.

104*Id.* at 7.

holders, however, may raise concerns about whether they reinforce the influence of already powerful actors.¹⁰⁵ The ability of these actors to be successful in bringing previously unrepresented views to bear on international decision-making may therefore depend on the extent to which these actors can be empowered in ways that enhance equality of representation. The Inspection Panel is a significant step toward the goal of more representative global governance; however it also illustrates the challenges to achieving such a goal and the inadequacy of existing reforms.

The North American Free Trade Agreement

The North American Free Trade Agreement (NAFTA) provides two contrasting examples of innovative non-state participation in a multilateral agreement. First, NAFTA provides investor-protection rights, which give “foreign investors unprecedented power to challenge national and state laws and to demand compensation when environmental or health measures affect the value of their investments.”¹⁰⁶ Second, the NAFTA environmental side agreements created the Commission for Environmental Cooperation (CEC), which provides for some public involvement. The environmental protections offered by the CEC, however, are much weaker than the investor-protection provisions in NAFTA. This section compares the opportunities for corporate participation versus citizen and NGO participation in the NAFTA regime within the context of environmental protection. I will begin with an overview of the possibilities for citizen and NGO participation through the CEC.

During the negotiation of NAFTA, there was considerable concern that the agreement “would detrimentally affect the environment” in Mexico, Canada, and the United States.¹⁰⁷ In response to these concerns, concessions were made in an effort to make NAFTA more environmentally friendly. In fact, some had referred to NAFTA as a ‘green’ agreement and a number of prominent NGOs stepped

105As Andrew Hurrell notes, “...we have to face the argument that existing NGO influence already works to favour the values and interests of Northern states and societies, and that moves to expand such influence as part of attempts to democratize international institutions would magnify still further the power of the already powerful.” ANDREW HURRELL, ON GLOBAL ORDER: POWER, VALUES, AND THE CONSTITUTION OF INTERNATIONAL SOCIETY 113 (2007).

106Center for International Environmental Law, *Groups Defend California’s Right to Protect Public Health: Canadian Corporation’s NAFTA Suit Threatens State Sovereignty*, 2004, available at http://www.ciel.org/Tae/Methanex_30Mar04.html.

107Roberto A. Sanchez, *Governance, Trade and the Environment in the Context of NAFTA* 45 AM. BEHAV. SCI. 1369, 1370 (2002).

forward to offer their support of NAFTA, including the Environmental Defense Fund, the National Audubon Society, and the World Wildlife Federation.¹⁰⁸

A key provision offered to appease environmental groups was the creation of the Commission for Environmental Cooperation (CEC). One of the most important aspects of the CEC is the citizen submission process, which is the “primary activity of the CEC in the area of enforcement.”¹⁰⁹ The citizen submission process authorizes the Secretariat of the CEC to investigate “factual submissions” prepared by individuals or groups that allege “member government noncompliance with domestic environmental laws.”¹¹⁰ After the CEC has received a complaint from “any NGO or person,” the secretariat is responsible for screening the “submissions to determine whether they meet the criteria set out” in the CEC’s charter.¹¹¹ The secretariat can then request a response from the relevant party (i.e., Canada, Mexico, or the United States), and after it has received the response, it decides “whether to recommend the preparation of a factual record of the situation surrounding the complaint.”¹¹² If the secretariat recommends the preparation of the factual report, and two of the three parties agree, a report will be prepared, which can then be published, if two of the three parties agree once again.¹¹³ No sanction can be imposed through the citizen submission process, except for the possible bad publicity generated through the release of a factual report.

108Id.; David J. Blair, *The CEC’s Citizen Submission Process: Still a Model for Reconciling Trade and the Environment?* 12 J. ENV’T & DEV. 295, 300 (2003).

109Blair, *supra* note 108, at 299. There is also a dispute resolution process in Part V of the CEC charter, yet this has been ineffective partly because of disagreements between the parties on establishing rules of procedure for the process. *Id.* at 298.

110Stephen P. Mumme & Pamela Duncan, *The Commission for Environmental Cooperation and Environmental Management in the Americas*, 39 J. INTERAMERICAN STUD. AND WORLD AFF. 41, 47 (1997-1998). See Article 14(1) of the North American Agreement on Environmental Cooperation (NAAEC) (the charter of the CEC). Blair, *supra* note 108, at 299.

111Blair, *supra* note 108, at 299. “Among these criteria are the requirements that the submission provide sufficient information about the particular accusation (including documentary evidence) for the secretariat to use in its review of the charges in question, that it appears to be aimed at promoting enforcement rather than at harassing industry, and that the submission clearly shows how the submitted complaint matter has been communicated with the relevant authorities” *Id.*

112Blair, *supra* note 108, at 299. In deciding whether to request a response from the relevant party, “Article 14(2) [of NAAEC] calls for the secretariat to be guided by whether the submission alleges harm to the person or organization making the submission, whether the submission raises matters whose further study would advance the goals of the Agreement, whether private remedies available under the party’s law have been pursued, and whether the submission is drawn exclusively from mass media reports” *Id.*

113Blair, *supra* note 108, at 299.

While the citizen submission process is an innovative attempt at reconciling trade and the environment through citizen participation, it has largely been a disappointment. In addition to the inability of the citizen submission process to lead to formal sanctions, the process has been continually undermined because the CEC's structure makes it "highly dependent on the whims of its member governments."¹¹⁴ The role of the CEC Council, which is comprised of the environmental ministers of each country or their deputies, in approving the investigation of citizen submissions calls into question the obvious issue of conflict of interest.¹¹⁵ As Roberto Sanchez writes, "[CEC] council members are judge and interested/affected parties at the same time."¹¹⁶

Furthermore, the majority of the submissions have not resulted in preparation and publication of factual records. David Blair writes, "of the 21 submission files that were closed by the end of 2001, only 2 had resulted in the preparation and public release of factual records."¹¹⁷ In the cases where a factual record has been prepared, the investigation has often been limited. For instance, in a claim submitted alleging failure of the United States to enforce the Migratory Bird Treaty Act (MBTA), "the CEC Council...rejected the preparation of a factual record on the general pattern of enforcement of the MBTA and authorized an investigation only into the two specific incidents cited in the submission as examples of the failure to enforce this law."¹¹⁸ Similarly, in a submission involving a Mexican shrimp farm, the Council permitted an investigation, but "instructed [the secretariat] not to review the adequacy of the penalties imposed in accordance with the environmental laws in question."¹¹⁹ Additionally, an excessive length of time often elapses before the completion of a citizen submission file. As Blair reports, "Five of the files that were closed by the end of 2001 had taken over 2 years to reach their conclusion, and the 10 files that were still active at the end of 2001 had been active for an average of over 2.5 years, including one that was nearly 5 years old."¹²⁰ One reason for these delays may be that the CEC has been underfunded, but the deliberate action or inaction of the parties also appears to be a cause.¹²¹

114Mumme & Duncan, *supra* note 110, at 55.

115Although, since the approval of the preparation of a factual report requires only a two-thirds majority, rather than a unanimous decision, the CEC regime is "nominally endowed with a measure of autonomy" *Id.*

116Sanchez, *supra* note 107, at 1377.

117Blair, *supra* note 108, at 304.

118*Id.* at 312.

119*Id.*

120*Id.* at 307.

121*Id.* With respect to the underfunding of the CEC, Mumme and Duncan write, "Originally, the

Despite the numerous problems with the CEC's citizen submission process, there is some indication that the process has been, or at least could be, effective in some cases. For example, in one claim regarding the development of a cruise ship pier near Cozumel, Mexico, Gustavo Alanis Ortega, the president of the organization that had filed the claim, "expressed his belief that the submission process led to the declaration of the Cozumel Reef as a protected natural area, the downsizing of the development project, improvements to Mexican environmental impact laws, and the establishment of a trust fund for reef protection."¹²² Another submission regarding hydroelectric dams owned by BC Hydro in Canada may have had some effects even before the factual record was prepared.¹²³ Moreover, the continued attempts by the parties to "exert greater control over the citizen submission process could paradoxically be an indication of the mechanism's potential effectiveness."¹²⁴

While there has been some indication that the CEC citizen submission process may be effective in some cases, it stands in stark contrast to the opportunities investors have to file grievances under NAFTA. Corporate participation through NAFTA has been extremely 'effective,' in so far as it has resulted in multimillion-dollar settlements for corporations. NAFTA has offered a remarkable degree of power to corporations. This power is derived largely from the investment protections in NAFTA's Chapter 11. The most notorious of these is the protection against state actions 'tantamount to expropriation.' This has been interpreted widely and used to challenge a range of regulatory action on the part of democratically elected domestic governments in all three NAFTA countries.¹²⁵ An investor (typically a multinational corporation) alleging that it has been harmed by a state's violation of NAFTA's investor protections can file a claim directly against that state, a rather remarkable development for traditionally state-centered international law.

CEC pegged a modest US \$15 million...as its year one funding target, hoping to strengthen its financial support over time. Instead the parties have reluctantly anted up only \$9 million in annual operating funds in the first two years." Mumme & Duncan, *supra* note 110, at 51. With respect to deliberate action or inaction of the parties, Blair writes, "In the case of the BC Hydro submission, Canadian officials canceled a number of meetings the secretariat was trying to set up in the course of its preparation of a factual record, and the secretariat's investigation in the Metales y Derivados submission was delayed, in part, because it had not received information it had sought from Mexico for several months." Blair, *supra* note 108, at 308.

¹²²Blair, *supra* note 108, at 315.

¹²³*Id.* at 316.

¹²⁴*Id.* at 315.

¹²⁵James McCarthy, *Privatizing Conditions of Production: Trade Agreements as Neoliberal Environmental Governance* 35 GEOFORUM 327, 330-334 (2004).

The very process of dispute settlement in NAFTA empowers market actors because it is based on the “model of corporate arbitration,” and therefore “market relations and norms structure the basic arena of disputes, rather than the domestic law of any given country, or international law dealing with subjects such as human rights or the environment.”¹²⁶ Furthermore, NAFTA tribunals are held in secret, and the proceedings “are kept confidential unless both the challenging corporation and the defending government agree to make them open.”¹²⁷

While the CEC citizen submission guidelines have often been interpreted narrowly to the disadvantage of environmental NGOs, the rules regarding arbitration under NAFTA’s Chapter 11 have been interpreted widely, to the advantage of corporations. For example, in Ethyl Corporation’s claim against Canada’s Manganese-based Fuel Additives Act, which banned “interprovincial trade in and commercial imports of” a manganese-based fuel additive, the arbitral tribunal dismissed a number of technical jurisdictional claims by Canada in favor of Ethyl Corporation.¹²⁸ The parties eventually settled, with Canada paying \$13 million to Ethyl.¹²⁹

Two other cases are particularly illustrative of the power given to corporations under NAFTA’s Chapter 11 dispute settlement process. In one case, Metalclad, a U.S. corporation, brought a claim against Mexico claiming that it had expropriated its property. Metalclad had intended to open a hazardous waste landfill in Guadalcazar, San Luis Potosi. Metalclad claimed that it had been assured by federal officials that it had all the necessary permits, however the Municipality of Guadalcazar ordered that construction of the landfill stop “because no municipal construction permit had been issued.”¹³⁰ Metalclad applied for the permit, but continued construction.¹³¹ Demonstrations prevented the landfill from opening when it was completed in 1995. The municipality filed a motion in Mexican courts challenging Metalclad’s right to open the landfill, and

¹²⁶*Id.* at 332.

¹²⁷Martin Wagner, Director of International Programs, Earthjustice Legal Defense Fund, testimony at a joint hearing before the California State Senate Committee on Banking, Commerce and International Trade and the California State Senate Committee on International Trade Policy and State Legislation (May 16, 2001), *available at* http://www.earthjustice.org/news/press/001/international_trade_agreements_and_california_law.html.

¹²⁸Alan C. Swan, *Ethyl Corporation v. Canada, Award on Jurisdiction (under NAFTA/UNCITRAL)*, 94 AM. J. INT’L L. 159, 159 (2000).

¹²⁹*Id.* at 160.

¹³⁰William S. Dodge, *Metalclad Corporation v. Mexico ICSID Case No. ARB(AF)/97/1.40 ILM* 36 (2001), and *Mexico v. Metalclad Corporation*, 2001 B.C.S.C. 664 95 AM. J. INT’L L. 910, 911 (2001).

¹³¹*Id.*

an injunction was issued “barring Metalclad from operating the landfill.”¹³² After subsequent negotiations failed, Metalclad filed its Chapter 11 claim in 1997.¹³³ Approximately nine months later, the governor of San Luis Potosi issued an ecological decree declaring the landfill site a natural preserve.¹³⁴ In 2000, the arbitral tribunal awarded Metalclad \$16,685,000, the cost of its investment plus interest.¹³⁵ The tribunal ruled that “the ‘motivation or intent’ of the [ecological] decree [was] irrelevant to the question of expropriation.”¹³⁶ A Canadian court overturned some of the tribunal’s findings, but the two parties settled for an amount just slightly less than what the tribunal had awarded.¹³⁷ As William Dodge writes, “Although the *Metalclad* Tribunal could have written a clearer and more persuasive award, it could hardly have written one more favorable to foreign investors.”¹³⁸

The most infamous Chapter 11 claim yet is perhaps Methanex’s claim against the United States. In 1999, California banned MTBE, a gasoline additive and a suspected carcinogen that had turned up in California’s groundwater.¹³⁹ The ban was supposed to go into effect in 2002.¹⁴⁰ Methanex, a major producer of an ingredient in MTBE, claimed that California’s ban on MTBE was ‘tantamount to expropriation,’ and demanded nearly \$1 billion in compensation. In 2005 Methanex’s claim was dismissed on both jurisdictional grounds and on its merits, and the United States was awarded \$4 million to cover legal expenses.¹⁴¹ A statement by Adam Ereli, a deputy spokesman for the US State Department, argued that the decision in the Methanex case “demonstrates that U.S. trade agreements and investment treaties do not encroach on governments’ legitimate right to regulate in the public interest.”¹⁴² However, the very fact that Methanex was able to embroil the United States in multimillion-dollar and multi-year litigation over what many perceived as an obviously legitimate public policy prerogative shows the extent to which corporations have been empowered. This empowerment stands in sharp contrast to the very limited opportunities for

132*Id.*

133*Id.*

134*Id.*

135*Id.* at 913.

136*Id.* at 911.

137*Id.* at 914-915.

138*Id.* at 917.

139McCarthy, *supra* note 125, at 333.

140*Id.*

141Adam Ereli, *NAFTA Tribunal Dismisses Methanex Claim*, US Department of State, Aug. 10, 2005.

142*Id.*

participation given to other non-states. Interestingly, however, in an unprecedented decision, the arbitral tribunal in the Methanex case allowed a group of NGOs to submit 'friends of the court' briefs.¹⁴³ This is an important, though small, step toward making the NAFTA Chapter 11 dispute resolution process more inclusive.

NAFTA provides unique avenues for non-state actor involvement. However, different types of actors have been empowered unequally, with corporate actors being given much more power than individuals or NGOs. This inequality of representation within NAFTA presents a challenge to the development of more democratic transnational governance in North America. While it is not surprising that corporate actors have more power than civil society actors given corporations' access to resources, the institutional and legal arrangements of NAFTA exacerbate this problem. Non-state actor participation in multilateral institutions could lead to more democratic governance. However, the NAFTA case demonstrates that in order for this to occur efforts must be made to ensure some degree of equality in terms of opportunities to participate. Allowing NGOs to file 'friends of the court' briefs in NAFTA arbitrations could be a significant move toward more representative governance under NAFTA. However, given the enormous disparity in the empowerment of market versus civil society actors, more serious reforms are needed.

ASSESSING THE ROLE OF NON-STATE ACTORS AND POSSIBILITIES FOR REFORM

Globalization and the nature of power in the international sphere create a number of challenges to traditional conceptions of democracy. However, as I have argued, this is no reason to abandon the project of democratizing global governance. The case studies presented in this paper offer valuable lessons about the global power system and about the prospects of global democracy. First, the cases presented herein substantiate that power in the international sphere is complex, disaggregated, and often contingent. NGOs, corporations, governments, and even individuals exercise some degree of power in at least some instances. While states or corporations appear to hold the majority of the power in most instances, there is no one actor that controls all power in every situation. At the very least, it can be said that there are openings for the exercise of power by civil society actors. The ability of civil society actors to generate publicity and disseminate information is especially important in this regard. However, the structure of the

¹⁴³Center for International Environmental Law, *supra* note 106.

multilateral institutions considered here has often prevented civil society actors from achieving more extensive influence.

At present, the contribution of non-state actors to the democratization of transnational governance through their participation in multilateral institutions is mixed. On one hand, there are several instances when non-state actors have clearly been able to voice the concerns of the voiceless and to interject perspectives that would otherwise go unheard. However, the dominance of certain non-state actors (corporations most notably in the cases presented here) has, at times, undermined democracy by leading to governance that is one sided and ignores social and environmental concerns. This is especially problematic in the case of NAFTA, where corporate power has undermined democratically made domestic laws. The participation of non-state actors is also problematic because it is unclear to what extent their participation really represents the interests of individuals. Environmental NGOs, for instance, may be seen as special interest groups that do not actually represent the will of the people. There are also concerns about the extent to which NGOs are themselves democratically accountable. Making participation contingent on basic standards of representativeness and transparency can help to partially remedy this problem, but without 'one person, one vote' it is difficult to know to what extent each person's voice is being heard.¹⁴⁴ The emphasis here, however, is on encouraging the expression of a multiplicity of views, while acknowledging that a maximum level of democracy may not be achievable.

Furthermore, reforms could help to ensure that non-state actor participation is at least somewhat representative of stakeholders' interests.¹⁴⁵ The following propositions would provide useful guidelines for future reforms. First, within any given international institution, empowerment of non-state actors should emphasize equality of representation. As Jan Aart Scholte writes, "If civil society is to make a full contribution to democratic rule of global spaces, then all interested parties must have access—and preferably equal opportunities to participate."¹⁴⁶ Relatedly, if one type of non-state actor is given the opportunity to be heard, similar opportunities should be afforded to other actors that have legitimate claims for standing. In the case of NAFTA, for example, environmental

¹⁴⁴Although it is also difficult to know if every person is heard in electoral democracy given enormous bureaucracies and low voter participation rates.

¹⁴⁵NGOs themselves might play a key role in developing such reforms. For example, the South African NGO coalition CIVICUS has worked with national governments and international institutions to encourage the creation of "frameworks of engagement with civil society." Kumi Naidoo, *Creating a Space to Act Globally: Empowering Civil Society Organizations* 11(2) BROWN J. WORLD AFF. 147, 148 (2005).

¹⁴⁶Scholte, *supra* note 6, at 296.

and social NGOs could be given rights to engage in arbitration procedures for the protection of the environment that are similar to those given to corporations to protect investments. Even within a procedure designed for one type of non-state actor, allowing for the participation of other competing types of actors would be beneficial. The submission of 'friends of the court' briefs by environmental NGOs to NAFTA investment protection tribunals is an example of such a reform. Second, recognition and empowerment of non-state actors may have to be proactive. Participating directly in international decision-making is time consuming and costly. Given the unequal resources available to different types of non-state actors, it may be necessary to develop proactive programs to encourage the participation of a wide range of actors representing a wide range of interests. This is especially important in developing countries, where resources are scarce and where international civil society networks may be less developed. It is also important to empower non-state actors in underrepresented areas of developed nations.¹⁴⁷ Third, allowing individuals to participate directly in certain aspects of governance may be especially effective since this brings the opportunity to participate in global governance directly to those affected. However, when individuals are allowed to participate, proactive empowerment is especially needed, since individuals are least likely to have the resources and knowledge needed to participate directly. Even with proactive empowerment, individuals are unlikely to have the resources to participate regularly and directly in policy formation, but the participation of individuals could be especially effective as a last resort means of accountability. Finally, public education about international issues is of key importance, especially because publicity is an essential source of power for civil society actors. Increasing public awareness of international issues could therefore help to empower civil society actors and to serve as a counterbalance to corporate power.

CONCLUSION

The participation of non-state actors in international affairs has the potential to be a democratizing influence on global governance. However, it is clear that non-state participation will not automatically lead to more democratic international decision-making. Increasing levels of participation by non-states in international politics could lead to less representative governance, particularly if this participation increases the influence of corporations that already have a

¹⁴⁷The need to ensure that stakeholders actually have the means to participate may also draw attention to broader concerns about global inequality and distributive justice. *See* Hurrell, *supra* note 105, at 316.

disproportionate amount of power. The ability of civil society actors to provide a counterbalance to corporate power and to represent otherwise unrepresented groups is one key way in which global governance could be democratized. Fortunately, globalization has the potential to strengthen civil society groups. The further development of global advocacy networks that make use of developing technologies, such as the Internet, could lead to an increase in power for incipient civil society actors. Further study is necessary to better understand under what conditions civil society groups may be empowered.

In the case studies presented here, public awareness and the support of national governments were two key conditions that allowed civil society groups to be effective. Given the contingent nature of international power and the lack of traditional power held by civil society actors, the support of other power holders may be critical in allowing civil society groups to attain greater influence. In particular, the support of national governments and intergovernmental institutions may be crucial.¹⁴⁸ Framing the participation of non-states within the context of democracy is therefore important. Since democratic values are widely supported by powerful policy makers, understanding the participation of non-state actors within the context of democracy would lend support to government reforms to empower civil society actors in ways that could increase the representativeness of global governance. It must be remembered, however, that civil society groups are not inherently representative of relevant interests. The framework for participation for these groups as well must therefore emphasize broad representation of stakeholders.

The benefits of democracy did not stop at the city-state and they do not stop at the nation-state. Globalization presents significant challenges to traditional conceptions of democracy, but democracy must adapt to a changing world order. Indeed the complex and interdependent nature of our globalizing world makes increasing the level of democracy in the international sphere imperative. The involvement of non-state actors in international politics could help to democratize global governance. However, as Fred Halliday points out, non-state actors, and their role in international politics, are not necessarily benign.¹⁴⁹ The development of a policy framework that encourages equality in the participation of non-state actors could enhance the benefits of non-state actor participation. Finally, it must be remembered that non-state actors operate in a system of power in which there

148As Hurrell notes, "State action may be shaped by NGO lobbying but it is often state action that is crucial in fostering the emergence of civil society in the first place and in providing the institutional framework that enables it to flourish." Hurrell, *supra* note 105, at 112.

149Fred Halliday, *The Romance of Non-State Actors*, in NON-STATE ACTORS IN WORLD POLITICS, *supra* note 5, at 25.

are multiple types of power holders. To be successful, the effort to democratize global governance must be as complex and multifaceted as the system it is attempting to transform. The direct participation of non-state actors in multilateral institutions could be one important part of the democratization of global governance, though it is unlikely to be sufficient.