

Reforming the WTO: Toward More Democratic Governance and Decision-Making

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§ I: Introduction

This paper takes a critical approach to the World Trade Organization (WTO) and proposes a radical solution involving more direct involvement of civil society and the private sector in WTO governing structures. Jan Aart Scholte has suggested that critics of the WTO fall broadly into one of three categories: ‘radicals’, who believe the institution is failing to the degree that it ought to be abolished; ‘reformers’, who are still in favor of maintaining the WTO but believe it is in need of serious re-thinking; and ‘conformers’, who believe the current trading system and WTO need only minor adjustments.¹ This paper is written from a reformist viewpoint. Although current political realities, especially the recent collapse of the Doha Development Round of Trade Negotiations, may seem to provide growing evidence to support the radicals’ argument, this paper suggests a means by which we might improve the WTO’s deficiencies while still preserving what exists and functions well at the WTO.

Criticisms of the WTO, within any of the three categories introduced above, can be divided further into two subject categories: criticisms of the underlying economic theory of the institution, and criticisms of the way in which the institution is run, regardless of the economic debate surrounding the issue of free trade. This paper does not examine the economic foundations of the WTO. It does not delve into the question of whether trade liberalization is the best means of achieving higher standards of living in all countries, especially developing countries, or what the economic conditions for a “fair” multilateral trading system might be. Instead, this paper advocates that, regardless of economic theory, the WTO needs an effective democratic governance structure. It does not address the question of *economic* “fairness”, but it questions whether *political* “fairness” is upheld at the WTO—whether WTO member countries are all equally represented and influential within the organization, or if a certain set of members has illegitimately amassed an undemocratic—“unfair”—amount of influence. In this sense, the paper unequivocally links democratic legitimacy to direct, proportional representation.

Robert Dahl argues that intergovernmental organizations (IGOs) probably can never become legitimate on the basis of having expressed consent of the governed, in the way one might expect from a democracy at the national level. Dahl does not believe that sufficient shared beliefs or common values exist to attain unanimity in global society, given conflicting individual and group interests. Dahl argues that IGOs should be thought of as bargaining systems, not democratic institutions.

We should be wary of ceding the legitimacy of democracy to non-democratic systems... I suggest that we treat them as bureaucratic bargaining

¹ See Scholte, J.A. (1998). “The WTO and Civil Society.” Working Paper No. 14/98, Centre for the Study of Globalisation and Regionalisation. Available online at <http://www2.warwick.ac.uk/fac/soc/csgr/research/workingpapers/1998/wp1498.pdf>

systems...Leaders in [these systems] cannot indefinitely ignore the limits set by the opinions and desires of the governed.²

This view that IGOs should be seen as bargaining systems and not democratic institutions is shared by realist analysts of many IGOs, particularly those in the financial sphere. As Emad Tinawi argues with regard to the WTO: “The U.S. and other powerful economies will always drive the agenda in a way that favors their economic interests. This is not a secret. The WTO is exactly the place where each state needs to push for its economic interest—it is a place for deal-making among nations.”³

From this point of view, it does not matter if the WTO obviously suffers from a ‘legitimacy’ failure, in that it fails to refer to the beliefs of the ruled in a meaningful way. Evidence that many citizens fail to accept the rule of the WTO manifests itself in popular protests against both its specific policies as well as protests against its very existence. The value patterns of many international institutions, especially the WTO, are incompatible with the systems prevalent in many countries, and this is shown by the refusal of some countries to implement their recommendations as well as the steps taken by the institutions to punish this (such as the withdrawing of loans). From the Dahl or Tinawi point of view, the WTO is not meant to be democratic and the voices of those not represented in the WTO can only come from public protests or rejection of their policies.

This paper opposes this view, advocating that the WTO both *should* and *can* enjoy an effective, democratic structure of governance and decision-making. In this paper I demonstrate that the WTO is currently not meeting what I argue are the appropriate standards of democracy and accountability that should govern its operation. In particular, the poorest of its members are disadvantaged by the governance system, which denies them the consideration and protection they require. Although the WTO espouses a decision-making protocol based on consensus, and holds itself to a ‘one member, one vote’ principle of participation, developing countries are poorly represented at the WTO. They are kept from participating fully in debate and discussion by larger, more powerful nations who influence proceedings through coercion and incentives, as well as by their own inadequate resources. Moreover, their issues are not prioritized within the organization, which tends to be dominated by the interests of those nations with the largest shares of world trade. Finally, the dispute resolution mechanism at the WTO is based on a system of approved sanctions, which offers little consolation to those countries lacking sufficient weight in world trade to pose a threat to the interests of more powerful rivals.

Section 3 reviews the historical relationship between the WTO and NGOs, both within member nations and internationally, examining the ways in which collaboration has gradually increased. It identifies ways in which greater engagement of NGOs with the proceedings of the WTO can improve its transparency, accountability, and legitimacy, by ensuring its members are equally represented, issues are appropriately prioritized, and

² Robert Dahl (1999). “Can International Organizations Be Democratic: A Skeptic’s View” in Shapiro, I. and Hacker-Cordon, C. *Democracy’s Edges*. Cambridge, UK: Cambridge University Press. p. 33-34.

³ Emad Tinawi, Comments to the author, April 2006.

disputes resolved effectively. It is argued that consultation is insufficient; rather, NGOs should be given a formal voice in the WTO, alongside the private sector, and included in decision-making processes. Formal inclusion for the private and civil sectors is suggested, with both of them given full voting rights and representative status within IGOs to match that of national governments. There are risks, however, to including NGOs, and this section also analyzes potential ways in which NGOs can reach appropriate levels of transparency and accountability.

Finally, the last section considers a practical recommendation for how to establish the parameters of this new, inclusive system of global governance. The system cannot work unless existing members of the WTO, national governments, support the idea and engage in the process. Formal consultation and collaboration is envisaged, with a suggested four-step process to ground a new regime. Phase 1 consists of securing conceptual support for change from NGOs, national governments, and the corporate sector, including through information and pressure campaigns if necessary. Phase 2 requires each of the three sectors to select its representatives in an accountable, transparent way, such that they have representative voices speaking for them throughout the process. During Phase 3, the three sectors will need to agree on parameters of the new system, including specifics such as how agenda-setting and debates will take place in the new regime. Finally, Phase 4 involves implementing the new system, integrating the efforts of the three sectors to implement and entrench the new system of global governance.

Ultimately, this paper envisions a new type of WTO: a transparent, inclusive, accountable and representative organization where influence is formalized and proceedings are legitimate, which can serve as a model for other IGOs. This can only be achieved by including the voices speaking on behalf of the interests of global citizens, in the corporate and civil sectors, to augment the voices of national governments with national interests. Working together, these three sectors can create a new system of global governance that truly is fit to govern a globalized world.

§ II. The WTO – Processes, Procedures and the Imbalance of Power

The World Trade Organization (WTO) came into being on 1st January 1995. A result of the Uruguay Round of trade negotiations (1986-1994) and the Marrakech Agreement, it took over from the General Agreement on Tariffs and Trade (GATT) as the body that presides over the multilateral trading system. The rules of the international trading system had been established by the 1947 GATT, but it was with the birth of the WTO that the rules were extended to include a number of areas previously outside the GATT system: notably agriculture, textiles, trade in services and intellectual property rights. The changes gave the WTO much more power to influence people's lives than the GATT ever had, especially in developing countries. Based in Geneva, the WTO is made up of 146 member countries, eighty percent of which are considered to be 'developing'.

When the WTO was established, countless benefits were envisioned for the whole world, but developing countries, in particular, were to expect vast improvements. Lori Wallach and Patrick Woodall summarise the assurances as follows: "Rich countries and the GATT Secretariat staff promised developing countries that they would experience major gains as industrialized countries lowered and eventually eliminated tariffs on such items as textiles and apparel and cut agricultural subsidies that had enabled large agribusinesses to dominate world commodity markets."⁴ The Marrakech Agreement explicitly prioritizes considerations of a nation's welfare, suggesting that "relations in the field of trade and economic endeavor should be conducted with a view to raising standards of living... while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development."

At the Singapore Ministerial Conference in 1996, the WTO recognized the important and unique needs of developing countries relevant to trade negotiations. For that reason, the Ministerial committed to "organize a meeting with UNCTAD and the International Trade Centre as soon as possible in 1997, with the participation of aid agencies, multilateral financial institutions and least-developed countries to foster an integrated approach to assisting these countries in enhancing their trading opportunities."⁵ This meeting resulted in the founding of the Integrated Framework for Trade-Related Technical Assistance to least-developed countries (IF), a multi-agency, multi-donor program that assists the least developed countries (LDCs) to expand their participation in the global economy whereby enhancing their economic growth and poverty reduction strategies. It brings together the IMF (International Monetary Fund), ITC (International Trade Centre), UNCTAD (United Nations Conference on Trade and Development), UNDP (United Nations Development Programme), World Bank and the WTO to provide targeted assistance to a group of countries that has now grown to number 50. The IF is intended to provide planning and

⁴ Wallach, L and Woodall, P. (2003). WTO: Whose Trade Organization? New York: The New Press. Excerpts provided by Public Citizen, "The WTO and the Developing World: Do as we say, not as we did". Available online at <http://www.tradewatch.org/trade/wto/articles.cfm?ID=10447>

⁵ World Trade Organization, (1996). "Singapore Ministerial Declaration." Available online at http://www.wto.org/english/thewto_e/minist_e/min96_e/wtodec_e.htm

technical assistance to “meaningfully integrate LDCs into the multilateral trading system”⁶ and ensure they have a voice within the system.

However, the WTO has not delivered all it has promised. Many of those subsidies and tariffs are still in place, with others continuously being erected, as countries find themselves unable to reach agreements on removing them within the existing paradigm.⁷ Furthermore, and crucial from the position of this paper, the governance structure is in reality not as fair as a ‘one country, one vote’ system ought to achieve, and many developing countries are severely under-represented in the decision making processes. Rather than benefiting from the WTO, it seems developing countries may be losing out.

There are three main ways in which these countries are disadvantaged by the current governance structure and decision making processes of the WTO. The first is that obstacles exist to their participation in agenda-setting, deliberation, and decision-making. By restricting the engagement of developing countries with all facets of WTO proceedings, larger countries limit their ability to influence outcomes. The second is that their issues are rarely prioritized by the WTO, and often disregarded. This allows proceedings to be dominated by the agendas of large, developed countries, or even multinational corporations, rather than the pressing issues of smaller, poorer nations. Finally, when these countries are wronged, their access to avenues of recourse proves ineffective and unreliable, and rarely resolves their disputes effectively. This section will consider each issue in turn, showing how the WTO is failing to provide developing countries with democratic governance and decisions making forums, before suggesting means of improvement.

1. Participation

1.1 A core group of developed countries control the issues under discussion in the WTO and make key decisions before developing countries have entered the process

In a formal sense, the WTO is structured in a very democratic way. George Monbiot has argued that “the World Trade Organization, which sets and enforces the rules under which nations trade, is in principle the most democratic of all the powerful international institutions. Every nation which belongs to it has one vote, and unpopular measures can, in theory, be blocked by a constitutional minority of its members. If the poor nations feel they are being treated unfairly, they can bring negotiations to a halt, just as they did, spectacularly, during the world trade talks in Seattle in 1999. As there are many more poor nations than rich ones, we could expect the poor to regularly outvote the rich.”⁸

⁶ World Trade Organization (2003). “Report By The Director-General To The Fifth Ministerial Conference.” Available online at <http://docsonline.wto.org/DDFDocuments/t/WT/Min03/1.doc>

⁷ Witness, for example, the European Union’s recent decision to impose a 16.5% tariff on imports of leather shoes from China for two years, announced 5 October 2006.

⁸ Monbiot, George. (2004). The Age of Consent. A Manifesto for a New World Order. London: Flamingo, p205

However, in practice, a small group of rich countries drive the agenda and outcomes of WTO negotiations:

“Before a new round of trade talks begins the agenda is first established by a group of nations called “the Quad”: the United States, the European Union, Canada and Japan. They and a small number of poorer countries – a different assortment every time – conduct a number of “Green Room” meetings, during which all the principal business of the new trade round is decided. The Green Room, in other words, is the WTO’s Security Council, and the Quad is its permanent membership. The WTO is as exclusive, in practice, as the United Nations. Those other countries which are permitted by the Quad to attend the Green Room negotiations are treated by the more powerful players just as the temporary members of the UN Security Council are treated by the residents....

By the time the formal, constitutional trade talks are ready to begin, the key decisions have already been made. An agenda has been set, a declaration has been drafted, and all the nations which were excluded from the Green Room meetings can do is seek to block the rich nations’ proposals. They cannot make proposals of their own; they cannot set a new agenda. They are presented with a stark choice: either they accept the declaration drafted in their absence, more or less in its entirety, or they reject it....

In principle, the WTO grants the governments of the poor world more collective decision-making power than the governments of the rich world. In practice, it has permitted the realities of power to reassert themselves. The strong states have devised a means of bypassing collective decision-making, while the weak states have proved reluctant to use their constitutional powers to stop them, for fear of punishment.”⁹

Global Exchange, an international human rights organization dedicated to promoting political, social and environmental justice globally, supports this view. Although their rhetoric tends to be inflammatory, they make some fair criticisms, skeptically pointing out that the WTO “supposedly operates on a consensus basis, with equal decision-making power for all. In reality, many important decisions get made in a process whereby poor countries’ negotiators are not even invited to closed door meetings—and then ‘agreements’ are announced that poor countries didn’t even know were being discussed.”¹⁰

Some examples exist to suggest that developing countries have been able to resist and even thwart the efforts of the dominant Northern countries. As mentioned above, the 1999 Seattle WTO meeting failed because the developing and least developed countries rejected the agenda set by the developed Northern countries. Indeed, for the Doha

⁹ *Ibid*, p205-107

¹⁰ Global Exchange (2006). “Top Reasons to Oppose the WTO”. Available online at <http://www.globalexchange.org/campaigns/wto/OpposeWTO.html>

Development Round, it was the developing countries that were responsible for placing many issues on the agenda and not the developed countries, as in most of the past rounds. However, this made Doha's subsequent collapse all the more significant. Doha was, in many respects, the 'developing countries' ministerial'; the representatives of the Least Developed Countries, in particular, were engaged "in almost all areas of the Doha Development Agenda work programme and negotiations."¹¹ The collapse of this critical round of multilateral discussions demonstrates that while there is such unequal influence within the WTO, the only way in which developing countries are able to take a stand is to effectively halt proceedings. A legitimate, discussion-based system of collective management would manage to avoid the many breakdowns in negotiations that the WTO has witnessed recently.

1.2 Developed countries use formal and informal pressure tactics to channel and shape the participation of the developing countries

Despite the one-member-one-vote principle of equality in the WTO, a number of arguments have been made that a hierarchy has evolved. I shall rehearse several of these arguments here to reveal the kinds of worries at stake. At the top are 'the Quad' and other developed countries; on the second level are the upper-middle-income countries (and some lower-middle-income countries), and on the lowest level are the least-developed countries (LDCs). It is claimed that the top tier of the hierarchy has developed an enormous ability to force the less developed countries and LDCs into decisions that will directly benefit the Quad, to the detriment of the Southern countries. Jawara and Kwa provide a detailed analysis of problem¹². They note that Quad representatives have the power to offer small compromises to Southern representatives to change their vote. In some cases these bargaining chips are artificially created in anticipation of difficult negotiations, or else an issue of particular importance to a developing country may be held up until the Quad wishes to play it in exchange for agreement in a particularly controversial area.

At the other end of the spectrum from offering incentives, Northern representatives have the power to threaten to suspend preferential trade agreements. More dramatically, there have been instances in which Southern Ambassadors who have stood up to the influence of the Northern states have been threatened with removal, or suddenly removed from office. Jawara and Kwa note that when faced with a determined ambassador, the major players at the WTO (members of the Quad) would go over the head of the ambassador to the government of the country and apply direct political pressure for his or her removal. The authors report that the Quad has a "black list of Ambassadors," that is, a list of Ambassadors they would like to see removed from office.¹³ They also report that soon after the Doha development round of negotiations, one Geneva-based ambassador was

¹¹ World Trade Organization (2003). "Report By The Director-General To The Fifth Ministerial Conference." Available online at <http://docsonline.wto.org/DDFDocuments/t/WT/Min03/1.doc>

¹² Fatoumata, Jamara and Kwa, Aileen.(2003). Behind the Scenes at the WTO: the Real World of International Trade Negotiations. New York: Zed Books

¹³ Fatoumata, Jamara and Kwa, Aileen.(2003). Behind the Scenes at the WTO: the Real World of International Trade Negotiations. New York: Zed Books, p. 151

sacked following complaints from the US, at least four other ambassadors unpopular with the US were removed from their Geneva missions and relocated to less controversial posts elsewhere, and at least two other Geneva-based representatives remained on the US blacklist as of early 2003.¹⁴ The authors base these claims on interviews with numerous WTO delegates and ambassadors, but have kept names and country information anonymous for the protection of these parties.

Additionally, large countries can take advantage of events outside of the WTO to put extreme pressure on members. For example, the Seattle debacle in 1999 created a strong imperative for the WTO to complete a successful trade round in Doha. As a result, many developing countries' delegates were pushed into decisions with which they disagreed, for fear of holding up the proceedings and accordingly being vilified. Two years later, the September 11th attack and the rise of the 'War against Terror' brought more pressure on delegates to decide whether they were 'with or against' America.

Jawara and Kwa argue that "less overt pressure tactics" include subjecting over-worked, under-staffed delegates and ministers to all night negotiating sessions, sometimes without translation in the language of the delegates, until they are mentally exhausted. At this point, a minimal compromise will be offered to close the deal in the developed country's favor. Similarly, important meetings may be run concurrently, not be widely publicized, or scheduled on a short notice; since developing countries are hugely understaffed in comparison to the developed countries, this can force them to be ill-prepared for these meetings, or worse, to miss some of the meetings and never catch up because of the lack of published transcripts.¹⁵

This may be overstating the hidden agendas of developed countries, nevertheless, it is true that the size and complexity of the WTO requires that many meetings be run concurrently otherwise nothing would be achieved. No country, whether a member of the Quad or an LDC, is able to attend all meetings, and as a result countries must prioritize according to the resources they have and their own economic interests. Developing countries typically have far fewer resources, whether human, financial, legal or research (as discussed below). Therefore, they ought to devote even more care to prioritizing the use of their limited resources. However, it is not uncommon for developing countries to fail to prioritize or even to decide how to divide up attendance at the meetings. I believe it is necessary, as part of the reform of the WTO, to educate developing countries of the need for them to commit to prioritizing their limited resources such that they are better prepared in the face of the Quad's tactics.

1.3 A formal system of 'consensus' masks a reality in which each country's voting power matches its weight in world trade

The Quad relies heavily on its ability to sway opinions and votes because the WTO is based on the controversial system of consensus. Amrita Narlikar, in an as-yet-unpublished manuscript (The WTO: A Case for G20 Action on Institutional Reform),

¹⁴ Ibid.

¹⁵ Jawara and Kwa, *ibid.*

recalls Pascal Lamy's tirades after WTO meetings in Seattle and Cancun, where he referred to the WTO as a "medieval organization". Narlikar emphasizes the problems of reaching consensus, invoking a September 25, 2003 paper by the EC Directorate-General for Trade entitled 'The Doha Development Agenda after Cancun', which states that, "the first and fundamental question of organization is whether it is possible to pursue one meaningful, comprehensive progress in the WTO only on the basis of consensus...". Lamy has proposed splitting the WTO into two categories – one organization that includes everyone for classical areas and another that is optional. His proposal for a "consultative" group to explore this idea was vigorously opposed by developing countries.

In support of consensus, Ambassador John Weekes, former President of the WTO General Council, makes an elegantly phrased statement in a forthcoming publication¹⁶: "There is some criticism that the consensus rule in the WTO makes progress difficult. However, it is hard to imagine how to reach agreement on a collective domestic reform agenda other than by consensus. Agreements entered into voluntarily will be much more durable and, importantly, easier to implement." Although the consensus system may retard progress, it is the best theoretical approach, since other systems would only further disadvantage developing countries.

While it sounds optimal in theory, Didier Jacobs, Special Advisor to the President at Oxfam America, explains that "the WTO's culture on consensus is deceptive".¹⁷ He continues:

"Consensus means that states have a veto right on any decision, suggesting that the WTO is a strong confederation. But the reality is not so commendable. Each state's real veto capacity is directly proportional to its weight in world trade. The United States, the European Union and Japan have the capacity to veto anything at the WTO, even though their negotiating positions can be severely affected by intransigence. That is because these three markets are so big that secession by any one of them would create huge competitive imbalances that global business could not tolerate. Votes do not take place at the WTO because if, say, the United States were put in minority on a treaty amendment, she would secede and the WTO would collapse....By contrast, if "small economies" were to

¹⁶ Weekes, John. (2004). "A Possible Scenario for a Deal on Agricultural Trade Reform". Paper presented to the conference on "Breaking the Deadlock on Agricultural Trade and Development", 8-9 June, Oxford University. Available online at http://www.120.org/publications/2_C3_A_S_Weekes.pdf.

¹⁷ Jacobs, Didier. (2002). "Democratizing Global Economic Governance". Paper presented at the Conference on Alternatives to Neoliberalism, May. p7. Available online at <http://www.new-rules.org/docs/afterneolib/jacobs.pdf>. . Didier Jacobs is Special Advisor to the President at Oxfam America, where he organizes the Board of Directors and senior management team, coordinates relations with Oxfam International, advises the President on the strategic direction of programs, and works on special projects such as strategic planning, impact assessment and the ONE campaign. He was previously a researcher in Oxfam America's Policy Department, specializing on global governance and international finance. Before joining Oxfam, Mr. Jacobs was a researcher at the London School of Economics and Catholic University of Louvain.

reject treaty amendments, global business would not be overly disturbed and the WTO would move on, possibly expelling dissenting states in order to maintain the discipline that underpins its success. (Such scenarios are rarely mentioned publicly, but they are the big elephant in the middle of the WTO's negotiating room.) Hence, when a round of WTO negotiations comes to an end and it is clear that most states support a proposed deal, each Quad member faces two alternatives: accept the new deal or impose the status quo on everybody. The alternatives faced by any individual developing country are quite different: accept the new deal or be prepared to be pushed out of the WTO.”¹⁸

To remedy this situation, Jacobs suggests that opt-out rights should be used more frequently to protect developing nations and that developed nations should reserve their secession threats for truly exceptional situations.

1.4 Chronically insufficient human resources create structural impediments to the participation of developing countries

Didier Jacobs has identified three requirements to influencing policy options: (1) have a seat at the negotiating table, (2) realize what one's national interests are and (3) have the capacity to formulate highly technical policy options to defend those interests. Many developing countries do not have the resources to meet these requirements, as Jacobs points out:

“At the WTO, many Southern states do not meet any of these requirements. The filtering of policy options takes the shape of thousands of formal and informal meetings between representatives of national governments in Geneva. Some Southern states do not have any delegation in Geneva at all. Those that have one do typically not have enough people to physically attend all the meetings, many of which occur simultaneously. Even if they did, many of them are simply not invited to most informal meetings. Even when present at the table, the issues are so complex that it is often hard for small delegations to figure out what are the national interests at stake, let alone which proposals best fulfill those interests. Decisions are taken only after many compromises have been made across issues in numerous technical informal meetings. It is very hard for a delegation that has not participated in this process to voice objections at that stage.”¹⁹

This problem is exacerbated by a strategy highlighted earlier, in which developed countries schedule meetings concurrently or on extremely short notice. Whereas huge national delegations can afford to deploy delegates to many simultaneous meetings, teams from developing countries often can only manage a much smaller presence at the WTO. With their numbers limited, they are vulnerable to this tactic, and often miss important meetings and discussions.

¹⁸ *Ibid*, p4.

¹⁹ *Ibid*, p14.

There is no doubt that the developing countries themselves have some role in ameliorating these circumstances. Where their resources are constrained, there is a greater imperative for them to marshal those resources more effectively. To some degree, it makes sense that smaller countries with fewer vested interests in world trade will have more limited participation. However, futility is demotivating, and developing countries will need some possibility of success before it makes sense for them to invest further in the WTO. Their participation needs to have some potential of being fruitful to make the expense of these constrained resources worthwhile for developing countries. If the system is reformed to increase the responsiveness of WTO institutions to these smaller countries, they will be increasingly incentivized to deploy their resources as effectively as possible. From there, the onus will be on them, and they will need to rise to the challenge; however, until the WTO creates a system wherein limited but targeted resources can have an impact, augmented by the voices of civil society joining together, developing countries will remain consigned to the background within the system.

1.5 Developing countries also suffer from a lack of legal resources and research support

Michael Edwards highlights additional resource gaps faced by developing countries. “To participate effectively in a global economy, poor countries need a much stronger legal, regulatory and policy-research capacity. US trade negotiator Charlene Barshefsky takes an army of experts with her to the World Trade Organization (WTO) but Bangladesh can afford only one.”²⁰

Busch and Reinhardt support this theory, arguing that many developing countries suffer from a lack of legal capacity which inhibits them from aggressively pursuing their rights in the increasingly complex legal trade regime. “Experienced trade lawyers (are needed) to litigate a case, but also seasoned politicians and bureaucrats to decide whether it is worth litigating a case...a staff to monitor trade practices abroad, but also the domestic institutions necessary to participate in international negotiations on complex issues, like health and safety standards, which figure so prominently on the WTO’s agenda.”²¹

Busch and Reinhardt do point out that this problem is one of which the WTO is aware. The situation has been recognized as inequitable and steps are being taken to compensate for it. As Busch and Reinhardt explain, “[i]nstitutions like the Agency for International Trade Information and Cooperation offer assistance to developing countries in interpreting trends in the global economy, and the Advisory Centre on WTO Law provides subsidized legal assistance.”²² While these resources are well-intentioned, they

²⁰ Edwards, Michael. (2004) Future Positive. International Co-operation in the 21st Century. London: Earthscan Publications. p134.

²¹ Busch, M. and Reinhardt, E. (2004). “The WTO Dispute Settlement Mechanism and Developing Countries”. Sida Trade Brief, Department for Infrastructure and Economic Cooperation. Available online at http://www.sida.se/shared/jsp/download.jsp?f=SIDA3600en_DisputeSettlement+web.pdf&a=3089

²² *Ibid.*

cannot possibly correct the imbalance. Under-funded public agencies offering advice to all impoverished countries cannot compete with the armies of well-educated lawyers that each developed country brings to the WTO, focused exclusively on their own interests and strategies. These resources are a step in the right direction, but huge differentials in legal expertise remain pervasive.

In Busch and Reinhardt's opinion, a key issue for developing countries is the dispute settlement process, through which they are unlikely to get defendants to offer substantial concessions early in the process (i.e. before a ruling is issued), as will be discussed below. Conversely, developed countries use their legal know-how and savvy to take maximum advantage of the legal opportunities afforded by the system. They do this by resolving the majority of their disputes through negotiation at the consultation phase or at the panel stage rather than proceeding further in the process. "Early settlement offers the greatest likelihood of securing full concessions from a defendant."²³ They add that "if defendants do not settle early, they tend to dig in their heels, and thus lower the prospects for the successful resolution of disputes."²⁴

Similarly, Bown states that the institutional bias in WTO dispute settlement is generated by the fact that countries require sufficient resources to monitor and recognize violations and to fund legal proceedings in which their rights have been violated. "Richer countries have more access to the resources necessary to hire counsel to both monitor trading interests and to stand up for those interests through litigation."²⁵

Shaffer, Senior Fellow at the Center on World Affairs and the Global Economy and Associate Professor of Law for University of Wisconsin Law School, adds that in addition to a lack of legal resources, developing countries do not benefit from economies of scale since they use the system less frequently than developed countries:

"Developing countries often have high *per capita* stakes in individual cases, so that WTO law can be of potential benefit to them. Overall, however, developing countries simply export a vastly narrower array and limited value and volume of exports than do the United States and EC. Because developing countries are less active traders, they are less likely to be repeat players in WTO litigation. Because they are less likely to be repeat players, they have less incentive to deploy the necessary resources to develop sophisticated internal WTO legal expertise in order to participate in the first place. Irrespective of vast litigation resource asymmetries between developed and developing countries, developing countries also do not benefit from economies of scale because of their less frequent use of the system."²⁶

²³ Busch, M. and Reinhardt, E. (2003). "Developing Countries and General Agreement on Tariffs and Trade/ World Trade Organization Dispute Settlement". In Journal of World Trade, 37 (4). p 720.

²⁴ *Ibid*

²⁵ Bown, Chad P. (2005). "Participation in WTO Dispute Settlement: Complainants, Interested Parties, and Free Riders", in The World Bank Economic Review, Vol. 19 (2). p301

²⁶ Shaffer, G. (2003). "How to Make the Dispute Settlement System Work for Developing Countries: Some Proactive Developing Country Strategies". ICTSD monograph, Geneva. p16. Shaffer bases his

1.6 The WTO itself is under-resourced and thus cannot protect less developed countries' interests

George Soros has suggested that part of the problem lies with the under-resourcing of the WTO: “The WTO simply does not have the staff or the budget to maintain adequate communications or to protect the interests of all its members.... in the WTO, all negotiations are carried on between countries, and the less-developed countries often do not have the capacity to protect their interests. They did not have much say in designing the provisions of the Uruguay Round, yet they had to buy into them wholesale because under WTO rules a country must be party to all the negotiated agreements as a single package. This may have been necessary to get the Uruguay Round accomplished, but it has given rise to the complaint that many countries did not know what they were signing.”²⁷

This means that, even where the WTO recognizes injustices or inefficiencies in its own system, it often lacks the means to effect change. An example of this was identified earlier, where the WTO cannot provide adequate legal assistance to smaller countries, even though it may wish to do so. The institution itself is subject to the interests of its most powerful members, and often cannot afford to help the ones who need it most.

2. Prioritisation

2.1 Developed countries' issues and interests are prioritized over those of developing countries

Joseph Stiglitz has argued that the WTO, along with the World Bank and the IMF, has served the interests of developed nations over those of the developing world: “The problem is not with globalization, but with how it has been managed. Part of the problem lies with the international economic institutions, with the IMF, World Bank, and WTO, which help set the rules of the game. They have done so in ways that, all too often, have served the interests of the more advanced industrialized countries – and particular interests within those countries – rather than those of the developing world.”²⁸

observations on data from the World Trade Organization's *International Trade Statistics 2002*; reports by the Dispute Settlement Mechanism's Appellate Body on numerous cases; statistical analysis by Busch and Reinhardt, “Testing International Trade Law: Empirical Studies of GATT/WTO Dispute Settlement”, in *The Political Economy of International Trade Law: Essays in Honour of Robert E. Hudec*, Daniel Kennedy and James Southwick, eds., (Cambridge University Press: Cambridge, 2002); and statistical analysis by Young Duk Park and Georg C. Umbrecht, “WTO Dispute Settlement 1995-2000: A Statistical Analysis”, in the *Journal of International Economic Law*, vol. 4, 2001, pp. 213-230, among other sources. The term “repeat players” is taken from Marc Galanter's classic piece, *Why the “Haves” Come Out Ahead: Speculations on the Limits of Legal Change*, 9 L. & Soc'y Rev. 95 (1974)

²⁷ Soros, George. (2002). *On Globalisation*. Cambridge, USA: PublicAffairs. p53-54.

²⁸ Stiglitz, Joseph. (2002). *Globalisation and its Discontents*. London: Penguin Books. p214.

George Soros cites an example of this in operation. “As regards the misuse of the WTO mechanism, two issues stand out. The first, and in terms of the sheer volume of trade most important, is the disparity in the treatment of developed and developing countries’ products. The removal of tariff and non-tariff restrictions on agricultural products, textiles, and footwear is phased in over a much longer period than on more advanced industrial goods. ...These features create a very uneven playing field.”²⁹

Oxfam argues that rich countries twist development arguments to serve their own needs: “Developed country negotiators have become adept at cloaking their own interests in the language of development...Rich countries argue that what they call ‘advanced developing countries’ – such as China, India, Brazil, and South Africa – no longer need SDT measures to promote development...However, such countries are being targeted not because they have reached a particular level of development, but because their middle-class consumers constitute potentially lucrative markets. The realpolitik is that the rich countries want ‘blood on the floor’ in the share of market access concessions by these countries as part of any deal.

Many of these countries still have large populations living in poverty and large uncompetitive sectors that could be wiped out by premature liberalization, with severe consequences for poor farmers and industrial workers.”³⁰

Oxfam International’s assessment of the ongoing WTO negotiations is far from favorable. According to Jeremy Hobbs, the Executive Director: “When the Doha Development Agenda was launched in 2001 we welcomed the stated intention to put the needs of poor countries first...But as the deadlines have come and gone, the development content of the Doha talks has diminished and poor countries’ needs have been sidelined Oxfam’s analysis shows that what is being demanded in the areas of non-agricultural-market access and services is far from balanced by the minimal gains in agriculture and the so-called development package. Without the promised special and differential treatment in all pillars of the talks, poor countries stand to lose more than they gain from a new trade deal.”³¹

When analyzing the recently failed Doha round, Oxfam added that “the WTO may look like a ‘one-country one-vote’ democracy, but in practice the powerful players call the shots. In an exhausting war of attrition, rich countries have wielded the full arsenal of negotiating tricks, raising spurious issues, linking any movement to further concessions, and other arm-twisting tactics to force concessions.

²⁹ Soros, *op cit.*, p33

³⁰ Oxfam International. (2004). “Blood on the floor”. Oxfam Briefing Paper, December, p33.

³¹ Hobbs, Jeremy. (2006). “Setting the record straight: Oxfam is not walking away from WTO talks”. Oxfam International Press Release, 1 May. Available online at: http://www.oxfam.org/en/programs/campaigns/maketradefair/hobbs060501_wto?searchterm=wto

Proposals and draft texts typically emerge from small groups of the more powerful countries and are presented on a 'take it or leave it' basis to other members. While these groups now routinely include powerful developing countries such as Brazil and India, most smaller countries remain on the margins of decision-making."³²

2.2 The expectations of developing countries in terms of rewards for implementing their WTO obligations have not been met; in fact, their compliance has had disadvantages

A number of commentators have emphasized that the benefits developing countries expected, in return for substantial concessions, have simply not been realized. In a paper he wrote in 2002, shortly after the agreement of the Doha Development Agenda, Martin Khor, Director of Third World Network³³, reviewed the prevailing situation and identified priorities for action: "The developing countries' main expectation of benefit from the Uruguay Round was that at last the two sectors which the developed countries had heavily protected (agriculture and textiles) would be opened up and that that the developing countries' products would have greatly enhanced market access. However, these sectors in fact remain closed many years after the Round ended."³⁴

Khor pointed out that "Implementing their obligations under the WTO agreements has brought many problems for developing countries....These problems include:

(a) the prohibition of investment measures and subsidies, making it harder to encourage domestic industry; (b) import liberalization in agriculture, threatening the viability and livelihoods of small farmers whose products face competition from cheaper imported foods, many of which are artificially cheapened through massive subsidies; (c) the effects of a high-standard intellectual property right (IPR) regime that has led to exorbitant prices of medicines and other essentials, to the patenting by Northern corporations of biological materials originating in the South, and to higher cost for and lower access by developing countries to industrial technology; and (d) increasing pressures on developing countries to open up their services sectors, which could result in local service providers being rendered non-viable."³⁵

³² Oxfam International., *op cit.*, p11

³³ The Third World Network is an independent non-profit international network of organizations and individuals involved in issues relating to development, the Third World and North- South issues. Its objectives are to conduct research on economic, social and environmental issues pertaining to the South; to publish books and magazines; to organize and participate in seminars; and to provide a platform representing broadly Southern interests and perspectives at international forums such as the UN conferences and processes.

³⁴ Khor, Martin. (2002). "The WTO, the Post-Doha Agenda and the Future of the Trade System: A Development Perspective". Third World Network, May. Available online at:

<http://www.twinside.org.sg/title/mkadb.htm>

³⁵ *Ibid.*

Thinking about the future, Khor emphasizes: “The objective of development should become the overriding principle guiding the work of the WTO, whose rules and operations should be designed to produce development as the outcome. Since the developing countries form the majority of the WTO membership, the development of these countries should be the first and foremost concern of the WTO....The reorientation of the WTO towards this perspective and approach is essential if there is to be progress towards a fair and balanced multilateral trading system with more benefits rather than costs for developing countries. Such a reorientation would make the rules and judgment of future proposals more in line with empirical reality and practical necessities.”³⁶

Monbiot supports the notion that developed countries have simply failed to honor their obligations: “Many of the concessions the United States and the European Union have extracted from the poorer nations during trade negotiations have been exchanged for the promise that the subsidies they give their farmers will be scaled down or eliminated. So ruinous are these subsidies to the lives and livelihoods of the people of the poor world that their governments have agreed to almost everything the powerful nations have demanded. They have been rewarded by a flat refusal on the part of the US and Europe to honor the deals. Soon after the latest trade agreement was negotiated, for example, the United States raised the value of farm subsidies by eighty per cent.”³⁷

2.3 Developed countries focus excessively on trade, to the exclusion of appropriate consideration of human rights

It goes without saying that the World Trade Organization should be primarily concerned with Trade. However, it should be critical to any IGO that its work is carried out within a context of other values and standards to which international actors are expected to adhere. As the WTO itself states, its “goal is to improve the welfare of the peoples of the member countries”³⁸. Trade is viewed as an avenue to this, but it must be increased with a view to additional priorities. However, the developed countries that dominate the WTO’s agenda do not regularly bear this in mind.

George Soros explains: “In the absence of equally binding regulations in other fields such as human rights, labor conditions, health and environmental protection, the WTO gives international trade supremacy over other social objectives...There ought to be a better balance between the WTO and the ILO [International Labor Organization]. If the member states had the political will, they could ratify and enforce the ILO conventions.”³⁹

Global Exchange identifies two examples of the excessive prioritisation of trade:

- (i) “The WTO encourages a ‘race to the bottom’ in wages by pitting workers against each other rather than promoting internationally

³⁶ *Ibid.*

³⁷ Monbiot, George. *op cit.* p191.

³⁸ World Trade Organization (2005). “The WTO in Brief.” Available online at http://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr00_e.htm

³⁹ Soros, George. *op cit.* p35-40.

recognized labor standards. The WTO has ruled that it is illegal for a government to ban a product based on the way it is produced, such as with child labor. It has also ruled that governments cannot take into account “non commercial values” such as human rights, or the behavior of companies that do business with vicious dictatorships such as Burma when making purchasing decisions....

(ii) The WTO’s fierce defense of ‘Trade Related Intellectual Property’ rights (TRIPs)—patents, copyrights and trademarks—comes at the expense of health and human lives. The WTO has protected pharmaceutical companies’ ‘right to profit’ against governments seeking to protect their people’s health by providing lifesaving medicines in countries in areas like sub-Saharan Africa, where thousands die every day from HIV/AIDS. Developing countries won an important victory in 2001 when they affirmed the right to produce generic drugs (or import them if they lacked production capacity), so that they could provide essential lifesaving medicines to their populations less expensively. Unfortunately, in September 2003, many new conditions were agreed to that will make it more difficult for countries to produce those drugs. Once again, the WTO demonstrates that it favors corporate profit over saving human lives.”⁴⁰

Developed countries emphasize that protection of patents through TRIPs is essential to encouraging further pharmaceutical research. If these companies were prevented from profiting from the drugs they develop, it is worth pointing out, there would be no incentive for them to keep researching new cures and vaccines, and both developed and developing countries would suffer. This argument is unconvincing, however, since it proves the wrong point. It may be important to protect patents and copyrights within developed countries, in order to ensure some profits accrue to the companies to compensate for their investment. However, if the WTO were to prioritize the issues of developing countries, it would emphasize their interest in protecting their populations from disease over the additional increments of profit for the pharmaceutical companies of developed nations. Intellectual property rights could be enforced within the developed world, with exceptions drawn for developing nations. Alternatively, the WTO budget could subsidize the developing world’s use of these drugs; it could fund research into new drugs to ensure continual development, even in the absence of profits from the developing world.

Oxfam adds that although developing countries have made progress in a number of areas, developed countries continue to push trade over human rights:

“At Doha, developing countries successfully united against the USA and others to push through the Doha Declaration on TRIPS and Public Health, which said that health needs, should outweigh private intellectual property rights, even though it did not formally amend TRIPS. Although the EU has since abided by the letter and spirit of the Declaration, the USA has systematically used its bilateral trade agreements, together with intense diplomatic pressure, to introduce ‘TRIPS-plus’ intellectual property protection in developing countries, which further reduces

⁴⁰ Global Exchange. *op cit*.

access to affordable generic medicines. The USA also invariably demands ‘TRIPS-plus’ laws from countries such as Vietnam as a condition for entry to the WTO.”⁴¹

This ensures that developing countries will continue to pay a premium for the technologies and resources they need to develop, rather than giving them all the tools available to accelerate their growth.

Though the WTO has rarely become involved in issues related to ‘human rights’, when it has, rather than focusing on issues such as intellectual property that are critical to developing countries, it has generally been in areas such as labor regulation. One example of this is the expressed commitment in the 1996 Ministerial Declaration to “internationally recognized core labor standards” and their observance by member countries. This commitment is occasionally used by the WTO’s supporters to show that developed nations are genuinely concerned about the quality of life around the world, and willing to put basic standards ahead of trade considerations. However, developing countries have vehemently rejected this, arguing that ‘labor standards’ is a thin veil behind which developed nations continue to push their own agenda. Their opposition to labor regulation is explained as follows:

“Many developing and some developed nations believe the issue has no place in the WTO framework. These nations argue that efforts to bring labor standards into the arena of multilateral trade negotiations are little more than a smokescreen for protectionism. Many officials in developing countries believe the campaign to bring labor issues into the WTO is actually a bid by industrial nations to undermine the comparative advantage of lower wage trading partners.”⁴²

Human rights should not be allowed to serve as another avenue by which developed nations secure their own interests. If the WTO is to take any point of view on these universal standards, as it seems it must, the appropriate areas and methods of intervention should be agreed by its members, with weighty influence given to the interests of developing nations, the members who most need the WTO’s protection within a multilateral system.

2.4 Multinational corporations have undue influence over the negotiations of the WTO

According to Global Exchange: “The WTO rules are written by and for corporations with inside access to the negotiations. For example, the US Trade Representative gets heavy input for negotiations from 17 “Industry Sector Advisory Committees.” Citizen input by consumer, environmental, human rights and labor organizations is consistently ignored.”⁴³ Because corporations are organized and wealthy enough to lobby government effectively, their voices are heard and inputted into WTO decisions, unlike those of individual citizens or civil society.

⁴¹ Oxfam International. *op cit.* p21-22.

⁴² World Trade Organization. “Labor standards: highly controversial.” Available online at http://www.wto.org/English/thewto_e/whatis_e/tif_e/bey5_e.htm

⁴³ Global Exchange. *op cit.*

Oxfam adds that, during WTO negotiations, “vested interests, from steel to the sugar lobby, excel in putting politicians under pressure to do the wrong thing. Negotiators revealed as much when they stated in one meeting that in order to sell any final deal back home, they had to be able to point to the “blood on the floor”⁴⁴ where the “pain should be shared”.⁴⁵

Michael Edwards has argued that “free-trade agreements like NAFTA and the World Trade Organization protect corporations but abandon workers...”⁴⁶ They prioritize corporate interests but under-emphasize labor standards and job security. While they ensure that corporations’ expectations are upheld, they ignore the demands of workers to have their own interests maintained, allowing corporations to manipulate their workforce as desired to achieve maximum profits.

George Soros regrets the favoring of corporate interests: “There are agreements on Trade Related Intellectual Property Rights (TRIPs) and Trade Related Investment Measures (TRIMs), but there is no agreement on trade-related labor rights, except prison labor, or trade-related environmental issues. The choice of subjects clearly favors corporate interests.”⁴⁷

Noreena Hertz adds her voice to those lamenting the influence that multinational corporations have on the WTO, pointing out that this power can interfere with nations’ ability to protect the interests of their people, even in the largest developed countries. “At the headquarters of the World Trade Organization on the banks of Lake Geneva we see rulings being made in the names of the free market that limit states’ abilities to safeguard their people’s interests. When the European Union tried to ban synthetic hormones from beef on the basis of strong evidence that they could cause cancer, reduce male fertility and in some cases result in the premature onset of puberty in young children, it found itself unable to do so thanks to a WTO ruling which put the interests of Monsanto, the US National Cattlemen’s Association, the US Dairy Export Council and the National Milk Producers Federation first.”⁴⁸

3. Resolution

3.1 The Dispute Settlement mechanisms of the WTO do not provide effective avenues of recourse for developing countries

The terms of the WTO’s founding charter are enforceable by sanctions on any member country in the case of an impartial finding of noncompliance with the rules. The WTO is

⁴⁴ The term ‘blood on the floor’ implies that economically painful concessions have been obtained from all countries, including poor ones

⁴⁵ Oxfam International, *op cit.* p11.

⁴⁶ Edwards, Michael. *op cit.* p7.

⁴⁷ Soros, George. *op cit.* p33.

⁴⁸ Hertz, Noreena. (2001). “Why we must stay silent no longer.” In *The Observer: The Globalisation Debate Special*. 8 April.

unique among international bodies in its ability to punish countries, with the result that countries give precedence to the WTO over institutions that cannot penalize them for broken agreements. However, the mechanism for imposing sanctions in the WTO is asymmetric and favors the powerful developed countries.

In theory, any country can take trade disputes to the Dispute Settlement Body. In practice, however, this is a costly, time-consuming process. Punishment takes the form of approved sanctions, meaning the wronged country can impose sanctions on the other party to the dispute, but the asymmetry between countries makes sanctions an ineffective tool: trade restrictions by a Quad member would have a serious economic impact on any other country, yet trade restrictions by a small developing country would have almost no impact at all on the giants of international trade. This means that the Dispute Settlement Mechanism (DSM) is rarely even used by the smaller Southern countries.

These problems were illustrated in 1997 when, following an outbreak of cholera around Lake Victoria, the European Union banned imports of the *Nileperch* fish, jointly harvested from the lake by Kenya, Tanzania and Uganda. These three East African partners protested to the EU that the ban was unjustified as there was no evidence that the fish were contaminated. Tanzania requested that the World Health Organization carry out a risk analysis, the results of which concluded that fish from the lake did not pose a risk of cholera outbreak in Europe. The ban was finally lifted and Tanzania and the others resumed exporting to the EU; however, the economies of these countries had suffered unrecoverable losses. This case is a classic example of the 'precautionary principles' that states often apply, which can have devastating consequences if not used with proper diligence. Nevertheless, although the East African trading partners could have taken their case to the WTO DSM to address the issue of compensation for retrospective economic losses, they chose not to because of the prohibitive cost and the belief that nothing positive would come of it in the face of Northern domination. As a developing country's delegate stated: "the power of enforcement of the rulings coming out of the dispute settlement system is based on your capacity to retaliate against a country that has bent the rules", and not on the validity of the case. That is, the threat of legally sanctioned retaliation is practically worthless to small countries.

It is worth noting that developing countries have, on occasion, won cases through the DSM. Busch and Reinhardt cite several cases in which WTO panels have found in favor of developing countries in cases against much larger nations, in industries ranging from underwear (*Costa Rica vs. US*) to sardines (*Peru vs. European Community*).⁴⁹ However, eliciting a favorable resolution is only half the battle. Because DSM decisions are enforceable by sanction, developed countries can afford to disregard resolutions in favor of smaller countries. When small countries constitute tiny fractions of trade weight, resolutions allowing them to impose sanctions are insufficiently worrisome, and can simply be ignored. Perhaps the best example of a developed country ignoring a WTO resolution is the recent case of cotton subsidies. Long a sore spot in the domain of international trade, American subsidies of the cotton industry cost the US Department of Agriculture over \$2 billion in 2001 alone, resulting in an estimated loss of \$600 million

⁴⁹ Busch, M. and Reinhardt, E. (2004). *op cit.* p.6.

to Brazil that same year, with countless other countries burdened as well.⁵⁰ When Brazil brought a case to the DSM in 2004, “the panel found that the United States was maintaining prohibited export and import substitution subsidies as well as actionable subsidies that caused serious prejudice to the interests of Brazil.”⁵¹ The American government has slowly taken steps towards meeting the literal requirements of the ruling, though they have been extremely reticent to cut subsidies. The Brazil government “has continued to question whether the United States has fully complied in the case”, although they have ceased bringing pleas to the DSM, noting little progress following previous appeals.⁵² These issues are of critical importance to developing countries, since a single industry can underpin an entire economy. The Director-General of the WTO has highlighted that the “importance of sectoral issues, such as the impact of cotton subsidies has also been strongly emphasized by some LDCs at the highest political level.”⁵³ The lack of action on these issues, so weighty to developing countries, thereby highlights the degree to which WTO dispute resolution processes are unresponsive to their concerns.

3.2 Due to their weak ability to retaliate, developing countries are less likely seek resolution by filing disputes

The typical outcome of rulings has a ‘multiplier’ effect on the possibility of success for developing countries, since it affects their predisposition to seek resolution in the first place. Chad Bown argues that many developing countries will not file disputes against developed countries, not only because they do not expect resolution, but also because they fear retaliation. Two possible forms of retaliation exist. First, if developing countries are reliant on the respondent for bilateral aid, they are less likely to initiate a dispute against them for fear of losing this aid. Similarly, if developing countries have a preferential trade agreement with the developed country, they are less likely to take part in a dispute against another agreement member for fear of damaging relations.⁵⁴

Bown argues that the level of a country’s retaliatory capacity is critical when a country is deciding whether to formally engage in the WTO dispute settlement or not. The system’s rules and incentives generate an ‘institutional bias’ that particularly affects developing economies’ participation in this process⁵⁵. In this system, “complainant countries must have the retaliatory capacity to impose economic costs on respondents that fail to comply with WTO panel rulings.”⁵⁶ He finds “substantial evidence that retaliation threats affect the likelihood and size of trade liberalization undertaken by the respondent and weak

⁵⁰ (2004). “Unpicking cotton subsidies” in *W*, April 30

⁵¹ Grimmet, Jeanne J. (2006). “WTO Dispute Settlement: Status of U.S. Compliance in Pending Cases,” CRS Report to Congress”, March 1. Congressional Research Service, Library of Congress: Washington DC. Available online at http://vienna.usembassy.gov/en/download/pdf/wto_uscompliance.pdf

⁵² *Ibid.*

⁵³ World Trade Organization (2003). “Report by The Director-General To The Fifth Ministerial Conference.” Available online at <http://docsonline.wto.org/DDFDocuments/t/WT/Min03/1.doc>

⁵⁴ Bown, Chad P. (2005). “Participation in WTO Dispute Settlement: Complainants, Interested Parties, and Free Riders”, in The World Bank Economic Review, Vol. 19 (2). p. 301.

⁵⁵ *Ibid.* p307.

⁵⁶ *Ibid.* p287.

evidence that panel rulings of guilty also induce economic compliance.”⁵⁷ His evidence supports the fact that “the larger the exporter’s reliance on the respondent for bilateral aid, the less likely it is to intervene as a complainant.” In support of this, Besson and Mehdi add that “when a developing country is reliant on a developed country for bilateral assistance, it is unlikely to win a dispute when opposed to the latter.”⁵⁸

Bagwell and Staiger (2000) also emphasize that retaliation threat is a central component of the WTO DS system. Retaliation threat provides an enforcement mechanism which deters violation of trade agreements. However, this mechanism is limited by the severity of credible threat of retaliation. Retaliation must be sufficiently high to induce enough long-term losses in order to incite the defendant to conform its trade practice to WTO rules. Therefore, the current rules of the DS procedure entail a bias against countries with weak capacity to retaliate.⁵⁹

Contrary to the authors cited above, Busch and Reinhardt believe that developing countries benefit from the fact that “defendants worry about the normative condemnation that goes along with a legal defeat, rather than retaliation per se, because such a label may damage their prospects of gaining compliance when they, in turn, file as complainants.”⁶⁰ They believe that it is this factor which contributes most to the effectiveness of the dispute process, rather than the fear of trade sanctions, which are rarely exercised, arguing that “threats of retaliation are not the key to the system.”⁶¹ Although they may be correct in assuming that there is a normative stigma associated with negative rulings from the DSM, it cannot be a particularly compelling one; developed nations continue to maintain subsidies and tariffs that the WTO rejects in principle. If the fear of ‘normative condemnation’ were so persuasive, there would be no cotton or sugar subsidies in the US and no Common Agricultural Policy in the European Union.

Besson and Mehdi add one more way in which the WTO dispute settlement process favors developed countries, which is that the political power of a country disadvantages its trading partner during litigation. The politically weaker one country is, the lower its probability of success. In their opinion, “trade disputes are partly generated by political

⁵⁷ Bown, Chad P. (2002). “The Economics of Trade Disputes, The GATT’s Article XXIII, and the WTO’s Dispute Settlement Understanding.” in *Economics and Politics*, 13(3). p.283-323.

⁵⁸ Besson, Fabien and Mehdi, Racem. (2004). “Is WTO Dispute Settlement System Biased Against Developing Countries? An Empirical Analysis”. In Y. Stivachtis (ed.), *International Governance and International Security: Issues and Perspectives*. Athens: ATINER. p19. Besson and Mehdi’s observations constitute reliable testimony based on their econometric study which examines whether there are any biases against developing countries in the WTO DSM litigation procedure. They consider if there exists empirical evidence of DSM bias against developing countries using four categories of explanatory variables, which may or may not directly affect litigation outcomes: trade, legal resources, economic retaliation, and political retaliation. These variables are suggested by their initial theoretical research analysing the WTO DS procedure from an economic perspective, and also drawing on legal and world politics considerations which may affect trade dispute outcomes. They draw their data from numerous reliable sources including the WTO website, UN and UNCTAD websites, World Bank Database, and Stockholm International Peace Research Institute (SIPRI) website.

⁵⁹ *Ibid.* p7

⁶⁰ Busch, M. and Reinhardt, E. (2004). *op cit.*

⁶¹ *Ibid*

relationships and are the result of the structures of power and conflicts between countries.”⁶² Their research shows that the “DS (dispute settlement) procedure also fails to insulate developing countries from international political factors and hence contains a bias against weak developing countries...our results seem to show that a developing country is unlikely to win a dispute against a developed country when it participates to a military alliance with the latter and the military expenditure gap is high.”⁶³

In the face of these bleak prospects, developing countries are forced to look to other measures. When official resolution mechanisms fail to resolve their grievances, they can only implement or retain their own tariffs and quotas to help protect their nations from being entirely subject to the whims of larger nations. This perpetuates the existence of costly trade barriers and further limits the prospects for these impoverished countries. There is no doubt that these countries must play a role in removing these barriers, but they cannot be expected to open their borders unconditionally in the face of an unresponsive dispute resolution process. Before developing countries can confidently remove their remaining barriers to trade, they must have confidence in an effective multilateral trading system protected by a balanced resolution process.

All of these factors combine to render the dispute settlement mechanism of the WTO an ineffective and frustrating avenue of recourse for developing countries. Their suits are unlikely to be successful due to lack of legal expertise and political clout. Even when they are successful, the threat of sanctions from small countries is inadequately compelling to alter the behaviour of large countries. Finally, the fact that resolutions are unlikely to result in gains for developing countries means their prosecution is not worth the money, time, or risk to preferential trade agreements that a suit would entail, and relying on their own barriers simply seems more appealing. Developing countries can expect little resolution from the DSM.

Though I have not here provided a thorough analysis of the problems with a detailed study of the evidence for each of the various claims, I think that the studies cited show clearly enough that there is a general imbalance of power in the WTO that needs to be addressed.

⁶² Besson, Fabien and Mehdi, Racem. *op cit.* p12.

⁶³ *Ibid.* p19

§ III: Historical Relations Between the WTO and Nongovernmental Organizations

Attempts to increase the role of civil society in the multilateral trading system date back to the 1940s, and a proposed intergovernmental group known as the International Trade Organization (ITO). Item 5 of the ITO's provisional agenda specifically referred to paragraph 2 of article 87 of the Havana charter, which states:

“the Organization may make suitable arrangements for consultation and co-operation with non-governmental organizations concerned with matters within the scope of this Charter”⁶⁴.

A report prepared by the Secretariat of the Interim Commission for the International Trade Organization (ICITO) gave a brief overview of the arrangements made by the Economic and Social Council (ECOSOC) of the UN⁶⁵, and presented a set of conclusions and recommendations on how procedures regarding how NGOs should be adapted to suit the ITO. Although the recommendations never materialized, they formed the basis of the current WTO guidelines for its relation with NGOs. At the time, there was a genuine belief that the ITO could benefit from the experience of issue-specific NGOs: as its proponents said, “it is clearly desirable that the ITO should take full advantage of the knowledge and expertise of the non-governmental organizations in these various fields”⁶⁶. However, no formal procedure was adopted for consulting NGOs. It was decided that a flexible case-by-case scenario of consultations was preferable, and it has been this principle of flexibility that has allowed the relationship to remain shallow and unsatisfactory. At the 1994 Ministerial Meeting in Marrakech that established the WTO, no provisions existed for inviting NGOs, and those NGOs that did attend had to acquire press credentials and attend as members of the press. Nevertheless, the signing of the final act of the Uruguay Round and Marrakech Agreement heralded the beginning of the irreversible process of NGO recognition, as evidenced by Article V:2 of the Marrakech agreement:

“The General Council may make appropriate arrangements for consultation and cooperation with non-governmental organizations concerned with matters relating to those of the WTO”⁶⁷

Initially, article V:2 provided little guidance as to *how* NGOs could be more active in the WTO, but the July 1996 meeting of the General Council saw the introduction of the *1996 Guidelines for Relations with Non-Governmental Organizations*. Since then, the WTO has adjusted its language to recognize civil society, undertaken various outreach initiatives towards civic associations, increased its public dissemination of information, and made some alterations to policy that have partly met civil society demands.

⁶⁴ “Note by the Secretariat”. (1948). [ICITO/EC.2/11](#), 15 July.

⁶⁵ The Constitutional Provision for arrangements with NGOs is found in article 71 of the UN Charter.

⁶⁶ (1948). [ICITO/EC.2/11](#), 15 July

⁶⁷ World Trade Organization. (1999). *The Legal Texts: The Results of the Uruguay Round of Multilateral Trade Negotiations*. Cambridge, UK: Cambridge University Press. p. 9

In terms of its language, there are numerous examples of the WTO acknowledging the importance of civil society contributions. Previous Director-General Renato Ruggiero argued for the benefits of including NGOs, the business sector and the media in his address to the Singapore Ministerial Conference. Furthermore, at the Geneva Ministerial Conference, Ruggiero and several government leaders publicly endorsed the idea of improved relations between the WTO and civil society; this was followed by President Clinton's call for a "forum where business, labor, environmental and consumer groups can speak out and help guide the further evolution of the WTO"⁶⁸.

Going beyond rhetoric, the WTO has in fact undertaken numerous outreach programs, the most important of which have been the gestures towards civil society at the Ministerial Conferences and the Symposia on trade and sustainable development issues. It has been extremely difficult to raise the profile of NGOs at the WTO: the Secretariat faced huge practical difficulties when attempting to improve NGOs' access to the Singapore Ministerial Conference, for example, providing facilities, suitable meetings with and access to delegates, and task forces to deal with NGO problems and requests. Pedersen notes that the Secretariat undertook considerable work to achieve an effective and workable model for NGO involvement in Singapore that would also be acceptable to WTO member governments.⁶⁹ The practical difficulties of hosting a multitude of NGOs were compounded by member governments remaining sharply divided over NGO attendance and their role in the context of the meeting. Nevertheless, the following three Ministerial Conferences increasingly included NGOs whose activities were "concerned with those of the WTO". Table 1 summarizes the increase in NGO's presence and the improvements in the facilities devoted to NGOs:

⁶⁸ International Centre for Trade and Sustainable Development. (1998). "Clinton Endorses Call for High-Level WTO Meeting on Trade-Environment and Calls for WTO Openness" in Bridges Weekly Trade News Digest, vol. 2, no. 18, 18 May.

⁶⁹ Pedersen, Peter N. (1998). The World Trade Organization and Non Governmental Organizations. Available online at <http://www.ictsd.org/dlogue/1998-sept/pedersen.pdf>

Table 1. NGO Presence at Previous WTO Conferences⁷⁰

Conference	Number of NGOs submitting requests to attend	Number of NGOs that attended	Number of individuals	Facilities provided for NGOs
Singapore, December 1996	159	108	235	<p>NGO center (including conference room of capacity 250 with computer facilities, document distribution area, live TV feed from plenary sessions)</p> <p>5 small meeting rooms for NGO meetings</p> <p>2 rooms for informal meetings with WTO delegates</p> <p>Invitation to participate in all social events with delegates</p> <p>Access to a taskforce specially created to deal with NGO problems and requests</p>
Geneva, May 1998	152	128	362	<p>NGO center (as above)</p> <p>Meeting rooms (as above)</p> <p>NGO facilities housed in the same building as Ministerial Conference which amounted to improved access to delegates</p> <p>Allocated tables near document distribution desk to deliver printed materials</p> <p>Special NGO Gallery (50 seats) for NGOs in General Assembly Hall</p> <p>Regular briefings by WTO Secretariat</p>
Seattle, USA, Nov/Dec 1999	776	686	1550	<p>NGO center (as above)- within walking distance from main convention center</p> <p>Meeting rooms (as above). In excess of 160 meetings were held</p> <p>Daily briefings by Secretariat</p> <p>Press area (equipped to follow and report on proceedings)</p> <p>Superior access to delegations and Secretariat staff</p>

The number of NGOs associated with the WTO has continued to rise as the trend towards greater collaboration has accelerated. In advance of the most recent round of trade negotiations in Doha, Qatar, 647 NGOs were invited to attend the central Ministerial, to

⁷⁰ Pedersen, Peter N. (1998). *The World Trade Organization and Non Governmental Organizations*. Available online at <http://www.ictsd.org/dlogue/1998-sept/pedersen.pdf>

which NGOs previously did not have access⁷¹. Although there is no formal mechanism by which to define those officially associated and those not, the attendance list from the Cancun Ministerial Meeting reveals that the number of NGOs communicating with the WTO has risen to nearly 1000. These include everything from the Academic Council of the United Nations to the Zenshinren of Japan (the National Federation Forest Owners Cooperative Associations).

Since 1994, numerous issue-specific symposia have also been hosted by the WTO, covering such trade-related topics as the environment (1994, 1997, 1998, 1999), competition policy (four in the period 1997-1999), development (1997, 1999), and trade facilitation (1999).⁷² Designed to broaden and improve the dialogue between the WTO and NGOs, participants typically included representatives from NGOs, private corporations, academia, and of course, the WTO. In some cases, the heads of the United Nations Conference on Trade and Development (UNCTAD) and the United Nations Economic Program (UNEP) were also present, and September 1997 saw a joint two-day WTO-UNCTAD NGO Symposium that took place in Geneva on Trade-Related Issues Affecting Least-Developed Countries. In addition, the 1996 Singapore Ministerial Conference resulted in the formation of the aforementioned Integrated Framework. Although the IF is not mandated to deal with NGOs, its formation reflects willingness on behalf of individual IGOs to work together with other organizations in pursuit of shared goals.

Other IGOs have also undertaken initiatives to augment the role of civil society within their proceedings. The Secretary-General of the United Nations established a panel chaired by former president of Brazil Mr. H. F. Cardoso in February 2003 (the 'Cardoso Panel'), as part of a broad set of reform measures. The Panel was intended to make the United Nations "more able to respond to the new demands of the 21st century, and highlights the growing interaction between civil society and the United Nations as one of the areas that need improvements."⁷³ In the course of its work, the Cardoso Panel advocated an improvement to the process of accrediting NGOs at the General Assembly, as well as within other IGOs such as the WTO.⁷⁴ Although the Panel's specific recommendations were met with skepticism, its work has already introduced the topic of NGO inclusion in IGO decision-making, meaning collective management will not need to start from scratch in attempting to formalize the inclusion of civil society. The Parliamentary Network responsible for scrutinizing the affairs of the World Bank also

⁷¹ World Trade Organization. (2001). "647 non-governmental organizations eligible to attend the Doha ministerial", WTO Press Release, 13 August. Available online at http://www.wto.org/English/news_e/pres01_e/pr240_e.htm

⁷² Data and information drawn from Pedersen, Peter N. (1998). "The World Trade Organization and Non Governmental Organizations" for the International Centre for Trade and Sustainable Development, pp. 15-18. Available online at <http://www.ictsd.org/dlogue/1998-sept/pedersen.pdf>

⁷³ United Nations (2003). "Cardoso Panel Holds Its First Meeting". Available online at <http://www.un.org/reform/pdfs/pr11june2003.htm>

⁷⁴ United Nations (2004). "Report of the Secretary-General on the implementation of the Report of the Panel of Eminent Persons on United Nations-Civil Society Relations". Available online at <http://www.globalpolicy.org/reform/initiatives/panels/cardoso/0904sgreport.pdf>

provides a promising example, and has even led to negotiations on a similar body under the auspices of the WTO.⁷⁵

The WTO responded to demands from civil society for greater release of information on policy-making by launching an elaborate WTO website in 1995. Visitors to the site can access information about the WTO, request information, submit questions and download derestricted documents. In 1998, a special section for NGOs was added to the site via a direct link from the homepage. In 1996, the General Council adopted protocol on *Procedures for the Circulation and De-Restriction of WTO Documents*, a direct result of which has been the publication of dispute panel reports as soon as they are adopted. The WTO also publishes completed trade policy review reports and summaries of the proceedings of the Committee on Trade and Environment.

Scholte helps explain why civil society may be increasingly involved in IGO decision-making processes. With specific reference to the WTO, he argues that civil society can offer the global trade regime six potential benefits⁷⁶. Civil society can:

- (1) provide information (data and analysis) that is useful in policy formulation, implementation and review,
- (2) stimulate debate about WTO policies, and challenge the WTO to better clarify, explain, justify and perhaps rethink its positions,
- (3) provide channels through which stakeholders may voice their views on trade issues and have those opinions relayed to WTO staff, as a result of which officials can better gauge the political viability of the proposed measures or programs,
- (4) play a role in democratically legitimating (or delegitimizing) WTO activities,
- (5) serve as agents of civic education, increasing public understanding of the WTO and its policies, and
- (6) promote more general democratizing effects through its relations with the WTO. For example, citizens' groups that are denied access to their national governments may be able to gain a voice through global channels such as the WTO.

While the CSOs have been gaining strength and penetration into international institutions and businesses, this phenomenon has not been an easy process, nor is it universally lauded. Maxwell Cameron, writing on global civil society and the 'lessons from the movement to ban anti-personnel landmines', notes that "debate on the emergence of a global civil society has oscillated between guarded optimism and explicit skepticism"⁷⁷. Indeed, among the critics exist some governments that have been taking active steps to

⁷⁵ Kiljunen, Kimmo "Global Governance and Parliamentary Influence." Background paper for the Helsinki Process, Globalization and Democracy. Available online at http://www.helsinki.fi/netcomm/ImgLib/24/89/hp_track1_kiljunen.pdf

⁷⁶ Scholte, J.A. (1998). "The WTO and Civil Society." Working Paper No. 14/98, Centre for the Study of Globalisation and Regionalisation. Available online at <http://www2.warwick.ac.uk/fac/soc/csgr/research/workingpapers/1998/wp1498.pdf>

⁷⁷ Cameron, M.A. (2002). "Global civil society and the Ottawa process: Lessons from the movement to ban anti-personnel mines". In Cooper, A.F., English, J., and Thakur, R. (eds.). Enhancing global governance: Towards a new diplomacy?. New York: United Nations University Press. p.69-89.

limit the freedoms of civic organizations and/or monitor their activities more closely in the name of fighting terrorism.

Nonetheless, despite all resistance, civil society has made tremendous progress in voicing its opinion, and even shaping government policies and business trends. However, more needs to be done. The current role of NGOs is only a consultative one, and as such, civil society does not have a formal voice in the decision-making processes of these institutions. If some of the pressing problems of global governance are to be alleviated, a fresh and radical approach is required. Following David Held's approach, this paper advocates a collective management mechanism that incorporates NGOs in an official capacity in the decision-making process of global institutions. The rest of this section outlines the collective management framework and its potential benefits, before noting the risks and advising of some cautionary measures that need to be taken.

1. NGOs and Collective Management

The WTO is, in theory, an association of national governments. However, to deny that non-state actors currently influence decisions is exceedingly naïve. Groups and individuals put pressure on governments to represent their views and seek policies at the WTO that protect their interests. The problem with this system stems from the unequal access that different spheres of society have to these avenues of influence.

Currently, the 'second sector', private enterprise, is implicitly present during IGO meetings and ministerials. Business and corporate enterprise often have the resources to mount successful lobbying campaigns, swaying governments to see things in their preferred way. The result, in many cases, is that national governments will pursue the industry's interests, even though the companies are formally absent at the WTO. Prime examples of this 'proxy' phenomenon occur in the pharmaceutical industry. Multinational corporations (MNCs) based in the United States have placed significant pressure on the American government to ensure that their 'intellectual property rights' are protected, even at the expense of health and safety needs in the developing world. International health objectives could be achieved best if drugs were made readily available around the world. This would be facilitated by increases in production of 'copycat' versions of treatments and inoculations; Brazil, Thailand and India are all home to a number of companies that can produce generic versions of drugs. However, the US is trying to conclude bilateral trade deals which will prevent export of these drugs and force poor countries to buy them from the US pharmaceutical giants, ensuring that the interests of these corporations are articulated in the field of international trade.

Among the three sectors that, in the view of this paper, should be responsible jointly for the governance and decision-making of the IGOs, governments and industry, as discussed above, are well represented. By contrast, the third sector, civil society, is altogether absent from international governance. There is not simply a need to *enhance* civil society's presence on the global governance scene, via increased consultation or consideration. Rather, a new mechanism needs to be developed that allows NGOs to serve as active partners in the decision-making process of IGOs.

The proposed collective management system requires that NGOs be formally introduced into IGOs. It advocates that NGOs be enfranchised with a vote, and thus, be transformed from being ‘consultants’ to being *participants* in the global trading system. In other words, civil society gains full representation on the same basis as governments do.

The role of private enterprise must be similarly formalized. It can no longer be conducted through government channels as this informal, non-transparent system creates potential for widespread corruption and bribery, unduly influencing government and disadvantaging citizens who do not benefit from business initiatives. Global collective management would formally introduce a huge number of new players to the international political scene. It is therefore necessary to design new codes and standards to vet participants and govern the system of collective management. Furthermore, an effective enforcement mechanism, such as the one proposed in section 5, will also be needed.

2. Potential benefits of NGO participation in WTO decision-making

Rather than advocate for formal inclusion of NGOs and MNCs in the WTO, it would be possible to suggest simply that all non-state influence be removed from the arena of international trade. However, there are many advantages to including NGOs in the system. In fact, NGOs can help the WTO correct many of its perceived problems. In particular, they can help compensate for the three areas in which the WTO is currently failing developing countries, as identified in Section II: participation, prioritisation, and resolution.

The most straightforward area of potential improvement is **participation**. The inclusion of more voices will increase the diversity of opinion represented at the WTO. NGOs are particularly well positioned to articulate these opinions due to their close ties to the public; Peel points out that NGOs “derive their legitimacy in the international arena, at least in principle, from their close link with general public constituencies.”⁷⁸ In a deliberative setting where decisions are made by consensus, the articulation of additional viewpoints can only enrich the quality of debate, helping to ensure that answers which emerge are informed and comprehensive. As Keohane and Nye explain, the participation of NGOs at the WTO can help ensure discussions are representative and inclusive, mitigating debate about a ‘democratic deficit’ at the WTO; that is to say, “greater cooperation with NGOs might help to alleviate the concern about accountability.”⁷⁹ Moreover, the potential benefits from increased NGO participation are particularly salient for developing nations. The presence of informed, organised groups will provide a counter-balance to the power of the Quad, holding the WTO to its principles and ideals. As more actors become engaged, it will be increasingly difficult for small groups of

⁷⁸ Peel, J. (2001). “Giving the Public a Voice in the Protection of the Global Environment”. Published in Colorado Journal of International Environmental Law and Policy, Winter 2001. Available online at <http://www.globalpolicy.org/ngos/role/globdem/globgov/2001/peel-wto.htm>

⁷⁹ Keohane, R. and Nye, J. (2000). “The Club Model of Multilateral Cooperation and Problems of Democratic Legitimacy.” Paper presented to the American Political Science Convention, Aug 31 – Sept 3, Washington DC. Available online at <http://www.ksg.harvard.edu/prg/nye/clubmodel.pdf>

nations to dominate the WTO's agenda and meetings. This will create more space for developing countries to engage with the issues, and help ensure that the decisions that prevail are those that are in the interests of most people, rather than the interests of the most powerful.

On a similar note, NGOs can help ensure fair and representative **prioritisation** of issues as the WTO. First of all, they are able to serve as credible and effective voices on issues that span national borders. In fact, given their ability to focus on issues rather than domestic outcomes, "NGOs are arguably more effective guardians of the public interest...than States preoccupied by national self-interest."⁸⁰ Additionally, since they are charged with representing citizens at large, often cutting across international borders, NGOs are concerned with those issues that are most important to the global populace. Immune from obligations to corporate interests or national electorates, NGOs can agitate on behalf of the issues that are truly important in the international arena. In this way, they can help prioritize the issues of importance to nations in the developing world, even if a few powerful countries would prefer to avoid them.

Finally, the involvement of NGOs in the WTO can help ensure that all countries have access to effective dispute **resolution** mechanisms. First, NGOs can help offset the inequities in legal expertise that make it difficult for developing countries to prevail through the DSM. Because NGOs are "increasingly sophisticated international actors with access to a wide range of resources and expertise"⁸¹, they can help provide advice and insight to smaller nations that need it. They can deploy their resources strategically to help redress the balance of legal and political power at the WTO. Second, the presence of NGOs could help augment the specter of the 'normative condemnation' that Busch and Reinhardt identify, and make its threat more of a deterrent to violating trade rules. By shedding light on disreputable practices by governments and bringing them to the public's attention, NGOs can make unethical conduct an important issue on the global stage. Keohane and Nye point out that "the naming and shaming of governments engaged in corrupt practices by Transparency International helps create a type of accountability."⁸² In this way, NGOs can help increase the efficacy of both formal and informal means of dispute resolution at the WTO.

However, it is not only the developing countries that stand to gain from the deeper engagement of NGOs. The main normative justification for including NGOs in the decision-making process is that they will become the vehicle by which transfer of the most important values of social democracy – the rule of law, political equality, social justice, social solidarity and economic effectiveness – to the global arena begins.

Participation of NGOs in IGOs would be a giant first step towards legitimizing the latter. Legitimacy in this case would be empowered from the bottom upwards by creating public awareness and transparency, and this trend could gradually introduce global democracy

⁸⁰ Peel. *op cit.*

⁸¹ *Ibid.*

⁸² Keohane and Nye. *op cit.*

to these institutions. NGOs would overcome the ‘double-aspect’ problem: they would become the voice of the voiceless.

The collective management framework would give civil society an equal role alongside market and government representatives in setting the global rules and codes that would govern all IGO member states. These rules and norms would be formed in the interests of all people, not just the Northern population. In this way, NGOs would offset the legitimacy deficit that I have argued currently exists in the global governing bodies. Formalizing the third sector’s efforts could lead to a new form of democracy, empowered from below, and developing countries can be the first beneficiary of the new global architecture as their people find new avenues of expression.

Finally, although this is not the WTO’s priority, full enfranchisement will also give the international NGO movement (and with it the local and regional NGOs) a new international profile. This will enable them to develop financial and other necessary resources more rapidly through donation and direct subsidy from the IGOs, and enable them to play an even larger role in global governance as institutions evolve.

A WTO with formal NGO participation, then, will be more representative and effective for both developed and developing countries. In this way, NGOs can help the WTO achieve its goals. Equally importantly for a global governance institution whose rules are still being written, NGOs can help the WTO solidify its appearance of transparency, accountability, and efficiency, all of which will help cement its role in world affairs. As Daniel Esty tells us: “Because an NGO-enriched WTO would consider a diverse range of viewpoints and make decisions more democratically, it would gain legitimacy. Public participation in and understanding of the trade regimes decision processes is critical to the acceptance of its political outcomes as fair and worthy of respect. Enhanced WTO legitimacy will be critical to public support for further trade liberalization.”⁸³

3. Problems and challenges of NGO Inclusion in WTO decision-making processes

Scholte summarizes the main risks associated with poor organization and implementation of any WTO-NGO initiatives⁸⁴:

- (1) The collection of civic associations that develops relations with the WTO might not be fairly representative of the various constituencies with an interest in the global trade regime, and could enlarge inequalities connected with nationality, class, gender, race, religion, etc.

⁸³ Esty, Daniel. (1997). “Public Participation in the International Trading System: Why the World Trade Organization Needs Environmental NGOs.” Published for the International Centre for Trade and Sustainable Development. Available online at <http://www.ictsd.org/English/esty.pdf>

⁸⁴ Scholte, J.A. (1998). “The WTO and Civil Society.” Working Paper No. 14/98, Centre for the Study of Globalisation and Regionalisation. Available online at <http://www2.warwick.ac.uk/fac/soc/csgr/research/workingpapers/1998/wp1498.pdf>

- (2) The WTO treating overtures to civil society as a public relations exercise, not only missing out on the potential valuable benefits mentioned above, but also alienating potential civic partners.
- (3) Misdirected or ill-informed interventions from civil society in the global governance of trade could disrupt institutional operations and policy development⁸⁵.
- (4) WTO exchanges with civic groups might draw the WTO into local or national politics of which it has little understanding, perhaps even undermining democracy in the process.
- (5) Exchanges with supportive civil society groups can be favored to the neglect of challengers, thereby getting a false sense of endorsement of its policies. Such a marginalization of critics could generate a severe backlash against the global trade regime.

Given these risks there are a number of measures that would be wise to carry out before entering into any collective management mechanism. Appropriate and effective screening techniques are unquestionably necessary, and section 5 goes into some detail as to how to select the NGOs that will represent the civil society in the collective management system. Thus, screening would solve the problems of ‘rogue’ NGOs, whose interests might stray far from the ‘good’ of civil society, and unfair representation of civic associations. This would answer the majority of Scholte’s concerns, since the involvement of NGOs could be regulated to ensure focused, relevant and equal access for groups that will make use their responsibilities effectively. However, there are still a number of measures that it would be advisable to employ. In particular, it will be important to ensure that NGOs fairly represent both the Northern and Southern countries, that their participation is influential rather than illusory, and that the NGOs themselves are transparent and accountable.

A) Inclusion and alliance-building between Northern and Southern NGOs

More difficult to assess, and perhaps of graver consequence ultimately, is whether the NGO movement, at root a Northern movement, can adequately address the concerns and represent the interests of the South. This could be a major objection, and it invites the question of whether NGOs, or more precisely international NGOs (INGOs), are fairly representative, or whether they might eventually become so after some period of transition. If representative NGOs suffer from Northern dominance, then they are themselves suffering from legitimacy deficits and are ill-placed to correct this problem in other institutions. Even many large INGOs lack a stable working mechanism that would make them accountable members of the global collective mechanism, and many NGOs, especially those in the South, lack the resources to participate effectively.

Building closer alliances between Northern and Southern NGOs could help to address the problem of asymmetry between Northern and Southern NGOs, especially with respect to financing. Activity on the international stage requires resources for research, analysis and

⁸⁵ Some NGOs’ activities can be counter productive giving civil society a bad name; witness the vandalism tactics used by ATTAC against McDonalds outlets in France.

representation.⁸⁶ Public campaigns cost money. Northern NGOs can help their Southern partners with funding or the provision of hard-to-obtain resources. In return, Southern NGOs often have extensive grassroots networks from which Northern NGOs can benefit if granted access to them.

Hudock emphasizes the importance of funding in determining the effectiveness of NGOs, warning that while more funding increases capacity, funding from the 'wrong' sources (such as from governments) can undermine an NGO's legitimacy.⁸⁷ One of the main concerns is that Southern NGOs that receive funding from Northern NGOs may suffer as they become "essentially contractors and are little more than extensions of the donor agencies"⁸⁸, and thus are unable to exploit the advantages they have gained from their grassroots work.

Some experience from the Integrated Framework program would seem to indicate there are also limits to coalition building between disparate organizations such as Northern and Southern NGOs, even when they appear to have a common purpose.

However, other research has shown that Northern NGOs are increasingly building permanent relations with Southern NGOs, often along sectoral lines and as a result of mutually rewarding project associations. This may be the result of a deliberate policy of the Northern NGOs to build capacity by using their Southern counterparts as part of their overall mandate. The South Asian Partnership⁸⁹, for example, has strategically sought out Southern alliances to assist in its execution of development projects. As part of this alliance, the South Asian Partnership includes training and capacity building for the Southern NGO. North-South cooperation has also been facilitated through UN organizations. For example, the International Panel on Climate Change (IPCC) and the World Meteorological Organization (WMO) brought together experts and scientists from both North and South. This meeting was instrumental in identifying the problem of global warming and in creating a common frame of reference with respect to the problem.⁹⁰ There are also Northern-based NGOs that have a specific mandate to foster North-South cooperation with the linking of NGOs a key part of their programs. The Council of Europe North South Center, for example, has a mandate to "help in maintaining and enhancing the process of communication and cooperation between governments NGOs and local and regional authorities."⁹¹ Other Northern NGOs are specifically mandated to facilitate overall understanding between North and South on a broad range of issues.

⁸⁶ The IMF employs 2600 people; the World Bank 5500, and the WTO perhaps 800. Their staffs are stretched thin. The WTO has not "developed any mechanisms to coordinate its work on civic associations with national governments and other global governance bodies that have more experience in these contacts. In most cases, civic groups suffer from even more precarious resource situations than the WTO." (Scholte. *op cit.* p. 21).

⁸⁷ Hudock, Ann. (1999). NGOs and Civil Society: Democracy by Proxy? Cambridge: Polity Press

⁸⁸ *Ibid.* p. 2.

⁸⁹ An NGO based in Canada with a broad mandate to execute rural development projects in South Asia

⁹⁰ Scientists however, sometimes act more as agents of their national governments than as impartial experts

⁹¹ Council of Europe, Committee on Economic Affairs and Development, July, 2003

Brown, Khagram, Moore and Frumkin detail the power of “inter-organizational learning and problem solving” of international NGOs and alliances⁹². Their examples of successful alliances include the World Commission on Dams, the International Forum on NGO Capacity Building and the Global Network on Violence against Women. North-South alliances are now increasingly being made in undertaking strategic development work in developing countries. A recent joint effort between Northern and indigenous Ugandan NGOs in writing a Poverty Reduction Strategy Paper (PRSP) has yielded outstanding results.⁹³

While the challenge of satisfactorily integrating Southern NGOs into decision making processes remains a huge challenge, especially for the proper functioning of the collective management system described in the next section, a full analysis of the means by which this might be achieved is beyond the scope of this paper. Suffice to say here that it is an area which I consider to be of extreme importance and interest, and history provides grounds for optimism concerning the potential joint contributions of Northern and Southern NGOs. The inspiring element of the examples listed here is the formulation of effective coalitions joining Southern and Northern NGOs. “When they work best, Transboundary NGO coalitions can help to transcend issues of national sovereignty, reconcile North-South differences, and bring the attention of a world audience to important regional or local issues. In some instances, these coalitions have achieved successes that many policy experts would have deemed impossible”⁹⁴. The International Campaign to Ban Landmines coalition included 1,400 NGOs from 90 countries. The ‘Jubilee 2000’ campaign was a civil society initiative with participant organizations in more than 60 countries. Networks of NGOs from the West working with NGOs from developing countries have successfully influenced the building of large hydroelectric dams in several countries in Asia. The logical implication of these successful examples of North-South NGO cooperation is that a campaign could be effective to improve the WTO.

B) Effectiveness

Jordan argues that NGOs have already carved out channels of communication that serve them well.⁹⁵ She identifies these channels as: multi-stakeholder dialogues, formal interactions with multi-lateral institutions, convincing national governments, local work at the grassroots level, and campaigns and public protests. In the final category, Jordan notes that lobbying has proved a particularly successful tool. European Parliaments and the US Congress have responded to lobbying from both businesses and civil society. The petroleum and pharmaceutical industries have both demonstrated examples of successful business lobbying.

⁹² Brown, D.L., Khagram, S., Moore, M.H. and Frumkin, P. (2000). “Globalization, NGOs, and Multisectoral Relations”. In Nye, J.S., and Donahue, J.D. (eds.). Governance in a Globalizing World. Harrisonburg, Virginia: R.R. Donnelley and Sons. p.271-296

⁹³ Scholte, J. and Schnabel, A. (2002). Civil Society and Global Finance. London: Routledge. page 56

⁹⁴ (2003). World Resources 2002-2004: Decisions for the Earth: Balance, voice, and power. United Nations Development Programme, United Nations Environment Programme, World Bank, World Resources Institute. Available online at http://pubs.wri.org/pubs_content_text.cfm?ContentID=1904

⁹⁵ Jordan, L. (2003). “Civil Society’s Role in Global Policymaking”. In Alliance and Global, March

However, even within these channels of operation, the effectiveness of NGO efforts may still be improved. Discussing the ingredients of NGO effectiveness at the international level, P.J. Simmons provides a useful taxonomy detailing how “non-state actors (private sector, NGOs, communities of scholars, scientists, and similar experts) are helping to draft blueprints of the global architecture.”⁹⁶

In one example, he discusses the reasons behind the success of the International Campaign to Ban Landmines (ICBL) in setting the international agenda. Critical elements included support from Patrick Leahy, Kofi Annan, Princess Diana, minimal private sector opposition, and significant Canadian government involvement, all combined with a compelling, clear and circumscribed goal – in other words, both excellent teamwork and fortuitous timing. In Simmons’ taxonomy, crucial actions for civil society effectiveness include:

- (i) Effective framing – creative flair and emotional resonance appealing to values of fairness justice and responsibility (the tuna/dolphin case, NIKE sweatshops)
- (ii) Inciting fear (1995 Royal Dutch/Shell Group sinking of Brent Spar Oil Rig in North Sea)
- (iii) Touching immediate interests
- (iv) Coupling problems with solutions and showing that remedies are possible (transnational anti-corruption movement).

Four other important elements are partnership, ‘Cohesiveness within Coalitions’, money and timing. The ‘Power of Partnerships’ is discussed by Simmons, who uses the example of Canada and the International Red Cross in the Land Mines campaign. In the Jubilee 2000 campaign, the Pope, the US Treasury Secretary and Jim Wolfenson were key partners. The best example of ‘Cohesiveness within Coalitions’ is Transparency International, where the work of 80 diverse chapters was well coordinated. Money is obviously a very important factor – Simmons presents Amnesty International, Greenpeace (Whaling) and Rockefeller Foundation (Arms Control) as case examples.

The overall effectiveness of all NGOs can arguably be improved by appropriately uniting them into one global voice. A single united message will have much more impact on its target than several thousand dissonant voices. To achieve this, it is necessary to create a supervisory organization to act as the Voice of the Global Civil Society (VGSC). VGSC would serve as a mechanism to channel the views of NGOs and to consolidate their collective strength and influence into a united voice. By identifying common purposes shared by a diverse mix of individuals and organizations, civil society realizes its strongest voice.

C) Transparency and Accountability

⁹⁶ Simmons, P.J. and de Jonge Oudraat, C. (2001). *Managing Global Issues: Lessons Learned*. Washington, DC: Carnegie Endowment for International Peace.

While their influence on policy-making would likely be positive, most NGOs (both Northern and Southern) could benefit from increasing degrees of transparency and accountability. This is especially important if NGOs are to be granted representation status at the same level as the IGOs. NGOs must demonstrate transparency and accountability to the same high standards as required from IGOs. Although current standards exhibited by IGOs are considered to be low, NGOs should set the example by seeking and meeting higher standards.

Evidence from the One World Trust (OWT) suggests that many NGOs themselves have some way to go before they can be considered satisfactorily accountable to their members. If NGO calls for increased IGO accountability and transparency are to be taken seriously, it is necessary for the NGOs to improve their own state of accountability first. MNCs have also been criticized on accountability grounds by OWT surveys. Before any collective management system can be implemented it is crucial that all three types of organization—IGOs, NGOs and MNCs—are made fully accountable to the people that they affect via their decisions and policies.

4. Criticisms of the WTO-NGO initiatives

Although interaction between civil society the WTO has increased noticeably since the early 1990s, there remains widespread distrust and dissatisfaction among the NGO community. This manifested itself in early 1996 at the Singapore WTO ministerial meeting, especially among environmental groups: “expressing deep dissatisfaction with the accomplishments to date of the WTO’s Committee on Trade and Environment (CTE), greens from developed countries yesterday sought ways to make the world’s trading rules more sustainable.”⁹⁷ More recently, Food First posted a “Joint NGO Statement on the Untransparent and Manipulative Process Leading to the Draft WTO Doha Ministerial Declaration” on November 7, 2001.⁹⁸

Michael Mason used a survey technique to study the relationship between (primarily environmental) NGOs and the WTO.⁹⁹ “Results from questionnaire surveys show a mixed response in terms of environmental NGOs’ assessment of WTO civil society initiatives. While high levels of satisfaction are recorded in terms of notification of meetings and opportunities for questions, the survey records a strong dissatisfaction with the current level of public access to WTO documents, calling for further de-restriction. In addition, NGOs collectively favor the creation of a WTO-civil society advisory group, formalization of observer status for NGOs at the WTO, and the right of NGOs to submit briefs to the dispute settlement body.”

⁹⁷ World Trade Organization. (1996). “Greens Place Trading Rules under Spotlight.” Committee on Trade and Environment and Investment Treaty, December 11.

⁹⁸ For more information, see Khor, M. (2001). “NGOs condemn Doha draft Declaration and ‘biased’ process”. Available online at <http://www.twinside.org.sg/title/condemn2.htm>

⁹⁹ Center for Environmental Policy and Governance. (2004). “Recent Civil Society Initiatives at the WTO”. In LSE Environment, Issue 1, February.

While NGOs have been invited to attend the Ministerial Conferences since 1996, they are only passive observers, and still have no voice in the actual decision-making process. The current relationship between the WTO and NGOs, while improving, suffers from extreme shallowness. It is an *informal* relationship at best, and at worst it serves as a public relations ploy that eases the pressure on the WTO to undertake real reform based on formal agreements with NGOs. The WTO lacks clearly formulated objectives and carefully constructed channels of communication for its NGO relations. Unlike the World Bank, the WTO has established no liaison committee with civic groups, nor has the WTO made arrangements for permanent accreditation of civic organizations, as the UN has, but relies instead on ad hoc admission to specific events. The superficial nature of WTO-NGO interchanges may be indicative of a response to NGO calls for greater access that is dominated by developed countries, protecting their interests. WTO members call attention to the 23 July 1996 Guidelines for the Arrangements on Relations with the NGOs (WT/L/162):

“Members have pointed to the special character of the WTO, which is both a legally binding intergovernmental treaty of rights and obligations among its Members and a forum for negotiations. As a result of extensive discussions, there is currently a broadly held view that *it would not be possible for NGOs to be directly involved in the work of the WTO* or its meetings. Closer consultation and cooperation with NGOs can also be met constructively through appropriate processes at the national level where lies primary responsibility for taking into account the different elements of public interest which are brought to bear on trade policy-making”

That is, the WTO argues that NGO concerns should be addressed to national governments whose representatives will then take these issues forward to WTO debate. This reluctance to engage in direct involvement will have to be attacked and changed. We have to work towards a future in which this guideline is revised to provide for a more progressive approach to the very legitimate and valuable contributions from civil society.

Regardless of motives, the WTO is not the only party guilty of lacking structure to WTO-NGO interchanges. Relatively few NGOs have pursued sustained, focused, carefully researched efforts to understand and affect WTO's policy. The radical groups, especially, tend to form around sporadic short-term issues or conferences, rather than following a longer-term, well-thought-out plan of action. There is also an issue of limited capacity at the WTO—they do not currently have the staff or resources to engage with the large numbers of NGOs that wish to participate. One danger is that an external relations office, separate from real action, is set up as a buffer to quiet NGOs.

Those interchanges that have occurred between the WTO and civic groups, especially with reformist and radical groups, have lacked sufficient openness and reciprocity on both parts. Often the WTO has appeared not to take in what NGOs have said, or has implemented policies to restrict the NGOs abilities to express opinions. For their part, NGOs have also been unprepared to compromise. For example, although Michael Mason notes that the majority of NGOs favor the creation of a WTO-civil society advisory

group, numerous NGOs have rejected the WTO's offer of a place on the newly established Advisory Board, harming the initiative as a whole.

Finally, there is a problem of unequal access to the WTO. NGOs have to compete with other non-governmental sectors, such as business, for seats at Ministerial Conferences. The balance is highly skewed in favor of business, which was accredited with 65 percent of the seats available to civic organizations at the Singapore Ministerial Conference. Even within the category of NGOs, there is a bias towards certain types of NGO, especially reformist environmental and development groups. Grassroots associations have little or no direct entry to the WTO at all. A second bias exists between Northern and Southern NGOs, favoring the more developed, better-financed organizations of the North. And finally, a gender bias has become apparent, with disproportionately large participation from men in both the WTO staff and the NGOs. However, NGOs are challenged to correct any of these biases, as they are at the mercy of the WTO staff, which decides which organizations to accredit.

5. Possibilities for reform

A member of an African delegation at Doha identified three levels at which change is theoretically possible: the ideological level, the official level, and the subterranean level. Changes to the ideological level might include narrowing the focus of WTO agreements, for example, eliminating TRIPS, TRIMS, GATS, the New Issues, etc. This might be possible if combined with an Economic and Social Security Council along the lines of the one suggested by Kemal Dervis, which would not manage the WTO but could be entrusted to decide which issues are best handled where.¹⁰⁰ The African delegation member also suggested re-considering rules that prevent the protection of infant industries in developing countries. To this end, Chang writes that "...WTO rules and other multilateral trade agreements should enlarge the scope for Special and Differential Treatment in such a way that a more active use of infant industry promotion tools (e.g., tariffs and subsidies) is allowed".

Advocates of change at the official level recommend ending the practices of mini-ministerials and green room meetings; establishing rules and procedures in advance of meetings; banning all-night-long sessions; ensuring simultaneous translation of meetings into at least French and Spanish; allowing all ambassadors to attend (not just those perceived to have an interest in the area); and giving advance notice of all meetings.

However, change must start from the subterranean level, namely by correcting the imbalance of power and restoring democracy to the organization's decision-making mechanisms. No initiatives such as collective management can be introduced while a few powerful Northern states, namely the Quad, dominate the decision-making proceedings. Jawara and Kwa's interviews with unnamed WTO delegates point to the need to make developing countries aware of the role they can potentially play within the WTO if they consolidate their power against the bullying of the Quad and other

¹⁰⁰ See Dervis, Kemal (2005). *A Better Globalization: Legitimacy, Reform, and Governance*. Washington, DC: Brookings Institution.

developed countries. NGOs can support this effort by lobbying Southern governments to take action and educating them as to what these actions might be.

A first step towards democratizing the WTO is therefore to promote coalition building and solidarity between developing countries, and to educate developing countries as to the potential benefits of countering developed country factions. The LDCs are already becoming a stronger and more coherent group¹⁰¹. The *LDC Group* consists of thirty WTO members, mostly low-income countries. However, middle-income countries are still subjected to the developed countries' divide-and-rule tactics, a key method of pushing a desired agreement through being to play one developed country off against another.

The media can publicly highlight abuses in the decision-making mechanism. NGOs should act as a bridge between delegates and the media, since the media are often regarded with suspicion by developing country delegates after such incidences as the vilification of India by the Western press when India was the strongest country opposing a new round. With the consent of those involved, cases of threats and actions taken against individual ambassadors can be brought to light. Publicizing these instances is a first step towards reducing them and bringing more scrutiny to the grayer areas of behind the scenes policy-making.

NGOs and other external groups can also lobby for increased transparency. At the most basic level, the WTO should take full minutes and translate into at least French and Spanish (the other official languages of the WTO). If delegates are not able to attend all meetings, they should be able to obtain transcripts of the meetings. NGOs have long fought for negotiations to be opened up to civil society observers in the name of transparency. To date, the more powerful WTO members have always kept a tight reign on civil society involvement. Many initiatives have been superficial, only designed to improve the *appearance* of transparency without actually ceding any influence to civil society.

Some NGOs advocate for establishing databases within countries to give trade officials information on patterns of trade, growth and poverty. These databases can be used to study the likely short- and long-term economic costs and benefits for all groups within a country resulting from proposed WTO rules and agreements. Once the database is established, further negotiations should be suspended until the impacts of the previous and current agreements have been assessed. The WTO perhaps could emulate the World Bank, which has a relatively independent inspection panel and evaluation department.

The above suggestions go some way towards addressing the criticisms of WTO-NGO initiatives, and I believe the criticisms that have not already been addressed in this section would be satisfied by a fully functioning collective management system. The next section outlines a proposal to use collective management to increase NGOs' participation in the policy making process of the WTO. This proposal goes beyond the suggestions presented above, and sketches the first plans for a phased approach to building a collective

¹⁰¹ Coalition builders must be aware that LDC interests are not always congruent amongst themselves; for example, Brazil's interests in agriculture are closer to the NDCs than to the poorest LDCs.

management mechanism that includes all three sectors: civil society, business and government. That is not to say that the points made above are not relevant. Indeed, many of them are included in one of the four phases described below.

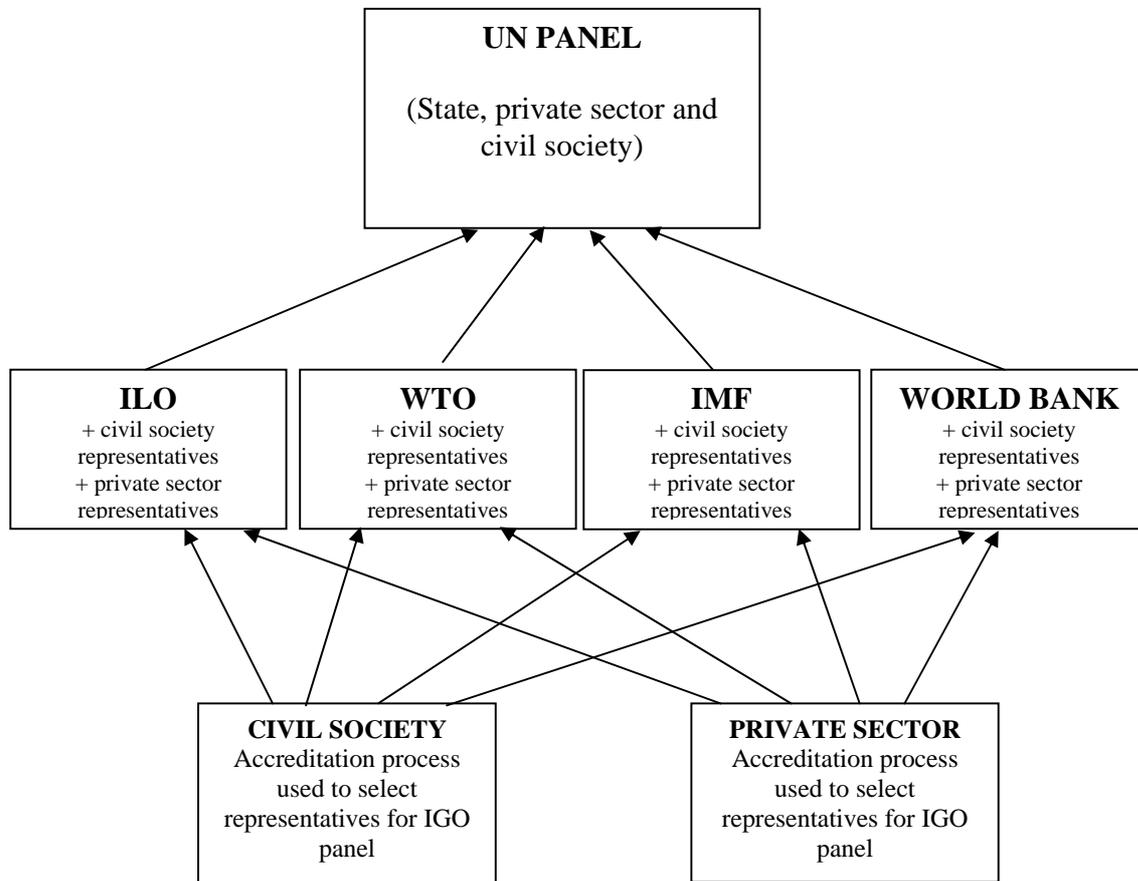
§ IV: A Proposed Solution

The goal of this section is to sketch a broad outline of a new collective management framework for the WTO. The objective of the collective structure is to bring together representatives of the state, private and civil society sectors as active participants in the international governance system. The approach is hypothetical and much detail would be required in designing a complete mechanism. There are numerous procedural difficulties to solve, such as a dispute settlement procedure that works at removing any existing asymmetries of power rather than exaggerating them.

It should be noted that such an arrangement is not entirely revolutionary on the level of global governance. The International Labor Organization (ILO), a specialist UN agency, is already such a tripartite body, bringing together government, employers and workers. Each member state is represented by two government delegates, an employer delegate and a worker delegate. Although the ILO's decisions are not binding on those states which do not ratify them, statutes and by-laws allow for the issue of special resolutions condemning any member who violates or fails to implement what has been agreed upon. Though it does not integrate NGOs explicitly, the Integrated Framework for Trade-Related Technical Assistance to least-developed countries (IF) discussed above has developed considerable experience. Its history includes successes and failures, including an overhaul in 2000 resulting in a new, refocused organization, recommitted to its objectives. Its experience in integrating autonomous organizations into a functioning collective to achieve shared goals will offer valuable lessons for any system of collective management.

The solution presented here proposes an arrangement whereby selected civil society and private enterprise delegates are each granted full representation and a vote, giving them identical voice to the delegates representing nations. Both these sectors must devise a system for screening their representatives for accreditation, and then selecting those suitable to be considered for membership of the collective management delegations. Selected civil society and private sector delegates are then to be allocated to an IGO according to their area of focus. For example, the Emergency Committee for American Trade, the Institute for Agriculture and Trade Policy and the International Federation for Alternative Trade should all be assigned to the WTO, while the International Chamber of Commerce would fall under the World Bank group, and the International Confederation of Trade Unions would be allocated to the ILO. This would ultimately result in a system looking something like that represented in Figure 1 below.

Figure 1. Proposed Architecture of the Global Collective Management Mechanism



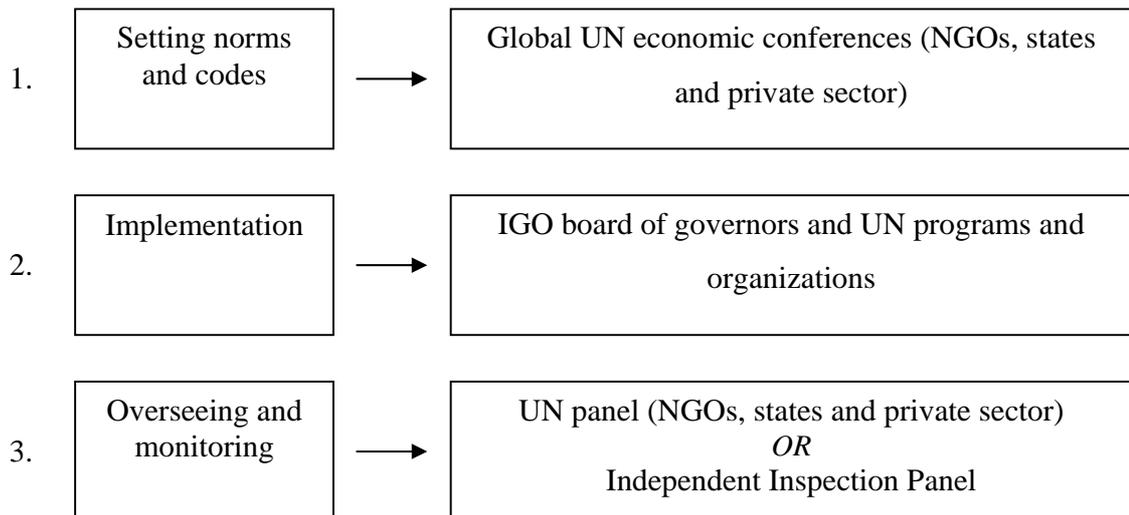
1. Codes and Standards of Conduct

It is crucial that a set of codes and standards for the management of this new framework be decided and agreed upon by all parties. This will help to overcome some of the biggest hurdles to full NGO participation on the boards of IGOs—their current lack of direct accountability, their tendency to prefer populism over efficiency and professionalism, and, in some cases, their lack of transparency.

Given the very positive reception that greeted the aforementioned One World Trust report on NGO accountability and its emphasis on covering the issues of standards and codes, this would be a good starting point. However, it will not be enough for civil society to unilaterally set their own codes and standards—the acceptable codes and standards governing the behavior and ethics on IGO boards must apply to both NGOs and businesses, and must also be agreed upon by the IGOs. Support for the criteria from all of the representatives to the international institutions, as well as from the institutions themselves, will make it difficult for critics to question the legitimacy of the selected standards.

The finalized codes and standards will be implemented by each IGO (now including private and civil society representation). It will then fall to the UN organs to supervise the players and enforce these rules. Some form of dispute settlement mechanism that threatens punishment equally to all parties is necessary to enforce the new rules. As discussed above, the current dispute settlement mechanism in place at the WTO threatens trade sanctions against those countries that do not adhere to the WTO agreements; this is non-compelling when the wronged nation is an insignificant trading partner. A real threat of punishment is an important component of the system, since it creates incentive to obey the codes and standards. Unlike the current system, the power of the DSM must be available to all parties equally. Moreover, the process of settling disputes must not be so expensive or lengthy that it excludes the poorer or less well-staffed members. Figure 2, below, demonstrates the principles of the process just described.

Figure 2. The Three-Step Process



It will be important to consider how many representatives from each sphere should be included. Although these international institutions should remain primarily comprised of nations, it will be important to include a sufficient number of representatives from the worlds of private enterprise and civil society. They will each need several delegates in order to ensure a range of viewpoints are included and diverse interests are represented. Professor Barry Carin suggests that the IGOs follow the example of the UNAIDS Program Coordinating Board (PCB), which has as full members 5 NGO representatives¹⁰². At a minimum, 5 ex officio places on the General Council could be offered to NGOs, with similar access given to representatives of the business sector. These numbers could be adopted initially on an experimental basis, with adjustments made as appropriate.

All parties must be involved in debating the possible incarnations of these ideas, and each sphere must contribute to decisions on a mutually agreeable set of codes and standards. If

¹⁰² Carin, B. (2004) Private discussions. London.

any of the three parties fundamentally challenges the legitimacy or mandate of the new institutions, they will be ineffective forms of collective management. For this reason, there must be some meeting of minds during which the logistics can be debated. I believe that the best vehicle for this discussion is a Global Conference, to be attended by representatives of all three sectors—governments (IGOs), business (MNCs), and civil society (NGOs). The model proposed here suggests that the role of the existing Economic and Social Council be extended to become a ‘General Secretariat’ for global conferences on international governance.

2. ECOSOC and the Global Conference

The Economic and Social Council (ECOSOC) is a respected and non-partisan body under the aegis of the UN General Assembly. It coordinates the economic and social work of the United Nations and the UN family of organizations. As the central forum for discussing international economic and social issues and for formulating policy recommendations, the Council plays a key role in fostering international cooperation for development. It also consults with NGOs, thereby reinforcing a vital link between the United Nations and civil society. Under the tenets of the UN Charter, ECOSOC is responsible for promoting “higher standards of living, full employment, and economic, social and health problems; facilitating international cultural and educational cooperation; and encouraging universal respect for human rights and fundamental freedoms”¹⁰³. ECOSOC’s purview extends to over 70 percent of the human and financial resources of the entire UN system. More importantly as it pertains to this exercise, in carrying out its mandate, ECOSOC consults with academics, business sector representatives and more than 2100 registered NGOs, giving it extensive outreach to civil society and private enterprise. Its current mandate is closely associated with many NGOs and within its structure there already exists a specialized committee on NGOs.

ECOSOC can fulfill a critical coordinating function for the updated governance institutions, particularly during the transition towards a new system. It can consult with each of the three sectors on their opinions and ideas, and aggregate those interests into a coherent system. These goals could be achieved by the proposed Global Conference, which ECOSOC could organize, and which will take decisions and draft resolutions according to areas that have been discussed during its sessions. Of particular importance are decisions on codes and standards. However, equally important is the design of a monitoring and enforcement mechanism that will encourage member organizations to keep to the agreed rules.

The conference opening and closing sessions should be attended by all the delegates, but in the interests of efficiency, for all other sessions, the delegates will be separated according to their area of specialty, such as trade (the WTO and all trade-related NGOs and private groups), finance (the World Bank and finance-related NGOs and private

¹⁰³ United Nations Economic and Social Council. (2004). “What ECOSOC does”. Uzbekistan: United Nations Office Information Centre. Available online at <http://unagencies.undp.uz/unic/eng/bodies/ecosoc.php?PHPSESSID=3f368a9f7a2ec163ef009b17d9d469a5>

groups), labor relations (the ILO, labor-related NGOs and private groups), etc. Past successful global conferences, such as the Rio conference on environment issues, can offer valuable insights during the planning and implementation stages.¹⁰⁴ However, the Global Conference will go beyond the scope and mandate of past conferences, since the groups into which the three sectors divide for the main sessions, i.e. trade, finance, labor, environment, etc., will form the basis for the new collectively managed IGOs. Following the conference, when organizing principles and logistics have been established, existing IGOs will make the transition to include fully enfranchised members of civil society and private enterprise.

Discussions on the parameters of the new system of global governance will require four phases of interaction. In the first phase, conceptual support must be secured from all relevant parties to the new system: government, business, and civil society. In the second phase, the candidates for participation in the new system must establish selection criteria that are acceptable to all those involved, and choose the voices that will represent them in negotiations. In the third phase, selected representatives can discuss specific systems of interaction which will achieve the goals of collective management, and design the new institutions of global governance. In the fourth phase, the new system must be entrenched, and effective monitoring systems must ensure it remains true to its purposes going forward. Each of these phases will be considered in turn.

3. Phase 1 : Securing conceptual support

The first, and perhaps largest, barrier to success involves the existing asymmetry of power within the WTO and other IGOs. In practice, powerful Northern countries may be able to block any reform initiative, including the hosting of a conference or any debates on major reforms to the existing system. Obviously, if this is the case, this proposal is made redundant, since meaningful reform requires major changes to the current international regime.

The crux of the problem is this: in order to tackle the legitimacy deficit within IGOs, I propose to start with a conference involving all parties. However, it is precisely this legitimacy deficit that allows one of the parties (or at least a dominant minority of that party) to disrupt this plan. Thus, Phase 1 must find some way of exerting pressure on the minority benefiting from the current system to change their position and agree to participate in debates on a new regime. This pressure may be applied from inside the IGO (e.g., by Southern states in whose interest it is to pursue these proposals), or from outside it (e.g., by NGOs and other civic organizations).

In Section Two, this paper detailed how a minority of Northern states dominates proceedings in the WTO. Internal pressure must be applied by the Southern states and sympathetic Northern states, all of which must become aware of the tactics employed by

¹⁰⁴ Lessons we can learn from past international conferences include the importance of securing buy-in from all parties, particularly the most influential, and of ensuring the conference is well-organized and smoothly-run.

the Northern delegates and, in response, form their own coalitions and alliances. These Southern delegates have perhaps the most crucial role of all in persuading the WTO and other governance institutions to undertake the initiatives proposed here. NGOs outside the WTO can support and help by educating Southern governments and delegates as to the need to counter Northern dominance in the IGOs, and the means of doing so.

External pressure includes all those channels of communication that civil society already utilizes: lobbying, campaigns and public protests, multi-stakeholder dialogues, formal interactions with national governments and multilateral institutions, etc. Professor Barry Carin notes that NGOs can use moral influence to motivate governments to revise their positions, rallying the global populace to pressure governments by letter-writing, public protest, or even principled boycotts of the exports of particular nations as necessary¹⁰⁵. He emphasizes that “the important point is to select a focused message....With respect to the WTO, the campaign theme could be to provide value to the retaliation rights of very small countries, by creating a market allowing them to sell such rights to a country which could use them. A less problematic approach [to dispute resolution] would be to have fines assessed by the WTO on the guilty country, the proceeds going to the injured small country. Another example of a campaign to capture and channel public opinion is to pressure all countries to agree to enforce WTO decisions in their own courts”¹⁰⁶.

Carin also suggests lobbying for a fifth WTO Deputy Director General to be appointed to represent civil society from inside the WTO management team. In addition, he argues that “the developing world needs its own OECD Secretariat”¹⁰⁷; it should pool resources to establish a well-financed professional body to array evidence and compile policy and negotiating options. It could build on existing bodies like Third World Network (an international network of organizations involved in issues relating to development, the Third World and North-South issues) and the G24 Secretariat (which represents the position of 24 developing countries on monetary and development finance issues).

These efforts will be much more influential if civil society is united in its message so that it is lobbying with a single, clear voice. One way of achieving this is to form a global organization to act as the Voice of Global Civil Society (VGCS). In addition to coordinating civil society’s message, this organization could collect data and statistics (crucial to a well-run campaign), promote greater North-South alliance building, and, when the Global Conference planning is underway, act as civil society’s representative through the planning phases.

¹⁰⁵ Carin, B. *op cit.*

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

4. Phase 2: Choosing the voices

Having secured agreement from all parties to participate in the conference, the next challenge to tackle is how to screen applicants to the conference so that all three sectors of society are represented fairly and legitimately. Government and businesses already have processes in place to do this but NGOs do not. Obviously it will not be possible for every NGO to attend. However, the NGOs that do attend should represent as many fields of activity as possible (e.g. environment, labor, gender, trade, finance, etc). There should also be representatives from every geographical area (e.g. the US, Europe, Australasia, etc), if not every country. In order to achieve this, a multi-level selection process with well-defined criteria is required. One approach would be to develop electoral districts (representing the different geographical areas) and require that NGOs are elected in these constituencies. The NGO electoral process could have many of the same characteristics as current political systems, with NGOs having to define and describe themselves and their constituents much as a political party would have to.

The first stage would be country elections. Each country would have to elect a specific quota of NGOs, and would have to include at least one NGO from every field of activity. Each country's quota would be set by the UN and would be decided according to such parameters as the country's size, population, gross domestic product, number of NGOs, etc. The second stage, the district elections, would involve all the NGOs elected from the countries within each district, and would again be required to fill a UN-specified quota of NGO representatives. Once these district representatives had been determined, they would be eligible to run for a place in the Global Conference. As specified above, every district and every field of activity must be accounted for in the Global Conference.

The main criteria for election should be the level of transparency and accountability of the NGO. Once again, it is important to emphasize that civil society is being included into the international decision making process to augment the legitimacy and accountability of IGOs. Civil society *must* therefore set the standard for these values. Transparency and accountability can be judged according to the One World Trust's eight dimensions and scoring system, described above. The private sector must also select its delegates, and it has already adequate mechanisms in place to do so.

If a Global Conference is chosen as the best way to solicit input and debate ideas among the three contributory spheres, then the three sectors will need to collaborate to plan the logistics for the conference as well. ECOSOC might act as a secretariat organization at this stage, and coordinate organization and agenda-setting.

The planning stage also includes organizing the financial and logistical support necessary to ensure a diverse, global representation of the three sectors. ECOSOC can help the Southern NGOs to participate effectively in global conferences by organizing financial assistance for them, although funds should be allocated carefully to ensure no conflicts of interest.

5. Phase 3: Designing the system

As noted before, the main objective of the inter-sphere dialogue is to establish codes and standards describing how the collective management mechanism will work, and to govern its operation. ECOSOC can act as the Secretary General at the Global Conference throughout the proceedings to ensure transparency and equal involvement.

The Global Conference is one way of ensuring that representatives of all three spheres can come together and debate the parameters of the new system of international governance. There may be other methods of achieving this goal, such as arranging online forums or videoconferences. However, a live conference is likely to be the most effective way of establishing the parameters of a new system: in-person meetings will help establish goodwill that will encourage compromise and dialogues, and open discussion will motivate the moderation of ideas. Given the critical importance of setting appropriate standards for a new system, all parties should welcome the chance to engage in real debate about the ideal regime of global governance.

If a Global Conference is chosen as the ideal forum in which to debate the specifics of a new system, it is crucial that, throughout the formal and informal proceedings, an environment of transparency and openness is cultivated. This means that full minutes of all conference sessions and proceedings are taken and made available, quickly and easily, to all delegates. Minutes of subject-specific meetings should also be made available to delegates from different subject areas. For example, trade-related delegates should have access to the minutes of environment-related meetings if they so wish. All meetings, including informal discussions, social events and other activities outside of the formal sessions, should be open to all. It is important to avoid any of the clandestine meetings that IGOs are criticized for, such as WTO green room meetings.

6. Phase 4: Implementing the changes

When the three spheres have reached agreement on codes and standards, the final stage is to implement them and monitor that they are obeyed. Implementation amounts to transferring some of the IGOs' power to the relevant NGOs and businesses; that is, to putting in place the collectively-managed governing bodies of the IGOs. Once in place, it is necessary to monitor them to ensure that all members abide by the established rules of conduct. A reformed dispute settlement mechanism will threaten punishment to anyone breaking these rules.

The question of who should fulfill the monitoring role must be answered during Phase 3 and agreed in advance of the implementation stage. There are a number of candidates for this role. ECOSOC has the potential to fulfill such a function, since it possesses human, financial and technical resources. However, Carin argues in favor of a well-resourced Independent Inspection Panel to review and publicly report on compliance, and a new arbitration process (like a Small Claims Court) designed to give the poorest countries inexpensive and expedited binding arbitration (without prejudice or precedent

to other WTO disputes). Very poor countries cannot afford the current process, especially the delays involved in its leisurely pace.

While this paper has outlined the framework for the collective management mechanism, and noted the cautionary measures that need to be taken in advance of implementing the mechanism (e.g., screening applicant NGOs), much more detail and investigation is needed before the proposal could be implemented. For instance, the involvement of experts from a wide range of fields to consider issues of funding, alliance-building, improving transparency, accountability and effectiveness is needed; input from experts in business management, management of civil society organizations, and liaisons with government will also be needed. Furthermore, the planning stages are critical to the project's success, and must be rigorously prepared and executed. The importance of preparation cannot be overstated. In order for the new system to succeed, it must be perceived as a credible undertaking and this depends, in large part, on buy-in from all parties, which can only be achieved by careful dialogues.

§ V: CONCLUSION

This paper has discussed the system of international governance, with its regimes that wield burgeoning power as the forces of globalization accelerate. However, although IGOs have increased in importance, and their duties and spheres of influence are continuing to expand, there are many that exhibit an extreme lack of popular legitimacy. The WTO, in particular, is seen by many to be an example of non-legitimate governance because the strong Northern nations dominate proceedings and sway decisions, and the Southern nations often do not accurately represent their citizens' interests, meaning representation of citizens is unequal. In addition, the business sector has a disproportionately loud voice in the WTO; this is particularly true when compared to civil society, which has no voice, but is often the only form of representation on which Southern populations can depend. This means the interests of powerful actors are prioritized over those who are less vocal, even if the latter's interests are much more consequential to the world's people, the IGOs' constituents. Finally, the WTO offers an ineffective dispute resolution process which is of differential use to its member nations, the poorer of which can expect little justice from the politicized system. It is for these reasons that civil society has the potential to be a valuable contributor in the WTO decision-making process. However, at present, it has no formal means of contributing.

This paper has charted the history of WTO-NGO initiatives, demonstrating the increasing numbers of NGOs that attended WTO ministerial meetings as observers, and the rising numbers of issue-specific symposia hosted since 1994, designed to improve NGO-WTO dialogue. Increasing transparency and public speeches acknowledging the importance of civil society have also been features of the WTO's efforts to cooperate with civil society demands. Nevertheless, these small gestures and the existing relationships between the WTO and civil society organizations are shallow and insufficient. It appears that cooperation alone cannot solve the problem of declining legitimacy, nor can it redress the balance of power within the WTO. Doing so requires that civil society be granted formal representative status within the WTO, comparable to that of government. The corporate sector, then, must also be granted formal representative status. The result, as advocated by this paper, would be a tripartite system of collective management in which government, business and civil society all have an equal vote.

At present, power in the WTO is concentrated among a select few Northern states, the majority of which are opposed to any initiatives that will reduce their influence or compromise the system from which they benefit. Any proposal that attempts to solve the legitimacy problem must start by redressing the balance of power, to the extent that reform is indeed possible. Civil society can be involved in these efforts, while still external to the formal decision making processes, through strategic lobbying and pressuring the Southern representatives to resist Northern demands. Therefore, Phase 1 of the four-phase solution proposed in this paper begins by securing the consent of all three spheres, using pressure tactics if necessary; this will involve strengthening the voices of the Southern delegates, for without their support, the Quad will almost certainly block all attempts to grant businesses or civil society any influence.

Once agreement from IGOs, NGOs and MNCs to participate in the discussions on a collective management system has been secured, a Global Conference involving representatives from government, business and civil society is recommended to determine the framework and rules of the system. The final three phases of the proposed solution detail how this process can be performed. Phase 2 includes choosing representatives, which each sphere must do in a way deemed to be transparent and accountable. Those chosen as representatives should demonstrate established standards of accountability, transparency and legitimacy—exactly those attributes that this paper hopes to promote in IGOs. Additionally, Phase 2 includes planning for the debate on system parameters, including ensuring that all relevant parties can participate.

The third phase is the debate itself, in conference form or otherwise, the objectives of which are as follows: (1) to set the codes and standards that will govern the collective management system; (2) to identify the regulatory body that will monitor compliance with these codes and standards; and (3) to agree upon a dispute settlement mechanism and credible system of punishments for non-compliance. The crucial element in this phase is the open, constructive participation of each sphere, such that the agreed regime is one in which governments, businesses, and NGOs all feel comfortable participating.

The final phase is the implementation of the collective management mechanism. IGO decision-making bodies will now include representatives from business and civil society groups from similar fields of activity, all abiding by the rules agreed upon during founding debate. The UN organs will oversee the implementation of the new system and monitor participants, ensuring that all members keep to the codes and standards set, as well as overseeing the use of the dispute settlement mechanism in cases of non-compliance.

This will be a series of complex and difficult tasks to perform. It may take as long as ten years to fully prepare for the new regime. However, it is critical that no part of this initiative is rushed at the expense of careful planning. Preparation is crucial. In order to succeed, the system of collective management must be perceived as a *credible* attempt to integrate business and civil society into the IGO decision-making mechanism. Much of this credibility will derive from visibly rigorous planning and careful publicity initiatives, all of which must be supported by all three spheres.