

BEYOND THE MONOPOLY OF STATES

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ABSTRACT

In the twenty-first century, a wide range of complex global challenges will require unprecedented levels of global cooperation between states and non-state actors. Yet few leading international institutions today are designed to effectively leverage the resources, ingenuity, and connectivity of diverse societal actors. While some scholars maintain the view that civil society should not meaningfully participate in the governance of international institutions, a new generation of multi-stakeholder institutions points to a new way of understanding the relationship between non-state actors and international institutions. This article examines the role of civil society in the governance of international institutions and highlights this new generation of multi-stakeholder institutions that involve non-state actors as full participants in governance. It applies insights from work on associative democracy to suggest a new approach to evaluating civil society participation within international institutions.

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1. INTRODUCTION

In the twenty-first century, a wide range of complex global challenges will require unprecedented levels of global cooperation. However, most of the international institutions we inherited from the last century were designed only to promote cooperation among states in the context of a very different world in the wake of World War II. Sixty-five years later, many of today's biggest challenges can no longer be managed or solved by states alone, but instead require the resources, ingenuity, and connectivity of diverse societal actors. A new generation of institutions is increasingly harnessing the energies of civil society organizations¹ and other non-state actors through multi-stakeholder forms of governance. The governance of international institutions and the expanding role of these institutions in responding to key global challenges has become a resurgent area of research interest.² However, a number

¹ See John Gerard Ruggie, *Reconstituting the Global Public Domain – Issues, Actors, and Practices*, 10 EUR. J. INT'L REL. 499, 522 n.1 (2004) (defining civil society organizations ("CSOs") as "transnational social movements, coalitions, and activist campaigns as well as formal non-governmental organizations").

² See generally JOSÉ E. ALVAREZ, *INTERNATIONAL ORGANIZATIONS AS LAW-MAKERS* (2005); ANNE-MARIE SLAUGHTER, *A NEW WORLD ORDER* 10, 18 (2004); Kenneth W. Abbott & Duncan Snidal, *Why States Act Through Formal International Organizations*, 42 J. CONFLICT RESOL. 3, 29 (1998); Kenneth Anderson, *Book Review: Squaring the Circle? Reconciling Sovereignty and Global Governance Through Global Government Networks*, 118 HARV. L. REV. 1255, 1311 (2005); Daniel Bodansky, *The Legitimacy of International Governance: A Coming Challenge for International Environmental Law?*, 93 AM. J. INT'L L. 596 (1999); Steve Charnovitz, *Nongovernmental Organizations and International Law*, 100 AM. J. INT'L L. 348, 372 (2006); Daniel C. Esty, *Good Governance at the Supranational Scale: Globalizing Administrative Law*, 115 YALE L.J. 1490 (2006); Andrew T. Guzman, *Global Governance and the WTO*, 45 HARV. INT'L L.J. 303 (2004); Laurence R. Helfer,

of theorists remain skeptical that civil society should play a significant role in the governance of international institutions.³ This article argues that involving civil society in the governance of international institutions is increasingly necessary and that the traditional approach of consultation is inadequate to catalyze their potential contribution to these institutions. Instead, multi-stakeholder forms of governance, which are features of a number of twenty-first century institutions, will be increasingly critical to the success of many international institutions.

Civil society groups are becoming key actors in a wide range of international arenas that were formerly the exclusive province of states and increasingly viewed as essential actors in many of these areas. Few people would suggest today that contemporary global challenges in areas such as climate change or global health can be solved by states alone without the extensive participation of non-state actors. Thus far, relatively few scholars have examined a new generation of twenty-first century international institutions that are moving away from exclusively intergovernmental structures and towards multi-stakeholder partnerships where non-state actors are full participants in governance.⁴ Most work on civil society

Understanding Change in International Organizations: Globalization and Innovation in the ILO, 59 VAND. L. REV. 649 (2006); Robert O. Keohane & Joseph S. Nye, Jr., *Between Centralization and Fragmentation: The Club Model of Multilateral Cooperation and Problems of Democratic Legitimacy* 4–6 (John F. Kennedy Sch. of Gov't, Harvard Univ., Working Paper No. 01-004, 2001), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=262175; Benedict Kingsbury et al., *The Emergence of Global Administrative Law*, 68 LAW & CONTEMP. PROBS. 15 (2005); Kal Raustiala, *The "Participatory Revolution" in International Environmental Law*, 21 HARV. ENVTL. L. REV. 537 (1997); Ruggie, *supra* note 1, at 499.

³ See, e.g., Kenneth Anderson, *Global Governance: The Problematic Legitimacy Relationship between Global Civil Society and the United Nations* (Am. Univ., Wash. Coll. of Law Research Paper Series, Paper No. 2008-71, 2008), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1265839 (arguing that non-governmental organizations ("NGOs") do not possess sufficient democratic qualities to play a legitimate role in global governance); John R. Bolton, *Should We Take Global Governance Seriously?*, 1 CHI. J. INT'L L. 205, 217 (2000) ("[I]t is precisely the detachment from governments that makes international civil society so troubling, at least for democracies."); Martin Shapiro, *Administrative Law Unbounded: Reflections on Government and Governance*, 8 IND. J. GLOBAL LEGAL STUD. 369 (2001) (arguing that NGOs are epistemic communities that develop rules through opaque processes that do not involve the participation of voters).

⁴ See, e.g., Kenneth W. Abbott & Duncan Snidal, *Strengthening International Regulation Through Transnational New Governance: Overcoming the Orchestration Deficit*, 42 VAND. J. TRANSNAT'L L. 501, 577–78.

participation within international institutions has primarily focused on the practice of twentieth century institutions, which significantly informs the conclusions that many theorists draw about the role of non-state actors in governance.⁵

Innovative twenty-first century institutions, in areas such as global health, are demonstrating that multi-stakeholder governance can be extremely successful and increasingly undermining the logic of those who reject the idea of moving beyond exclusively inter-governmental arrangements. A rich literature on associative democracy, which is usually applied to national contexts, offers fresh insights into some of the key design challenges facing these multi-stakeholder institutions in terms of enhancing the contribution of civil society actors.⁶

Section 1 examines the theoretical objections raised by scholars to the inclusion of civil society actors in the governance of international institutions. It seeks to understand these objections in the context of the practice of leading international institutions, such as the United Nations and the Bretton Woods Institutions. Section 2 highlights a new generation of institutions challenging the traditional view that states are the only legitimate actors within international institutions. Section 3 applies insights from associative democracy theorists and develops an approach to evaluating civil society participation that seeks to respond to the objections posed by critics and offer lessons for the design of effective international institutions for the twenty-first century.

⁵ See, e.g., Chadwick Alger, *The Emerging Roles of NGOs in the UN System: From Article 71 to a People's Millennium Assembly*, 8 GLOBAL GOVERNANCE 93 (2002) (examining the developing relationship between the U.N. system and civil society during the twentieth century); Anderson, *supra* note 2, at 1311; Charnovitz, *supra* note 2, at 352-55 (examining the influence of NGOs on international law with particular attention to developments in the twentieth century).

⁶ See, e.g., Joshua Cohen & Joel Rogers, *Secondary Associations and Democratic Governance*, 20 POL. & SOC'Y 393, 464-65 (1992) (suggesting that associative democracy can enhance democracy while avoiding the dangers of factionalism); Archon Fung & Erik Olin Wright, *Thinking about Empowered Participatory Governance*, in DEEPENING DEMOCRACY: INSTITUTIONAL INNOVATIONS IN EMPOWERED PARTICIPATORY GOVERNANCE 3, 5 (Archon Fung & Erik Olin Wright eds., 2003) (highlighting the reform models that engage ordinary citizens in policymaking which affects their lives).

2. THE MONOPOLY OF STATES APPROACH

Many contemporary scholars of international institutions still hold the view that states are the only legitimate actors that should participate in the governance of international institutions. Even as the scope of involvement of non-state actors continues to expand within most international institutions, significant debate remains over the wisdom of civil society participation in the formal governance of these institutions. A number of scholars challenge whether civil society should meaningfully participate at all in the governance of international institutions.⁷ Some have even argued that expanded societal participation reflects a flawed attempt by an insufficiently representative civil society and incompetent international institutions to generate legitimacy for each other.⁸ Civil society representation in the governance of international institutions is rejected on the grounds that these groups are not representative,⁹ not sufficiently accountable or legitimate,¹⁰ or that their very independence from states conflicts with participation in

⁷ See Anderson, *supra* note 3, at 25–27 (suggesting that CSOs are just one type of the many pressure groups involved in the democratic process, and that their participation does not confer democratic legitimacy *per se*); Kenneth Anderson & David Rieff, ‘Global Civil Society’: A Skeptical View, in GLOBAL CIVIL SOCIETY 2004/5 26, 35–36 (Helmut Anheier et al. eds., 2005) (suggesting that when stakes are high, particularly during wartime, international organizations turn to the legitimacy that comes from important state actors, rather than international NGOs); Thomas M. Franck, Remarks, in NON-STATE ACTORS AS NEW SUBJECTS OF INTERNATIONAL LAW 151, 152 (Rainer Hofmann ed., 1998) (“Not only do NGOs not address [the problem of representativeness] because they are in no sense a substitute for some direct form of representation of people in the process which normally one thinks of as parliamentary representation. . . . NGOs are irrelevant . . .”).

⁸ See Anderson & Rieff, *supra* note 7, at 36 (noting that the mutual support and legitimacy that international organizations and global civil society organizations provide to each other “appears to have led the NGOs astray”).

⁹ See Bolton, *supra* note 3, at 217 (raising the concern of international NGOs’ ability to undermine democratic systems by achieving policy results they could not otherwise achieve); Anderson, *supra* note 3, at 12–17 (disputing the idea that international NGOs are the “legitimate representatives of the world’s people”).

¹⁰ See Antonio F. Perez, *Who Killed Sovereignty? Or: Changing Norms Concerning Sovereignty in International Law*, 14 WIS. INT’L L.J. 463, 489 (1996) (suggesting that the community of sovereignty and community of knowledge-base experts lack democratic legitimacy because they do not involve a “political process . . . built around a politics of interest of groups, not reified states, and managed by politicians, not technocratic experts”); Shapiro, *supra* note 3, at 376 (noting the opaque processes used by international NGOs, and suggesting that international procedures may create accountability and transparency).

international institutions.¹¹ These arguments fit broadly within what I refer to as the “monopoly of states” approach, which holds that states alone should govern international institutions and rejects the idea that civil society and non-state actors should significantly participate in the governance of these institutions.

The most consistent and, in some ways, most powerful argument against civil society representation in the governance of international institutions is that non-state actors are not representative in the traditional sense because they are usually not elected.¹² The most basic version of this is sometimes posed with the question: “[W]ho elected the NGOs?”¹³ In the first instance, it is clear that most NGO leaders are not elected and even those who are elected can usually claim to formally represent only a relatively small slice of a given population.¹⁴ A more subtle version of the question of representation has been framed as “[h]ow representative must an organization be in order to deserve a seat in governing bodies?”¹⁵ These concerns about the representative nature of civil society should be examined against the backdrop of the representational role of other actors within international institutions.

In the case of many countries, the representation by governments within international institutions does not adequately or effectively reflect the views of its citizens.¹⁶ Some states are

¹¹ See Marina Ottaway, *Corporatism Goes Global: International Organizations, Nongovernmental Organization Networks, and Transnational Business*, 7 GLOBAL GOVERNANCE 265, 267 (2001) (arguing that the cost of corporatist arrangements between international organizations and international NGOs outweigh their benefits).

¹² See Raustiala, *supra* note 2, at 567 (“[M]any powerful NGOs come from a small minority of advanced industrial states, and NGO views are often far from reflective of the public at large.”).

¹³ See Anderson, *supra* note 3, at 28–29 (citing David Rieff and questioning the representativeness of international NGOs).

¹⁴ See *id.* at 27 (describing NGOs as organizations that provide a voice for civil society in undemocratic states, but noting that they are not an effective substitute for democratic elections).

¹⁵ See Michael Edwards, *Introduction to GLOBAL CITIZEN ACTION* 1, 6–8 (Michael Edwards & John Gaventa eds., 2001) (posing the question of how legitimate a NGO must be to gain a vote in a global organization, and suggesting that these less heard from voices “add[] an essential layer of checks and balances into the international system”).

¹⁶ See Paul Wapner, *Defending Accountability in NGOs*, 3 CHI. J. INT’L L. 197, 198 (2002) (“There are plenty of nondemocratic polities ruled by those who are

represented in international institutions by authoritarian governments which are unlikely to adequately reflect the views of the citizens of that country, given the lack of effective democratic processes. The military rulers of Burma, for example, hold a seat on the General Assembly of the United Nations but seem to have little claim to represent the people of Burma in any democratic sense.

At the same time, other states have virtually no representation within the governance of key international institutions. In the case of many international institutions, those living in the poorest countries often have relatively little representation through their governments in the formal decision-making processes of these institutions. On the U.N. Security Council, there are no permanent members from the countries in the Southern Hemisphere. In the International Monetary Fund, the entire continent of Africa holds less than 5% of the votes within the institution and the country of Eritrea holds just 0.02% of the total IMF votes.¹⁷ If many countries are not represented at all, or significantly, within international institutions it complicates the idea that states alone can effectively represent diverse populations in the context of governance.

In both of these circumstances, when a state has little or no representation or when a state is represented by leaders who were not selected by its people, there is a reasonable basis to assume that non-state actors might be able to make a contribution by raising concerns and offering views that would not otherwise be heard in forums limited to states alone.¹⁸ Sometimes these groups accentuate the voice of the often-underrepresented Southern Hemisphere, while in other cases, civil society groups might raise issues of concern to marginalized groups within many countries.¹⁹

immune from constitutional constraints and that worry little about satisfying a broad-based, collective interest.”).

¹⁷ *IMF Executive Directors and Voting Power*, INT’L MONETARY FUND, <http://www.imf.org/external/np/sec/memdir/eds.htm> (last updated Nov. 23, 2010).

¹⁸ See Kal Raustiala, *States, NGOs, and International Environmental Institutions*, 41 INT’L STUD. Q. 719 (1997) (describing the tendency of NGOs to uphold values and concerns that would not otherwise be protected, and explaining the benefits that states receive from NGO inclusion, such as the enhanced ability to create and maintain international regulatory rules).

¹⁹ See Richard H. Stanley, President, The Stanley Found., Opening Remarks to The Thirteenth United Nations Issues Conference, Feb. 19–21, 1999, in *THE STANLEY FOUNDATION, THE UNITED NATIONS AND CIVIL SOCIETY: THE ROLE OF NGOS*

A different critique of civil society participation in governance is tied to the concern that Northern groups would dominate Southern groups in these global forums.²⁰ Indeed, this balance between North and South is already a challenge within most international institutions, even when governance is limited exclusively to state actors. It is not at all clear that excluding civil society altogether from formal governance helps to solve this underlying problem, as it very likely leaves those living in the Southern Hemisphere with less of a voice than they would have in an imperfect governance structure that includes civil society. New models of constituency-based participation by both Northern and Southern NGOs, which will be examined in the next section, offer one potential response to concerns about the geographic balance of civil society participation.

Another core critique of civil society involvement with international institutions is that civil society groups are not sufficiently accountable.²¹ Given that most non-state actors are not directly accountable through elections, it is reasonable to ask by what mechanism these groups can be held accountable at all. Some commentators suggest that there should be more universal standards for the transparency and integrity of non-governmental organizations.²² Others suggest that the accountability of NGOs "should depend upon the particular governance function they

7, 9, available at <http://www.stanleyfoundation.org/publications/archive/Issues99.pdf> (noting that, while some NGOs represent the values and concerns of their members, there are other NGOs that address the concerns of an "externally defined geographic or community constituency").

²⁰ See Karin Bäckstrand, *Multi-Stakeholder Partnerships for Sustainable Development: Rethinking Legitimacy, Accountability and Effectiveness*, 16 EUR. ENV'T 290, 299 (2006) (concluding that most transnational partnerships are North driven, composed primarily of international organizations and industrialized states); Klaus Dingwerth, *Private Transnational Governance and the Developing World: A Comparative Perspective*, 52 INT'L STUD. Q. 607, 625 (2008) (noting the lower representation of Southern stakeholders in international governing bodies).

²¹ See Yanyu Ke, *The Democratic Deficit, Intergovernmental Organizations, and Global Civil Society* 15 (Feb. 15, 2009) (unpublished paper), available at http://www.allacademic.com/meta/p_mla_apa_research_citation/3/1/3/3/7/pages313370/p313370-1.php ("Many NGOs lack necessary expertise and negotiating skills . . . in improving accountability and public participation in IGOs.").

²² See *id.* at 13-17 (suggesting that increased transparency and homogeneity amongst NGOs could more effectively promote democracy in IGOs, as well as increase their own democratic accountability).

perform.”²³ Still others argue that a better approach is to encourage NGOs to be accountable to their own constituencies, a goal that can itself be encouraged through the very process of becoming repeat players in the governance of international institutions.²⁴ Since NGOs are particularly vulnerable to threats to their reputations—and because they are otherwise fairly weak actors who rely on their credibility for influence—reputational concerns can be a powerful accountability mechanism.²⁵

The incentives for civil society actors involved in sustained interactions on substantive matters within international institutions are quite different from the incentives for those without access to the deliberations of these institutions. The experience of being repeat players with a meaningful voice in these institutions—in addition to the importance of protecting their reputation for credibility outside of such institutions—also serves as a basis for accountability, even without direct elections, for many civil society groups.²⁶

Accountability is already perceived as a weakness of many international institutions in part because of the perceived lack of

²³ Erik B. Bluemel, *Overcoming NGO Accountability Concerns in International Governance*, 31 *BROOK. J. INT’L L.* 139, 143 (2005).

²⁴ See Steve Charnovitz, *Accountability of Non-Governmental Organizations in Global Governance*, in *NGO ACCOUNTABILITY: POLITICS, PRINCIPLES AND INNOVATIONS* 21, 27–28 (Lisa Jordan & Peter van Tuijl eds., 2006) (highlighting Peter Spiro’s argument that the inclusion of NGOs in international decision-making would make them accountable as repeat players on the international stage).

²⁵ See Robert O. Keohane, *Global Governance and Democratic Accountability*, in *TAMING GLOBALIZATION: FRONTIERS OF GOVERNANCE* 130, 153 (David Held & Mathias Koenig-Archibugi eds., 2003); Wapner, *supra* note 16, at 203–04 (noting that reputational and credibility-based concerns can serve as both an accountability mechanism and as a powerful incentive for NGOs to self-police).

²⁶ See Jonathan A. Fox & L. David Brown, *Introduction to THE STRUGGLE FOR ACCOUNTABILITY: THE WORLD BANK, NGOs, AND GRASSROOTS MOVEMENTS* 1, 21 (Jonathan A. Fox & L. David Brown eds., 1998) (explaining that while NGOs are not subject to normal institutional accountability mechanisms, they are made accountable by virtue of their representational concerns and their need to interact on a continuing basis with other international actors); Wapner, *supra* note 16, at 203–04 (arguing that civil society actors must maintain their reputation for credibility and be accountable to state actors if they are to work successfully within international forums); Vivien Collingwood & Louis Logister, *Perceptions of the Legitimacy of International NGOs*, in *NGO INVOLVEMENT IN INTERNATIONAL GOVERNANCE AND POLICY* 21, 30 (Anton Vedder, ed. 2007) (“Certain NGOs draw legitimacy from their refusal to take money from, or bargain with, political or corporate bodies.”).

transparency. Many of these institutions face growing challenges to their legitimacy as democratic norms become more strongly embedded internationally.²⁷ According to Robert Keohane and Joseph Nye, the older, "club" model of global governance faces increasing challenges because of its lack of transparency to outsiders and participation is generally limited to officials from a relatively small group of countries.²⁸ Transparency is generally enhanced by the participation of civil society within international organizations. In fact, NGO participation was found to be a leading predictor of organizational transparency in a recent study of 72 international organizations.²⁹

Recent work on the legitimacy of international institutions has highlighted the importance of "input legitimacy," as well as "output legitimacy," or successful problem-solving.³⁰ Rules promoting transparency and public participation in international institutions can be extremely important to promoting procedural

²⁷ See Claudia Kissling & Jens Steffek, *CSOs and Democratization of International Governance: Prospects and Problems*, in CIVIL SOCIETY PARTICIPATION IN EUROPEAN AND GLOBAL GOVERNANCE: A CURE FOR THE DEMOCRATIC DEFICIT? 208, 216 (Jens Steffek et al. eds., 2008) ("We can conclude from the evidence presented in this book that the participatory practices in international organizations need to be improved if the existing potentials for democratizing international decision-making are to be realized.").

²⁸ See Keohane & Nye, *supra* note 2, at 4–6 (explaining that while exclusivity of membership and a lack of transparency were once essential to the success of the "club" model of global governance, these factors have brought this model under scrutiny in today's interconnected, globalized world).

²⁹ See generally Alexandru Grigorescu, *Transparency of Intergovernmental Organizations: The Roles of Member States, International Bureaucracies and Nongovernmental Organizations*, 51 INT'L STUD. Q. 625 (2007). Even skeptics of traditional approaches to transparency recognize the contribution of multi-stakeholder models. See, e.g., Mark Fenster, *The Opacity of Transparency*, 91 IOWA L. REV. 885, 948 (2006) (recognizing that deliberation involving community groups and government officials leads to greater transparency).

³⁰ See Bäckstrand, *supra* note 20, at 294–96 (defining "input legitimacy" as balanced representation of various stakeholders, and accountability and transparency mechanisms to monitor the effectiveness of partnerships and "output legitimacy" the effectiveness of partnership networks); see also Klaus Dieter Wolf, *Private Actors and the Legitimacy of Governance Beyond the State: Conceptual Outlines and Empirical Explorations 12–20* (Apr. 2001) (unpublished manuscript) (on file with the Technical University of Darmstadt, Institute for Political Science), available at <http://www.politikwissenschaft.tu-darmstadt.de/fileadmin/pg/media/papers/civil.pdf> (using input and output legitimacy as methods of critically assessing the overall legitimacy and effectiveness of governing bodies).

legitimacy.³¹ Keohane and Nye ultimately concluded that “any sustainable pattern of governance will have to institutionalize channels of contact between international organizations and constituencies within civil society.”³² Therefore, the broader challenge is not just to ensure the accountability of civil society groups, but also to harness their potential contribution to the overall accountability of the international institutions in which they participate.

Another critique of civil society involvement in the governance of international institutions is the idea that their participation in governance undermines and weakens the influence of states.³³ The argument is that civil society participation will undercut the more directly representative role served by many state actors. Some observers have claimed that incorporating civil society increases the autonomy and independence of these institutions from key state actors.³⁴ Others have suggested that incorporating NGOs in

³¹ See Bodansky, *supra* note 2, at 614 (noting the importance of transparency and participation in legitimizing democratic forms of government); Thomas Risse, *Transnational Governance and Legitimacy* 10 (Feb. 17, 2004) (unpublished manuscript) (on file with the Freie Universität Berlin Otto Suhr Institute of Political Science Center for Transatlantic Foreign and Security Policy), available at http://userpage.fu-berlin.de/~atasp/texte/tu_governance_benz.pdf (“[I]ncluding non-state actors in global governance is also meant to increase the external accountability of states. Trisectoral public policy networks and global public private partnerships are precisely meant to close the participatory gap identified by critics of international regimes.”).

³² Keohane & Nye, *supra* note 2, at 25.

³³ See Bolton, *supra* note 3, at 217 (suggesting that civil society involvement in the international context may decrease state power and even undermine democracy by giving intrastate advocates a second opportunity to pose arguments that were previously rejected); Duncan B. Hollis, *Private Actors in Public International Law: Amicus Curiae and the Case for the Retention of State Sovereignty*, 25 B.C. INT’L & COMP. L. REV. 235, 237 (2002) (noting the argument that allowing private actors participate in public international law may erode state sovereignty). See generally Shapiro, *supra* note 3 (exploring the role played by NGOs in administrative decision-making, and suggesting that the distinction between governmental and non-governmental actors has been blurred due to increased civil society participation).

³⁴ See Gabriel Casaburi et al., *Multilateral Development Banks, Governments, and Civil Society: Chiaroscuros in a Triangular Relationship*, 6 GLOBAL GOVERNANCE 493, 502–05 (2000) (suggesting that increased civil society participation has placed a check on the power of governments and has given institutions a greater role in decision-making).

these institutions challenges the fundamental concept of sovereignty itself.³⁵

On its face, the participation of non-state actors in the governance of international institutions would seem to dilute the monopoly of state actors over shaping the direction of these institutions. Yet, it is not always the case that including civil society actually weakens the role of states in shaping the key outcomes of international institutions. Given the relative representation of states and non-state actors within most governance structures, it is virtually impossible that the views of non-state actors could ever prevail without substantial support from at least some states.³⁶

Therefore, while civil society participation could plausibly affect the role of some states in shaping key international institutions, it is not the case that non-state actors could significantly shape these institutions without the support of some states. Perhaps the more reasonable concern is that non-state actors would buttress the efforts of a given international institution to enhance their own autonomy and authority.³⁷ Yet, civil society participation is closely tied to stronger rules in these institutions, requiring expanded transparency, and often, accountability.³⁸

³⁵ See Jeffrey Andrew Hartwick, *Non-Governmental Organizations at United Nations-Sponsored World Conferences: A Framework for Participation Reform*, 26 LOY. L.A. INT'L & COMP. L. REV. 217, 249-50 (2003) (discussing the argument that NGOs, as unelected, extra-national entities, may threaten national sovereignty by making "decisions that are not necessarily in the best interest of a nation-state"); Raustiala, *supra* note 18, at 720 (recognizing the argument that civil society participation in international institutions may challenge state sovereignty, but ultimately arguing that NGO inclusion works to the advantage of states); Raustiala, *supra* note 2, at 585 (discussing the argument that the rise of transnational private actors has caused a corresponding decline in state power in the international arena).

³⁶ See Thomas Risse-Kappen, *Structures of Governance and Transnational Relations: What Have We Learned?*, in BRINGING TRANSNATIONAL RELATIONS BACK IN: NON-STATE ACTORS, DOMESTIC STRUCTURES AND INTERNATIONAL INSTITUTIONS 280, 294 (Thomas Risse-Kappen ed., 1995) (noting that transnational actors must depend upon and work with state actors in order to be effective, rather than diminish state control over international systems).

³⁷ See generally MICHAEL BARNETT & MARTHA FINNEMORE, *RULES FOR THE WORLD: INTERNATIONAL ORGANIZATIONS IN GLOBAL POLITICS* (2004) (offering an overview of international organizations and their effect on global politics, and the ways in which increased autonomy allow such organizations to evolve, occasionally in unintended ways).

³⁸ See Volker Rittberger, *Global Governance: From 'Exclusive' Executive Multilateralism to Inclusive, Multipartite Institutions* 14 (Eberhard Karls Univ. of

Consequently, the proposition that enhanced participation leads to greater institutional autonomy is not self-evident. Indeed, wider transparency almost always exposes these institutions to greater outside scrutiny.

Even when non-state actors are able to overcome the views of some states within these institutions, it is not immediately obvious that civil society representation undermines the capacity of states to influence the international arena. In fact, some scholars argue that including NGO participation actually strengthens the ability of states to regulate and shape important arenas.³⁹ Thus, even if civil society involvement in governance could challenge the monopoly of state influence on a given decision, it might actually enhance the capacity of such states, and thereby indirectly serve their interests.

While some fear that non-state actors might undermine the influence of states, others fear that including these actors in formal governance jeopardizes the independence of civil society groups, thereby undercutting their core comparative advantage.⁴⁰ Such participation in governance is sometimes viewed as inevitably leading to a process of co-optation at the international level, through which states shape the views and behavior of non-state actors.⁴¹ One of the central roles played by civil society groups in relation to international institutions is often that of an independent, external watchdog, monitoring the operations of the institution.⁴²

Tübingen Inst. for Political Sci., Working Paper No. 52, 2008), available at <http://www.uni-tuebingen.de/uni/spi/taps/tap52.pdf> ("The inclusion of actors from civil society and the business sector also positively impacts on the effectiveness of an institution because it leads to an increased readiness to comply with norms and rules.").

³⁹ See Charnovitz, *supra* note 2, at 362–63 (noting that NGO involvement in international law may "strengthen states when the new international legislation promoted by NGOs expands states' regulatory agendas"); Raustiala, *supra* note 2, at 538 (arguing that NGO participation in international environmental law yields many potential benefits for states including political, technical, and informational benefits).

⁴⁰ See Ottaway, *supra* note 11, at 266–67 (arguing that incorporating civil society groups in international governance may weaken their ability to contribute innovative ideas).

⁴¹ See *id.* at 267.

⁴² See Raustiala, *supra* note 2, at 560–61 (noting the instrumental role that NGOs have played in monitoring state compliance with international environmental law); Jan Aart Scholte, *Civil Society and Democratically Accountable Global Governance*, 39 GOV'T & OPPOSITION 211, 217–19 (2004) (discussing the benefits that civil society organization monitoring has brought to democratic

As NGOs gain greater influence through formal structures of institutions—as in the United Nations—they are increasingly subject to the rules and cultures of those institutions' bureaucracies.⁴³ Multi-stakeholder approaches to governance, at their worst, can serve as agents "of co-optation rather than representation."⁴⁴ Yet, this challenge fundamentally reflects the imbalances that can exist within governance structures, and suggests the importance of institutional designs that ensure effective participation without imposing bureaucratic constraints.

Unless one assumes that any engagement with formal institutions inevitably compromises the independence of civil society groups, it remains plausible that expanded access to information and internal deliberations of formal institutions could strengthen rather than weaken the watchdog function of civil society. Within many institutions, civil society groups continue to play both inside and outside roles and sometimes utilize the enhanced transparency of the institution as a point of leverage for broader reform.⁴⁵ Nonetheless, it is instructive to highlight the possibility that civil society will simply become the tool of powerful states when contemplating a design of international institutions that might reduce such risks of co-optation.⁴⁶

While critics of civil society participation sometimes fear that these non-state actors might challenge the interests of states, their greatest contribution to governance may well be to introduce the perspectives of diverse societal actors precisely because they hold views different than those advanced by powerful states. These views will sometimes reflect the long-term interest of states otherwise constrained by short-term political factors, and at other

accountability, including increased review of state compliance with constitutions, official resolutions, and public declarations).

⁴³ See Ottaway, *supra* note 11, at 277 (arguing that increased NGO participation within the United Nations has left these organizations shackled by bureaucratic rules and divided them into separate categories).

⁴⁴ *Id.* at 267.

⁴⁵ See Scholte, *supra* note 42, at 219 ("Once policy practices are publicly visible, civil society associations are in a position to advance democratic accountability in global governance through watchdog and evaluation activities.").

⁴⁶ See Ottaway, *supra* note 11, at 267-70 (noting the tendency of global corporatism to weaken the contributions of civil society groups, and to subsume the agendas of NGOs within the larger agendas of state-actors).

times might foster a broader global consensus of stakeholders around a common mission that otherwise could not be achieved.

2.1. *Theory Grounded in Twentieth Century Practice*

The views expressed by many of the theorists who remain skeptical of significant civil society participation in international institutions reflect the prevailing practice of leading twentieth century international institutions. The core international institutions founded shortly after World War II remain fundamentally inter-governmental bodies. The way in which many scholars in the field conceived of these institutions often centered on their role in fostering inter-governmental cooperation. Despite reforms at the end of the last century designed to facilitate consultation with civil society, these institutions remained forums for cooperation among states.⁴⁷ As a result, the world of twentieth century practice, which shaped so much of the literature in the field, remained quite limited in terms of the roles that it imagined civil society could play within international institutions.

One of the ironies of the rejection of civil society participation in the governance of key international institutions is the important role that many of these groups played in the founding of the United Nations and other institutions in the first place. In 1945, representatives from as many as forty-two NGOs were invited to serve as advisers to the official U.S. delegation at the founding conference of the United Nations.⁴⁸ In total, 1,200 voluntary associations were present at the founding of the United Nations.⁴⁹ Yet, the extensive involvement of civil society organizations in the founding conference of the United Nations after World War II did not lead to non-state actors being given a meaningful role within the U.N. structure.

The United Nations Charter initially had no provision even for any formal consultation with civil society groups. Article 71 was

⁴⁷ See Peter Willetts, *From "Consultative Arrangements" to "Partnership": The Changing Status of NGOs in Diplomacy at the UN*, 6 *GLOBAL GOVERNANCE* 191, 191-92 (2000) (describing the evolution of consultative arrangements between NGOs and the United Nations); see also Casaburi et al., *supra* note 34, at 496-505 (discussing the increased participation of multilateral development banks in global governance).

⁴⁸ AKIRA IRIYE, *GLOBAL COMMUNITY: THE ROLE OF INTERNATIONAL ORGANIZATIONS IN THE MAKING OF THE CONTEMPORARY WORLD* 43 (2002).

⁴⁹ Alger, *supra* note 5, at 93.

only incorporated into the Charter after aggressive lobbying by the World Federation of Trade Unions. It provided that: "The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence."⁵⁰ The Economic and Social Council ("ECOSOC") defined NGOs as "[a]ny international organization which is not established by intergovernmental agreement," and only admitted national NGOs to consultative status with the permission of their home government.⁵¹

Although ECOSOC became the primary locus for consultations with NGOs within the United Nations, it is one of the weakest of the core U.N. organs, with much less influence than the Security Council or the General Assembly. Yet, even within ECOSOC, civil society groups were not viewed as full observers: "A clear distinction is drawn in the Charter of the United Nations between participation without vote in the deliberations of the Council and the arrangements for consultation."⁵² Unlike NGOs, those members of international organizations and governments who served as observers were permitted to participate in deliberations as part of decision-making.⁵³ In contrast, non-state actors might have been consulted, but did not have a role in the deliberations of the United Nations.⁵⁴

As with the United Nations, the Bretton Woods institutions opted for a governance model that was limited only to states. The governance structures of both the World Bank and the International Monetary Fund consisted exclusively of states with voting shares weighted based on a quota system that was meant to

⁵⁰ U.N. Charter art. 71.

⁵¹ E.S.C. Res. 288B(X) of February 27, 1950 was adopted with amendments by E.S.C. Res. 1296(XIV), ¶ 7, U.N. Doc. E/RES/1968/1296 (May 23, 1968).

⁵² E.S.C. Res. 1996/31, ¶ 18, U.N. Doc. E/RES/1996/31 (July 25, 1996); *see also* Alger, *supra* note 5, at 95-96 (discussing the poor design of consultative status rules for NGOs working with ECOSOC and the resistance of some UN member states to increased NGO participation).

⁵³ *See* Willetts, *supra* note 47, at 191-92 (noting that nonmember states or intergovernmental organizations could, as "observers," participate in the decision-making process, but NGOs are not allowed that level of participation).

⁵⁴ *See id.* (describing the limited roles NGOs were allowed within the United Nations).

reflect each country's share of the global economy.⁵⁵ Neither institution seriously contemplated a significant role for non-state actors in the governance structure, nor did they initially establish a structure for consultation with civil society.

In the last decade of the twentieth century, the expansion of consultative processes within leading international institutions demonstrated the possibility and limits of reform within an older generation of institutions. Challenges to the effectiveness and the legitimacy of many of these institutions catalyzed reform at the same time that non-state actors were expanding their involvement in many international arenas. These institutions responded by moving in the direction of greater openness to consultation with external stakeholders.

Unlike the United Nations, the World Bank did not have a formal role for NGOs in its early years. Before 1981, there was no formal mechanism for the World Bank to consult with NGOs. In 1981, the Bank developed Operational Policy Note (10.05), which outlined potential benefits from more direct engagement with civil society groups, and suggested the possible involvement of NGOs in project identification, design, financing, implementation, and evaluation of projects.⁵⁶ In 1989, the Bank adopted another operational directive (14.70) that outlined procedures for consulting with NGOs on specific bank projects at different stages of development.⁵⁷

Although the World Bank formed a Bank-NGO committee in 1981 to engage with fifteen NGO leaders, only in the 1990s did the Bank take a much more active role in soliciting broader civil society feedback on its work.⁵⁸ The shift was catalyzed largely by the findings of the independent Morse Commission. In the wake

⁵⁵ NGAIRE WOODS, *THE GLOBALIZERS: THE IMF, THE WORLD BANK, AND THEIR BORROWERS* 22–23 (2006).

⁵⁶ See Ibrahim F.I. Shihata, *The World Bank and Non-Governmental Organizations*, 25 *CORNELL INT'L L.J.* 623, 625 (1992) (discussing the evolution of the World Bank's policy of participation with NGOs and the benefits of Operational Policy Note (10.05)).

⁵⁷ *Id.* at 626.

⁵⁸ See generally Jane G. Covey, *Is Critical Cooperation Possible? Influencing the World Bank Through Operational Collaboration and Policy Dialogue*, in *THE STRUGGLE FOR ACCOUNTABILITY: THE WORLD BANK, NGOS, AND GRASSROOTS MOVEMENTS* 81 (Jonathan A. Fox & L. David Brown eds., 1998) (discussing World Bank-NGO project collaborations and the increased involvement of NGOs in Bank projects).

of the Commission's findings, Washington-based NGOs testified before Congress that they would "oppose funds to the Bank unless" it created an independent body to respond to complaints by citizens and civil society groups in countries where Bank projects operated.⁵⁹ As a result of the Commission, there was growing interest on the part of the U.S. Congress and international NGOs in developing new mechanisms of consultation and accountability, such as the creation of an independent Inspection Panel.⁶⁰ In 1993, the U.S. Congress linked its contribution to the replenishment of the Bank's International Development Association funds to the creation of an independent Inspection Panel, and the Bank created the Panel that same year.⁶¹

Amidst these growing pressures for accountability to local stakeholders, the World Bank also endorsed an innovative Report of the Participatory Development Learning Group in 1994. One of the key findings of the Learning Group was that: "There is significant evidence that participation can in many circumstances improve the quality, effectiveness, and sustainability of projects, and strengthen ownership and commitment of government and stakeholders."⁶² The report proved to be a precursor to the subsequent expansion of the Bank's consultative processes with NGOs. In 1995, the Bank-NGO Committee created six regional bodies and in 1997, the Bank created civil society liaison staff at all of its seventy-two resident missions around the world.⁶³

Despite these steps toward greater openness to civil society consultation, it remained extremely rare for any high-level policy

⁵⁹ Lori Udall, *The World Bank and Public Accountability: Has Anything Changed?*, in *THE STRUGGLE FOR ACCOUNTABILITY: THE WORLD BANK, NGOS, AND GRASSROOTS MOVEMENTS* 391, 402 (Jonathan A. Fox & L. David Brown eds., 1998).

⁶⁰ See Fox & Brown, *supra* note 26, at 8 (explaining how the findings of the Morse Commission inspired Congress and international NGOs to push for broader policy changes at the World Bank, including the establishment of an Inspection Panel that could accept complaints from project-affected people).

⁶¹ See WOODS, *supra* note 55, at 28 (explaining how the U.S. Congress used the threat of withholding funds to pressure the World Bank into creating the Inspection Panel).

⁶² THE WORLD BANK, *ISSUES AND OPTIONS FOR IMPROVING ENGAGEMENT BETWEEN THE WORLD BANK AND CIVIL SOCIETY ORGANIZATIONS* 6 (2005) (quoting the 1994 final report of the World Bank's Participatory Development Learning Group).

⁶³ See WOODS, *supra* note 55, at 170 (discussing the influence of NGOs in shaping the World Bank debt strategy).

decisions by the World Bank board to reflect substantial consultation with NGOs, and there was still no role for civil society in formal governance.⁶⁴ Civil society input remains discretionary, and the central debate over governance reform within the World Bank continues to be focused on the shares of votes between different state actors. As one scholar explained, consultation does not necessarily imply actual participation in governance it is “seen as a proxy for participation” and thus “restricted to consultation by request.”⁶⁵

Just as the World Bank faced growing pressures to expand its consultations with non-state actors, so too did the United Nations, as the role of NGOs grew in the context of environmental and other major U.N. conferences. ECOSOC remained the central body with which non-state actors could engage, if not fully participate.⁶⁶ By the 1970s, NGOs were allowed to participate formally in Special Sessions on development and other issues.⁶⁷ Although NGOs initially had fewer rights to participate in conferences than in ECOSOC, by the 1980s, these groups achieved an expanded role in international conferences.⁶⁸ Still, there remained substantial restrictions on the role that civil society groups were allowed to play in these settings.⁶⁹

⁶⁴ See THE WORLD BANK, CIVIL SOCIETY ENGAGEMENT: REVIEW OF FISCAL YEARS 2005 AND 2006, 67 (2006) (observing that while there is growing operational collaboration between the World Bank and NGOs, the Bank still needs to make changes to engage with civil society groups more effectively).

⁶⁵ Casaburi et al., *supra* note 34, at 503; see also Sabine Schlemmer-Schulte, *The Impact of Civil Society on the World Bank, the International Monetary Fund and the World Trade Organization: The Case of the World Bank*, 7 ILSA J. INT'L & COMP. L. 399, 406 (2001) (noting that consultation fails to provide NGOs with any concrete influence over decisions made by the World Bank).

⁶⁶ See generally Alger, *supra* note 5, at 95 (discussing the varying roles and duties given to NGOs according to their consultative status within the ECOSOC).

⁶⁷ See Peter Willetts, *The Rules of the Game: The United Nations and Civil Society*, in WHOSE WORLD IS IT ANYWAY?: CIVIL SOCIETY, THE UNITED NATIONS AND THE MULTILATERAL FUTURE 247, 273 (John W. Foster & Anita Anand eds., 1999) (discussing the participation of NGOs in Special Sessions beginning in the 1970s).

⁶⁸ See Willetts, *supra* note 47, at 193 (noting that by the mid-1980s, NGOs “increasingly had a higher political status and better participation opportunities” at international conferences than in ECOSOC).

⁶⁹ See Ronnie D. Lipschutz & Cathleen Fogel, “Regulation for the Rest of Us?” *Global Civil Society and the Privatization of Transnational Regulation*, in THE EMERGENCE OF PRIVATE AUTHORITY IN GLOBAL GOVERNANCE 115, 116 (Rodney Bruce Hall & Thomas J. Biersteker eds., 2002) (noting that while non-state social actors were allowed “access to and influence within a number of intergovernmental

A more ambitious shift toward multi-stakeholder governance was contemplated by high-level advisors to the U.N. but was never realized in practice. This vision was articulated by the High-Level Panel on U.N. Civil Society Relations led by former Brazilian President Cardoso in its 1994 report "We the Peoples: Civil Society, the United Nations, and Global Governance."⁷⁰ The report called for the managed inclusion of civil society groups in the processes of the General Assembly and also for expanded engagement with the Security Council.⁷¹ In order to implement these recommendations an ECOSOC resolution called on the General Assembly to establish mechanisms for participation by NGOs in "all areas of the work of the United Nations."⁷² Yet, there was substantial resistance by a number of Security Council members, especially to the idea of allowing the General Assembly to consider expanding NGO participation in other organs of the United Nations.⁷³ As a result, a subgroup of the General Assembly Working Group on Reform of the U.N. system, which was established to take up the question of NGO access to U.N. proceedings, was unable to reach any agreement on the group's mandate or meaningfully move the agenda forward.⁷⁴

institutions such as [ECOSOC], for the most part there were serious restrictions in terms of what they could say or do in these forums").

⁷⁰ U.N. Secretary-General, *We the Peoples: Civil Society, the United Nations and Global Governance: Rep. of the Panel of Eminent Persons on United Nations-Civil Society Relations*, U.N. Doc. A/58/817, at 70 (June 7, 2004) ("Through assertive use of the moral leadership and convening power of the Secretary-General, the Organization could champion a new vision of global governance throughout the international system . . .").

⁷¹ *Id.* at 16-18 (detailing proposals that would increase civil society input to the General Assembly and the Security Council).

⁷² Willetts, *supra* note 47, at 198 (analyzing the debate over the level of involvement NGOs were given in the United Nations, and explaining that the original agreement on NGO involvement did not apply to the General Assembly, but ECOSOC recommended that it be discussed later).

⁷³ See Barbara Adams, *ECOSOC and NGOs: A Review of the Review*, 1 CIVIL SOCIETY ENGAGING MULTILATERAL INSTITUTIONS: AT THE CROSSROADS 8, 11 (1999), available at <http://www.fimcivilsociety.org/en/library/FIMForum1999.pdf> (noting that the United States and European Union were against NGO involvement in every facet of the United Nations).

⁷⁴ See Stanley, *supra* note 19, at 7 (recounting the history of NGOs' attempts to play a role in global governance and decision-making).

Today, NGOs are still not in a position to formally deliberate alongside United Nations Member States in policy-setting arenas.⁷⁵ The backlash to expanded civil society participation reflected the fears on the part of some U.N. delegates of losing a nation-state monopoly on decision-making. By 1998, there was a movement to further curtail NGO access to U.N. processes.⁷⁶ In no case did NGOs become full participants in core structures of the U.N. system in the sense of having a vote and the ability to formally negotiate with state actors within these still primarily intergovernmental forums.⁷⁷ Despite recent shifts toward greater consultation with civil society at the United Nations and the World Bank, each of these institutions remained bodies in which states deliberate and decide without meaningful participation by non-state actors.

3. TWENTY-FIRST CENTURY INSTITUTIONS

The emergence of twenty-first century institutions that are adopting multi-stakeholder models of governance and expanding the role of civil society creates an opening for new ways of thinking about the governance of international institutions. This Section highlights these new institutions, their approach to multi-stakeholder governance, and the challenge it poses to inherited assumptions about the proper roles of states and non-state actors in the international arena. While many scholars still reject the wisdom of civil society participation in governance, the experience of these new institutions points toward the potential for a new approach that encompasses the emerging twenty-first century role of societal actors as partners with states in responding to pressing global challenges. Civil society groups are among a range of non-state actors that are now centrally involved in the formal governance of diverse institutions and are transforming the nature of the debate around many key global challenges. In many cases, these new institutions have involved civil society in the formal

⁷⁵ See *id.* at 18 (stressing the importance of fostering a clear understanding of the relationship between NGOs and the United Nations to create a sustainable partnership).

⁷⁶ See ANN FLORINI, *THE COMING DEMOCRACY: NEW RULES FOR RUNNING A NEW WORLD 202* (2005).

⁷⁷ See *id.* at 206–07.

governance structure of the institution in ways that go beyond the consultation model of the United Nations and the World Bank.

There has been relatively little scholarly work on many of these new institutions established in the last decade in sectors such as global health, education, and agricultural development, which have introduced new approaches to governance.⁷⁸ Much of the valuable literature highlighting multi-stakeholder models of governance within international institutions has focused on the historical legacy of twentieth century institutions such as the International Labor Organization (“ILO”), which includes non-state actors selected by states in its governance structure.⁷⁹ There is relatively little existing research in this area looking across institutions and sectors.⁸⁰

At the same time, there is an important literature on global administrative law, which focuses on the role of procedural requirements within international institutions as a means to

⁷⁸ See generally Kenneth W. Abbott, *Innovations in Global Health and the Global Governance System*, WALL SUMMER INST. (2007) (analyzing changes in health systems through the lens of public and private global governance systems, including the roles of NGOs); Sonja Bartsch, *The Global Fund to Fight AIDS, Tuberculosis and Malaria*, in GLOBAL HEALTH GOVERNANCE AND THE FIGHT AGAINST HIV/AIDS 146 (Wolfgang Hein et al. eds., 2007) (examining key actors in global health, and analyzing the patterns of conflict and cooperation in the fight against HIV/AIDS and global health governance); KENT BUSE, OVERSEAS DEVELOPMENT INST., EDUCATION FOR ALL—FAST TRACK INITIATIVE: REVIEW OF THE GOVERNANCE AND MANAGEMENT STRUCTURES (2005), available at <http://www.hlfhealthmdgs.org/HLF4Tunis/Education%20for%20All%20FTI%20materials/EFAFTIGovernanceEvaluation.pdf> (reviewing the strengths and weaknesses of the governance structures used by the Fast Track Initiative, an organization whose goal is to bring about universal primary school completion).

⁷⁹ See Steve Charnovitz, *The Emergence of Democratic Participation in Global Governance (Paris 1919)*, 10 IND. J. GLOBAL LEGAL STUD. 45, 64 (2003) (describing the role of non-state actors in the International Labour Organization). See generally Laurence R. Helfer, *Understanding Change in International Organizations: Globalization and Innovation in the ILO*, 59 VAND. L. REV. 649 (2006) (explaining the ILO's preeminent profile in the debate of global governance, and the efficacy of its governance structure); Faina Milman-Sivan, *Representativity, Civil Society, and the EU Social Dialogue: Lessons from the International Labor Organization*, 16 IND. J. GLOBAL LEGAL STUD. 311 (2009) (discussing representation in EU social dialogue and the lessons that can be learned from ILO).

⁸⁰ See generally Magdalena Bexell et al., *Democracy in Global Governance: The Promises and Pitfalls of Transnational Actors*, 16 GLOBAL GOVERNANCE 81 (2010) (examining the organizational structures of international organizations and identifying a need for research that explores expanded participation in global governance).

improving responsiveness and accountability of these institutions.⁸¹ Although this literature clearly recognizes the emerging role of hybrid institutions involving non-state actors, it focuses on enhancing the accountability of international institutions through procedures adopted from the context of administrative law.⁸² It particularly highlights the requirements of expanded transparency, participation through notice and comment, and the requirement of reason-giving in the context of decision-making.⁸³ The administrative law vision appears largely compatible with expanded consultation with NGOs within international institutions without necessarily requiring full civil society participation in multi-stakeholder governance. Nonetheless, many of its insights regarding the importance of transparency and access to information, among other procedural standards, remain extremely valuable to thinking about the design of multi-stakeholder institutions.

Early in the twenty-first century, a range of new institutions adopted multi-stakeholder forms of governance that involved civil society actors as full participants. A number of these institutions focused on global health financing, despite the fact that finance has been viewed as a “least likely” case for civil society participation.⁸⁴ Launched in 2000, the Global Alliance for Vaccines and Immunization (“GAVI”), initiated a new era for the multi-stakeholder approach to governance.⁸⁵ When GAVI was established it was somewhat unique in the significant role that it

⁸¹ See generally Benedict Kingsbury & Lorenzo Casini, *Global Administrative Law Dimensions of International Organizations Law* (Inst. for Int’l L. and Just., Working Paper No. 2009/9, 2009) (arguing that the use of global administrative law mechanisms strengthens the law of international organizations).

⁸² See Kingsbury et al., *supra* note 2, at 38–40 (explaining that global administrative law techniques allow for transparency in international organizations so that other nations can express their opinions).

⁸³ See Benedict Kingsbury et al., *Foreword: Global Governance as Administration – National and Transnational Approaches to Global Administrative Law*, 68 *LAW & CONTEMP. PROBS.* 1, 8 (2005) (noting the effect of global administrative law to affect accountability through open procedural mechanisms, which allow broader public participation).

⁸⁴ See Kal Raustiala, *States, NGOs, and International Environmental Institutions*, 41 *INT’L STUD. Q.* 719, 734 (1997).

⁸⁵ See generally GAVI Alliance, *Innovative Partnership*, http://www.gavi.org/about/in_partnership/index.php (last visited Nov. 12, 2010) (summarizing the objectives of the Alliance’s multi-stakeholder partnership and the unique contributions of the individual members).

provided to non-state actors such as partner foundations, the private sector, and technical experts.⁸⁶ The GAVI Alliance Board sets overall policies and monitors programs. The Bill and Melinda Gates Foundation holds one of four “renewable” seats on the GAVI Alliance Board. In addition, there are several other seats for non-state actors among the twelve rotating seats on the board. Of these, one is designated for civil society groups while the others are allocated to research and technical health institutes, the developing country vaccine industry, and the industrialized country vaccine industry.⁸⁷

In 2005, the GAVI Alliance Board determined that it needed to further strengthen the participation of civil society constituencies in its governance and programs, and allocated expanded resources to enhance civil society representation at the country level. In 2010, the GAVI Partners forum created the GAVI Alliance Civil Society Constituency, a group of civil society representatives, to support members of GAVI’s governance bodies in their responses related to governance functions.⁸⁸ In addition, GAVI created the position of a Communications Focal Point for the civil society constituency in order to support wider participation and improved communication within the constituency.⁸⁹

The Global Fund to Fight AIDS, Tuberculosis, and Malaria, launched in 2002, went even further than the GAVI model in terms of broadening multi-stakeholder participation in its governance structure.⁹⁰ The Global Fund provides for a wider representation of civil society groups and a greater role in its governance structure

⁸⁶ *Id.* (highlighting that the “added ingredient” to GAVI’s objective is to strengthen the engagement of civil society organizations in order to broaden the Alliance’s perspective and to ensure that government and international actors are acting in the best interest of the people they serve).

⁸⁷ GAVI Alliance, The GAVI Alliance Board, <http://www.gavialliance.org/about/governance/boards/index.php> (last visited Nov. 23, 2010) (charting the different groups affiliated with the Alliance).

⁸⁸ GAVI Alliance, Civil Society Organisations, http://www.gavialliance.org/about/in_partnership/cso/ (last visited Nov. 12, 2010) (outlining the Alliance’s “Call to Action” in strengthening its engagement with civil society organizations).

⁸⁹ *Id.*

⁹⁰ See Bartsch, *supra* note 78, at 146 (discussing the creation of the Global Fund, the strengths and weaknesses of its structured partnership, and its impact on general discourses in global health).

for developing country governments.⁹¹ In addition to incorporating civil society representation from the global North and South, the Global Fund also includes the most directly affected communities of people living with AIDS, tuberculosis, and malaria on its Board.⁹²

With each of these civil society representatives, a communications focal point plays a key role in organizing the constituency and facilitating the selection process for the board member, the alternate board member, and the wider delegation for meetings of the board. The communications focal point serves as the primary convener of internal deliberations within the delegation and also as a liaison to other delegations and the Secretariat in order to ensure a steady flow of information to members of the delegation. The nominations for the board member for the affected communities delegation is conducted through an open call for applicants based on candidates' capacity to commit their time and participate in the work of the board.⁹³ For other delegations, the communications focal point arranges a nomination and selection process that includes all the members of the delegation and wider stakeholders actively involved in the constituency.

Instead of having a single representative from a given foundation or civil society group, the constituency model of the Global Fund established a full-fledged delegation designed to reflect greater diversity within each sector.⁹⁴ In addition, the

⁹¹ See Kenneth W. Abbott, *Toward a Richer Institutionalism for International Law and Policy*, 1 J. INT'L L. & INT'L REL. 9, 23 (2005) (highlighting the Global Fund's structured partnership, which includes governments, international organizations, Northern and Southern NGOs, philanthropic foundations, businesses, and people living with diseases).

⁹² See Bartsch, *supra* note 78, at 152 (noting that the "affected communities" – CSOs representing people living with the diseases – secured a voting seat on the Executive Board after demonstrating that such move would ensure that the views of the people are represented and thereby strengthen the Global Fund's reputation).

⁹³ *Call for Nominations for Members of the Global Fund Communities Delegation 2011 Through 2013*, WORLD CARE COUNCIL (Nov. 6, 2010 4:58AM), <http://www.worldcarecouncil.org/content/call-nominations-gf-communities-delegation> (last visited Nov. 12, 2010) (calling for nominations for the Global Fund Communities Delegation, and citing the criteria for which the selection will be based on).

⁹⁴ Abbott, *supra* note 91, at 23 ("The Fund promotes parallel forms of collaboration in recipient countries.").

Fund's governance structure established a donor bloc, including foundations and the private sector, and a recipient bloc, including civil society, and recipient countries. Major decisions of the Global Fund are usually based on consensus.⁹⁵ However, in the absence of consensus, concurring majorities are required such that both the donor bloc and the recipient bloc must demonstrate two-thirds support of those present in order to approve a controversial decision.⁹⁶ Civil society also plays a unique leadership role on the Board since the roles of Chair and Vice-Chair are distributed and alternate between stakeholders from the donor and recipient blocs.⁹⁷ Civil society representatives have in the recent past served as the Vice-Chair of the board of the Global Fund.⁹⁸

Beyond global health, a number of other important sectors, such as education and agriculture, have adopted this multi-stakeholder approach to governance in recent years. The Education for All—Fast Track Initiative (“FIT”), like the Global Fund, emerged out of the leadership of the G8 early in the twenty-first century. It was established to accelerate progress to achieve universal primary education by leveraging resources and coordinating donor efforts in countries with strong national education plans which lacked adequate resources.⁹⁹ Initially governed by a broad partnership meeting and, subsequently by a steering group it recently adopted a multi-stakeholder governance structure for its board that moves it closer to the model of the Global Fund. In 2010, as part of a broader reform process, the FTI transformed its governance structure to include an equal number of developing countries as donors on the Board and extended three

⁹⁵ The Global Fund to Fight AIDS, Tuberculosis and Malaria By-laws, art. 7 (as amended May 1, 2009), available at http://www.theglobalfund.org/documents/TGF_Bylaws_en.pdf [hereinafter The Global Fund to Fight AIDS] (outlining the method by which decisions are made within the Fund).

⁹⁶ *Id.*

⁹⁷ Bartsch, *supra* note 78, at 152–55 (describing the structure of the Global Fund's executive board, and noting that civil service organizations are the second most influential members on the board).

⁹⁸ See, e.g., HÉLÈNE ROSSERT-BLAVIER, THE GLOBAL FUND TO FIGHT AIDS, TUBERCULOSIS, AND MALARIA, SELF-ASSESSMENT OF THE POLITICAL STATEMENT FROM THE VICE CHAIR OF THE GLOBAL FUND TO FIGHT AIDS, TUBERCULOSIS AND MALARIA 9 (2005), available at http://www.theglobalfund.org/documents/Auto-evaluation_Helene_Rossert-Blavier_en.pdf.

⁹⁹ Buse, *supra* note 78, at 2–3 (explaining the goals and aims of the Fast Track Initiative).

seats to civil society organizations.¹⁰⁰ The FTI unified control over its trust funds under the Board, eliminating exclusively donor governance of its core resources.¹⁰¹

In the agricultural sector, the recently created Global Agriculture and Food Security Program (“GAFSP”) also reflects direct civil society involvement in governance. The steering committee of the GAFSP includes the Bill and Melinda Gates Foundation—along with several governments—as one of five voting members who were also the original contributors to the GAFSP trust fund.¹⁰² In addition, the GAFSP steering committee includes three non-voting civil society representatives who have the same status as representatives from other multilateral institutions. The civil society seats are specifically allocated with two set aside for Southern NGO representation from different regions, and one seat provided for Northern NGO representation, from a country that is a member of the Organization for Economic Co-operation and Development (“OECD”).¹⁰³

An emerging twenty-first century model of civil society participation in the governance of international institutions reflects a shift away from mere consultation toward full membership for non-state actors in formal governance structures. Pioneered in the field of global health, similar models have since been translated into other sectors, including education and agriculture. What unites these diverse institutions is their commitment to multi-stakeholder governance, in contrast to primarily inter-governmental bodies.

¹⁰⁰ See EDUCATION FOR ALL—FAST TRACK INITIATIVE BOARD OF DIRECTORS MEETING, KEY DECISIONS (May 2010), available at http://www.educationfasttrack.org/media/library/Secure/Board_Documents_May-2010/Final_Board_Key_Decisions_Bod-May-2010.pdf (adopting changes to the current Board composition to affect greater equity and inclusion).

¹⁰¹ *Id.*

¹⁰² See GLOBAL AGRIC. & FOOD SEC. PROGRAM, GLOBAL AGRICULTURE AND FOOD SECURITY PROGRAM (GAFSP) GOVERNANCE DOCUMENT, 2(i) (adopted May 14, 2010), available at <http://www.gafspfund.org/gafsp/sites/gafspfund.org/files/Documents/GovernanceDocument.pdf> (listing members of the steering committee).

¹⁰³ See *id.* at 2(i)(B)(d) (allocating three seats on the steering committee to civil society organizations).

3.1. From Governance to Impact

With this new generation of institutions, there is also new data to suggest that multi-stakeholder models of governance can contribute to better deliberation and greater institutional effectiveness. Some of the advantages of civil society participation in governance appear to be higher levels of public credibility, institutional transparency, deeper deliberation within the institution, stronger connections to diverse stakeholders outside of the institution, and higher levels of overall institutional effectiveness.

Civil society groups often have great credibility in key areas in which international institutions operate. According to surveys measuring public trust in government institutions since 2000, non-governmental organizations perform better than governments, business, and the media in providing credible information on environment, health, and human rights.¹⁰⁴ On the issue of public credibility, NGOs are surpassing all other institutions in many parts of the world.¹⁰⁵ Many inter-governmental organizations now face persistent criticism for their perceived lack of accountability and responsiveness.¹⁰⁶ The legitimacy of the objectives and norms put forward by international institutions are often linked to the perceived legitimacy of the institutions themselves and their governance structures.¹⁰⁷

¹⁰⁴ See THE WORLD BANK, *supra* note 62, at 21 (commenting that NGOs/CSOs enjoy more public confidence than other institutions).

¹⁰⁵ See TERRY MACDONALD, *GLOBAL STAKEHOLDER DEMOCRACY: POWER AND REPRESENTATION BEYOND LIBERAL STATES* 3 (2008) ("The growing influence of NGOs is underpinned by their perceived legitimacy, and this derives to some degree from their claims to serve as democratic representative of global peoples.").

¹⁰⁶ See BARNETT & FINNEMORE, *supra* note 37, at 170–72 (criticizing international organizations for a lack of accountability and transparency, exacerbated by the fact that member nations often have a vested interest in preserving the status quo); Asher Alkoby, *Global Networks and International Environmental Lawmaking: A Discourse Approach*, 8 CHI. J. INT'L L. 377, 402 (2008) (discussing this criticism and concluding that "NGOs are held accountable differently, and sometimes more effectively, than states because their actions are monitored more directly through internal accountability.").

¹⁰⁷ See, e.g., Lars Thomann, *The ILO, Tripartism, and NGOs: Do Too Many Cooks Really Spoil the Broth?*, in *CIVIL SOCIETY PARTICIPATION IN EUROPEAN AND GLOBAL GOVERNANCE: A CURE FOR THE DEMOCRATIC DEFICIT?* 71, 73 (Jens Steffek et al. eds., 2008) ("The ILO and its tripartite structure can . . . claim a high level of legitimacy, because the active participation of non-governmental actors is institutionalized.").

In terms of institutional transparency, the example of the Global Fund helps to give context to the broader observation that civil society participation improves the overall transparency of international institutions.¹⁰⁸ Civil society participation in the Global Fund's board contributed to the adoption of enhanced transparency requirements, through the Global Fund Documents Policy, and the adoption of a requirement for a formal independent evaluation of the Fund.¹⁰⁹ Additionally, civil society involvement on the Board has contributed to a substantial revision of the guidelines for ensuring effective multi-stakeholder involvement in country-level processes, proposals, and program implementation.¹¹⁰

Involving civil society groups in the formal decision-making process within international institutions can sometimes lead to more robust deliberation, and thereby contribute to improved decision-making.¹¹¹ Looking at the World Trade Organization, Dan Esty highlights the contribution of competing ideas offered by civil society which can be applied to many other institutions: "An NGO-enriched WTO decision process would offer better competition for national governments in the search for optimal policies."¹¹² The expansion of participation in the international environmental arena has been seen to provide particular benefits in

¹⁰⁸ See Grigorescu, *supra* note 29, at 625 (suggesting that intergovernmental organizations can become more accountable and legitimate through increased transparency).

¹⁰⁹ See THE INT'L CTR. FOR RES. ON WOMEN, CIVIL SOCIETY PARTICIPATION IN GLOBAL FUND GOVERNANCE: WHAT DIFFERENCE DOES IT MAKE? PRELIMINARY RESEARCH FINDINGS 2-3 (2004), available at http://www.theglobalfund.org/documents/library/studies/position_papers/PP_PS2_full.pdf (commenting that civil society has played a significant role in the decision-making and policy choices of the Global Fund).

¹¹⁰ See THE GLOBAL FUND TO FIGHT AIDS, TUBERCULOSIS AND MALARIA, AN EVOLVING PARTNERSHIP: THE GLOBAL FUND AND CIVIL SOCIETY IN THE FIGHT AGAINST AIDS, TUBERCULOSIS AND MALARIA 11 (2007), available at <http://www.theglobalfund.org/en/publications/other/evolvingpartnership/> (recommending several strategies designed to insure greater civil society participation in program implementation and decision-making activities).

¹¹¹ See Alkoby, *supra* note 106, at 388 (discussing the efficacy of a transparent and inclusive negotiating process, particularly in multi-actor situations).

¹¹² Daniel C. Esty, *Non-Governmental Organizations at the World Trade Organization: Cooperation, Competition, or Exclusion*, 1 J. INT'L ECON. L. 123, 137 (1998).

policy formulation because of the specific expertise of non-state actors.¹¹³

In addition, civil society actors can sometimes provide a long-term perspective on certain challenges precisely because they are less constrained than many state actors. Less affected by the demands and limitations of shorter-term political bargaining in which governments must constantly engage, civil society groups can often afford to take a longer-term view of important policy questions. NGOs seek to compete for the public conscience, and prod governments to consider broader perspectives and focus on pressing transnational issues.¹¹⁴

Civil society can also foster deliberation beyond the boundaries of the boardrooms of international institutions. By communicating with local-stakeholders and shaping global media interest, non-state actors can function as a "'transmission belt' between a global citizenry and the institutions of global governance."¹¹⁵ Civil society groups can transport issues and concerns from local stakeholders that might not otherwise reach relevant international institutions.¹¹⁶ Even when the arguments of non-state actors do not prevail within these institutions, the incorporation of civil society groups in the governance of international institutions can

¹¹³ See Raustiala, *supra* note 2, at 558–59 (explaining that one of the benefits is that NGOs devote substantial efforts and resources to research and development which afford governments reasonably accurate, efficacious, and creative policy advice).

¹¹⁴ See Ann M. Florini, *Transnational Civil Society*, in *GLOBAL CITIZEN ACTION* 29 (Michael Edwards & John Gaventa eds., 2001).

¹¹⁵ Jens Steffek & Patrizia Nanz, *Emergent Patterns of Civil Society Participation in Global and European Governance*, in *CIVIL SOCIETY PARTICIPATION IN EUROPEAN AND GLOBAL GOVERNANCE: A CURE FOR THE DEMOCRATIC DEFICIT?* 1, 3 (Jens Steffek et al. eds., 2008); see also Bexell et al., *supra* note 80, at 86–87 (noting that NGOs and other transnational actors responsive to citizens as part of their design are thus more able to integrate "citizen concerns into the debate and onto the agenda").

¹¹⁶ See Patrizia Nanz & Jens Steffek, *Deliberation and Democracy in Global Governance: The Role of Civil Society*, in *PARTICIPATION FOR SUSTAINABILITY IN TRADE* 61, 61 (Sophie Thoyer & Benoît Martimort-Assou eds., 2007) (arguing that deliberation between civil society and international organizations "may enhance the rationality and legitimacy of political decisions made beyond the nation state"); see also Michael Zürn, *Democratic Governance Beyond the Nation-State: The EU and Other International Institutions*, 6 *EUR. J. INT'L REL.* 183, 198 (2000) (discussing the power of NGOs to form networks crossing through national borders).

expand deliberation beyond the institution itself to a broader array of stakeholders engaged in the policy dialogue.¹¹⁷

Another important reason for including civil society in the governance of international institutions is the possibility that their participation can enhance the impact of a given institution in implementing its programs and advancing its mission.¹¹⁸ In the context of increasingly complex global challenges, the capacity for international institutions to solve problems is likely to become an increasingly important test of their legitimacy. Although it is a difficult issue to definitively resolve, there is a growing body of evidence that strongly suggests that more participatory approaches can yield better results, particularly in the field of development.¹¹⁹

There is substantial evidence for this conclusion concerning the link between civil society participation and institutional effectiveness from the World Bank.¹²⁰ A 1998 study of World Bank-supported projects found that a majority of projects demonstrated the “potential for success because their preparation and early implementation . . . are highly participatory.”¹²¹ Another study of participatory processes in Bank-assisted projects completed in 2001 concluded that “participation of primary and secondary stakeholders (including CSOs) increased significantly during the mid-1990s, and the resulting benefits have been

¹¹⁷ See THE ADVISORY GROUP, CIVIL SOCIETY AND AID EFFECTIVENESS: A SYNTHESIS OF ADVISORY GROUP REGIONAL CONSULTATIONS AND RELATED PROCESSES JANUARY–DECEMBER 2007, at 6 (2008), available at <http://siteresources.worldbank.org/ACCRAEXT/Resources/4700790-1208545462880/AG-CS-Synthesis-of-Consultations.pdf> (commenting that NGOs are perceived as being a natural outgrowth of societies with free association of individuals); Steffek & Nanz, *supra* note 115, at 28 (stating that CSOs improve the accessibility of international governance, but are not considered to have a strong and vibrant role).

¹¹⁸ See Liesbet Steer & Cecilie Wathne, *Donor Financing of Basic Education: Opportunities and Constraints*, 30 INT’L J. EDUC. DEV. 472, 476 (2010) (noting the success of civil society involvement in catalyzing resources for the Global Fund for AIDS, Tuberculosis and Malaria).

¹¹⁹ See Kennedy M. Maranga, *The Evolving Role of NGOs in Global Governance* 8 (July 28, 2010) (unpublished manuscript), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1650163 (discussing the increased legitimacy and effectiveness of NGOs when allowing themselves to be held accountable to the public).

¹²⁰ See Schlemmer-Schulte, *supra* note 65, at 411 (arguing that the World Bank’s policy can be greatly shifted by a system of accountability to civil society).

¹²¹ CHRISTOPHER GIBBS ET AL., THE WORLD BANK, NONGOVERNMENTAL ORGANIZATIONS IN WORLD BANK-SUPPORTED PROJECTS: A REVIEW 32 (1999).

significant.”¹²² A more recent study by the Bank found that civil society consultation in the development of country assistance strategies could improve the overall quality of these strategies.¹²³ Analysis of the World Bank’s portfolio performance reports also indicates that NGO involvement can lower the risk of poor performance and that civil society participation can have a significant impact on effectiveness.¹²⁴

Since a strong and engaged civil society has been found to improve the delivery of public services, it is not surprising that more participatory approaches to service delivery often yield substantial improvements.¹²⁵ Some of the best aid projects that demonstrate a capacity to improve the delivery of services in the public sector involve civil society participation.¹²⁶ According to one recent study, examining projects in 49 countries, projects were successful 62% of the time when participation was a goal. Conversely, only 10% were successful when participation was not a goal.¹²⁷ One of the strongest reasons for the inclusion of civil society groups in the governance of many twenty-first century international institutions is their potential to contribute to resource mobilization. Many of the institutions with the highest levels of civil society participation in governance—in areas such as global

¹²² THE WORLD BANK, *supra* note 62, at 7.

¹²³ See THE WORLD BANK, WORLD BANK-CIVIL SOCIETY ENGAGEMENT: REVIEW OF FISCAL YEARS 2002–2004, at 53 (2005) (commenting that cooperation between the World Bank and civil society could lead to greater development aid efficiency).

¹²⁴ See Schlemmer-Schulte, *supra* note 65, at 411 (concluding that the World Bank’s own reports indicate improved efficiency through NGO involvement).

¹²⁵ See THE WORLD BANK, ASSESSING AID: WHAT WORKS, WHAT DOESN’T, AND WHY 3 (1998) (“An active civil society improves public services. One good idea that many projects have supported in recent years is a participatory approach to service delivery, often resulting in huge improvements. The best aid projects support initiatives that change the way the public sector does business.”); see also Kent Buse & Gill Walt, *The World Health Organization and Global Public-Private Health Partnerships: In Search of ‘Good’ Global Health Governance*, in PUBLIC-PRIVATE PARTNERSHIPS FOR PUBLIC HEALTH 169, 174 (Michael R. Reich ed., 2002).

¹²⁶ See THE ADVISORY GROUP, *supra* note 117, at 8 (“As CSOs develop relationships of trust with communities through the delivery of particular programs (whether government-initiated or not), they can go further to empower communities to seek out a full range of services from their governments.”).

¹²⁷ Jonathan Isham et al., *Does Participation Improve Performance? Establishing Causality with Subjective Data*, 9 WORLD BANK ECON. REV. 175, 185–86 (1995).

health—have been among the most successful in the last decade in mobilizing an expansion of overall institutional resources.¹²⁸

One of the strongest examples of the correlation between broader participatory governance and increased performance is the Global Fund, both in terms of its resource mobilization and its programmatic achievements.¹²⁹ Within a few years of its creation, the Global Fund was already a multi-billion dollar a year venture because of its success in mobilizing resources from donor countries. In less than five years, it grew its portfolio to \$5.5 billion, invested in 131 countries.¹³⁰ For the last several years, the Fund has mobilized resources in excess of \$3 billion each year, despite increasing demands on scarce donor resources.¹³¹ One of the keys to its success as a financing mechanism lies in the development of engaged and empowered constituencies in donor countries that are invested in the institution and linked into its governance structure.¹³²

Even more impressive are some of the results of the Global Fund on the ground, which are consistent with the growing

¹²⁸ A 2002 McKinsey & Co. study of thirty global health alliances concluded that upwards of 80% of public health alliances appeared to be functioning, as opposed to the private sector's success rate of 50%. The report defined success "as accelerating, improving, or reducing the cost of, initiatives aimed at reducing disease burden, by comparison with what could be accomplished by bodies acting individually in a 'solitary approach.'" KAREN CAINES ET AL., *ASSESSING THE IMPACT OF GLOBAL HEALTH PARTNERSHIPS* 10 (2004), available at http://www.theglobalfund.org/documents/library/studies/integrated_evaluations/GHP_Synthesis_Report.pdf; see also Rene Loewenson, *Civil Society Influence on Global Health Policy* 9 (Apr. 2003) (unpublished manuscript) (on file with the World Health Organization), available at <http://www.tarsc.org/WHOCSI/pdf/WHOTARSC4.pdf> (reporting that CSOs engaging governments and international organizations "have yielded benefits for all players within policy processes through reducing conflict, facilitating communication and bringing new expertise into policy processes").

¹²⁹ For a general account of the success of the Global Fund and its engagement with civil society, see *THE GLOBAL FUND TO FIGHT AIDS, TUBERCULOSIS AND MALARIA, AN EVOLVING PARTNERSHIP: THE GLOBAL FUND AND CIVIL SOCIETY IN THE FIGHT AGAINST AIDS, TUBERCULOSIS AND MALARIA* (2007), available at http://www.theglobalfund.org/documents/publications/brochures/evolvingpartnership/AnEvolvingPartnership_en.pdf.

¹³⁰ See Richard G.A. Feachem & Oliver J. Sabot, *An Examination of the Global Fund at 5 Years*, 368 *LANCET* 537, 537 (2006) (offering an overview of the Global Fund's investment portfolio).

¹³¹ *Pledges and Contributions*, GLOBAL FUND TO FIGHT AIDS, TUBERCULOSIS AND MALARIA, <http://www.theglobalfund.org/en/pledges/> (last visited Nov. 12, 2010).

¹³² See *id.* (listing the Global Fund's current pledges and contributions).

literature on the link between participation and effectiveness in development. As of the end of 2009, the Global Fund was providing financing for treatment for 2.5 million people suffering from AIDS.¹³³ Additionally, it provided treatment to some 6 million people living with active tuberculosis, leading to a reduction in tuberculosis prevalence and mortality in many target countries.¹³⁴ It also distributed 104 million insecticide-treated bed nets to prevent the spread of malaria, and provided 57% of international disbursements for malaria control, as of 2008.¹³⁵ The Fund estimates that its combined efforts have contributed to preventing some 4.9 million deaths.¹³⁶

Increasingly, many twenty-first century institutions that have adopted multi-stakeholder governance models are demonstrating impressive results that are challenging the traditional role of some of the leading twentieth century institutions. Improved institutional transparency, deeper engagement with diverse societal actors, public confidence and support for expanded resource mobilization, and programmatic impact are all characteristic of many of these multi-stakeholder institutions.

The insights that have been gained from the experience of this new generation of institutions have not yet been adequately incorporated into the theoretical debates over the design of international institutions. At issue is not just the question of whether civil society should play a meaningful role in the governance of international institutions, but also the more challenging question of how best to incorporate non-state actors in ways that will maximize their contribution and minimize the risks that so many critics have highlighted. It is this latter question that is the focus of the next section, which argues in favor of incorporating the insights from associative democracy theorists,

¹³³ See THE GLOBAL FUND TO FIGHT AIDS, TUBERCULOSIS AND MALARIA, THE GLOBAL FUND 2010: INNOVATION AND IMPACT RESULTS SUMMARY 1 (2010), available at http://www.theglobalfund.org/documents/replenishment/2010/Progress_Report_Summary_2010_en.pdf (tallying the total number of HIV/AIDS patients who received Global Fund financed antiretroviral therapy in 2009).

¹³⁴ See *id.* at 2 (estimating the number of tuberculosis patients who received treatment through Global Fund financed programs in 2009).

¹³⁵ See *id.*

¹³⁶ See *id.* (estimating the total number of lives saved through the Global Fund's collective efforts as of December 2009).

and adopting constituency models as a core part of multi-stakeholder governance.

4. BEYOND THE MONOPOLY OF STATES

The models of multi-stakeholder governance incorporated in twenty-first century international institutions challenge many prevailing assumptions about the proper role of states and non-state actors in the international arena. While the growing evidence regarding the effectiveness of including civil society within formal governance is a powerful response to critics of civil society participation, their concerns can nonetheless prove invaluable to the design of these institutions. The insights of associative democracy theorists offer a new way to think about how diverse stakeholders might be organized to contribute to the core mission of many international institutions. Constituency models of civil society participation hold great promise in leveraging the broader contribution of non-state actors while reducing the risk of narrow or self-interested actors who might take advantage of more participatory models of governance.

One of the core challenges for any model of multi-stakeholder governance is to guard against non-state actors pursuing a narrow or self-interested agenda that does not reflect the concerns of the wider constituencies from which they have emerged. Many of these dynamics are not new or even unique to the international arena, but have instead been prominent features in long-standing debates over the role of diverse actors in the context of national or local governance. A rich literature on associative democracy and participatory governance offers new insights that can be applied to the global challenge of structuring international institutions.

When it comes to overcoming the risks of empowering private actors, there is a longstanding literature that highlights the “mischief of faction” that can be produced by private interests.¹³⁷ The risk—which has been highlighted by critics of civil society participation—is that unaccountable actors will be empowered through expanded participation.¹³⁸ However, there is also a

¹³⁷ See generally THE FEDERALIST NO. 10, at 72–79 (James Madison) (Clinton Rossiter ed., 1961). Cf. Alkoby, *supra* note 106, at 400 (describing the dangers of empowering NGOs because of concerns regarding their lack of accountability).

¹³⁸ See Scholte, *supra* note 42, at 231 (arguing that many civil groups lack adequate standards of accountability); Marguerite A. Peeters, *Participatory*

growing body of work, which highlights the positive contributions that civil society groups—sometimes called secondary associations—can make to further successful democratic governance.¹³⁹

The core idea of associative democracy is that civil society groups are capable of performing useful, democracy-enhancing functions.¹⁴⁰ Conceptions of associative democracy highlight the role of civil society groups in linking citizen participation more closely to the exercise of public power.¹⁴¹ In the national context, scholars have highlighted the contribution that these groups can make by providing valuable information to policymakers, equalizing representation, catalyzing citizen education, and contributing to problem solving. Associations can provide a mechanism for less powerful groups to participate in governance, serve as “schools of democracy,” and facilitate alternative forms of governance focused on problem-solving.¹⁴² However, there are several key qualitative features of groups that are viewed as necessary conditions for enabling these valuable contributions, including the accountability relationships between leadership and members, the degree to which the group fully encompasses the affected population, and the distribution of power and modes of interaction across different groups.¹⁴³ These qualitative features, such as breadth of the overall constituency, the relationships between leaders and the broader constituency, and the interaction between different constituencies, are also very relevant in evaluating civil society participation within international institutions.

Building upon this work on associative democracy, recent scholarship has examined innovative approaches to promoting

Democracy in the New Europe: A Critical Analysis 3 (Am. Enter. Inst. for Pub. Pol’y Res.), available at http://www.aei.org/docLib/20040402_20030611_Peeters.pdf (arguing that NGOs should demonstrate their representativeness and the role of members in decision-making).

¹³⁹ See Archon Fung, *Associations and Democracy: Between Theories, Hopes and Realities* 29 ANN. REV. SOCIOLOGY 515, 515–16 (2003); see also Cohen & Rogers, *supra* note 6, at 395 (recognizing some of the positive contributions that civil society groups can make to improving governance).

¹⁴⁰ See Cohen & Rogers, *supra* note 6, at 424.

¹⁴¹ See Fung *supra* note 139, at 533.

¹⁴² See *id.* at 424–25.

¹⁴³ See *id.* at 428.

participatory democracy and governance, in which ordinary citizens directly engage in policymaking.¹⁴⁴ The core insight motivating this literature is the observation that existing mechanisms of political representation are increasingly unable to foster adequate citizen involvement and reach consensus on major policy challenges.¹⁴⁵ Archon Fung and Erik Olin-Wright have introduced the idea of “empowered deliberative democracy,” which seeks to link expanded participation with improved deliberation and citizen empowerment.¹⁴⁶ They argue that “empowered deliberative democracy” works when people focus on specific tangible problems that involve ordinary people and engage in the deliberative design of solutions to such problems.¹⁴⁷ This model suggests the devolution of public decision authority to local units of governance. However, the focus on specific areas of public problem solving in this conception is consistent with the approach of many twenty-first century international institutions. At the same time, a rough equality of power in the context of participation by citizens and government officials is seen in this literature as crucial to enabling meaningful deliberation.¹⁴⁸ Just as in the international context, the benefits of expanded participation also extend to the likelihood of heightened commitment by diverse actors to effectively implement decisions.¹⁴⁹

Central to all of these models is the underlying conception of deliberation and its role in effective governance.¹⁵⁰ Deliberation by itself is not necessarily either democratic or reflective of a wide range of views and stakeholders. As Josh Cohen and Charles Sabel put it: “[D]eliberation, understood as reasoning about how best to

¹⁴⁴ For a discussion of participatory democracy, see generally Jeffrey D. Hilmer, *The State of Participatory Democratic Theory*, 32 *NEW POL. SCI.* 43 (2010).

¹⁴⁵ See Fung & Wright, *supra* note 6, at 5.

¹⁴⁶ *Id.* at 7.

¹⁴⁷ See *id.* at 14; Mikael Wigell, *Multi-Stakeholder Cooperation in Global Governance* 31 (Finnish Inst. of Int’l Aff., Working Paper No. 58, 2008) (“Multi-stakeholder initiatives help to broaden discussion and *identify global public needs.*”) (emphasis in original).

¹⁴⁸ See, e.g., Fung & Wright, *supra* note 6, at 24.

¹⁴⁹ See *id.* at 26 (arguing that empowered participatory governance contributes to “generate and adopt proposals that enjoy broad consensus support”).

¹⁵⁰ See, e.g., Elizabeth Garrett & Adrian Vermeule, *Institutional Design of a Thayerian Congress*, 50 *DUKE L.J.* 1277, 1291 (2001) (discussing the importance of deliberation and its role in institutional design).

address a practical problem, is not intrinsically democratic: it can be conducted within cloistered bodies that make fateful choices, but are inattentive to the views or the interests of large numbers of affected parties"¹⁵¹ Yet, there is an important literature which suggests that deliberation is enhanced by the process of assessing divergent views.¹⁵² While the critique of multi-stakeholder participation in the governance of international institutions focuses on how diverse views can make achieving consensus more difficult, recent literature on deliberation emphasizes the importance of the process of the discussion and elaboration of difference.¹⁵³

Visions of deliberation going back to at least John Stuart Mill have focused on its role in encouraging deliberants to "weigh interests not his own"¹⁵⁴ Or, as Amy Gutmann and Dennis Thompson put it, participants in deliberations "are more likely to take a broader view of issues . . . in a process in which moral arguments are taken seriously"¹⁵⁵ Too frequently, the governance of international institutions fails to foster this type of deliberation, in part because of the limited range of actors and views that participate in the process. Civil society participation has the potential to ensure not only that different views will be weighed, but also that expanded consideration will be given to views which are less constrained by short-term political constraints and potentially more reflective of longer-term interests.

Some scholars equate civil society participation in the governance of international institutions with corporatist democracy's structures for involving non-state actors with elected officials. Under this view, civil society participation should be

¹⁵¹ Joshua Cohen & Charles F. Sabel, *Sovereignty and Solidarity: EU and US, in PUBLIC GOVERNANCE IN THE AGE OF GLOBALIZATION* 157, 169 (Karl-Heinz Ladeur ed., 2004).

¹⁵² See Esty, *supra* note 2, at 1520.

¹⁵³ See Charles F. Sabel & Jonathan Zeitlin, *Learning from Difference: The New Architecture of Experimentalist Governance in the EU, in EXPERIMENTALIST GOVERNANCE IN THE EUROPEAN UNION: TOWARDS A NEW ARCHITECTURE* 1, 8 (Charles F. Sabel & Jonathan Zeitlin eds., 2010) (noting that new forms of deliberation that account for and incorporate a diversity of views can open up "new possibilities for democratization of decision making").

¹⁵⁴ JOHN STUART MILL, *CONSIDERATIONS ON REPRESENTATIVE GOVERNMENT* 79 (1882).

¹⁵⁵ AMY GUTMANN & DENNIS THOMPSON, *DEMOCRACY AND DISAGREEMENT* 42 (1996).

organized around a model of intermediate associations and ensure that relevant associations with legitimate claims to representing the largest numbers of people will be selected for participation. Yet strictly corporatist models pose significant challenges at the international level in terms of how such organizations would be selected, and the risk that rigidities could evolve that would exclude emerging stakeholders.¹⁵⁶ One formulation for expanding participation that responds to this concern is the idea of striving for the “fullest possible participation and representation of those affected.”¹⁵⁷ The focus, in this view, is not just on the representative basis for civil society participation, but also on its connection to those most directly impacted by the work of a given institution.

The central challenge to achieving these potential benefits resulting from multi-stakeholder governance is structuring participation in ways that limit the risks of enhancing the power of unrepresentative or parochial interests while maximizing the possibility that diverse stakeholders will be meaningful contributors to deliberation, rather than merely symbolic participants.¹⁵⁸ Constituency models of governance can foster both enhanced accountability and improved deliberation within these institutions. While most major international institutions now provide for some form of consultation with civil society groups, the roles of such organizations are often extremely limited. If models of consultation were the dominant approach for most of the twentieth century, new models of full participation in governance are increasingly common features of twenty-first century institutions.

¹⁵⁶ See Francesca Bignami, *Civil Society and International Organizations: A Liberal Framework for Global Governance* 62–64 (Duke L. Faculty Scholarship, Paper No. 1126, 2007), available at http://scholarship.law.duke.edu/faculty_scholarship/1126; Ottaway, *supra* note 11, at 266.

¹⁵⁷ Gráinne de Búrca, *Developing Democracy Beyond the State*, 46 COLUM. J. TRANSNAT'L L. 221, 227 (2008).

¹⁵⁸ See Bexell et al., *supra* note 80, at 89–90 (noting that while transnational partnerships between state and non-state actors could potentially promote meaningful participation, learning, and dialogue, they are limited by unequal bargaining positions).

4.1. Reconciling Theory and Practice

The next Section seeks to sketch out an approach to civil society participation that promotes both meaningful and accountable participation in the governance of international institutions. The first hurdle is to identify the essential elements of the structure of governance without which civil society participation is unlikely to be robust and risks becoming merely symbolic. The challenge of fostering accountable and effective multi-stakeholder institutions is closely tied to the way in which the participation of non-state actors is structured. Among the most successful models have been those which require civil society representation to be grounded in constituencies of diverse and encompassing organizations rather than vested in a single individual or organization.¹⁵⁹ In this Section, these different models for structuring civil society participation within existing institutions are distilled in order to identify the structural features of a framework that fosters more deliberative and effective civil society participation in international institutions.

Models of multi-stakeholder governance still vary a great deal—from participation in governing boards without voting rights, to full participation in governance. Many governments, some scholars, and even some civil society groups traditionally resist the idea of allocating voting status to civil society groups within international institutions. Yet it is hard to imagine a true partnership in any governing context in which some have voting rights and others do not. This is consistent with the findings of work on local-level participatory governance in which a rough equality of power between citizens and official experts is seen as crucial to fostering meaningful deliberation.¹⁶⁰ There also appear to be inevitable limits to the depth of partnership and the sense of accountability for governance in models in which NGOs serve as observers rather than full participants.

¹⁵⁹ Civil society constituencies are defined somewhat differently within different institutions but are often divided within multi-stakeholder institutions between NGOs from the global North and those from the global South. The United Nations has defined its “major groups” to include constituencies such as trade unions, youth, women, business, and scientific experts. Constituency models are also potentially valuable for structuring the participation of other types of non-state actors, such as the private sector, which are not the focus of this paper.

¹⁶⁰ See Fung & Wright, *supra* note 6, at 13–14.

While a number of twenty-first century institutions allocate just one seat to civil society, even on a relatively large board, an increasing number of institutions now allocate seats to civil society groups from the global North and South.¹⁶¹ In addition, some of these institutions designate specific seats for representatives of the communities most directly affected by the work of the institution, as well as representatives from foundations, individual experts, and representatives from the private sector.¹⁶² The representation of both Northern and Southern actors is significant in the context of concerns that civil society participation in governance might accentuate the imbalances of representation between different regions of the world.

Models of civil society participation in the governance of international institutions that merely include an individual representative are much weaker than models of constituency representation at incorporating diverse voices, preventing co-optation, and promoting accountability. In contrast to a single individual being solely responsible for representing the views of a multifaceted sector, constituency models involve a delegation which jointly makes key policy decisions and also serves as a forum for learning for future and alternate board members.

As with associative democracy in national contexts, the degree to which those representing civil society actually reflect the views of the affected population and the existence of accountability mechanisms for leaders are key factors in shaping the contribution of civil society participation.¹⁶³ Some scholars have suggested that the key challenge is to find ways to structure voice in order to “combat, rather than accentuate, existing . . . inequalities.”¹⁶⁴

¹⁶¹ See INT’L CTR. FOR RES. ON WOMEN, *supra* note 109, at 1 (noting the vigorous participation of civil society groups from Northern and Southern regions on The Global Fund’s Board in contrast to limited participation by civil society representatives at the United Nations).

¹⁶² For example, The Global Fund board includes a seat for a delegation of NGOs representative of people living with AIDS, tuberculosis, and malaria. *Board Delegations’ Contact Information*, THE GLOBAL FUND TO FIGHT AIDS, TUBERCULOSIS AND MALARIA, <http://www.theglobalfund.org/en/board/delegations/> (last visited Nov. 22, 2010).

¹⁶³ See Cohen & Rogers, *supra* note 6, at 395.

¹⁶⁴ Michael Edwards, *Introduction* to GLOBAL CITIZEN ACTION 1, 7 (Michael Edwards & John Gaventa eds., 2001).

In the cases of The Global Fund and more recently GAVI, the work of the constituency is facilitated by a communications focal point to ensure broad and meaningful participation by various stakeholders.¹⁶⁵ The delegation serves as a resource and force-multiplier for a single board member as well as a forum for deliberation and a potential check on a board member who might not adequately represent the views of a diverse constituency. The constituency model is not unique to global health institutions as it has been adopted by other development institutions and could plausibly be applied to international institutions in a range of sectors.

Observer status for non-state actors is much less likely to translate into a significant role within the governance of international institutions because it suggests that their role is to watch rather than to participate in the deliberations of these institutions. There are examples of institutions in which non-state actors are granted the rights and responsibilities of membership without a formal vote.¹⁶⁶ While this distinction matters much less in processes that are truly consensus based, there always remains the possibility of a deadlock in consensus, and if there is any role for formal voting then the question of whether civil society holds voting rights becomes much more significant.

Another key structural feature to ensure meaningful civil society participation in the governance of international institutions is the balance of representation within these structures. The allocation of just one single seat to non-state actors or even to global civil society actors is often a recipe for symbolic but not meaningful participation. The concern is both that any single voice would be much more likely to be marginalized within an otherwise inter-governmental institution and also that a single seat

¹⁶⁵ See GAVI ALLIANCE, MEETING REPORT: GAVI ALLIANCE CIVIL SOCIETY MEETING (Nov. 21, 2009), http://www.gavialliance.org/resources/Report_on_Gavi_CSO_Day_21_Hanoi.pdf (last visited Nov. 22, 2010) (highlighting GAVI's intent to hire an independent communications focal point in order to support civil society organizations).

¹⁶⁶ See, e.g., GLOBAL AGRIC. & FOOD SEC. PROGRAM, GLOBAL AGRICULTURE AND FOOD SECURITY PROGRAM (GAFSP) GOVERNANCE DOCUMENT, 2(i) (2010), available at <http://www.gafspfund.org/gafsp/sites/gafspfund.org/files/Documents/GovernanceDocument.pdf> (listing the steering committee members which are made up of both voting and non-voting members).

would not allow for the inclusion of both those from the Northern and Southern Hemispheres. Civil society groups in the South too often lack any role in the governance of international institutions while groups in the North often have greater resources to influence other actors within these institutions. As a result, to include one and not both of these actors is much more likely to result in participation that is either unbalanced or insufficiently heard.

No less important than the challenge of fostering full participation by civil society actors is that of promoting the accountability and effectiveness of these actors. Any model in which individuals disconnected from a broader constituency structure are the sole participants risks inadequate accountability. Constituency models which link representation to a broader delegation and encompass a diverse group of stakeholders are much more likely to reflect the views of the broader constituency. A major challenge is defining which groups should be included and excluded from participation in a given constituency. In defining the breadth of a given constituency, the principle of self-organization is central for many institutions.¹⁶⁷ A risk this poses is that early participants will become entrenched in their roles and prevent the involvement of new groups. Limited terms and mechanisms for promoting new leadership are both critical to limiting the likelihood of ossification. Delegations can provide a forum for the development of new leadership within the constituency and, when necessary, for accountability mechanisms for board representatives who might be pursuing narrow interests.

Just as important as ensuring accountability for non-state actors in the governance of international institutions, is fostering the capacity for these stakeholders to effectively participate. One of the models that has proven most effective to promote communication within diverse and geographically dispersed delegations and for supporting the capacity of individual participants is the creation of a designated communications focal point for the delegation.¹⁶⁸ The key role is to facilitate deliberation,

¹⁶⁷ See THE GLOBAL FUND FOR AIDS, TUBERCULOSIS AND MALARIA, GUIDELINES ON CONSTITUENCY PROCESS, available at http://www.theglobalfund.org/documents/publications/other/ConstituencyProcesses/ConstituencyProcessesGuidelines_en.pdf (discussing constituency formation and composition).

¹⁶⁸ See *id.* (listing “[e]xcellent communication skills” as a key focal point); see also GAVI Civil Society Communications Focal Point, GAVI ALLIANCE, <http://www.gavialliance.org/employment/card.php?empID=92> (last visited Nov. 22,

preparation, and engagement with other board members rather than to replace or bypass the delegation and its representatives on the board.¹⁶⁹

A new framework for evaluating the participation by civil society in the governance of international institutions should involve a two-part test. First, the relevant international institution should be structured in such a way as to foster effective participation and maximize the contribution of civil society actors to the mission of the institution. The consultative models of most twentieth century institutions are unlikely to meet this test and observer models will have difficulty doing so as well because neither approach is as likely to catalyze the full contribution of civil society actors. Second, civil society participation should be designed to maximize the accountability of civil society actors to a broad constituency of affected stakeholders. Models in which disconnected individuals from NGOs serve on boards would not meet this test, and models that involve the selection of a single large or well-known NGO are also unlikely to meet this test.

For each of these two critical dimensions, the effective participation and accountability of civil society, three minimum conditions can serve as benchmarks in evaluating civil society participation. The minimum conditions for effective participation by civil society in the governance of international institutions are: 1) full membership as part of the governing body, which usually but not always will involve some form of voting rights; 2) participation by more than a single representative; and 3) the inclusion of both Southern and Northern stakeholders. The minimum conditions for accountability for civil society participation within international institutions are: 1) the existence of a constituency-based approach to participation; 2) a civil society delegation that encompasses a diverse range of stakeholders, including those most affected; and 3) a communications focal point to facilitate deliberation and communication within the delegation.

This approach to evaluating civil society participation in the governance of international institutions treats effective and

2010) (posting an employment opportunity specifically for a communications focal point to develop communications fooks for the GAVI Alliance).

¹⁶⁹ See *GAVI Civil Society Communications Focal Point*, *supra* note 168 (discussing the purpose and main responsibilities of the communications focal point).

accountable participation as equally important ultimate objectives. Voting rights without a constituency based model would empower some non-state actors, but not necessarily leverage the broader contribution from the sector that contributes to the overall quality of decision-making and institutional effectiveness. Robust civil society participation depends on creating enough room at the governance table for non-state actors to make a major contribution and ensuring enough connection to a broader constituency so that this contribution is accountable and catalytic of wider efforts among diverse stakeholders.

5. CONCLUSION

In the twenty-first century, a wide range of complex global challenges will require unprecedented levels of global cooperation between states and non-state actors. Yet, few leading international institutions today are designed to effectively leverage the resources, ingenuity, and connectivity of diverse societal actors. While some scholars maintain the “monopoly of states” view that civil society should not meaningfully participate in the governance of international institutions, a new generation of multi-stakeholder institutions points toward a new approach to understanding the relationship between non-state actors and international institutions.

The core challenge to improving the performance of international institutions in meeting contemporary global challenges, as Ernest Haas explained, is that most international institutions are much better at adapting than engaging in meaningful learning processes: “Adaptive behavior is common, whereas true learning is rare. The very nature of institutions is such that the dice are loaded in favor of the less demanding behavior associated with adaptation.”¹⁷⁰ Haas’ point and the experience of the leading international institutions established in the twentieth century both strongly suggest that if the design of these institutions is not inclusive from the beginning, the opportunities for transformation of governance within existing institutions may be quite limited.

¹⁷⁰ ERNST B. HAAS, WHEN KNOWLEDGE IS POWER: THREE MODELS OF CHANGE IN INTERNATIONAL ORGANIZATIONS 37 (1990).

Multi-stakeholder approaches to governance could be adopted within a wide range of international institutions. Yet it also may be the case that these models will be most successful in institutions which are more focused on specific tangible problems, which make it easier to involve non-state actors in deliberation over the solutions to those problems. For this reason, global health and development institutions have proven to be particularly fertile ground for innovations with respect to civil society participation in governance. Certainly, the role of these institutions in providing global public goods highlights the importance of effective implementation that engages diverse stakeholders. Nonetheless, even for many institutions with a very different focus and mission, the benefits of broadened participation could remain valuable in improving deliberation and enlisting the contributions of diverse societal actors. Future research on a wider range of sectors and diverse institutional models of civil society participation will be extremely valuable in demonstrating the possibility and limits of multi-stakeholder governance.

In responding to many global challenges, international institutions may ultimately be more successful by expanding multi-stakeholder involvement in their governance structures. Evidence from a number of twenty-first century institutions suggests that greater civil society participation can lead to enhanced transparency, more effective deliberation, greater public credibility, and more effective implementation of programs. Yet it remains possible that expanded participation in the governance of international institutions in some contexts may diminish institutional effectiveness.¹⁷¹ Constituency models of participation may offer a pathway to better harness the potential contribution of civil society and reduce such tradeoffs. Further research is needed to better explore the interplay between expanded participation and institutional effectiveness within diverse institutions and the

¹⁷¹ See generally JONATHAN G.S. KOPPELL, *WORLD RULE: ACCOUNTABILITY, LEGITIMACY, AND THE DESIGN OF GLOBAL GOVERNANCE* (2010) (arguing that there exists a tradeoff between expanding participation in governance and building and maintaining what he terms the authority of international institutions, in regulatory areas including the environment). But see Kal Raustiala, *Nonstate Actors in the Global Climate Regime*, in *INTERNATIONAL RELATIONS AND GLOBAL CLIMATE CHANGE* 95, 115–16 (MIT Press, 2001) (arguing that the participation of NGOs in formal international cooperation enhances the ability of states to regulate new areas in the environmental context).

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mechanisms through which different models of participation might alter these dynamics.

It is unlikely that states alone will be able to respond to the greatest challenges of the twenty-first century. Even with enhanced cooperation between states, it is increasingly clear that non-state actors are essential to responding to key challenges across a wide range of issues. Although it is possible to imagine expanded cooperation between state and non-state actors without a fundamental shift toward multi-stakeholder governance, it may prove difficult for many international institutions to be successful and accountable in the long-run without governance structures that catalyze the contributions of civil society actors.