

How to Get Beyond the Zero-Sum Game Mentality between State and Non-State Actors in International Environmental Governance

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The ideas expressed in this article are those of the author and do not reflect the view of the Swiss Government. The author would like to thank the comments on a previous draft of this article received from Dr. Jürg Schneider; Stephan Michel and Alexander Kopp.

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Scholarly Abstract

This paper examines the participation of stakeholders in environmental policy formulation and implementation. After a short discussion of the main functions and challenges of environmental governance the paper addresses the issue of stakeholder participation and the claim of “democratic deficits” in international environmental governance. It stresses that while non-state actor involvement does not necessarily increase democratic legitimacy, it may nevertheless increase the quality of the environmental policy processes. It will then argue that certain international processes such as the UN Commission on Sustainable Development (CSD) have led to an unsatisfactory situation of non-state actor involvement where excessive formalization and proceduralization impede active interaction and input of expertise from non-state actors. It seems that the interaction between state and non-state actors in some of today’s international processes, such as the CSD, has led to a zero-sum game¹ where no party is really benefiting from the contributions of the other. This paper will suggest several changes to get beyond this zero-sum game mentality, including de-formalization of participation, replacement of generalist non-governmental organizations with those that specialize in specific fields, and reformation of the relationship between state and non-state actors so that each might come to see the other as a partner, not as a competitor. It will conclude by arguing that neither the alleged lack of an authoritative, effective central institution addressing the main environmental problems, nor the so-called “democratic deficit” is the main challenge to today’s international environmental governance, but the lack of political will. Political will, however, is not an absolute; it can and has to be stimulated. And this may be one of the most productive contributions that non-state actors can make.

Author's Note

The international environmental policy processes are often criticized for inadequate involvement of non-state actors such as NGOs or international organizations. This is often referred to as a 'democratic deficit'. Yet my experiences as head of delegation or lead negotiator for the Swiss government in the UN Commission on Sustainable Development (CSD) or in international chemicals negotiations such as the development of the Strategic Approach to International Chemicals Management (SAICM) have revealed that not all NGO participation is as fruitful as often claimed. In some international processes such as the CSD, NGO participation has become an overly formalized procedure that prevents rather than stimulates interaction and exchange within the NGO community and Commission participants. Today's interaction between state and non-state actors in the CSD can be described as a zero-sum game where no party is benefiting from the contributions of the other. The expertise and perspectives of non-state actors, however, is invaluable to consensus decision-making, policy-formulation and eventual impact through international governance like the CSD. This article proposes the following steps to increase the effectiveness of non-state actors in environmental policy processes: a de-formalization of non-state actor involvement, a replacement of generalist NGOs with those that specialize in specific fields, a reformation of the relationship between state and non-state actors so that each might come to see the other as a partner, not as a competitor, and finally a strategic change whereby NGOs re-focus their energy towards raising public awareness, influencing nations' negotiation positions, and triggering the political will and commitment that is needed to effectively formulate and implement the policies of environmental governance.

Keywords:

international environmental governance, non-governmental actors, NGOs, stakeholder participation, legitimacy, democratic deficit

How to Get Beyond the Zero-Sum Game Mentality Between State and Non-State Actors in International Environmental Governance⁺⁺

By Franz Xaver Perrez^{*}

⁺⁺ This article is a shortened version of the presentation “*The Pareto Optimum of Stakeholder Participation in Environmental Governance*” made at the Conference on Environmental Governance and Democracy – Institutions, Public Participation and Environmental Sustainability: Bridging Research and Capacity Development, which was organized by Yale University Center for Environmental Law & Policy in conjunction with the United Nations Institute for Training and Research, UNITAR, on May 10-11 2008 at the Yale University in New Haven. See generally: <http://www.yale.edu/envirocenter/envdem/index.htm>.

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1. Introduction

Today, it is well recognized that threats to the environment undermine the resource base of human development and well-being. As UN Secretary-General Kofi Annan (2005) has held, “[o]ur efforts to defeat poverty and pursue sustainable development will be in vain if environmental degradation and natural resource depletion continue unabated.” In order to address the challenge of global environmental degradation and natural resource depletion, a complex and multi-layered international environmental governance structure has materialized over the past few decades with an abundance of institutions, organizations and processes emerging—sometimes overlapping, sometimes cooperating, oftentimes conflicting. Several factors contribute to the lack of effectiveness and efficiency of today’s system of international environmental governance, namely its fragmentation, the dilution of the authority of its core-institutions such as the UN Environment Programme UNEP, the imbalance between the environmental regime and other regimes, the lack of institutional leadership within the international environmental regime, the inefficient use of already limited resources, and the lack of political will and commitment.² To further complicate the situation, this governmental environmental structure is complemented by an intricate network of thousands of active non-government organizations, initiatives and action groups. Environmental governance has become so complex, that even specialists have lost oversight.

This paper examines the participation of stakeholders (i.e. all actors that have an interest at stake, thus both states as well as non-state actors such as non-governmental organizations and international organizations³) in forming and implementing international environmental policy. One body of stakeholders commonly discussed is that of “nongovernmental organizations” (NGOs), which is understood as including both, so-called “public interests NGOs” and industry and business representatives. The paper will focus on the international level of environmental governance and will draw from experiences of international processes, such as those of the United Nations Commission on Sustainable Development (CSD) and international chemicals negotiations, namely the development of the Strategic Approach to International Chemicals Management (SAICM).

After a short discussion of environmental governance, its actors and institutions, and its main functions and challenges (Section 2), the paper will address the issue of NGO participation and the claim of a “democratic deficit”⁴ in international environmental governance. It will stress that while NGO involvement does not directly increase the democratic legitimacy as such (Section 3), it may nevertheless increase the quality of environmental policy processes (Section 4). It will then argue that over time, NGO participation has become an overly formalized procedure that prevents rather than stimulates interaction between conference participants. This is especially the case in processes like the United Nations Commission on Sustainable Development (CSD), where stakeholder participation is confined to a portion of any given meeting known as the “multi-stakeholder segment.” Today, interaction in the CSD could be said to represent a zero-sum game where the contributions of one party are seen as hindrances by the other. On the other hand, there are processes such as the development of the Strategic Approach to International Chemicals Management that do not limit stakeholder participation to specific segments and which are characterized by abundant, interactive and direct stakeholder involvement throughout negotiations and the decision making process. The paper will suggest that a de-formalization of non-state actor involvement is imperative to allow for valuable active stakeholder participation. A proposed method for how such reforms can be made will be detailed in this paper. It will conclude that non-state actor involvement may be less effective in general environmental governance processes addressing broad issues. Similarly, NGOs with a very general background may have less impact on specialised political processes. On the other hand, in processes where the issue in question is more specific, NGOs and stakeholders with greater expertise in specific fields will be vital as active participants in policy making (Section 5). Finally, it will argue that neither the alleged lack of an authoritative, effective central institution addressing the main environmental problems, nor the so called “democratic deficit” are the main challenge to today’s international environmental governance, but the lack of political will, i.e. the continued political prioritization of other issues over the environment. Non-state actors such as NGOs, however, can be crucial in addressing this lack of political will.

2. Functions, Actors and Institutions of Environmental Governance

a) Functions and Actors

Environmental governance is the political and administrative system established to address environmental problems. It embraces institutions, principles, rules, procedures and instruments that regulate, manage, and implement the processes of environmental protection.⁵ The function of environmental governance is to provide a comprehensive, coherent, effective and efficient framework for the protection and sustainable use of natural resources.⁶

Traditionally, it is argued that the main pillars of an environmental institutional framework are government authorities, appointed and authorised by elected officials to carry out tasks at the national (federal) and sub-national (regional and lower) levels. This traditional model has been changing rapidly - non-state actors are no longer seen only as an “object” of environmental policy, they have also become a “subject” of environmental policy making. Today, non-state actors are fulfilling increasingly important roles as engines of international environmental policy-making, setting agendas for international policy processes and development, providing knowledge and scientific information, monitoring implementation of international policies and lobbying state actors. They are also involved in partnership initiatives with governments, as well as the development of voluntary standards, and implementation of environmental protection programs.⁷ The establishment of private label schemes such as that from the Forest Stewardship Council, a not-for-profit organization established to promote the responsible management of the world’s forests, is a prominent example of international environmental governance conducted without national government involvement.⁸ Today more than ever there is a growing corpus of rules, principles and decisions with a direct impact on private actors that has not been negotiated in a traditional inter-state context. Rules such as technical guidelines for best available technologies and best environmental practices are often made by international organizations with strong support from non-state expertises and the direct participation of non-state actors; international partnerships are being formed between public and private entities; international codes of conduct are being developed by private actors or private initiatives such as the Forest Stewardship Council. All of the above have become important elements of international environmental governance. Thus, international governmental organisations and non-state actors such as non-governmental organizations, corporations, other collectives and even individuals have become important actors of both national and international environmental governance.⁹

b) Institutions and Challenges

Governance can generally be seen as the system how actors, through institutions and processes, identify, address and solve common problems.¹⁰ It addresses not only how decisions are being made, who is responsible for making decisions, how decision makers carry out their mandate and how they are held accountable,¹¹ but also how decisions are implemented and reviewed.

International environmental governance is thus the international regime that has been developed to identify, address and solve environmental problems.¹² International environmental governance is relatively young and dynamic. Over time, a multi-layered regime has emerged, and a proliferation of instruments, processes, institutions and actors has evolved that bears the risk of duplication and even of conflict.¹³ Today's multi-layered international environment regime and its numerous institutions and processes demand an increased level of international cooperation; it might even be argued that cooperation is increasingly an *obligation* or necessary *duty* of state actors.¹⁴ Non-state actors, however, seem not to bear such a responsibility to cooperate.

The United Nations' Environment Programme UNEP is one of the main institutions of today's international environmental governance. However, UNEP is lacking resources, authority and support to fulfil its role as central pillar of the international environmental regime. In addition to UNEP, over 500 international environmental treaties and multilateral environmental agreements (MEAs) such as the United Nations Framework Convention on Climate Change, the Convention on Biodiversity or the Montreal Protocol for the protection of the Ozone Layer have addressed specific environmental concerns. Each treaty establishes specific rules and obligations and creates its own mini-institutional machinery that includes annual meetings and an administrative structure to serve these meetings and to oversee the implementation of the conventions' directives.¹⁵

In addition, while the UNEP and the international environmental treaties and MEAs have the primary political-normative functions of international environmental governance, their work is complemented by specialized organizations and institutions such as the Food and Agriculture Organization, the International Maritime Organization, or the UN Commission on Sustainable Development. Today, many of the most important decisions affecting the environment stem from

institutions and processes outside of the complex web of the core global environmental governance system like the WTO, multilateral development banks or bilateral investment and free-trade agreements.¹⁶ Additionally, implementation and financing of environmental activities is often tasked to other institutions such as the United Nations Development Programme UNDP, the World Bank, the Global Environment Facility, the United Nations Institute for Training and Research UNITAR, or United Nations Industrial Development Organization UNIDO.

This proliferation of MEAs, international environmental rule-setting bodies, and organizations and institutions engaged in environmental activities, often with overlapping or conflicting goals and strategies has led to a fragmentation within the sphere of international environmental governance.¹⁷ Due to the weak position of the UNEP, there is a lack of cooperation and coordination among the different relevant international institutions and a lack of implementation and enforcement, and the limited financial resources are not always used efficiently.¹⁸ These challenges or shortcomings of the international environmental regime can be structured into four groups or clusters: i) insufficient commitment to and prioritization of environmental considerations by states, ii) fragmentation of the regime, iii) limited authority and limited resources of UNEP, and iv) a structural and institutional imbalance between the environmental regime and other regimes.¹⁹ This proliferation of international environmental institutions and processes also makes it difficult for state and non-state actors to follow the work of all the relevant institutions and processes in international environmental governance.

In response to its weaknesses, several propositions have been made to strengthen international environmental governance over the past several years.²⁰ The most recent initiative was taken at the 2005 UN World Summit, which recognized the need for more efficient international environmental governance with enhanced coordination, improved policy advice and guidance, strengthened scientific knowledge and assessment, better treaty compliance, as well as better integration of environmental activities in the broader sustainable development framework; at the operational level, the heads of state and government agreed to explore the possibility of a more coherent institutional framework to address this need.²¹ It is interesting to note that all these propositions refer to institutional aspects of international environmental governance and politics and that they make no specific reference to the involvement and the general role of non-state

actors. However, non-state actors can significantly contribute to addressing several of the identified needs.

3. Stakeholder Involvement and the Claim of a “Democratic Deficit”

The involvement of non-governmental actors in the international environmental policy regime is a typical characteristic of environmental governance. The UN Commission on Sustainable Development (CSD) is said to have been a pioneer in engaging non-governmental actors in its work by including in its annual meetings “multi-stakeholder dialogues” where representatives from diverse sectors convene and share their experience and forge common grounds. This has led to a significant increase in NGO representatives from around the world attending CSD meetings.²² Today, non-governmental organizations regularly participate as observers at meetings of international environmental institutions and processes and make effective use of their right to intervene and submit their views and proposals.

Nevertheless, the involvement of non-state actors is often said to be insufficient and international institutions and processes are frequently criticized for suffering from a “democratic deficit.” The increased involvement of these non-state actors is said to be crucial, as they are typically deemed representatives of the global civil society and of the public interest worldwide; enhancing their role in international decision-making would enhance the democratic legitimacy of international institutions and processes.

The claim that NGO participation can enhance the democratic legitimacy of international governance relies on the assumption that the concept of democracy can as such be directly applied to international governance.²³ “Democracy” is generally understood as a form of government in which the supreme power is held by the people, i.e. all individual subjects of the government live under a free electoral and participatory system.²⁴ Democracy is thus a form of self-governance by the people of a political entity. Since there is no global government (a single government responsible for the political functioning and decision-making of the whole globe) and no global “people” (demos), international governance is difficult to associate with the act of

democratic governing. And, it is argued that because of the fundamental absence of the premise of majority rule on a global scale, the concept of democracy seems hardly applicable to international governance, and any attempt to bring international governance “into the laboratory of democracy will result in a reductionist and impoverished understanding of international law, of democracy and of the actual and potential relationship between the two.”²⁵

However, even if the applicability of democratic principles to international governance were to be accepted, the claim that NGO participation could correct a so-called democratic deficit of international governance seems to be superficial and short-sighted. In fact, NGOs represent the views of specific interest groups – this does by no means imply that NGOs represent the general public or a “global civil society.” Therefore, NGOs do not have greater democratic legitimacy than governments and cannot justify playing an activist role through arguing that they better represent the public than government representatives.²⁶ While it could be argued that the aggregation of NGOs as agents of special interests could theoretically holistically represent the views of the global community in the same way that democracies incorporate the special interests held by their constituents, this is not the case. For such democratic aggregation to occur, all views and interests would have to be represented by specific NGOs, each with equal access to the international decision making processes. Since this is not the case, this counter-argument may be not convincing. In fact, the involvement of stakeholders in international governance may even pose democratic challenges: while it’s assumed that governments defend the interests of the states they represent, and while government authorities are typically appointed and authorised by elected officials to carry out their tasks, NGOs and stakeholders exert their influence without such control by and accountability to the general public. Thus, the active NGO and stakeholder involvement in international environmental governance could raise concerns with respect to their accountability and democratic legitimacy.

This concern of accountability and democratic legitimacy becomes even more pressing if the existence of a “New World Order” is accepted, as is proposed by Anne-Marie Slaughter.²⁷ Building on examples where international institutions function effectively when drawing significantly upon the existence of informal policy networks, Slaughter presents a world that is largely run by networks of elites with close personal ties to one another. In her model, the

individuals who make up these networks are public servants such as regulators, bureaucrats, diplomats and judges—personalities with explicit mandates under public law, formally held accountable to the people through elected governments and representative institutions. While Slaughter’s “network” conception seems to depend on the continuing viability of a clear boundary between public and private, there is a real risk that these networks operate in a way “whereby network ‘insiders,’ both governmental and non-governmental, cooperate in a manner that defies formal boundaries between public and private”.²⁸ But if global governance is run by networks that include both governmental and non-governmental actors, then the selection of who should be a member of the decision-making body becomes complex and raises important questions of accountability and legitimacy, as the general public is excluded from the selection of the members of the network and the non-governmental members of the network are not accountable to the general public but to special interests.

4. The Benefits of NGO and Stakeholder Participation

Although the claim that NGOs would enhance the democratic legitimacy of international environmental governance must be rejected, there are nevertheless other important benefits of non-state actor involvement in international environmental policy making and implementation. NGOs, as compared to state actors, have the benefit of being able to focus on one specific interest and can express themselves more freely on that issue, being less constrained by the general interest of a specific nation at large. Moreover, NGOs often have specific expertise and knowledge. They enhance public support and assist in the domestic internalization and implementation of internationally agreed norms and commitments. Additionally, “[i]n being entrepreneurial, NGOs compete with other actors in a dynamic marketplace of ideas” and can be more creative in constructing and encouraging new norms, and new models of governance.²⁹

Non-state actors can play vital, supportive roles in each step of the process of developing, implementing, and monitoring international environmental policies within international environmental governance:³⁰

- i) By collecting, analyzing, and disseminating relevant information, drawing attention to new and emerging issues that need international attention and by mobilizing public opinion through information campaigns and broad outreach activities, they can influence the *agenda-setting of international environmental governance*.
- ii) They can inspire and shape the *development of international norms and policies* by providing expert advice to state-centered international negotiations, formulating views and expressing interests that might otherwise be ignored by state actors, by mobilizing public opinion at the national level to influence the position of representatives, and by lobbying and monitoring governmental delegations during negotiations. Several forms or channels for non-state actors involvement exist to influence the development of norms and policies by international governmental institutions: The most common form of this type of influence is non-state actor participation as observers in international meetings, negotiations and national delegations. Moreover, some international institutions directly seek the expertise and the advice of NGOs on specific issues or include NGOs in technical committees or advisory groups. Finally, non-state actors can strongly influence international policy development by formulating and applying norms, standards, codes of conduct, or practices that influence governmental policy formulation.
- iii) They can contribute to the *understanding of international norms and policies* through dissemination of information to the public, engaging in interpretation of international rules and norms, and by contributing to international adjudication by making amicus curiae (friends-of-the-court) submissions.
- iv) They can support the *implementation of international environmental policies* by advising state actors, supporting state implementation and by performing operational functions themselves.
- v) Finally, they can support *compliance with commitments and policies* by monitoring state action, by drawing the public attention to implementation problems, sue institutions at the national level for non-action, and, in specific environmental regimes, by triggering compliance procedures, i.e. initiate the procedure established by any given international environmental agreement to assess the compliance of its parties with the obligations under the agreement.³¹

These contributions of non-state actors to the process of developing, implementing, and monitoring international environmental policies undoubtedly increase the quality of international regulations and policies and improve the outcomes associated with them. Thus, it is not the misleading claim of a higher democratic legitimacy that makes NGO participation desirable, but the fact that NGO participation may provide additional views and proficiency and that they promote transparency and accountability. Clearly, NGO and stakeholder involvement *does*

generally increase the legitimacy of international decision-making even if NGOs are unable to address the “democratic deficit” of environmental governance. However, in order to ensure that such benefits of stakeholder and NGO participation are possible, it is crucial that non-state actors do have specific expertise and actively accompany, monitor and support the governmental negotiations. And, it is important that the processes are organized in a manner which allows for real interaction between non-state and state actors. Experience shows that this is not always the case.

5. Getting Beyond the Zero-Sum Game Mentality between State and Non-State Actors with Respect to Stakeholder Participation

The United Nations Commission on Sustainable Development (CSD) has been praised in the past for having been a pioneer in engaging non-governmental actors, for organizing rich and stimulating multi-stakeholder dialogues at each of its meetings, and for including NGO representatives in many of its official government delegations. However, a critical analysis of the stakeholder and NGO participation of the CSD would come to less positive conclusions. Most of the time, the multi-stakeholder segment does not provide for active interaction between state and non-state actors but rather, is a platform for repeating already-known positions instead of a forum for collective brain-storming that provides new insights, expertise and stimulates new ideas that would be relevant for the issues under debate. A more provocative description would even argue that the CSD stakeholder dialogues—which, in the interest of political correctness, are openly lauded as enlightening, thought provoking and crucial for quality and success of the CSD deliberations—have evolved into formalized rituals that restrict the non-state actors’ impact. As a result, each year non-state representatives repeat more or less the same mantras, which too often fail to provide useful insights or tangible approaches to addressing the issues under consideration. The fact that a representative of the indigenous people is wearing a marvellous dress does not guarantee that his or her intervention is enlightening; the fact that the presence of a youth delegate is refreshing does not add value to the substance of his or her contributions; and the fact that a representative of the environmental community is deeply concerned about the issues under discussion does not guarantee a constructive analysis of the

problem at hand. Additionally, as a time specifically demarcated for non-state actor involvement, the introduction of multi-stakeholder segments has provided an excuse for excluding non-state actors from other parts of the CSD sessions.

Given the fact that the multi-stakeholder segments do not provide additional or new insights in the issue under debate, the governmental delegations often use the multi-stakeholder segment to work on their position or to consult and coordinate informally. However, as it would be considered as political incorrect if a national delegation did not attend the multi-stakeholder segment, leaving its seat in the meeting room empty during this time, an intern, a junior member of the delegation or the NGO-representative in the government delegation is often sent to attend the multi-stakeholder segment so as to mark governmental presence and interest. Later in the process, as delegations exchange non-non papers³² and begin to negotiate in small informal-informal contact groups³³, which perhaps due to their unofficial nature are absolutely vital to the negotiation process, NGOs and non-state representatives are excluded. And in the final negotiation phase when delegates are overwhelmed with work and responsibilities, they no longer have the time to respond to questions or contemplate potentially important proposals that NGOs attempt to introduce to the state representatives. Although a simplified—and thus, potentially controversial—picture of the dynamics within the CSD, the above description highlights important shortcomings of the current system that are too often overlooked.³⁴

Thus, the once-commended NGO and stakeholder participation at the CSD is not an adequate example of the positive impact of proactive involvement of non-state actors. CSD multi-stakeholder segments fail to ensure that non-state actors provide useful forms of expertise that could be usefully employed by delegates. Additionally, these segments do not provide sufficient in-depth interaction between non-state actors and other delegates. Despite the shortcomings of multi-stakeholder segments, non-state representatives have greatly appreciated their inclusion in the formal agenda; as non-state actors have come to increasingly enjoy their new formal role, they have consequently begun to behave more formally. However, it seems that the formalization³⁵ and proceduralization³⁶ of stakeholder participation has not furthered its impact and value. While some thought that formalizing the stakeholder participation would not only secure a prominent time-slot for interaction with non-state actors but also give more weight and

importance to the non-state actors as such, the reality seems to be that by allocating specific time segments to NGOs and by formalizing their participation in the deliberations of governmental representatives, flexibility and dynamic have been lost. Additionally, the formal multi-stakeholder segment has legitimized the exclusion of non-state actors from the other parts of the process, namely the less formal part where concrete results are negotiated.

In order to change the current procedure, non-state actors would have to be ready to renounce the time, procedural certainty, and formality that is allocated to them in the formal multi-stakeholder segment; delegates would have to invest real interest to exchange with non-state actors; or time that is reserved for governmental-only deliberations would have to be opened for non-state participation. However, non-state actors do not seem to be ready to give up what they have gained—namely, the special segment formally allocated to them as well as the semi-official status they have earned through this formalization; on the other hand, Government delegates are not ready to sacrifice any more of “their time” during CSD meetings to NGOs. It seems that the formalization and proceduralization of NGO participation in the CSD—and in many other processes—have led to a zero-sum game where no party is benefiting from the contributions of the other. This suboptimal result cannot be rectified without reforming the zero-sum game mentality held by each of the parties at hand.

The benefits of expunging this zero-sum game mentality from environmental governance are clear. For example, there are other cases marked by more dynamic, direct and active non-state actor participation where a more fruitful non-state actor involvement has been reached due to a cooperative approach taken by state and non-state actors. One such example is the process to develop the Strategic Approach to International Chemicals Management (SAICM).³⁷ The decision to develop SAICM was taken in 2004. In light of the desire to bring in the specific knowledge and expertise of the non-state actors involved in chemicals management issues, the need for a strong and direct involvement of all relevant stakeholders in the process was accepted from the beginning of the process. Thus, NGOs were allowed to participate fully in all of the work of the SAICM Preparatory Committee and to attend as equal partners both the formal sessions and the informal negotiations. Over sixty NGOs from the agriculture, development, environment, health, industry, and labour sectors participated actively in the negotiations of

SAICM with the full right to take the floor, express their views and make constructive proposals. Throughout the SAICM process, NGOs brought valuable expertise and knowledge and in the end, many of their ideas and proposals were taken up.³⁸ The adoption of SAICM was attended by over 140 governments, 60 specialized NGOs and 20 intergovernmental organizations from the agriculture, development, environment, health, industry and labour sector, a magnitude and diversity of attendees that lent the revolutionary stress on stakeholder participation even greater significance.

Several reasons made this participatory approach so productive: NGO participation at SAICM was not restricted by formalized procedures or a constrained stakeholder segment; NGO's greatly invested in their SAICM participation, coming well-prepared with specific, concrete proposals; NGOs coordinated effectively among themselves and with governments throughout the process and they were clearly not perceived as competitors to the states but as active and competent partners. One could even argue that within the SAICM-setting, it has been possible to leave the traditional interstate paradigm and to move towards a collective concern or community interest approach.³⁹ In this case, extensive NGO participation was not sought in order to achieve greater democratic legitimacy but rather in order to tap stakeholders' practical expertise and competency.

Thus, there seem to be at least six fundamental differences between a CSD-like zero-sum game mentality case and the more dynamic SAICM model: (i) while the participation of non-state actors within the CSD is focused on a formalized stakeholder dialogue, this is not the case in the SAICM process; ii) while the CSD is perceived as a process dealing with the broad, overarching theme of sustainable development, SAICM addresses a more specific issue; iii) while the CSD seems to have attracted non-state representatives with a less focused background, less specialized expertise and little commitment to focus on the very details of the ongoing discussions between the government delegates, SAICM has attracted NGOs with specific expertise and knowledge in chemicals management; iv) while the non-state actors often formulate general and broad views not directly linked to the issues under debate at the CSD, they have provided specific comments and proposals during the SAICM process; v) while in the CSD-process the formalized multi-stakeholder segments are sometimes perceived as non-productive, so non-state actors are too

often viewed as obstacles, stakeholders have been seen as competent partners bringing in needed expertise and information in the SAICM-process; and vi) while governments often primarily focus on the defence of their personal interests within the CSD, they have tended to search for solutions to pressing common challenges in the SAICM context.

For the CSD and other environmental governance structures, a move beyond the zero-sum game mentality towards a more flexible system that allows for direct interaction between state and non-state actors throughout the process would probably require several changes:

- *De-formalization of participation:*
Formalization and proceduralization by allocating preset and thus limited segments to stakeholders excludes them from other parts of the debate. It makes it easy for government representatives to escape interaction with non-state actors. Formalization and proceduralization also seem to attract non-state actors with less specific expertise and those that are inclined to focus on the form of participation and not the substance of contribution. Formalization and proceduralization should be replaced with more flexible meeting structure that allows for direct and spontaneous interaction between state and non-state actors. At the same time, non-state actors should not internalize form and procedure, but remain innovative and thought-provoking participants.
- *Generality of expertise and input should be exchanged for specificity:*
A key benefit of non-state involvement in policy deliberation is the specific expertise and information that they can provide and the fact that they may formulate interests and views that otherwise might have been lost in a state-centric process. By broadening the information base, they can contribute to an improvement in the quality of decision-making. Therefore, NGOs must not repeat generalities but focus on making specific comments and proposals on issues under debate.
- *Non-state and state actors as partners not as competitors:*
State actors should perceive the non-state actors not as competitors for time or influence but as partners who provide for the specific insights and information needed. At the same time, it is crucial that these partners, focusing on their role to broaden the information base for good decision making, do not perceive government representatives as enemies of the public interest who defend a short-term interest of a small privileged elite whenever government representatives take a different view than the one promoted by non-state actors. They must go beyond simple accusation and try to understand the concerns and challenges that the government actors face and contribute actively to a common search for the best solution to solve the specific challenge under debate.

6. Conclusions

This paper has argued that formalization and proceduralization of stakeholder participation may lead—and has led in certain processes such as the CSD—to a non-productive zero-sum game situation. Stakeholder participation, when excessively formalized and proceduralized, risks becoming an inefficient, crude ritual in which stakeholder influence is limited and the process of interaction between state and non-state contributors fails to be interactive and dynamic. Moreover, such a system is conducive to a less-than-desirable situation where the non-state actors most familiar with the system and its procedures will have their voices heard, while those non-state actors with the most needed expertise on a specific issue under debate will remain silenced. This will lead to zero-sum game situation where neither NGOs nor Governments are willing to change their allocation of time and resources, and any gains in time allotted to one party are seen as direct setbacks by the other. Although all sides are not entirely satisfied with the situation, each side fears losing more than they might gain if the arrangement were to be changed; NGOs would not be ready to lose their formal (but nonetheless limited) platform of influence and governments would not want to lose what they have been able to maintain as a “government only” sphere of policy making; both sides are afraid of “unknown territories” of state and non-state interaction.

Comparing the UN Commission for Sustainable Development—an example illustrating the zero-sum game situation of stakeholder participation—with the Strategic Approach to International Chemicals Management—an example with active and dynamic stakeholder involvement—it seems that NGO and stakeholder involvement is less effective in processes which address broad issues at a general level and where NGO and stakeholder involvement is strongly formalized and institutionalized. Such processes will attract NGOs with a less focused background, less specialized expertise and little commitment to focus on the very details of the ongoing discussions between the government delegates. However, because of the zero-sum game situation, it is difficult to move from such a formalized and static situation towards a more dynamic and interactive process. A move beyond this suboptimal situation, such as the one in the CSD, would require several changes: (i) *de-formalization of participation*: limited segments allowed to stakeholders and excluding them from other parts of the debate should be replaced with interaction throughout the whole process; (ii) *generality with respect to NGO backgrounds*

should exchanged for specificity: NGOs should bring in specific expertise and they should make specific comments and concrete proposals on issues under debate; (iii) *non-state actors as partners not as competitors*: state actors should perceive the non-state actors not as competitors for time or influence but as partners bringing insights needed in the common search for the best solutions for environmental issues.

It seems as though the key challenge to today's international environmental governance is not the lack of a strong and authoritative central institution addressing the main existing and emerging issues and providing overarching policy guidance, nor is it a "democratic deficit" or insufficient NGO and stakeholder involvement. Rather, the main challenge is the lack of political will, political commitment and prioritization of environmental interests. This lack of political will and commitment and lack of political prioritization of environmental concerns, however, cannot be an excuse for inadequate environmental policy. While the strength of a certain regime and the effectiveness of policies are a reflection of political will and political prioritization, political will and prioritization are not a given fact that cannot be influenced. By raising public awareness of challenges and problems and by monitoring policy development and implementation NGOs can become a strong force in addressing this exact fundamental failing of today's system of environmental governance. As long as today's overly formalized systems of non-state actor participation in processes of international environmental governance are maintained, NGOs and other non-state bodies will remain sub-optimally limited in their functionality. Until reform on this front is enacted, NGOs ought to devote their energies to raising awareness and lobbying at the national level when outside of the formalized processes of negotiation, and focus on their role as governance watchdogs when within. Specializing in these roles while shying away from certain international governance processes that constrain non-state actors through over-formalization of their involvement will serve to maximize non-state actors' impact.

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Endnotes

¹ Zero-sum game represents the case where any gain experienced by one individual in a system is associated with losses elsewhere in the system of equal sum magnitude to that of the gain. All gains in such a system are cancelled out by losses and no aggregate, or social, gain is possible for the system as a whole.

² Perrez and Ziegerer 2008, 254-255

³ Throughout this article, the term “stakeholders” is used as including all actors that have an interest at stake, thus state- and non-state actors; non-state actors include non-governmental organizations (NGOs) and international (intergovernmental) organizations; NGOs include both, so-called "public interests NGOs" and industry and business representatives; private actors would include NGOs and individuals.

⁴ Concerning the criticism that the international regime suffers from a “democratic deficit”, see generally: Nye Jr., Joseph S (2001), Moravcsik 2004.

⁵ Esty 2006, 1497-1499; Najam, Papa, and Taiyab 2006, 3.

⁶ Esty and Ivanova 2002, 191-192; Perrez 2001; Roch and Perrez 2005.

⁷ Najam, Papa, and Taiyab 2006, 62 and 65-73; Gemmill and Bamidele-Izu 2002, 89-95.

⁸ Meidinger 2006.

⁹ Kingsbury, Krisch, and Stewart 2005, 23-25; Sands 2003, 70-122.

¹⁰ Matz 2005, 342.

¹¹ El-Ashry 2007, 7.

¹² Perrez 2001; Roch and Perrez 2005.

¹³ Roch and Perrez 2005, 3–6; Sands 2003, 25-69.

¹⁴ Perrez 2000, 271-297.

¹⁵ French 2002, 176-177.

¹⁶ Najam, Papa, and Taiyab 2006, 57-62.

¹⁷ Perrez and Ziegerer 2008, 254.

¹⁸ Ivanova 2005; Najam, Papa, and Taiyab 2006, 14-16 and 36-56; UNEP 2001.

¹⁹ Perrez 2001, 452-453; Roch and Perrez 2005, 15-17. See also: Perrez and Ziegerer 2008, 253-55.

²⁰ Perrez and Ziegerer 2008, 255-258.

²¹ 2005 World Summit Outcome, § 169.

²² French 2002, 195.

²³ Obregón 2006, 103-104.

²⁴ Neusüss 1984.

²⁵ Weiler 2004, 549 and 552.

²⁶ Charnovitz 2006, 365.

²⁷ Slaughter 2004.

²⁸ Howse 2007, 232-233.

²⁹ Charnovitz 2006, 361-363.

³⁰ Charnovitz 1997, 271-274; Charnovitz 2006, 352-355; Esty 1998, 129; Gemmill and Bamidele-Izu 2002, 83-95.

³¹ See e.g. Paragraph 18 of the Compliance Procedures of the Aarhus Convention, available at <<http://www.unece.org/env/pp/documents/mop1/ece.mp.pp.2.add.8.e.pdf>>.

³² “Non-non papers” are used to preliminarily test ideas or propositions, off the official record of a given conference. A “non-non paper” is one degree of informality higher than a “non-paper,” which is an unofficial document circulated during negotiations when one party seeks feedback on a certain proposition without being held officially responsible for the proposition in question.

³³ “Informal-informal” groups are meetings of delegates even less formal than “informal” contact groups. An example of an informal-informal group is when delegates discuss an idea off of the record in the corner of a meeting room.

³⁴ In fact, this author has several times benefited during the CSD negotiations from the exchange and discussion with NGO representatives and from the concrete proposals and suggestions on specific issues they were sharing with the author. However, these positive interactions have not

taken place in the formalized setting of the multi stakeholder dialogue but informally in the corridors. And, they have always involved NGO representatives with specific knowledge and expertise addressing very concrete issues under debate.

³⁵ “Formalization” refers to a process by which the form or the formality of certain activities becomes increasingly important, such as when statements must be made in certain prescribed ways: i.e. “the distinguished delegate from country X”.

³⁶ “Proceduralization” is understood as a process by which activities are increasingly bound to follow strict procedures, such as when participants cannot directly react to each other but have to ask questions through the chair, or when non-state actors are forced to speak once all the state actors have already spoken. As such, proceduralization can also include an element of formalization but is not limited to that.

³⁷ Perrez 2006.

³⁸ Gubb and Younes 2006; Perrez 2006, 247-249.

³⁹ Brunnée 2006, 307.