

Global Governance, Participation and the Public Sphere

AMONG THE MOST COMMON CRITIQUES OF GLOBALIZATION IS THAT this process sacrificed democratic politics to the demand for functional international cooperation and economic liberalization. Since the Second World War, a considerable number of international legal regimes have developed which institutionalize some kind of centralized legislation or executive with more or less influence on domestic law and its every day practice.² A most striking example is the World Trade Organization (WTO) whose rules increasingly determine the environmental, agricultural, health and food safety rules of democratic communities, and, thus, affect the fundamental welfare of their citizens. The increasing capacity of international governance regimes to generate law and regulations binding all citizens has come to conflict with this problem of democratic legitimacy. The idea of democratic legitimacy is that the citizens decide for themselves the content of the laws that organize and regulate their political association. Separating the process of rule-making from politically accountable institutions, global governance is argued to suffer a massive 'democratic deficit'.³

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² Armin von Bogdandy, 'Law and Politics in the WTO: Strategies to Cope with a Deficient Relationship', *Max Planck Yearbook of United Nations Law*, 5 (2001), pp. 609–74.

³ While the decisions of international institutions have an effect on the citizens, the only form of legitimation available today is a highly indirect one derived from the (democratically elected) national governments (and their representatives in international organizations), rather than from the collectivity of world citizens.

In this paper, we explore the possibility of democratic and legitimate decision-making at the global level – in both its normative and its analytical dimensions – from the perspective of a deliberative theory of politics. This theory claims that democratic legitimation⁴ can be generated by means of deliberation between a variety of social actors (e.g. government officials from different national communities, scientific experts, NGOs, etc.).⁵ Political decisions are reached through a deliberative process where participants scrutinize heterogeneous interests and justify their positions in view of the common good of a given constituency. In our view, any bestowal of democratic legitimacy on global governance must ultimately depend on the creation of an appropriate public sphere, i.e., an institutionalized arena for (deliberative) political participation beyond the limits of national boundaries.

Moreover, we argue that actors from organized civil society play an important role in the creation of a public sphere. They have the potential to act as a discursive interface between international organizations and a global citizenry. Their role is to monitor policy-making in these institutions, to bring citizens' concerns into their deliberations and to empower marginalized groups so that they too may participate effectively in global politics. Given the functionally differentiated and often highly technical nature of global governance, we do not envisage the transnational public sphere as a distinct or overarching realm of broad public deliberation at the global level. Rather, our vision of the public sphere corresponds to the model of functional decision-making and functional participation in the deliberative forums of governance arrangements.⁶

⁴ Legitimacy can be understood as a general compliance of the people with decisions of a political order that goes beyond coercion or the contingent representation of interests. Normatively, democratic legitimacy results from a rational agreement among free and equal citizens.

⁵ Robert Howse is one of several authors who argue that the provisions of the WTO and their interpretation by the dispute settlement body can be understood not as usurping legitimate democratic choices for stricter regulations, but as enhancing the quality of deliberation among citizens about risk and control, although only at the level of membership (R. Howse, 'Democracy, Science, and Free Trade: Risk Regulation on Trial at the World Trade Organization', *Michigan Law Review*, 98: 7 (2000), pp. 2329–57).

⁶ Stijn Smismans, 'The European Economic and Social Committee: towards Deliberative Democracy via a Functional Assembly', *European Integration Online Papers*, 4: 12 (2002).

Deliberative participatory publics at the global level stimulate a criss-cross of broader public deliberation in which policy choices (reported and discussed, e.g. within national media) are exposed to public scrutiny. Such a conception of a transnational public sphere and its specific relation to decision-making processes within international organizations is lacking from the current global governance debate.

This paper is organized as follows: The next section briefly reviews different approaches to democratic legitimacy of international governance and locates our own theoretical standpoint in the deliberative tradition. In the following part we develop an argument about the central role of the public sphere in democratizing global governance. We highlight the close normative connection between processes of political decision-making, citizen participation and public deliberation. Moreover, we specify the central role that civil society can play in establishing such a global public sphere. The final section then illustrates our claims about the democratizing potential of civil society involvement and critical public discourse with some empirical examples from the WTO.

DEMOCRATIZING GLOBAL GOVERNANCE: THE DELIBERATIVE APPROACH

a) Democracy without Representation and without a Demos?

Democracy is a political ideal that applies principally to the arrangements for making binding collective decisions. Such arrangements are democratic if they ensure that the authorization to exercise public power arises from collective decisions by the citizens over whom that power is exercised. There are a variety of institutional forms of modern government that resolve this principle of democratic will-formation in slightly different ways. Most western countries have developed some form of electoral democracy. It formally secures the inclusion of citizens, their interests and concerns into government by means of aggregation of individual interests through political parties, corporations and parliaments. For the majority of citizens, participation in this system is reduced to voting in more or

less frequent political elections.⁷ In addition, there are indirect and voluntary forms of participation in the political process, as, for example, through active involvement in political parties, interest groups, social movements and civil society associations. By addressing problems through public discussion, democracy not only assumes access to information but also exposure to a range of alternative solutions to practical problems.

International governance is remote from citizens, its procedures are opaque, and it is dominated by diplomats, bureaucrats and functional specialists. Although the foundational legal acts of international governance are often subject to national ratification processes, its everyday norms and standards are negotiated by non-elected experts and government officials. They come together behind closed doors, free from the usual intrusion of mandated public representatives and interest groups in their decision-making processes. International organizations do not ensure adequate information to the (ordinary) interested citizen nor is there sufficient public debate about their policy choices. Critics who see international organizations as the triumph of global technocracy see them enshrining professional expertise at the expense of popular sovereignty. Along these lines, it has been forcefully argued that international organizations cannot be democratic because, first and foremost, international policy elites are not (elected) representatives of the people and, second, there is no shared collective identity (a *demos*) and no common political culture supportive of international institutions.⁸

Yet, if global governance will be democratic, it will certainly not be a national democracy writ large.⁹ How can we devise an

⁷ The prevalent design of a western parliamentary mass democracy has been criticized extensively for being remote from citizens, for not reflecting their true concerns, and for fostering an empirical trend away from the active *citoyen* towards the passive and disinterested *bourgeois*. In the view of participatory democrats, interest aggregation dominates over the value-oriented discussion seeking political consensus and novel solutions to problems through a cooperative and creative process of dialogical exchange; see Carol Pateman, *Participation and Democratic Theory*, Cambridge, Cambridge University Press, 1970; Benjamin Barber, *Strong Democracy: Participatory Politics for a New Age*, Berkeley, University of California Press, 1984.

⁸ Robert A. Dahl, 'Can International Organizations Be Democratic? A Skeptic's View', in I. Shapiro and C. Hacker-Cordon (eds), *Democracy's Edges*, Cambridge, Cambridge University Press, 1999, pp. 19–36.

⁹ Eric Stein, 'International Integration and Democracy: No Love at First Sight', *American Journal of International Law*, 95: 3 (2001), pp. 489–534.

alternative model of democratic will-formation that corresponds to the emerging system of global governance? This contribution argues that a deliberative understanding of democratic collective decision-making is particularly suited for global governance where there is a lack of competitive elections¹⁰ and, as yet, a condition of scarce transnational public sphere. Here, democracy is understood as a framework of social and institutional conditions that facilitate the expression of citizens' concerns and ensures the responsiveness of political power. Democracy is regarded as intrinsically enhancing the legitimacy of government or governance because it ensures the (procedural) conditions for a high quality of the decision-making process, with respect to both regulatory choices and equality of access of affected citizens (or their representatives) in this process. Deliberation, understood as reasoning that is aimed at best addressing practical problems, focuses political debates on the common good: interests, preferences and aims that comprise the common good are those that 'survive' deliberation.

b) Deliberation without Participation?

In the context of international relations, the model of deliberative decision-making has taken on a vision *sui generis*. Since a parliamentarization of politics above the nation-state is not in sight,¹¹ enhanced political deliberation has been regarded as an alternative avenue for global governance. Well-informed and consensus-seeking discussion in expert committees that are embedded in international decision-making procedures has been suggested as an effective remedy to the legitimation problems of international governance. In this perspective, political deliberation is viewed primarily in a functional fashion as a prerequisite for a high level of efficiency, efficacy and quality in political regulation. This approach to deliberation is inspired by thinking from public policy and international relations

¹⁰ Given the huge differences in the size of the populations of different countries, no system of representation could give equal weight to the vote of each citizen and prevent small countries from being outvoted by larger countries.

¹¹ Only few believe that international institutions not only should, but actually can be, democratized in this sense, e.g., Richard Falk and Andrew Strauss, 'Toward Global Parliament', *Foreign Affairs*, 80: 1 (2001), pp. 212–20.

theory that have highlighted the importance of scientific expertise and consensus-seeking within epistemic communities of experts.¹² Global governance regimes are said to draw their legitimacy from the deliberative quality of their decision-making process: it is not designed to aggregate self-interests, but rather to foster mutual learning, and to eventually transform preferences while converging on a policy choice oriented towards the public interest.¹³ Deliberation among experts becomes a key device of 'good governance' by a responsive administration.

The legitimizing capacity of expert deliberation has also been grounded in empirical arguments. It has been claimed that well-informed rules are effective because they can command assent and compliance by citizens, and thus enhance the (social) legitimacy of political authority. However, some important empirical arguments have been made against this alleged automatism. Thompson and Rayner,¹⁴ for example, present evidence from environmental policy and risk regulation, which indicates that citizens assent to rules only if they have the impression that their own concerns have been treated fairly in the process of rule-making. Consequently, the authors argue for more inclusive institutional designs that accommodate the views of non-experts in deliberative decision-making. In the case of risk regulation, this implies consulting with consumer organizations, environmentalists and, when locating hazardous sites, the local population.

At the international level, the emergence of a transnational social movement against technocratic global governance is evidence of the fact that the 'permissive consensus' for secretive forms of rule-making among experts is vanishing. The legitimacy crisis of global governance manifests itself in transnational public discourse on these

¹² Peter M. Haas, 'Introduction: Epistemic Communities and International Policy Coordination', *International Organization*, 46: 1 (1992), pp. 1–35.

¹³ However, it cannot be regarded as democratic: Even if we trust experts and scientists – for example in 'comitology' within the EU (see Christian Joerges and Jürgen Neyer, 'Transforming Strategic Interaction into Deliberative Problem-solving: European Comitology in the Foodstuffs Sector' *Journal of European Public Policy*, 4: 4 (1997), pp. 609–25) – to advocate norms that, in their view, serve the common good of a polity and not some particular interest, *their* assessment and *their* view of the good still prevails.

¹⁴ Michael Thompson and Steve Rayner, 'Risk and Governance Part I: The Discourses of Climate Change', *Government and Opposition*, 33: 2 (1998), pp. 139–66.

international organizations and their policies.¹⁵ The popular movement against the WTO and against the IMF does not only target capitalist principles of neo-liberal globalization. It also critiques their institutional arrangements – an expression of distrust regarding the role of experts and diplomats as protagonists of international governance. In the eyes of many stakeholders and affected citizens, elite expertise and bureaucratic deliberation alone do not suffice to make international organizations legitimate.

More importantly in the context of this paper, the desirability of ‘good governance’ by elites is also questionable from a normative perspective on democratic legitimacy. Deliberative government is not intrinsically democratic because ‘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’.¹⁶ Deliberative democracy must ensure that citizens’ concerns feed into the policy-making process and are taken into account when it comes to a decision on binding rules. Hence, deliberative democracy relies on certain *participatory* conditions for rule-making. From such a standpoint, it is crucial that the process of (political) deliberation within international organizations is opened to both public scrutiny and to the input of stakeholders.

CITIZEN PARTICIPATION AND THE PUBLIC SPHERE

a) Democratic Legitimacy and the Public Sphere

The desirability of expert deliberation can be contrasted with the idea of *public* deliberation as a source of democratic legitimacy for governing (at the nation-state and global level). In Habermas’s proceduralist theory, for example, the public sphere plays a key role: it is conceived as a dispersed, all-encompassing, discursive network within which citizens, connected by the means of mass communication, form currents of opinion in seeking how best to resolve

¹⁵ Jens Steffek, ‘The Legitimation of International Governance: a Discourse Approach’, *European Journal of International Relations*, 9: 2 (2003), pp. 249–75.

¹⁶ Joshua Cohen and Charles F. Sabel, ‘Sovereignty and Solidarity: EU and US’, in J. Zeitlin and D. Trubek (eds), *Governing Work and Welfare in a New Economy. European and American Experiments*, London, Oxford University Press, 2003, pp. 249–75.

common problems.¹⁷ A public understood as a collectivity of persons connected by processes of communication over particular aspects of social and political life, can, in principle, extend beyond national borders. What is important to the notion of public deliberation is not so much that everyone participates but more that there is a warranted presumption that public opinion is formed on the basis of adequate information and relevant reasons, and that those whose interests are involved have an equal and effective opportunity to make their own interests (and their reasons for them) known. This 'public use of reason' depends on civil society as 'a network of associations that institutionalizes problem-solving discourses on questions of general interest inside the framework of organized public spheres'.¹⁸

Habermas's theory distinguishes between political institutions (or decision-making bodies) and the broader, decentred public sphere. Our conception departs from this view insofar as it focuses on sites of public deliberation between policy-makers and stakeholders. We emphasize the role of organized civil society participating *within* governance regimes as an intermediary agent between the political institutions and the wider public. We argue that, at the international level, the public sphere – conceived as a pluralistic social realm of a variety of sometimes overlapping or contending (often sectoral) publics engaged in transnational dialogue¹⁹ – can provide an adequate political realm with actors and deliberative processes that help to democratize global governance practice. Deliberative participatory publics within governance regimes stimulate an exchange of arguments in which policy choices are exposed to public scrutiny.

At the national, regional and local level there are many forms of deliberative participation as a means of holding power accountable. It occurs in forums in which citizens (or representatives of organized civil society) discuss with one another and with power-holders their evaluation of policy choices. These participatory forums have different degrees of institutionalization and impact on the political system.

¹⁷ Jürgen Habermas, *Between Facts and Norms*, Cambridge, MA, MIT Press, 1996, p. 360.

¹⁸ *Ibid.*, p. 367.

¹⁹ Patrizia Nanz, 'Legitimation of Transnational Governance Regimes: Foodstuff regulation at the WTO', in C. Joerges, I. Sand and G. Teubner (eds), *Constitutionalism and Transnational Governance*, Oxford, Hart Publishing, forthcoming 2004.

They come in the form of civic review boards, implementation studies and periodic official participatory hearings that follow the policy-making process or consultation of civil society. Wider public spheres can further democratic legitimacy by means of questioning, praise, criticism and judgement.

What institutional mechanisms can be envisioned at the global level to serve as an institutional focus for a broader, decentred public sphere? We think of deliberative forums in which groups of social actors (e.g., national officials, scientific experts, NGOs, etc.) cooperatively address a certain global problem, and the ensemble of which could serve for enhancing broader transnational public debates. Such participatory arenas reserve themselves the prerogatives to scrutinize and monitor policy choices of international organizations. They introduce a deliberative element to the public level, while protecting the autonomy and internal complexity of the administrative realm (e.g., outreach meetings could be understood as such publics). If we conceptualize the public sphere as a communicative network where different (national and sectoral) publics partially overlap, the emerging features of global governance regimes can also be seen as offering the chance for the creation of new transnational communities of political action.²⁰ From such a perspective, global governance regimes – when understood as sites of public deliberation and cooperative inquiry – may yield unprecedented forms of trust and solidarity amongst a variety of social actors (government officials, experts, NGOs, stakeholders, etc.) with diverse (national/sectoral) perspectives on a certain issue. By fostering extended deliberation among those actors over the nature of problems and the best way to solve them, participatory arenas produce a pool of (transnationally) shared arguments which contribute to the emergence of a global public sphere.

b) The Role of Civil Society in Creating a Global Public Sphere

Global governance places new and more demanding epistemic requirements and normative constraints on participation in the

²⁰ Patrizia Nanz, 'Europolis. Constitutional Patriotism beyond the Nation State', PhD dissertation, European University Institute, Florence, 2001.

public sphere. Such entry requirements consist not only in cultural knowledge in general, but also in how to communicate across boundaries that differentiate the audience of modern societies, and, most importantly, in how to interact with and employ international institutions and global media of communication. We argue that organized civil society has a high potential to act as a 'transmission belt' between deliberative processes within international organizations and emerging transnational public spheres. Such a discursive interface operates in two directions: First, civil society organizations can give voice to citizens' concerns and channel them into the deliberative process of international organizations. Second, they can make the internal decision-making processes of international organizations more transparent to the wider public and formulate technical issues in accessible terms. From a normative point of view, these civil society actors must ensure that citizens' concerns are reflected in the decision-making process of international organizations.

This can function only under certain preconditions. First, international public organizations must provide appropriate access to documents and meetings to members of civil society. They must also incorporate all relevant concerns of civil society into their own agenda. Second, in order to contribute to the democratization of global governance, civil society organizations themselves must remain open to citizen input and take on board newly-emerging issues, including those of marginalized groups. Their own agenda must not be 'hijacked' by an elite group of professional activists or special interest groups. Only then can civil society organizations become 'legitimate' participants in global politics.

Transnational civil society is capable of bringing together people with shared (often highly specific) concerns, but very different identities, and considerable uncertainty as to how to address their aims. Deliberative processes among stakeholders thus can create the basis of solidarity beyond national boundaries: through a cooperative search for the best policy practice, engaging in (functional) political participation and sharing expertise. However, the emergence of a substantive (wider) transnational public sphere is not dependent on institutional arrangements. Moreover, enhancing transparency and generating public debate on global governance is only a necessary but not a sufficient precondition for its democratization. Whether (or not) a reformed world trade regime can become more democratic will crucially depend on its ability to develop institutional

mechanisms to make trade debates substantially more inclusive, for example through 'participatory publics' which monitor policy choices. Here disadvantaged groups of stakeholders should be able to participate actively either directly or indirectly through civil society organizations which systematically take on board their concerns.

By now, transnational civil society interacts with virtually all international organizations. There are, however, various degrees of institutionalization and formalization of this interaction.²¹ The fact that it interacts with international public organizations does not mean that it is necessarily influential in determining policy outcomes. Yet, as the case study below will illustrate, civil society can expose these organizations to public scrutiny and can force them to engage with certain issues they would have otherwise ignored. This is precisely what we claim about civil society's role in democratization: it helps to create a transnational public sphere in which the policies of international institutions are scrutinized and through which citizen concerns can be brought to bear in decision-making within these institutions.

TOWARDS A PUBLIC SPHERE OF GLOBAL GOVERNANCE: THE CASE OF THE WTO

a) The Deficits of the Status Quo

In the theoretical part of this paper we have outlined a deliberative approach to the democratization of global governance and highlighted the crucial importance of a transnational public sphere for this project. In this second section we will illustrate our theoretical argument with some empirical evidence from one core institution of global governance, the WTO. There is wide consensus that the WTO is not among the most open or transparent international organizations, and that its democratic legitimacy is questionable. Yet what would it take, in practice, to promote a deliberative

²¹ Steve Charnovitz, 'Two Centuries of Participation: NGOs and International Governance', *Michigan Journal of International Law*, 18: 1 (1997), pp. 183–286.

democratization of the WTO and the emergence of a public sphere in the functional realm of world trade policy? In the following sections we discuss some key problems, assess the status quo and propose a list of measures to promote the emergence of a public sphere of world trade.

Before we sketch possible remedies to the legitimacy deficit of the WTO, a brief outline of this deficit is in order. The WTO is a member-driven organization where the international bureaucracy plays a subordinate role in policy-making. Important decisions are taken by member states at the biannual Ministerial Conference or at the level of ambassadors in the permanent General Council in Geneva. Moreover, the WTO has adopted and formalized the practice of consensus voting from the GATT. In the GATT, virtually all decisions were taken by consensus. In practice, this meant that a text was negotiated until no party would object to it any more. The WTO charter includes the possibility of majority voting if no consensus can be reached. Yet a vast majority of three-quarters of the members is required in these instances, so that this possibility plays a minor role in practice and consensus-seeking still prevails. Therefore, one could be tempted to conclude that there is an efficient protection of national sovereignty and equality in the WTO.²²

In reality, however, the procedures at the WTO are much more problematic, and in order to explain the difference between paper form and actual practice a historical perspective should be adopted.²³ Although the WTO is formally an organization with almost universal membership and equal voting rights, it retains important characteristics of the 'club model' of international cooperation that characterized its predecessor, the GATT.²⁴ The club design aims at crafting 'coalitions of the willing and able' among the powerful players. That this prevails in the WTO is historically rooted in the fact that the GATT had not been designed as an international political forum, but

²² John H. Jackson, *The World Trade Organization*, London, Pinter, 1998, p. 47.

²³ Rorden Wilkinson, 'The WTO in Crisis. Exploring the Dimensions of Institutional Inertia', *Journal of World Trade*, 35: 3 (2001), pp. 397–419.

²⁴ Robert O. Keohane and Joseph S. Nye, 'The Club Model of Multilateral Cooperation and the World Trade Organization: Problems of Democratic Legitimacy', in R. Porter et al. (eds), *Efficiency, Equity and Legitimacy: the Multilateral Trading System at the Millennium*, Washington, DC, Brookings Institution, 2001, pp. 264–93.

as a rudimentary institutional framework for tariff bargaining. This task is facilitated by keeping marginal political players, domestic interest groups and the critical public out of the organization's business.

Due to this club tradition, which many WTO officials and delegates still hold dear, the decisive political debates over many world trade issues still take place in informal meetings between the big trading nations. The infamous 'green room' consultations at the Ministerial Conferences have become a synonym for obscure and secretive ways of international decision-making.²⁵ No records are kept of these meetings, thus preventing even ex-post reconstruction of the political debate. The heavily criticized green room style of decision-making is by no means a practice of the past. In November 2002 the Australian government invited representatives of 25 selected WTO members for a 'mini-ministerial' to clear some obstacles on the road to the Cancun Ministerial Meeting in 2003. This procedure triggered a sharp response from several governments but also the concerted protest of some 150 NGOs.

Since key deliberations are informal and by invitation only, the WTO has a problem with internal as well as with external transparency. Its policy-making process not only excludes the public, but also the majority of WTO member states. To exclude state representatives from decisive deliberations is of course a manifest breach of democratic principles. As a consequence, the club system tends to privilege the concerns and interests of the key trading nations at the expense of marginalized stakeholders. Yet even if all member states were represented in all decisive meetings, the problem of accountability towards the ultimate stakeholders of governance, i.e. the world's citizens, would still remain. Due to its secretive style of policy-making, the WTO inhibits informed public debate and critical reflection. For deliberative democratization of world trade governance additional steps are required, which can be subsumed under the following headings:

- transparency of the rule-making process;
- inclusion of stakeholder concerns;
- empowerment of marginalized groups of stakeholders.

²⁵ Green room consultations normally involve 10 to 25 out of more than 140 members.

b) *Transparency*

The enduring lack of transparency prevents the emergence of a public sphere on world trade policy. At present the WTO is in the middle of a process of institutional reform that aims officially at enhancing external transparency, access to documents and NGO participation. This process was initiated by reform pressure from the outside, and the organization, in fact, responded to it. In 1996 the WTO General Council took a first step towards an opening up of the organization by adopting official guidelines for the consultation of non-state actors.²⁶ In recent years the WTO has adopted a derestriction policy with the aim of facilitating public access to its policy documents.²⁷ By now, the WTO's presentation of documents on the internet is regarded to be among the best of all public international organizations in terms of content and user guidance.²⁸ These changes would definitely not have come about without a sustained campaign by civil society, in particular by activist NGOs, to open up the black box of world trade governance.²⁹ However, these reforms aimed at transparency and participation of non-state actors have gone only half way and the public sphere of world trade governance must be still regarded as in its infant phase.³⁰ Why is this so?

One major problem remaining is that of access to political deliberation within the WTO. Neither political meetings of the General Council and the committees, nor the norm review process of the dispute settlement panel are accessible to observers, let alone to the

²⁶ Gabrielle Marceau and Peter N. Pedersen, 'Is the WTO Open and Transparent?', *Journal of World Trade*, 33: 1 (1999), pp. 5–49; see also WTO document WT/L/162 (23 July 1996).

²⁷ The decision on speeding up the derestriction procedure was taken in May 2002, see WTO document WT/L/452.

²⁸ See One World Trust (ed.), *Global Accountability Report*, London, One World Trust, 2003, p. 15.

²⁹ Diana Tussie and Maria P. Riggiozzi, 'Pressing Ahead with New Procedures for Old Machinery: Global Governance and Civil Society', in V. Rittberger (ed.), *Global Governance and the United Nations System*, Tokyo, United Nations University Press, 2001, pp. 158–80.

³⁰ Peter Willetts, 'Civil Society Networks in Global Governance: Remediating the World Trade Organisation's Deviance from Global Norms', presentation for the Colloquium on International Governance, Palais des Nations, Geneva, 20 September 2002.

general public. In this respect the WTO is not much different from many other international organizations. However, there are in fact, regimes of multilateral international cooperation that are much more open to the scrutiny of registered observers. In the political process of the *United Nations Framework Convention on Climate Change*, for example, registered observers have access to a broad variety of political and expert meetings.³¹ If, in deliberation within, and deliberation about, the world trade system is to be inclusive the WTO must change its restrictive policy on observer access; the international public must have a chance to learn what is going on in its political meetings.

External transparency is a precondition for informed political debate and consequently also for the formulation of stakeholder concerns. It is obvious that stakeholders of governance can only formulate their concerns and interests if they have adequate information and capacity of critical judgement. Stakeholders need a good grasp of the social, legal and political problems involved in trade policy in order to be able to make (critical) use of information and participate effectively in the political process. They need to be able to anticipate the consequences of WTO decisions in fields such as intellectual property. However, even if actors have access to minutes of countless WTO meetings and records of complex decision processes, they are not automatically able to process this information. It threatens to create overload more than it facilitates oversight. Deliberatively democratizing WTO governance, therefore, implies that the citizens of the world should be able to receive comprehensive (and comprehensible) information about what is at stake in the WTO. This is, of course, a difficult task, as many world trade topics are extremely technical in nature and the consequences of decisions are not easy for non-experts to assess.

Complexity is a challenge experienced not only by ordinary citizens and stakeholders but also by some bureaucrats and state representatives within the trade regime. In fact, political officials in charge of negotiating at the WTO in many cases lack the expertise to envisage fully the whole range of consequences of their decisions. This is particularly problematic for representatives from developing countries, who often cannot rely upon the same expertise of supporting

³¹ Sebastian Oberthür et al., *Participation of Non-Governmental Organisations in International Environmental Co-operation*, Berlin, Erich Schmidt Verlag, 2002, pp. 117–41.

staff in Geneva or at their home base, which most northern delegations enjoy.³² Massive communication problems also occur between national delegations to the WTO and the elected members of parliament at home. With the notable exception of the US Congress, there is very little interaction between national trade negotiators and their parliamentary constituency. It has been observed that legislators' scrutiny in the ratification process of the Uruguay round results was perfunctory.³³ Again, this problem affects developing countries to a higher degree than industrialized WTO members.

With regard to the mass media, there still is a lack of substantial coverage on trade issues that would otherwise work to facilitate the understanding of a wider audience. Journalists, not unlike some national members of parliament, might sometimes underestimate the political implications of WTO decisions. Nevertheless it is quite clear that many WTO topics are of limited interest to the mass media and general public. Yet we do not require the global public sphere to be all-encompassing and permanently to include all members of world society. What matters is *access* to comprehensible information for all those who seek it. In this respect, organized civil society can make an important contribution by processing and disseminating information on world trade, with an emphasis on critical perspectives.³⁴

c) Inclusion of Stakeholder Concerns

As in the case of information, the activities of civil society seem equally indispensable with regard to the representation of stakeholder concerns in deliberative processes at the WTO. Yet the possibility of non-state actors in bringing topics onto the official,

³² Elisabeth Türk, 'The Role of NGOs in International Governance. NGOs and Developing Country WTO Members: Is there Potential for Alliance?', in S. Griller (ed.), *International Economic Governance and Non-Economic Concerns: New Challenges for the International Legal Order*, Vienna and New York, Springer, 2003, pp. 162–211.

³³ Christoph Bellmann and Richard Gerster, 'Accountability in the World Trade Organization', *Journal of World Trade*, 30: 6 (1996), pp. 31–74.

³⁴ A prominent example for respected and widely used independent information on trade is the newsletter 'Bridges', published by the International Center for Trade and Sustainable Development (ICTSD), see <http://www.ictsd.org>. See also the newsletter 'Harmonization Alert' published by the organization Public Citizen.

intergovernmental, agenda is still limited in practice. At the moment, the WTO invites submissions of NGO papers and grants a limited possibility of presenting issues at Ministerial Meetings. In its everyday business, however, the concerns of nongovernmental and even other intergovernmental organizations are invisible.³⁵ A recently invented instrument to tackle this deficit is symposia on trade-related issues that bring a wide variety of civil society actors into contact with WTO officials.³⁶ Those symposia are not likely to be sufficient, however, because they do not include state representatives as the real decision-makers in the WTO. In the dispute settlement procedure there is the possibility for non-state actors to present unsolicited statements as so-called 'amicus curiae briefs'. However, whether these will be considered or not still lies at the discretion of the panel.³⁷

Hence there is yet a need for improving and institutionalizing stakeholder input at the WTO. With regard to policy-making we should consider a procedure that forces decision-makers to respond to stakeholders and to publicly justify their actions, similar to parliamentary question times.³⁸ How could such a public confrontation be institutionalized? For the WTO we propose a public assembly that could, for example, precede every Ministerial Conference. This assembly should comprise the heads of national delegations on the one hand, and representatives of civil society on the other, with the mass media as observers. To make this procedure feasible, one would

³⁵ For example, not even the representatives of international *governmental* organizations such as the United Nations Environment Programme are admitted as observers to the meetings of the WTO Committee on Trade and Environment.

³⁶ A symposium on the 'Doha Development Agenda' took place from 29 April to 1 May 2002 in Geneva, see also http://www.wto.org/english/tratop_e/dda_e/symp_devagenda_prog_02_e.htm.

³⁷ See the Appellate Body's report on amicus curiae briefs of 8 November 2000, and WTO document WT/DS135/9 on the procedure of amicus brief submission; see also Petros C. Mavroidis, 'Amicus Curiae Briefs before the WTO: Much Ado About Nothing', in A. v. Bogdandy, P. C. Mavroidis and Y. Mény (eds), *European Integration and International Coordination: Studies in Transnational Economic Law in Honour of Claus-Dieter Ehlermann*, Den Haag, Kluwer Law International, pp. 317–29.

³⁸ Jens Steffek, 'Free Trade as a Moral Choice: How Conflicts of Principle Have Troubled Transatlantic Economic Relations in the Past, and How a "Council on Trade and Ethics" Could Help Prevent them in the Future', in European University Institute (ed.), *Preventing Transatlantic Trade Disputes: Four Prize-winning Essays*, Florence, European University Institute, 2001, pp. 45–55.

probably need to have civil society actors agree in advance on a limited number of statements on the WTO political programme or on a single decision. The decisive advantage of having such an assembly would be a direct, public give-and-take of reasons, rather than, as it is now, the WTO publishing its decisions and the reasons for them in press releases, while NGOs present critical counter-arguments in their own briefings and own websites. As an institutional focal point, such an assembly could foster the public visibility of trade policy. In addition, media coverage on the WTO and world trade issues is highest at the time of ministerial conferences. With regard to deliberative democracy, the function of such a consultative assembly would be two-fold: First, it demands enhanced public justification of political choices by decision-makers. Second, it secures stakeholders' access to bring their concerns directly to the attention of policy-makers.

d) Empowerment of Marginalized Groups

A central problem in having more inclusive deliberation on world trade is a manifest 'unequal opportunity' amongst actors. Representatives and stakeholders coming from developing countries, for example, experience major disadvantages that prevent them from participating effectively in debates on world trade. There is, first of all, an inequality in the capacity to gather and assess relevant information. This leads to further inequalities in the capacity to identify and formulate one's own interests and concerns. Even if political interests are well-defined, obstacles remain with regard to participation simply because developing country governments and their civil society organizations have far fewer resources to bring their concerns to bear in Geneva.

In order to enhance participation in rule-making and to make deliberation on world trade more inclusive, the WTO will have to actively support developing countries. To overcome the representation problem, some additional financial means would have to be provided for countries without representation in Geneva. A developing country fund, which might also sponsor the representation of extremely disempowered groups such as indigenous peoples, would be a step into the right direction. Yet, inviting officials to Geneva is not enough to guarantee the plurality of opinions and arguments;

critical voices of civil society actors have to be included in the political process.³⁹

With regard to civil society actors from the south, their problems resemble those of their official delegates – namely limited capacities to gather and process relevant information and insufficient representation at the sites of political meetings. Thus far, the majority of civil society organizations participating in the world trade debate are based in the north. Many of them claim to fight for issues that mainly concern developing countries, such as trade and development. As many critics have remarked, the danger of ‘benevolent patronizing’ is imminent whenever northern-based organizations speak on behalf of the developing world.⁴⁰ Not only but not least for this reason, official representatives of developing countries have been sceptical about strengthening the role of nongovernmental organizations in world trade governance.

It will be a major challenge for nongovernmental actors to gain the trust of developing country representatives in their ability to assist them in improving know-how and in the formulation of political positions without imposing their own agenda. The participation of civil society actors from the south should be promoted as well. Using public money to organize southern civil society is problematic with regard to their capacity to adopt alternative views and to criticize the official line of their governments. Therefore, assistance is to come from within self-organized transnational civil society in the form of partnerships between northern and southern actors. Beyond the transfer of material resources and technical know-how, this kind of transnational cooperation holds the promise of fostering mutual learning and perspective-taking. As it is likely to produce political arguments that are shared across boundaries, it can also contribute to the emergence of a more encompassing and more truly global trade governance.

³⁹ There are already some efforts at training developing country delegations, and in particular those without permanent representation in Geneva. Since 1998 the Geneva-based Agency for International Trade Information and Cooperation (AITIC) provides technical assistance to developing country delegates. The WTO itself holds training sessions for member governments without permanent representation, the so-called ‘Geneva weeks’. In 2001, the Advisory Centre on WTO Law was established as a law office specializing in international economic law, providing legal services and training exclusively to developing countries and economies-in-transition.

⁴⁰ See Miles Kahler’s contribution to this issue.

The table on p. 335 summarizes the proposed measures that should be taken to promote public deliberation on world trade issues and, thus, foster the emergence of a global public sphere. It lists the type of actions that can be taken by the WTO itself, or also by some member governments, and by international civil society.

CONCLUSION

We argued in this essay that the democratization of international governance will ultimately depend upon the creation of an appropriate transnational public sphere. The public sphere is a communicative space where arguments on the merits and defects of international governance are generated and negotiated. It reaches from within international organizations to national decision-makers to citizens, and it uses many different channels of communication (from informal conversations to media to institutionalized meetings of voluntary associations). Reporting by mass media is but one element of a public sphere, although an important one, given the number of addressees it can potentially reach. Certainly, the internet plays a central role for connecting people interested in the governance of global issues. Even more important, we have argued, is organized civil society.

A global public sphere will hardly be as all-encompassing and unitary as national ones, but rather the ensemble of overlapping (national/sectoral) public communication about the same (sometimes very specific) issue or problem. Making global governance public presupposes that relevant political information is made available to interested stakeholders. Since modern politics in general, and international governance in particular, are highly complex and functionally fragmented, we cannot assume that citizens will be routinely interested. We assume that interested citizens will actively search for ways of receiving information on international governance and of bringing their own concerns in. International public (sic) organizations have the duty to inform their stakeholders about their policies. Only civil society, however, can add critical, alternative perspectives. The task of transnational civil society is to enable stakeholders of global governance to make informed judgements and choices. Civil society can (and should) give voice to citizens affected by regulations made at the global level. A particularly important form of

empowerment is to assist those marginalized groups of stakeholders that face the greatest obstacles to political participation.

Our normative approach to the legitimation and democratization of global governance can be summed up as follows: By fostering extended deliberation among stakeholders over the nature of problems and the best way to solve them, participatory arenas produce a pool of (transnationally) shared arguments which – often disseminated by civil society organizations – contribute to the emergence of a wider public sphere, in which the decisions of international organizations are exposed to ‘transnational’ public scrutiny. Global governance arrangements should ideally become sites of public deliberation between social actors (e.g., representatives of international organizations, scientific expertise, NGOs, etc.) that generate democratic legitimation in a heterogeneous global polity.

Table 1
Elements for Promoting Public Deliberation about World Trade Policy

| <i>Issue</i> | <i>WTO/governmental action</i> | <i>Civil society action</i> |
|--|--|---|
| Exposing world trade governance to public scrutiny | Dissemination of official information. Providing documents, internet access, press releases | Dissemination of critical information. Informing press, national parliaments, grass-roots groups |
| Bringing stakeholder concerns into the WTO | Organization of outreach meetings; granting speaking time to NGOs; obliging state representatives to justify decisions taken | Participation in meetings with officials and state representatives. Debating political proposals among civil society groups |
| Empowering disadvantaged stakeholders | Technical training of developing country representatives; financial assistance to underrepresented countries/groups | Providing critical expertise to state representatives and non-state actors. Cooperation with NGOs from developing countries |