Reimagining Participation in International Institutions

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I. Introduction

It is by now well recognized that civil society organizations (CSOs) have become important global actors over the past four decades, shaping international law and politics and substantially restructuring traditional relationships among states, non-state actors, and international institutions.[1] It is uncertain, however, whether twenty-first-century international institutions will maintain the predominantly state-centric models of governance they have inherited or whether they will further transform civil society participation.

International environmental institutions have been among the most celebrated leaders of what has been called a "participatory revolution."[2] Both

[1] See Kenneth W Abbott and Duncan Snidal, "Strengthening International Regulation through Transnational New Governance: Overcoming the Orchestration Deficit" (2009) 42 Vand J Transnat'l L 501 at 577–78; José E Alvarez, *International Organizations as Law-Makers* (New York: Oxford University Press, 2005); MM Betsill and E Correll, eds, *International NGO Diplomacy: The Influence of Nongovernmental Organizations in International Environmental Negotiations*, (Cambridge: MIT Press, 2008); PG Cerny, *Rethinking World Politics: A Theory of Transnational Pluralism* (New York: Oxford University Press, 2010); Rodney Bruce Hall and Thomas Biersteker, eds, *The Emergence of Private Authority in Global Governance* (New York: Cambridge University Press, 2002); A Claire Cutler, Virginia Haufler, and Tony Porter, eds, *Private Authority and International Affairs* (Albany: SUNY Press, 1999); Terry Macdonald, *Global Stakeholder Democracy: Power and Representation beyond Liberal States* (Albany: SUNY Press, 2008); Phillip Pattberg, *Private Authority and Global Governance: The New Politics of Environmental Sustainability* (Cheltenham, UK and Northampton, USA: Edward Elgar, 2007); James N Rosenau and E-O Czempiel, eds, *Governance without Government: Order and Change in World Politics* (Cambridge, UK: Cambridge University Press, 1992); Anne-Marie Slaughter, *A New World Order* (Princeton: Princeton University Press, 2004); Sidney Tarrow, *The New Transnational Activism* (Cambridge: Cambridge University Press, 2005); Kenneth Anderson, "Book Review: Squaring the Circle? Reconciling Sovereignty and Global Governance through Global Government Networks" (2005) 118 Harv L Rev 1255 at 1311; Daniel Bodansky, "The Legitimacy of International Governance: A Coming Challenge for International Environmental Law?" (1999) 93 Am J Int'l L 596; Steve Charnovitz, "Nongovernmental Organizations and International Law" (2006) 100 Am J Int'l L 348 at 372; Daniel C Esty, "Good Governance at the Supranational Scale: Globalizing Administrative Law" (2006) 115 Yale LJ 1490; David Gartner, "Beyond the Monopoly of States" (2010) 32 U Penn J Int'l 595; Benedict Kingsbury et al, "The Emergence of Global Administrative Law" (2005) 68 Law & Contemp Probs 15. For a review of changes in these relationships within the UN system, see *UN System and Civil Society: An Inventory and Analysis of Practices*, Background Paper for the Secretary-General's Panel of Eminent Persons on United Nations Relations with Civil Society, May 2003, online: http://www.ngocongo.org/congo/files/un-civil_society-background_paper1.doc [*Inventory*]. A recent policy-oriented review is Robert Falkner, *Global Governance — The Rise of Non-State Actors: A Background Report for the SOER 2010 Assessment of Global Megatrends*, European Environment Agency Technical Report no 4 (Luxembourg: Publications Office of the European Union, 2011).

[2] Kal Raustiala, "The 'Participatory Revolution' in International Environmental Law" (1997) 21

the 1972 Stockholm Conference on the Human Environment and the 1992 Rio Conference on the Environment and Development (UNCED) saw unprecedented civil society involvement—organizations such as the Commission on Sustainable Development (CSD) and the Global Environment Facility (GEF) pioneered arrangements for civil society input into international decision-making. Yet civil society input remains merely consultative, and some more recent environmental organizations have abandoned expanded participation, challenging the leading accounts of civil society's role.[3]

At the same time, a new generation of global health institutions is transforming the landscape of participation, incorporating civil society representatives and other non-state actors directly into formal decision-making bodies.[4] As a result, the nature of participation in these two fields has sharply diverged—global health is now the innovator, while the environment has become a relative laggard. Explaining this divergence and exploring its normative implications are essential not only for these two important fields but also for the design of institutions capable of responding effectively to other pressing global challenges.

To be sure, CSOs play important roles in international regimes without directly participating in decision-making. CSOs frequently act as advocates, seeking to influence the agendas, positions, and decisions of states and international organizations.[5] CSOs also play significant operational roles. For example, under the current International Health Regulations (IHR), the World Health Organization need no longer rely only on state reporting of infectious disease outbreaks.[6] It can now utilize information provided by CSOs and other non-state actors as well.[7] CSOs also co-operate with international officials in numerous informal ways.[8] We focus in this article, however, on CSO participation in international decision-making—an issue of substantial importance and one in which dramatic differences have emerged.

Harv Envtl L Rev 537. See also Steven Bernstein, "Legitimacy in Global Environmental Governance" (2004) 1 J Int'l L & Int'l Rel 139 at 148-51.

[3] See Raustiala, *ibid*; Bernstein, *ibid*; Peter Spiro, "NGOs in International Environmental Lawmaking: Theoretical Models," in Daniel Brodansky, Jutta Brunnée & Ellen Hey, eds, *Oxford Handbook of International Law* (New York: Oxford University Press, 2007); Steve Charnovitz, "Two Centuries of Participation: NGOs and International Governance" (1997) 18 Michigan J of Int'l L 183.

[4] See, for example, Kenneth Anderson, *Global Governance: The Problematic Legitimacy Relationship between Global Civil Society and the United Nations*, (2008) American University, Washington College of Law Research Paper Series no 2008-71; Martin Shapiro, "Administrative Law Unbounded: Reflections on Government and Governance" (2001) 8 Ind J Global Legal Stud 369.

[5] See, for example, Margaret E Keck and Kathryn Sikkink, *Activists beyond Borders: Advocacy Networks in International Law* (New York: Cornell University Press, 1998); Richard Price, "Transnational Civil Society and Advocacy in World Politics" (2003) 55 World Pol 579; Thomas Risse, "Transnational Actors and World Politics," in Walter Carlsnaes, et al, eds, *Handbook of International Relations* (London: Sage Publications, 2002).

[6] World Health Organization, *International Health Regulations*, 2nd edition (2006).

[7] David P Fidler and Lawrence O Gostin, "The New International Health Regulations: An Historic Development for International Law and Public Health" (2006) 34:1 JL Med & Ethics 84 at 90.

[8] *Inventory*, *supra* note 1 at 3.

Building on the Charter of the United Nation's (UN Charter) provision for CSO "consultative status" with the Economic and Social Council (ECOSOC), many international institutions—including those addressing environmental issues—have established procedures for consulting with civil society, including arrangements by which CSOs act as observers.[9] Consultations are often held in connection with governing body meetings, and authorized observers actually attend such meetings. However, none of these procedures provides for membership in governing bodies or for direct participation in decision-making. Environmental organizations including the United Nations Environment Programme (UNEP), the CSD, the GEF, and the Adaptation Fund (AF) remain fundamentally inter-governmental, despite consultative processes that are more (the CSD, the GEF) or less (the AF) extensive.

In contrast, recent global health institutions have embraced a multi-stakeholder model in which non-governmental organizations (NGOs), the private sector, private foundations, and other constituencies within civil society—including populations directly affected by health threats—participate directly in governance structures, deliberation, and decision-making. For example, the Global Fund to Fight AIDS, Tuberculosis and Malaria (Global Fund) allots a quarter of its board seats to non-state stakeholders, while the board of the GAVI Alliance (GAVI) includes representatives of CSOs, businesses and foundations, as well as private individuals.

The broad multi-stakeholder character of institutions such as the Global Fund and GAVI demands an equally broad understanding of "CSOs." The term encompasses advocacy, service, and other NGOs as well as NGO coalitions and networks.[10] But it also encompasses other organizations "that have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations."[11] We include private foundations, scientific and technical bodies, indigenous peoples associations, and communities suffering the effects of particular international phenomena—all of which participate in the institutions discussed in this article. CSOs may be transnational, national, or local. In practice, transnational groups are more likely to participate in international decision-making, while national or local groups are more likely to participate in local decision-making.

In this article, we document the growing divergence in civil society participation between global health and the environment, suggest explanations for this divergence, and analyze the implications of direct participation for responding to global challenges. The first section briefly

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[9] Charter of the United Nations, (1945) 39 AJIL 190, Article 71 [UN Charter].

[10] John Gerard Ruggie, "Reconstituting the Global Public Domain—Issues, Actors, and Practices" (2004) 10 Eur J Int'l Rel 499 at 522 n 1. Ruggie's definition also includes "transnational social movements … and activist campaigns."

[11] The World Bank has adopted this definition, developed by civil society research centres. See *Defining Civil Society*, online: http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/CSO/0,,contentMDK:20101499~menuPK:244752~pagePK:220503~piPK:220476~theSitePK:228717,00.html.

compares civil society participation across four pairings of health and environmental institutions. To maximize comparability, we analyze pairings of institutions that have similar missions and that were established at similar points in time. The second section offers an explanation for the divergence in participation. We identify three significant causal factors: civil society demand for participation; the nature of the forum in which an institution is established; and path dependence within an issue area. We also show how these factors have influenced the development of specific institutions. The third section considers the normative implications of civil society participation in international decision-making. We argue that direct participation has important advantages over mere consultative processes. The article concludes by considering the implications of our analysis for the future design of effective international institutions.

II. The Divergence of Global Health and Environmental Institutions

This section compares four pairings of institutions from the fields of global health and the environment. While complete symmetry is not possible, we pair organizations from the two fields in terms of both their function—for example, policy-making or financing—and the general timing of their establishment. This approach allows us to at least partially control for explanatory factors that are associated with function (for example, that states might maintain particularly tight control over financing bodies) and with the development of norms and practices over time (for example, that a broad norm of civil society participation may have developed in recent decades). Table 1 identifies the four pairings discussed in this section.

TABLE 1: COMPARISONS OF GLOBAL HEALTH AND ENVIRONMENT INSTITUTIONS

Function	Global Health	Environment
Core Institution	WHO (1946)	UNEP (1972)
Policy and Coordination	UNAIDS (1994)	CSD (1993)
Financing	GAVI (1999)	GEF (1991/94)
Financing	Global Fund (2002)	AF (2007) Climate Investment Funds (2008)

1. Core Institutions

The core institutions for health and the environment were created before civil society participation had permeated international governance.[12] Both establish the baseline participation arrangements from which more recent developments have grown. Non-state actors may act as observers, but they have no direct roles in decision-making. Over time, additional consultation mechanisms have been established.

A. World Health Organization (WHO)

The WHO, an inter-governmental organization created in 1946, based its relations with civil society on the model of consultative status that was initiated with ECOSOC: "The Organization may … make suitable arrangements for consultation and co-operation with non-governmental international organizations and, with the consent of the Government concerned, with national organizations, governmental or non-governmental."[13] In addition, the World Health Assembly may "invite any organization, international or national, governmental or non-governmental, which has responsibilities related to those of the Organization, to appoint representatives to participate, without right of vote, in its meetings … but in the case of national organizations, invitations shall be issued only with the consent of the Government concerned."[14] Non-state actors have no formal role in decision-making.[15]

B. United Nations Environment Programme (UNEP)

The General Assembly established UNEP in 1972.[16] Its Governing Council includes fifty-eight states elected by the General Assembly.[17] Like the WHO, UNEP adopted the traditional UN model of civil society relations, focused on transnational CSOs: "International non-governmental organizations having an interest in the field of the environment ... may designate representatives to sit as observers at public meetings of the Governing Council ... Upon the invitation of the [chair], and subject to the approval of the Governing Council ... international non-governmental organizations may make oral statements on matters within the scope of their activities."[18]

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[12] *Inventory*, *supra* note 1 at 3-5 (civil society participation did not "explode" until the 1990s).
[13] *Ibid,* Article 71. In addition, the director-general may arrange with member states to have direct communication with national health organizations, non-governmental organizations (NGOs), and governmental organizations. *Ibid,* Article 33.
[14] *Ibid,* Article 18.
[15] As noted earlier, non-state actors also take part in World Health Organization operational activities, for example, as collaborating centres, under the International Health Regulations and as members of the Global Outbreak Alert and Response Network.
[16] *UN Environment Programme (UNEP) Policy on NGOs and Other Major Groups*, online: http://www.unep.ch/natcom/assets/about_natcom/about_ngos.doc.
[17] UN General Assembly (UNGA) Resolution 2997 on Institutional and Financial Arrangements for International Environmental Co-operation (XXVII), 27th Session, UN Doc A/RES/27/2997, 15 December 1972.
[18] *Rules of Procedure for the Governing Council*, Rule 69, online:

Following UNCED in 1992, UNEP substantially expanded its informal consultations with the nine designated "major groups" (MG) of civil society.[19] It initiated an annual Global Civil Society Forum in conjunction with Governing Council meetings. It created a special branch of its Secretariat to promote CSO involvement in UNEP's work. And it organized the Major Groups Facilitating Committee (MGFC), which is made up of constituency representatives. However, the MGFC is explicitly "not a decision-making body" but, rather, a source of expertise and a means to facilitate MG participation in UNEP's meetings and programs.[20] Table 2 summarizes civil society participation in these organizations.

TABLE 2: CORE INSTITUTIONS

	WHO	**UNEP**
Direct Participation	XXX	XXX
Consultation	Observers; Informal Consultation	Observers; Forum; MGFC
Country Level	IHR information; Operations	N/A

2. Policy and Co-ordination Bodies

UNAIDS and the CSD have broad policy missions, which comprise co-ordinating responses to major issues across the UN system. The CSD has the broader mandate, but UNAIDS pursues a comprehensive response to the AIDS crisis, addressing social, political, economic, and cultural issues as well as medical treatment.[21] UNAIDS broke the taboo in UN practice against

http://www.unep.org/Documents.Multilingual/Default.asp?Documentid=77&Articleid=1155&L=En.

[19] See UNEP, *Natural Allies: Engaging Civil Society in UNEP's Work*, 2nd edition (Nairobi: United Nations Environment Programme, 2009), online: http://www.unep.org/civil_society/PDF_docs/UNEP-NaturalAllies-June2009.pdf. The Major Groups (MGs) are farmers, women, the scientific and technical community, children and youth, indigenous people, workers, business, NGOs, and local authorities.

[20] UNEP, Global Major Groups Stakeholder's Forum, online: http://www.unep.org/civilsociety/GlobalMajorGroupsStakeholdersForum/MajorGroupsFacilitationCommitteeMGF/tabid/2773/Default.aspx.

[21] For example, UNAIDS addresses HIV transmission through sexual relations and drug injections, gender inequalities, discrimination against persons living with HIV, HIV-related travel restrictions and resource mobilization, as well as medical issues. UNAIDS, *Ten Targets: 2011 United Nations General Assembly Political Declaration on HIV/AIDS: Targets and Elimination Commitments*, online: http://www.unaids.org/en/media/unaids/contentassets/documents/unaidspublication/2011/JC2262_UNAIDS-ten-targets_en.pdf. This comprehensive

direct civil society participation. The CSD has expanded on the traditional model, granting MG representatives access to informal interactions with the commission as well as observer status.

A. UNAIDS

In 1994, ECOSOC established UNAIDS as a joint institution co-sponsored by six UN agencies with major AIDS programs. It replaced the WHO's co-ordination of the UN's response to AIDS.[22] The UNAIDS Program Coordinating Board includes six agencies (UN Development Programme (UNDP), the UN Children's Fund (UNICEF), the UN Population Fund, the WHO, the UN Educational, Social, and Cultural Organization, and the World Bank) as well as donor and recipient governments.[23] Ultimately, ECOSOC also provided for five CSOs to sit on the Board, with three from developing countries.[24] UNAIDS thus became the first UN program with civil society representatives on its governing body.[25] The CSOs themselves were authorized to decide which organizations would participate, subject to periodic review by the board.[26] The CSOs also determined that at least three of their delegates must be people living with HIV-AIDS.

Yet CSOs are still granted a limited role: they may speak, but they "have no negotiating role" and cannot "participate in any part of the formal decision-making process, including the right to vote which is reserved for representatives of Governments."[27] UNAIDS subsequently adopted measures to "support and resource the NGO Delegation and wider civil society to systematize and improve the selection, capacity, and working

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response required strong coordination among international agencies. Christer Jönsson, "From 'Lead Agency' to 'Integrated Programming': The Global Response to AIDS in the Third World" (1996) Green Global Yearbook 65, online: http://www.fni.no/ybiced/96_06_jonsson.pdf.

[22] The United Nation's response included the UN Development Programme (UNDP), the UN Children's Fund (UNICEF), the UN Population Fund (UNFPA), the WHO, the UN Educational, Social, and Cultural Organization (UNESCO), and the World Bank. United Nations Economic and Social Council, Resolution 1994/24, "Joint and co-sponsored United Nations programme on human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS)," 26 July 1994.

[23] Lindsay Knight, *UNAIDS: The First Ten Years 1996-2006* (Geneva: UNAIDS, 2008) at 22. Some CSOs criticized the association with ECOSOC because the latter's state-centric structure might constrain robust collaboration with CSOs. See Christer Jönsson & Peter Soderholm, "IGO-NGO Relations and HIV/AIDS: Innovation or Stalemate?" (1995) 16:3 Third World Quarterly 459 at 470.

[24] Civil society's role was initially unclear. ECOSOC Resolution 24, 44th Meeting, S/RES/24 (26 July 1994).

[25] Governance and Civil Society Involvement in the UN General Assembly, online: http://www.unaids.org/en/media/unaids/contentassets/documents/programmes/janbeag le/civilsociety/cs_B1L2_gov.pdf.

[26] ECOSOC Resolution 1995/24, Joint and Co-sponsored United Nations Programme on Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome (9 June 1995).

[27] UNAIDS, "A stronger civil society voice in the UNAIDS work" (11 April 2008), online: http://www.unaids.org/en/resources/presscentre/featurestories/2008/april/20080411astrong ercivilsocietyvoiceunaidswo/. According to the terms of reference for the CSO delegation, however, in practice CSO representatives "fully participate" in deliberations. *Terms of Reference of the UNAIDS PCB NGO Delegation*, online: http://www.unaids.org/en/aboutunaids/unaidsprogrammecoordinatingboard/ngocivilsociet yparticipationinpcb/ [*Terms of Reference*].

practices of the Delegation, and the quality and strategic impact of its interventions."[28] Its Communication and Consultation Facility supports CSO participation and works to "ensure that the voices of the broad and diverse civil society communities are heard and reflected in the development of international policies that will meet their needs."[29]

B. Commission on Sustainable Development (CSD)

The UN General Assembly (UNGA) established the CSD in 1993.[30] The CSD has an extremely broad mandate: to follow up implementation of Agenda 21, the Rio Declaration on Environment and Development, and the Johannesburg Plan of Implementation and to integrate environment and development throughout the UN system.[31] Yet it has very limited authority. It can only review progress, promote implementation, and make recommendations.

The CSD is an inter-governmental body, with fifty-three state members elected by ECOSOC. Accredited UN observers, including CSOs, may "participate in the Commission in the capacity of observer, in accordance with established practice."[32] In addition, when it established the CSD, the UNGA encouraged informal relationships, specifying that the CSD should "receive and analyse relevant input from competent non-governmental organizations"; "enhance the dialogue … with non-governmental organizations and the independent sector";[33] and arrange for "non-governmental organizations, including those related to major groups as well as to industry and the scientific and business communities, to participate effectively in its work and contribute within their areas of competence to its deliberations."[34] A major goal was to allow CSD member states "to benefit from the expertise and competence of relevant … non-governmental organizations."[35]

Following the sustainable development summits of 1997 and 2002, the CSD enhanced its interactions with civil society.[36] It pioneered "multi-stakeholder dialogues," which were segments of CSD meetings in which the MGs could engage directly with commission members. It also provided additional opportunities for input—for example, the MGs could submit

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[28] *Ibid.*
[29] *Ibid* at para J.
[30] UNGA, *Institutional Arrangements to Follow up the UNCED*, Doc. A/RES/47/191 (29 January 1993), online: http://www.un.org/documents/ga/res/47/ares47-191.htm.
[31] Agenda 21, 13 June 1992, UN Doc A/CONF.151/26 (1992); Rio Declaration on Environment and Development, 13 June 1992, 31 ILM 874 (1992); Johannesburg Plan of Implementation, in *Report of the World Summit on Sustainable Development*, Johannesburg, South Africa, 26 August-4 September 2002, UN Doc A/CONF.199/20 (2002).
[32] UNGA, *Institutional Arrangements, supra* note 30 at para 6.
[33] *Ibid* at para 3.
[34] *Ibid* at para 7.
[35] *Ibid* at para 8.
[36] The UNGA initially called for "focused dialogue sessions." UN Department of Economic and Social Affairs, *Background Information on Major Groups Participation in the CSD*, online: http://www.un.org/esa/dsd/dsd_aofw_mg/mg_csdbackinfo.shtml at para 133.

suggested "priorities for action" and propose content for official reports.[37] The MGs were also able to participate in thematic and regional discussions. The CSD sessions "aim to be as highly interactive as possible. The bureau traditionally includes major groups in every segment of the Organization of Work (except the opening of the High-level Segment and during formal negotiations in the Policy Year)."[38] From this quotation, however, it is clear that the CSD excludes CSOs from participation in the inter-governmental negotiations, which are potentially the most influential part of the CSD process. Table 3 summarizes civil society participation in these two bodies.

TABLE 3: POLICY AND COORDINATION BODIES

	UNAIDS	**CSD**
Direct participation	Board members; No decision role	XXX
Consultation	Observers	Special sessions; Other interactions
Country level	N/A	N/A

3. 1990s Financing Mechanisms

In the 1990s, GAVI extended the legacy of UNAIDS, designating seats on its governing board and allowing non-state actors to fully participate in decision-making. The GEF, which was created a few years earlier, provides no direct governance role for non-state actors, merely consultation arrangements such as those used by the CSD. The GEF also follows the World Bank's approach to stakeholder participation in funded projects.

A. GAVI

In 1998, the World Bank called for a new approach to childhood vaccinations.[39] The WHO proposed to host a new vaccination partnership. When the WHO terminated its own childhood vaccine initiative, however, the Bill and Melinda Gates Foundation (Gates Foundation) stepped in, offering major funding for a new program.[40] Under the influence of the Gates

[37] UN Department of Economic and Social Affairs, Major Groups Programme, *CSD-19 Guidelines for Major Groups*, online: http://www.un.org/esa/dsd/csd/csd_pdfs/csd-19/MG-Guidelines-CSD-19_18-november.pdf.
[38] UN Department of Economic and Social Affairs, *Entry Points for Major Groups*, online: http://www.un.org/esa/dsd/dsd_aofw_mg/mg_csdentrpoin.shtml.
[39] Kristin Ingstad Sandberg et al, *A New Approach to Global Health Institutions? A Case Study of New Vaccine Introduction and the Formation of the GAVI Alliance* (2010) 71 Social Science & Medicine 1349.
[40] *Ibid* at 1353. The Gates Foundation's initial contribution was US $750 million. GAVI Alliance, *Donor Profile for Bill and Melinda Gates Foundation*, online: http://www.gavialliance.org/funding/donor-profiles/bmgf/.

Foundation, GAVI was established in 1999 as an independent public-private partnership.

GAVI granted non-state actors an unprecedented participatory role.[41] The Gates Foundation holds one of four permanent seats on the GAVI board.[42] In addition, several of the twelve rotating board seats are designated for non-state constituencies, including NGOs, research and technical institutes, and vaccine industries in developing and industrialized countries. In 2005, GAVI added five "unaffiliated" board members—private individuals with relevant expertise, especially on financial issues.[43]

GAVI also engages more broadly with civil society. It holds regular partners' forums. It helped create the Civil Society Constituency, which is a network of supportive CSOs that funnels input into decision-making.[44] GAVI's communications focal point supports participation and improved communication with and among CSOs.[45] Finally, GAVI has tested support for CSO participation in its national vaccination programs.[46]

B. Global Environment Facility (GEF)

In 1991, catalyzed by pledges from France and other European Union countries, the World Bank, UNEP, and the UNDP created the GEF as a pilot project to finance environmental measures in developing countries.[47] During the pilot phase, the World Bank operated the GEF, and, in 1994, the participating states and agencies restructured it as a largely autonomous institution.[48] The GEF provides grants and concessional funds to developing and transitional economies to finance the "agreed incremental costs" of environmental projects. It is the official financial mechanism for several environmental conventions and "the largest funder of environmental projects."[49]

Only states serve on the GEF Council, with recipient states making up the majority. Since its pilot phase, the GEF has organized CSO consultations prior to its Council meetings. The GEF also initially selected participants from its NGO network of accredited organizations. Since 2005, however, it

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[41] *Ibid* at 1354.
[42] GAVI Alliance, *Board Members*, online: http://www.gavialliance.org/about/governance/boards/members/index.php. The other permanent members are international organizations.
[43] *Ibid*. A separate board oversees GAVI's Innovative Finance Facility for Immunization. *Governance and Legal Structures*, online: http://www.gavialliance.org/about/governance/iffim/index.php.
[44] GAVI Alliance Civil Society Constituency, online: http://www.gavialliance.org/support/what/cso/index.php.
[45] *Ibid*.
[46] *Civil Society Organisation Support*, online: http://www.gavialliance.org/support/what/cso/index.php.
[47] Developed state support was in part a strategic move to establish a single environmental fund, rather than separate funds for each treaty. Laurence Boisson De Chazournes, "The Global Environment Facility (GEF): A Unique and Crucial Institution" (2005) 14 RECIEL 193 at 196; Charlotte Streck, "The Global Environmental Facility—A Role Model for International Governance?" (May 2001) 1:2 Global Environmental Politics 71.
[48] GEF, *Instrument for the Establishment of the Restructured Global Environment Facility*, October 2011, online: http://www.thegef.org/gef/sites/thegef.org/files/publication.GEF_Instrument_Oct2011_final_0.pdf [*Instrument for the Establishment of the Restructured GEF*].
[49] GEF, *What Is the GEF*, online: http://www.thegef.org/gef/whatisgef.

has allowed the network to select its own delegates. Pre-consultations now include three components. A preparatory meeting allows CSOs to finalize submissions and select delegates for its Council sessions. A jointly sponsored consultation then allows CSOs to interact with Council members, although Council attendance has been spotty.[50] Finally, ten CSO representatives (five at one time) may attend Council sessions as observers, speaking only when invited. The GEF Assembly meetings also provide modest opportunities for CSOs to interact with governments.

At the project level, the GEF's charter calls for "consultation with, and participation as appropriate of, major groups and local communities throughout the project cycle."[51] The GEF's principles for public involvement state that effective public participation can enhance country ownership and accountability; help address the needs of affected people; build partnerships between the GEF's implementing agencies and stakeholders; and contribute experience and knowledge.[52] "Public involvement" is defined as including the dissemination of project information; consultation with stakeholders (without decision-making authority); and stakeholder participation "as appropriate."[53] These principles echo the World Bank's approach to civil society input on funded projects.[54] However, it is difficult to assess their impact. While the principles call for the bank to promote public involvement throughout the project cycle,[55] the GEF's actual project criteria place a relatively low priority on consultation and stakeholder participation.[56] Table 4 summarizes civil society participation in these financing bodies.

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[50] IUCN, *Review of Practices on NGO/CSO Participation and Recommended Measures for NGO Representation at Meetings of the CIF Trust Fund Committees*, January 2009, online: http://siteresources.worldbank.org/INTCC/Resources/Review_of_Practices_NGO-CSO_Particiaption_Final.pdf.

[51] *Instrument for the Establishment of the Restructured GEF*, *supra* note 48 at para 5.

[52] GEF, *Public Involvement in GEF-Financed Projects*, June 1996, online: http://www.thegef.org/gef/gef/node/2024. *Instrument for the Establishment of the Restructured GEF*, *supra* note 48 at para 4.

[53] *Instrument for the Establishment of the Restructured GEF*, *supra* note 48 at 8.

[54] World Bank, *Involving Nongovernmental Organizations in Bank-Supported Activities*, Good Practice no. 14.70, online: http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/CSO/0,,contentMDK:22511723~pagePK:220503~piPK:220476~theSitePK:228717,00.html.

[55] *Instrument for the Establishment of the Restructured GEF*, *supra* note 48 at 15.

[56] *Criteria for Review of GEF Projects*, online: http://www.thegef.org/gef/sites/thegef.org/files/documents/GEFProjectReviewCriteria2008.pdf at Article 7.6.

TABLE 4: 1990S FINANCING MECHANISMS

	GAVI	**GEF**
Direct participation	Designated board seats	XXX
Consultation	Constituency; Forum; Focal point	NGO Network; Observers; Consultations
Country level	Pilot CSO funding	Consultation "as appropriate"

4. Twenty-first-Century Financing Mechanisms

Recently established financing organizations reflect the most striking divergence in civil society participation. The Global Fund has expanded board participation even further than GAVI. It also requires applicant countries to create multi-stakeholder bodies to oversee applications and funded projects. In sharp contrast, the AF reverts to a state-centric model with accredited observers, and private actors also have limited input in its funded projects. The Climate Investment Funds provide CSOs with no direct role in governance, but it grants them "active observer" status, the ability to operate constituency selection processes, and the opportunity to establish consultation mechanisms such as those of the GEF.

A. Global Fund

The Global Fund, which was created in 2001, broadens CSO participation by designating separate seats on its board for northern and southern NGOs.[57] The board also includes a representative from the affected communities—people living with AIDS, tuberculosis, or malaria.[58] Instead of designating particular organizations for seats (as GAVI does for the Gates Foundation), the Global Fund establishes a full constituency model, reflecting the diversity of its represented sectors. For each civil society constituency, a communications focal point manages an inclusive nomination and selection process to select a board member, an alternate, and a delegation. It also facilitates communication with other delegations and the Secretariat.[59]

Civil society delegates have significant voting power. The board is divided into a donor bloc, including donor countries, foundations, and the private sector, and a recipient bloc, including recipient countries and civil

[57] Sonja Bartsch, "The Global Fund to Fight AIDS, Tuberculosis and Malaria," in Wolfgang Hein et al, eds, *Global Health Governance and the Fight Against HIV/AIDS* (New York: Palgrave Macmillan, 2007) at 146. The fund also provides a stronger role for developing countries.
[58] *Ibid* at 152.
[59] Moderación PortalSIDA, *We Are Soliciting Nominations*, online: http://www.portalsida.org/news_details.aspx?ID=10634. The affected communities' delegation gathers nominations through an open call.

society. While most major decisions are based on consensus, in the absence of consensus each bloc must approve decisions by a two-thirds vote.[60] Civil society delegates can also play leadership roles, as the chair and vice-chair alternate between the blocs.[61] The Global Fund's Partnership Forum engages an even broader range of stakeholders.

The fund's arrangement for country-level participation is highly innovative. It requires that broadly representative Country Coordinating Mechanisms (CCMs) approve all grant applications and nominate grant recipients. CCMs also oversee grant implementation.[62] Fund guidelines require CCMs to "seek active engagement of all stakeholders relevant to the fight against the three diseases in their national context."[63] At least 40 percent of the CCM members should represent NGOs, people living with the target diseases, the private sector, and academic institutions.[64] Each constituency is to select its own representatives through a "documented, transparent process."[65] The fund supports CCMs financially and encourages grants to private recipients, thereby building civil society capacity. Its Community Systems Strengthening Framework facilitates participation by supporting community-based organizations.[66]

B. Adaptation Fund (AF) and Climate Investment Funds

The AF grew out of the Kyoto Protocol, which requires that a share of proceeds from projects under the Clean Development Mechanism (CDM) be used to fund adaptation activities in particularly vulnerable developing countries.[67] In 2001, the parties to the Kyoto Protocol decided to create a fund, directed 2 percent of the proceeds of the CDM towards it, and invited developed states to make additional contributions. They finalized the AF governance structure in 2007.

This structure is highly state-centric. The AF Board (AFB) includes qualified representatives from sixteen states. Members "serve as government representatives," and the AFB is also accountable to the parties of the Kyoto Protocol.[68] The only provision for civil society involvement is that AFB meetings "shall be open to attendance, as observers … by UNFCCC accredited observers, except where otherwise decided by the AFB."[69] In December 2010, the AFB held its first formal dialogue with civil society observers.

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[60] *Global Fund By-Laws,* as amended 2 March 2011, Article 7.6, *Board,* online: http://www.theglobalfund.org/en/about/structures/board/.
[61] *Ibid,* Article 7.3.
[62] *Country Coordinating Mechanisms,* online: http://www.theglobalfund.org/en/ccm/.
[63] Global Fund, *Guidelines and Requirements for Country Coordinating Mechanisms*, online: http://www.theglobalfund.org/en/ccm/guidelines/ at para 43 [*Global Fund Guidelines*].
[64] *Ibid* at para 44.
[65] *Country Coordinating Mechanisms, supra* note 62.
[66] *Global Fund Guidelines, supra* note 63.
[67] Kyoto Protocol, 37 ILM 32 (1998), Article 12, para 8.
[68] Bali Climate Change Conference, *Decisions adopted by the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol: Decision 1/CMP.3: Adaptation Fund* (December 2007), online: http://unfccc.int/resource/docs/2007/cmp3/eng/09a01.pdf.
[69] *Ibid.*

In project governance, the AF emphasizes the role of governments.[70] Projects should be based on national priorities and expressed in national strategies for sustainable development, poverty reduction, or adaptation.[71] And governments must endorse all funding proposals.[72] The AF does incorporate significant innovations, including direct access to funding and an independent revenue source.[73] And local stakeholders may be consulted about projects.[74] However, civil society participation is otherwise highly limited.[75]

The World Bank established the Climate Investment Funds (CIF) in 2008 in order "to bridge the financing and learning gap between now and a post-2012 global climate change agreement."[76] The CIF include the Clean Technology Fund (CTF) and the Strategic Climate Fund (SCF), which support the Pilot Program for Climate Resilience (PPCR) and other targeted programs. The CTF and SCF are governed by committees, which each include donor and recipient states in equal number.

The CIF committees initially made no significant provision for civil society engagement.[77] Following CSO calls for stakeholder involvement, however, the CTF committee provided for four "active observers" from civil society and two from the private sector—the SCF committee adds two from indigenous peoples. Only the PPCR sub-committee, however, includes an observer from a "community dependent on adaptation to secure livelihoods," which is equivalent to the Global Fund's affected communities. The CIF selected organizations to design and facilitate selection processes for each sector, and it has also held three Partnership Forums.[78] Unlike the GEF, however, the CIF makes no specific arrangements for civil society participation in project governance. It relies on the policies of the multilateral development banks that administer the CIF grants.[79]

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[70] *Operational Policies and Guidelines for Parties to Access Resources from the Adaptation Fund*, http://www.adaptation-fund.org/sites/default/files/OPG%20Revised%204.4.12%20(with%20annexes).pdf. As this is written, the Adaptation Fund has approved twenty-four projects. *Funded Projects*, online http://www.adaptation-fund.org/funded_projects.

[71] *Accessing Resources from the Adaptation Fund: The Handbook*, online: http://adaptation-fund.org/sites/default/files/AdaptationFund%20Handbook%20English.pdf at 7.

[72] *Operational Guidelines of the AF*, *supra* note 70 at para 20.

[73] German Watch and Brot für die Welt, *Making the Adaptation Fund Work for the Most Vulnerable People*, online: http://www.germanwatch.org/klima/adfund08.pdf.

[74] The AF application calls for applicants to "describe the consultative process, including the list of stakeholders consulted, undertaken during project preparations." *Project/Program Proposal*, online: http://www.adaptation-fund.org/system/files/Call%20for%20Proposals%20Letter.pdf at Part II.H.

[75] International Institute for Environment and Development, *The Adaptation Fund: A Model for the Future?* (August 2009), online: http://www.germanwatch.org/klima/adbr09.pdf.

[76] *Climate Investment Funds: History*, online: http://www.climateinvestmentfunds.org/cif/designprocess.

[77] World Bank, International Union for the Conservation of Nature, *Review of Practices on NGO/SCO Participation and Recommended Measures for NGO Representation at Meetings of the CIF Trust Fund Committees* (January 2009), online: http://siteresources.worldbank.org/INTCC/Resources/Review_of_Practices_NGO-CSO_Particiaption_Final.pdf.

[78] *Climate Investment Funds*, *supra* note 76.

[79] At the 2011 Durban climate conference, the parties to the UN Framework Convention on

5. Summary

Table 5 summarizes the contrasts between the four pairings of health and environmental institutions analyzed in this article. The growing disparity in direct participation can be clearly seen in the top rows of the successive sections. In addition, the global health institutions now have at least equivalent arrangements for consultation at the international and country levels.

TABLE 5: SUMMARY OF GLOBAL HEALTH-ENVIRONMENT COMPARISONS

	WHO	**UNEP**
Direct participation	XXX	XXX
Consultation	Observers; Informal alliances	Observers; Forum; MGFC
Country level	CCs; GOARN	N/A

	UNAIDS	**CSD**
Direct participation	Board members; No decision role	XXX
Consultation	Observers	Special sessions; Other interactions
Country level	N/A	N/A

Climate Change, 31 ILM 849 (1992), approved governance arrangements for the Green Climate Fund (GCF), which will support mitigation and adaptation activities in developing countries. The GCF Board is made up of states, equally divided between North and South countries, and is responsible to the Conference of the Parties. The board is to make arrangements "to allow for effective participation by accredited observers in its meetings." Two representatives from civil society and two from the private sector will be invited "to participate as active observers." Each observer category will include representatives from the North and South. Participation in the GCF thus combines elements of the AF and the CIF. In addition, the board is "to promote the input and participation of stakeholders," including the private sector, NGOs, vulnerable groups, women, and indigenous peoples, "in the design, development and implementation of the strategies and activities" financed by the GCF. United Nations Framework Convention on Climate Change, Decision 3-/CP.17, *Launching the Green Climate Fund,* online: http://unfccc.int/2860.php. See Kenneth W Abbott and David Gartner, *The Green Climate Fund and the Future of Environmental Governance*, Earth System Governance Working Paper no 16, online: http://ssrn.com/abstract=1931066.

	GAVI	**GEF**
Direct participation	Designated board seats	XXX
Consultation	Constituency; Forum; Focal Point	NGO network; Observers; Consultations
Country level	Pilot CSO Funding	Consultation "as appropriate"

	Global Fund	**AF, CIF**
Direct participation	Broad stakeholder participation; Affected communities; Delegations; Voting Power	XXX
Consultation	Partnership Forum	AF: Observers CIF: Active observers; Partnership forum
Country level	CCMs; Financial Support	Limited Consultation

III. Explaining Divergence

A variety of factors might explain the remarkable divergence in civil society participation between global health and environment institutions. Functionalist and normative accounts offer some insights, but neither provides an adequate explanation. An approach that combines three factors—civil society demand for participation, the institutional context in which institutions are founded, and path dependence—provides the most promising explanation.

One leading theory of participation turns on the functional benefits of civil society input, particularly information and expertise. Kal Raustiala, who analyzes the "participatory revolution" in environmental governance, argues that "NGO participation enhances the abilities of states to regulate globally," particularly because of the knowledge and expertise CSOs can contribute.[80] Other international relations scholars echo the importance of expertise.[81]

[80] Raustiala, *supra* note 2 at 567.
[81] Miles Kahler, "Defining Accountability Up: The Global Economic Multilaterals," in David

However, a functional explanation based on expertise would predict the development of consultation arrangements, which enable intergovernmental institutions to gather information and knowledge from experts without disrupting their basic governance structures. This prediction tracks the development of consultative mechanisms in environmental institutions, but it does not account for the deeper participation in similar health institutions.[82] To be sure, responses to problems such as AIDS and malaria require significant expertise—scientific, social, and economic—but no more than responses to climate change or persistent organic pollutants.[83]

In addition, explanations based on expertise often emphasize CSO knowledge of local conditions. This approach would predict civil society involvement mainly in the planning and implementation of funded projects and other local actions. This prediction tracks the practices of financing institutions such as the GEF,[84] although even here the more extensive participation in the Global Fund's country coordinating mechanism is difficult to explain. Yet local knowledge does not account for civil society involvement in international decision-making, as in UNAIDS and the Global Fund.

A second leading explanation for civil society involvement focuses on the emergence and dissemination of a broad norm of participation. Constructivist scholars highlight how norms shape the behaviour and even the identities of states and other international actors. According to this account, a norm of participation could influence both international institutions and the states that create and govern them.[85] If norm entrepreneurs disseminate a participation norm over time, moreover, one would expect institutions to become gradually more inclusive. Steve Charnovitz argues along these lines that a duty to consult with CSOs has come to shape international governance.[86]

The principal difficulty with this explanation is its failure to account for differences across issue areas. Our analysis largely controls for norm development by comparing institutions created at similar times, yet we see a striking divergence between health and environment organizations. In addition, while global health shows a clear pattern of expanding civil society participation, the pattern is much more uneven in the environment. The AF, which became operational only in 2010, provides no direct civil society participation and minimal consultation procedures.[87] It is possible, however,

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Held and Mathias Koenig-Archibugi, eds, *Global Governance and Public Accountability* (Malden, MA: Blackwell, 2005) at 8-34.

[82] One Major Group, the scientific and technical community, is essentially defined by expertise.

[83] The WHO requires delegates to its governing bodies to be "technically qualified in the field of health." *Constitution of the World Health Organization*, 2006, Article 24.

[84] Jonas Talberg, *Explaining Transnational Access to International Institutions* (2008 Annual Convention of the International Studies Association), online: http://www.transdemos.se/publications/tallberg-isa.pdf.

[85] Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change" (1998) 52:4 Int'l Org 887.

[86] Charnovitz, "Nongovernmental Organizations and International Law," *supra* note 1.

[87] The Green Climate Fund provides for slightly greater participation than the AF but less than

that a norm of participation may have emerged solely within the area of health, and we return to this point later in this article.

If neither a functionalist nor a broad normative account is sufficient, we must turn to other possible explanations. Based on the history of the organizations analyzed here, we suggest an explanation that incorporates three elements. The first two relate to (1) *demand* for participation and (2) characteristics that influence the *supply* of participation within founding institutions, while the final element is (3) *path dependence*, which involves continuities in participation over time.

1. Civil Society Demand

Demand by civil society for a direct role in decision-making appears to be a precondition for the emergence of participatory governance. In health, strong demand by people living with AIDS was a key factor in opening space for broader CSO participation. Demand by influential foundations reinforced its effect. Given the massive resources of the Gates Foundation, it is tempting to ascribe expanded non-state participation in health governance largely to the influence of this one organization. However, while the Gates Foundation played a central role in creating GAVI, the same is not true of UNAIDS, which was established just as the Gates Foundation was deciding to focus on global health,[88] or of the early civil society push to create the Global Fund. Moreover, while foundations are important participants in many recent health institutions, CSOs with far more limited resources have also gained participation in these organizations.

Civil society has been far less forceful in demanding direct participation in environmental institutions. Particularly notable is the limited demand from communities directly affected by environmental problems, such as the communities facing major climate change adaptation—analogous in many ways to demands from AIDS sufferers. The most likely explanation is the diffuse nature of such communities:[89] they are often numerous and widespread, have modest incentives to organize around environmental issues,[90] and are frequently poor. Such a group "is at a distinct disadvantage relative to concentrated groups with a preference for the … status quo: its resources are generally modest, knowledge about often technical and arcane regulatory issues is limited, and [its numbers are] too large to easily overcome the collective-action problem."[91]

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the CIF.

[88] Bill and Melinda Gates Foundation, *Foundation Timeline*, online: http://www.gatesfoundation.org/about/Pages/foundation-timeline.aspx.

[89] Mancur Olson, *The Logic of Collective Action* (Cambridge: Harvard University Press, 1961).

[90] Adaptation is a gradual process, with the most wrenching changes relatively far in the future. Before the widespread use of anti-retroviral drugs, the situation of AIDS sufferers was dramatically different.

[91] Walter Mattli and Ngaire Woods, "In Whose Benefit?" in Walter Mattli and Ngaire Woods, eds, *Explaining Regulatory Change in Global Politics in the Politics of Global Regulation* (New Jersey: Princeton University Press, 2009) at 1, 26.

2. Institutional Context

The institutional context in which a new organization is created has profound effects on the structure of participation. It determines the degree to which the founders supply participation in response to civil society demand. As Walter Mattli and Ngaire Woods argue with regard to public interest regulation, institutional contexts that are open and transparent are likely to expand participation in response to demand; those that are exclusive and closed are likely to limit it.[92]

For example, UNAIDS grew out of the WHO Global Program on AIDS and a UN task force, which were both relatively open to civil society participation.[93] In contrast, the AF was established in an exclusively inter-state forum, focused primarily on North-South balance and institutional funding and resistant, or at least not welcoming, to CSO participation. Other environmental financing organizations, including the GEF and the CIF, grew out of the World Bank, which had well-established arrangements for consultation with civil society but which were primarily aimed at the project level.

3. Path Dependence

Path dependence influences the development of institutions over time. Path dependence takes two different forms: within an individual institution and within the broader sector. In both cases, the path dependence theory emphasizes that relatively small decisions at critical junctures can be difficult to alter later.[94] Decisions on participation, for example, shape expectations for future action, the repertoire of arrangements considered by institutional designers, and the political influence of relevant groups.

The expectations generated by early decisions may also harden into norms within a given sector. Norm entrepreneurs who find these decisions appropriate or desirable (as well as the actors who benefit from them) may cast them in normative terms and seek to persuade others to follow them through a logic of appropriateness. Persuasion and dissemination are facilitated when decisions are embodied in institutions, which clarify their meaning and operation and create demonstration effects.[95] Norms that arise in this way may be confined to particular issue areas, such as global health, or to particular institutions, such as the European Union,[96] rather than being disseminated more broadly.

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[92] *Ibid* at 16.
[93] Jönsson, *supra* note 21.
[94] See Paul Pierson, "Increasing Returns, Path Dependence and the Study of Politics" (2000) 94 Am Pol Sc Rev 251.
[95] Finnemore and Sikkink, *supra* note 85.
[96] Sabine Saurugger, "The Social Construction of the 'Participatory Turn,' The European Union and 'Organized Civil Society'" (2010) 49 Eur J Political Research 471.

4. The Three Factors Illustrated

A. UNAIDS

The innovative structure of UNAIDS reflects the strong role of AIDS activists in promoting effective responses to the epidemic and demanding a seat at the table. In 1987, the United Nations designated the WHO as the "lead agency" in its response to the crisis. In 1988, AIDS advocacy NGOs won representation on the Global Management Committee of the WHO's Global Program on AIDS.[97] The program also worked closely with associations of affected persons, including the Global Network of People Living with AIDS, the International Council of AIDS Service Organizations, and the International Community of Women Living with HIV/AIDS. When infighting among the six UN agencies with AIDS programs led to calls for a new organization, notably by key donors, these groups demanded a role in planning.[98]

Nordic countries proposed that planning be shifted from the agencies to an independent, multi-stakeholder task force with CSO participation. The United Nations agreed, creating a task force that included three CSOs.[99] CSOs were thus directly involved from the design stage, making it difficult to exclude them from UNAIDS itself, despite opposition from some states. The six agencies and the secretary-general approved the task force's preferred approach—a joint, co-sponsored UN body, with responsibility equitably shared among agencies and with the participation of CSOs, albeit with non-voting status.

The CSOs' lack of a vote prevented the adoption of later proposals to expand their role. Notably in 2007, the CSO delegation to UNAIDS commissioned an independent report "to assess the current strengths and weaknesses of … civil society participation in the [board] and to identify improvements for the future."[100] This report recommended full voting rights for CSOs and urged UNAIDS to abandon formal approval of CSO representatives.[101] So far, the board has declined to adopt these recommendations. Yet the UNAIDS precedent made it politically difficult for subsequent health institutions to reduce civil society participation below the level established in UNAIDS. In fact, continued demand produced expanded participation over time.

The CSD emerged from a far more state-centric process. Although many CSOs participated in UNCED, which called for the establishment of the CSD, only states adopted the Rio Declaration and Agenda 21 or participated in the subsequent UNGA/ECOSOC process. In addition, while civil society sought

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[97] Jönsson and Soderholm, *supra* note 23 at 468.
[98] Dennis Altman, *UNAIDS: NGOs on Board and on the Board—Civil Society Engaging Multilateral Institutions: At the Crossroads* (Montreal: FIM, 1999).
[99] Knight, *supra* note 23 at 20.
[100] *Results of the Review of NGO/Civil Society Participation in the Programme Coordinating Board*, online: http://www.unaids.org/en/media/unaids/contentassets/dataimport/pub/externaldocument/2007/review_ngo_participation_item_3.2_en.pdf.
[101] *Ibid.*

to be part of the sustainable development agenda, as reflected in the recognition of the MGs, demand did not extend to direct participation. Indeed, some CSOs were reluctant to participate in the CSD because of its weakness.[102] CSOs gained unusual access to the CSD, but only through consultative mechanisms (UNEP adopted similar measures). The failure of these organizations to move beyond the consultative model constrained expectations for participation in later environmental institutions.

B. GAVI

Like UNAIDS, GAVI involved non-state actors from the design stage, although these did not include NGOs. The first planning meeting hosted by the World Bank included UN agencies (UNICEF and the WHO), a private foundation (Rockefeller Foundation), and pharmaceutical companies (Pasteur, Merck, SmithKline, Wyeth, and the International Pharmaceutical Manufacturers Association).[103] These actors established a working group, which included UNICEF, the WHO, the World Bank, industry representatives, and the Rockefeller Foundation, "to work with all of the participants in the meeting and other partners in immunization to further elaborate the key issues which have been raised and to develop proposals on ways to move forward."[104]

The decision to establish GAVI as an independent organization, not as part of the WHO or the World Bank, facilitated private participation. The Gates Foundation assumed a central role after the WHO terminated its vaccine initiative. As a result, the Gates Foundation received a permanent board seat. The precedent set by UNAIDS, however, created expectations for participation among other actors as well. In response, GAVI also assigned leading NGOs and research institutes seats on its board.

After its founding, GAVI further strengthened civil society participation. Following a review of its governance structure, GAVI created "independent" board seats for expert individuals, in addition to constituency seats. Unusual among peer institutions, the GAVI board now includes five "unaffiliated" members.[105] At the 2009 Partners' Forum, civil society representatives issued a call to action, urging GAVI to double its CSO representation and create separate seats for northern and southern NGOs. The call to action also urged GAVI to require civil society participation in funded country-level programs and to create a direct funding process for national CSOs.[106] GAVI adopted some of these recommendations, strengthening stakeholder input and carrying out a pilot project to test financial support for CSO participation in

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[102] Stine Madland Kaasa, "The UN Commission on Sustainable Development: Which Mechanisms Explain Its Accomplishments?" (2007) 7:3 Global Envt'l Politics 107.
[103] William Muraskin, "The Last Years of CVI and the Birth of the GAVI," in Michael Reich, ed, *Public-Private Partnerships for Global Health,* Harvard Series on Population and International Health (Cambridge: Harvard University Press, 2002).
[104] *Ibid*.
[105] *GAVI Board Composition*, online: http://www.gavialliance.org/about/governance/gavi-board/composition/.
[106] GAVI Alliance, *Civil Society*, online: http://www.gavialliance.org/about/in_partnership/cso/index.php.

immunization programs, but it has not changed the makeup of the board.

In contrast, non-state actors made only limited demands for participation in the GEF and were not significantly involved in its design. The GEF's origin as a collaborative effort among the World Bank, UN agencies, and donor states and its initial operation as a World Bank program eliminated any real possibility for strong civil society participation. The GEF did, however, provide for civil society input on funded projects, following the World Bank's template. Over time, moreover, the GEF expanded its consultative arrangements along the lines set by the CSD.

C. Global Fund

Non-state actors were again centrally involved in the design of the Global Fund. In fact, the vision for the fund originated primarily within civil society. Early actions were driven by a bipartisan effort in the US Congress, catalyzed by civil society advocacy. In 2000, US representatives Barbara Lee (Democrat from California) and Jim Leach (Republican from Iowa) sponsored successful legislation to create a World Bank AIDS Trust Fund. In 2001, Secretary-General Kofi Annan's call for action at the UNGA's Special Session on AIDS created additional momentum. The G-8 soon pledged financial support for a fund structured as a private-public partnership.

The real work of designing the Global Fund, however, was carried out in a multi-stakeholder Transitional Working Group (TWG). The TWG included representatives of developed and developing countries, NGOs, foundations, UN agencies, and the private sector. Initial governance discussions focused on the importance of a relatively small board with donor country, recipient country, and civil society members.[107] Each constituency would select its own representatives. The TWG proposed a board with four non-state members, representing southern and northern NGOs, the private sector, and private foundations. A representative of persons living with the target diseases was later added. The affected communities seat was originally non-voting but was granted the right to vote following advocacy from the southern NGOs.[108]

The inclusion of CSOs in the planning group gave them a strong platform from which to demand participation in the fund and in country-level-funded activities through the CCMs. On the supply side, the decision to create an independent institution outside the World Bank was again crucial. The founders of the Global Fund drew on the precedents of UNAIDS and GAVI to further develop the multi-stakeholder model.

In contrast, the AF was a product of the state-centric Kyoto Protocol, with key planning decisions taken by the Kyoto Protocol's state parties. Discussions among the parties were dominated by conflict over the North-

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[107] *Final Report of the First Meeting of the Transitional Working Group to establish a Global Fund to fight AIDS, Tuberculosis, and Malaria*, Brussels, 11-12 October 2001, online: http://www.theglobalfund.org/en/board/twg/ at 3-4.

[108] Sonja Bartsch, "Southern Actors in Global Health Public-Private Partnerships: The Case of the Global Fund," in Sandra J MacLean, Sherri A Brown and Pieter Fourie, eds, *Health for Some: The Political Economy of Global Health Governance* (New York: Palgrave Macmillan, 2009) at 130 and 135.

South distribution of states on the board, the areas in which the AF would fund projects, and the size of its budget. Inter-governmental negotiations on a global health fund might be less contentious, but the dominant difference with the Global Fund's process appears to be the fact that negotiators kept the design of the AF within this fraught inter-state political environment, whereas the Global Fund was created in a far more open context. The political divide in the inter-governmental AF negotiations also muted civil society demand for participation.

The CIF was created by the donor state-dominated World Bank, which established state-based committees. By the late 2000s, however, a number of CSOs, inspired by the Global Fund, were calling for stakeholder participation. Germanwatch and CARE urged "active and meaningful participation by vulnerable populations and people in decision-making on adaptation at all levels."[109] Practical Action called for national bodies such as the CCMs to support community-based adaptation.[110] In response, the committees asked the Secretariat to propose a framework for civil society engagement, and it commissioned a study by International Union for the Conservation of Nature (IUCN).

The IUCN examined the role of civil society in several international institutions, including the GEF, but drew particular inspiration from the Global Fund. In the short term, the IUCN recommended that civil society representatives be made "active observers" in all CIF committees, with the authority to speak, request that items be added to the agenda, and recommend experts to speak. Observers should represent constituencies, including communities affected by climate change, and they should be selected by, and speak on behalf of, their constituency. The CIF should also facilitate CSO participation. In the longer term, the IUCN recommended that the CIF gradually expand civil society participation, eventually authorizing full participation in decision-making, at least on specific matters.[111] The CIF adopted almost all of these short-term recommendations,[112] but it did not address the longer-term recommendations. Given the legacy of the CIF, a move to direct civil society participation in the near future would be surprising.

In sum, only where there was substantial *demand* from non-state actors for a direct role in decision-making has participation been extended beyond mere consultation. Only where the *institutional context* of formation was separated from inter-state forums and from an established consultative approach were direct participation arrangements adopted. And once a

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[109] CARE, German Watch and Bread for the World, *Pro-Poor Governance of Global Adaptation Funds* (2009), online: http://www.germanwatch.org/klima/ad-dis09.pdf.
[110] Practical Action, *Governance for Community-Based Adaption*, online: http://practicalaction.org/smoke/docs/climate_change/governance-for-community-based-adaptation.pdf.
[111] *IUCN Review of Practices*, *supra* note 48 at 17-18.
[112] *Guidelines for Inviting Representatives of Civil Society to Observe Meetings of the CIF Trust Fund Committees*, 20 April 2009, online: http://www.climateinvestmentfunds.org/cif/sites/climateinvestmentfunds.org/files/guidelines_for_inviting_reps_of_civil_society_to_cif_tfc_meetings_042009.pdf.

pattern of participation was established, it became the baseline from which subsequent institutional design decisions could proceed. Civil society participation in UNAIDS[113] created expectations, precedents, political influence, and nascent normative understandings that contributed to the multi-stakeholder approach of GAVI, which in turn influenced the even more participatory structure of the Global Fund. In environmental organizations, in contrast, the unbroken legacy of consultative relationships still sets the outer limits of institutional imagination.

IV. Evaluating Participation

The success of participatory health institutions challenges traditional assumptions about the appropriate role for non-state actors in international governance. Direct participation appears to enhance legitimacy, deliberation and decision-making, and effectiveness. The observer and consultation mechanisms of environmental institutions, while valuable, appear less successful in leveraging the full potential of civil society. We conclude that direct participation would increase civil society contributions to environmental and other international institutions, especially along the dimensions of legitimacy, deliberation, and effectiveness.

1. Legitimacy

Legitimacy is "the justification of authority," and it is essential as environment and global health institutions claim increasing governance authority over non-state actors and communities as well as over states.[114] Scholars highlight two major forms: "input" and "output" legitimacy.[115] Input legitimacy relates to the quality of an institution's decision-making processes.[116] Some scholars focus on the participatory nature of institutional processes under this heading and treat transparency, accountability, and other procedural elements separately. "Output legitimacy" relates to the effectiveness of an institution's decisions and actions.[117] We examine input

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[113] CSOs had also participated in health partnerships hosted by the WHO, such as Roll Back Malaria (RBM). Participation in these partnerships has also expanded; RBM now includes seven constituencies with full voting rights, including NGOs, foundations, and research bodies. Roll Back Malaria, The RBM Partnership Board, online: http://www.rbm.who.int/mechanisms/partnershipboard.html.

[114] Bodansky, "The Legitimacy of International Governance," *supra* note 1 at 600-1. Legitimacy may be a factual question (do the relevant actors view an institution as legitimate?) or a normative one (how strong are the justifications offered?). These questions are interrelated in practice, and we treat them together here. *Ibid* at 601-2. Compare with Steven Bernstein, "Legitimacy in Intergovernmental and Nonstate Global Governance" (2011) 18 Rev Int'l Pol Econ 17 at 20.

[115] Fritz W Scharpf, "Economic Integration, Democracy and the Welfare State" (1997) 4 J Eur Public Pol'y 18.

[116] Legal authority is also an element of input legitimacy.

[117] See, for example, Karin Bäckstrand, "Democratizing Global Environmental Governance? Stakeholder Democracy after the World Summit on Sustainable Development" (2006) 12 Eur J Int'l Rel 467; Klaus Dieter Wolf, *Private Actors and the Legitimacy of Governance beyond the State: Conceptional Outlines and Empirical Explorations*, online: http://www.politikwissenschaft.tu-darmstadt.de/fileadmin/pg/media/papers/civil.pdf at 12. Bodansky, *supra* note 1 at 612, follows

legitimacy here and in the next subsection and output legitimacy in the third subsection.

Civil society participation can contribute to input legitimacy by involving stakeholders in decision-making, enhancing institutional credibility, and expanding transparency and accountability. These elements are extremely important for legitimacy in the international system, where true democratic procedures—the most widely accepted legitimacy criterion—have yet to penetrate:[118] "the social and political conditions for democracy are not met at the global level and there is no reason to think that they will be in the foreseeable future."[119]

First, stakeholder involvement enhances institutional legitimacy. As communities and interests affected by an organization's actions are involved in its decisions, they gain a sense of ownership, increasing their willingness to grant authority to the institution.[120] More broadly, stakeholder involvement is one of the "participatory, deliberative practices" that endow institutions with a degree of democratic legitimacy even without true electoral procedures under the deliberative tradition in democratic theory.[121] Such practices are the most feasible way to build more robust democracy at the international level.[122] In addition, participation by multiple, countervailing interests—such as NGOs, business groups, and technical experts—helps prevent any one interest from capturing (or being seen as capturing) the institution.[123]

Second, CSOs are viewed as highly credible on issues of public policy. In surveys of public trust conducted since 2000, CSOs perform better than government, business, or the media in terms of providing credible information on the environment, health, and human rights.[124] Trust in CSOs stems in large part from their "moral authority … directly linked to claims that they represent the common good in global affairs as well as the 'voices

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the three-part approach with different designations.

[118] Bernstein, *supra* note 2 at 147; Bodansky, *supra* note 1 at 617-19; Charnovitz, *supra* note 1; Thomas Risse, "Transnational Governance and Legitimacy," in *Governance and Democracy: Comparing National, European and International Experiences* (Abingdon: Routledge, 2006) at 183: "Including non-state actors in global governance is also meant to increase the external accountability of states. Trisectoral public policy networks and global public private partnerships are precisely meant to close the participatory gap identified by critics of international regimes."

[119] Allen Buchanan and Robert O Keohane, "The Legitimacy of Global Governance Institutions" (2006) 20 Ethics & Int'l Affairs 405 at 416.

[120] Bodansky, *supra* note 1 at 617; Risse, *supra* note 118.

[121] Bernstein, *supra* note 2 at 147. The leading conceptions of democracy are the liberal or aggregative, the republican or communitarian, and the deliberative or cosmopolitan. Henrik Fryman and Ulrike Mörth, "Soft Law and Three Notions of Democracy: The Case of the EU," in Ulrike Mörth, ed, *Soft Law in Governance and Regulation: An Interdisciplinary Analysis* (Northampton, MA: Edward Elgar Publishing, 2004) at 155 and 157.

[122] Gráinne de Búrca, "Developing Democracy beyond the State" (2008) 46 Colum J Transnat'l L 221.

[123] Abbott and Snidal, "Strengthening International Regulation," *supra* note 1 at 554.

[124] World Bank, *Issues and Options for Improving Engagement between the World Bank and Civil Society Organizations* (2005) at 20.

of the weak and powerless.'"[125] This is one of "the real and genuine pillars of the legitimacy of private actors' participatory claims."[126] In the case of the Global Fund, for example, northern and southern NGOs draw legitimacy from representing "the interests of those people who are at the centre of the activities of the [fund]: the people affected by diseases, ill-health and poverty in developing countries."[127] CSOs may contribute their credibility to institutions in which they participate. This benefit, however, is less likely to attach to institutions that merely solicit civil society views through external mechanisms, such as partnership fairs or pre-meeting consultations, than to those that include civil society in actual decision-making.

Third, accountability is a key element of legitimacy.[128] Accountability may be internal, from an agent to its principals, or external, from an institution to the groups affected by its decisions. With respect to internal accountability, global health institutions—and some environmental institutions—have made significant strides. Starting with UNAIDS, CSOs have been allowed to select the organizations that would represent them. In the Global Fund, each civil society constituency operates a full nomination and selection process.[129] The fund also reserves separate board seats for northern and southern CSOs. Constituency processes that are sufficiently broad go some way to answering the concern that CSOs are only accountable to small numbers of members and donors, most of whom are from Western nations.[130] Undoubtedly, however, additional efforts are needed to ensure that southern voices are adequately represented.[131]

Global health institutions devote significant resources to supporting selection processes and facilitating other interactions with civil society—for example, through communications focal points.[132] Health institutions also operate broad stakeholder consultation processes, which increase transparency and serve as a check on CSO accountability. In addition, the Global Fund mandates transparent country-level constituency procedures for CCMs. Achieving the desired level of civil society participation has been

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[125] Risse, *supra* note 118. See Wolf, *supra* note 117 at 17: "[A] credible commitment to basic norms or to the general welfare."
[126] Wolf, *supra* note 117 at 17.
[127] Bartsch, *supra* note 108 at 134.
[128] Thomas Hale, "Transparency, Accountability and Global Governance" (2008) 18 Global Governance 73.
[129] In fact, "[o]nly the three civil-society delegations have truly open and transparent selection processes which involve public nominations and voting." *Turning the Page from Emergency to Sustainability,* Final Report of the High-Level Independent Review Panel on Fiduciary Controls and Oversight Mechanisms of the Global Fund to Fight AIDS, Tuberculosis, and Malaria (2011), online: http://www.theglobalfund.org/en/highlevelpanel/report/.
[130] Risse, *supra* note 118.
[131] For other perspectives on how to foster greater accountability of CSOs, see Kenneth Anderson, "What NGO Accountability Means and Does Not Mean" (2009) 103 Am J Int'l L 170; L David Brown, *Creating Credibility: Legitimacy and Accountability for Transnational Civil Society* (Sterlin, VA: Kumarian Press, 2008); Mary Kay Gugerty and Aseem Prakash, eds, *Voluntary Regulation of NGOs and Nonprofits: An Introduction to the Club Framework* (New York: Cambridge University Press, 2010).
[132] Again, the same is true of environmental institutions such as the GEF.

challenging, although constituency processes have steadily improved.[133] Yet by including affected communities and supporting community organizations, CCMs are broadening internal accountability. To be sure, national and international constituency procedures are far from perfect, but they remain in their infancy.[134] They already provide for "contestability" within civil society.[135] Over time, they can be expected to evolve in the direction of greater accountability.

On external accountability, transparency is especially important.[136] In institutions such as the Global Fund, civil society representatives have pressed for measures to increase transparency and accountability.[137] As a result, global health institutions appear to be outperforming environmental institutions on these measures. In 2011, the United Kingdom Department for International Development (DFID) reviewed forty-three multilateral organizations to which the United Kingdom contributes.[138] DFID assessed (1) "organizational strengths" (input legitimacy), of which transparency and accountability were major elements and (2) the "impact on … development and humanitarian objectives" (output legitimacy). It judged "value for money" across both areas. DFID rated the organizational strength of GAVI and the Global Fund as "strong," the highest rating given—GAVI received the highest rating of any organization.[139] The review highlighted the organizations' robust external transparency and internal audit functions, singling out the Global Fund's decision to publish, and require grant recipients to publish, procurement data. In contrast, it rated the GEF and the CIF as only "satisfactory," criticizing both for limited transparency in particular areas.

A separate review of the quality of international assistance by the Center for Global Development and the Brookings Institution also found recent

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[133] Global Fund, *Country Coordinating Mechanism Model: Governance and Civil Society Participation*, online: http://www.theglobalfund.org/en/ccm/documents/reports/.

[134] Bartsch, *supra* note 108 at 140 (limited transparency in Global Fund selection processes), 136 (representation problems in CCMs).

[135] Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (New York: Oxford University Press, 1992) at 56-58 (calling for contestability among potential civil society participants by analogy to contestable markets).

[136] Robert O Keohane, "Global Governance and Democratic Accountability," in David Held and Mathias Koenig-Archibugi, eds, *Taming Globalization* (Oxford: Government and Opposition Ltd, 2003) at 130-59; Ronald B Mitchell, "Transparency for Governance: The Mechanisms and Effectiveness of Disclosure-based and Education-based Transparency Policies" (2011) 70 Ecological Economics 1882.

[137] International Center for Research on Women, *Civil Society Participation in Global Fund Governance: What Difference Does It Make?* (2004) at 2-3, online: http://www.theglobalfund.org/en/library/evaluationlibrary/positionpapers/. In addition to a strong transparency policy, civil society representatives on the fund's board were largely responsible for the requirement of a formal review of the fund, with the results publicly available. Global Fund, *An Evolving Partnership: The Global Fund and Civil Society in the Fight Against Aids, Tuberculosis and Malaria*, online: http://www.theglobalfund.org/en/publications/other/evolvingpartnership/ at 11.

[138] UK Department for International Development, *Multilateral Aid Review: Ensuring Maximum Value for Money for UK Aid through Multilateral Organizations* (March 2011), online: https://s3-eu-west-1.amazonaws.com/media.dfid.gov.uk/multilateral_aid_review_full_linked.pdf at iii.

[139] *Ibid* at 76.

global health institutions to outperform their peer environmental institutions. The Global Fund and GAVI received among the highest rankings for both transparency and learning, while the GEF was below average.[140] These two assessments strongly suggest that participatory governance is contributing to greater transparency and accountability.[141]

2. Deliberation

Involving civil society in institutional decision-making leads to a more robust deliberation. As noted earlier, deliberative democracy is an important alternative to representative democracy as a source of legitimacy,[142] although there is no consensus on the requirements for adequate deliberation and deliberation in many institutions is undoubtedly deficient.[143] Robust deliberation can also contribute to improved decision-making, increased effectiveness, and output legitimacy.[144]

Most concretely, participation enables non-state actors to contribute information and expertise that is valuable for policy formulation and legitimacy: "[K]ey information resides in the knowledge and mental models of stakeholders."[145] Much of this information can be tapped through consultative mechanisms. However, participation allows CSOs to bring subjective understandings of situations and issues, values, and normative commitments to bear along with more technical information and expertise. Moreover, while arrangements such as the GEF's pre-meeting consultations or the CSD's multi-stakeholder segments may allow CSOs to express understandings, values, and commitments, such mechanisms can evolve into "formalized rituals that restrict the non-state actors' impact."[146] For true deliberation, interactions must not be confined to "a sideshow that obscures where key decisions actually get made."[147] Direct participation allows CSOs to argue for their understandings, values, and commitments during decision-making, in the give and take that characterizes true deliberation.[148] When

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[140] Center for Global Development and Brookings Institution, *Quality of Official Development Assistance*, online: http://www.cgdev.org/userfiles/quoda/QuODA_TransparencyLearning_Update_022211.pdf.

[141] See Bartsch, *supra* note 108 at 141 (the Global Fund's transparency and accountability is strong).

[142] Bernstein, *supra* note 2 at 147.

[143] Abbott and Snidal, *supra* note 1 at 556-57: "social groups possess highly uneven capacities for organization and collective action, systematically skewing participation."

[144] John S Dryzek and Hayley Stevenson, "Global Democracy and Earth System Governance" (2011) 70 Ecological Economics 1865; Asher Alkoby, "Global Networks and International Environmental Lawmaking: A Discourse Approach" (2008) 8 Chi J Int'l L 377at 388: "But there is some evidence to suggest that at least in some areas of global governance an inclusive process also produces more effective outcomes."

[145] Brian Walker et al, "Resilience Management in Social-Ecological Systems: A Working Hypothesis for a Participatory Approach" (2002) 6 Conservation Ecology 14.

[146] Franz Perrez, "How to Get Beyond the Zero-Sum Game Mentality between State and Non-State Actors in International Environmental Governance" (2009) 2 Consilience: The Journal of Sustainable Development 15, online: http://www.consiliencejournal.org/index.php/consilience/article/view/95.

[147] Dryzek and Stevenson, *supra* note 144.

[148] Thomas Risse, "'Let's Argue!' Communicative Action in World Politics" (2000) 54

civil society representatives have a vote, moreover, their arguments are backed by political leverage.

The perspectives and judgments of CSOs are particularly valuable in deliberations on long-term issues. Civil society actors are often best placed to provide long-term perspectives because they face fewer political constraints than governments. Less fettered by the short-term political bargaining that governments must constantly engage in, CSOs can, for example, speak on behalf of future generations and prod governments to consider broad perspectives and focus on fundamental issues.[149] In addition, CSOs act as the "voices of the weak and powerless," who are under-represented in inter-governmental deliberations.[150] Again, while civil society can voice such perspectives during consultative procedures, without direct participation there is little reason to believe they will have a strong influence on decision-making.

CSOs can also serve as vertical "transmission belts," communicating the concerns, understandings, values, and norms—even the place- and context-specific knowledge—of smaller-scale communities, which might otherwise never reach international institutions.[151] Again, only direct participation ensures that these ideas will be effectively inserted into deliberation and decision-making. Even when civil society's arguments do not prevail, their participation introduces a broader range of ideas and values, stimulating innovative thinking.[152]

3. Effectiveness

Many of the impacts of participation that were just discussed also increase the effectiveness of international institutions, enhancing output, as well as input, legitimacy.[153] This is true, for example, of broad knowledge inputs, robust deliberation, external accountability, and stakeholder ownership. One important impact is on resource mobilization. Over the last decade, institutions with strong civil society participation have been among

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[149] Ann M Florini, "Transnational Civil Society," in Michael Edwards and John Gaventa, eds, *Global Citizen Action* (Boulder, CO: Lynne Rienner, 2001) at 39.

[150] Frank Biermann and Aarti Gupta, "Accountability and Legitimacy in Earth System Governance: A Research Framework" (2011) 70 Ecological Economics 1856.

[151] Patrizia Nanz and Jens Steffek, "Deliberation and Democracy in Global Governance: The Role of Civil Society," in Sophie Thoyer and Benoît Martimort-Asso, eds, *Participation for Sustainability in Trade* (London: Ashgate, 2007) at 61; Michael Zürn, "Democratic Governance Beyond the Nation-State: The EU and Other International Institutions" (2000) 6 Eur J Int'l Relations 183 at 198.

[152] Advisory Group, *Civil Society and Aid Effectiveness: A Synthesis of Advisory Group Regional Consultations and Related Processes, January-December 2007* (2008), online: http://siteresources.worldbank.org/ACCRAEXT/Resources/4700790-1208545462880/AG-CS-Synthisis-of-Consultations.pdf at 6; Jens Steffek and Patrizia Nanz, "Emergent Patterns of Civil Society Participation in Global and European Governance," in Claudia Kissling, Patrizia Nans and Jens Steffeck, eds, *Civil Society Participation in European and Global Governance: A Cure for the Democratic Deficit?* (New York: Palgrave Macmillan, 2007) at 28.

[153] Steinar Andresen and Ellen Hey, "The Effectiveness and Legitimacy of International Environmental Institutions (2005) 5 Int'l Envt'l Agreements 211 at 212.

the most successful at raising funds.[154]

Key to this success has been the development of engaged and empowered constituencies in donor countries.[155] Committed and empowered civil society groups often have far greater influence on donor governments than do international institutions, and they have exercised their influence successfully. For example, CSOs have consistently pushed for ambitious replenishments of the Global Fund, and, in many countries, they are the primary voice urging governments to expand funding.

Although varying degrees of transparency make comparisons difficult, resource mobilization appears to be stronger for the Global Fund and GAVI than for the GEF and the AF. Over nearly twenty years, the GEF Trust Fund has received replenishment commitments totalling US $16 billion.[156] GAVI, in just over half as many years, has received contributions and commitments of more than US $14 billion.[157] And in less than half the GEF's life span, the Global Fund has received over US $30 billion in pledges, of which nearly US $22 billion has been received.[158] In sharp contrast, the AF, over its several-year gestation period, has received contributions of only some US $119 million, as well as $173 million from the Clean Development Mechanism, comparing poorly to the early success of the health funds.[159] These data suggest that expanding participation might enhance resource mobilization for the AF and other environmental funds.

Although the Global Fund recently faced a shortfall in anticipated funding, its latest replenishment still surpassed that of peer environmental institutions such as the GEF. Both organizations implemented replenishments during the difficult economic conditions of 2010, but pledges to the Global Fund were three times those of the GEF.[160] The Global Fund was still forced to postpone a new round of grants due to the extent of its existing commitments, reflecting a cautious methodology for assessing future funding as well as the failure of some donors facing fiscal pressures to deliver on their pledges.[161] In a reflection of the value of the multi-

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[154] Karen Caines et al, *Assessing the Impact of Global Health Partnerships* (2004), online: http://www.dfidhealthrc.org/publications/global_initiatives/GHP%20Synthesis%20Report.pdf at 10; Rene Loewenson, *Civil Society Influence on Global Health Policy* (April 2003), online: http://www.tarsc.org/WHOCSI/pdf/WHOTARSC4.pdf at 9.

[155] Global Fund, *Donors and Contributions*, online: http://www.theglobalfund.org/en/about/donors/.

[156] *Record Funding for the Global Environment Facility*, online: http://www.thegef.org/gef/node/3010.

[157] *Donor Contributions and Proceeds to GAVI*, http://www.gavialliance.org/funding/donor-contributions-pledges/.

[158] *Pledges and Contributions*, online: http://www.theglobalfund.org/en/about/donors/public/.

[159] *Adaptation Fund Trust Fund Financial Report, as of March 31, 2012*, online: http://fiftrustee.worldbank.org/webroot/data/AF_TR_1.pdf.

[160] *GEF-5 Replenishment Meetings & Documents* (2010), online: http://www.thegef.org/gef/replenishment_meetings/1. Global Fund, *Third Replenishment, Second Meeting* (2010), online: http://www.theglobalfund.org/en/donors/replenishments/thirdreplenishmentsecondmeeting/.

[161] Global Fund Observer, *Why the Global Fund Cancelled Round 11* (December 2011) at 2-3; Board Chair Cover Note, Audit and Investigations Reports Issued by Global Fund's Office

stakeholder model for resource mobilization, however, the Gates Foundation responded with a contribution of US $750 million, significantly more than it had contributed over the previous decade. Furthermore, the Global Fund's response to these challenges—appointing a high-level panel and initiating a series of structural reforms based on the panel's recommendations—demonstrates the flexibility and innovativeness of participatory institutions.

At the project level, initial evidence suggests that civil society participation can also improve implementation.[162] The World Bank's portfolio performance reports indicate that CSO involvement at the country and project levels lowers the risk of poor performance and improves effectiveness.[163] According to one study that reviewed development projects in forty-nine countries, projects were over six times more likely to be successful when participation was a core goal.[164] The sense of ownership created by participation in decision-making should likewise increase civil society's commitment to an institution's projects and policies.

The DFID review again suggests that global health institutions are outperforming environmental institutions. DFID described GAVI and the Global Fund (along with only seven other organizations) as offering "very good value for money," while the GEF and the CIF were found to provide only "good value for money."[165] The DFID evaluation drew on diverse evidence including survey data, independent studies of effectiveness, external evaluations, and reporting by the institutions themselves.[166] The analysis by the Center for Global Development and the Brookings Institution also assigned GAVI and the Global Fund top ratings for organizational efficiency, while the GEF was below average.[167]

A major criticism of civil society participation is the inefficiency that stakeholder involvement may create.[168] Yet participatory health institutions appear highly effective. By the end of 2011, the Global Fund was financing AIDS treatment for 3.3 million people and tuberculosis treatment for 8.2

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of the Inspector General (1 November 2011), online: http://www.theglobalfund.org/en/oig/reports/.

[162] Liesbet Steer and Cecilie Wathne, "Donor Financing of Basic Education: Opportunities and Constraints" (2010) 30 Int'l J Educational Development 472 at 476; Kennedy M Maranga, *The Evolving Role of NGOs in Global Governance* (28 July 2010) at 8, online: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1650163.

[163] Sabine Schlemmer-Schulte, "The Impact of Civil Society on the World Bank, The International Monetary Fund and the World Trade Organization: The Case of the World Bank" (2000-01) 7 ILSA J Int'l & Comp L 399 at 411, note 50.

[164] Jonathan Isham, Deepa Narayan, and Lant Pritchett, "Does Participation Improve Performance? Establishing Causality with Subjective Data" (1995) 9 World Bank Econ Rev 175 at 178, 185-86.

[165] DFID, *supra* note 143.

[166] *Ibid.* Although working with partners and a beneficiary voice were among the forty-one criteria for DFID's assessment of "value for money," these factors accounted for less than 5 percent of the overall score and were very unlikely to account for the significant differences between health and environmental institutions overall (at 112-13).

[167] Center for Global Development and Brookings Institution, *supra* note 145.

[168] See, for example, Jennifer Wallner, "Legitimacy and Public Policy: Seeing Beyond Effectiveness, Efficiency and Performance" (2008) 36 Policy Studies Journal 421; Bernstein, *supra* note 2 at 151.

million, reducing prevalence and mortality in many countries. It had distributed 230 million insecticide-treated bed nets, contributing to sharp reductions in malaria mortality in Africa. The Global Fund estimates that its efforts have helped prevent 5.7 million deaths.[169] Over ten years, GAVI has immunized some 288 million children. Vaccine coverage for hepatitis B has increased from under 20 percent to nearly 70 percent, while diphtheria-tetanus-pertussis coverage has increased by nearly one-third to 82 percent. The WHO estimates that GAVI's programs have prevented 5.5 million deaths.[170] To be sure, one cannot assess the counterfactual results of less participatory organizations, yet these results at least demonstrate that civil society participation need not prevent institutional effectiveness.

4. Longer-Term Rewards and Risks

In addition to its impact on the legitimacy and effectiveness of specific institutions, civil society participation has the potential to catalyze broader transformations of governance at multiple scales. International institutions can serve as schools of democratic engagement, teaching and empowering non-state actors to participate in governance across diverse scales and issue areas.

Local and national impacts are particularly clear when international institutions promote civil society participation at these levels. The project-level input arranged by the GEF and other World Bank-affiliated organizations promotes relatively narrow and localized engagement and capacity. The Global Fund's CCM mechanism, in contrast, has the potential to lead to participation in national processes, build broader capacity, enhance country-wide networks, and expand civil society engagement in policy formulation.

Participation at the international level has equivalent benefits, which may spill over into other contexts. For example, civil society representatives on the Global Fund board contributed to the adoption of strong guidelines for stakeholder involvement at the country level,[171] leading recipient governments to open political processes to non-state actors. The fund's recent decision to invest in strengthening civil society participation—like GAVI's decision to provide direct support for CSO participation in strengthening national health systems[172]—should produce similar benefits. Over time, programs such as these could shift the relationships between civil society and governments.

Just as participation produces broad benefits, however, so too may it pose risks. Foremost are the risks that participation will co-opt civil society representatives and that unrepresentative slices of civil society may capture

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[169] *Ibid*.
[170] *Key Indicators: Measuring the Alliance's Progress against Its Four Strategic Goals*, online: http://www.gavialliance.org/performance/global_results/GAVI_Alliance___Results_2008___Vaccines.php.
[171] Global Fund, *supra* note 142.
[172] *Civil society organization support*, online: http://www.gavialliance.org/support/cso/.

the space for participation. Co-optation involves CSOs abandoning their independent, often critical roles by assimilating into the norms and practices of institutions dominated by status quo states. It is essential that some CSOs maintain a "critical distance" from decision-making—their watchdog role improves governance and legitimacy.[173] Capture, in contrast, involves a narrow, unrepresentative segment of civil society gaining control of participation mechanisms, excluding actors with different perspectives and values.

While co-optation and capture are both reasonable concerns, the rapidly evolving mechanisms of civil society participation can be important buffers. Constituency procedures offer potentially significant protections. Any structure in which representatives are disconnected from their constituencies risks inadequate accountability. Constituency nomination and selection mechanisms, however, link representatives to their diverse constituencies, increasing accountability and providing a bulwark against capture by a single faction. Similarly, such mechanisms allow stakeholders to recall representatives who become co-opted or pursue self-interest or the interests of particular organizations rather than those of the constituency while maintaining their own critical distance.[174]

Constituency mechanisms can also provide other important benefits. First, they support the development of leadership within the constituency. One successful approach is the selection of alternate representatives, who learn the practices of the constituency and the institution before succeeding the sitting representatives. Second, constituency mechanisms build civil society capacity. In this case, a useful model is the communications focal point, which is tasked to promote information exchanges and other interactions within diverse and geographically dispersed constituencies and to support individual participants in global processes. Pioneered by the Global Fund, this approach has since been adopted by UNAIDS and GAVI.[175] Finally, constituency mechanisms enhance the legitimacy of civil society participants and, thus, of the entire institution.

V. Conclusion

The optimal design of international institutions to confront twenty-first-century global challenges is an increasingly urgent question. In addressing the challenge of climate change, for example, civil society participation remains controversial. Despite the pioneering roles of the CSD, the GEF, and other environmental institutions in expanding participation, the AF, the CIF, and

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[173] Dryzek and Stevenson, *supra* note 144.

[174] To be sure, delegation procedures pose their own problems. For example, they may exclude diffuse or poorly organized interests, becoming themselves a larger form of cooptation. These procedures remain in their infancy and must be carefully supervised to maximize their contributions. See Arthur Benz and Yannis Papadopoulos, "Introduction: Governance and Democracy: Concepts and Key Issues," in Benz and Papadopoulos, eds, *Governance and Democracy: Comparing National, European and International Experiences* (London: Routledge, 2006) at 8.

[175] Gartner, *supra* note 1.

the new Green Climate Fund all reject multi-stakeholder governance in favour of state-centric governance. Yet the evidence from the new generation of global health institutions strongly suggests that this turn away from participation is ill-advised. From transparency to resource mobilization, health institutions are outperforming environmental institutions in many crucial areas. While direct participation alone is unlikely to fully account for this performance gap, it is a central feature of the emerging model of global health governance.

The importance of civil society demand in explaining the divergence between health and the environment suggests that CSOs themselves will significantly shape the future of global governance. For example, efforts to organize and represent diffuse communities such as those affected by climate change could spark reforms similar to the ones initiated by the AIDS movement. Yet demand alone is insufficient. The limits of imagination are shaped by institutional contexts, most inherited from an earlier century, and by path dependence within institutions and issue areas. As a result, participatory institutions are more likely to emerge outside of twentieth-century institutions such as the United Nations and the World Bank.

Further research is needed to understand how well the lessons of global health and the environment on the link between direct participation and institutional performance can be translated into other areas. While research on international institutions often focuses on a single institution or, at best, a single sector, cross-sectoral comparisons provide additional explanatory leverage and normative insight and offer broader governance lessons. While there are strong reasons to believe that civil society demand, institutional context, and path dependence will matter in diverse fields, their balance may differ depending on the characteristics of issues and institutional contexts. Inquiries such as these should be a major area for future research on international governance.