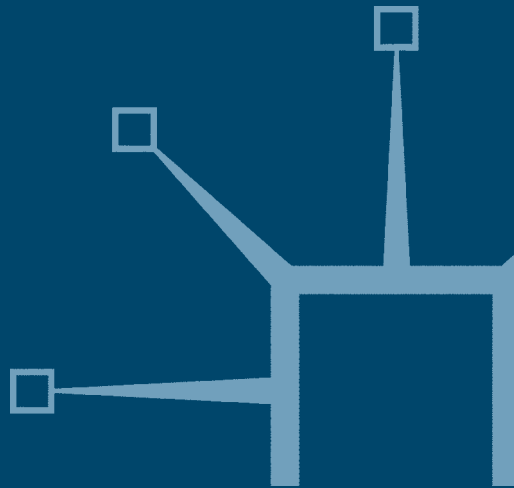


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The New Transnationalism

Transnational Governance and Democratic
Legitimacy

Klaus Dingwerth



Transformations of the State

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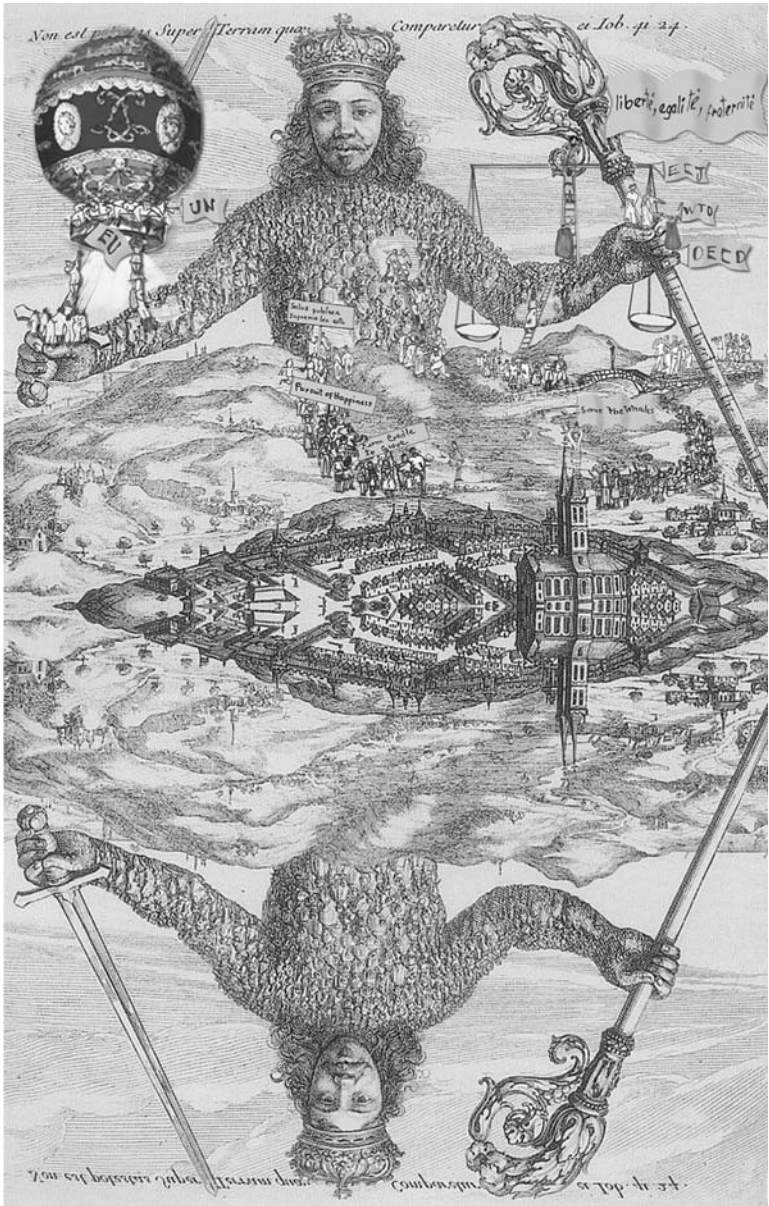
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Transformations of the State

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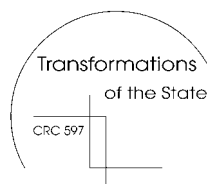
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Transnational Governance and Democratic Legitimacy

Klaus Dingwerth

Institute for Intercultural and International Studies, University of Bremen, Germany
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Series Preface

When we think about the future of the modern state, we encounter a puzzling variety of scholarly diagnoses and prophecies. Some authors predict nothing less than the total demise of the state as a useful model for organizing society – its powers eroded by a dynamic global economy and by an increasing transference of political decision-making powers to supranational bodies. Others disagree profoundly. They point to the remarkable resilience of the state and its core institutions. For them, even in the age of global markets and politics, the state remains the ultimate guarantor of security, democracy, welfare and the rule of law. These debates raise complex questions for the social sciences: what is happening to the modern liberal nation-state of the OECD bloc? Is it an outdated model? Is it still useful? Is it in need of modest reform or far-reaching changes?

The state is a complex entity, providing many different services and regulating many areas of everyday life. There can be no simple answer to these questions. The Transformations of the State series will try to disaggregate the tasks and functions of the state into four key, but manageable dimensions:

- the monopolization of the means of force
- the rule of law as prescribed and safeguarded by the constitution
- the guarantee of democratic self-governance
- the provision of welfare and the assurance of social cohesion

In the OECD world of the 1960s and 1970s these four institutional aspects merged as the central characteristics of the modern state, forming a synergistic whole. This series is devoted to empirical and theoretical studies exploring the transformations of this historical model and the promise it still holds today and for the future. Books in the series address research on one or several of these dimensions, in all of which crucial change is taking place. Although political science is the main disciplinary approach, many books will be interdisciplinary in nature and may also draw upon law, economics, history and sociology. We hope that taken together these volumes will provide its readers with the ‘state of the art’ on the ‘state of the state’.

This book contributes to the work of the Collaborative Research Centre *Transformations of the State* at the University of Bremen (Germany), and is funded by the German Research Foundation (DFG). The state analyses pursued by the Centre are readily accessible through two overview volumes: Stephan Leibfried and Michael Zürn (eds), *Transformations of the State?* (2005); and Achim Hurrelmann, Stephan Leibfried, Kerstin Martens and

Peter Mayer (eds), *Transforming the Golden-Age Nation State* (2007), published in the Transformations of the State series. Further information on the Centre, can be found at www.state.uni-bremen.de.

Achim Hurrelmann, Stephan Leibfried,
Kerstin Martens and Peter Mayer
Series Editors

Acknowledgements

When I began my work on this book in 2002, ‘global public policy networks’ were clearly en vogue. These networks, in which civil society, the corporate sector and public agencies jointly seek solutions for global social and political problems, were lauded for their flexibility and generally seen as effective, efficient and legitimate instruments of global governance. Five years later, the tide has turned. No longer perceived as an adequate cure for the participatory and operational gaps in global governance, most commentators portray global public policy networks with a great deal of scepticism, questioning both their democratic legitimacy and their practical effectiveness. This book shows that neither of these extreme views is adequate. Rather than reflecting the realities of global public policy networks, both the initial optimism and the current scepticism are best seen as snapshots of the political moods of a given historical moment. By giving a detailed and systematic account of the strengths of weaknesses of global public policy networks – which I label ‘transnational rule-making processes’ – I hope to provide both commentators and decision-makers with the means to evaluate this specific instrument of global policy-making more accurately. The most general argument I present is that, if designed carefully, transnational rule-making processes can indeed be legitimate and effective at the same time. Given the magnitude of the challenges the global community is facing in many issue areas of world politics, I believe that this is an important insight.

As any such endeavour, this book would not have been the same without the contributions of many friends, colleagues, and supporters. I owe a great debt to all of them. Particular thanks are due to Frank Biermann and Thomas Risse who were most closely involved with my work on this book and gave invaluable intellectual and practical advice on numerous occasions. As the director of the international Global Governance Project (glogov.org) in the context of which I conducted this study, Frank Biermann was also a reliable source of motivation, encouragement and, most of all, unsurpassable optimism. Moreover, my colleagues from the Global Governance Project provided a work environment that could neither have been more productive nor more enjoyable. I am particularly indebted to Steffen Bauer and Philipp Pattberg for carefully reading and critically commenting on the manuscript on several occasions. In addition, I am very grateful to all those who commented on individual draft chapters, articles and conference papers; to all those who, through frequent and lengthy discussion, helped me to better understand the phenomena analysed in this book; and to those, whose practical assistance was crucial at various stages of putting this book together. They include Sliman Abu Amara, Lydia Andler, Harro van Asselt, Steffen

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This book would also look very different without the help of those who provided crucial information, core funding and an intellectual home. I am therefore particularly indebted to all those who agreed to be interviewed, responded to my e-mail inquiries and telephone calls, provided important documents, and shared their own experiences of the three processes I reconstruct and analyse in this book. I would have been unable to write this book without their sustained, kind and generous support. Beyond those interviewed for this study, I particularly thank Alyson Slater, Careesa Gee and Alan Pierce for compiling and sharing archive documents on the case studies that make up the empirical part of the book. I also wish to thank Earthscan Publishers, the United Nations Environment Programme and the Forest Stewardship Council for granting permission to reprint the policy principles of the World Commission on Dams and the Principles and Criteria for Forest Stewardship in the annex.

Moreover, I am greatly indebted to those who funded my research and to the institutions that hosted me over the past five years. The German National Merit Foundation (Studienstiftung des deutschen Volkes) provided a very generous grant that greatly facilitated my work on this study. Additional funding came from the Volkswagen Foundation through its grant for the MANUS project on international environmental organisations, to which my study contributes. Four host institutions provided a very rich intellectual environment as well as administrative support: the Potsdam Institute for Climate Impact Research, the Environmental Policy Research Centre at the Freie Universität Berlin, the Institute for Environmental Studies at the Vrije Universiteit Amsterdam and the Institute for Intercultural and International Studies at the University of Bremen. At the University of Bremen, I wish to particularly thank the Research Centre on 'Transformations of the State' for taking the results of this project under its wings in this young series. At the Institute for Environmental Studies, I am particularly grateful to Joyeeta Gupta for including me in her international environmental policy research group when I was a visiting fellow in Amsterdam. At the Freie Universität Berlin, I thank Klaus Jacob for his support for the research group on global environmental governance of which I had the pleasure to be an associate member for over two years. At the Potsdam Institute, Richard Klein and

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Finally, my greatest thanks go to my parents, my sister, a handful of very close friends and to Madleina Collenberg for their continuous support over the last years and decades. Writing the book would have been much more difficult and much less enjoyable without their friendship and encouragement.

Klaus Dingwerth

List of Acronyms

ABB	Asea Brown Boveri Ltd.
CDM	Clean Development Mechanism
CERES	Coalition for Environmentally Responsible Economies
CITES	Washington Convention on International Trade in Endangered Species
CSR	Corporate social responsibility
ECA	Export Credit Agency
EU	European Union
FERN	Forests and the European Union Resource Network
FLA	Fair Labor Association
FMU	Forest management unit
FSC	Forest Stewardship Council
GA	General Assembly (of the Forest Stewardship Council)
GRI	Global Reporting Initiative
IASB	International Accounting Standards Board
ICANN	Internet Corporation for Assigned Names and Numbers
ICOLD	International Commission on Large Dams
IDA	International Development Association
IHA	International Hydropower Association
IGO	Intergovernmental organisation
ILO	International Labour Organisation
IRN	International Rivers Network
ISEAL Alliance	International Social and Environmental Accreditation and Labelling Alliance
ISO	International Organisation for Standardisation
ITTA	International Tropical Timber Agreement
ITTO	International Tropical Timber Organisation
IUCN	World Conservation Union (originally named International Union for the Conservation of Nature)
IWG	Interim Working Group
MSC	Marine Stewardship Council
MWG	Measurement Working Group
NGO	Non-governmental organisation
NTFP	Non-timber forest products
OECD	Organisation for Economic Cooperation and Development
OED	Operations and Evaluations Department
PSU	Policy and Standards Unit
PWG	Policy Working Group

RWG	Revisions Working Group
SCWG	Stakeholder Council Working Group
SFM	Sustainable Forest Management
SFP	Structured Feedback Process
SLIMF	Small and low-intensity managed forests
SME	Small and medium-size enterprises
SRI	Socially responsible investment
TWG	Technical Working Group
UN	United Nations
UNECE	United Nations Economic Commission for Europe
UNEP	United Nations Environment Programme
UNEP DTIE	United Nations Environment Programme, Division of Technology, Industry and Economics
VWG	Verification Working Group
WBCSD	World Business Council on Sustainable Development
WCD	World Commission on Dams
WSSD	World Summit on Sustainable Development
WWF	World Wide Fund for Nature/WWF

1

Introduction

At the outset of the 21st century, world politics is undergoing profound change. Concepts such as ‘turbulence’ (Rosenau 1990), ‘transformations of the state’ (Leibfried and Zürn 2005; Hurrelmann et al. 2008) or ‘global change’ (Lüdeke et al. 2004) are invoked to describe the dynamic nature of our times. In what is still the most ambitious account, Martin Albrow (1996) even identifies the dawn of a new age. Modernity, he asserts, is being replaced by the Global Age. As geography no longer matters in the organisation of social relations and as the globe becomes the most relevant point of reference for justifying socio-political demands, programmes and activities, conventional accounts of state-society relations and our basic understanding of world politics are fundamentally challenged.

These transformations give rise to a whole set of normative questions. They primarily revolve around the question: How may we organise our collective lives in the ‘global age’? In his book *One World: The Ethics of Globalization*, Peter Singer (2002: 200–1) puts the task of normative theorising about global governance into a larger historical context:

The fifteenth and sixteenth centuries are celebrated for the voyages of discovery that proved that the world is round. The eighteenth century saw the first proclamations of universal human rights. The twentieth century’s conquest of space made it possible for a human being to look at our planet from a point not on it, and so to see it, literally, as one world. Now the twenty-first century faces the task of developing a suitable form of government for that single world. It is a daunting moral and intellectual challenge, but one we cannot refuse to take up.

On a practical level, demand for global governance is increasing. Climate change is widely acknowledged as a danger that can only be faced effectively if activities are coordinated at a global scale. The same holds true for ozone depletion, the loss of biological diversity and other environmental problems. To respond to these challenges, authors increasingly call for

planetary solutions. They call for no less than a 'science for global sustainability' (Clark et al. 2005), an 'earth system analysis' (Schellnhuber and Wenzel 1999) and for practical steps towards 'earth system governance' (Biermann 2007). But environmental problems are not an exception. Health challenges such as the fight against HIV/AIDS, Malaria or Tuberculosis, the volatility of global financial flows and global security threats induced by the activities of transnational terrorist networks pose similar global challenges. In sum, there is thus broad agreement that global governance – the rule-based coordination of global political action to meet the abovementioned challenges – is needed. But which form of global governance is adequate?

Given the variety of global governance mechanisms that are in place, this is not an easy question. At a most general level, we can distinguish between three different forms of global governance, each with its own merits and deficits:¹ In *intergovernmental governance*, states cooperate with each other through their governments. They either negotiate international agreements such as the United Nations Framework Convention on Climate Change or cooperate in international organisations such as the World Bank, the United Nations or the World Trade Organisation. Once in place, intergovernmental governance may be very effective as is illustrated by the current world trade regime. Yet, other examples such as international negotiations on the Kyoto Protocol or the UN Convention on the Law of the Sea support the widely held view that intergovernmental governance is often slow and that meaningful results are difficult, if not impossible, to achieve where powerful veto players exist. Moreover, intergovernmental governance is often criticised for its allegedly poor democratic performance.

In *transgovernmental governance*, members of national bureaucracies, judiciaries and parliaments cooperate across borders to address pressing policy problems. The Basel Committee on Banking Supervision and the International Organisation of Securities Commissioners are primary examples of transgovernmental networks that exert significant policy influence. In the former, the heads of national banking supervision agencies have created and now overlook international standards for the banking sector; the latter performs a similar function in regulating the activities of stock exchanges. While some observers have argued that transgovernmental networks have a strong potential to contribute to 'good' global governance (Slaughter 2004), the 'closed shop' nature and low level of transparency of transgovernmental networks invite criticism of their democratic performance.

Finally, in *transnational governance*, non-state actors regulate particular issue areas of global governance. Traditionally, non-state actors such as Greenpeace, Amnesty International, global unions, industry associations and companies have focused on – and frequently succeeded in – influencing the rule-making activities of governments or intergovernmental organ-

isations. More recently, these actors engage in creating and implementing their own rules. Prominent examples of this *new transnationalism* include the Internet Corporation for Assigned Names and Numbers (ICANN), the International Accounting Standards Board (IASB) and a variety of transnational labelling and certification organisations such as Rugmark, the Forest Stewardship Council (FSC) or the Marine Stewardship Council (MSC).

A key question for contemporary global governance research is to what extent these different forms of global governance can be considered effective and legitimate. Many commentators believe that only intergovernmental governance can meet the challenge of combining effectiveness with legitimacy. At the same time, governments have come under attack for their failure to achieve either of these two goals and intergovernmental organisations are criticised for being ineffective, inefficient and undemocratic. As transgovernmental networks face similar objections, this study evaluates the potential of the *new transnationalism* to contribute to better global governance.

By closely examining three transnational governance processes in which governments are either absent or only marginally involved – the World Commission on Dams (WCD), the Global Reporting Initiative (GRI), and the Forest Stewardship Council (FSC) – this study sheds light on the nature and on the democratic potentials of transnational governance. The book argues that, while transnational rule-making faces a number of severe challenges, it can be both effective *and legitimate*. Where decision-making is designed as an inclusive, transparent and deliberative process, transnational governance may be as legitimate as intergovernmental negotiations. Where important stakeholder groups are excluded, transparency is low and sincere deliberation does not take place, transnational governance will lack such legitimacy. In practice, the three processes analysed in this study are situated between these poles. They all face difficulties, in particular with regard to the selection of participants. At the same time, they make strong – and often successful – efforts to meaningfully include the voices of those affected by their decisions, to achieve a high level of transparency, and to base their decisions on a sincere exchange of arguments among participants.

The proliferation of transnational rule-making

In their volume *Private Authority in International Affairs*, Claire Cutler and colleagues observe that ‘private actors are increasingly engaged in authoritative decision-making that was previously the prerogative of sovereign states’ (Cutler et al. 1999b: 16). Indeed, transnational rule-making processes have proliferated over the past decade; they now constitute a generic feature of contemporary global governance. When addressing the participants of one of the regional consultations of the World Commission on

Dams (WCD), South African Minister of Education and WCD Chair Kader Asmal thus maintained that

The Commission is a prototype for what I like to think of as the real New World Order. It is not dominated by any one agency or by one government, or by the UN or the World Bank. The Commissioners are eminent persons from the forefront of the dams debate and as a group they represent all the worlds that intersect therein: international business, NGOs involved in environmental and social activism, academia, government, and the engineering profession. (WCD 1999c)

The WCD is hardly unique in this regard. To the contrary, a large number of similar processes illustrate the presence of a growing market of non-state processes in which issues are defined, rules are made, and compliance with these rules is monitored. This proliferation of transnational rule-making processes extends across different policy areas:

- In *environmental policy*, the *Marine Stewardship Council* (MSC) is an independent non-profit organisation that emerged out of a close partnership between Unilever – the world’s second largest food corporation and largest buyer of frozen fish – and the WWF. Modelled on the success of the Forest Stewardship Council, its goal is ‘to harness consumer purchasing power to generate change and promote environmentally responsible stewardship of the world’s most important renewable food source.’ Wal-Mart, one of the world’s largest supermarket chains, recently announced that it would exclusively buy and sell MSC-certified fish and fish products in its North American stores within three to five years (MSC 2006a, 2006b).
- In the area of *human and labour rights*, the *Fair Labor Association* (FLA) is a partnership of twenty leading brand-name companies, several non-governmental organisations (NGOs) and about 175 colleges and universities that join forces to protect workers’ rights and improve working conditions worldwide. To this end, the FLA ‘conducts independent monitoring and verification to ensure that the FLA’s Workplace Standards are upheld where FLA company products are produced’. Currently, twenty member companies, among them companies such as Nike, Adidas and H&M, and nineteen so-called category B licensees subject themselves to independent monitoring against the nine principles of the organisation’s Code of Conduct (FLA 2006).
- In *economic and financial policy*, the *International Accounting Standards Board* (IASB) is ‘an independent, privately-funded accounting standard-setter (...) committed to developing, in the public interest, a single set of high quality, understandable and enforceable global accounting standards that require transparent and comparable information in general

purpose financial statements' (IASB 2006). Even though the IASB portrays itself as mostly a technical agency, its activities are nevertheless highly political in as much as they determine which national accounting standards prevail and how other standards will have to adapt (Perry and Nölke 2005; Zimmermann et al. 2008).

- In *telecommunication policy*, the *Internet Corporation for Assigned Names and Numbers* (ICANN) issues technical standards for the operation of the Internet and assigns and administers top-level domain names, including country domains. ICANN however differs from other transnational rule-making processes since it has signed a 'Joint Project Agreement' with the US Government. Although formally a private multi-stakeholder organisation, it is thus closely tied to one particular national government (Bendrath et al. 2008; Beutel 2006).
- In *security policy*, the *Kimberley Process* was first initiated as a joint project of NGOs such as Global Witness and the world's leading diamonds seller, the London-based multinational De Beers. The goal of the initiative was to halt the trade of conflict diamonds and to thereby limit the financial resources of rebel movements in several countries, including Angola, the Democratic Republic of Congo, and Sierra Leone. Only after civil society participants and the diamond industry had reached a substantive consensus on a certification scheme to prove that diamond shipments were free of conflict diamonds, governments embraced the agreement at an intergovernmental conference (Beffert and Benner 2005; Kantz 2006).

In all these instances, transnational rules are developed in organisations set up for explicitly this purpose. Transnational rule-making organisations constitute governance beyond the state in a dual sense: First, they are transnational and therefore *beyond the scope of individual states*. Second, rule making primarily occurs among non-state actors and thus constitutes *inter-societal* rather than *intergovernmental* coordination. By specifying the strengths and weaknesses of transnational rule-making processes in view of their democratic performance, this study contributes to a growing body of literature on private authority in global governance. This literature has already shed light on many aspects of non-state governance beyond the state. In particular, it has distinguished between different patterns and strategies of transnational political activity (Börzel and Risse 2005; Knill and Lehmkuhl 2002) and identified factors that determine the emergence, institutionalisation and impacts of private governance schemes (Cashore et al. 2004; Hall and Biersteker 2002; Pattberg 2007). Moreover, several works have analysed the changing role of private actors (Fuchs 2005; Koenig-Archibugi 2004; Levy and Newell 2005) and examined how particular societal and economic sectors differ in terms of their capacities to self-regulate their activities across national borders (Cutler et al. 1999a). Finally,

individual governance arrangements such as the ISO 14000 standards on environmental management system have been analysed in significant depth (Clapp 1998; Hertin et al. 2004; Kollman and Prakash 2001).

At the same time, the private governance literature has largely neglected further key aspects of the phenomenon, among them a whole range of normative issues. In the context of a growing literature on private authority beyond the state, this book therefore addresses several research gaps. First, it focuses on the *process dimension* of private governance schemes and provides a detailed reconstruction of three cases that are often referred to in the global governance literature but the decision-making processes of which are rarely analysed in sufficient depth. Second, I introduce a comparative perspective to a field that has so far been dominated by single case studies that are rarely comparable. Third, I combine the empirical analysis of specific transnational policy processes with an explicit normative perspective that was so far missing in the more systematic literature on private global governance. Finally, I also aim to build a bridge between two strands of the global governance literature that often ignore each other – an analytical literature aimed at understanding current structures of global governance, and a normative literature that seeks to reform those structures (Dingwerth and Pattberg 2006). In sum, I hope to offer a more systematic and hence also more realistic view than those implicit in both the initial appraisal of transnational regimes as symbols of a new – and usually better – world order and in the more recent concern that a ‘privatisation of world politics’ (Brühl et al. 2001) will undermine democratic ideals.

Key questions and case design

To examine the normative quality of transnational rule-making as a new form of global governance I explore three questions:

- What does it mean for rule-making beyond the state to be democratically legitimate?
- How does transnational rule-making differ from intergovernmental rule-making in terms of its democratic legitimacy?
- How do different organisational models of transnational rule-making differ in terms of their democratic legitimacy?

As systematic research on the structure of transnational rule-making processes, let alone on the normative implications of such structures, is largely absent, in the empirical Chapters 4 to 6 I am primarily interested in identifying consistent patterns and generating hypotheses about these questions. Accordingly, the book applies a qualitative approach in which insights are gained from an in-depth analysis of a small number of cases. To allow for a comparison across cases, the study is based on a coherent

analytical framework developed in Chapter 2 and applied consistently in Chapters 3 to 6. The strict adherence to the framework enables the reader to compare subsections on individual criteria of democratic legitimacy across cases.

The selection of cases is led by the desire to gain an encompassing view of the democratic legitimacy of transnational rule-making processes and to examine whether and how particular organisational forms of transnational rule-making influence democratic performance. This requires, first, a specification of the category 'transnational rule-making processes' and, second, a specification of relevant subcategories. For the purpose of this study, I conceptualise rules as *consciously devised and relatively specific commands for behaviour whose normative authority is such that at least a minimum level of compliance can reasonably be expected*.² In accordance with this working definition, the term transnational rule-making process refers to the making of such rules in which actors from more than one country are involved, in which at least one of the negotiating parties is a non-state actor, and in which rules are intended to apply across national borders.

To account for the variation in the organisational form of transnational decision-making, I further distinguish between three models – the commission model, the foundation model, and the association model.³ In the *commission model*, the initiators of the rule-making process delegate decision-making to a small non-permanent body of either experts or stakeholder representatives. Commissions are expected to carefully weigh all arguments for and against particular positions and to base decision-making on norms of expertise, impartiality, and rationality. After a pre-determined period, they present their results in the form of a final report that formulates concrete policy recommendations. The *foundation model* extends the commission model in its temporary dimension by creating a permanent organisation. Similar to the commission model, internal decision-making is led by a small group of individuals, in this case the board of directors. In addition, a permanent secretariat manages the day-to-day business of the organisation. As in the commission model, participatory elements are optional. Finally, the *association model* is similar to the foundation model in as much as decision-making occurs within the framework of a permanent organisation rather than a temporary process. Yet, as a core difference from the foundation model, associations have a defined membership that acts as the principal of the organisation. Accordingly, while some authority may be delegated to other governing bodies, these are formally the agents through which the principals (that is, the association's members) pursue their goals. Consequently, the general assembly of members acts as the supreme authority of an association.

As a further criterion for case selection, I limited the range of possible cases by focusing on rule-making processes within a single issue area. This substantive focus admittedly constrains the possibility to generalise

the findings since, for instance, transnational financial rule-making may take on very different forms than transnational environmental rule-making. At the same time, it allows for a more meaningful comparison because relevant factors beyond the particular organisational form can be kept relatively constant – for instance, the level and quality of interest organisation with regard to the issue at stake. I selected global sustainability politics as an issue area in which a relatively broad range of transnational policy processes co-exist. At the final stage of case selection, individual processes within the range of each model were selected primarily based on their political relevance, their assumed quality as ‘typical’ cases for a particular organisational form of rule-making, and their quality as role models for other processes. Consequently, Chapters 4 to 6 examine three cases – the World Commission on Dams (WCD) as a paradigmatic case for the commission model, the Global Reporting Initiative (GRI) as a prototype for transnational rule-making organised according to the foundation model, and the Forest Stewardship Council (FSC) as the prime example of the association model of transnational rule-making.

To ensure comparability, the case studies follow a common structure guided by the analytical framework. Moreover, the reconstruction of decision-making processes is based on the same type of information. All three case studies are based on an analysis of the primary documents available at the time of writing and on the analysis of available secondary sources, including journal, magazine and newspaper articles as well as electronic publications. Semi-structured interviews with key actors in the decision-making processes complement the informational basis of the case studies.⁴ Interviews followed a common set of questions for all three studies and were conducted on the basis of anonymity. The references in Chapters 4 to 6 therefore reveal the dates of interviews, but not the names of individual interviewees.

As a final note on the methodological approach, Chapter 3 has a somewhat special status within the framework of this study. Its main function is to provide a basis for comparing transnational rule-making processes with their intergovernmental counterparts. Since it would have been difficult to select one ‘typical’ intergovernmental rule-making process, the analysis in Chapter 3 is based on a review of the secondary literature on intergovernmental rule-making processes. As the argument proceeds at a more abstract level, the findings of Chapter 3 may not be directly comparable to the findings of the other empirical chapters where arguments are based on a much more detailed analysis of individual cases. Yet, intergovernmental rule-making processes are a relatively well-researched phenomenon. Here, the choice for a secondary analysis appears justified because it allows extending the substantive focus of the analysis beyond a small set of individual cases or even a single case analysis.

Core findings and plan of the book

In response to my three guiding questions, my study presents three main results:

- First, when compared to intergovernmental negotiations, transnational rule-making processes have two inherent normative deficits. They are usually self-mandated – in other words, rule-makers are not formally authorised by their constituencies to devise rules on a given issue – and their initiators are unable to base their definition of relevant constituencies on a non-arbitrary basis. Who is recognised as a stakeholder and how different stakeholders are grouped are key concerns for any multi-stakeholder process. Decision-making on these matters therefore becomes a central site of power struggles in transnational rule-making processes.
- Second, despite these deficits, the case studies in Chapters 4 to 6 illustrate that transnational rule-making processes have a significant democratic potential. Transnational rule-making processes are often highly transparent; they include numerous innovative elements aimed at ensuring broad participation of affected communities; and they frequently base their decisions on sincere and meaningful deliberation among participants.
- Third, the organisational form of a transnational rule-making process – that is, whether rule-making occurs in a commission, a foundation or an association – does not fundamentally affect its democratic legitimacy. Nonetheless, significant differences exist in relation to individual criteria of democratic legitimacy. Decision-making in commissions and foundations – but not in associations – is conducive to a high quality of deliberation. In contrast, the quality of participation and of accountability relations is strongest in associations.

These findings are reached in three broad steps – a theoretical discussion of democratic legitimacy beyond the state (Chapter 2), an evaluation of the democratic legitimacy of intergovernmental rule-making processes that serves as a benchmark for comparison with transnational processes (Chapter 3), and an empirical analysis of three specific decision-making processes that each represent a distinct organisational form of transnational rule-making (Chapters 4 to 6). In more detail, the book proceeds as follows:

In Chapter 2, I develop the theoretical framework of the study. Based on a discussion of constitutionalist, pluralist, and deliberative approaches to democratic global governance I distinguish between three conceptual dimensions of democratic legitimacy, namely participation and inclusiveness, democratic control, and the discursive quality of opinion- and

will-formation. These dimensions are specified through six criteria of democratic legitimacy as a basis for the empirical evaluation of inter- and transnational policy processes. The analytical framework is complemented by four additional criteria that take into account that different rule-making processes may require different levels of democratic legitimation, depending on their particular contexts.

In Chapters 3 to 6, these criteria are applied to intergovernmental and transnational rule-making processes. Drawing on secondary literature about intergovernmental negotiations on trade and environmental issues, I summarise the democratic performance of intergovernmental rule-making processes in Chapter 3. The chapter illustrates that, in contrast to their transnational counterparts, intergovernmental policy processes are based on an explicit mandate from their constituencies. Moreover, by exclusively identifying governments of internationally recognised states as their relevant constituencies, intergovernmental processes ensure that each citizen is formally represented in the decision-making process. Beyond these positive features, the chapter also reveals a number of normative challenges for intergovernmental rule-making processes. These challenges include poor transparency records, long accountability chains and significant disparities in governments' capacities to participate effectively in negotiations.

In Chapter 4, I analyse the performance of the World Commission on Dams (WCD) as a prime example of a transnational rule-making process organised as a temporary commission. Initiated in 1998 by the participants of a multi-stakeholder workshop organised by the World Bank and the World Conservation Union (IUCN), the WCD was mandated to 'develop and promote internationally acceptable standards for the planning, assessment, design, construction, operation and monitoring of large dam projects' (IUCN and World Bank 1997: 9). In the two years of its existence, the twelve-member commission made strong efforts to ground its final report on a broad range of voices. To this end, it commissioned a comprehensive *Knowledge Base* that included thematic reviews, case studies of individual dams, country studies, regional consultations, and public submissions. The commission's decision to spend the whole first year on creating a common knowledge base led to a highly deliberative process at the stage of decision-making. Yet, the case study also reveals a number of shortcomings, in particular in relation to the definition of legitimate stakeholder groups, the commission's stakeholder rhetoric and the weak role of the stakeholder forum.

In Chapter 5, I examine the democratic quality of decision-making in the Global Reporting Initiative (GRI). Established in 1997 by the Coalition of Environmentally Responsible Economies (CERES) and the Tellus Institute and having become an independent permanent organisation in 1997, the GRI provides a framework for organisations – usually corporations – to report on their sustainability performance. The evolution of the GRI illustrates

how institutionalisation has led to a complex organisational structure in which the Board of Directors – formally the leading governing body – is now complemented by three additional governing bodies: the Secretariat, the Technical Advisory Council, and the Stakeholder Council elected by the ‘Organisational Stakeholders’ of the GRI. The complexity of the GRI’s governance system provides for a number of checks and balances between individual governing bodies; it thereby ensures that no single group may dominate the decision-making process. At the same time, it has made decision-making in the GRI less transparent, thereby lending support to common concerns about bureaucratisation. Nonetheless, the history of the GRI process demonstrates that despite its high level of bureaucratisation, the GRI has made significant efforts to increase participation in decision-making over time.

As a third case study, Chapter 6 presents the Forest Stewardship Council (FSC) as an example of a transnational rule-making process organised as a membership association. Established by environmentalist groups, consultants and business representatives in 1993, the FSC aims ‘to promote environmentally responsible, socially beneficial and economically viable management of the world’s forests’ (FSC 2002d: Article 1). To achieve this goal, the FSC has established *Principles and Criteria* for responsible forest management and a certification programme associated with these principles and criteria. The FSC is essentially governed by its over 600 members who convene for a general assembly every three years. In between assemblies, the Board of Directors and an international secretariat located in Bonn (Germany) manage the activities of the organisation. A particularity of the FSC process is that it has institutionalised North-South parity in its decision-making structures. Although an unusually broad definition of the South partly undermines the affirmative procedures, the procedural rule to assign fifty per cent of the overall voting power to Southern members is unique in contemporary transnational governance schemes.

Finally, I synthesise the results of the empirical chapters in Chapter 7 and link them back to the academic debates on global governance and on democratic governance beyond the state. In a first section, I reflect upon the nature of the three cases as prototypes of transnational rule-making processes. The argument is that transnational rule-making processes constitute a new form of governance beyond the state that is distinct from intergovernmental forms of governance and from all other forms of non-state governance beyond the state. Subsequently, I discuss the main similarities and differences between transnational and intergovernmental rule-making processes and between different organisational forms of transnational rule-making. In a final section, I critically re-examine the theoretical framework that underlies this study and identify areas in which further research is needed to gain a better understanding of transnational governance.

2

Disaggregating 'Democratic Legitimacy': A Framework

The notion that the current structures of global governance need to be democratised resonates in the academic as well as the non-academic literature. Thus, the Commission on Global Governance (1995: xiv), set up in 1992 as an eminent persons body, speaks of a need to enable 'citizens to exert their democratic influence on a global process'. In very general terms, the Commission further states that 'the vision of global governance can only flourish (...) if it is based on a strong commitment to principles of equity and democracy grounded in civil society' (ibid.: 6).

How such a general statement would translate into more concrete measures is, however, less clear. Making things even more intricate, the diversity of arguments put forth in the name of democratising international politics could hardly be greater. While some authors argue that democratisation requires a new world order in which market forces can be tamed more effectively (Falk 1995), others are satisfied with reforming existing political institutions (South Centre 1996). While some authors perceive a stronger participation of civil society as an actual (Willetts 2000: 207–8) or at least potential (Gordenker and Weiss 1996) contribution to democratisation, others remain sceptical (Schmidt and Take 1997). Finally, while some authors strive to achieve democratisation through decentralisation (Falk 1995; Rosenau 1998) or disentanglement (*Entflechtung*) (Scharpf 1993), others place their hopes on a global ethics (Commission on Global Governance 1995), a global (civil) society (Archibugi 1998: 222; Barber 2000) or a world state (Lutz-Bachmann and Bohman 2002).

Although there is no shortage of writing on the democratic deficit of global governance, the above mentioned examples illustrate that the theoretical debate still lacks a clear and coherent understanding of democratic governance beyond the state. Such an understanding, however, is necessary as a basis for a comparative empirical analysis of the democratic legitimacy of different international and transnational institutions. In consequence, it does not come as a surprise that the study commission of the German Parliament 'Globalisation of the World Economy – Challenges and

Answers' concludes its chapter on global governance with a number of open questions:

Governance in this multi-level system raises, *inter alia*, the question how interlocking the different levels can succeed so that co-operation, coherence and co-ordination are ensured. In addition, concrete forms of global democracy – for the necessary transparency and democratisation of this multi-level governance – must be developed. (...) Questions also remain to be solved with respect to the collaboration of state and non-state actors within the framework of public policy networks and policy partnerships. How can such collaboration at the national and global level be fostered without non-governmental actors losing their autonomy? Which competences do public-private networks obtain and which criteria of democratic legitimacy do they have to satisfy? How can sufficient participation of affected citizens throughout the world and a just balance of interests and of power be guaranteed? (Deutscher Bundestag 2002: 451–2, my translation)

In the end, Richard Falk's dictum (1995: 132) that 'the challenge of democratisation is present, but difficult to articulate, especially in relation to specific policy implications' sums up the issue very well. There appears to be a broad consensus that the current system of global governance ought to be democratised. What the concept of democracy entails when it is transferred to the global level of decision-making, which structures would best satisfy the call for democratisation, and why exactly such a call deserves our support in the first place, is however far from clear. By addressing these questions and examining the democratic performance of a particular form of global governance, this study contributes to scholarly efforts to gain a more solid knowledge about the possibilities for democratic global governance.

In a first step towards fulfilling this task, this chapter links the more philosophical (but often empirically deficient) literature on the theory of transnational democracy to the empirically oriented (but often philosophically incomplete) normative global governance literature. As legitimacy and democracy are concepts whose usage frequently provokes misunderstanding, I first clarify how 'democratic legitimacy' is conceptualised for the purpose of this study. In further sections, I discuss different models of democratic governance beyond the state and develop criteria for democratic legitimacy as a basis for evaluating actual decision-making processes. The analytical framework is complemented by a final section in which I discuss contextual factors that may be used to determine the specific needs for democratic legitimacy for a given rule-making process.

The concept

As I have just shown, the concept of legitimacy is used in a variety of ways. To avoid or at least minimise terminological confusion, two important distinctions can however be made. The first is between sociological and normative understandings of legitimacy, the second between the input and output dimension of legitimacy (see Figure 2.1).

Sociological conceptualisations of legitimacy are primarily about the social *acceptance* of authority. In contrast, the main interest of the normative understanding of legitimacy is in the *acceptability* of authority.¹ Seizing the middle ground between sociological and normative accounts of legitimacy, Peter Graf von Kielmannsegg (1971: 368) has defined legitimacy as ‘social validity as rightful’ (*soziale Geltung als rechtens*). To Kielmannsegg, validity simply means that something is considered valid. Accordingly, legitimacy as an analytical category is concerned with the foundations, functions and consequences of the validity of social order as rightful. Treating legitimacy as a dependent variable, we may ask under what conditions social systems are considered valid; treating it as an independent variable we may explore what the consequences of such validity are. While social validity emphasises the sociological dimension of the concept of legitimacy, the second part of Kielmannsegg’s definition – social validity *as rightful* – highlights its normative dimension. Legitimacy is thus not only social validity, but a social validity which has a particular quality, namely that of being normatively justified (*ibid.*: 370).

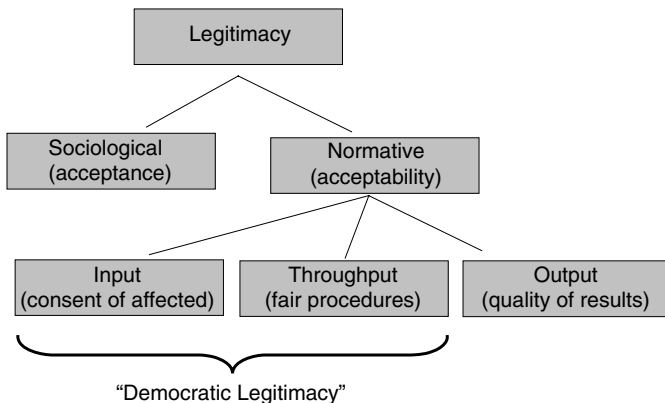


Figure 2.1 The Concept of Democratic Legitimacy

This idea of a normatively justified validity lies at the heart of normative concepts of legitimacy that address the material as well as procedural acceptability of social order (Mandt 1995: 284). The conceptual basis of these normative accounts of legitimacy usually consists of two complementary elements: basic norms and decision-making procedures. Together, these norms and procedures are said to constitute the sources of legitimacy, and while not all criteria associated with such an idea of legitimacy can be fully realised at the same time, they constitute equally valid measures for the design and criticism of actual political processes and decisions (Mandt 1995: 286).²

A second important distinction has been made by Fritz Scharpf (1999) and other authors who draw a line between input legitimacy and output legitimacy. While the former is generated through the consent of the addressees, the latter is based on the substantive quality of the decision, notably its potential to enhance the common good (for a discussion, see Wolf 2002b: 39–42). Michael Zürn has added throughput legitimacy as a third conceptual dimension of legitimacy. On Zürn's account, throughput legitimacy refers to the procedural fairness of the process by which input is transformed into output; it can relate both to decision-making within and beyond the state (Zürn 1998b: 233–6).

This study applies the term democratic legitimacy as *a normative concept that primarily refers to the input and throughput dimensions of legitimacy* and is thus primarily interested in procedural aspects of decision-making processes. That democratic legitimacy is used as a normative concept means that the main question is not 'When do people accept decisions as rightful?' but rather 'When do people have good reasons to accept decisions as rightful?'. That the notion of democratic legitimacy refers to the input and throughput dimensions implies that the focus is on questions such as 'Who is involved in making rules?' and 'How is the input of participants transformed into results?'. In other words, while the output-dimension is an important element of a normative understanding of *legitimacy*, I do not, in this study, consider it as a constitutive element of *democratic legitimacy*. Finally, the reference to procedure rather than substance reflects a particular procedural understanding of democracy, which underlies this study.³

To summarise, a rule-making process can be said to be democratically legitimate to the extent that the questions 'Who is involved in making rules?' and 'How is the input of participants transformed into results?' are answered in a manner that gives affected constituencies good reasons to accept the rules as rightful. What qualifies as a 'good reason' is, of course, a matter of much philosophical debate. This debate will be dealt with in more detail in the following sections where different answers are examined. To further specify the concept of democratic legitimacy for the purpose of

this study, the remainder of this chapter addresses the following three questions:

- Which models of democratic governance beyond the state are most suitable for evaluating the democratic legitimacy of inter- and transnational rule-making processes?
- Which criteria can be developed based on these theoretical models to support a theoretically grounded evaluation of real-world rule-making processes?
- Which contextual factors justify the variation in the extent to which these criteria are met in a given rule-making process?

Correspondingly, the argument unfolds in three steps. In the next section, I discuss three different approaches to democratic governance beyond the state: constitutionalism, pluralism, and deliberative democracy. Building on the discussion of these models, in a further section I distinguish between three basic dimensions of legitimate rule-making, namely legitimacy through participation, legitimacy through democratic control, and legitimacy through argumentative practice. The discussion of these dimensions translates the abstract categories of the various models of democratic governance into a set of more specific criteria with which actual inter- and transnational decision-making processes can be evaluated. In a final section, I discuss to what extent contextual factors may justify variation in the level of participation, control, and deliberation among different decision-making processes.

Models of democratic governance beyond the state

Concepts of democratic legitimacy and democratic governance have become rather popular in the discussion of governance beyond the state. This section gives a brief overview of different approaches to democratic governance beyond the state and discusses their usefulness for a normative evaluation of international and transnational rule-making processes.

As for the meta-criteria that may guide such a discussion, Klaus Dieter Wolf has identified context adequacy as the most important measure. In simple terms, context adequacy requires that models of democratic governance are compatible with the 'specific milieu of governance beyond the state' (Wolf 2002b: 35). This requirement is reasonable since any theory incompatible with the milieu of international or transnational governance would be, regardless of its philosophical quality, unable to guide us in our efforts to improve global decision-making.

But when is a theory of democratic governance compatible with the 'specific milieu of governance beyond the state'? Wolf himself has developed three criteria to evaluate the context adequacy of theoretical models.

First, they should accommodate both input- and output-oriented arguments for legitimation. Second, they should be applicable to functional rather than territorial differentiation as the main organising principle of politics beyond the state. Third, they should take into account that inter- and transnational governance is dominated by a horizontal rather than a hierarchical mode of interaction (Wolf 2002b).⁴ Moreover, Rainer Schmalz-Bruns (1999: 221–3) notes that theoretical models should also allow to identify relevant constituencies for sector- or issue-specific decision-making processes and take into account that social bonds cannot be presumed beyond the state. As a result, models of democratic governance beyond the state should include procedural demands for the internal will formation that 'link the guarantee of the democratic quality of procedures with socialising and civilising effects' (ibid.: 221, my translation).

In the following subsections, these relatively broad criteria will be used as a baseline for evaluating different approaches to democratic governance beyond the state. The discussion of constitutionalist, pluralist, and deliberative approaches to democratic governance will reveal that these approaches do not necessarily contradict each other. They rather emphasise different aspects of democratic ideas. But taken together, the three models cover the major part of the spectrum of contemporary definitions of democratic governance beyond the state.

More government: constitutional approaches

The basic idea of constitutionalism is the 'legal codification of [the] relation between the governors and the governed, who are conceived as parts of an overarching common polity' (Preuss 1996: 24). The recognition of individual rights within a political community is central to this idea; it is usually conceived as the mutual recognition of citizens as individual right-holders. The background of constitutionalist thinking is a key insight from enlightenment philosophers, namely that 'naturally free individuals have to create a good order by their own limited means' (ibid.: 13).

One such 'limited means' is the rule of law, a central feature of constitutionalist theorising about democracy. It is given a twofold meaning in that 'acts of domination must acquire the form of the law (government *through* law), and the government itself must subject its will power to the constraints of the law (rule *by* law)' (ibid.: 16). As can already be gathered from these summary statements, the idea of constitutionalism is usually applied to domestic politics, that is, to existing polities or communities. However, the idea of a legally circumscribed political order which guarantees individuals a right to an adequate share in the making of decisions that significantly affect them also figures prominently in at least two approaches to democratic governance beyond the state, namely Otfried Höffe's theory of the world minimal state and David Held's model of cosmopolitan democracy.

Theory of the World (Minimal) State. According to the theory of the world (minimal) state, the demand for collective action on a global scale implies a demand for a global legal and political order (Höffe 2002: 11). Based on the recognition that

wherever humans interact, arbitrariness and violence are to be replaced with rules (...), the rules are to be placed in the hands of public powers (...), and the powers are to be institutionalised as qualified democracy (Höffe 1999: 267, my translation),

the resulting world republic is 'not demanded per se, but only for those tasks that are not yet solved in legal form' (Höffe 2002: 14, my translation). As a consequence, the aim of establishing a world (minimal) state does not imply that individual nation states ought to be dissolved. Instead, the world state is viewed as complementary and subsidiary to existing nation states. In accordance with the two-dimensional character of international law, the imperative of a world republic, the *Weltrepublikgebot*, includes two dimensions: While the *public* international law dimension is responsible for the lawful co-existence of states, the *world civic* dimension fulfils the same function with regard to the lawful co-existence of non-state subjects; it regulates the legal relations between world citizens. Theoretically speaking, the federal organisation of such a world (minimal) state requires a 'two-fold world republican treaty'. Practically speaking, it requires above all a functioning global public sphere (ibid.: 22–6).

Critics invoke that the idea of a world state cannot reasonably be expected to be realised. Moreover, it has been argued that even if it could be realised the idea of a world state would not be desirable (Maus 2002: 249–50). The most relevant argument, however, is that the theory does not meet the criteria of context adequacy introduced above. First, the model's mode of legitimation insufficiently addresses the output dimension of legitimacy. Second, it envisages significant hierarchical elements, thereby disregarding the predominantly horizontal style of current global governance. Third, the model presupposes rather than supports social bonds between citizens. In sum, Höffe's theory mainly develops a normative ideal for supranational governance. As such it does not sufficiently acknowledge the conditions under which contemporary world politics is operating. As a result, it has difficulties to provide more specific criteria for normatively evaluating real-world decision-making processes beyond the state.

Cosmopolitan Democracy. David Held's model of cosmopolitan democracy is more promising in this regard. While it has similarities to Höffe's approach in according a central status to law and in emphasising the idea of subsidiarity, Held's model starts from a more explicit acknowledgement of the essentially pluralist nature of world politics (Held 1995: 22).

Held (*ibid.*: 15) starts from the normative premise that 'a defensible account of the proper meaning of democracy must acknowledge the importance of fundamental liberal and liberal democratic tenets.' In line with this premise, the focal point of his theory of cosmopolitan democracy is the principle of autonomy, which states that 'persons should enjoy equal rights and, accordingly, equal obligations in the specification of the political framework which generates and limits the opportunities available to them' (*ibid.*: 147). The principle of autonomy has the status of an articulation of 'the basis on which public power can be justified' and it should therefore be 'thought of as a principle of political legitimacy' (*ibid.*: 153).

According to David Held, the idea of democracy is attractive because it reflects this principle of autonomy in the idea of self-determination. This idea stipulates that the members of a political community should be able to freely choose the conditions of their own association and that their choices constitute the ultimate legitimation of the way the community interprets and pursues its needs. The idea that the members of a political community govern themselves under the conditions of freedom and equality further requires that these members are able 'to participate in a process of deliberation, open to all on a free and equal basis, about matters of public concern' (*ibid.*: 155).⁵

In terms of collective self-determination, the growing interlinkage between societies results in a problem of congruence between those involved in making a decision and those affected by it (*ibid.*: 17). As a consequence, the idea of collective self-determination is confronted with the problem of defining the relevant community (or communities) for each specific decision. The consequences are far-reaching:

At issue is the nature of a political community and how the boundaries of a political community might be drawn, as well as the meaning of representation and the problem of who should represent whom and on what basis and the proper form of participation – who should participate in which domains and in what ways. (Held 2000: 410)

The solution envisaged by cosmopolitan democracy is based on the two pillars of subsidiarity and legal guarantees. Held conceives of cosmopolitan democracy as a 'system of overlapping democratic institutions at different territorial levels from the city up to the global level' (Melchior 1999: 203). In this way, the nation state remains a central point of reference, and decision-making centres beyond the confines of national boundaries are considered appropriate only to the extent that lower levels of decision-making cannot satisfactorily address a political question (Held 1995: 136). To solve the problem of allocating decision-making competences to the appropriate levels of governance, Held proposes the three tests of extensiveness, intensity, and comparative efficiency (*ibid.*: 236).⁶

To meet the normative requirement that citizens are able to effectively participate in decision-making processes on a free and equal basis, the idea of cosmopolitan democracy further entails a number of legal guarantees. For Held, free and equal participation of citizens in political will-formation is made possible by virtue of the institution of public law (Melchior 1999: 206). Since the individual – rather than the community – constitutes the subject of cosmopolitan democracy, the principle of autonomy can best be institutionalised in terms of individual rights. As a result, David Held (1995: 190) maintains that

a democracy would be fully worth its name only if citizens had the actual power to be active as citizens; that is to say, if citizens were able to enjoy a bundle of rights which allowed them to command democratic participation and to treat it as an entitlement.

It is here that cosmopolitan democracy becomes constitutionalist in the sense mentioned above. By defining ‘the proper forms and limits of state action’ (ibid.: 50) and by referring ‘to implicit and/or explicit limits on political or state decision-making’ (ibid.), constitutionalism – or, to use David Held’s words, cosmopolitan democratic law – is expected to provide the conditions for and to give shape to ‘the successful entrenchment of legitimate political power’ (ibid.: 22).

In this way, democracy is ultimately conceptualised as the sum of individual democratic rights. As to the contents of this ‘cosmopolitan democratic law’, the canon of rights it comprises is guided by the principle of autonomy and by the acknowledgement of various ‘sites of power’ that shape the life choices of citizens. It encompasses several ‘clusters of rights’, including civil and political rights, cultural and economic rights, the right to health care and to peace (ibid.: 191–7). These clusters of rights ought to be understood as a ‘constitutional structure which articulates and entrenches rights across the seven spheres [of power]’ and, therefore, as a ‘key condition for the possibility of democracy’ (ibid.: 199–200). In analogy to this catalogue, democracy can be understood as ‘a continuum across which particular rights *within* clusters will be more or less enforced, and *different* right clusters will be more or less entrenched’ (ibid.: 191).⁷

Held’s model is explicitly tailored to politics beyond the state and it can provide relevant insights for specifying the normative requirements of rule-making processes beyond the state. In particular its emphasis on the idea of self-determination, the centrality accorded to the principle of congruence and to values such as participation and inclusiveness, and its focus on the principle of subsidiarity are valuable elements of an analytical framework for the evaluation of real-world political processes. In addition, Held’s notion of sites of power may provide an analytical instrument for the

identification of accountability gaps in current global governance arrangements (see below).

At the same time, the cosmopolitan model has some limitations in terms of its context adequacy that impede its direct application to real-world phenomena. The model strongly relies on ideas inherited from national democratic practice, that is, on elements of majoritarian democracy and on the establishment of some form of world government, presuming among other things that citizens can develop an identity as 'world citizens' (Wolf 2000: 192–5). In particular because of its reliance on a hierarchical mode of interaction – that is, on 'government' rather than 'governance' – cosmopolitan democracy has been characterised as not particularly suitable to the empirical conditions of global governance (ibid.: 194). This evaluation points to a general weakness of constitutionalist approaches. They fail to acknowledge the empirical realities under which decision-making beyond the state currently operates and is likely to continue to operate in the foreseeable future.

Less government: pluralist approaches

If constitutionalist approaches are inadequate because their style of policy-making is not sufficiently horizontal, then a pluralist model of democratic governance may appear more suitable. Pluralist approaches do not ascribe to the state a role as central as their constitutionalist counterparts. Instead, they conceive of the balanced interaction among societal forces – organised in interest groups, political parties or other voluntary associations – and the dispersion of power among a variety of social actors as the core elements of democratic governance (Cunningham 2002: 73–90; Laclau 2001: 514). The following paragraphs give a brief overview of the pluralist approach.

Pluralism is a label that together with democracy is used both in an empirical and in a normative sense. In its empirical usage, the notion of pluralism points to the observation that in existing liberal democracies, a plurality of social and political actors share in the making of politics. As a normative idea, the doctrine of pluralism holds that the dispersion of power among a variety of collective actors and the balancing of diverse social interests through the – more or less unimpeded – interaction of social forces should constitute the core of any political system that may rightly be called democratic.

The normative theory of pluralist democracy is based on the view that associations – 'voluntary organizations created by private citizens to pursue a shared interest or activity' (Hirst 1995: 91) – are a highly desirable feature of democratic political systems and that 'they are (...) necessary to the functioning of the democratic process itself, to minimising government coercion, to political liberty, and to human well-being' (Dahl 1986: 1). Normative pluralism rests on the acknowledgement that modern societies are characterised by a high degree of social differentiation, a diversity of life styles, and a plurality of interests. In these diverse societies, independent

organisations function as intermediate institutions through which interests can be aggregated and articulated.

The approach is based on the premises that, in principle, all interests can be articulated and organised and a balance between these interests can be achieved. If it is further assumed that the organisation of interests requires the investment of resources, then this would presuppose that all interest groups dispose of roughly equal resources (Schmidt 1997: 151–61). Since this precondition is not necessarily given in actual societies, the state is called upon to establish and guarantee an ‘equality of weapons’, a *Waffengleichheit* (ibid.: 156) among interest groups. As a result, pluralist democracy may not accord the state as central a status as other theories of democracy do, but it does not categorically rule out state involvement in social and economic affairs either. Instead, public law and institutional controls on the executive power are seen as core elements of a democratic political system.

As a general model, pluralism has developed a number of variants and provided fertile ground for the development of related theories. Thus, labels such as corporatism and neo-corporatism (see Schmitter 1995 for an overview), competitive elitism (Schumpeter 1950), polyarchy (Dahl 1956, 1971, 1989, 1998) or associationalism (Cohen and Rogers 1995; Hirst 1994) stand for a number of approaches the common core of which is the idea that in a democratic society power ought to be dispersed among a variety of actors and that, as a result, policy-making ought to derive largely from the interaction either among interests groups or between interest groups and government (Berry 1995: 619). The virtue of pluralism, it is argued, is that, ‘ideally, those who are most affected by an issue have the greatest say about its resolution’ (ibid.).

At a first glance, pluralist approaches seem more suitable to the particular requirements of inter- and transnational politics than their constitutionalist counterparts.⁸ Thus, pluralism offers a solution to the problem of identifying relevant constituencies in that it ties the democratic quality of decision-making to the inclusion of self-selected organised interest groups at the bargaining table. In addition, the pluralist approach is primarily based on a horizontal style of policy-making and therefore does not presuppose a strong governmental element. Finally, power is necessarily dispersed in the inter- and transnational arenas, and the recent transnationalisation of (alliances of) nongovernmental actors as well the observation that ‘corporatism goes global’ (Ottaway 2001) further indicate that the idea of bargaining among societal forces has an empirical counterpart in world politics. In sum, pluralist approaches satisfy most of the core requirements with regard to the empirical context of world politics.

Yet, from a normative perspective they have two important weaknesses that distinguish them from the constitutionalist models discussed above. First, the normative appeal of the pluralist approach rests on the notion

that all interests may be organised to a similar degree. However, numerous empirical studies have demonstrated that interests that share special characteristics are necessarily better organised than others and that, as a consequence, the former will be better represented in decision-making while the claims of the latter will be neglected. Ultimately, pluralism allocates competences to strong interests without being able to provide, from within the theory, principled arguments for a protection of weaker social interests. Thus, pluralism becomes more or less identical with power politics, ignoring questions about equality and participation that have been at the centre of democratic theory since ancient times.

Second, pluralism contravenes the requirement to 'offer procedures which do not consume, but instead generate collective identity and mutual trust' (Wolf 2002b: 46). In fact, its procedures are neither 'qualifying' in that they reward the pursuit of moral orientations, nor 'civilising' by supporting the development of solidarity among fellow citizens. Even worse, the pure pluralist doctrine gives every reason to fear that the already weak bonds between citizens will decrease gradually as a result of decision-making based on the unrestricted bargaining among social forces.

In sum, similar to the constitutional model the pluralist model can provide important insights for the conceptualising of democratic legitimacy beyond the state. The dispersion of power and the more general notion of democratic control are the most central ideas in this regard. Similar to the broad values of participation and inclusiveness derived from the constitutionalist model, 'democratic control' can therefore serve as a further element in a conceptual framework for the evaluation of the democratic quality of real-world decision-making processes. At the same time, the pluralist conception of democracy as the unrestrained bargaining among societal forces is normatively deficient. To correct the deficits just discussed the conception thus needs to be qualified.

More discourse: deliberative approaches

In contrast to constitutionalists and pluralists, for adherents to deliberative democracy the idea of democracy is tied not so much to the fate of government but rather to the discursive quality of collective decision-making. Hence, instead of calling for more or less government, deliberative democrats' recipe for democratisation can be summarised in the call for 'better discourses' or 'more deliberation.'

The Idea of Deliberative Democracy. As most other theories of democracy, deliberative approaches see their primary task in spelling out 'the conditions under which political decisions should be considered legitimate expressions of the collective will of the people' (Hauptmann 1999: 858). Based on the observation that contemporary societies are characterised by a plurality of reasonable religious, philosophical, and moral doctrines (Rawls 1997: 96), deliberative democracy grounds its considerations on the

understanding that 'legitimacy in complex societies must be thought to result from the free and unconstrained public deliberation of all about matters of common concern' (Benhabib 1996: 68).⁹ Thus, Jon Elster (1998: 8) defines the democratic part of deliberative democracy as 'collective decision making with the participation of all who will be affected by the decision or their representatives.' In turn, the attribute deliberative refers to 'decision making by means of arguments offered *by* and *to* participants who are committed to the values of rationality and impartiality.'¹⁰ The common core of deliberative democracy can thus be summarised in the statement that

A law is legitimate only if it is based on the public reasons resulting from an inclusive and fair process of deliberation in which all citizens may participate and in which they may continue to cooperate freely. (Bohman 1996: 184)

Both John Rawls and Jürgen Habermas stress that the democratic procedure of collective will-formation constitutes the only post-metaphysical source of legitimacy. It derives its legitimising force from the fact that it

makes it possible for issues and contributions, information and reasons to float freely; it secures a discursive character for political will-formation; and it thereby grounds the fallibilist assumption that results issuing from proper procedure are more or less reasonable. (Habermas 1999: 448)

Here, collective decisions derive their legitimacy not from their form – that is, from their formulation as general laws that abstract from the empirical differences of the individuals subject to them – or their moral content, but from the procedures of decision-making themselves (*ibid.*: 135).¹¹

As far as such procedures are concerned, deliberative democratic theory is organised around the notion of an ideal procedure for deliberation and decision-making (Habermas 1996: 285). This conception of an ideal procedure serves the purpose of a counterfactual thought experiment against which real procedures can be critically evaluated. The notion of an 'ideal deliberative procedure' has been elaborated most clearly by Joshua Cohen (1989: 22–3). According to Cohen, deliberations have to be free from coercion and follow an argumentative mode of communication. In other words, participants are required to give reasons for their proposals and must be ready to critically judge other participants' propositions. Second, deliberations have to be inclusive and public in that all those who are potentially affected by a decision have equal chances to access and participate in the deliberations. Third, deliberations should be oriented towards consensus, that is, participants are required to approach the deliberations openly and with the aim of reaching a reasoned agreement.¹²

As indicated, the 'ideal deliberative procedure' has the theory-internal function of a counterfactual thought experiment. Thus, as one observer remarks, 'the ideal speech situation by itself tells us nothing about the structure of discourses, but it does give us a standard from which to evaluate real discourses' (Chambers 1996: 172) and 'the relationship between thought experiments and real discourse is optimally one of reflective equilibrium' (ibid.: 168–9). Unlike Rawls's notion of reflective equilibrium, in which we check our thought experiments against our own considered judgments, however, 'the discourse version calls for checking our thought experiments against the considered judgments of others as well' (ibid.: 169).¹³

As a counterfactual idea, the ideal deliberative procedure has the additional benefit of clarifying some of the key elements of deliberative democratic thought. First, it stresses the role of impartiality and respect in the deliberative process. Because deliberators are required to frame their arguments in terms that they can reasonably expect other participants to accept, in the end 'even self-interested speakers are forced or induced to argue in terms of the public interest' (Elster 1998: 12).¹⁴ In addition, the 'process of mutual reason-giving' (Gutmann and Thompson 2002: 157) can be understood as an expression of the more fundamental democratic norm that citizens should respect one another as persons with equal fundamental rights and liberties. In sum, the notion that the 'legitimacy of laws rests on the persuasiveness of the reasons that can be garnered for these laws' (Chambers 1996: 8) may therefore be interpreted as reflecting how impartiality and respect can form the basis of collective decision-making in a society marked by a diversity of comprehensive doctrines.

Second, the ideal procedure also points to the epistemic value of deliberation. In the words of Habermas (1999: 304), 'deliberative politics acquires its legitimating force from the discursive structure of an opinion- and will formation that can fulfill its socially integrative function only because citizens expect its results to have a reasonable *quality*.' In the ideal speech situation envisaged by Habermas, citizens would be able to communicate without distortions caused by differences in power, resources or capabilities. As a consequence, it should be expected that their deliberations, in which no force except the force of the better argument is at work, would eventually lead to the epistemically best agreement. While it is obvious that real deliberation will be unable to meet such extraordinary standards of rationality, the potential for rationality inscribed into the requirement of actual mutual reason-giving is an asset of the deliberative model, not least with regard to the demand for models of democratic governance beyond the state to combine elements of input and output legitimation (see also Wolf 2000).

Third, the ideal procedure can provide guidance regarding the institutionalisation of 'discursive designs' (Dryzek 1990). Thus, while most

adherents of deliberative democracy would agree that for an institutionalisation of deliberative procedures, the existence of 'arenas in which citizens can propose issues for the political agenda and participate in debate about those issues' (Cohen 1989: 31) is central and that the function of institutions in deliberative democracy is to 'establish the framework for free public deliberation' (ibid.: 21), such general statements do not yet convey a very clear picture of what we can and should expect from real procedures and discourses or how we ought to design political institutions. Here, the various elements of the ideal deliberative procedure may provide assistance.

Deliberative Democracy and Transnational Politics. Most authors seem to agree that deliberative democracy is a rather attractive model not only for local or national politics, but also for international and transnational politics. Thus, John Dryzek (1999: 44) notes that the discourse model of democracy is particularly conducive to international society because, unlike other models of democracy, it can downplay the problem of boundaries. Furthermore, the absence of an overarching state or a state analogy, while at the same time accounting for the pervasiveness of conflict in international and transnational politics, is seen as 'one less obstacle to discursive democracy' (Dryzek 1990: 90). Moreover, the model derives its usefulness for the conceptualisation of democratic governance beyond the state from the fact that it does not primarily depend on the existence of a strong sense of community. In contrast, the procedures of deliberative democracy themselves have a potential to contribute to the generation of community and solidarity (Schmalz-Bruns 1999: 189; Wolf 2000: 196). Fourth, as indicated above, the epistemic quality of deliberative democratic decision-making – although disputed among theorists – is also attractive to transnational politics that are pervaded by complexities and that cannot, for the time being, rely on a strong solidarity among citizens.

Finally, a deliberative conception of democracy beyond the state seems capable of connecting to existing research programmes in International Relations, such as the debate about the role of arguing and communication in world politics (Risse 2000, 2004; Zürn 1998a). Thus, the deliberative quality of decision-making may be translated into a continuum marked by the two poles of arguing (as an expression of communicative action) and bargaining (as an expression of strategic action) whereby the deliberative quality of a decision-making process would be measured in terms of its closeness to the arguing-end of the continuum (Elster 1998: 13). However, while publicity and inclusiveness are not necessarily elements of arguing as a mode of social interaction, they are necessary if decision-making is to qualify as democratic (Wolf 2000: 200; Schmalz-Bruns 1999). In sum, the mode of communication can thus be called upon to evaluate the *deliberative* quality of a decision-making process. The evaluation of its *deliberative-democratic* quality however needs to include the additional dimensions of publicity, universal access and the linkage of collective decisions to public discourse.

The discussion of the three approaches to democratic governance can be summarised as follows: At a very general level, all three approaches provide insights in democratic governance beyond the state. Moreover, the three approaches can be seen as complementary where they highlight different aspects of democratic theory. While constitutionalist approaches focus on self-determination, inclusiveness and subsidiarity, pluralist conceptions of democracy stress the role of checks and balances on the exercise of power. Third, deliberative approaches emphasise the discursive character of will-formation and decision-making and therefore demand that mutual reason-giving should play a central role in collective decision-making. While all three approaches have their strengths and weaknesses, the deliberative model seems most suitable to inter- and transnational governance. By relying on a horizontal mode of political coordination, combining aspects of input, throughout and output legitimacy, and by combining the democratic quality of procedures with concerns about socialising and civilising effects, it offers an attractive model not only for politics within, but also beyond the state.

As every model of democratic governance, deliberative democracy is, however, not without its weaknesses. Among these weaknesses are potential trade-offs between deliberation and other goals such as efficiency; difficulties in terms of identifying relevant constituencies for a specific decision; and difficulties with regard to allocating competences to entities more specific than 'discourses' in general.¹⁵ Since some of these difficulties may be linked to the abstract nature of grand democratic theory as such, the following section lowers the level of abstraction. It translates the key insights from cosmopolitan, pluralist, and deliberative democracy into three dimensions of democratic legitimacy, namely inclusiveness, control and discursive practice. The aim of the section is to develop a set of concrete questions that can guide the evaluation of the democratic performance of actual rule-making processes beyond the state.

Dimensions of democratic legitimacy: A framework

What does the discussion of the various models of democratic governance tell us in terms of more concrete criteria which we can use to evaluate actual decision-making processes? In other words, which procedural requirements should international and transnational rule-making processes aspire to meet? The following section argues that we can distinguish between three sources or dimensions of democratic legitimacy, namely inclusiveness, democratic control, and discursive quality. Accordingly, specific criteria are best developed in relation to each of these conceptual dimensions of democratic legitimacy.

Participation and inclusiveness

A first way to establish the democratic legitimacy of collective decision-making processes is through participation. Participation is a core element

of any democratic theory, and one could hardly speak of democratic legitimacy where none of the individuals subject to a collective decision has taken part in its making. At the same time, it goes without saying that decision-making implies individuals that actually make a decision. In other words, any decision-making process presupposes at least a minimal degree of participation. The real question of democratic legitimacy is therefore not so much about *whether* there is participation, but *to what extent* those who are subject to a decision have been included in the decision-making process.

This question has two aspects, namely the *scope* and the *quality* of participation. The scope of participation refers to *who* participates. It relates to the postulate of congruence. This postulate requires that the range of individuals that are significantly affected by a collective decision is identical to the range of individuals who make (or are represented by those who make) the decision. This leads to the problem of identifying and defining relevant constituencies for a decision-making process – and it should lead the analyst to be sensitive to how this problem is solved in actual decision-making processes. Thus, a first set of questions for the evaluation of decision-making processes can be phrased as follows: How are relevant constituencies identified and defined, and how are participants selected? Which alternatives would have been available? And how convincing is the actual choice in the light of these alternatives? Generally speaking, the notion of ‘legitimacy through participation’ would imply that, the broader the scope of participation in a decision-making process, the more legitimate its results. However, trade-offs with other criteria such as efficiency (Dahl 1994) are apparent so that it is difficult to provide an absolute standard for the ideal scope of participation.

As a second aspect, in the quality of participation we address *how* those who are included in the decision-making process actually participate. Here, various degrees of participation can be imagined, ranging from largely passive modes such as receiving information via the mass media to more active modes like raising one’s voice in public debate, voting in a referendum, selecting a representative or representing a constituency in negotiations. Again, while a more active mode will generally be seen as providing more legitimacy, it is difficult to establish, independently of their specific contexts, a clear standard for what kind of participation would be desirable for decision-making processes in general.

The different models of democratic governance, however, can assist in establishing appropriate criteria. For instance, the deliberative model would demand that those who perceive themselves as potentially affected by a collective decision can participate in the public exchange of arguments on the issue. In this perspective, the quality of participation is linked to the *equality of opportunities to participate* in decision-making in an adequate way. Analysts of actual decision-making processes would thus need to be sens-

itive to instances of exclusion. As a result, a second set of questions can be phrased as follows: How do the groups that are included participate in the decision-making process? Are there different qualities of participation and, if so, to what extent do constituencies have access to the various modes of participation? Is representation a central element of participation and, if so, who represents whom in which ways?

Democratic control

A second source of democratic legitimacy is linked to the idea of democratic control. The idea that the choices of those who govern should to a certain extent be subject to control by those who are governed is a theme in all three models of democratic governance – most directly so in the pluralist model's emphasis on checks and balances. However, in the three models the idea is conceptualised in different ways and thus gives the theme a different weight in the respective framework of democratic governance.

In general, the idea of democratic control has certain similarities with the idea of participation, and forms of control might ultimately be conceived of as passive forms of participation. If, for analytical reasons, we accept the distinction between citizen participation and democratic control, then the latter can be further specified through the concepts of accountability, transparency and responsiveness. Among these concepts, responsiveness – the notion that decision-makers should act according to the interests of their constituencies¹⁶ – marks the ultimate goal. In turn, accountability is seen as a means to achieve greater responsiveness, and transparency is conceived as a means to achieve greater accountability. I will now briefly discuss the concepts of accountability and transparency as the means to achieve control or responsiveness.

Accountability is a relational concept. In the words of Robert Keohane (2002: 12),

an accountability relationship is one in which an individual, group or other entity makes demands on an agent to report on his or her activities, and has the ability to impose costs on the agent. We can speak of an authorized or institutionalised accountability relationship when the requirement to report, and the right to sanction, are mutually understood and accepted. Other accountability relationships are more contested. In such situations, certain individuals, groups, or entities claim the right to hold agents accountable, but the agents do not recognize a corresponding obligation.

With regard to the general idea of accountability, a number of further distinctions can be made. Thus, Keohane and Nye (2001: 4–5) distinguish between electoral, supervisory, legal, reputational, and market accountability; and Keohane (2002: 13–14) further distinguishes between internal

and external,¹⁷ and between democratic and non-democratic forms of accountability. As far as the latter distinction is concerned, accountability can be democratic, but it need not be:

Indeed, it can also be hierarchical (in which subordinates are accountable to superiors) or pluralistic (as in Madisonian constitutionalism, in which different branches of government are accountable to one another). Actual systems of accountability in constitutional democracies combine all three syndromes of accountability: democratic, hierarchic, and pluralistic (ibid: 13).¹⁸

The varieties of forms of accountability point to an important difference between participation and control: the language of democratic control often downplays the question 'Who is able to exert control over decision-makers?' as long as checks and balances are existent and regarded as sufficient. It may therefore be useful to distinguish between 'control', conceived as the existence of checks on the power of decision-makers, and 'democratic control', perceived as the existence of roughly equal access to such control mechanisms among individuals or groups that may legitimately hold decision-makers accountable. As a rule, control will be preferable to the absence of control, and democratic control will be preferable to non-democratic control. A third set of questions for the evaluation of inter- and transnational decision-making processes can therefore be summarised as follows: Which effective mechanisms of accountability exist in a given decision-making structure? Which groups have a valid claim to hold decision-makers accountable? And which opportunities do these groups have to access existing control mechanisms?¹⁹ As it was the case with the scope and quality of participation, the empirical analysis will have to take account of trade-offs that exist between accountability and other desirable goals such as efficiency.

As a second aspect of democratic control, the degree of *transparency* can be conceptualised as the extent to which individuals who may be significantly affected by a decision are able to learn about the decision-making process, including its existence, subject matter, structure and current status.²⁰ The notion of transparency thus refers, on the one hand, to the quality and accessibility of information that is provided either by the decision-making bodies themselves or through independent monitoring via the media or other agents. On the other hand, a broader understanding of transparency will also include the capacities of those whom the information should reach, including the technical and intellectual capacities as well as the resources (time-wise or financial) required to obtain and to make use of the information. A fourth set of questions may thus be phrased as follows: What information about the existence, structure, content and current status of the decision-making process is available to the public? How and at which costs can those who may be significantly affected

by a collective decision inform themselves about the decision-making process? What are the barriers to accessing, collecting, and disseminating information about the decision-making process?

Discursive practice

As the discussion of the various models of democratic governance has shown, establishing criteria by which we can distinguish more deliberative-democratic decision-making processes from less deliberative-democratic ones will be crucial for our analysis. The practical demands of deliberative democracy can be analysed along the notions of universality, rationality, and reciprocity (Chambers 1996: 197–211).

Universality demands that no barriers exist which systematically exclude specific individuals or groups from deliberations. Next to the absence of barriers to participation, the degree of actual participation – that is, the questions 'Do deliberations extend beyond elite negotiations?' and 'Are there organisations through which a critical public can feed in its opinions?' – and the degree of political interest among potentially affected groups are further indicators of the universality or inclusiveness of the decision-making process (ibid.: 197–202). The universality criterion is thus linked to the dimension of participation and inclusiveness.

Second, with the criterion of *rationality* or non-coercion we ask 'How is a consensus reached?' and 'What is the role of power within the deliberative process?' Any attempt to zero in on this variable will inevitably encounter methodological problems induced by both the complexity and internality of communicative processes (ibid.: 203–5). Whether or not an agreement is based on an autonomous decision or not can ultimately only be answered by the participants themselves, if at all. In the light of these difficulties, the only way to at least approximately determine the degree of rationality or non-coercion is to focus on distortions in communication and discourse produced by existing power disparities (ibid.: 203).

Third, the criterion of *reciprocity* refers to the extent to which impartiality and respect are present in a given discourse and participants approach deliberations with a aim of reaching consensus. The consistency and coherence of participants' overall argumentation, the consistency of their arguments and behaviour, the recognition of the moral status of opposing views and the 'disposition to openness' can indicate reciprocity (ibid.: 207–11). Accordingly, a fifth set of questions may be phrased as follows: To what extent does a given decision-making process include deliberative elements and which role do arguments play in the process? To what extent do deliberations extend beyond elite negotiations and include a broader public? How do participants approach deliberations?

In contrast to this view of deliberation as a desirable instrument to reach collective decisions, some proponents of deliberative democracy regard discourses as 'a long-term process of collective interpretation rather than

a decision procedure' (ibid.: 200; see also Dryzek 2000) and conceive of democracy as the balance of discourses. If we subscribe to such a broader view of discourse as the social space where collective interpretations are constructed and if we consider practical discourse as a long-term, consensus-forming process, then our evaluation of international and transnational rule-making processes would need to include a sixth set of questions such as: What are the characteristics of the dominant discourse(s) in an issue area in which the decision-making process is situated? How do they affect the decision-making process? Which role do alternative discourses play?

In review, we can recapitulate that the democratic legitimacy of rule-making processes beyond the state can be analysed along three dimensions, namely the participation or inclusiveness of a rule-making process, the democratic control it provides for, and its discursive quality. In the discussion of these dimensions of democratic legitimacy, I have attempted to further specify the criteria for distinguishing between more and less democratic forms of rule-making by indicating various sets of questions that should be addressed in an evaluation of actual intergovernmental and transnational rule-making processes.

Since the three dimensions are partly related to each other, trade-offs exist between individual dimensions. For instance, Michael Zürn (1998a: 10) notes that a tension exists between the requirements of inclusiveness and transparency on the one hand and the discursive character of communicative processes on the other. 'As a rule,' he argues, 'consensus-oriented deliberations and negotiations are more successful with a small number of actors and (at least sometimes) in camera. Yet both closed sessions and a biased selection of participants contradict democratic principles.'²¹ Other trade-offs such as those between transparency and privacy or between deliberation and efficiency have been mentioned. Accordingly, none of the criteria established in this section should be regarded as absolute standards. In addition, trade-offs should sensitise the analyst to the particularities and contingencies of the social contexts of any given decision-making process. Before concluding this chapter, I will therefore complement the discussion by asking 'How much democratic legitimacy do real-world rule-making processes require given their specific contexts and qualities?'

Context-specific differences: How much is enough?

If we assume that not all rule-making processes need to be held to the same high standards of inclusiveness, control or deliberation, the question arises 'Which contextual factors justify variation in what is deemed a "sufficient" level of democratic performance?' Four such justifications can be derived from the literature:

First, decision-making processes may be distinguished by source of authorisation. Thus, Klaus Dieter Wolf (2002a) distinguishes between: explicit

authorisation by national or international law; implicit authorisation when states do not explicitly object to the rule-making efforts of other actors; ex post recognition by an authorising body; and self-authorisation.²² He argues that, while 'the exercise of power is traditionally regarded as legitimate if it is carried out by a legally authorised body' (ibid.: 15), the notion of democratic legitimacy through legal authorisation is problematic when applied to international and transnational politics because of the legitimacy deficits of intergovernmental decision-making procedures themselves. In short, there is no international body that may authorise the delegation of rule-making authority with the same degree of legitimacy as a national political system could. Nonetheless, different forms of authorisation may justify variation in the degree to which standards of democratic legitimacy are met. To what extent such variation is justified in practice is a question that is best addressed through studying specific cases.

A second aspect is the level of citizens' affectedness by a subject matter. Thus, the need for participation, control and deliberation may be said to depend on the extent to which a decision directly affects the lives of citizens subject to a decision (Decker 2000: 587). Accordingly, it has been argued that 'the greater the significance of (...) international institutions, the greater the need for democratic legitimation of their decisions' (Zürn 1998a: 7). Such a distinction is also broadly in line with Robert Keohane's (2002: 14) observation that 'merely being affected cannot be sufficient to create a valid claim [to hold an entity accountable]'. Here, we would require a distinction between different degrees of affectedness and, ideally, a context-sensitive threshold, by which we could determine the degree of affectedness that validates a claim to participation or control.²³ Since such a threshold will be difficult to determine in practice, the recommendation for the analyst of actual decision-making processes can – again – only be to remain sensitive to how much the subject matter of a given rule-making process really affects the lives of different individuals and groups.

Third, the quality of a rule may justify different degrees of participation, control or deliberativeness. A first distinction can be made between decisions about rules for a specific area of policy-making and decisions about constitutional rules (Pogge 1997). This distinction basically conforms with John Rawls' (1997: 94) argument that 'the limits imposed by public reason do not apply to all political questions but only to those involving what we may call 'constitutional essentials' and questions of basic justice.' Similarly, Simone Chambers (1996: 196) argues that 'the more the issue is an issue of justice that affects all, the more the forum should replace the market.' Linking this distinction to the more empirical literature on world politics, we can distinguish further in reference to the obligatory character, the precision and the delegation a given set of rules provides for (see Abbott et al. 2000). Finally, the (intended or actual) scope of the rule's application – that is, whether a rule applies only to the parties who have negotiated it or

whether it also claims normative authority beyond this circle – can be called upon to distinguish between different qualities of rules.

Fourth, the degree to which a global rule is deemed necessary may justify different degrees of participation, control or discursive quality. This distinction is linked to the idea of subsidiarity, that is, to the idea that decisions are best taken at the lowest policy-level at which a given problem can be effectively addressed. Thus, the empirical analysis should ask whether a transnational or global rule is necessary for a given issue and which interests in setting a transnational or global rule exist. Where an argument for transnational or global rules cannot be formulated convincingly, higher standards of democratic legitimacy will need to be applied.

Conclusions

Both legitimacy and democratic legitimacy are multidimensional concepts. They are likely to cause misunderstandings when they are used in private conversation, public speeches, or academic articles. We may notice this when we use the terms ourselves – and we will most probably take notice when other people use the terms and when we are ourselves struggling to understand what they mean. Therefore I have attempted to disaggregate the concept of ‘democratic legitimacy beyond the state’ and to make it more readily applicable to the study of actual intergovernmental and transnational decision-making processes.

After laying the theoretical foundations for the concept in reference to constitutionalist, pluralist and deliberative approaches to democratic governance, I have distinguished three dimensions of democratic legitimacy, namely participation and inclusiveness, democratic control, and discursive quality. The theoretical models and the conceptual dimensions are linked in such a way that all models acknowledge the relevance of at least two of the three dimensions, but each theoretical model emphasises one conceptual dimension. Thus, constitutionalist approaches emphasise inclusiveness, pluralist approaches stress the idea of democratic control, and deliberative approaches focus on the discursive quality of rule-making processes. Beyond this focus, constitutionalist and deliberative models also acknowledge the relevance of the other two dimensions of democratic legitimacy. In contrast, pluralist models acknowledge the relevance of inclusiveness, but not necessarily of the discursive quality of decision-making.

Based on the distinction of the different conceptual dimensions of democratic legitimacy (DL), I then specified a number of criteria and questions that provide a valuable starting point for evaluating actual rule-making processes beyond the state:

(DL 1) Scope of participation: How are the relevant constituencies identified and defined, and how are the participants determined and

selected? Which alternatives would have been available? And how convincing is the actual choice in the light of these alternatives?

(DL 2) *Quality of participation*: How do those who are included participate in the decision-making process? Are there different qualities of participation? And, if so, to what extent do constituencies have access to the various modes of participation? Is representation a central element of participation? And, if so, who represents whom in which ways?

(DL 3) *Democratic accountability*: Which effective mechanisms of accountability exist in a given decision-making structure? Which groups have a valid claim to hold decision-makers accountable? And which opportunities do these groups have to access existing control mechanisms?

(DL 4) *Transparency*: What information about the existence, structure, content and current status of the decision-making process is available to the public? How and at which costs can those who may be significantly affected by a collective decision inform themselves about the decision-making process? Which barriers to accessing, collecting and disseminating information about the decision-making process exist?

(DL 5) *Deliberativeness*: To what extent does the structure of a given decision-making process allow arguing to become a relevant mode of interaction? Which deliberative elements exist in the decision-making process? And what role do arguments play in the actual decision-making process? To what extent do deliberations reach beyond elite negotiations? How do participants approach deliberations?²⁴

(DL 6) *Discursive balance*: What are the qualities of the dominant discourse(s) in the issue area in which a decision-making process is situated? And how do they affect the decision-making process? Which role do alternative discourses play?

Finally, since every political process will have to be judged in the light of the context in which it is embedded, I have identified a number of contextual factors (CF) that may justify a variation in the degree to which the various standards of democratic legitimacy are met in a given situation. The discussion leads to a list of complementary criteria:

(CF 1) *Authorisation*: On which source(s) of formal or informal authorisation does the rule-making process rely?

(CF 2) *Affectedness*: To what degree do the issue(s) to be decided affect the lives of different individuals or groups? How are various individuals or groups affected by the outcomes of the decision-making process?

(CF 3) *Quality of the rules*: What are the qualities of the rule(s) devised? Are they first order or second order rules? What degree of obligation, precision, and delegation is attached to the rules? Is the – intended or actual – scope of the rule's application internal or external?

(CF 4) *Subsidiarity*: Is the institutional framing of the issue to be decided upon as a transnational or global problem convincing? Is a transnational or global rule necessary? Which interests in transnational or global rules on the issue exist?

When is transnational rule-making democratically legitimate? In conclusion, my answer is, that – against the backdrop of the normative implications of the social contexts in which a given rule-making process is embedded (criteria CF1 to CF4) – a rule-making process can be considered democratically legitimate to the extent that it is inclusive (criteria DL1 and DL2), provides for mechanisms of democratic control (criteria DL3 and DL4), and is based on a deliberative style of decision-making (criteria DL5 and DL6). The establishment of such sets of criteria will not make the evaluation of decision-making processes independent from differences in the interpretation of the very phenomena we are analysing. Nevertheless, a comparison of different cases based on a single framework has considerable potential to advance our understanding of the normative dimension of transnational decision-making.

3

The Democratic Legitimacy of Intergovernmental Rule-Making

Any assessment of the democratic performance of decision-making processes requires an in depth evaluation of possible alternatives. Before I evaluate the performance of three specific transnational rule-making processes in Chapters 4 to 6, I now apply the criteria developed in Chapter 2 to intergovernmental rule-making processes as these are the alternative to transnational rule-making. The analysis is based on a review of secondary literature where it deals with those aspects of intergovernmental rule-making processes that are relevant to the conceptual and theoretical framework developed in Chapter 2. The focus is on negotiations between governments and rule-making in intergovernmental organisations (IGOs).

The normative context

The normative contexts of intergovernmental rule-making vary widely. As they differ significantly in terms of duration, the number of issues under negotiation, and the degree of obligation, precision and delegation attached to their outcomes, it is almost impossible to outline a typical normative context that fits most or even all intergovernmental rule-making processes. In particular, for criteria like *affectedness*, *subsidiarity* or *quality of intergovernmental rules*, the spectrum of intergovernmental rules impedes any synthesis. As illustrated by the lending criteria of the International Monetary Fund, intergovernmental rules may affect the lives of millions of individuals in very fundamental ways. In contrast, other rules affect only a small range of actors or demand only marginal behavioural change from their addressees. Many technical standards set within the International Organisation for Standardisation (ISO) or the rules laid down in the Stockholm Convention on Persistent Organic Pollutants are examples of the latter type.

A similar argument holds for subsidiarity. Thus, some issues on the agenda of intergovernmental negotiations are more easily identified as transboundary or even global problems than others. For instance, while

ozone depletion and global climate change are usually seen as requiring global action, the framing of trade-related intellectual property rights as a global concern has often been criticised as only reflecting the particular interests of a handful of industrialised countries (see for instance Correa 2000). Finally, the quality of intergovernmental rules – including their scope, level of obligation, precision and adjudication – also varies greatly (see Goldstein et al. 2000).

As a result of this diversity, *authorisation* can be seen as the most distinctive contextual feature of intergovernmental rule-making processes. In contrast to *transnational* governance processes, participants in *intergovernmental* rule-making are authorised by their governments to enter into negotiations about a specific set of issues. In democratic polities, these governments are themselves authorised by their electorates to negotiate international agreements. For autocratic political systems, things look different since those who authorise the participation in negotiations and the ratification of negotiation outcomes are not themselves accountable to their citizens. In both cases, however, the mechanisms for authorising intergovernmental rules do not differ significantly from the mechanisms for authorising national rules. As a result, the quality of authorisation depends on the democratic quality of the political systems whose governments participate in an intergovernmental rule-making process.

Participation and inclusiveness

How inclusive are intergovernmental rule-making processes? As has been argued in Chapter 2, an answer to this question can best be sought by considering the *scope* and *quality* of participation in international rule-making processes. While both aspects are interrelated, I will consider them separately to portray the specific strengths and weaknesses of intergovernmental rule-making more clearly.

The scope of participation

If we ask ourselves who participates in international negotiations, then governments will be the first group of actors that come to our mind. Thus, Wolf (2002b: 40) states that ‘only representatives of national governments have guaranteed access to the institutions of international governance’ and that ‘the involvement of other actors is at best selective and always subject to state review’. To be formally admitted to intergovernmental negotiations, such actors need to dispose of resources that are attractive to states. Other authors have thus observed that

States have incorporated NGOs because their participation enhances the ability, both in technocratic and political terms, of states to regulate through the treaty process. (...) NGO participation provides policy

advice, helps monitor commitments and delegations, minimizes ratification risk, and facilitates signalling between governments and constituents. (Raustiala 1997b: 720)

As a result, if one chooses a narrow view of negotiations, it is first and foremost states or their governments who participate in the making of intergovernmental rules. Where they include members of non-governmental organisations in their delegations, this occurs based on that calculus. While non-state actors may wish to participate in negotiations but are not formally allowed to do so, governments that are allowed to participate may often be unwilling. As there is usually no obligation for any state to participate in intergovernmental negotiations, the decision to do so is, at least to some extent, a voluntary one. Where non-participation is deliberately chosen, no significant normative problems arise as to the scope of participation. Moreover, rules cannot become legally binding for states whose governments have not participated in a negotiation process.¹

Nevertheless, three normative problems may occur. First, governments occasionally establish intergovernmental 'clubs' in which some states may participate while others are excluded. Where negotiation outcomes affect non-participants, this leads to an incongruence between those who govern and those who are governed. This is for instance the case when informal talks of the G7/G8 result in the creation of new norms and rules or when rules generated within regional IGOs generate demands on actors outside that region. Second, actual participation depends not only on being admitted to negotiations, but also on the capacities to negotiate. Thus, governments need to be aware of negotiations, they need to have a clear idea of how a negotiation process relates to their citizens' interests, they need to have skilled negotiators and the resources to send these negotiators to frequent and lengthy intergovernmental conferences. The vast disparities in state capacities and the proliferation of intergovernmental forums lead to all constituencies not being represented equally. Since lack of capacity, however, most often does not determine *whether or not* governments participate, but rather *how* they can participate, its implications will be discussed in more detail in the following section. Third and finally, the exclusive participation of governments is problematic where affected communities are incongruent with national constituencies. Where the interests of domestic constituencies are heterogeneous and fall into identifiable sub-groups, the view that governments can best represent the interests of their citizens is challenged. As a result, when specific interests are systematically underrepresented by national governments, other actors – such as transnational advocacy coalitions – may be better representatives of the interests of communities affected by a decision-making process.

This last problem may, however, be mitigated if we adopt a broader view of international negotiations. Thus, if we acknowledge that the life cycle of

a treaty 'begins long before delegates are bargaining over specific issues' and that 'it may even continue once agreement is reached' (Chasek 2001a: 2–3), then intergovernmental negotiations are not an exclusively state-centric activity, but instead provide an arena for a wide array of non-state actors. The vital role of advocacy coalitions and interest groups in the initial stage of identifying issues and defining problems has, for instance, been demonstrated in issues as diverse as climate change and biodiversity (Arts 1998), trade in hazardous wastes (Kempel 1993) or landmines (Cameron et al. 1998; Price 1998).

Whether or not such non-governmental participation is desirable, is very controversial. The potential of NGOs to guard the interests of the voiceless has been mentioned as a positive effect of their participation and it has been argued that, 'at a minimum, they may provide an articulation of interests (...) which are otherwise unlikely to be raised in a diplomatic setting' (Raustiala 1997a: 567). But the representative nature of NGOs has been challenged with equally valid arguments based on the observation that 'many powerful NGOs come from a small minority of advanced industrial states, and NGO views are often far from reflective of the public at large' (ibid.). As a result, Kal Raustiala (1997b: 726) warns that 'enhanced participation by civil society in governance may enhance the power of self-interested groups that are already powerful.' How desirable non-state participation in intergovernmental negotiations may, in the end, be is mainly a matter of the quality of participation. The question is not so much whether or not non-state actors participate, but rather *how* these actors contribute to the making of international rules.

The quality of participation

Starting with governments as the most central actors in intergovernmental rule-making processes, which different types of participation exist and how do different governments make use of them? As I have argued in Chapter 2, various modes of participation can be imagined, ranging from largely passive modes such as receiving information to active modes such as representing a constituency in negotiations.

Among the more passive modes, it can be assumed that all governments receive information about intergovernmental negotiations via various channels such as official documents provided by the secretariats of multi-lateral conventions and reports from their embassies or from other members of the state bureaucracy. The breadth and depth of information individual governments receive correlates with the quality and efficiency of a state's bureaucracy and with its involvement in intergovernmental institutions. States with fewer resources are at a disadvantage, not least because they may not have embassies in all of the world's capitals and the centres of international dialogue. As an illustration, Peter Drahos (2003: 84) reports that thirty-six members and observers of the World Trade Organisation do

not have a permanent representation in Geneva, the seat of the organisation. In a number of fields of international activity, independent conference documentation however mitigates some of these imbalances (Chasek 2001b).

As far as active participation is concerned, voting power of individual governments differs across forums. Thus, while consensus decision-making is a common feature of intergovernmental negotiations (Chasek 2001a: 31–2), institutions such as the UN Security Council, the World Bank or the International Monetary Fund have tied voting rights to military or economic power.² Not least because of the different voting systems of intergovernmental organisations, forum selection has become a crucial aspect of intergovernmental rule-making (Clapp 1998; Sell 2004). In relation to this point, it is interesting to note that, while different voting schemes exist, hardly any scheme bases voting power on the number of individuals represented by individual governments.³ As a result, a frequent criticism of intergovernmental rule-making processes is that the governments of Luxembourg and China have one vote each even though one government represents less than half a million individuals while the other represents over a billion. However, since bargaining power in intergovernmental forums is not determined by voting power alone, the problem appears less acute than is occasionally assumed.

As a consequence, by far the most relevant challenges to the inclusiveness of intergovernmental rule-making processes relate to unequal capacities of governments to represent their constituencies in negotiations. While states formally participate as equals in most intergovernmental forums and while consensus is a common decision rule, a number of practical obstacles prevent that constituencies are represented equally. First of all, the complexity of the subject matter of intergovernmental rule-making processes is often overwhelming: many developing country governments face severe problems in terms of equipping their delegations with a level of expertise required to make informed choices (Chasek 2001a). In particular small developing countries frequently face difficulties to systematically collect the data required to develop a national position on the issue under negotiation and to analyse and evaluate the implications of proposals made by other delegations, and to send technically competent and experienced negotiators (Chasek 2001b: 169; see also Sjöstedt and Spector 1993: 311). As a result, developing countries may be present at negotiations. Yet, they frequently are not effective participants (Gupta 1997: 132).

In addition to the issues under negotiation, multilateral negotiations themselves are a highly complex process; they involve 'a multitude of actors, cover a multitude of issues, and often occur under conditions of great uncertainty' (Chasek and Rajamani 2003: 246). To be able to defend their national positions, individual delegations need to include experienced negotiators, legal and technical experts, the availability of which heavily

depends on a state's financial, educational and intellectual resources. Finally, the proliferation of multilateral negotiations strongly affects the negotiating process and it has been argued that

Many developing countries do not have the personnel or financial resources to attend such a large number of negotiating sessions. As a result, there are more and more instances where a developing country or group of 'like-minded' countries is forced to rely on another country to represent their interests. (Chasek 2001a: 203)

The reliance on other countries or on non-state actors to represent a state's interest may offer a short-term solution to the lack of representation. Yet, it does not solve the more fundamental problems associated with a lack of negotiating capacity. In contrast, it creates accountability gaps where the represented governments are also unable to check the data on which these other countries or non-state actors base their positions. Moreover, it creates dependencies where national delegations cannot close the gap in negotiation experience over time.

As climate change negotiations illustrate, the lack of national capacity is not only related to a lack of research capacities, but also to one of domestic awareness and societal interest. Thus, in the case of the Kyoto Protocol's Clean Development Mechanism (CDM),⁴ developing countries not only encounter difficulties in analysing their CDM potentials and lack trust in external studies – two factors that by themselves inhibited many developing countries from taking a strong position in CDM negotiations (Frost 2001: 54) – but they also suffered from the absence of significant private sector involvement. This lack of involvement illustrates the general lack of awareness of intergovernmental negotiations in these societies. Thus, although climate change is likely to have significant impacts on developing countries, it is rarely perceived as a priority.⁵ As a consequence of the lacking domestic debate, developing countries have frequently entered negotiations with a 'hollow mandate' (Gupta 1997) and, in contrast to most industrialised countries, many developing countries pursued a rather defensive negotiation strategy, putting themselves at a disadvantage in relation to more proactive delegations. Acknowledging the link between domestic knowledge generation, domestic debate and the formulation of clear national strategies, Joyeeta Gupta (*ibid.*: 165) therefore concludes that 'as long as there is structural imbalance in knowledge generation, the country lagging behind will be on the defensive (...) in international negotiations, and will be unable to generate salient solutions to the problem.'⁶

The problems observed in multilateral trade negotiations broadly concur with these observations. Hence, Drahos (2003: 82–3) argues that in trade talks, four factors determine the bargaining power of governments: the

share of the world market; access to commercial intelligence networks that collect, disseminate and analyse information on a state's – and other states' – trade, economic and business performance; the ability to build coalitions with other states; and the existence of adequate and experienced domestic political institutions that support intergovernmental negotiations. Obviously, all four sources of bargaining power place developing countries – and in particular small and least developed countries – at a clear disadvantage. Accordingly, developing country participants have often found themselves at a disadvantage in international trade negotiations because their delegations were small and inexperienced, because they lacked national research support, and because they were not familiar with the formal and informal proceeding of negotiations (Page 2003: 7).

However, as a small sign of hope, observers of trade negotiations have noted that the negotiating capacity of developing countries has 'clearly benefited from the experience of successive trade rounds' (*ibid.*: 5) and that delegations for whom the Uruguay Round was the first round of multilateral trade talks learned a great deal from their participation. In negotiations that succeeded the Uruguay Round, many developing countries have thus taken a much more proactive stance. Consequently, Sheila Page (2002: 30) has argued that in trade talks after 1995, 'the Uruguay Round model of the major countries (...) making the decisions and announcing them to the rest was no longer feasible'. The experience from multilateral trade negotiations thus lends support to the view that longer negotiations can help produce informed outcomes for new participants. Comparing a range of regional and global trade negotiations, Page (2003: 12) concludes that 'participation is working best in the longest established negotiations (...) with the broadest range of allies and less obvious dependency'.

To conclude, not all participants in intergovernmental negotiations have equal possibilities to represent their constituencies at the negotiation table. Instead, 'more often than not developing countries today enter multilateral negotiations at a disadvantage' (Chasek and Rajamani 2003: 245). Reviewing the sources of inequality, most of them are not inherent to intergovernmental rule-making as such, but a consequence of structural inequalities that characterise the contemporary world political system. Moreover, a number of the difficulties developing country delegations are facing with could be remedied – for instance through providing adequate funding for attendance at conferences of the parties, strengthening permanent domestic institutions for research and policy coordination, improving coordination in between conferences of the parties, and training negotiators (Richards 2001: 22–4). Moreover, voting structures may be adapted along the lines of the international ozone regime or the Global Environmental Facility, in which decision-making requires a double-majority of both industrialised and developing countries (Biermann 1998: 55, 176–80).

Democratic control

Beyond inclusiveness, I have identified possibilities for democratic control as a second dimension of democratic legitimacy in Chapter 2. The notion of democratic control demands that decision-making processes are transparent and that the authors of intergovernmental rules can be held accountable by those affected by them.

Transparency

The level of transparency of a decision-making process can be conceptualised as the extent to which individuals who may be significantly affected by a decision can obtain information about the decision-making process, including its existence, subject matter, structure and current status. Accordingly, the transparency of intergovernmental rule-making processes depends on a range of factors.

As a first aspect, the *readiness of rule-makers to share information* on the negotiation process and to grant access to observers varies. Thus, while international negotiations on a Multilateral Agreement on Investment initiated by the Organisation for Economic Co-operation and Development (OECD) were highly secret – and partly failed because of its closed character (Metzges 2006) – some 1,500 non-governmental organisations were formally accredited to the 1992 United Nations Conference on Environment and Development. As a rule, however, even relatively open negotiation processes include informal elements with closed-door sessions (Raustiala 1997b: 724). As a result, the transparency of intergovernmental negotiations is generally considered to be modest.⁷

Second, the *capacities of citizens, NGOs or the media to observe negotiations* may also differ significantly. For both NGOs and the media financial constraints figure prominently in a decision about whether or not to attend an international conference. Since observers from developing countries face the most serious budget constraints, intergovernmental negotiations tend to be less transparent for developing country constituencies than for their counterparts in industrialised countries. In addition to financial constraints, the public perception of an issue under negotiation is also an important factor for NGOs and media representatives alike. As both rely on the readiness of their own constituencies to pay for their information – either by donating money or by buying information – some topics offer themselves much more to NGO and media reporting than others. In consequence, negotiations on issues of high interest to the media will be more transparent than negotiations on issues that are less easily sold to the public.

Finally, the *educational, technical and financial capacities of affected communities* to access and evaluate available information in the light their own interests also vary. Hence, the same challenges developing country govern-

ments are facing in terms of their capacities to collect and analyse data also apply to the capacities of societal actors. Thus, the so-called digital divide gives stakeholders in industrialised countries much better opportunities to inform themselves than stakeholders in developing countries. For the former, the revolutionary developments that communication technology has seen over the last decades have made it much easier to collect, exchange, and disseminate information. In contrast, large segments of affected communities in developing countries remain excluded from the benefits of the World Wide Web. In addition, the differences in educational resources – with illiteracy rates ranging from close to zero in many industrialised countries to over 80 per cent of the national adult population in Mali, Niger or Burkina Faso⁸ – further aggravate the information gap between constituencies in the North and in the South.

In sum, Klaus Dieter Wolf's (2002b: 40) characterisation that 'the lack of transparency of political processes in international negotiating systems (...) has turned into a severe obstacle to the effective exercise of democratic control even on the national level' seems justified. Severe challenges for the transparency of intergovernmental rule-making processes are posed at several levels: the practice of informal negotiation sessions; the scientific complexity of subjects under negotiation as well as the complexity of negotiation processes themselves and of possible solutions; and the widespread lack of capacity to access and evaluate available information in terms of a community's own enlightened interests.

Accountability

A distinctive strength of intergovernmental rule-making processes is that the accountability problem is solved in a very formal manner and that a chain of interconnected accountability relations links negotiators to individual citizens. Most directly, negotiators are accountable to their governments from which they receive instructions and on behalf of which they negotiate. And then, governments are accountable to national parliaments. Depending on the type of political system, this form of accountability is more or less direct and effective. The case of the US Senate, however, illustrates that parliaments may exercise strong control on their governments' international activities. As US ratification of intergovernmental agreements requires the consent of the Senate, senators have substantial control over the negotiation process. In fact, as one negotiation practitioner recalls,

One has to be very careful if one is negotiating an agreement that is subject to ratification by the U.S. Senate. It is important to always keep in touch with U.S. senators as the negotiating process continues in order to obtain their independent inputs, be aware of their sensitivities, and recognize vested domestic interests and blocking constituencies. (Koh 1996: 315)

Finally, in democratic political systems control of parliamentarians by their electorates complements the chain of formal control mechanisms. The election of parliamentarians on a regular basis constitutes an ex-post control mechanism. Its force, however, depends on a number of assumptions: A first assumption is that parliamentarians aim at re-election and that one could therefore expect them to have a strong incentive to do well in controlling the executive. Yet, foreign policy is only one of many policy areas and it rarely decides the outcome of elections, thus weakening the final link in the accountability chain that connects negotiators to individual citizens. As a result, the strength of the accountability of negotiators to citizens is related to two further assumptions, namely, that citizens obtain sufficient knowledge to evaluate the performance of their governments and parliaments, and that they attach high relevance to their government's international performance. As both assumptions are debatable, accountability relations may be strong on paper, but tend to be modest in actual practice.⁹

In addition to the formal accountability mechanisms just outlined, intergovernmental negotiations are subject to a number of informal control mechanisms. Thus, most intergovernmental negotiation processes admit non-governmental organisations as observers, and civil society groups as well as industry representatives have increasingly made use of this privilege and installed themselves as watchdogs. Closely following intergovernmental meetings, these actors hold negotiators accountable by providing information on the performance of negotiators to the public, blaming individual delegations for blocking negotiations or publicly supporting the proposals of other delegations. Moreover, governmental delegations are frequently composed of representatives of various government agencies.¹⁰ As different ministries tend to have different constituencies, broad governmental involvement further increases the level of societal control.

Nonetheless, critics have observed that governments have, on some occasions, deliberately turned to rule-making in the international arena to gain autonomy vis-à-vis their electorates – in other words, to circumvent mechanisms of democratic control at the national level (Wolf 1999, 2000). As such practice illustrates accountability mechanisms beyond the state tend to be weaker than those within democratic states. In sum, it seems fair to say that intergovernmental rule-making processes are based on relatively solid formal accountability mechanisms that relate decision-makers to decision-takers. At the same time, the strength of these mechanisms is partly hampered by the complexity of accountability chains and by the structural imbalances that characterise the contemporary interstate system. Moreover, as the accountability problem is primarily solved domestically, the extent of citizen control depends on the quality of the political systems of those governments participating in a negotiation process.

Discursive quality

The discursive quality of decision-making processes constitutes a third and final dimension of their democratic legitimacy. Like the other dimensions, it can be disaggregated into two criteria. As a first criterion, deliberativeness demands that decision-making is based on a sincere exchange of arguments among participants. Second, the notion of discursive balance requires that decision-making processes are open to arguments from different social discourses related to the issue under negotiation.

Deliberativeness

Intergovernmental rule-making processes have long been described as dominated by strategic interaction. In more recent work on the role of ideas and arguments in international politics, this view has however been partly modified. Intergovernmental negotiations, it is now commonly acknowledged, constitute a mixture of bargaining and arguing (Gehring 1996; Risse 2000). In practice, both arguing and bargaining are therefore likely to be present throughout the different stages of international negotiations. For concrete situations, it may even be difficult to determine whether participants engage in arguing or in bargaining since a practice interpreted as arguing may, at its very heart, be motivated by strategic rather than communicative reasoning (Risse 2000: 20). Notwithstanding these difficulties, authors have identified a number of conditions that facilitate argumentative processes in intergovernmental negotiations.

First, it is largely undisputed that the framing of a problem is pivotal and that the pre-negotiation phase of issue definition often involves a considerable degree of communicative interaction. Of course, the contestation of concepts and meanings can be motivated by strategic reasoning. For instance, in the context of the United Nations Convention to Combat Desertification, it has been disputed whether the issue to be addressed is 'desertification' or 'soil degradation', whether the problem is 'natural' or 'anthropogenic', whether or not it is related to climate change, and whether it primarily constitutes an 'environmental' or a 'development' problem (Bauer 2006). Any of these choices has positive implications for some stakeholders and negative ones for others. As a consequence, interaction related to these choices is likely to have a strong strategic component. Nonetheless, the fact that any of the choices mentioned needs to be made and defended based on arguments lends support to the idea that the 'force of the better argument' is significant at the stage of issue definition.

Second, normative ideas such as justice and fairness play an important role in intergovernmental negotiations (Albin 2001). For instance, in the context of the international regime to protect the Rhine, Christophe Dupont (1993: 143) remarks that the 'balance of power has, to some extent, been influenced by moral suasion exerted against some parties by the

nature, urgency, or intensity of problems'. Moreover, a number of more recent negotiation successes of middle-power coalitions can be explained with reference to argumentative dynamics. In particular, the success of the International Campaign to Ban Landmines and the political process that led to the creation of the International Criminal Court demonstrate that moral arguments can become significant if they enjoy strong leadership by respected governments and gather additional support from civil society groups (Hampson and Reid 2003).

Distinguishing more systematically between different factors that render intergovernmental decision-making conducive to a deliberative mode of interaction, Thomas Risse (2000: 15) maintains that the normative frameworks created by international institutions structure interaction in specific issue areas of international cooperation. For instance, proposals in the World Trade Organisation need to show how their implementation would promote the aims of free trade and global welfare. Moreover, Risse holds that organisational structure makes a difference and that 'nonhierarchical and networklike international institutions characterized by a high density of mostly informal interactions' are particularly conducive to discursive processes. Beyond organisational structure, Risse (*ibid.*: 33) argues that

Arguing processes are more likely to occur (...), the more actors are uncertain about their interests and even identities; the less actors know about the situation in which they find themselves and about the underlying 'rules of the game' ('common knowledge'); and the more apparently irreconcilable differences prevent them from reaching an optimal rather than a merely satisfactory solution for a widely perceived problem ('problem-solving').

Finally, the role of mediators in strengthening argumentative elements has been stressed as a further catalyst for deliberativeness. Since they operate without a power base of their own, these mediators rely on the force of their arguments. As a result, a skilled negotiation chair or head of an intergovernmental agency can make a difference (Gehring 1996: 229).¹¹

To sum up, it can be assumed that intergovernmental rule-making processes, while essentially based on strategic interaction, leave significant room for the sincere exchange of arguments among participants. As with the other two dimensions of democratic legitimacy discussed in the previous subsections, this does not imply that all actors involved are equally equipped to participate in the exchange of arguments. Since not only bargaining chips but also arguing skills are distributed unequally, a number of practical constraints put some actors at a clear disadvantage (Wolf 2002b: 41). This problem is further aggravated if we include the domestic level of policy-making in our equation and take the idea of 'two-level-arguing' seriously (Risse 2004). In open societies with high levels of

education the positions of delegations may thus be tied more closely to informed public deliberation at home. In contrast, the governments of closed societies with low levels of education are either unlikely or even unable to base even highly important decisions on the informed public discussion among their citizens. Finally, power relations are hardly absent from argumentative processes. Instead, they frequently determine who has legitimate access to a discourse and what counts as a good argument in a given context (Risse 2000: 16).

Discursive balance

Finally, the discursive balance of intergovernmental rule-making processes is difficult to assess at the level of generality I seek in this chapter. While anecdotal evidence tends to support the popular view that issues reflecting the interests of economically powerful actors tend to enter the intergovernmental agenda more easily than issues backed by less economically powerful actors, this observation has yet to be confirmed – and most likely to be qualified – by more systematic comparative research.

Beyond intergovernmental negotiations, Michael Barnett and Martha Finnemore (2004) argue that rule-making in *intergovernmental organisations* is likely to be grounded on discourses that reflect – and hence serve to expand – the specific sources of authority on which a particular intergovernmental organisation draws. In other words, it is likely to draw on the rational-legal character of a decision, on an organisation's mandate from states, or on its expertise and moral legitimacy as an impartial representative of global interests. As an illustration, the International Maritime Organisation's technical expertise implies that the organisation is likely to promote discourses that see marine environmental problems as a technological challenge. Discourses that portray marine pollution as a structural problem associated with an increase in maritime transport, resulting from increasingly global trade relations, are unlikely to feature prominently in the organisation's work (Campe 2007).

Overall, the observation that moral authority of IGOs is largely tied to their perception as representatives of global interests suggests that decision-making in IGOs is likely to balance ideas and values associated with different social or cultural origins. Yet, the balance will differ from case to case and it is therefore difficult to provide a systematic summary statement for intergovernmental rule-making processes as such. Why some problems become accepted as global problems, why issues get framed the way they do, and when and how attempts to frame an issue differently lose the discursive struggle are questions that deserve a more solid empirical analysis. For this study, conclusions on the discursiveness of intergovernmental rule-making processes therefore remain weaker than for the other criteria.

The democratic legitimacy of intergovernmental rule-making: Conclusions

The discussion in this chapter illustrates that intergovernmental rule-making processes have distinct strengths and weaknesses in terms of their democratic legitimacy. Their main characteristics can be summarised in the following schematic way (see also Table 3.1).

Intergovernmental rule-making processes have three distinct strengths. First, they are authorised by governments that, at least in democratic political systems, are themselves authorised by their electorates. Second, they define governments of internationally recognised states as their primary constituency and thereby ensure that each citizen is represented in negotiations by government representatives. Third, intergovernmental rule-making processes are grounded on a highly formalised accountability system in which delegates are accountable to governments, governments to parliaments, and parliaments to electorates. As a result, the accountability problem is – at least formally – solved at the domestic level.

Table 3.1 The Democratic Legitimacy of Intergovernmental Rule-Making

Criteria	Strengths	Weaknesses
Normative context	Intergovernmental rule-making processes are authorised by governments. In democratic political systems, governments are themselves authorised by their electorates.	The level of obligation and precision can be very high.
Participation and inclusiveness	The exclusive extension of participation rights to governments ensures that each citizen is represented by government representatives.	Capacities to participate effectively differ widely.
Democratic control	The accountability problem is solved at home: delegates are accountable to governments, and governments to electorates.	Transparency is often low; chains of accountability are very long, and representatives of autocratic regimes are unaccountable to their constituencies.
Discursive quality	Depending on their organisational structure, international negotiations may include significant discursive elements.	Strategic interaction dominates in some negotiations (or elements thereof), thereby impeding efforts to a more sincere deliberation.

But intergovernmental rule-making processes also face serious normative challenges. Most importantly, capacities to participate effectively in intergovernmental negotiations and to control decision-makers are dispersed unequally across the globe. Second, chains of accountability are relatively complex and thus tend to be weaker in practice than on paper. And, specifically, representatives of autocratic regimes are largely unaccountable to their constituencies. Third, intergovernmental negotiations often lack the transparency necessary for national parliaments and publics to make effective use of the formal and informal control mechanisms they may otherwise have at their disposal.

Finally, rule-making in intergovernmental organisations is characterised by some particularities. Most importantly, standard-setting tends to be less participatory and control of decision-makers less direct. As a result of relatively weak accountability relations, Barnett and Finnemore (2004: 157) have expressed concerns about the 'increasingly detached and undemocratic character' of intergovernmental bureaucracies, agencies that, in their view, 'have never received high marks as exemplars of democratic decision making'. However, three positive aspects can be noted. First, decision-making in IGOs may be is often conducive to a deliberative style of interaction, although deliberations may remain limited to a small range of individuals (Joerges and Neyer 1997). Second, since the moral authority of IGOs is largely tied to their perception as representatives of international or even global interests, we may assume that decision-making within IGOs is at least sensitive to different discourses. Third, most observers, including Barnett and Finnemore (2004: 169–70), concede that under the increasing pressure from their critics many IGOs have improved their records of inclusiveness, transparency and accountability over the past few years.

4

The World Commission on Dams

Despite its short-lived existence, the World Commission on Dams (WCD) has become a reference point for scholars and practitioners alike. Proponents of public-private partnerships praise it as a model on which future transnational institutions ought to be built. The United Nations Environment Programme (UNEP) has set-up a Dams and Development Programme to continue the dialogue and support implementation of the WCD's guidelines. The European Union has incorporated these guidelines in its proposal for linking the European emissions trading scheme with the Kyoto Protocol on reducing greenhouse gas emissions. And governments as well as non-governmental organisations refer to the Commission's recommendations in their day-to-day work.

In this chapter, I introduce the WCD as a prime example for a transnational rule-making process organised as a temporary commission. In particular, I evaluate the WCD process in light of the criteria developed in Chapter 2.¹ After introducing the social and political context of the large dams debate and sketching the main features of the WCD process, I examine the normative requirements of the WCD as a rule-making process. In the remaining sections, I analyse to what extent the WCD has met demands for inclusiveness, democratic control and discursiveness. In a final section, I summarise the main findings of this chapter.

Global rules for large dams: The context

To provide the context for the evaluation of the WCD process in this chapter, this section introduces the debate over large dams as a background for the work of the World Commission on Dams. Moreover, I summarise the main events that led to the creation of the WCD, give an overview of the most important features of the WCD process itself and discuss different interpretations of the nature of the WCD.

Why large dams?

Until the early 1970s, large dams² had widely been considered as effective, clean and largely harmless instruments of energy and development policy. However, this perception changed dramatically in the mid 1970s. Protests of environmental and human rights activists became more frequent and powerful and the international public became increasingly aware of the problems associated with large dams. As a result, the debate between proponents and adversaries of dams developed into one of the most politicised disputes in the field of sustainable development throughout the 1990s. While a shift in general development paradigms has certainly contributed to the changing public perception of large dams (Khagram 2004: 4–5), the manifold positive and negative consequences of dams constitute the more specific background to the debate.³

Among their positive consequences, dams can serve valuable purposes such as irrigating land, supplying water, controlling floods or generating electricity. As hydropower is frequently assumed to have a significant potential to meet the increasing energy demands in the developing world, the function of generating electricity is often considered paramount. According to one source, a doubling of the globally installed capacity from 2.000 terawatt hours per year (as of 1997) to above 4.000 terawatt hours in 2020 is expected, with half or more of all new projects to be realised in China, India, and Brazil (Churchill 1997: 105). The benefits proponents associate with large dams, however, go beyond their primary purposes. Thus, as every large infrastructure project, dams can change the social and economic conditions of a region, for instance by changing land use patterns, increasing household incomes, generating employment options, boosting energy-intensive industries and attracting further investment. As a result, large dams are not only prestigious objects for symbolic politics and for the reputations of individual policy-makers, but also drivers for socio-economic development at a regional or even national scale.

In turn, the negative consequences associated with large dams include social, environmental and economic problems. Social implications of large dams are mainly associated with the resettlement of communities from the reservoir area, the change of life conditions for downstream communities, and risks associated with changes in disease patterns. Environmental problems include modifications in the balance of highly sensitive ecosystems, including potentially negative impacts downstream of the dam, the loss of regional biodiversity, and the salinisation of agricultural land. Economically, the lower than expected performance of dams and the low return of investments are among the most severe problems of large-dam projects (for a more comprehensive overview, see WCD 2000a: Chapters 2–4).

Commenting on the changing public attitudes towards the economic, social and environmental performance of dams, one observer concluded

that in 'less than a decade, hydropower and the dams associated with many developments have gone from being viewed as the most environmentally benign source of power to among the most aggressively criticized' (Churchill 1997: 105). The fact that dams are today viewed much more critically than in earlier decades has a variety of reasons. In addition to the more general 'mounting domestic and transnational contestation over big dams that has spread to all regions of the worlds' (Khagram 2004: 2), specific developments in the finance sector also contributed to a crisis in the dam-building industry. As increasing shares of credits had to be generated from private sources, the past performance of dam-building with frequent delays and considerable cost overruns led to high interest rates (Churchill 1997: 107; see also McCully 2001a: xvii). To attract private investment, hydropower projects needed to compete with other investment options such as pension funds or government bonds. As their (short-term) return rates had to be competitive, this created pressure to cut costs – for instance, by reducing compensation for displaced communities or by excluding adverse environmental and social impacts from the calculation of costs. Where these external costs are not internalised, they are either covered by the government or remain uncovered (Churchill 1997). In particular the latter alternative, however, is bound to encourage rather than end civil society's battle against large dams, a battle that is in part responsible for delays and cost overruns.

In sum, large dams are highly sensitive projects mainly for two reasons: First, their impacts are extremely diverse and complex, thus making it extremely difficult to objectively calculate costs and benefits for individual projects, let alone for dams in general. Second, some of the consequences of large dams relate to fundamental values and hopes of individuals and communities. For displaced communities, environmentalists and human rights activists, the physical loss of homeland or of culturally important sites is a particularly sensitive issue; for project beneficiaries and development agencies, the hope for more secure water supply, access to electricity and agricultural land and the hope for regional economic development constitute similarly elementary concerns.

Given the continuing controversy and the ensuing political deadlock between dam opponents and proponents in the early and mid 1990s, the World Bank and other public credit agencies were essentially facing two problems: First, to answer the question, under what conditions they should assist in financing and building new large dams; and second, to make sure that their answer could be put in practice despite the highly politicised controversy over large dams.

Towards a World Commission on Dams

The World Bank had long been used to making its own policies on Bank-funded dams, but when large dams were forcefully put on the agenda of

public debate and the Bank was perceived as their main supporting institution, its policies were scrutinised and criticised ever more vehemently by environmentalists and human rights activists.⁴ More and more often, protest movements succeeded in delaying or even stopping individual projects (Khagram 2004). The deadlock between proponents and opponents of large dams however came at a high cost to both sides. While governments and private businesses could hardly embark on any new projects, dam opponents invested large proportions of their resources into the battle against large dams.

In 1994, a transnational coalition of over 300 NGOs from 44 countries adopted the Manibeli Declaration, in which the signatories demanded the World Bank to establish an independent review of all Bank-funded large dam projects and called for a moratorium on all such projects until that review had been delivered.⁵ At around the same time, a transnational advocacy coalition had succeeded in turning the protests against India's projects in the Narmada Valley into a symbol of public opposition against large dams. This large-scale river basin project which included the construction of thirty large dams was partly funded by the World Bank (Khagram 2004: 2). As public opposition to the project was growing, the Bank was confronted with ever more criticism and, according to one source, 'acquiesced to the first ever independent review of a project it was funding' (*ibid.*). When the protests of domestic and transnational activists continued, the Government of India eventually decided to continue the project without the Bank's financial support (for a comprehensive analysis, see *ibid.*: 65–138).

Faced with these difficulties, the World Bank's Operations and Evaluation Department (OED) made a decision to examine its past experience with large dams. The publication of its internal report in 1996 was a crucial event in the lead-up to the WCD. The report itself was based on a study of 50 World Bank-funded dams. The short version that was later published by the OED concluded that the dams studied had 'made major contributions to economic development', that resettlement had been 'inadequately managed in half of the projects', in particular before the Bank's policies on resettlement had been put in place, and that the set of 50 dams analysed showed a 'mixed record on the management of environmental consequences' (World Bank Operations Evaluation Department 1996). The unpublished full version of the report, however, had a more positive tone. According to one source, the report claimed that '37 of the large dams in this review (74 per cent) are acceptable or potentially acceptable', suggesting that 'overall, most dams were justified' (McCully 2001a: xx, citing the full report). As the OED was rather concerned about simply putting these results on the table – the main fear being that civil society groups would use the report to further promote the case against the Bank's involvement in dam-building – it suggested to convene a workshop to discuss its report

and to develop a design for a potential follow-up study. This coincided with a recent agreement of the World Bank and the IUCN to establish closer working relations between the two organisations. As this partnership was still lacking specific content and as the IUCN had a high credibility with environmentalist groups, it seemed a natural decision for both organisations to cooperate as co-sponsors of such a workshop.⁶

The workshop was eventually held at the IUCN headquarters in Gland (Switzerland) in April 1997. The organisers had invited around forty individuals from diverse regional and professional backgrounds and, more importantly, from both sides of the large dams debate. Given that many observers were astonished by the fact that such a workshop could be held in the first place, the results of the workshop seemed even more surprising. Rather than leaving without agreement, participants identified common ground. In the end, the Gland workshop went beyond developing guidelines for a follow-up study to be carried out by the OED as participants suggested setting up an independent commission (IUCN and World Bank 1997; see also Brinkerhoff 2002a: 327).⁷ As to the commission's mandate, workshop participants agreed that it should provide a global overview of the development effectiveness of large dams and their alternatives, and that it should 'develop and promote internationally acceptable standards for the planning, assessment, design, construction, operation and monitoring of large dam projects' (IUCN and World Bank 1997: 9).⁸

The hopes associated with the WCD were summarised in a comment on the Gland meeting in the *Financial Times* the day after the meeting – the article reported that a 'truce' had been called in the battle over large dams (Flanders 1997).

The main elements of the World Commission on Dams: An overview

To keep the momentum of the Gland meeting, the World Bank and IUCN set up a small Interim Working Group (IWG) of staff members of the two institutions. Overseen and occasionally consulted by a so-called Reference Group of participants from the Gland workshop, the IWG decided on the basic structure and selected, together with the Commission Chair Kader Asmal, the individuals who were to serve on the commission. Originally envisaged to begin its work in late 1997, the WCD was eventually inaugurated in May 1998.

The structure and process of the WCD were guided by its mandate and by the background of the large dams debate (Khagram 1999: 10–14, see also Figure 4.1 for an overview). At the centre of the WCD process was the twelve-member commission itself that was established to guide the global inspection of the development effectiveness and develop guidelines for future projects. While the 12 commissioners should not see themselves as representatives of particular interest groups (WCD 1999b: 4), their selection by the IWG was strictly guided by criteria of balanced representation.

During their two and a half years term, the commissioners convened at ten commission meetings and took part in a number of other activities of the work programme such as regional consultations (WCD 2001b: 4).

The commission was supported by a secretariat staffed with eighteen staff members.⁹ The WCD Secretariat was based in Cape Town, South Africa; it assisted the commission in its day-to-day work and facilitated the WCD process. In addition, it acted as a moderator between the commission and the stakeholder forum on the one hand, and the commission and a wider public on the other. The WCD Forum, in turn, consisted of some 70 organisational stakeholders invited by the secretariat. Forum participants included affected people's groups such as the Narmada Bachao Andalan or the Brazilian Movimento dos Antigos por Barragens; NGOs like the WWF/World Wide Fund for Nature (WWF), the International Rivers Network (IRN) or the Berne Declaration; private sector firms such as Enron, Siemens or Asea Brown Boveri (ABB); multilateral agencies such as the African, Asian and Inter-American Banks for Development or the United Nations Development Programme; and a number of government and bilateral agencies. The main purpose of the WCD Forum was to serve as a 'sounding board' (WCD 1999f) for the commission's work. The commission made use of this sounding board on two occasions – a first meeting was held in Prague in March 1999 and a second meeting in Cape Town in April 2000.¹⁰ In addition, numerous members of the stakeholder forum

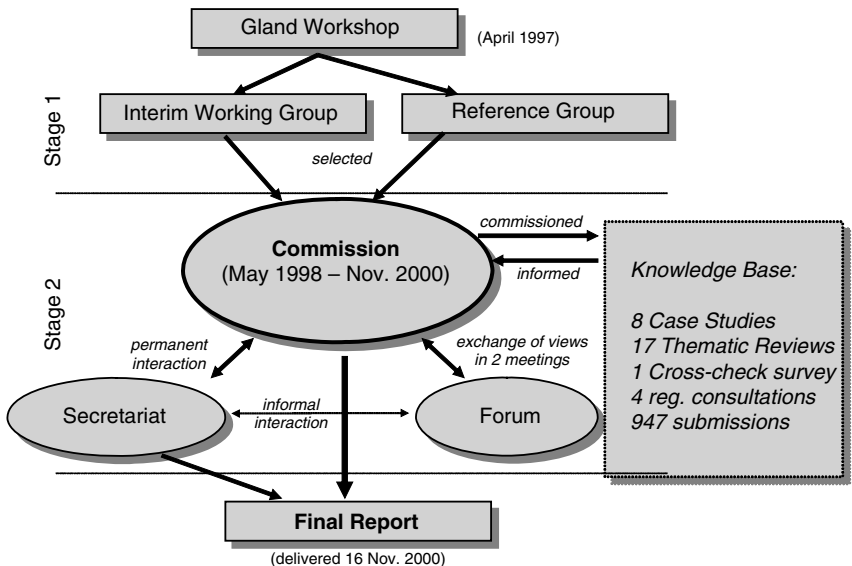


Figure 4.1 The World Commission on Dams: Organisational Design

provided services such as commenting on papers prepared for the WCD Knowledge Base.¹¹

This Knowledge Base was the main instrument in the fulfilment of the commission's mandate. To examine the development effectiveness of large dams and to develop international guidelines for future projects, the commission needed a broad and sound information basis. The work programme for the Knowledge Base encompassed eight case studies, three country studies, 17 thematic reviews on social, ecological, institutional, and economic and financial aspects of large dams, four regional consultations in Colombo, Sao Paulo, Cairo and Hanoi, as well as a cross-check survey based on quantitative data for 125 dams. In addition, the Secretariat received over 900 public submissions from individuals or organisations.¹² As a result, the WCD Knowledge Base, which has been made available to the public via the World Wide Web (www.dams.org), is widely considered as the most comprehensive analysis of the consequences of large dams so far.

In November 2000, the World Commission on Dams presented its final report *Dams and Development: A New Framework for Decision-Making* at a public event in London; the event included a presentation of the report's main findings by former President of South Africa, Nelson Mandela. In its report, the commission concludes that the majority of the 45,000 large dams built in the past have either failed to fulfil their expectations or have had far more detrimental consequences than foreseen in the planning phase. Moreover, the commission reported that social and ecological consequences in particular have been given only marginal consideration in the planning of many large dams. The report estimates that the overall number of displacements due to large dams is between 40 and 80 million people. In its guidelines for future dam building, the commission recommends to give particular emphasis to the rights and risks of affected people. The commission identifies equity, efficiency, participatory decision-making, sustainability and accountability as the five core values that should guide decisions with regard to future projects. These core values are translated into seven strategic priorities, which are further specified in the form of thirty-three policy principles and twenty-six sets of more concrete guidelines 'anchored in the good practice identified in the Knowledge Base' (WCD 2000a: 260, see also *ibid.*: Chapters 7–9).

The report of the WCD found a mixed echo in the global public. Proponents praised the commission for bridging the wide gaps and agreeing on a common document despite the existing controversies. In addition, the substance of the commission's contribution was also welcomed by many. For instance, the report's emphasis on the numerous social and ecological consequences of large dams and on their lack of consideration in past projects was approved by many civil society groups. Industry organisations, however, criticised that the data considered by the commission was insufficient to support its conclusions and lamented that benefits of

large dams had not been given sufficient consideration in the final report. Finally, reactions from governments were mixed. Whereas governments from industrialised countries were more inclined to welcome the commission's guidelines, some government representatives from developing countries felt that the recommendations were too strict and that they endangered the development potentials of their societies.¹³

To continue the multi-stakeholder dialogue on large dams, a follow-up process to the WCD was established under the auspices of the United Nations Environmental Programme (UNEP).¹⁴ In the meantime, dam builders and operators, whether actually or rhetorically, are using the recommendations of the World Commission on Dams as a point of reference. In this way, they contribute to creating and strengthening an international norm dynamic along the guidelines established by the WCD.¹⁵

The World Commission on Dams as a transnational rule-making process

What are we to make of the World Commission on Dams? In what terms should we evaluate or analyse its efforts? In one reading, the WCD constitutes no more than a mostly self-selected body of 12 more or less senior individuals that resembles previous commissions such as the Brandt Commission, the Brundtland Commission or the Commission on Global Governance (Ottaway 2001). According to this perspective, *Dams and Development* is, more than anything else, an issue-specific sequel to reports such as *North-South: A Program for Survival* (Independent Commission on International Development Issues 1980), *Common Crisis North-South: Cooperation for World Recovery* (Independent Commission on International Development Issues 1983), *Our Common Future* (World Commission on Environment and Development 1987), or *Our Global Neighbourhood* (Commission on Global Governance 1995).

Yet, some view the World Commission on Dams not so much as an eminent persons body, but as a 'globalized and privatized policy process' (McCully 2001b: 1474) that has vested itself with the authority to devise a normative framework for future dam-building. According to this reading, the WCD process can be regarded as an instance of transnational rule-making that is functionally equivalent to multilateral environmental negotiations. Its main distinction from the latter is that the actors involved are not governments, but – with few exceptions – individuals or other non-state actors. In other words, the WCD can be seen as an instance of appropriation of rule-making authority by actors that usually do not dispose of such authority in world politics.¹⁶

Analytically, this second reading comprises two arguments that need to be further specified. First, it sees the WCD process as an instance of transnational or global rule-making. Second, it assumes that private actors are at the centre of this rule-making process. For the purpose of this chapter, the

first of these two arguments – that is, the assumption that the WCD’s core function lay in establishing transnational rules for future dam-building – is most relevant. If, as defined in Chapter 1, rules are conceptualised as *consciously devised and relatively specific commands for behaviour whose normative authority is such that at least a minimum level of compliance can reasonably be expected*, then the guidelines developed by the WCD can indeed be regarded as a set of such rules.

First, they have consciously been developed as rules – the commission’s explicit mandate was to devise ‘internationally acceptable’ standards. Second, the guidelines developed by the Commission are fairly specific – see for instance Policy Principle 2.3 which recommends that ‘social and environmental aspects are given the same significance as technical, economic and financial factors in assessing options’ (WCD 2000a: 223) or the related guideline specifying that project-level impact assessments ‘should include an Environmental Impact Assessment, a Social Impact Assessment, a Health Impact Assessment (...), and Cultural Heritage Impact Assessment’ and that the ‘assessments should be sufficiently detailed to provide a pre-project baseline against which post-project monitoring results can be compared’ (WCD 2000a: 283). Third, evidence suggests that the guidelines do make a difference. They not only constitute a new normative and discursive frame of reference for current and future large dam projects in which deviations from the WCD guidelines now need to be justified, but they also have regulative and material effects on a variety of stakeholders (on the impact of the WCD, see further below).

The normative context

In the previous section I have argued that one of the key purposes of the World Commission on Dams was to devise and promote global rules on large dams and that these rules have significant real-world impacts. An important implication that derives from the acknowledgement of these two observations is that the WCD, as a collective rule-making body, ought to have a certain level of democratic legitimation. In this section I therefore analyse the specific normative requirements of the WCD in relation to the criteria identified in Chapter 2. In particular, I discuss the form of authorisation, the level of affectedness by the rules, the quality of the rules, and the degree to which the rule-making process respects the principle of subsidiarity.

Authorisation

On which sources of formal or informal authorisation can the World Commission on Dams draw? While there is no straightforward answer to this question, the WCD process can be interpreted as a combination of self-authorisation by the participating individuals plus some kind of collective

authorisation by two intergovernmental agencies, the World Bank and the IUCN. As mentioned above, the formal mandate of the WCD – as well as the general outline of an institutional design for the WCD process – resulted from the Gland Workshop where participants agreed on setting up an independent commission to evaluate the past performance of large dams and to develop recommendations for the future. In its original wording, this mandate lists six specific tasks for the Commission, namely

- ‘To assess the experience with existing, new and proposed large dam projects so as to improve (existing) practices and social and environmental conditions;
- To develop decision-making criteria and policy and regulatory frameworks for assessing alternatives for energy and water resources development;
- To evaluate the development effectiveness of large dams;
- To develop and promote internationally acceptable standards for the planning, assessment, design, construction, operation and monitoring of large dam projects and, if the dams are built, ensure affected peoples are better off;
- To identify the implications for institutional, policy and financial arrangements so that benefits, costs and risks are equitably shared at the global, national and local levels; and
- To recommend interim modifications – where necessary – of existing policies and guidelines, and promote “best practices” (IUCN and World Bank 1997: 9).¹⁷

Labelling the WCD process as self-authorized refers to the observation that those who established – and thereby authorised – the World Commission on Dams, namely the participants of the Gland Workshop, the members of the Interim Working Group, and the members of the so-called Gland Reference Group, did not themselves have any formal authorisation from governments, citizens, or their own stakeholders to negotiate a mandate for an independent commission. In addition, the notion of self-authorisation draws further support from the observation that the stakeholder forum established as a ‘sounding board’ for the commission was essentially an expanded version of the Gland Workshop. Many of the participants of the Gland Workshop remained participants of the WCD Forum, and the selection of new members was directed by the WCD secretariat in cooperation with the commission and existing forum members.

Hence, conceiving of the WCD process as largely self-authorized appears as an adequate interpretation of the early history of the WCD. The alternative interpretation of the WCD process as an instance of delegation from the World Bank and the IUCN to an independent commission seems

misleading for two reasons. First of all, no formal act of delegation is documented and World Bank statements on the WCD do not support such a reading. Second, the details of the early WCD process do not lend much support to this particular interpretation. The purpose of the Gland Workshop was to discuss the design for a follow-up study on large dams to be undertaken by the World Bank's OED rather than to create an independent commission. In the consensus that emerged at the workshop and that led to the creation of the WCD, the Bank was eventually relegated to the status of being one stakeholder among many others. Moreover, the World Bank's reaction to the final report was relatively cold, which further supports the assumption that the Bank perceived the WCD as an independent body rather than a commission to which it had delegated the task of developing guidelines for future dam-building.

In sum, it is therefore more appropriate to speak not of delegation of authority, but of endorsement of the WCD process by both the World Bank and IUCN. This endorsement provided the WCD with at least a minimal degree of quasi-authorisation from internationally legitimated actors that it was otherwise lacking. Overall, the characterisation of the WCD process as self-authorisation that was endorsed by two international agencies, the World Bank and the IUCN, therefore seems appropriate. The WCD's record in terms of authorisation is thus to be located between the two extremes: It could neither draw on any formal source of authorisation, nor was it entirely disconnected from collective international actors who base their authority on a more formal intergovernmental legitimacy.

Affectedness

Concerning the degree of affectedness associated with the WCD process, it seems appropriate to distinguish between the issue of large dams itself and the norms and rules set by the WCD. Regarding the first aspect, the positive and negative impacts of large dams on people's lives are immense. The most comprehensive picture of the breadth and depth of affectedness can be gained from the final report of the WCD itself. On the one hand, the electricity and irrigation stemming from large dams have improved the standard of living of millions of people around the world. On the other hand, large dams constitute interventions in social and ecological systems that have resulted in the – often poorly planned and executed – resettlement of 40 to 80 million people and fundamentally altered the living conditions of many more.¹⁸

Overall, large dams therefore affect a large number of individuals in a very direct way and at a rather deep level of their everyday lives. As a consequence, they constitute a highly sensitive issue for decision-making, not only from a normative, but – as the evidence of uncounted fights over dams suggests – also from an empirical perspective.

For the work of the WCD, however, it is important to distinguish between different geographic regions. Since the WCD can mainly have an impact on societies in which substantial plans exist to build large dams in the future, countries such as India, China, or Brazil are particularly affected by its final report. In contrast, many industrialised countries have exploited their potentials for hydropower and do not have significant plans to build new dams. As a consequence, the industrialised world's interest in dams is of a more indirect nature. It primarily includes the interests of the dam-building and associated industries and the interests of environmental activists who claim a stake in the dams debate as representatives of the voiceless, including future generations and non-human nature.

Regarding the effects of the WCD report, there is a general perception that 'the WCD has certainly made an impact, and its circle of influence is ever widening' (Imhof et al. 2002: 13). Thus, numerous governments are consulting about how to proceed with the WCD's recommendations, NGOs such as the WWF or the International Rivers Network (IRN) are using the report for their campaigns, and participants of the WCD process claim that 'every company has the report on their desks.'¹⁹ In short, the content of the WCD report serves as the new frame of reference for talking about dams. While a more systematic evaluation of concrete effects remains yet to be conducted, a preliminary overview leads to the following broad picture:

First, at the governmental and intergovernmental level, the EU directive that links the WCD guidelines to the Clean Development Mechanism (CDM) of the Kyoto Protocol has already been mentioned in the introduction to this chapter. For emission reductions from hydropower projects with a generating capacity exceeding 20 MW to be accredited under the European Union's emission trading scheme, the directive demands that

Member States shall, when approving such project activities, ensure that relevant international criteria and guidelines, including those contained in the World Commission on Dams November 2000 Report 'Dams and Development A New Framework for Decision-Making', will be respected during the development of such project activities. (European Parliament and Council of the European Union 2004)

In addition to this European initiative, the WCD recommendations also found their way into negotiations for replenishing funds for the International Development Association (IDA) where delegates asked that, in addition to requiring all IDA-funded projects to comply with the World Bank's environmental and safety standards, the IDA should 'take into account the core values and strategic priorities suggested by the WCD for preparing and evaluating dam projects' (International Development Association 2002: 18).

At the level of individual states, dialogues on how to use the WCD recommendations and guidelines have taken place in a large number of countries, including Brazil, Germany, Pakistan, South Africa, Thailand, the United Kingdom, and Vietnam (UNEP Dams and Development Project 2003: 22–6). In these national dialogues, which often followed the multi-stakeholder pattern of the WCD, recommendations made by the commission have not been turned into national law but served as a starting point for further consultations. As a result, the WCD recommendations have come to constitute a widely accepted frame of reference for national policy-making on dams. Among individual government agencies, the German Federal Ministry for Economic Cooperation and Development was one of the first to welcome and accept the WCD recommendations. It maintained that ‘future dam projects must meet the criteria of the World Commission on Dams and must provide a real benefit for the country, especially for the population affected immediately.’ Moreover, one of its state secretaries announced that the federal ministry intended ‘to work toward implementing the WCD recommendations at both the international and the national level’ (Uschi Eid, in *Deutsche Gesellschaft für Technische Zusammenarbeit and KfW Entwicklungsbank* 2004: 5).

In addition, Export Credit Agencies (ECAs), which were explicitly addressed in the WCD report, are central to put the WCD recommendations into practice at the national governmental level. However, the analysis of ECAs’ policies in the aftermath of the WCD shows that, so far, the agencies have integrated the WCD guidelines only to a moderate extent. An evaluation of the policies of eight ECAs concludes that

In the years since their publication, the WCD recommendations have been a central force behind promoting greater consideration of environmental impacts in evaluating dam projects. However, they have had only limited visible influence on ECAs’ environmental guidelines. In the few cases where ECAs’ guidelines explicitly mention the WCD recommendations, they are not referred to as strict guidelines, but rather as a general influence to be taken into consideration. (Knigge et al. 2003: 3)

More precisely, out of eight OECD-based agencies that were analysed in the study, WCD recommendations were explicitly mentioned only in the Swiss, German, and French ECAs’ guidelines (*ibid.*: 29). Of these agencies, only the Swiss export credit agency had incorporated the seven strategic priorities of the WCD report into its policies and required companies to report to the ECA to what extent the priorities were met (*ibid.*: 42).²⁰ However, even if most agencies have not formally included WCD recommendations in their policies, the authors of the study hold that ‘most environmental practitioners consider the WCD report to have had a considerable influence on the practical implementation’ of environmental

guidelines by ECAs. Even if compliance with WCD rules is not formally required, the latter are seen as constituting 'a set of topics that would have to be addressed in the Impact Assessment for any large dam project' (ibid.: 3).

Second, at the level of civil society, NGOs have taken up the WCD's normative vision and based their post-WCD campaigns on the core values, strategic priorities and policy principles developed by the Commission. For instance, the IRN has prepared a *Citizens' Guide to the World Commission on Dams* in order 'to ensure that the WCD recommendations are more likely to be followed than not.' Consequently, it recommends its readers to 'prepare analyses on whether proposed projects comply with WCD recommendations and distribute them to government agencies and funders', to 'advocate for WCD recommendations to be incorporated into national laws and policies', and to 'push the World Bank, regional development banks, export credit agencies and bilateral aid agencies to adopt WCD recommendations into their policies and follow them in practice' (Imhof et al. 2002: 3–4). Some organisations have already made use of this approach and challenged, for instance, the World Bank's involvement in the Bujagali dam project in Uganda by using the WCD guidelines as a checklist. In addition, the more successful campaign against the Ilisu Dam in Turkey also bases many of its arguments on alleged non-compliance with WCD recommendations (Imhof et al. 2002: 25–7).²¹

Third, some impacts of the WCD guidelines on the business community can also be detected. For instance, the International Hydropower Association (IHA) has drafted sustainability guidelines for its members in response to the WCD report. The document states that the IHA supports the core values and that 'there is broad agreement on the objectives of the Report's Strategic Priorities'. The IHA guidelines are then conceptualised as a framework for good practice that is in accordance with the core values put forth by the WCD (International Hydropower Association 2004: 3). The wording 'broad agreement on the objectives of the Report's Strategic Priorities', however, points to partial rather than full support. It neither explicitly mentions the IHA as a partner to such agreement, nor does it extend the support to the *content* (rather than merely the *objectives*) of the strategic priorities. In addition, the more specific policy principles associated with the WCD's strategic priorities are not mentioned in the IHA Sustainability Guidelines.

At the level of individual firms, the Swedish company Skanska announced at the release of the WCD report that it would apply the WCD recommendations in the evaluation of its own projects (Skanska AB 2000). In addition, Hydro-Québec is frequently mentioned to have incorporated the principle of prior informed consent – arguably the most controversial element of the WCD's normative framework – in cases where Native Americans in Canada are affected by hydropower development projects. However, while the company's management does demand that new

projects are accepted by the host community, this policy is not a response to the WCD report but has been informally followed since the 1970s and formalised in 1998.²²

Beyond these more direct impacts, a fourth and more indirect effect of the WCD and its report is equally important: By turning the stakeholder rhetoric into mainstream discourse – or by at least supporting an already existing trend – the WCD contributed to changing the discourse about how global decisions ought to be made. This shift is captured in the statement by WCD Chair Kader Asmal quoted in Chapter 1 in which Asmal called the WCD ‘a prototype for (...) the real New World Order’ that brought together ‘eminent persons from the forefront of the dams debate’ who, as a group, ‘represent all the worlds that intersect therein’, namely transnational business, civil society, government and academic experts (Kader Asmal in WCD 1999c: 3). The fact that a report on an issue such as dams, which does not usually attract a great level of public attention, has become so successful a theme for the global public policy debate equally suggests that process was as important as substance. This coincides with the view of a WCD member who maintained that the commission had been established at a point in time when people tried to find new ways of consensus-building and norm generation.²³ In and through its own decision-making practice, the WCD thus promoted a shift from ‘government’ to ‘governance’ that had given birth to the World Commission on Dams in the first place.

Quality of the rules

As a third criterion, the quality of the rules is a decisive factor in determining the extent to which inclusiveness, transparency and discursive quality need to be achieved to qualify a rule-making process as democratically legitimate. In particular, the type of rules, the (intended or actual) scope of the rules, and the degree of obligation and precision attached to the rules are core elements for an assessment of this criterion. First of all, however, the rules need to be identified.

Identifying the rules. Whether the WCD is an example of ‘global standard-setting’ (Briscoe 2001), of global ‘rule-making’ (as interpreted in this study) or whether we should best talk about the ‘norms set by the WCD’ (Srinivas 2001: 136) is a matter of debate. The confusion about what the outcomes of the WCD process constitute is partly due to the complexity of the framework developed by the commission. Rather than formulating straightforward policy recommendations, the final report of the WCD lists five ‘core values’ that are complemented by seven ‘strategic priorities’. These strategic priorities are further specified in the form of thirty-three ‘policy principles’. Finally, the report identifies five ‘key decision points’ for which it operationalises the strategic priorities in the form of twenty-six ‘criteria’ and ‘guidelines’ (see Figure 4.2). So which element(s) of this normative framework should we treat as the norms, rules or standards set by the WCD?

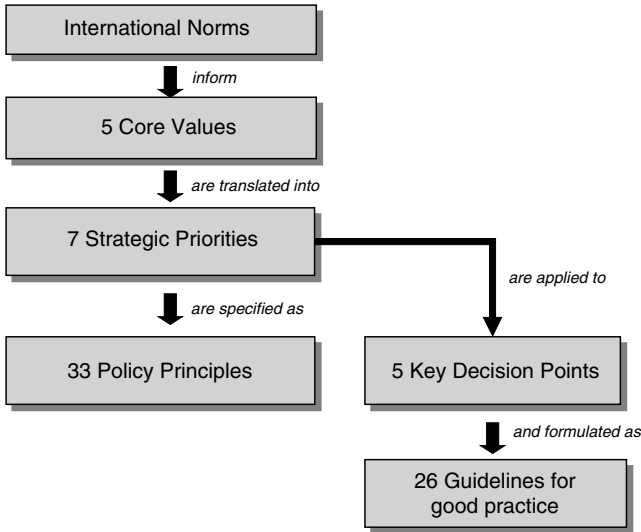


Figure 4.2 World Commission on Dams: Framework of the Recommendations

The twenty-six very specific guidelines formulated in chapter nine of the WCD report have occasionally been viewed as the central normative output of the WCD. In interviews conducted for this study, several commission members, however, pointed out that these so-called ‘criteria and guidelines’ were not intended as prescriptive statements, but rather as guidelines for good practice or – as one commissioner said – as ‘guidelines with a small “g”’.²⁴ One commission member even recalled that, at the very last Commission meeting, a fellow commissioner was asked to revise chapter nine of the report to make it appear less prescriptive. Yet, since no such revision was made, the precise intended status of the guidelines remained unclear.

As a result, it is more plausible to conceive of the strategic priorities and associated policy principles as the central normative output of the WCD. The seven strategic priorities – *Gaining Public Acceptance*, *Comprehensive Options Assessment*, *Addressing Existing Dams*, *Sustaining Rivers and Livelihoods*, *Recognising Entitlements and Sharing Benefits*, *Ensuring Compliance* and *Sharing Rivers for Peace, Development and Security* – can be considered as the headlines under which the commission subsumes its policy recommendations. As the overall headline of ‘strategic priorities’ implies, the Commission’s list of seven issues concerning decision-making processes around large dams are a purposeful selection of issues which the commission thinks should be prioritised over other issues. In terms of their form, language and content, the specification of these priorities in thirty-three policy principles comes closest to what an intergovernmental agreement on large dams may

look like.²⁵ Accordingly, the following discussion of the quality of the 'rules made by the WCD' mainly relates to the strategic priorities and policy principles and only occasionally refers to the other elements of the normative framework established by the WCD.

Quality of the rules. The normative framework developed by the WCD contains both procedural rules about how regional, national or local decisions should be made and substantive rules about how or which dams should be built. Most policy principles formulated under the strategic priorities of *Gaining Public Acceptance, Recognising Entitlements and Sharing Benefits* and *Sharing Rivers for Peace, Development and Security* are examples of procedural rules. In contrast, most policy principles subsumed under the strategic priorities *Comprehensive Options Assessment, Addressing Existing Dams* and *Sustaining Rivers and Livelihoods* formulate substantive rules.

As to the scope of the WCD's regulatory framework, the thematic reach is rather encompassing; it is circumscribed by the themes of the seven strategic priorities. Moreover, the intended geographical scope of the rules is global, although their actual scope may not always live up to this intention. In terms of the level of obligation attached to the WCD rules, they are legally non-binding for both governments and non-governmental actors.²⁶ On a weak reading, the commission's guidelines are therefore merely seen as milestones for different phases of the decision-making process meant to provide decision-makers with specific questions they should consider in the course of a project. However, the language in which the policy principles are formulated also leaves room for a somewhat stronger interpretation. In relation to Policy Principle 1.4 on prior informed consent of affected indigenous communities, for instance, the wording that 'decisions on projects affecting indigenous and tribal peoples are guided by their free, prior and informed consent achieved through formal and informal representative bodies' expresses a stronger normative impetus. While the commission opted for drafting its recommendations in the form of stated outcomes, that is, to say 'are guided' rather than 'should be guided', the normative quality of its policy principles can hardly be denied. Why else call them principles in the first place? In the words of a former member of the WCD secretariat, a stronger reading of the WCD rules could therefore argue that,

Since the role of the WCD has been of an advisory nature, states, developers and financing agencies are not bound to use the recommended guidelines. However because these stakeholders were responsible for creating and enabling the WCD to fulfil its mandate, they are bound by good faith to continue the dialogue and implement the recommendations. (Parasuranam and Sengupta 2001: 1891)

Hence, because they consider the WCD report as 'the only legitimate instrument offering a way forward', Parasuranam and Sengupta (*ibid.*)

argue that some sense of social obligation to follow the WCD's recommendations exists at least for those stakeholders that were actively engaged in the WCD's decision-making process. Empirically, a social pressure to comply with the WCD report certainly exists, and the uptake of the WCD recommendations by NGOs is likely to increase this pressure.

Finally, as far as precision is concerned, some observers have called the WCD's guidelines 'very general' (Baur and Rudolph 2001). Yet, this is true only for the core values and strategic priorities. The core values of equity, efficiency, participatory decision-making, sustainability and accountability are indeed 'very general' and, as such, hardly controversial. The seven strategic priorities are also fairly general in that they demand to 'gain public acceptance', to 'sustain rivers' or 'to ensure compliance' with project agreements. In contrast, the accompanying policy principles express much more specific demands, for instance that 'Planning approaches that take into account the full range of development objectives are used to assess all policy, institutional, management, and technical options before the decision is made to proceed with any programme or project' (Policy Principle 2.2). Finally, the guidelines for good practice developed in chapter nine of the WCD report are articulated in a very precise language. For instance, one guideline recommends that project-level impact assessments 'should include an Environmental Impact Assessment, a Social Impact Assessment, a Health Impact Assessment (...), and Cultural Heritage Impact Assessment' and that the 'assessments should be sufficiently detailed to provide a pre-project baseline against which post-project monitoring results can be compared' (WCD 2000a: 283).

Subsidiarity

As a final aspect, the extent to which global norms and rules on large dams are desirable or even necessary is highly contested. Thus, governments from developing countries or emerging markets have often emphasised that decisions about building large dams in their own countries were part of their 'national sovereignty' and hence nothing the international community should be concerned about. This view is, for instance, captured in a statements by former ICOLD president Theo van Robbroeck who holds that 'certainly large dam projects create local resettlement problems, but this should be a matter of local, not international concern' (van Robbroeck, cited in Khagram 2004: 1). As a result, public officials in India or Brazil were rather critical of the WCD. In the case of India, this resulted in the cancellation of the commission's regional consultation in the state of Gujarat after an initial invitation by the state government had been withdrawn (McCully 2001a: xxiv-xxv).

The view that global norms and rules about large dams are a necessity was mainly taken by environmentalists who teamed up with human rights organisations on this issue (Khagram 2004). For proponents of global

standards, the role of international organisations in particular in financing large dams was a critical argument for justifying their call. However, the World Bank had already developed such global standards in its operational directives which regulated the Bank's policies in relation to resettlement, rights of indigenous people or the assessment of environmental impacts. Calling for global standards therefore implied that harmonising standards of different development banks and export credit agencies would be useful, and that the adherence of governments, planning agencies and business corporations to similar standards would be equally desirable. Again, this is only partly convincing, since governments showed at best a moderate interest in such a harmonisation.

Overall, there is therefore no clear-cut answer to the question to what extent the WCD process respected the notion of subsidiarity. While the involvement of international actors may justify the call for some degree of harmonisation, proponents of global norms on large dams have so far failed to effectively refute developing countries' arguments on national sovereignty. Empirically, the choice for global standards must be seen as a pragmatic decision: Many of the major dam builders and dam financiers as well as a broad coalition of anti-dam activists were transnationally organised and saw an opportunity to end the costly struggle over large dams at the global level. Acknowledging the pragmatic nature of the choice does, however, not make the plea for global standards more convincing from a theoretical perspective.

The normative context of the World Commission on Dams: Summary

In sum, the WCD constitutes a primarily self-authorized decision-making process backed up only by informal endorsement from the World Bank and IUCN (see also Table 4.1). In addition, the wide-ranging and often deep effects of dams on individuals and communities turn large dams into a very sensitive issue area for decision-making, thus equally increasing the procedural demands for decision-making. Finally, the observation that the WCD's normative output – the core values, strategic priorities, policy principles and guidelines put forth in its final report – has had significant impacts on various stakeholders, in particular in developing societies, further points to a high demand for democratic legitimation.

Moderating the high normative requirements that result from these observations, the legally non-binding nature of the commission's recommendations distinguishes it from the outcomes of most intergovernmental processes. The fact that the WCD's rules are, technically speaking, voluntary guidelines which actors may or may not obey lowers the otherwise high normative demands. In addition, the fact that decisions about large dams are most frequently taken by public authorities ties the norms and rules developed by the WCD more closely to national and regional policy-making than is the case with other private rules, including those discussed

Table 4.1 The Normative Context of the World Commission on Dams

Criteria	Strengths	Weaknesses
Authorisation (C1)	The WCD is largely self-authorised.	<i>But:</i> Endorsement from World Bank and IUCN.
Affectedness (C2)	The WCD's guidelines constitute a new frame of reference for global discourse about large dams. Moreover, as an issue, large dams affect a large number of people in a very direct and fundamental way.	<i>But:</i> The direct effects of the WCD's regulatory framework identified so far are limited.
Quality of the rules (C3)	The scope of the WCD's regulatory is very broad, both in terms of issues and addressees. Some 'policy principles' are fairly specific.	<i>But:</i> The policy principles are legally non-binding and allow for some flexibility in their interpretation.
Subsidiarity (C4)	Decisions on specific projects will be taken at the domestic level where formal accountability relations often exist.	The need for global rules is only partially convincing.

in Chapters 5 and 6 of this book. Since further accountability mechanisms usually exist at these levels, this fact also serves to moderate the otherwise high demands for inclusiveness, control and discursive quality.

Inclusiveness and participation

Richard Falk (1999) characterised the WCD in its early stages by saying 'it may turn out that what is most memorable about this Commission is that it has successfully initiated an inclusive democratic process that has encompassed the most relevant voices.' In a similar vein, the Commission itself emphasised that 'inclusiveness and participation at all levels and stages of its two-year work programme are the outstanding hallmarks of the Commission' (WCD 1999b: 6). Which voices the WCD has integrated in what ways will be the focus of this section. In accordance with the theoretical framework developed in Chapter 2, I distinguish between the scope and the quality of participation in the WCD process. In a first section, I describe what mechanisms for ensuring broad participation in

the WCD process existed; building on this description I then evaluate the performance of the WCD in light of the normative criteria developed in Chapter 2.

Scope of participation and inclusiveness

Throughout the life span of the WCD, participation in the decision-making process was mainly structured in accordance with the notion of balanced representation between (inter-)governmental, civil society and business actors. Starting with the Gland Workshop, this principle of balanced representation characterises almost all WCD organs.

As for the initial Gland workshop, the World Bank and IUCN invited organisations which then nominated their own representatives to attend the workshop (Dubash et al. 2001: 33). Participants were selected from diverse geographic and professional backgrounds and represented both sides of the dams debate.²⁷

In addition to the Gland Workshop, balanced representation was crucial with regard to the choice of commissioners. The composition of the commission was subject to heated debates in the early days of the WCD process (Dubash et al. 2001: 38–9; Scudder 2001: 332–4). Lists of proposed commissioners were sent back and forth between the IWG and the Reference Group in order to find a consensus up to the point where Kader Asmal threatened to resign as chair of the WCD if the groups could not agree on a final list of Commission members.²⁸ As an illustration of the difficulties in finding consensus, former ICOLD president van Robbroeck, a South African national, reported that, in August 1997, he was told by one of the co-chairs of the Interim Working Group that ‘the IWG was looking for diversity of nationalities to serve on the Commission, and the fact that Asmal was from South Africa would make it unlikely that my candidature to serve on the Commission would be entertained’ (van Robbroeck undated). The fact that in the end two Australian and two Indian nationals nevertheless served on the commission indicates the need to balance a variety of interests and criteria. Despite the complexities involved, Sanjeev Khagram (1999: 8) notes in his review of the early WCD process that ‘no major interest was completely absent’ from the negotiations about the composition of the WCD and that the process, while not always transparent to outsiders, was as inclusive as it could have been.

As a result, when the Commission began its work in spring 1998, it included representatives of all identified stakeholder categories. The governmental sector was represented by three commissioners: WCD Chair Kader Asmal, the Director General of the Department of International Cooperation in the Chinese Ministry for Water Resources, Shen Guoyi, and the chair of the Australian Murray-Darling Basin Commission, Donald Blackmore. In addition, José Goldemberg, a former state secretary for science and technology for the Brazilian government, also had experience

in government. For the private sector, Göran Lindahl, CEO of Asea Brown Boveri Ltd. (ABB) – one of the world's largest corporations active in dam building – and Jan Veltrop, former president of the International Commission on Large Dams (ICOLD), participated in the WCD.²⁹ Finally, civil society was represented through the participation of Judy Henderson, Chair of Oxfam International, Joji Cariño from the Tebtebba Foundation/International Centre for Indigenous Policy, Research and Education, Deborah Moore from Environmental Defense and, most prominently, Medha Patkar as the charismatic leader of the Indian civil society movement Struggle to Save the Narmada River. The list of commission members was completed by Thayer Scudder, a leading expert on the social consequences of large dams, and by the commission's deputy chair Lakshmi Chand Jain, an Indian diplomat with experience as a member of the planning commission of a number of Indian states.³⁰ Achim Steiner, as the Secretary General of the WCD, participated in the commission's deliberations as a non-voting member (WCD 1999b: 2–3). Overall, roughly one third of the commissioners were known or assumed to be proponents and opponents of dams, respectively. The remaining third were considered as 'technocrats' moderately associated with either supporting or rejecting dams (Khagram 1999: 10 and own interviews).

In addition to the commission itself, the composition of the secretariat and the stakeholder forum was also structured along the three stakeholder groups (Dubash et al. 2001: 46–7).³¹ The secretariat constituted a central hub between the different WCD organs; its influence on the WCD process should therefore not be underestimated. In practice, its task consisted mainly in organising the development of the WCD Knowledge Base, providing a foundation for the commission's deliberations and assisting the commission in drafting the final report. Because of its central role in the WCD process, the secretariat also needed to reflect the diversity of views that existed on the issue. In the words of one commission member, the challenge was to create, with a limited number of positions, a 'hyper-matrix between men and women, North and South, pro-dam and anti-dam, engineers, social scientists and water experts'.³² The aim was that 'what was submitted to the Commission for consideration had already undergone the multicultural and multi-perspective screens of the Secretariat' (Asmal 2001: 1424).

Writing the final report was a joint process undertaken by the commission and the secretariat. In practice, every chapter was assigned to a core team of three secretariat members and two or three commission members who oversaw the drafting process. After finalising a first draft, commissioners presented the chapters at commission meetings. In some cases, consensus was found relatively quickly, in others such as chapter six, which lay out the basic normative approach of the report discussions went on for weeks until a final consensus among commissioners could be reached. The quality of participation in these activities differed – while one commission

member recalls to have read every draft that came out, others focused on the chapters whose drafting process they had been assigned to supervise.³³

Complementing the institutional set-up of the WCD, the stakeholder forum served as an institutionalised instrument for commissioners 'to receive feedback on their ongoing work' (Dubash et al. 2001: 46). Comprising approximately 70 organisations from various pre-defined stakeholder groups, this broadened reference group constituted a control mechanism vis-à-vis which the Commission could test its arguments and findings (Dubash et al. 2001: 91; Khagram 1999: 12). In the words of the WCD Chair, the stakeholder forum thus had no formal role in the WCD's decision-making process but constituted 'a reference body, a corps of advisors, and a bouncing board for the Commission' (Asmal 2001: 1425). For this purpose, the WCD process envisaged two meetings of the WCD Forum.³⁴ The first meeting in March 1999 in Prague served to establish and formalise interaction between members of the stakeholder forum and the commission and to discuss the work programme of the WCD (WCD 2001b: 5). At a second meeting held in Cape Town in April 2000, discussions focused on the core elements of the work programme and on some preliminary results that were available at the time of the meeting (Asmal 2000b: 5; WCD 2001b).

This second meeting in Cape Town constituted the central meeting of the stakeholder forum. Taking place at a stage when the commission was drafting its final report – according to the opening words of Kader Asmal (2000b) the work programme was 'virtually complete' and the commission was to 'embark on the synthesis' – the main purpose of the meeting was to reassure the commission of the stakeholders' support for the Knowledge Base as an adequate basis for its final report (Asmal 2000a). A further important item on the agenda of the third forum meeting was the discussion about follow-up strategies to the final report (WCD 2000b). On the first day of the meeting, the commission presented some 'emerging findings from the work programme'. These were followed by a general discussion and a session that focused on specific areas of the draft report. In both sessions, members of the stakeholder forum could comment on the findings and exchange their views with Commissioners (WCD 2000b). On the third day of the meeting, participants formed working groups to talk about specific issues in relation to the work of the commission (WCD 2000c). Immediately after the meeting of the stakeholder forum, commissioners met for three days of consultations to discuss draft chapters of the final report in the light of the issues and concerns raised at the stakeholder meeting.

Next to these institutional elements of the WCD, the commission's work programme to create an extensive knowledge base constituted a further opportunity to engage stakeholders, in particular at the local level, in the work of the commission. With regard to this aspect, Dubash et al. (2001: 56) argue, however, that in the early phase of the WCD process the neces-

sary publicity was missing in order to widen the discussion about the work programme to a broader range of stakeholders. While the secretariat made different drafts available on the WCD's Internet pages and invited comments on these drafts, this forum was still little known so that the comments that were received mostly came from persons with personal or professional links to WCD staff. The participation of stakeholders increased after the framework for creating the Knowledge Base had been defined, but the resources for incorporating the public submissions into the commission's work were generally scarce throughout the lifetime of the WCD (ibid.: 66).

Within the framework of the work programme, the case and country studies, the thematic reviews and the regional consultations provided for explicit participatory components. Thus, the commission reports that case studies were conducted in 'close consultation with stakeholders' (WCD 1999b: 12). To ensure participation, each of the case studies was based on two meetings on site. A first meeting, usually attended by an average of forty to sixty participants, was designed to give local stakeholders the chance to discuss the case study design and to point out potential shortcomings (WCD 1999b: 12). A second meeting intended to deliver the same service with regard to the preliminary results of the study (WCD 1999g).³⁵

Participatory elements of the thematic reviews included several contributing papers for all 17 reviews. Moreover, individual reviews used further instruments such as review authors' interviews with stakeholders (Resolve Inc. et al 2000), the occasional incorporation of public submissions (Cropper et al. 2000; Sadler et al. 2000), detailed comments from review panels and members of the stakeholder forum (WCD 1999h) and Internet conferences (Aylward et al. 2000; Sadler et al. 2000).

The process of drafting the thematic review on the impact of large dams on indigenous people (Colchester 2000) has been described as highly participatory (Cariño 1999: 53–4). At a first stage, it included the commissioning of seven national case studies and submissions from Hydro-Québec, the Inter-American Development Bank and the World Bank. Subsequently, a synthesis paper was drafted by the UK-based Forest Peoples Programme, taking into account the case studies and submissions as well as the literature available on the subject, the results of a questionnaire sent out to several hundred stakeholders and the results of in-depth interviews with several experts and stakeholder representatives. The case studies and the draft review paper were shared with representatives of indigenous groups at a consultative meeting in Geneva, and the paper was reviewed – like all thematic reviews – by a panel of experts and stakeholders.

As a final element of the WCD Knowledge Base, the four regional consultations allowed further stakeholders to participate. The consultations were held to give commission members a better idea about different regional perspectives on large dams. A selection of the contributions to these

regional consultations was made by the WCD secretariat, which again took charge of a balanced representation of the three sectors.³⁶ To ensure that a variety of perspectives could be heard despite economic inequalities, travel costs were reimbursed for presenters. The consultations were very structured and primarily served to inform commissioners about regional perspectives and differences. As a result, there was limited room for true deliberation at these consultations (see WCD 1998; 1999c, 1999d, 2000d; see also Dubash et al. 2001: 81–4).

Quality of participation and inclusiveness

In sum, by balancing representation among pre-defined stakeholder groups and by including a number of participatory elements in its work programme, the WCD managed to mobilise a broad range of stakeholders and to give voice to interests often marginalised in other forums, including intergovernmental negotiations. Overall, it can be estimated that some 2000 individuals took part in the various activities of the WCD process.³⁷ However, as can be seen from the discussion in the previous subsection, different stakeholders participated to different degrees. As a result, some critical remarks on the often acclaimed scope and quality of inclusiveness in the WCD process seem appropriate to put Richard Falk's (1999) and other observers' characterisation of the WCD as an 'inclusive democratic process that has encompassed the most relevant voices' into context.

First, the definition of public actors, business and civil society as the three core stakeholder categories is far from self-evident. Maybe even more importantly, it also obscures important differences within the three sectors. As the examples of women and project-affected people illustrate, the categories used by the WCD may be conventional, but they are not the only ones one could reasonably imagine. Women were underrepresented in most parts of the WCD process. In the Gland Workshop, no more than two of 37 participants were female (Dubash et al. 2001: 33). Similarly, a participant in the stakeholder forum criticised that a 'technocratic bias in the overall discourse' (Guttal 2001) marginalised gender issues in the forum and in the secretariat. Finally, while five (later four) of the twelve commissioners were women, after the resignation of Shen Guoyi all of them represented civil society organisations. This has led some commentators to suggest that the women on the commission were in a relatively weaker position compared to their male counterparts (Dubash et al. 2001: 41–2). However, interviews with commission members indicate that no such bias was felt to exist at the level of the commission itself.

Nonetheless, even if a balance existed at the level of Commissioners, the non-consideration of women as a stakeholder category in its own right seems particularly problematic given the issues under debate. Thus, women are conventionally identified as a key stakeholder group in the field of water use and management (Dubash et al. 2001: 47). Their role is expressly

acknowledged in Principle 3 of the intergovernmental Dublin Statement on Water and Sustainable Development of 1992 as well as in more recent international development programmes such as the Millennium Development Goals.³⁸

In addition, the group of project-affected people extends well beyond those threatened with displacement. As the – positive as well as negative – consequences downstream of the dam are often distributed over large and diverse groups of people, affected people are, however, difficult to organise. As a result, their interests are at a constant risk of being neglected (Scudder 1997). The WCD has covered the issue extensively in the substance of its Knowledge Base. At the same time, it is difficult to see how it has addressed it in its own procedures – that is, how the WCD has attempted to meet the practical difficulties to engage this diffuse group in its decision-making process.³⁹

A second criticism of the WCD's stakeholder approach essentially rests on the assumption that all identified stakeholder interests ought to be treated as equal. Thus, the WCD process does not make a distinction between the interests of the private sector – which usually only acts as contractor and thus has only secondary interests – and the interests of those who are directly affected in their individual or group rights. Of all three stakeholder groups involved in the WCD process, the legitimacy of participating governments raises the least concerns, at least where those governments are democratically elected. As a second group, civil society participants can, at least in some cases, invoke specific basic rights – for example where a dam project threatens the cultural rights of a community. In contrast, it is much more difficult to make arguments of a similar kind for the democratic legitimacy of private sector participation in the WCD. The fact that such legitimacy cannot be easily identified points to a general problem in the literature on private transnational governance. In contrast to Wolfgang Reinicke, it is by no means 'immediately obvious that the involvement of nonstate actors itself contributes to a reduction in the democratic deficit' (Reinicke 1998: 101). Instead, defining the range of actors who are legitimate participants in political decision-making is itself a key element of democratic theory. By failing to distinguish between the interests of actors with different qualities of affectedness, the concept of stakeholders conceals that not all interests are necessarily equally legitimate (Iyer 2001). Thus, local officials' interests in increasing their salary via accepting bribes they can expect to go hand in hand with the realisation of a dam project can hardly claim the same legitimacy as the interests of people who would need to be displaced as a consequence of that project. The question, who is to draw the line between legitimate and illegitimate interests (or between different degrees of legitimacy) and which criteria should guide such a decision, however, is left open in the stakeholder rhetoric. This would be different if the definition of legitimate stakeholder

interests was based on an approach that assessed the legitimacy on the basis of rights and risks of affected people. Ironically, while the WCD in its final report suggests such an approach for future decision-making processes on large dams (WCD 2000a: 206–11), the commission itself ultimately lacks such a basis for its own legitimacy.

Third, while commissioners and secretariat staff members often assured that the ‘extensive wealth of information generated by the submissions contributed substantially to the final report’ (Parasuranam and Sengupta 2001: 1884), it is difficult to estimate to what extent the submissions were incorporated and how this was done exactly. As a result, the treatment of public submissions was criticised by both, dam proponents and opponents, with the NGO community voicing concern that ‘few, if any, of the draft work products referenced NGO submissions’ (Brinkerhoff 2002a: 330) and dam industry associations challenging that the WCD did not provide sufficient information on how material provided by its members had been used (Varma et al. 2000).⁴⁰

Finally, some observers have argued that the WCD’s rhetorical emphasis on balanced representation was not implemented in actual practice. In particular, the WCD was criticised for its failure to bring governments to the negotiating table. Hence, the governments of important dam-building countries such as India (Iyer 2001), Brazil, China, or Turkey (McCully 2001a: xxiv–xxv) either did not support the WCD at all or played a very passive role. In fact, Patrick McCully speculates that ‘had the governments of leading dam building nations like Brazil, China, India, Japan, or Turkey formed an organized bloc within the Reference Group, it is almost certain that their coalition would have destroyed the Commission’s potential to issue a progressive report’ (McCully 2001b: 1465). Both the Chinese and Indian government showed some initial support for the Commission, with the Chinese government even sending a commissioner. However, the Chinese commissioner Shen Guoyi withdrew from the process before substantive issues were discussed and the Indian government soon perceived both Indian commissioners as pertaining to the anti-dam lobby and decided not to cooperate with WCD (Khagram 1999: 10; Iyer 2001: 2275).⁴¹ On the contrary, the state government of Gujarat’s withdrawal of its invitation for the WCD’s first regional consultation generated a serious crisis that for some days even called the continuation of the WCD process into question. The final reaction of the Government of India to *Dams and Development* has later been described as ‘not mere non-acceptance but total denunciation’ (Iyer 2001: 2275).

Overall, the critics’ argument that Southern governments were neither consulted about the set up nor about the terms of reference of the WCD (Thatte 2001: 348) seems however exaggerated. China was initially involved through the inclusion of a commissioner, José Goldemberg represented not only his professional views as an expert on energy policies, but also as a former Brazilian government official, and public officials took part

in the regional consultations and contributed to the work programme. Moreover, the failure to fully engage these governments was a result of the inexperience of the commission rather than of a deliberate strategy.⁴² In sum, it seems fair to say that while governments were certainly not at the centre of the WCD's decision-making process, they were neither deliberately excluded nor entirely absent from that process.

For civil society actors, the picture looks somewhat different. Thus, those NGOs who followed the process 'had an essential role in terms of making submissions, commenting on drafts of studies, and helping coordinate input from dam-affected people' (McCully 2001b: 1466). In the words of one group of observers,

NGOs and people's movements from around the world followed the WCD's work closely. They sent in submissions, gave presentations at regional consultations, participated in meetings on the detailed case studies and commented on drafts of the thematic reviews. IRN coordinated an informal network of around 20 NGOs and people's movements under the name of the International Committee on Dams, Rivers and People which provided input into the WCD and encouraged other NGOs and movements to get involved. (Imhof et al. 2002: 7)

In contrast, the business community, in particular dam-building companies, seem to have been less well coordinated. McCully thus recalls that the dam industry had 'little experience with modern public relations or lobbying techniques' and that for the large multinationals such as ABB, Siemens or Mitsubishi who had such experience, 'hydropower contracts make up a very small part of [their] overall business' (McCully 2001b: 1471–2). As a result, the business community had less capacity to channel media and public debates than the well-organised and experienced civil society networks.

Inclusiveness and participation in the World Commission on Dams: Summary

Summarising the discussion in this section, the WCD made a number of efforts to base its decision-making basis on a broad participatory basis. As a result, participation in the WCD process extended beyond the usual suspects and also included voices often marginalised in other settings, including intergovernmental negotiations. In addition, the WCD process contains a number of innovative elements intended to increase participation in the overall opinion- and will-formation process.

At the same time, the commission's definition of stakeholder groups provokes some critical comments. By following the conventional model of government, civil society, and business, it took on board all the weaknesses of this standard multi-stakeholder model. The failure to consider other

Table 4.2 Inlusiveness and Participation in the World Commission on Dams

Criteria	Strengths	Weaknesses
Scope of participation (DL1)	The WCD process included a broad range of actors, among them some actors that are often marginalised in other settings. The WCD process contains innovative participatory elements.	The definition of stakeholder categories is only partially convincing. The WCD failed to actively engage governments.
Quality of participation (DL2)		Most participants played a minor role in the decision-making process as important decisions were made by a small group of individuals at the core of the WCD process. It is not always clear how the input from participants was used. The WCD's stakeholder rhetoric conceals that different actors have different degrees of legitimacy to participate in the WCD process.

potentially legitimate stakeholder categories such as women and project beneficiaries and the disregard of potential differences in the legitimacy of various stakeholder groups stand out as most important shortcomings. Obviously, some decisions had to be made – in the light of the evidence presented in this section, it thus seems clear that legitimately defining the ‘relevant constituencies’ is a core problem for any transnational rule-making process. In contrast to intergovernmental negotiations, no widely accepted best solution to this problem exists.

Democratic control

In addition to its inclusiveness, the extent of democratic control within the WCD's decision-making process constitutes a second dimension of its democratic legitimacy. In accordance with the analytical framework developed in Chapter 2, I distinguish between the transparency of the WCD process and broader aspects of accountability of decision-makers vis-à-vis constituencies.

Transparency

'We pride ourselves on our transparency' (Asmal 2000c: 45). According to its own self-image, the World Commission on Dams set new standards in terms of transparent decision-making. This section will critically evaluate this claim. The discussion is structured along transparency in the narrow sense and transparency in a broader sense that includes the existence and strength of a common public sphere and differences in stakeholders' capacities to access and make use of available information.

Transparency in the narrow sense. As indicators for a transparent decision-making process, Dubash et al. (2001: 123) suggest the degree to which an institution communicates its goals to the relevant stakeholders in a timely manner, the extent to which it communicates how these stakeholders can participate in the process and how their input will be used, and the degree to which the institution fully communicates its decisions.

The WCD attempted to meet these criteria by informing via e-mail lists, via mail and via the Internet a large group of stakeholders about the possibilities for participation in the WCD process. Thus, the WCD Secretariat maintained a database of postal and email addresses for more than 2000 organisations and interested individuals in order to keep constituencies informed about the WCD process. A quarterly newsletter was distributed in paper and electronic versions (Brinkerhoff 2002a: 328; WCD 1999b: 18). In addition, parts of the work programme such as the terms of reference for studies written by external experts or drafts and final versions of the thematic reviews and case studies were circulated widely. Most documents were made available on the Internet, and regional consultations as well as local meetings served as an opportunity for direct contact between the WCD and its stakeholders (Dubash et al. 2001).

Again, these successes go along with a number of deficits. Thus, in the early days of the WCD process, information was in some instances made available only very late. As a consequence, potential stakeholder reactions could not be incorporated (WCD 1999b: 27). In addition, the level of transparency during the early phase of the WCD process has been discussed controversially. On the one hand, a participant in the early WCD process claimed that, when selecting commissioners, Reference Group members 'received extremely brief CVs of candidates' from which 'little could be learned of their suitability' for the task at hand (van Robbroeck undated). This charge draws further support from the memory of a fellow critic who maintains that 'no selection process was reported' and that 'neither the Gland workshop participants, nor the reference group nor the successor forum were informed about how, why and who decided the names' (Thatte 2001: 347). Other observers like Thayer Scudder (2001: 333), who was himself a member of both the Gland workshop and of the WCD, report that, during the pre-WCD process, the Interim Working Group (IWG) published four *Large Dam Review Updates* and that the Reference Group was 'adequately informed about, and involved in' the overall IWG process.

Second, it was not always clear how the commission dealt with the input it invited from the different stakeholder groups. This lack of strategy (or of its communication) led some stakeholders expect to more say than the commission was able or willing to grant. This became apparent when members of the stakeholder forum expressed their dissatisfaction over the fact that the commission did not want to share and discuss a draft version of its final report with forum members. This episode later led some of the industry stakeholders to reject the WCD report because of an alleged lack of transparency in the process of preparing it (see for instance Varma, Lafitte, and Schultz 2000; Varma 2001). They held that 'even ICOLD which was a forum member did not have a copy of the report except after it was released' and argued that this 'speaks volumes about the transparency of the WCD report' (Varma 2001). Yet, such an interpretation seems highly exaggerated. It implies that the stakeholder forum should have had a say in the actual formulation of the report – a role that was, however, never envisaged in the set-up of the WCD. In addition, commission members reasoned that sharing the report with forum members would most likely have resulted in opening up the whole debate anew. As a result, the added value of the WCD would have been diminished significantly.⁴³

As a third point of criticism, the criteria on which invitations to the stakeholder forum were based were not transparent. Moreover, the WCD's Internet-based information policy – while helping to reach a large number of possibly interested people at relatively low costs – systematically gave preference to stakeholders with access to this communication technology. Yet, this group constitutes only a small minority of those affected by decisions about large dams.⁴⁴ Fourth, language barriers are a further concern. Most contributions to the Knowledge Base were made available only in English which again systematically made the process transparent only for some rather than for all stakeholder groups (Dubash et al. 2001: 69).⁴⁵ Fifth, the deliberations of the Commission were neither open to the public nor have protocols of commission meetings been made publicly accessible.⁴⁶

As a final concern, information about constitutional or procedural aspects of the WCD process – that is, information about how the different institutional elements related to each other, how and where public submissions would find their way into the commission's deliberations and who had the ultimate decision-making power on these questions – was not made as explicit and not shared as widely as substantive information. This last criticism, while certainly an important one that also caused some concerns in the stakeholder community, mainly goes back to the fact that most procedural decisions were either taken during the early phase of the WCD process when only few stakeholders were included in the decision-making process or informally as the process was moving on. In this regard, the limited timeframe of its decision-making process puts the WCD at a disadvantage in comparison to permanent organisations such as the Global

Reporting Initiative or the Forest Stewardship Council treated in Chapters 5 and 6. In contrast to the latter, the WCD had little time to revisit its initial structures and to learn from mistakes in its early days.

Transparency in a broader sense. Discussing the existence and strength of a functioning public sphere around the issues discussed by the WCD, a distinction needs to be made between sectoral and general public spheres. While a sectoral public sphere was created through the direct involvement of numerous stakeholders, the WCD's website and the mailing lists maintained by the secretariat, widening public awareness to a more general (national or transnational) sphere proved difficult. The WCD attempted to achieve this goal by way of an extensive public relations campaign targeted mainly at the press. As a result, the online database maintained by the WCD contains more than 250 media reports.⁴⁷ However, if we exclude the spike in attention surrounding the presentation of the final report *Dams and Development* in London – a high-level event that included the presence of Nelson Mandela – this number is reduced considerably. In addition, substantive discussions of the commission's work in the media are fairly scarce. Nevertheless, the overall level of public attention attached to the World Commission on Dams seems remarkably high when we take into account that dams have rarely been an issue as debated as climate change or ozone depletion.

Accountability

The WCD process did not include formal control mechanisms to hold decision-makers to account. However, a number of informal control mechanisms partially compensated for the absence of formal control. In particular, two primary pathways existed for exerting control on the commission: peer pressure from constituencies and the control exerted by the stakeholder forum.

Thus, most of the 12 commissioners had some kind of accountability relations towards their constituencies. Kader Asmal's remarks to the first stakeholder forum meeting can be seen in this light. Asmal maintained that the commission had 'embarked on a journey on which the future of many of our reputations depends' (Asmal 1999). While the WCD Chair was keen to point out that 'it is essential that the Commission is (...) seen to be independent' (Asmal 1999) and while commissioners formally served in their individual capacities rather than as representatives of specific interests, many of them will have, albeit to different degrees, felt the pressure from their constituencies. Hence, one commission member recalled that 'we would all get back to our very constituencies for more background and advice – not on specific (...) issues as much as on general advice.'⁴⁸ So even if there was no formalised accountability mechanism – such as the right of constituencies to recall Commission members – an informal accountability regime was operative through public scrutiny and peer pressure.

Second, the stakeholder forum constituted a more institutionalised control mechanism, although without the formal means to veto, send delegates to speak at commission meetings or otherwise directly influence the deliberations of the commission. By and large, the forum's contribution was therefore an indirect one and the phrase of a 'sounding board' for the Commission seems adequate, in particular with regard to the second forum meeting held in Cape Town in April 2000. Nonetheless, the reservations made in the previous section regarding participation in the WCD process also apply to the composition of the stakeholder forum. Thus, women were underrepresented and stakeholders from certain regions with extensive dam-building activities such as for instance Turkey were missing. As a result, access to this particular control mechanism varied among interested parties.

Not surprisingly, WCD critics have also attacked the stakeholder forum. Hence, former ICOLD president van Robbroeck (undated) reports that he 'protested against the Commission itself appointing new members, because it was my opinion that the Commission was in fact responsible to the Reference Group (to whom else?), and that it could not appoint its own jury.' Another ICOLD representative called the forum a 'cosmetic exercise' and maintained that 'advice was not sought and no notice was taken of the responses made by professional associations on the "sounding board"' (Thatte 2001: 348). In fact, the interaction between the commission and the stakeholder forum seems to have been limited. While one commissioner interviewed for this study mentioned that his only interaction with the forum was attendance at forum meetings at which he reported not to have learned anything he did not know already, another commission member stated that 'there was very little interaction (...) between members of the forum and individual commissioners other than in cases where commissioners were personal friends with members of the forum.'⁴⁹

In sum, these accounts suggest that the stakeholder forum did not exert a strong *direct* influence on the commission. However, accountability relations are as much about indirect as about direct influence, and the indirect impact as a 'sounding board' should not be underestimated. In addition, ICOLD published its criticism mostly after the release of the final report – that is, when it learned that some recommendations of the commission strongly deviated from the position of the dam industry. The criticism therefore has to be seen in the context of ICOLD's efforts to partially delegitimise the commission's findings. Finally, the WCD's time and money constraints also put limits on the potential to use the forum as a more effective control mechanism. Sanjeev Khagram's early summary on the WCD's forum policy seems accurate on this point. Halfway through the WCD process, Khagram (1999: 12–13) remarked that

given the resource and time constraints of the WCD, to convene a meeting of all the Forum members, requires extraordinary skill and

tremendous amounts of logistical planning. Just to keep Forum members informed about the ongoing work and status of the Commission is a challenge in itself. Certainly, the widespread availability of e-mail has been indispensable in this regard. But to reach those Forum members who are from or work at the grassroots, especially those from developing countries, e-mail does not suffice. To date, an adequate mechanism for overcoming this constraint has not been developed.

Beyond commissioners' direct interaction with constituencies and the stakeholder forum, a variety of additional control mechanisms were built into the WCD's decision-making process. Thus, a further important accountability mechanism results from the acknowledgement that in one important respect transnational rule-making is different from intergovernmental rule-making. Thus, the WCD guidelines are not legally binding upon individuals, states, or other collective actors. Instead, to become effective they rely on an empirical legitimacy – that is, on the social acceptance *as rightful*. In this respect, the status of the WCD recommendations as a new discursive frame of reference for our thinking and talking about large dams is largely contingent; it ultimately rests on the success of the WCD's own claim to legitimacy. This claim may be criticised. Where the critique is persuasive, it is likely to harm the commission's public perception as an appropriately democratic process whose outputs ought to be followed. The status of the commission's recommendations thus hinges on its relative success in the discursive struggle for legitimacy. Stated differently, a great deal of accountability can be seen to lie in the fact that empirical legitimacy will be an important currency for the WCD if it is to make a difference.⁵⁰

Arguing in a similar direction, other authors have noted that the commission's guidelines need to be incorporated into national practice to become effective. Since amendments to national policies will, at least as far as democratic political systems are concerned, be open to public scrutiny and challenge by citizens, the WCD process could be regarded as only a temporary 'de-centering' of decision-making which is later 're-centered'. Seen this way, the WCD does not pose a great challenge in terms of accountability (Conca 2005).⁵¹

Finally, commission members emphasised that accountability was also achieved by setting a number of qualitative goals at the very beginning of the WCD process and by publicly presenting the work programme to the stakeholder forum so that stakeholders could always check whether the commission was living up to its promises or whether it failed to meet the targets that had been commonly agreed upon in the pre-WCD process.⁵² As public scrutiny was relatively high, this elementary control mechanism worked well. A commissioner's remark that 'everybody wanted the Commission until it was there'⁵³ illustrates the high level of scepticism – and hence scrutiny – that existed on both sides of the large dams debate; this scepticism in turn ensured a relatively high level of accountability.⁵⁴

The World Commission on Dams and democratic control: Summary

In sum, the WCD has a mixed record in terms of its transparency and accountability (see also Table 4.3). As far as transparency is concerned, the commission made almost all relevant documents widely available – with the two restrictions that stakeholders without Internet access and stakeholders without sufficient knowledge of English were largely excluded from obtaining first-hand information. In this context, it is remarkable that the output of the WCD has been translated into multiple languages, while process-related documents were not translated. Nonetheless, the WCD’s strong rhetorical emphasis on transparency was also visible in its actual practice.

In addition, while its institutional design did not include formal mechanisms to hold decision-makers to account, a number of informal control mechanisms were built into the process to secure that overall public control over the process was – and, as far as implementation of the WCD’s

Table 4.3 The World Commission on Dams and Democratic Control

Criteria	Strengths	Weaknesses
Transparency (DL3)	Almost all documents were made available via the Internet.	<i>But:</i> Internet-based English-language information excluded some stakeholders. In its early phase, the WCD process was less transparent. Criteria for membership in the stakeholder forum were unclear. In addition, it was often unclear how stakeholder input would be used.
Accountability (DL4)	Peer pressure from constituencies as an informal accountability mechanism. The stakeholder forum acted as a “sounding board”. Decisions on specific projects will be taken at the domestic level where formal accountability relations often exist. High level of public scrutiny.	No formal mechanisms existed to hold decision-makers to account. <i>But:</i> The Commission made scarce use of the forum and only some interested parties had access to this control mechanism.

recommendations 'on the ground' is concerned, remains – fairly high. As it is certainly true that not all stakeholders had the same possibilities to inform themselves about the decision-making process and to exert pressure on participants, the democratic nature of these control mechanisms may be debatable. However, in light of the discussion in the previous chapter, this problem appears to be largely independent of the particular form of rule-making beyond the state. Overall, accountability is therefore relatively high in the case of the WCD.

Discursive quality

As a third and final dimension of its democratic legitimacy, this subsection examines the discursive quality of the WCD process. In accordance with the analytical categories developed in Chapter 2, I distinguish between the deliberativeness of opinion- and will-formation and broader efforts to include the most relevant framings of the problems the WCD was set up to address.

Deliberativeness

To operationalise the notion of deliberativeness, Chapter 2 has identified three sub-criteria, namely universality, rationality and reciprocity. Since universality – the existence of barriers that systematically exclude specific individuals or groups from participating in the decision-making process – has already been discussed in the section on the inclusiveness of the WCD process, this section will focus on the criteria of rationality and reciprocity. In discussing the deliberativeness of the WCD process, I examine both the conduciveness of the WCD's basic structure to a deliberative mode of interaction and, to the extent the data allows for a discussion, the deliberative quality of actual communicative practice in the context of the WCD's decision-making process.

Rationality. To some observers, the fact that the commission was able to agree on a consensus report already constitutes a major success. But how was this consensus achieved? As I have discussed above, any answer to this question is inevitably faced with methodological difficulties. In the case of the WCD, the closed character of the commission's deliberations poses an additional problem. Thus, meeting protocols are not accessible to the public and the research team that observed the WCD process over its full life span was also not allowed to attend commission meetings (Dubash et al. 2001: 6).

By and large, Navroz Dubash and colleagues (*ibid.*: 88), however, were able to observe – at least after some tensions at the first commissioners meeting – a 'remarkable climate of mutual respect on a personal level and a growing willingness to listen to each other'. This notion of mutual respect was also confirmed in the interviews conducted for this study. Thus, all commission members interviewed reported that the atmosphere at commission meetings

was generally friendly and commissioners were very much listening to rather than going at each other. One commissioner recalled that

There were no cases where people lost their temper. Now that is quite amazing, especially when you view the tremendous range of viewpoints. There were certain commissioners who played a role in calming things down when conversations got heated, but not to the extent of stopping the conversations.⁵⁵

The most important basis for such a climate of respect was the establishment of a common knowledge basis and shared experiences such as the regional consultations. Thus, one commissioner reports that ‘a joint fact-finding, with a common knowledge base ... allowed us to build trust’ (cited in Dubash et al. 2001: 89). Besides, the high external expectations also contributed to establishing a strong collective identity and consensus orientation among Commission members.⁵⁶

From interviews conducted by Dubash et al. (2001) and for this study, it also appears that the WCD Chair Kader Asmal played a crucial role in the commission’s deliberations. Thus, commission members stressed the importance of Asmal’s decision to focus on the process of creating a common understanding of the issue throughout the first year. In the substantive discussions that followed in the second year, the WCD Chair also exercised strong leadership. In particular, his principle of ‘sufficient consensus’ was often mentioned as a crucial factor for the commission’s ability to finalise its work within the envisaged timeframe. According to this principle, decisions could be made unless commission members raised fundamental objections that prevented them from going along with a decision. When consensus was not in reach, issues were postponed for later discussions in order not to halt the consensus-building process. At a later stage of a commission meeting, small groups would then try to find solutions to unsolved problems and subsequently present them to the plenary where the discussion would then continue. At the end, the secretariat would be asked to put the core arguments into a draft text that could be developed further with a view to the final report.⁵⁷

When asked about the role of coalitions for the internal deliberations of the WCD, commission members consistently reported that no strong coalitions – for instance, among NGO or business representatives – existed. Instead, issue-related constellations emerged on a number of cases, for example when female commissioners wanted to make sure that gender aspects were adequately considered in the final report. Overall, coalitions, however, do not seem to have played a very important role. Instead, the collective success or failure of the commission seems to have been a primary concern of those who sat at the table.⁵⁸

Reciprocity. The principle of reciprocity asks to what extent participants approached deliberations with a view towards potential consensus rather

than basing their actions on purely strategic reasoning. Here, the discussion in Chapter 2 has identified several indicators such as the consistency of arguments, the consistency of arguments and actions, the acknowledgement of the moral status of opposing views or the readiness to re-think one's own positions. While the data gathered for this study does not allow for strong propositions on all of these indicators, a number of observations can be made in relation to some of them.

With regard to the acknowledgement of the moral status of opposing views and the readiness to rethink one's own positions, Dubash et al. (2001: 88) emphasise the climate of mutual respect among commission members. In the words of one commissioner,

Everyone respected each other. (...) It was a coincidental composition, but everyone noticed very quickly that the others who were there had good reasons to be there – even if they may have had completely different views. What happened then was a growing commitment to jointly bring this project to an end because people believed they could come up with something new by doing this jointly. And an increasing respect for the others because you learned to see things in a way you had not seen them before or to understand things you had not understood before. (...) This learning process was fascinating in a way that, at the end of the commission, you had the feeling that an ethos for this commission had been created and maintained by all of us.⁵⁹

In addition, information obtained from interviews similarly suggests a certain readiness of commissioners to rethink their own positions. Thus, several commission members mentioned that, as a result of their membership in the commission, they had learned substantially about the benefits and problems associated with large dams. Moreover, they asserted that their own views on the issue had partially changed as a result of the discussions with fellow commissioners, experts and affected people. As a first lesson, one commissioner reported, 'everyone learned that if you want to find a solution in a process like this – where decisions about billions of dollars of expenditures and about livelihoods of individuals are made – it is of enormous importance to include all perspectives.' On the substance of the large dams debate, commission members acknowledged that the fundamental orientations underlying their own as well as their fellow commissioners' views were in most cases not altered. Nevertheless, several commissioners reported that the debates they had within the WCD process opened up their views to other perspectives. In addition, one interviewee recalled that commissioners' views, many of which had been diametrically opposed in the beginning, had actually moved and 'come closer together as they listened to the arguments being put forth from the other side' and as they learned 'to see issues through the other persons or through the other constituencies' (...) eyes.⁶⁰

On the general question of arguing versus bargaining as a dominant mode of communication, the different phases of the WCD process need to be distinguished. The initial phase of commissioner selection was very much dictated by strategic interaction. Consequently, whenever proposals on the composition of the commission were made, both proponents and opponents of large dams claimed that the proposals were imbalanced, that they did not adequately reflect their interest, and that they could therefore not support the WCD unless their concerns were dealt with (Brinkerhoff 2002a; Dubash et al. 2001; Scudder 2001; van Robbroeck undated). At later stages, trust was slowly built – in particular within the commission – and commission members as well as the secretariat of the WCD attempted to keep the dialogue open and bring in different perspectives (Parasuranam and Sengupta 2001: 1881). Judging from the result of the WCD process, it is in fact striking to what extent the different sides have narrowed the gaps between opposing positions and de-emotionalised (in other words: rationalised) the debates about large dams. In conclusion, it therefore seems as if the WCD's deliberative approach has paid off in this regard.

The discussion above sheds a relatively positive light on the WCD process and its deliberative performance. However, from the perspective of deliberative democratic theory, four relevant limitations need to be mentioned. First, the definition of the relevant stakeholder categories and the decisions on the design of the WCD process – in other words, the fundamental decisions about the WCD's 'constitution' – were the subject of deliberations of a small and exclusive group of individuals. Second, deliberative elements beyond the internal consultations of the Commission were relatively weak. Thus, Dubash et al. (2001: 93) have argued that, within the stakeholder forum, the room for true dialogue among stakeholders was fairly limited – not least because only two stakeholder forum meetings were envisaged by the commission. Moreover, the regional consultations were very structured and only provided limited space for stakeholders and commissioners to engage in joint reasoning and an exchange of arguments. As Dubash et al. (2001: 81) have commented,

Far from allowing free-flowing dialogue at its consultations, the Commission carefully handpicked presenters for the regional consultations and timed the speeches strictly. The result was a consultation that was structured around a series of testimonies, lending the Commissioners the air of judges who would weigh the evidence in an independent manner.

Third, while the studies prepared for the Knowledge Base included participatory elements and made extensive use of external reviews, the review process itself was restricted to a relatively small group of experts and stakeholders.⁶¹ And fourth and finally, time constraints constituted a barrier to a higher quality of deliberations. For instance, a representative of the IRN

criticised that 'commission staff gave time shortage as a reason for their lack of effort to inform the studies with input from grassroots organizations and others without the capacity to access, rapidly read, and comment upon voluminous documents in English' (McCully 2001b: 1474). In addition, commissioners reported that at the last commission meeting, tasks were still allocated to individual commissioners although there was hardly any time for detailed discussion and although the execution of such tasks could not be checked by the commission as a whole anymore.⁶² As with some of the criticism mentioned in the previous sections, this last observation refers to a trade-off between two competing goals – in this case a high quality of deliberations and efficiency in decision-making.

Discursiveness

If the deliberative quality of the WCD's will-formation process is difficult to pin down with precision, this is even more true for the discursive balance of the WCD process, that is, for the extent to which existing discourses on large dams have been integrated in the decision-making process. According to the definition developed in Chapter 2, a decision-making process qualifies as balanced if the framing of the issue(s) on which decisions are made is open to many or most existing discourses on the issue. In contrast, a process is characterised as unbalanced if the framing is dominated by one particular discourse and excludes competing discourses.

In the case of the World Commission on Dams, the issue was initially framed in the WCD's mandate, the language of which has been challenged by both dam opponents and dam proponents. Thus, the notion that the WCD should evaluate the performance of large dams with regard to improving existing practices and social and environmental conditions has occasionally been interpreted as a prejudgment in favour of dams. At the same time, other actors perceived the wording of the commission's second task – 'to develop decision-making criteria and policy and regulatory frameworks for assessing alternatives for energy and water resources development' – as a predisposition against dams. In this case, criticism from both sides can in fact be interpreted as an indicator of the relatively balanced nature of the WCD mandate. It suggests that the overall framing of the decision-making process integrated at least the mainstream technocratic discourse and the mainstream environmentalist discourse as two of the most relevant discourses in the field.

This interpretation draws additional support from a comparison between the pre-WCD and the post-WCD public debates about large dams that is indicative of the WCD's success in rationalising the debate. Hence, extreme views that portray large dams as panacea for underdevelopment, water shortage and flood disasters or that, alternatively, condemn dams as archetypes of modern humanity's destruction of nature seem to have made way for more differentiated accounts which tend to acknowledge that each dam

has to be looked at on its own terms.⁶³ Sanjeev Khagram (2003) has captured this new perspective in the phrase that large dams are ‘neither temples nor tombs’. In this sense, the WCD process seems not only to have been open to different views on the issue, but also successful in synthesising some fairly diverse perspectives into a new dams paradigm. Ideal types of pro-dam engineers and anti-dam environmentalists certainly still play a role in debates about the usefulness of particular projects,⁶⁴ but their power to frame the overall discourse has – at least temporarily – been diminished as a result of the WCD’s success in integrating ideas from both camps.⁶⁵

Apart from this general observation, some more specific examples also point to the exclusion of certain views from the WCD process. This critique can be related to three aspects – a substantive argument in relation to the commission’s development paradigm and two procedural arguments about the commission’s consensus approach and about its stakeholder rhetoric.

The commission’s development paradigm. The development paradigm that was underlying both the mandate and the final report of the WCD has been criticised by one commissioner. At the final meeting of the commission, Medha Patkar – as the leader of the Struggle to Save the Narmada River movement – indicated to her fellow commissioners that, while she accepted many of the commission’s findings, she could not agree with some fundamental issues contained in the report. As a result, she informed her colleagues that she would only sign the report if she were allowed to add a comment. When her request was eventually approved, Patkar wrote that

The problems of dams are a symptom of the larger failure of the unjust and destructive dominant development model. (...) addressing these issues [of global development] is essential in any attempt to reach an adequate analysis of the basic systemic changes needed to achieve equitable and sustainable development and to give a pointer towards challenging the forces that lead to the marginalisation of a majority through the imposition of unjust technologies like large dams. (...) To endorse the process and many of our findings, I have signed the Report. To reject the underlying assumption of a development model which has palpably failed (...) I have asked for this note to be attached. (WCD 2000a: 321–2)

Patkar’s comment suggests that the commission stayed within a specific development paradigm – a paradigm that privileges large-scale infrastructure over community-based initiatives, that is technology- rather than human-centred, and that is ultimately grounded in the interests of private capital rather than society at large. The alternative development model is implicit in Patkar’s criticism. As the author of such an alternative paradigm, Patkar identifies

the peoples' movements whose role and perspectives should be given their due place. Not just with stories of eviction, repression and confrontation, but with their ideologies, strategies, and vision (ibid.).

This comment might hint at a discursive bias in as much as the WCD was from its outset based on a single and contested development paradigm. At the same time, appending a dissenting opinion of an individual commissioner – which in itself reflects a common practice for expert commissions – might merely show that alternative views existed, but represented a minority opinion. At the very least, the publication of Patkar's comment as a part of the final report indicates that alternative views have not been wholly absent from the decision-making process.

The commission's consensus approach. Linked to this discussion, the consensus approach expressed in the design of the WCD may also be seen as a discursive bias induced by the particular framing of the WCD process. The following statement by Jennifer Brinkerhoff (2002a: 331–2) illustrates the consensus approach:

The WCD encouraged all stakeholders to separate the issues from the actors, always search for common ground, and remain respectful during face-to-face dialogues. Such precedents were set during the Gland workshop and were institutionalised into the WCD's continuing work. Those who spoke on behalf of the commission (...) reinforced these values in their public statements.

Of course, establishing an independent World Commission on Dams would hardly have made sense unless at least partial consensus was envisaged. However, encouraging 'to always search for common ground' may be seen as barring individuals from taking a confrontational stance towards the commission once they were acting within the consensus-seeking framework of the WCD. In this regard, perspectives that see modern societies as characterised by fundamental conflicts of interests are difficult to integrate into the WCD process. For these more critical perspectives, 'searching for common ground' would simply serve to stabilise a situation in which one group dominates another. A soft version of this criticism is also implied in Medha Patkar's comment which argues that

An inclusive, transparent process of decision-making with equal status to all the stakeholders (...) would be a great advance, but does not go far enough. Even with rights recognised, risks assessed and stakeholders identified, existing iniquitous power relations would too easily allow developers to dominate and distort such processes. (WCD 2000a: 321)

By basing its decision-making process on the idea of a 'search for common ground', the WCD process might therefore be criticised for its exclusion of more confrontational or critical voices and for favouring ideas that were more closely related to the status quo.

The commission's stakeholder rhetoric. Finally, the stakeholder approach on which the WCD was based has been subject to substantial criticism. Iyer's discussion of the stakeholder concept may give some ideas about the implications of the approach for the WCD. In particular, Iyer (2001: 2279) criticises that

The concept of 'stakeholder' is a flawed one that has great potential for misuse. (...) it is an ethically neutral concept that lumps together every person or party having any kind of connection or concern with a project. Not only those who are likely to be adversely affected by the project or expect to enjoy the benefits that it will bring, but a wide range of others who are concerned with it in one form or another come within the ambit of the term. (...) The interests and concerns of these diverse categories may not in all cases be benign and legitimate, and some may have a more vital 'stake' than others, but the term 'stakeholder' makes no distinctions: it legitimises and levels all kinds of 'stakeholding'.

The choice for a stakeholder approach on which the WCD was explicitly based can therefore be read as excluding arguments that questioned the normative adequacy (or the empirical usefulness) of this approach. Whether or not the dam industry should sit at the table, whose interests representatives of non-governmental organisations actually represented or why governments were only involved at the margins are therefore questions that were unlikely to be asked or even answered within the framework chosen by the initiators of the WCD process. Instead, the WCD from its outset followed the strategy to present itself as a legitimate multi-stakeholder forum in which all those interested could openly deliberate about issues related to large dams and eventually find the best solution to the problem of when, where and how to make decisions about building (or not building) large dams.

Overall, the WCD's record in terms of its discursive balance is therefore mixed. By being open to and integrating arguments from the two arguably most relevant perspectives – the pro-dam lobby and the anti-dam movement – the WCD has succeeded in bringing about a more balanced discourse about large dams. Nevertheless, the synthesis of pro- and anti-dam arguments was achieved at the price of staying within a relatively mainstream development paradigm and pursuing a consensus policy which did not leave much room for disagreement on fundamental issues. In this regard, the normatively problematic stakeholder rhetoric of the WCD can be attributed to the non-governmental nature of the WCD process. Not

being a formal public body itself, it had to gain legitimacy among those whom it expected to later implement its recommendations. While governments might have directed their recommendations, regulations and rhetoric to citizens, the WCD chose to address its 'stakeholders'.

The discursive quality of the World Commission on Dams: Summary

Overall, the WCD's record in terms of its discursive quality is mixed (see also Table 4.4). Positively, the WCD combined the mobilisation of a considerable spectrum of affected interests with a high quality of deliberation within the commission. In particular the creation of the WCD Knowledge Base, which itself included several deliberative elements, enabled the commission to base its decision-making on a common understanding of the problems it was asked to address. Furthermore, the WCD process managed to integrate arguments from the main opposing camps whose lasting conflict had given rise to the WCD. It thereby succeeded in bringing about a more balanced discourse on large dams.

More critically, however, barriers to participation and deliberation existed in the early phase of the WCD process, in particular with regard to the initial definition of stakeholder categories and to the decision-making around the design of the WCD process. Later in the process, the Internet-

Table 4.4 The Discursive Quality of the World Commission on Dams

Criteria	Strengths	Weaknesses
Deliberativeness (DL5)	The WCD managed to mobilise a relatively large spectrum of affected interests.	<i>But:</i> Barriers to participation and deliberation existed in relation to the definition of stakeholder groups, the design of WCD, and the Internet-based information policy.
	High quality of deliberation within the Commission and deliberative elements in relation to the creation of the Knowledge Base.	<i>But:</i> In some areas, participation was limited to a few experts. Moreover, time constraints were an obstacle to more deliberation.
Discursiveness (DL6)	The WCD integrated arguments from two highly relevant opposing perspectives, the pro-dam lobby and the anti-dam movement. It succeeded in bringing about a more balanced discourse on large dams.	Arguments about underlying power relations between different social actors were less easily integrated as a result of the initial framing of the WCD's tasks.

based information policy of the WCD privileged some stakeholders while discriminating against others. In addition, deliberation was – with the important exception of some elements of the Knowledge Base – largely restricted to dialogue within and between the commission and the secretariat. Moreover, time constraints resulting from the commission's ambitious schedule, acted as obstacles to more deliberation on several occasions. Finally, as a result of the initial framing of the WCD's mandate and identity, arguments about underlying power relations between different actors were less easily integrated in the deliberations within the WCD.

The democratic legitimacy of the World Commission on Dams: Conclusions

Is the World Commission on Dams a blueprint for democratic decision-making beyond the state? Or was it a forum in which developing country governments were deliberatively kept out of decision-making and, in the words of Sebastian Mallaby (2004: 357), 'a self-appointed activist from Berkeley had more say than the elected government of India'? The discussion in this chapter reveals that both extreme views are incorrect.

To provide a more comprehensive picture of the democratic quality of the WCD process, a first section has analysed the normative context of that process. I have argued that as a largely self-authorized decision-making process in a highly sensitive issue area, the WCD demands relatively high levels of inclusiveness, accountability and discursive quality. This strong demand was, however, moderated by the observation that to become effective the WCD's recommendations will have to be implemented by public actors at the national, regional or local levels, thereby linking decisions about concrete projects back to more formal public policy processes at these levels.

Subsequently, I have argued that the WCD has a mixed record in terms of its inclusiveness, control and discursive quality. Making considerable efforts to broaden its decision-making basis and to include voices often marginalised in other forums, the WCD based its decision-making on a relatively broad range of stakeholder participation. However, the WCD's focus on and definition of stakeholder groups have provoked some critical comments. In particular, the WCD's definition of stakeholder categories can be criticised for following the conventional model of government, civil society and business and thereby taking on board all the weaknesses of that model. Failing to consider other potentially legitimate stakeholder categories and disregarding potential differences in the legitimacy of various stakeholder groups have been identified as the most critical shortcomings in this regard.

In terms of control, the WCD's institutional design did not include formal accountability mechanisms. Yet, a number of informal control

mechanisms largely compensated for this gap. Overall, they assured that public control over the process was – and partly remains – high. However, different stakeholders were equipped with different possibilities to inform themselves about the decision-making process and to exercise control over participants. Hence, the democratic nature of these informal control mechanisms is limited.

Finally, the discussion of the discursive quality of the WCD's decision-making process revealed that the WCD was successful in mobilising a considerable spectrum of interests and viewpoints, bringing about a high quality of deliberations within the Commission, including deliberative elements in the creation of the Knowledge Base on which the Commission grounded its findings and, finally, in integrating arguments from both dam proponents and opponents. Overall, these elements contributed to the WCD's success in bringing about a more balanced discourse about large dams. Nevertheless, this success needs to be qualified by a number of critical remarks. These critical remarks relate to barriers to participation and deliberation in the early phase of the WCD process, to the Internet-based information policy of the WCD that excluded some stakeholders from the deliberations, and to the observation that the high quality of deliberations was mainly limited to the commission and the secretariat as the organisational core of the WCD. Finally, the initial framing of the WCD meant that critical arguments regarding fundamental power differentials between social actors were less easily integrated in the commission's deliberations, thus inducing a bias towards mainstream discourses about sustainable development.

In evaluating these findings, it is important to keep in mind the specific constraints under which the commission was acting. Hence, WCD Chair Kader Asmal (2001: 1427) was eager to point out that

There will be those who claim that the knowledge base was inadequate, or that the opportunities to participate in the process were too circumscribed. In response, I insist on the 'givens' facing the Commission. It took on a task with a given budget framework and a given time limit upon which our legitimacy and success depended. The Commission believes that the final report is fully supported by the knowledge assembled and analyzed without ignoring any important perspectives gathered during the public consultations, through submissions, thousands of messages, and statements received on the web, via e-mail or by post.

In sum, both the praise and the criticism of the WCD should therefore be seen as elements of a post-WCD discursive struggle for empirical legitimacy, that is, for the acceptance of the WCD process and its final report as rightful. In the absence of alternative instruments for enforcing its recommendations, the outcome of this discursive struggle will partly decide

about either success or failure of the WCD. Accordingly, proponents and participants of the WCD have used emphatic language to support their calls. Elevating the Gland consensus to 'a kind of "social contract" among stakeholders in development' (Kader Asmal, cited in WCD 2001a: 11), Kader Asmal has called the WCD 'one of the first international commissions to establish a credible framework for the private sector and civil society to be active participants in shaping global policy' (Asmal 1999). In addition to appealing to these normative political ideas, the wisdom and competence of the commission have been invoked to counter the critics. Again in the words of Asmal (cited in WCD 2001a: 11),

To question the competence and composition of the WCD may be a useful tactic, for either side. But if a group as professionally competent and reflective of the diversity of views of society as the WCD is dismissed as somehow irrelevant – where else will we turn for developing a new consensus on the role of dams in development.

To the critics, the notion that an independent commission of 'stakeholders' essentially recommended that 'stakeholders' should be at the centre of future decision-making about dams may be a valid point for attacking the WCD. The discussion above indicates that the 'truth' – itself to be established discursively – will lie somewhere in the middle. While dams have, in the post-WCD process, been said to be neither temples nor tombs (Khagram 2003), the discussion in this chapter illustrates that the WCD was neither deliberative democracy at work nor a self-serving exercise of special interest groups.

5

The Global Reporting Initiative

The Global Reporting Initiative (GRI) provides a framework for organisations – most often corporations – to report on their sustainability performance. As a multi-stakeholder initiative to which a wide array of actors contributes, it shares a number of similarities with the World Commission on Dams. Moreover, as the latter, it is frequently lauded as one of the success stories of non-state governance beyond the state.¹ As the only non-state policy process explicitly referenced in a formal document at the Johannesburg World Summit on Sustainable Development (WSSD) in 2002, a partner institution of the United Nations' Global Compact, and a collaborating centre of the United Nations Environment Programme (UNEP), the GRI has achieved a high international profile since its inception in 1997.

In this chapter, I reconstruct the development of the GRI and its decision-making structure and evaluate the organisation's decision-making process in terms of democratic legitimacy.² The argument follows the structure of the previous chapter. In a first section, I introduce the GRI as a transnational rule-making body in the broader context of the corporate social responsibility debate. To determine the specific requirements for democratic legitimacy, I then discuss the context of the GRI process as a transnational rule-making process. Subsequently, I evaluate the GRI process in terms of its inclusiveness, democratic control and discursive quality.

In the context of this study, the GRI represents a distinct model of transnational rule-making, namely rule-making organised in the form of a foundation. The foundation model shares some similarities with the commission model discussed in the previous chapter. Most importantly, a relatively small body – in this case the Board of Directors – exerts ultimate authority over the decision-making process. As a major structural difference, the foundation model, however, establishes a permanent organisation rather than a temporary commission. As a result, foundations are significantly more institutionalised than commissions. The particular strengths and weaknesses that result from these differences are discussed in this chapter; a summary of the main findings is included in the final section.

Global rules for sustainability reporting: The context

Chapter 30 of Agenda 21 demands that 'business and industry should be encouraged to report annually on their environmental records, as well as on their use of energy and natural resources' (United Nations Conference on Environment and Development 1992). The GRI responds to this call by providing a framework for organisations to report on their non-financial performance. Similar to financial reporting, sustainability reporting allows users of the reported information to evaluate a company's performance and to compare it to that of its competitors. The envisaged users of sustainability reports are rating agencies, investors and shareholders but also employees, consumers and local communities. By establishing a widely accepted framework for non-financial reporting, the GRI forms part of a wider debate about corporate social responsibility. I therefore begin this section by locating the GRI within this debate. Subsequent subsections then describe the formation process and the institutional design of the GRI and discuss its quality as a transnational rule-making process.

Sustainability reporting in the context of the corporate social responsibility agenda

Sustainability reporting – and hence the GRI – is at the intersection of two recent debates. The first is a debate about the norms that should guide corporate conduct on social and environmental issues. The second revolves around the ways in which corporations should disclose information on their non-financial performance and impacts.

The corporate social responsibility (CSR) debate. The CSR agenda gained momentum after a number of severe corporate accidents in the 1980s. The most prominent of these were the Bhopal chemical accident in 1984 and the Exxon Valdez oil spill in 1989 (White 1999). In addition, revelations about poor labour conditions in overseas production facilities, where products for well-known companies such as Nike or Reebok were manufactured, further demonstrated the relevance and timeliness of the topic. Finally, increasing public awareness of corporate power in the wake of economic globalisation gave campaigns against corporate misconduct further backing. In a mostly confrontational mode, the behaviour of business, in particular transnational corporations, was scrutinised by an ever-increasing number of activists (see for instance Klein 2000; Werner and Weiss 2003). The critics demanded that corporations should be held to account for their actions. To ensure such accountability, they called for legal regulation.

When the corporate sector began to accept some of the responsibilities assigned to it and, in some cases, partnered with civil society organisations, cooperation partly replaced confrontation. As a result of corporate attempts to improve both performance and reputation, a broad consensus on the

relevance – though not on a precise definition – of corporate social responsibility emerged (Oliviero and Simmons 2003: 79).

The idea that corporations have a social and civic responsibility for the consequences of their activities is hardly new. As early as in the 1780s, the anti-slavery movement managed to organise consumer boycotts in response to corporate violations of legal and moral norms (Oliviero and Simmons 2003: 77–8). Yet, a broader intellectual debate about the responsibilities of corporations did not take shape until the 1950s. In the 1960s and 1970s, views of companies as elements of society with corresponding obligations together with claims that corporations ‘should heed the consequences of their actions on society for ethical reasons’ (Loew et al. 2004: 2) gained further ground. The current debate about CSR is distinct from these earlier debates in as much as it is primarily interested in voluntary ‘civil regulation’ rather than state or interstate regulation (Utting 2002; see also Jenkins 2001). The reasons for this shift are manifold: First, a general demise of so-called command and control regulation, a concurrent rise of private self-regulation and subsequent criticism of neoliberal deregulation constitute a powerful ideological context in which the current debate is embedded. Within this context, civil regulation through multi-stakeholder processes provides an alternative not only to governmental regulation, but also to deregulation. Second, the extension of the emerging norm of good governance to the private sector in the wake of the Enron and WorldCom scandals and the breakdown of the new market in the early 2000s further supported the call for corporations to be controlled more effectively. Third, the enhanced power and self-consciousness of NGOs vis-à-vis business and a declining capacity and willingness of states to control corporations gave rise to multi-stakeholder initiatives (United Nations Research Institute for Social Development 2001: 1; Utting 2002: 67–75).

Usually comprising organisations from both the corporate and the civil society sector, these multi-stakeholder initiatives were regarded as a new and promising tool to end the confrontation between business and campaign groups and to restore public trust in the corporate sector. Within a few years, a large number of such initiatives spread at different policy levels and around various issues. At some point, it seemed that the main result of the CSR debate would be a long list of codes of conduct that were highly diverse in terms of their authors, ambitions, substance and procedures. Most codes emanated from individual companies in the North and responded to a variety of pressures such as public concern, the need to comply with laws or other demands. While some codes addressed consumers, others targeted a wider and mostly undefined ‘public’ or a corporation’s employees (Gordon and Miyake 1999). As a result of the diversity, a comparison across codes – and hence between different companies – remained difficult.

Sustainability reporting in the context of the CSR debate. In the context of the CSR debate, sustainability reporting refers to the systematic collection and regular documentation of socially, economically and environmentally relevant information about business activities.³ As such, sustainability reporting responds to several trends. First, as the importance of brand reputation for a company's share value has increased, fund managers have recognised that socially irresponsible company behaviour constitutes a growing risk to their investment values (Berthoin Antal et al. 2002: 7–8; Gilmour and Caplan 2001).⁴ For instance, a report published by PricewaterhouseCoopers in 2001 states that 'there is now increasing awareness that a company that does not deal with environmental and social risk factors may damage its value in the market' (Gilmour and Caplan 2001). As a result, disclosure on sustainability issues becomes increasingly relevant for publicly owned companies.⁵

Second, the financial market has developed some successful niche products, such as socially responsible investment (SRI), which are essentially based on information about the social and environmental consequences of firms' activities. As the SRI market has experienced a steady growth for some years, the idea of social and environmental reporting has also gained popularity.

Third, corporate managers have recognised that sustainability reporting may help to identify inefficiencies and thereby cut costs. For instance, the US-based chemicals producer DuPont reported that 'since it began measuring and reporting on the environmental impact of its activities, its annual environmental costs dropped from a high of US\$ 1 billion in 1993 to \$560 million in 1999' (Gilmour and Caplan 2001). In addition, sustainability reporting has also been associated with increasing a company's attractiveness to future employees and with better enabling a company to build trust-based relations with key customers and suppliers (ibid.).

Finally, sustainability reporting also responds to the proliferation of codes of conduct described above. Hence, many voluntary CSR schemes rely on some kind of reporting. However, who is asked to report what, to whom and how, differs across individual instruments. The lack of a harmonised approach to sustainability reporting has often been criticised. It has spurred efforts to standardise reporting and to develop indicators that can adequately measure social and environmental business performance (Oliviero and Simmons 2003: 91; Berthoin Antal et al. 2002: 10–12). So far, the GRI has been the most successful of these efforts.

Towards the Global Reporting Initiative

The Global Reporting Initiative was established in 1997 to promote harmonisation of sustainability reporting standards. It began as a joint project of the Coalition for Environmentally Responsible Economies (CERES), a US-based coalition of socially responsible investors and environmental

groups, and the Tellus Institute, a major North American think tank in the field of sustainability.⁶ The driving force behind the establishment of the GRI was frustration over the confusion that resulted from the variety of co-existing standards (White 1999). As one of the GRI's initiators recalls,

Everybody was putting forward reporting frameworks, guidelines, norms, standards, codes. It was becoming very, very messy. (...) It was frustrating for all parties, including civil society and labour. (...) There was a moment in time where we thought we could offer a reasonable solution. That was the birth of GRI.⁷

An initial founder of the GRI, CERES had been set up in 1989 largely in response to the public outrage following the Exxon Valdez oil spill. The coalition was supported by large corporations such as American Airlines, Coca-Cola USA, and General Motors, but also by smaller environmental front-runners such as The Body Shop International. In addition, environmental and labour organisations such as the Sierra Club, the Natural Resources Defense Council and the American Federation of Labor were among the founding members of the coalition (Pattberg 2007; Waddell 2002).

The idea behind CERES was to engage companies in dialogue over environmental principles and to commit them to a long-term improvement of their environmental performance (Pattberg 2007). To this end, CERES established ten principles for environmentally responsible business conduct. One of these principles required endorsing companies to report annually on their performance in relation to the environmental aspects covered by the other principles. It thus served as an early expression of the idea of sustainability reporting at the company level. With the establishment of the GRI, this idea was extended along two dimensions. First, while CERES exclusively covered environmental performance aspects, the scope of the GRI was social, economic and environmental. Second, while CERES was geographically limited to the United States, the GRI reached out to a global audience.

In 1997, *Green Metrics*, a study done by Tellus researchers, paved the way for the GRI. The study compared existing reporting schemes and their requirements in a single matrix and identified overlaps between various schemes (White and Zinkl 1998). It thereby provided a foundation on which the GRI could build its dialogue with different stakeholder communities. Reaching out to potential partners, the founders of the GRI sought to involve interested organisations more closely. They promised to provide the necessary administrative support and to shoulder most of the financial burden in the initial phase. Moreover, they agreed that, if the GRI were going to be successful, it would not remain a CERES project but be turned into a fully independent organisation. This agreement was considered

crucial for the credibility of the initiative in its early stages (Waddell 2002: 5–6).

The GRI was successfully established in December 1997, when the first Steering Committee was set up. In early 1998, UNEP formally joined the GRI as a partner institution to confer further legitimacy and a truly global reach to the initiative. Together with the London-based think tank Sustainability, UNEP had been working on environmental reporting frameworks since the early 1990s and thus had a strong interest in the issue. In addition to its ideational support, staff members at UNEP's Division of Technology, Industry, and Economics (DTIE) in Paris provided administrative support and served on the initial Steering Committee. Last, but not least, its partnership with UNEP enabled the GRI to receive a generous grant from the United Nations Foundation in 1998.

Once it had been established, the development of the GRI has been described as 'fairly organic':

Initially, an informal group of like-minded people developed the concept, and then a more formal group was set up (also involving new individuals) as a Steering Committee. (...) CERES identified potential SC members to kick-start the process. The Steering Committee had the initial idea and then widened discussion. (...) GRI developed through Working Groups, Briefings, Conferences and Communications. (Stakeholder Forum for Our Common Future 2001)

The diverse group of stakeholders that initially helped to put the GRI together was united by a convergence of interests. Hence, for NGOs involved in rating corporations, regular information on environmental and social performance was essential. Governments, although not identified as a key stakeholder group within the GRI framework, were keen on obtaining a comprehensive view of industrial non-financial performance. And for accountants, auditors and verifiers, a generally accepted environmental (or sustainability) reporting framework similar to that for financial reporting seemed appealing not least because it established a new market for their business operations (White 1999).

In addition to this confluence of interests, the expectation that the new organisation would not replicate existing approaches but instead harmonise them under a single framework was equally important in rallying individuals and organisations behind the GRI. Altogether, these factors helped the GRI to gain significant recognition. Most importantly, acceptance of the GRI was based on the hope that it would achieve its substantive aim. Hence, many observers saw – and continue to see – the GRI as 'the only [effort] positioned to establish comparability among the myriad of approaches' to corporate social responsibility (Oliviero and Simmons 2003: 93).⁸

The main elements of the Global Reporting Initiative: An overview

Since its inception, the GRI's ambition has been to make 'reporting on economic, social and environmental performance as routine and comparable as financial reporting' (GRI 2003b: 4). To accomplish this mission, the organisation has developed a relatively complex institutional framework. From 1998 to 2002, the GRI was a partnership of CERES and UNEP that was run by a multi-stakeholder Steering Committee. In 2002, the GRI became an independent organisation with headquarters in Amsterdam, The Netherlands. It is now run by a Board of Directors that is assisted by several other governance bodies, including a small secretariat, the GRI Stakeholder Council, and the Technical Advisory Council.

Between 1997 and 2002, the Steering Committee was the centre of decision-making within the GRI. The Committee consisted of fifteen to thirty members that had been invited by the organisation's initiators. Led by Robert Massie and Allen White and assisted by a secretariat hosted by CERES in Boston, the Steering Committee met four times per year to decide on the general direction of the GRI, design the GRI process and oversee the development of the various versions of the *Sustainability Reporting Guidelines* released between 1999 and 2002.

In 1999, the GRI published its first version of the Guidelines, known as the Exposure Draft Guidelines. The document was essentially a product of

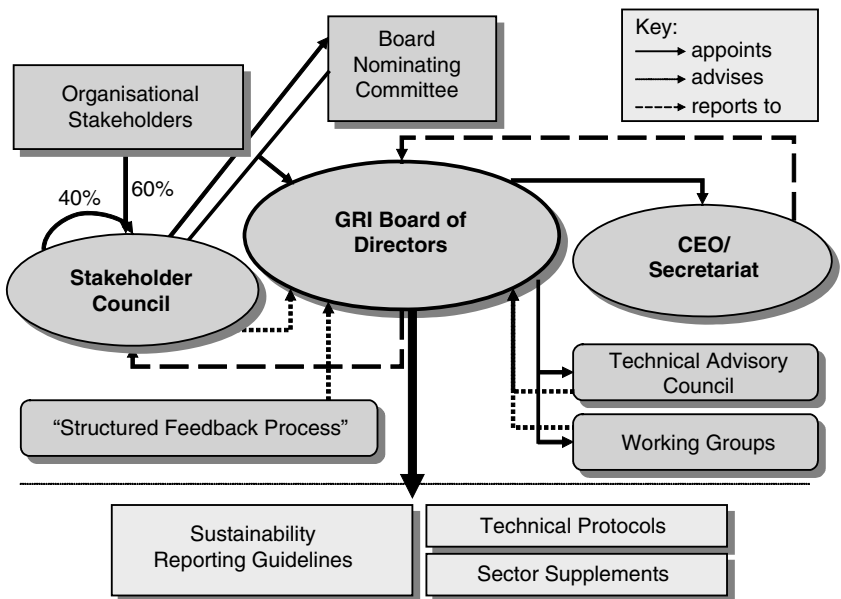


Figure 5.1 The Global Reporting Initiative: Organisational Design

the Steering Committee. After publication of its Exposure Draft Guidelines, the Steering Committee received numerous comments. These were discussed in the further development of the 2000 Sustainability Reporting Guidelines. The trend towards opening up the GRI to interested stakeholders continued in the revision process that led to the 2002 Sustainability Reporting Guidelines and to the publication of the third generation of the Guidelines in October 2006.

Since the 2002 Guidelines formulate the core of the GRI's reporting framework and were only modestly amended in the run-up to the new Guidelines in 2006, the analysis in this chapter focuses on the decision-making process that led to the publication of the 2002 Guidelines. In that process, the preparatory work on selecting and defining performance indicators was accomplished by the so-called Measurement Working Group (MWG), a multi-stakeholder body of approximately 150 individuals whose selection by the GRI Secretariat was based on an open call for participation. After an initial round of public feedback, the results of the MWG were later synthesised by a smaller Revision Working Group (RWG) that consisted of Secretariat staff, MWG members, Steering Committee members, and external experts. With assistance from the GRI Secretariat, the RWG also compiled the more general parts of the Guidelines, for instance on reporting principles. Eventually, the RWG submitted its final draft version of the Guidelines to the Board of Directors for approval. The Guidelines were then released at the WSSD in Johannesburg in August 2002.

With the establishment of the GRI as an independent organisation, the GRI process has entered a new phase. The revised governance structure of the permanent GRI is now based on the interaction of four permanent bodies – the Board of Directors (established in 2002), the Secretariat (established in 2002), the Stakeholder Council (established in 2003), and the Technical Advisory Council (established in 2005). The Board of Directors, chaired by former WCD commissioner Judy Henderson, decides on the overall strategy of the GRI and exerts ultimate authority over the organisation's policies. The Secretariat is based in Amsterdam, The Netherlands. With twenty permanent staff members, it coordinates the day-to-day management of the GRI.⁹ Moreover, it plays a central role in developing new ideas and serves as a link between the Board and the broader stakeholder community. The latter is now formally represented in the Stakeholder Council whose sixty seats are allocated in a way intended to ensure balance between geographical regions and stakeholder groups. The Stakeholder Council advises the other governing bodies and elects, together with the Board Nominating Committee, the members of the Board of Directors. Finally, the recently established Technical Advisory Council is charged with technically overseeing the development of the GRI family of documents.

In addition to these formal governing bodies, the working groups and the so-called Structured Feedback Process (SFP) remain core elements in the

development of new documents and in the revision of existing documents. The overall design of the GRI process and its main outputs is illustrated in Figure 5.1.

In terms of its output, the Sustainability Reporting Guidelines continue to be the central document produced by the GRI.¹⁰ The core of the 2002 Guidelines consists of two parts, the reporting principles (Part B) and the performance indicators (Part C) on which corporations are asked to report. The 11 reporting principles are fairly general and include principles such as transparency, inclusiveness, auditability, completeness, or accuracy. The 97 indicators on social, economic and environmental aspects of corporate behaviour are divided into 50 core indicators and 47 additional indicators. Core indicators are understood to be relevant to all reporting organisations as well as to most report users. For instance, environmental core indicator EN7 asks for a 'Description of the major impacts on biodiversity associated with activities and/or products and services in terrestrial, freshwater, and marine environments'. In contrast, additional indicators are either considered less relevant, less commonly used or deemed 'worthy of further testing for possible consideration as future core indicators' (GRI 2002k: 12–13).¹¹

In the 2002 Guidelines, organisations that wish to report 'in accordance' with the GRI framework are required to report on all core indicators or provide a statement that explains why they did not report on a specific indicator. In addition, they are asked to assure that the report is consistent with the GRI's reporting principles and to include a GRI content index as well as a statement signed by the CEO that declares that the report has been prepared in accordance with the Sustainability Reporting Guidelines (GRI 2002k). As the GRI is a voluntary scheme, organisations may themselves decide how to make use of the Guidelines. In the 2002 Guidelines, 'in accordance' reporting is thus optional and, in contrast to other bodies such as the Forest Stewardship Council, not certified by the GRI or by accredited certification bodies.¹²

Overall reactions on the Sustainability Reporting Guidelines have been relatively positive. The GRI has been praised for its pragmatic approach and for its commitment to continuously improve the Guidelines. The Guidelines themselves are widely considered as a viable compromise between comprehensiveness and feasibility of corporate non-financial reporting. As of November 2006, over 950 organisations have produced reports based on the GRI reporting framework, among them global market leaders such as BP, DaimlerChrysler, Dow Chemical or General Motors (GRI 2006a). Whether the overall number indicates a fast or a slow uptake of the Guidelines is a matter of perspectives – most observers, however, consider the GRI to be a success story. Nonetheless, a recent study of reports issued by Swedish companies reveals that even where companies use the Guidelines in the preparation of their reports, comparability among reports is relatively low due to the variance in how the Guidelines inform individual

reports (Hedberg and von Malmborg 2003: 157). In addition, of the almost 1900 reports listed in the GRI database, just under 300 meet the stricter 'in accordance' criteria.¹³

In sum, the GRI has managed to position itself as one of the leading reporting schemes in the field. In addition, it has proven to be a highly dynamic and reflexive organisation. As the organisation is constantly moving forward, it is not always easy to pin down what the GRI actually is. Among its more recent initiatives are the development of a more elaborate implementation scheme plans to 'move the Guidelines to a Standard' and intentions to 'move away from philanthropic dependence to self-sufficiency through the provision of products and services in support of the new Standard' (GRI 2004e).¹⁴

The Global Reporting Initiative as an instance of transnational rule-making

To what extent does the GRI process constitute a rule-making process? Do the Sustainability Reporting Guidelines actually constitute a code, a norm or a standard? The GRI maintains they are neither. While the Guidelines may be used to support codes and principles, the GRI is eager to stress that they 'do not specify performance standards and should not be construed as a performance standard' (GRI undated-e). Instead, they are primarily seen as an instrument for reporting. As such, the GRI itself is sometimes considered as merely a tool – for instance to monitor the implementation of the OECD Guidelines for Multinational Enterprises or other voluntary CSR initiatives. On a different reading of the GRI process and its outcomes, the rejection of the normative quality of the Guidelines, however, is subject to two challenges.

First, it is true that the Guidelines do not constitute a performance standard. They do not call upon or even prescribe to organisations how they should treat their employees, deal with the environment or ensure their economic sustainability. Yet, the Guidelines do constitute a standard for *reporting on performance*. In contrast to the WCD's recommendations, the normative quality of the Guidelines is not explicit in the language of the various GRI documents. It is, however, implicit in the GRI's mission statement as well as in many of its communications. In addition, both the design of the GRI process as a multi-stakeholder process aimed at including all relevant voices and the name chosen for its central document – the Sustainability Reporting *Guidelines* – support the notion that the result of the resource-intensive consultations on which the Guidelines are based is not intended as an indication of how a company *may report*, but rather of how a company *should report*.

Second, establishing reporting standards – that is, selecting specific criteria and indicators (for instance child labour policies) on which organisations should provide information and excluding others (for instance

employee remuneration and working time) on which information is deemed less relevant – implies a normative standpoint on appropriate corporate behaviour.¹⁵ While it is true that the GRI does not specify what kind of performance is deemed appropriate or inappropriate in relation to its indicators, both the selection and the framing of indicators constitute a highly political activity. As a result, the *Guidelines* may be read as an attempt to determine the content of corporate responsibility through the backdoor. They do not specify levels of appropriateness, but issues on which appropriate behaviour is considered relevant.

In this context, the GRI's reporting standard creates an expectation not only to report, but also to perform within a certain range of appropriateness. In other words, the specification of corporate responsibility through the GRI's selection of performance indicators 'lays the ground for the emergence of stabilized normative expectations organized around these indicators' (Perez 2004: 12). It would thus be naïve to assume that the GRI is 'merely' a reporting standard without influence on performance standards.¹⁶ In the 2002 *Guidelines*, the GRI argues that its decision to incorporate some labour practices into the category of human rights 'reflects the strong sentiment that an organisation's contribution in the area of labour practices should not be simply to protect and respect basic rights; it should also be to enhance the quality of the working environment and value of the relationship to the worker' (GRI 2002k: 51). When compared to the 'no code' language invoked by the GRI, this is a relatively strong normative statement that clearly illustrates that reporting standards imply assumptions about appropriate conduct.

Overall, it therefore seems plausible to conceive of the GRI process as a transnational rule-making process. That the Guidelines have been *consciously devised* and that they are *relatively specific* can hardly be disputed. That they are *commands for behaviour* I have argued above. Finally, that their *normative authority is such that at least a minimum level of compliance can reasonably be expected* is at least conceivable when we consider the uptake of the Guidelines and the wide support they receive from both governmental and non-governmental representatives.

The normative context

The interpretation of the GRI process as a global rule-making process with significant impacts on the idea and practice of corporate reporting implies that decision-making should involve those affected in a meaningful way. In the following section I analyse the specific normative requirements the GRI is facing in this regard. In line with the criteria identified in Chapter 2, I discuss four aspects: The extent to which the GRI process draws on public authorisation, the extent to which its outputs affect various actors, the precise quality of these outputs and the extent to which the GRI process responds to the principle of subsidiarity.

Authorisation

The GRI started as a private initiative of two non-state actors, CERES and the Tellus Institute. As a result, the GRI process was initially self-mandated. Yet, in the course of its activities, its initiators sought and received formal intergovernmental approval from various agencies. First, UNEP joined the GRI as a formal partner in 1998 and the GRI continues to be recognised as an official collaborating centre of UNEP. The GRI often invokes the centrality of UNEP's involvement in the early stages to increase its legitimacy with stakeholders. Thus, in the preface to the 2002 Guidelines, GRI Chair Judy Henderson states that 'the GRI was launched in 1997 as a joint initiative of the US-based non-governmental Coalition for Environmentally Responsible Economies (CERES) and United Nations Environment Programme' (GRI 2002k: i) when in fact the initiative was launched by CERES and Tellus, with UNEP joining soon thereafter. UNEP itself lists the GRI as an international voluntary initiative along with others such as the Global Compact and defines such schemes as initiatives in which the 'UN or other intergovernmental organisations act as international catalysts, working with business, governments and other society groups in design, implementation and monitoring' (United Nations Environment Programme 2000: 5). In the same document, UNEP stresses that these initiatives are 'distinct from other voluntary initiatives as they directly represent the moral authority of international commitments and globally accepted values' (United Nations Environment Programme 2000: 4).

In addition to its close ties with UNEP, the GRI formally cooperates with the UN Global Compact. Companies that take part in the Global Compact are thus encouraged to use the Guidelines in their communications on progress on the ten principles of the Global Compact. Thereby, the GRI is granted additional approval from an initiative that is directly linked to the UN system. Similarly, the OECD Committee on International Investment and Multinational Enterprises promotes the Guidelines as a tool to measure progress on the OECD Guidelines for Multinational Enterprises (GRI 2004d).

The international recognition of the GRI is also reflected in the outcomes of the 2002 World Summit on Sustainable Development (WSSD). Chapter III of the Johannesburg Plan of Implementation on 'Changing unsustainable patterns of consumption and production' notes that governments at the WSSD have agreed to enhance corporate environmental and social responsibility. It further specifies that the agreement includes actions at all levels to

Encourage industry to improve social and environmental performance through voluntary initiatives, including environmental management systems, codes of conduct, certification and public reporting on environmental and social issues, taking into account such initiatives as the

International Organization for Standardization standards and Global Reporting Initiative guidelines on sustainability reporting.

Finally, the Guidelines themselves include numerous references to transnational and international norms and agreements. Thus, reporting principles are broadly based on generally accepted accounting principles, that is, on norms widely shared in the accountancy profession. Moreover, GRI indicators refer to international norms or agreements on several occasions. For instance, the GRI (2002k: 51) notes that,

In particular, the labour practices and human rights indicators have drawn heavily on the ILO Tripartite Declaration Concerning Multinational Enterprises and Social Policy, and the Organisation for Economic Cooperation and Development (OECD) *Guidelines for Multinational Enterprises*, which were deemed most relevant to the responsibilities of business during the GRI consultative process.

The environmental performance indicators are also linked to several international agreements – for instance, the indicators on emissions, effluents and waste mention the Montreal Protocol on Substances that Deplete the Ozone Layer, the Stockholm Convention on Persistent Organic Pollutants, the Rotterdam Convention on Prior Informed Consent, and several protocols to the Convention on Long-Range Transboundary Air Pollution (ibid.: 50). Of course, any such links are partially based on the GRI's own interpretation of the articles of those international agreements. Nonetheless, the GRI's message is that what its guidelines recommend is essentially based on what governments have agreed to in their international agreements.

In sum, while the GRI started off as a private initiative, it has constantly sought the approval of formal international bodies. As a consequence, even though governments or intergovernmental agencies have not been central actors in the development of the Sustainability Reporting Guidelines, several international agencies have endorsed the process and collaborate with the GRI. The GRI is therefore neither a free-floating private decision-making process nor is it based on a full-fledged international mandate.

Affectedness

To what extent are the addressees and other individuals and groups affected by the GRI process? In contrast to large dams, sustainability reporting is a relatively abstract thing. Its effects on the everyday lives of consumers, employees or communities are more indirect and more difficult to determine. Nonetheless, the ideational shift in thinking about corporate social responsibility and sustainability reporting has an immense potential to affect the lives of millions in a very direct way. It has a potential to improve health and safety conditions at the workplace, to reduce child

labour or to minimise environmental risks of doing business. But it also has a potential to establish new non-tariff trade barriers, to effectively exclude Southern corporations from Northern markets or to create additional obstacles for small and medium sized enterprises to compete with the large multinationals. Consequently, most observers agree that the jury on the actual social consequences of sustainability reporting is still out. For the purpose of this chapter, a closer look at some observable effects of the GRI on different stakeholders is thus necessary.

There appears to be consensus among observers that, 'if the GRI Secretariat ceased to exist tomorrow, the reality is that GRI has changed the perception of non-financial sustainability reporting forever.'¹⁷ On other occasions, the Sustainability Reporting Guidelines have been termed an achievement 'so huge that few firms, big or small, can ignore them'¹⁸ and the GRI is credited for having had 'a transformational effect in terms of setting expectations for corporate disclosure' and bringing about a 'major sea change in terms of the status, the belief, and the respect of non-financial reporting'.¹⁹ Yet, all of these are rather abstract and intangible effects. In its 2003 Annual Review, the GRI (2003a: 4) therefore identifies a number of more concrete results:

- 'Shareholder resolutions were filed against 15 companies in the USA demanding a report based on the GRI Guidelines;
- Governments in Canada, Australia, Netherlands and France issued national level reporting frameworks based on GRI's Guidelines;
- A half-dozen mainstream and SRI funds requested reporting on GRI Guidelines including: Barclays, Calvert, Henderson, Hermes, and Insight. IRRIC aligned its questionnaire with the GRI Guidelines;
- Companies issuing GRI-based reports doubled in 2003;
- 90 per cent of all sustainability and environmental reporting award winners were GRI reporters in 2003;
- A proliferation of studies worldwide emerged in 2003 which evaluate corporate performance and reporting, these would not have been possible even two years ago without the existence of a globally understood language for sustainable development reporting;
- The first non-corporate reporters emerged, including non-profits and governments.'

More systematically, we can distinguish between GRI's effects on the business sector, on public actors, and broader effects that affect all stakeholder groups.

Impacts on business. The GRI's influence on the business sector is mainly related to the voluntary uptake of its Guidelines. One of the main impacts is that the GRI has generated an expectation that 'good companies' report on their performance in relation to sustainability and that they base their

reports on the GRI framework. Favourable estimates indicate that roughly 40 per cent of all CSR reporters are using the GRI Guidelines in preparing their reports and that nearly half of the Fortune 250 companies are GRI reporters.²⁰ In addition, the GRI maintains that 47 of the top 50 company reports identified by SustainAbility, Standard & Poor's, and UNEP reference the GRI Guidelines (GRI 2003b: 8; 2004e).

A related, but more indirect, impact lies in the demand for companies to issue corporate vision or mission statements as a part of their GRI report (GRI 2002k: 38–9). Specifying such a mission or vision often – although not necessarily – includes setting targets for a defined period of time. As a result, reports may be used to hold corporations to account by verifying to what extent these targets have been met. Early examples for such a mechanism include companies like McDonald's, Royal Dutch/Shell, and VanCity, which have related their corporate reports to their mission statements and linked their reporting format to the GRI framework (Berthoin Antal et al. 2002: 13). Furthermore, some pressure is exerted by the investment community, where a number of investment funds included non-financial reporting in their requirements. For instance, Henderson Asset Management has welcomed the GRI Guidelines and encouraged companies across all of its funds 'to work towards reporting in full accordance with them' (GRI undated-k). Overall, sustainable investment however remains a niche product in the financial market (Palenberg et al. 2006). In this context, the observation that the Johannesburg Stock Exchange requires publicly listed companies to report on GRI indicators (Bendell 2004: 39) remains exceptional.

Impact on public regulation. The impact of the GRI on governments is less direct. Nonetheless, in the GRI's own words,

mandatory sustainability, environmental, social and kindred types of reporting are in place or on the agenda in a growing number of countries. Many of these initiatives are directly influenced by GRI. (GRI 2002a)

Thus, the European Union has called for companies to voluntarily adopt the GRI guidelines and the European Commission has 'intimated that formal regulatory requirements may not be far behind' (Rochlin 2003). In addition, pension funds in several European countries require that companies in their portfolios produce GRI reports, which has led one US analyst to conclude that 'if your company does business in Europe, reporting along the GRI framework may soon be a must' (Rochlin 2003). However, current practice only partially supports such a strong statement. Instead, the European Commission, while mentioning the GRI Guidelines as 'a good example of a set of guidelines for reporting' which could serve as a base of 'greater consensus on the type of information to be disclosed, the reporting

format, the indicators used and the reliability of the evaluation and audit procedure', emphasises the voluntary nature of sustainability reporting (Commission of the European Communities 2002: 14).²¹

In South Africa, the King Report on corporate governance has put the issue of good corporate governance on the public agenda. The publicly commissioned report urges companies operating in the country to adhere to the Code of Corporate Practices and Conduct developed in the King 2 report. Reporting is part of this code which states that

Disclosure of non-financial information should be governed by the principles of reliability, relevance, clarity, comparability, timeliness and verifiability with reference to the Global Reporting Initiative Sustainability Reporting Guidelines. (King Committee on Corporate Governance 2002: section 5)

At the sub-national level, it is mainly individual projects that point to the potential impact of the GRI on business practice. For instance, the Wisconsin Department of Natural Resources has signed a cooperative agreement with Wisconsin Electric, a private company, which requires the latter to issue environmental performance reports in accordance with GRI Guidelines. It thus introduces the Guidelines into public regulation in this specific case. According to a GRI press release, the agreement between Wisconsin Electric and the state's natural resources department is 'the first specification of the Guidelines in a legal agreement' (GRI 2001a).

Finally, at the intergovernmental level, the GRI has received rhetorical support from several international agencies. For instance, the United Nations Economic Commission for Europe (UNECE) has, in its Ministerial Statement for the World Summit on Sustainable Development welcomed the GRI as a promising attempt to 'get companies to present comparable sets of data on environmental and social performance.' Moreover, the GRI cooperates with UNEP, the UN Global Compact, and with the OECD.

In sum, government interest in the GRI may be high, but the effects of the GRI on governments have thus far remained weak and indirect. In very few cases, GRI standards have been integrated into governmental regulation or quasi-regulation. In some cases, GRI language served as an inspiration or a blueprint for public rules. And in many cases, public agencies encourage the use of the Sustainability Reporting Guidelines without formally requiring it.

Other impacts. Finally – and maybe most importantly – the GRI and its Sustainability Reporting Guidelines have contributed to significant changes in the discourse about sustainability reporting in a more general way. Discursive shifts induced or, where they already existed, supported by the GRI include the broad acceptance of the importance of non-financial reporting, widespread recognition of the relevance of the CSR agenda and a

growing acceptance of the notion that not only firms, but also civil society organisations and public agencies should report the consequences of their activities.

In addition, a more subtle but equally important discursive effect lies in the GRI's effort to rhetorically blend different practices into a unified pattern of 'corporate sustainability.' A side effect of this aggregation consists in levelling the moral status of practices that are usually not discussed within a single framework. As a result, Pax Christi Netherlands (2000) criticised a draft version of the 2000 *Sustainability Reporting Guidelines* for its failure to acknowledge the legal character of human rights. As this criticism refers to a fundamental aspect of the work of the GRI, it is worth quoting the argument at length:

The structure of the Suggested Benchmarks does not fully respect the legal character of the human rights concept. Human rights is part of international law, which does not categorise labour rights separately from other human rights, nor are community engagement activities primarily a human rights issue. In the current texts, human rights are sometimes mixed up with ethics. The resulting deviation from the international legal reality must be corrected. The legal character of human rights prohibits private interpretations of its meaning and content. (...) An example of mixing ethics and human resource management issues with human rights is that the GRI draft categorizes corporate training programmes under human rights, while these have actually little bearing on human rights. Also, most of the Community Engagement indicators in the Suggested Benchmarks are taken from PwC's reputation assurance methodology. Reputation issues [have] only accidental, no intrinsic bearing on corporate human rights responsibilities; the indicators that are mentioned should be called what they are: reputation management tools, instead of benchmarks for human rights performance.

More generally, the GRI (undated-f) itself claims that it 'stands at the leading edge in redefining corporate accountability in the 21st century'. Through its reporting framework, the organisation effectively redefines notions of corporate accountability and corporate sustainability as appropriate performance on the sum of all core indicators plus some additional indicators depending on the relevance for the reporter and/or its stakeholders. As the GRI has become the leading non-financial reporting standard, its implicit definition of corporate sustainability has become a common frame of reference for thinking about sustainable business practice.

Last but not least, the GRI has a particular impact on stakeholders in developing countries. As the demand for sustainability reporting originates mainly from industrialised societies, the GRI has largely been a Northern-driven institution. Some developing country stakeholders have therefore

expressed a fear that the increasing demand for GRI reports from Northern consumers may disproportionately disadvantage Southern companies who either cannot afford reporting costs or lack the institutional capacity to implement sustainability management or information systems. The success of the GRI thus generates concerns among developing country stakeholders that resemble those concerns that arose in response to the success of the ISO 14000 standards on environmental management systems. Such concerns include the fear that GRI reporting may become a prerequisite to successfully operate in Northern markets – or at least in sections thereof – and that Southern corporations may remain unable to live up to Northern standards of ‘good’ corporate conduct (see Clapp 1998 on the ISO 14000 process).

Quality of the rules

As a third criterion, the quality of the rules is a relevant factor in determining the normative requirements for inclusiveness, transparency and discursive quality for the GRI process. As in the previous chapter, the quality of the rules can be broken down into several aspects. The first task, however, is to pin down ‘the rules’ that result from the GRI process.

What are the rules? As with the World Commission on Dams, the normative output of the GRI comprises a relatively complex structure of documents. The main element of the GRI framework are the Sustainability Reporting Guidelines which contain the reporting principles, the indicators on which organisations are asked to report, and the criteria for reporting ‘in accordance’ with the GRI framework. Finally, a growing number of Technical Protocols and Sector Supplements complement the Sustainability Reporting Guidelines. So, what shall we consider as the rules or the standards set by the GRI? While any possible answer to the question may be considered arbitrary to some extent, a plausible answer is to identify a combination of (a) the criteria for ‘in accordance’ reporting, (b) the reporting principles, and (c) the core performance indicators as the norms and rules put forth by the GRI.²² Where Technical Protocols are available to specify individual performance indicators, they also form part of the normative framework.

When we look at the wording of the various elements, the ‘in accordance’ criteria display the strongest normative language. While the Guidelines specify that ‘the decision to report in accordance with the Guidelines is an option, not a requirement’, they do set a clear standard for those who wish to report in accordance. Thus, the Guidelines specify that ‘organisations that wish to identify their report as prepared in accordance with the 2002 GRI Guidelines must meet five conditions’ (GRI 2002k: 13). Second, the wording of the reporting principles also contains normative language. For instance, the principle of transparency specifies that ‘the reporting organisation should systematically engage its stakeholders to help

focus and continually enhance the quality of its report', and the principle of auditability demands that 'reported data and information should be recorded, compiled, analysed, and disclosed in a way that would enable internal auditors or external assurance providers to attest to its reliability' (ibid.: 24–5). Finally, while the performance indicators can be interpreted as prescriptive in as much as they demand that reporting organisations disclose information related to the indicators, their language itself is a mixture of descriptive and prescriptive language. For instance, for the environmental core indicator 'EN4 – Indirect energy use', the accompanying text asks corporations to 'report on all energy used to produce and deliver energy products purchased by the reporting organisation (e.g., electricity or heat)' (ibid.: 49).

Scope of the rules. The GRI's normative framework contains recommendations pertaining to a variety of aspects of reporting. It includes fundamental principles which specify how organisations should report, a long list of indicators that specify what they should report and a number of additional recommendations, for instance on the frequency of reporting. However, the Guidelines do allow for considerable flexibility with regard to how reporters may use them. For instance, they do not prescribe a common structure for sustainability reports, nor do they specify how information should be verified. In sum, the Guidelines therefore cover a considerable range of aspects related to sustainability reporting. However, they are neither prescriptive nor very detailed on some core aspects such as the verification of reported information. In terms of their geographic scope, uptake of the Guidelines is thus far limited to corporations that either produce or make a significant share of their profits in industrialised societies. Nonetheless, the inclusion of indicators on child labour or freedom of association indicates that the framework itself is also directed to corporations that operate in developing countries.

Degree of obligation. As norms or rules established by a formally independent private organisation, the GRI's normative framework is legally non-binding. At the same time, the binding character of norms and rules should not be construed as a dichotomous variable. Hence, while legally non-binding, the Sustainability Reporting Guidelines have acquired a socially binding nature of some significance. On a weak reading, the Guidelines may be interpreted as just one recommendation among others, specifying how corporations may reasonably report on sustainability-related aspects of their activities. On a stronger reading, the emerging consensus on both the relevance and content of sustainability reporting, however, suggest that the GRI process has in fact created social expectations and pressures on companies and other organisations to apply and adhere to the Guidelines. The dynamics behind the construction of this social obligation – in the context of the CSR debate some commentators also speak of a 'social license to operate' – are therefore similar to that in the WCD case.

Degree of precision. As a fifth aspect, the precision of individual norms and rules varies across the different elements. Thus, while the reporting principles are formulated in relatively abstract language, the criteria for reporting 'in accordance' are precise. Finally, the performance indicators on which reporting organisations are expected to disclose information are very detailed. In particular, where indicators are accompanied by a Technical Protocol, the language could hardly be more specific. In sum, although they leave addressees some leeway in their application, the norms and rules set by the GRI are therefore relatively precise.

Delegation of adjudication. Finally, as far as adjudication on GRI norms and rules is concerned, the 2002 Guidelines do not contain provisions for monitoring, let alone adjudicating on, compliance with the Guidelines. While discussions over the verification of reported information have always been a conflictive issue within the GRI, the Verification Working Group (VWG) has not been able to agree on a more stringent policy. As a result, the GRI recommends but does not require assurance of organisations' sustainability reports.

Subsidiarity

To what extent is the GRI's claim justified that global rules for sustainability reporting are necessary? The GRI itself bases its claim on the rationale that over 2000 companies are already publishing environmental and/or social reports, but that these are hardly comparable because of the differences in reporting principles, reporting boundaries or indicators on which performance is reported (GRI undated-e). As a consequence,

A generally accepted framework can simplify report preparation and assessment, helping both reporters and report users to gain greater value from sustainability reporting. Because the development costs of the Guidelines (...) is shared among multiple users, the overall transaction cost for reporters is considerably lower than the costs that might be involved in developing an 'own company' or 'own sector' reporting framework. (GRI undated-e)

Hence, in the context of global diversity, convergence on a single framework seems desirable to cut costs for reporters and report users. In addition, a wide range of organisations nowadays operates across borders and often globally. As a result, a unified approach to business regulation is often considered as the only adequate response. As a viable way to readjust spheres of political decision-making with spheres of economic activity, global rules can be considered as appropriate because they escape the logic of a competition among jurisdictions that is often assumed to lead to a race to the bottom.

As a result, to the extent that sustainability reporting is regarded as desirable in the first place, the case for global rules seems convincing. In contrast to the construction of large dams, the consequences of corporate

activities are in many cases not limited to stakeholders in individual states, regions or communities. Nonetheless, different social and cultural expectations exist with regard to public information disclosure, to corporate governance, and to the relative importance of economic, environmental, and social aspects of sustainability. From a normative perspective, these differences therefore need to be taken into account in evaluating the decision-making process on the Sustainability Reporting Guidelines.

The normative context of the Global Reporting Initiative: Summary

A number of observations justify the demand that the GRI should indeed be inclusive, accountable and discursive. In particular, the self-mandated nature of the GRI and its potential adverse effects on different stakeholder groups demand that those who may be affected by the GRI's decisions are effectively included in the decision-making process. In addition, the high level of specificity of the GRI's normative framework, the broad thematic scope of the Guidelines and the social obligation that they have acquired call for meaningful ways to ensure the responsiveness of the GRI to those affected by its decisions.

At the same time, the observation that actual effects are rather indirect and difficult to determine as a result of the abstract nature of sustainability

Table 5.1 The Normative Context of the Global Reporting Initiative

Criteria	High requirement for democratic legitimacy	Low/medium requirement for democratic legitimacy
Authorisation (C1)	The GRI is not formally mandated by governments or intergovernmental organisations.	<i>But:</i> Close ties with the UN system, in particular with UNEP, and endorsement from international agencies.
Affectedness (C2)	<i>Potential</i> effects are significant. They include improvements in labour conditions and in businesses' environmental performance, but also adverse effects such as obstacles to market access for producers unable to meet GRI standards.	<i>But:</i> Due to the abstract nature of the issue, <i>actual</i> effects are indirect and difficult to determine.
Quality of the rules (C3)	The substantive scope of the <i>Guidelines</i> is very broad and the <i>Guidelines</i> are very specific.	The GRI <i>Guidelines</i> are legally non-binding and there is considerable flexibility in relation to how reporters may use them.
Subsidiarity (C4)		The case for global rules is largely convincing.

reporting moderates the normative demands placed on the GRI. Moreover, while the Guidelines may have attained some degree of social obligation, they are not legally binding and organisations can, technically speaking, always refrain from reporting. And even where corporations do report, the GRI framework allows for considerable leeway in relation to how the Guidelines are used. Finally, it is rarely disputed that global standards on non-financial reporting are desirable. In this regard, while initially self-mandated, the GRI's close and often formal ties with UNEP and its endorsement by other international forums lend it considerable intergovernmental legitimacy. In sum, the normative requirement for democratic legitimisation is therefore lower for the GRI than for the WCD.

Inclusiveness and participation

The GRI emphasises that it 'derives its legitimacy from balanced, global, multi-stakeholder participation at all levels' (GRI 2003c) and that its process for developing the *Sustainability Reporting Guidelines* is 'rooted in a philosophy of inclusiveness' (GRI undated-a). In this section I will have a closer look at the empirical reality of participation at various levels of the GRI process. As in the previous chapter, I first describe which actors participate in what ways and then evaluate the performance of the GRI in light of the normative criteria developed in Chapter 2. As mentioned in the previous section, the analysis focuses on decision-making in relation to the 2002 *Sustainability Reporting Guidelines*.

Scope of participation and inclusiveness

In the previous chapter, participation in the World Commission on Dams has been described as guided by the notion of balanced representation. It is difficult to identify an equally simple principle for the GRI process. At best, participation in the GRI process can be described as guided by three related principles: balanced representation of professions, regions and societal sectors; active engagement of those whose support is deemed necessary to ensure the organisation's success; and strengthening participatory elements over time.

In the initial phase of the GRI, the Steering Committee was the central decision-making body of the GRI. Although it had no legal mandate, it served as the key political organ.²³ Membership in the committee was by invitation; decisions on membership were essentially prepared by CERES and UNEP and, once it had been set up, approved by the existing members of the committee. To gain the support of its stakeholders, the GRI's global perspective required the organisation to secure balanced representation of geographical regions as well as of different stakeholder groups. In the words of a former member of the GRI Steering Committee, such balance was absolutely essential to GRI's credibility: 'It *had* to have private sector input;

it *had* to have labour input; it *had* to have NGO input. Otherwise those stakeholder groups wouldn't necessarily accept the GRI.²⁴

While stakeholder categories were not formally defined at the level of the Steering Committee, the initial committee comprised members from business, NGOs, and accountancy organisations (GRI undated-c). Accountancy organisations were, for instance, represented by the Association of Chartered Certified Accountants and the Canadian Institute of Chartered Accountants, while business was present through the World Business Council for Sustainable Development (WBCSD) or General Motors. Finally, civil society participation in the Steering Committee included the World Resources Institute and the India-based Centre for Science and Environment.²⁵ Steering Committee members served in their individual capacity rather than as representatives of their organisations. Nonetheless, they were selected because of their affiliations with certain stakeholder groups, thereby effectively introducing a quasi-representative element. Organisations like the WBCSD or UNEP thus regularly informed their members about the GRI and brought feedback from their constituencies back to the GRI.²⁶

In addition to providing strategic guidance, the main responsibility of the Steering Committee was the development of the Guidelines. For the 1999 Exposure Draft Guidelines, a Steering Committee draft was distributed for comments to stakeholders and made available on the Internet in late 1998. Comments were subsequently integrated into a new version prepared for approval by the committee (Waddell 2002: 9). Although this final version was still described as 'heavily environmental', its authors felt that 'it was more important to show progress than to be perfect'²⁷ and published the first draft guidelines in March 1999. The publication of the 1999 Guidelines served two major purposes. It helped to draw attention to the GRI – the organisation's first international symposium held in London in March 1999 was attended by over 500 participants – and encouraged a large number of comments and suggestions on which the Steering Committee could build.²⁸

The reactions gathered at the London symposium, received in the form of written comments and collected in feedback workshops, guided pilot testing and commissioned papers (GRI undated-a) thus paved the way for the revision of the 1999 document. A second GRI conference held in Boston in February 2000 provided further input to the preparation of a revised version of the Guidelines, which was eventually released in June 2000. For the first time, the 2000 Guidelines expanded the GRI's substantive scope into non-environmental issues.

Between 2000 and 2002, participation in the development of the Guidelines was extended and organised on a more systematic basis. The Steering Committee continued to be the central body. Yet, its role was primarily defined in terms of organising and overseeing the revision

process of the Guidelines rather than revising them itself. The largest part of the revisions for the 2002 Guidelines was thus prepared in the so-called Measurement Working Group (MWG), a body of over 130 experts and stakeholders set up in 2001. The MWG was charged with proposing a set of economic, environmental, and social indicators for the 2002 Guidelines. In late 2000, the GRI initially invited three individuals to serve as the co-chairs of the MWG.²⁹ In consultation with the co-chairs, the Secretariat selected a so-called core MWG of nineteen individuals that served as a coordinating body for the larger MWG (GRI 2001d).

After a general structure of ten subgroups had been worked out for the MWG, the GRI Secretariat issued a call for participation (GRI 2001b). In response, it received over 170 candidate applications from 32 countries. To ensure a manageable process, slightly over 130 participants were selected by the subgroup coordinators, the MWG chairs and the GRI Secretariat (GRI 2001d). The subgroups eventually included representatives from companies, labour organisations, campaign groups, academia, and investors. Geographically, North American and European participants dominated; in contrast, participation from African and Latin American countries was particularly low (GRI 2001c; see also below).

Within its lifespan of one year, the MWG prepared a set of recommendations on performance indicators for the 2002 Guidelines. These recommendations were submitted to the smaller Revisions Working Group (RWG) set up to elaborate a full draft version of the 2002 Guidelines. The RWG comprised 12 individuals drawn from the MWG, the Steering Committee, and the GRI Secretariat. The main task of the RWG was to ensure consistency and avoid overlap among the suggested indicators and to integrate additional aspects such as a section on underlying reporting principles (GRI 2002j). While the RWG eventually proposed a smaller number of indicators than the MWG, this decrease was mainly due to overlaps identified rather than a result of substantive amendments made by the group.³⁰

After several rounds of revisions of the initial documents, a draft version of the 2002 Guidelines was published on the GRI website in March 2002 (GRI 2002b). At the end of the sixty days public comments period, comments received from over eighty parties amounted to 'more than 300 pages for the Revisions Working Group to analyse' at its third meeting in Amsterdam in June 2002 (GRI 2002d). With strong support from the GRI Secretariat, the RWG sought to incorporate these comments into a new draft of the Guidelines. It submitted this revised draft to the newly established board of directors later that month. The GRI Board eventually approved the Guidelines for release at the WSSD in Johannesburg in August 2002 (GRI 2002c).³¹

While the Guidelines were mainly developed at the level of the MWG and the RWG under the guidance of the Steering Committee and the GRI Secretariat, by the time they were approved and released, the newly

appointed board of directors had taken over the ultimate responsibility for the decision-making process. This change in the governance of the GRI in midst of the revision process was due to the fact that the GRI had, in April 2002, given up its status as a joint CERES and UNEP initiative to become an independent organisation. As a consequence, the GRI Board of Directors replaced the Steering Committee as the leading governance organ of the organisation. The first board was selected by an independent Board Nominating Committee chaired by Jonathan Lash, then president of the World Resources Institute. The committee selected fourteen high level practitioners as the GRI's initial directors. The list of directors included representatives from business, the accountancy profession, civil society, labour, UNEP and from academia (GRI 2005b).³²

In addition to participation in the working groups or in one of the GRI governing bodies, Structured Feedback Processes (SFPs) and participation in the Stakeholder Council provided further entry points for participation in the development of the Guidelines. SFPs are an institutionalised means to seek comments on GRI documents. Coordinated by the Secretariat, their primary element is 'a questionnaire that guides participants through a variety of issues and asks for comments and considerations about further improvements to a GRI document' (GRI 2004f). SFPs have informed the revision of the 2000 and 2002 versions of the Guidelines and their scope has been expanded over the time. Thus, while the 1999 Draft Exposure Guidelines were pilot-tested by twenty-one companies, the 2000 Guidelines were tested by a larger number of stakeholders that included not only reporters, but also report users. In addition to expanding the number of feedback companies, the latest SFP that led up to the 2006 Guidelines also included regional roundtables (GRI 2004f).³³

Finally, the new governance structure of the GRI provides for additional participatory elements. In particular, the Stakeholder Council serves as an instrument to systematically include different perspectives in the GRI process. The council formally represents the interests of various constituencies within the GRI. It meets annually to discuss the progress of the GRI and debate 'key strategic issues'. In addition, it appoints new Board members based on nominations received from the Board Nominating Committee, makes strategic recommendations to the Board, gives advice on the GRI's work plan and the Guidelines revision, and participates, through individual members, in GRI working groups (GRI 2002g: articles 14–17).

The sixty seats on the Stakeholder Council are allocated according to stakeholder groups.³⁴ Business has been allocated twenty-two seats, civil society organisations and mediating institutions have sixteen seats each, and labour has six representatives on the council. Sixty per cent of the Stakeholder Council members are elected by the so-called Organisational Stakeholders of the GRI. This category is open to all parties that support the

general ideas behind the GRI and are willing to pay a modest annual membership fee. The over 380 Organisational Stakeholders (as of November 2006) are grouped according to the four GRI constituencies with each constituency electing its own representatives on the Stakeholder Council. The remaining forty per cent of the members of the Stakeholder Council are then appointed by those elected in the first round (GRI 2002g: articles 12–17). Beyond its role in electing board members, the council has no formal influence on the development of the Sustainability Reporting Guidelines. Its role is thus comparable to that of the stakeholder forum of the World Commission on Dams.

Quality of participation and inclusiveness

On the whole, the GRI process provides a number of opportunities for interested parties to participate. Through balancing representation among stakeholder groups, aspiring to represent different geographic regions and offering various channels for participation – such as becoming an Organisation Stakeholder, applying for working group membership or making use of public comments periods – the GRI has mobilised a considerable number of stakeholders. The organisation claims that ‘more than 5000 individuals from over 80 countries, representing corporations, governments, non-governmental organisations, consultancies, accountancy organisations, business associations, rating organisations, universities, and research institutes are in the GRI network’ (GRI undated-d). Overall, the GRI process thus includes a broad range of voices. In addition, participation has steadily increased as a result of the organisation’s reputation, but also of deliberate institutional reforms. Nonetheless, a closer look also reveals more critical aspects. In particular, the definition of stakeholder categories and the balance of participation deserve a more pronounced discussion.

Definition of stakeholder groups. The GRI distinguishes between four key stakeholder groups: business, civil society organisations, labour, and mediating institutions. The latter category comprises academics and experts, but also accountants and consultants. Several aspects are interesting in this classification: First, governments are not identified as a key stakeholder group by the GRI although their interest in and relevance for non-financial reporting is apparent. As indicated, the GRI closely collaborates with UNEP, and UNEP staff members regularly inform their Committee of Permanent Representatives about the progress of the GRI. Moreover, UNEP’s Division on Technology, Industry and Economics (DTIE) has held occasional government roundtables that focused on the GRI. Yet, while UNEP serves as a link between the GRI and individual governments, closer interaction between governments and the GRI has largely been absent. In essence, the non-consideration of governments as a stakeholder group therefore reflects the non-governmental nature of the GRI. It has led one observer to con-

clude that governments are 'purposefully excluded' from the GRI process (Waddell 2002: 24).

Second, the classification of labour as an individual category appears unusual. Hence, in most multi-stakeholder initiatives, labour organisations are classified as civil society organisations and thus share the seats allocated to that group with other non-profit organisations. When a similar scheme was proposed for the GRI, labour strongly opposed and pointed to international practice, in particular the International Labour Organisation (ILO), where labour organisations were considered as so-called social partners along with governments and employers. The argument was that, 'as Labour is an independent voice for responsibility within companies, labour doesn't fall under the "Civil Society" umbrella, but rather forms a category of its own' (GRI Stakeholder Council Working Group 2002: 7, see also the comments by Vic Thorpe on pp. 16–18 of the same document). In addition, labour representatives pointed out that they had not been represented in the original Steering Committee and that the concerns of this particular constituency were 'inevitably late in being addressed' (*ibid.*). Overall, the GRI-internal debate over the recognition of labour as a separate stakeholder group illustrates many of the difficulties inherent in defining and delimiting stakeholder categories.

Third, the classification of accountancy firms as so-called mediating institutions is questionable. On the one hand, accountants are experts on reporting and hence fall in the same category as other experts. On the other hand, the accountancy sector is clearly profit-oriented and shares many similarities with other service providers. Its representatives would therefore equally classify as business actors. Moreover, the explicit inclusion of this stakeholder group seems questionable in the first place. Accountants, consultants, verifiers, and auditors – although providing much needed expertise – are only secondary actors in sustainability reporting. They assist organisations in collecting and verifying information included in their reports. However, they are neither reporters nor report users in a narrow sense. Instead, they primarily act as service providers. As a consequence, the interests of the accountancy profession in the GRI are ambiguous since only a relatively complex reporting scheme is likely to create a significant demand for the profession's services. The relatively strong participation of accountants and consultants in the GRI process therefore induces similar problems as those observed in the negotiations of the ISO 14000 series of standards where, on some instances, representatives of large international auditing firms served as chairs of individual working groups (Clapp 1998).

All three examples show that the selection and definition of stakeholder groups is based on deliberate choices that have far reaching consequences for the whole decision-making process of the GRI.³⁵ In the end, the GRI thus suffers from the same problem as most other multi-stakeholder

Table 5.2 Participation in Key GRI Governing Bodies by Stakeholder Group³⁶

	Steering Committee ³⁷	Board of Directors ³⁸	Core MWG	MWG
Accountancy/Consulting	3	2	2	27
Academia	7	2	3	30
Business	4	4	9	39
Civil Society	1	1	3	18
Governments and IGOs	1	1	3	10
Labour	—	2	1	2
Other ³⁹	1	3	—	14
Total	17	15	22	140

processes – the practical impossibility to define legitimate stakeholder categories without making arbitrary choices.

Balance of stakeholder groups. Second, while the GRI aims at balanced representation of stakeholder groups, the numbers speak a different language. Most obviously, the procedures established for the Stakeholder Council accord different weightings to stakeholder groups. Hence, twenty-two seats are reserved for business, sixteen each for civil society organisations and mediating institutions, and six for labour organisations.

In addition, while representation at the level of the Steering Committee and the Board of Directors is relatively balanced, business participants also constituted the largest group in the development of performance indicators in the MWG and in the core MWG (see Table 5.2). In addition to the strong business presence, the centrality of accountants and consultants and of academia indicates a strong orientation towards technical expertise. As a consequence, civil society groups and labour organisations have so far not been represented in the GRI to the same extent as other stakeholder groups. The low level of labour participation in the MWG – with two representatives out of a total of 140 participants – is particularly noteworthy.⁴⁰

Table 5.3 Participation in Key GRI Governance Bodies by Geographic Region

Region	Steering Committee ⁴¹	Board of Directors ⁴²	Secretariat ⁴³	Stakeholder Council ⁴⁴	MWG	Core MWG
Africa	—	1	—	5	3	—
Asia	3	3	2	13	13	3
Europe	5	5	12	16	64	10
N. America	6	2	5	12	35	3
Oceania	—	1	1	5	4	—
Latin America	1	1	—	7	5	1
International	2	2	n. a.	—	11	5
Total	17	15	20	58	135⁴⁵	22

The fact that business organisations and mediating institutions are represented relatively well in the GRI process can be interpreted as a result of the issue at stake – the GRI is primarily about business regulation. In this context, the GRI's primary focus has been on including those actors that were deemed necessary to achieve the organisation's goals. In addition, the strong emphasis on technical expertise also reflects a general strategy to depoliticise sustainability reporting in the context of a conflict-laden debate over corporate social responsibility. Yet, with the establishment of the new governance system after 2002, some of the above-mentioned imbalances have been addressed. Hence, labour organisations now have two representatives on the Board and are also entitled to select their own representatives to the Stakeholder Council.

Balance between North and South. In addition to the balance among stakeholder groups, balanced representation of participants from industrialised and developing societies remains a key issue for the GRI. Initiated as a US-led project on an issue that was primarily debated in the OECD world, the GRI has steadily extended its outreach and participatory basis. The numbers in Table 5.3 indicate both the achievements and the challenges the GRI is facing in terms of the balanced representation of geographic regions. In particular, they illustrate that for most GRI governance bodies, participants from North America and Europe account for approximately two-thirds of all members. At the level of the MWG, European participants clearly dominate. In turn, African and Latin American stakeholders have at best played a marginal role in the development of the GRI. Overall, the Stakeholder Council is, as a result of the quotas introduced for this body, the only GRI organ where participation is significantly more diverse.

Beyond the key governance bodies, Northern dominance is also reflected in the location of the GRI Secretariat – once in Boston, now moved to Amsterdam – and in the location of earlier GRI conferences in cities such as London, Boston, Paris or Washington. As one observer states, this creates 'a natural bias that favors those that have financial resources and are geographically close to meetings' (Waddell 2002: 23). In some cases, the GRI has been able to reimburse travel costs for participants. However, the organisation's tight budget places limits on this instrument.⁴⁶ In addition, financial constraints prevented the GRI to realise its initial plan to establish regional GRI centres in several regions of the world.

In spite of these difficulties, the GRI has made efforts to include actors from developing countries. The regional quota for the Stakeholder Council or the regional roundtables held as a part of the structured feedback process for the most recent revision of the Guidelines serve as illustrations of such efforts. As a result, the criticism on the North-South gap in the GRI process has weakened over the years. Initially, at least individual commentators noted that 'the perspective of the South is missing in the GRI process and reporting content' (GRI 1999b) or asked to 'bring the G back into GRI'

(United Nations Environment Programme et al. 1999). Southern representatives regarded the GRI as an attempt to 'slip a social clause through the back door' (GRI 2000a: 1), maintained that 'organisations in developing countries would have a different priority for key indicators' (Excel Industries Ltd. 2000) or concluded that the 'GRI was not suitable for developing countries in its present form' (Ribeiro 2000). In the wake of some institutional reforms and the GRI's continuous efforts to increase participation from developing countries, such criticism seems to have vanished. Moreover, participants in the GRI process have stressed that 'the South' is very diverse and that participation from individual countries such as Brazil, South Africa or India has increased significantly.⁴⁷

Inclusiveness and participation in the Global Reporting Initiative: Summary

Summarising the discussion on the inclusiveness of the Global Reporting Initiative, Table 5.4 lists the most relevant successes and shortcomings. Overall, the GRI process has a clear multi-stakeholder character. By including a number of entry points for stakeholder participation and by continuously increasing the opportunities for participation, the GRI has managed to engage a broad and diverse range of voices in the decision-making process leading up to its Sustainability Reporting Guidelines.

The generally positive performance of the GRI in terms of its inclusiveness, however, goes along with three more critical aspects. First, the definition of stakeholder categories is arbitrary. The non-consideration of

Table 5.4 Inclusiveness and Participation in the Global Reporting Initiative

Criteria	Strengths	Weaknesses
Scope of participation (DL1)	Relatively broad participation of diverse actors.	The definition of stakeholder categories is problematic.
	The process for developing the <i>Guidelines</i> includes several entry points for participation.	Business and the accountancy/consultancy sector account for a relatively large share of participation in the GRI process.
	Participatory elements increased over time.	The level of participation from developing countries is relatively low.
Quality of participation (DL2)	As a result of broad participation, a wide range of viewpoints is included.	Southern participation is low in knowledge-based parts of the GRI process (e.g. in the MWG).

governments as a stakeholder category, the recognition of labour as a separate stakeholder group and the prominent role accorded to the accountancy profession illustrate the practical difficulties associated with defining and delimiting legitimate constituencies. Second, as a result of the expert-oriented conception of the GRI, business actors and so-called mediating institutions appear to have dominated the GRI process. At the same time, critical NGOs and labour organisations were involved to a lesser extent. Third, the low level of participation from developing countries remains problematic even if the GRI is making efforts to increase Southern involvement in order to live up to its global aspiration.

Democratic control

In addition to its inclusiveness, the extent of democratic control within the GRI's decision-making process constitutes a further dimension of the latter's democratic legitimacy. As in the previous chapter, I distinguish between the transparency of the GRI process as a precondition for accountability and the formal and informal accountability mechanisms as further instruments to control decision-making in the GRI.

Transparency

The GRI makes drafts of all relevant documents available to the public in a timely manner and informs stakeholders about how their feedback is dealt with. At first sight, the GRI process is therefore fairly transparent. Moreover, transparency is not restricted to a close circle of GRI 'members'. In contrast, the GRI assures that 'if a party should decide not to participate then they can still receive regular updates and reports on the process for purposes of transparency and openness' (Stakeholder Forum for Our Common Future 2001).

In its communication with stakeholders, the Internet and electronic mail are the predominant means of communication. Thus, drafts of GRI documents are usually published on the GRI website to solicit comments. For the development of the 2000 Guidelines, a memorandum that outlined the process for the revision of the Guidelines was also posted on the Internet to inform stakeholders about their opportunities to get engaged. In addition, after an initial round of feedback from the Steering Committee, from pilot test companies and from selected other active GRI participants, a second memorandum provided an overview of the envisaged structure and contents of the revisions (GRI 2000b). For the development of the 2002 Guidelines, a similar process was in place. As an additional element, all public comments on the draft Guidelines were posted unless feedback companies specifically asked not to do so (GRI 2001b, 2002e).

Aside from making documents available on its website, the GRI actively seeks to inform constituencies through its monthly newsletter. Between

1999 and 2004, updates have regularly been sent out to approximately 5000 subscribers (GRI 2005a). In addition, the Stakeholder Council, in 2004, established its own public newsletter that includes reports from the working groups and from different geographical regions (GRI 2004b). Third, the GRI stresses that 'all information resulting from stakeholder engagements is used to develop or improve GRI products, or set policy directions for the future.' To substantiate this claim, the organisation reports that

- 'Information gathered during the SFP resulted in plans for revising and improving the 2002 Guidelines during 2004–2006'; that
- 'Information gathered during working group processes directly resulted in the development of products such as Sector Supplements and Technical Protocols'; and that
- 'Information gathered at Stakeholder Council meetings in the form of recommendations are considered by the Board for decisions on policy and products' (GRI 2005a).

As far as the current governance structure of the GRI is concerned, the articles of association assign clear responsibilities to each governance body. In addition, a clear hierarchy has been established with the board of directors serving as the supreme authority of the GRI (GRI 2002g). Article 24.8 of the GRI's articles of association commits the board to develop 'procedures that enhance and ensure the transparency of decisions and decision-making processes' and the secretariat to '[post] on the Internet minutes of meetings of the Board, Stakeholder Council and Technical Advisory Council' (GRI 2002g: Article 24.8). On a more critical reading, the complexity of the governance structures or the influential role of the secretariat in the overall progress of the GRI might be considered as impediments to transparency. However, even the Secretariat shares many of its ideas with the stakeholder community. As a result, it appears that, in the context of the GRI, the instrumental need to be transparent works to minimise shortcomings traditionally associated with bureaucracies.

Overall, the GRI process is therefore relatively transparent. As a consequence, critique on the organisation's transparency record has focused on two less central aspects – transparency gaps in the early phase of the GRI and limits to transparency imposed by language barriers. Thus, one of the pilot testers in 1999 complained that 'as yet, the decision making process of GRI is not transparent to the public' (Rauberger and Wagner undated: 5). In particular, the authors of the criticism argued that they were unable 'to track the logic behind decisions taken'. They referred to ISO procedures as an alternative mode and suggested that working groups record on a line by line basis who made a comment, what decision the working group leadership had taken in regard to the comment, and how the group explained its

decision (Rauberger and Wagner undated: 7). While the suggestion to implement a similar scheme in the GRI process was not taken up by the Steering Committee, the fact that similar comments have not been reiterated in later rounds of the Guidelines revisions indicates that concerns on the issue might have weakened as the level of participation in the GRI process increased over time.

Second, language barriers are problematic insofar as the GRI, similar to the WCD, translates only its products into languages other than English.⁴⁸ In contrast, process-related documents, including draft versions of GRI products, are exclusively available in English, thus limiting the transparency of the GRI process for stakeholders without a sufficient command of that language.

Accountability

Compared to the WCD process, decision-making in the GRI is – in particular since its re-inauguration in 2002 – considerably more formalised. As a result, a number of formal and informal control mechanisms exist at various levels of the GRI process.

First, the relatively complex institutional arrangement includes some checks and balances between governing bodies. Most importantly, article 24 of the GRI's articles of association formally defines and delimits the roles of the various GRI bodies with regard to the development of the Guidelines (GRI 2002g). In practice, the secretariat, a key player in virtually all GRI activities, oversees the work of the numerous working groups. The work of the secretariat itself is supervised by the board of directors that is appointed by the stakeholder council. The members of the latter – as the elected representatives of the stakeholder groups – thus exert some control over the general direction of the GRI process. In addition, the articles of association are fairly precise and allow for little interpretative flexibility. As a result, accountability is achieved through commonly agreed rules and procedures that clearly define the roles and responsibilities of each governing body.

Second, while it may not exert a very strong direct influence on either the board or the secretariat, the GRI Stakeholder Council serves as a sounding board for both organs. It thereby plays a similar role to that of the WCD Forum, if maybe in a more extended and formalised way. Council members are expected to maintain dialogue with stakeholders in the regions they are representing and to 'present input to the Stakeholder Council from the constituencies they represent regarding the needs, expectations, and other priority issues related to the GRI and the Guidelines' (GRI undated-h).

Third, as in the WCD case a further control mechanisms results from the social background of the GRI process. Since compliance with the Guidelines is voluntary, their normative force is closely related to

the success of the organisation's claim to legitimacy. The GRI has thus been aware that 'any key stakeholders who undertook active advocacy to undermine GRI would create a serious problem' (Waddell 2002: 7). As a result, most stakeholder groups have been included in the decision-making in one way or another. Once included, these actors retain the power to revoke their support and to thereby put the future success of the GRI process at risk. As a consequence, key stakeholders have a relatively powerful informal accountability mechanism at their disposal. In addition, the GRI's financial supporters also exert control over the policies of the organisation.⁴⁹ And finally, the organisation's approach to publicly setting its own targets allows stakeholders to evaluate the organisation in terms of its performance vis-à-vis these targets. On the whole, the GRI's record on accountability therefore seems rather positive.

Nonetheless, three limitations are worth mentioning. First, since members of GRI governing bodies serve in their individual capacity, formal accountability relations between participants in the GRI process and their constituencies are weak. In addition, public scrutiny is relatively low in the case of the GRI. As a result, the members of GRI governing bodies have considerable freedom in interpreting their mandates and in making their own decisions on individual aspects. Third, the chances to effectively hold decision-makers to account are significantly lower for stakeholders who are only weakly represented in the GRI process. This holds particularly true for stakeholders from developing countries. In sum, while a number of control mechanisms ensure that individual stakeholder groups or organs within the GRI cannot do as they please, the democratic quality of these control mechanisms could be further enhanced.

The Global Reporting Initiative and democratic control: Summary

Summarising the discussion of the GRI's performance in terms of transparency and accountability, Table 5.5 provides an overview of the central arguments. Overall, the GRI process includes a diversity of control mechanisms. The organisation posts most documents on its website, actively informs stakeholders about its progress and strives to make transparent how stakeholder input is being used. In addition, the articles of association assign clear responsibilities to all governing bodies of the permanent GRI and provide for checks and balances between them. Moreover, the Stakeholder Council acts as a feedback mechanism for the GRI Board of Directors and for the secretariat. Finally, the non-binding nature of the Sustainability Reporting Guidelines implies that implementation will, at least to some extent, depend on the perceived legitimacy of the GRI process itself.

On a more critical reading, the generally high level of accountability is limited by three aspects – a lower level of transparency in the organisation's early days, language barriers that exclude those unable to comment

Table 5.5 The Global Reporting Initiative and Democratic Control

Criteria	Strengths	Weaknesses
Transparency (DL3)	<p>The GRI places a strong rhetorical emphasis on transparency.</p> <p>Most documents are available on the GRI's website and a newsletter provides stakeholders with monthly updates.</p> <p>The GRI makes efforts to inform stakeholders about how their input is used.</p>	<p>Transparency in the early days was not always as high as it is now.</p> <p>Language barriers limit transparency to stakeholders with good command of the English language.</p>
Accountability (DL4)	<p>Institutionalised checks and balances exist between the various governing bodies. The Articles of Association assign clear responsibilities to governing bodies.</p> <p>The Stakeholder Council acts as a 'sounding board'.</p>	<p>Serving in their individual capacity, the accountability of members of governing bodies to constituencies is limited.</p>

on English drafts, and a relatively diffuse accountability relationship between members of the key governance bodies and their stakeholder groups.

Discursive quality

In Chapter 2 I have identified the discursive quality of opinion- and will-formation processes as a third dimension of democratic legitimacy. In accordance with the theoretical framework developed in Chapter 2, I therefore analyse, in this section, the performance of the GRI with regard to the deliberative quality of internal will-formation processes and with regard to a broader discursive balance between different perspectives on sustainability reporting.

Deliberativeness

As in the previous chapter, the analysis of the deliberativeness of the GRI process follows the criteria of rationality and reciprocity developed in Chapter 2. The analysis is mainly focused on how favourable the basic structure of the GRI process is to a deliberative style of communication. Where relevant information is available, the discussion is complemented by accounts of the actual decision-making practice in the Steering

Committee, the Board of Directors and in the Measurement Working Group.

Rationality. In his closing remarks at the inauguration ceremony of the permanent GRI in 2002, Robert Massie emphasised the 'willingness to listen, to trust, to act in good faith' that had characterised the GRI from its start (GRI 2002f: 65). The following paragraphs analyse these characteristics with regard to the work of the Steering Committee, the Measurement Working Group, and the Board of Directors.

Steering Committee. As a small body operating based on consensus decision-making, the Steering Committee – as the early executive organ of the GRI – fulfils two basic preconditions for a high quality of deliberations. As one member recalls, consensus decision-making implied that, in the actual practice of decision-making, 'you really have to find out why someone cannot accept something and find a solution that everybody accepts.'⁵⁰

In addition to small size and to consensus procedures, trust among the members of a decision-making body and a commitment to the collective endeavour are further essentials for a deliberative mode of communication. As both of these preconditions cannot be expected to be present from the outset, the atmosphere at initial meetings of the Committee has been described as 'tense' and 'moderately sceptical'. Tensions resulted from different views on the issue – for instance between campaign groups and business – but also from a lack of familiarity among some of the parties. For instance, as one participant recalls, labour representatives and professional accountants 'probably had never been in the same room with each other.'⁵¹

However, trust building was facilitated by a relatively high level of continuity of membership in the Steering Committee. As a result, a participant recalls that after the first two or three meetings tensions decreased because committee members got to know each other and because of a 'growing sense that this big bold vision was indeed possible'.⁵² Over the course of the first year, commitment to this vision increasingly became a motivation for individual members. In addition, it facilitated the establishment of a collective identity and of a constructive atmosphere within the Steering Committee. As with the WCD, the creation of such an atmosphere was strongly credited to the chairpersons, in this case Robert Massie and Allen White. Their deep commitment to the process, their ability to mediate conflicts between stakeholder groups and their expertise on sustainability reporting were mentioned as factors that contributed to a willingness to compromise.⁵³ Overall, the Steering Committee thus provided very favourable conditions for a deliberative style of communication.

The Measurement Working Group. The MWG constitutes a second deliberative forum in the development of the Sustainability Reporting Guidelines. Divided into small subgroups of eight to ten individuals whose regular discussions are focused on specific aspects of the Guidelines and consensus

driven in its internal decision-making, the MWG similarly fulfils two basic conditions for a deliberative mode of interaction.

In contrast to the Steering Committee, the MWG's tight schedule – the GRI wished to present its new Guidelines at the Johannesburg summit – however impeded a longer trust-building phase. In addition, the subgroups often communicated electronically or through conference calls and only rarely met in person. As a result, no strong collective identity emerged. Moreover, individual subgroup leaders showed varying levels of commitment to the cause of the MWG. Overall, the quality of deliberations was therefore more limited than in the case of the Steering Committee. In practice, the atmosphere in the run-up to the 2002 Guidelines has thus been described as tense. While civil society actors were focused on details of the decision-making process, business representatives preferred to proceed straight to substantive issues without further delay.⁵⁴ Moreover, in the absence of sufficient time, the need to compromise meant that the overall number of indicators proposed by the MWG increased towards the end. As one MWG member recalls,

The fact that it was a consensual process and the fact that time was running out meant that there weren't good discussions about what the critical indicators were. In other words, it was easier to agree to something to go in than it was to have a discussion about how you could narrow down the number of indicators.⁵⁵

In January 2002, the MWG concluded its work and submitted its recommendations to the Revisions Working Group. Decision-making within this latter group was also based on consensus. As the Johannesburg summit came closer, discussions within the RWG were strongly focused on the task at hand. When a group member raised concerns whether comments received via the structured feedback process had been properly included into the MWG draft, a former MWG member conceded that they had 'made a good faith effort to review all feedback' but that they had also 'made a lot of decisions over 48 [hours]'. Nonetheless, it was agreed that, if the RWG was to override MWG decisions, it needed to explain why (GRI 2002i). In sum, this example illustrates that for both the RWG and the MWG, time constraints constituted an obstacle to exploiting the full deliberative potential and to discuss some central issues in more depth.

Board of Directors. Finally, at the level of the Board of Directors decision-making is also based on consensus. Although the statutes allow for voting,⁵⁶ interviewees only recalled one instance where a board member voted against a resolution. Usually, conflicts are resolved without calling for a vote and the board operates on the basis of 'sufficient consensus'.⁵⁷

As in other GRI bodies, board members serve in their individual capacity. The fact that they are not bound by a strict mandate from their constituencies

– while providing only limited control for the latter – increases the chances of high quality deliberations. As has been argued before, serving in their individual capacity does not imply that members do not argue in accordance with their constituency backgrounds. Nonetheless, it does mean, in the words of one participant, that ‘once you are around the board table, the responsibility of a board director is to the organisation first and to any constituency background they might have second.’⁵⁸ Overall, several board members have stressed that this demand was also met in practice and that all members showed a strong commitment to the GRI process and its objectives. In addition, the atmosphere at board meetings was generally characterised as positive and constructive and board members emphasised the good and robust culture of discussions at those meetings.⁵⁹

As with the working groups, time constraints restricted the scope for deliberations before the release of the 2002 Guidelines. As a result of the tight schedule, the board was only marginally involved in the development of the Guidelines. Most importantly, it was unable to discuss the substance of the 2002 Guidelines in significant depth. Board members thus expressed concern with the tight timeframes for approval of the Guidelines and reported discomfort about being ‘expected to approve the document without looking at it as a group’ (GRI 2002h: 7).

Reciprocity. Finally, the principle of reciprocity asks to what extent participants approached deliberations with a view towards potential consensus rather than basing their actions on purely strategic reasoning. A part of this question has already been answered above. Overall, the strong commitment of participants to the process certainly created an open atmosphere in which individuals listened to each others’ arguments. In addition, no strong factions existed at the level of the Steering Committee or the Board of Directors. In contrast, members of both organs stressed that a pragmatic approach prevailed over principled perspectives.

As a result, when asked if they or their fellow participants in the GRI process had modified their views on sustainability reporting as a result of their involvement with the GRI, interviewees frequently answered in the affirmative. Participants observed a gradual convergence of views as ‘people were able to see things from the perspective of the other side.’ For instance, civil society representatives learned about the complexities of implementing sustainability reporting in practice. In contrast, business participants learned what issues mattered to the people outside business and to better understand their own footprint in society.⁶⁰

Overall, the GRI process therefore includes a number of elements that are conducive to a high quality of deliberation. While all governing bodies involved in the making of the Sustainability Reporting Guidelines are small-sized and operate on the basis of consensus decision-making, the Steering Committee and its successor, the GRI Board of Directors, provide particularly favourable conditions based on a high level of trust and a

sense of collective identity among its members. Lacking a similar level of trust and collective identity, decision-making in the MWG is, in contrast, only moderately conducive to deliberation. Beyond these process-related observations, the GRI's dynamic character strengthens deliberative elements at a more general level. Except for the articles of association, all rules and procedures may be amended and all GRI documents are revised on a cyclical basis. Overall, the GRI's self-image as a social experiment – with questioning, reasoning, arguing and listening as important pillars of such an image – thus provides a solid ideational foundation for a deliberative style of communication.

Discursiveness

As a final aspect of the democratic legitimacy of transnational rule-making in the context of the GRI, this subsection discusses the extent to which existing perspectives on sustainability reporting have been integrated in the GRI process. In particular, I discuss three candidates for discursive dominance. The first relates to the question whether the GRI is taking sides in the debate between proponents of corporate social responsibility and advocates of corporate accountability. The second relates to a potential dominance of economic discourses on sustainability over more critical ecological discourses. Finally, a third concern is related to the possible dominance of 'Western values' in the GRI process.

CSR vs. corporate accountability – is the GRI taking sides? The GRI does not explicitly rest on either an understanding of corporate social responsibility or of corporate accountability. In fact, it seems that the organisation is successfully trying to avoid being co-opted by proponents of any one of the two discourses.

On a more critical reading, advocates of corporate accountability, however, could construe the GRI – as they do with other codes – as an attempt to 'deflect criticism, reduce the demand for external regulation and undermine the position of trade unions' (United Nations Research Institute for Social Development 2001: 1). The emphasis on the voluntary nature of the Guidelines would then be the main point of criticism for the corporate accountability movement. This voluntary nature also lies at the heart of the European Commission's definition of corporate social responsibility as 'a concept whereby companies decide voluntarily to contribute to a better society and a cleaner environment' (Commission of the European Communities 2001: 5). From such a perspective, whether or not a company contributes to a better society or a cleaner environment is left to the company itself. As a result, responsibility becomes something more akin to charity or philanthropy.

On the other hand, corporate disclosure of non-financial aspects of business performance is a key demand of the corporate accountability movement and the GRI has made a significant contribution to putting this

demand into practice. On the whole, the GRI therefore seems to link up to both the softer responsibility discourse and the more rigid accountability discourse. To keep business on board, the GRI has certainly been aware of not moving too close to the latter. Nonetheless, the constant revisions of the Guidelines and the ongoing debate about the verification of GRI reports illustrate that issues that are central to the corporate accountability perspective are also discussed within the GRI.

Are economic discourses dominating over critical ecological discourses? This second potential imbalance refers to the GRI's conceptualisation of sustainability. It has been expressed most clearly by Chris Hibbitt. In particular, Hibbitt (1999: 4) criticises that,

by developing both a conceptual framework and a set of guidelines for the form and content of sustainability reporting, the Steering Committee is, by implication, constructing a lens through which society will view the sustainability of business and other organisations (...). If, for the uninitiated, the Guidelines represent the first more-than-a-glance consideration of sustainability, there is, it seems, a real possibility that the Guidelines will engender a rather simplistic, down-played and, therefore, potentially misleading perception and understanding of what is an extremely complex issue.

Hibbitt thus criticises the GRI for pretending that societies may become sustainable without radical change. In its optimistic emphasis on incremental change and reform, the GRI, he argues, excludes more sceptical views. As a result, the GRI fails to render business sustainable:

Rather than attempting to change the nature of the business organisation's reality as presently constructed under traditional business accounting and management tools, the GRI Guidelines effectively force the concept of sustainability to fit in with existing organisational 'realities' and thus serve to preserve the status quo (ibid.: 16).

In sum, Hibbitt sees 'a very real danger that the concept of sustainability will be captured and defined by the business community in standard business parlance' (ibid.: 7). Such 'standard business parlance' is, for instance, implicit in the GRI's alignment with existing models of financial reporting or in the interpretation of relevance as a fundamental reporting principle (ibid.: 14–15).

Similar concerns have also been voiced elsewhere. For instance, David Murphy and Jem Bendell (1999: 39), although at a more general level, observe 'a business-first attitude to environmental and social problems, which often undermines more fundamental approaches to environmental sustainability' and the emergence of 'eco-modernism' as the dominant

industry discourse on the environment. In this eco-modernist discourse, environmental degradation is seen primarily as a technological problem. For instance, pollution is viewed as an economic opportunity for prevention and clean-up technologies rather than an indication of fundamental problems with the current economic system (Murphy and Bendell 1999: 40). Finally, the GRI's focus on 'sustainability' has been criticised for drawing together various conceptual dimensions that were previously treated separately (Berthoin Antal et al. 2002: 12–13). On this reading, arguments that focus on a single dimension of this aggregate concept or that reject the assumption that economic, environmental, and social aspects of corporate conduct are intrinsically linked to each other face difficulties to enter the GRI discourse.

How valid is this criticism on the whole? Is 'business parlance' dominating over critical discourses in the GRI? The emergence of the GRI out of a business-NGO partnership, the leadership role of business in the further development of the GRI and the partial absence of some of the more critical NGOs have certainly contributed to establishing a type of discourse within the GRI that is closer to business accounts of corporate social responsibility than to more fundamental criticisms of the capitalist economy. The answer therefore is that, to some extent, business accounts seem to dominate. Nonetheless, this development appears to be both, the result of the discursive power of business and an omission on behalf of proponents of alternative discourses.

Enforcing Western values? As a final aspect of the discursive balance of the GRI process, one Asian company argued in its answer to the SFP questionnaire that Asian companies will be more secretive and that more time should be allowed for GRI users 'to develop key performance indicators that can be shared openly'. In conclusion, it called upon the GRI to 'avoid "enforcing western values"' (cited in Downing 2003: 33). It is difficult to judge the empirical reality of such a criticism. In the narrow sense, the criticism was related to values such as openness, publicity and transparency – that is, to values that are central to the GRI as a whole. Notwithstanding the centrality of these values to the GRI, it seems fair to assume that a potential early bias towards these 'Western' values has been countered by increasing participation of Asian companies in the GRI and that a common understanding of the fundamentals of non-financial reporting has by now been achieved. If Western values are understood more broadly as referring to the values that prevail among consumers and managers in industrialised societies, then the more general observation that many codes of conduct focus 'on working conditions in core enterprises and development concerns that have a high profile in the richer industrialized countries, such as sweatshops, deforestation and pollution' (United Nations Research Institute for Social Development 2001: 1) partly applies to the GRI as well. Overall, the general criticism that Western values dominate the GRI discourse is,

however, too vague to be judged adequately. Unless it is specified, such a criticism is therefore largely meaningless.

The Discursive quality of the Global Reporting Initiative: Summary

Overall, the GRI's performance in terms of the discursive quality of its decision-making process is relatively positive (see also Table 5.6). The GRI managed to mobilise a large spectrum of affected interests and to thereby integrate a variety of perspectives and arguments in its decision-making process. This broad argumentative basis was paired with a high quality of deliberations within central decision-making organs. In addition, further elements of the GRI process such as the GRI symposia or the more recent regional roundtables, provided platforms for an exchange of arguments among a broader range of stakeholders. Finally, in terms of its discursive balance, the GRI process generally remains open to different perspectives on sustainability reporting. Although it may favour 'standard business

Table 5.6 The Discursive Quality of the Global Reporting Initiative

Criteria	Strengths	Weaknesses
Deliberativeness (DL5)	<p>Inclusion of a variety of perspectives and arguments.</p> <p>The structure of the GRI process, with the Steering Committee/Board of Directors at the centre and the working groups as relatively open complementary bodies, is conducive to deliberation.</p> <p>In practice, a joint commitment to the greater cause of the GRI among Board members further supports a deliberative mode of interaction.</p> <p>Various elements of the GRI process (e.g. working groups, conferences), provide sites for deliberation.</p>	<p>Time limits imposed constituted an obstacle to in-depth deliberations in the MWG, the RWG and among the Board of Directors.</p>
Discursiveness (DL6)	<p>The GRI process has generally been open to different perspectives on sustainability reporting.</p>	<p><i>But:</i> In practice, Northern conceptions of sustainability and sustainable business practice appear to dominate.</p>

parlance' on corporate social responsibility, it does not explicitly or implicitly exclude specific sets of arguments.

On a more critical note, time limits imposed by the desire to release the 2002 Guidelines at the Johannesburg summit impeded in-depth deliberations on some core issues in the Measurement Working Group, the Revisions Working Group and at the level of the Board of Directors. Moreover, while remaining open to different perspectives, the framing of the GRI and the definition of key concepts within the GRI framework have practically remained dominated by Northern standard conceptions of sustainability and sustainable business practice.

The democratic legitimacy of the Global Reporting Initiative: Conclusions

The self-perception of the GRI is that, within the GRI process, 'an unlikely assemblage of businesses, environmental and human rights groups, labour, accountants, investors, governments, and the UN have been quietly working together to build one of the core agreements of 21st century commerce' (GRI 2001e). In fact, sustainability reporting has become a mainstream discourse, and the GRI itself has acted as the primary forum for this discourse and, as a result, for the definition of sustainable business practice.

To evaluate the GRI's performance in terms of democratic legitimacy, this chapter has identified the specific normative requirements of the GRI process. The formally self-mandated nature of the GRI and its potential adverse effects on specific stakeholder groups were identified as factors that demand meaningful stakeholder participation. In addition, the precision of the GRI's normative framework and the broad thematic scope of the Guidelines also call for responsive decision-making. On the other hand, actual effects of the Guidelines are rather indirect and, even if the Guidelines have attained some degree of social obligation, organisations are legally free to refrain from reporting. Moreover, where they do report, reporters have significant freedom to decide how to use the Guidelines. Finally, it is rarely disputed that transnational standards on non-financial reporting are desirable to account for the transboundary nature of contemporary business practice. In sum, the need for democratic legitimation of the Global Reporting Initiative is therefore moderate.

Nevertheless, the GRI makes efforts to meaningfully include its stakeholders in the making of its products (see for instance Dickinson 2006). Overall, the decision-making process included a number of entry points for stakeholder engagement and the GRI leadership demonstrates a strong commitment to make the GRI process accessible to interested stakeholders. The generally positive performance of the GRI in terms of its inclusiveness, however, goes along with three more critical aspects – a contested definition of stakeholder groups that excluded governments, a relative dominance of

business representatives and accountants, and a low level of participation from the South.

In terms of democratic control, the GRI process is relatively transparent and accountable. The GRI posts most official documents on its website, actively informs stakeholders through its monthly newsletter, and makes efforts to clarify how stakeholders input is being used. In addition, the articles of association assign clear responsibilities to all GRI organs and provide for a number of checks and balances between them. Moreover, the non-binding nature of the GRI Guidelines means that implementation will to some extent depend on the perceived legitimacy of the GRI process, hence rendering decision-making accountable *post factum*. Yet, the generally high level of accountability of the GRI process is constrained by a lower level of transparency in the organisation's early days and by relatively weak accountability relations between members of governance bodies and their constituencies.

Finally, the GRI process is fairly conducive to a deliberative mode of communication, although time limits in the development of the 2002 Guidelines meant that the organisation has been unable to fully exploit its deliberative potential. Moreover, while the GRI process remains open to different perspectives on sustainability reporting, its framing is practically dominated by a Northern conception of sustainable development that focuses on the inseparability of economic, environmental and social aspects of business performance and on gradual improvement rather than radical change.

Relating these findings to the specific model of transnational rule-making which the GRI represents, the following conclusions can be drawn for policy processes organised according to the foundation model:

- Driven by a small board of directors, the foundation model does not *per se* require a high level of participation. Nonetheless, the example of the GRI illustrates that, where decision-making processes are designed carefully, they can be inclusive of a broad range of voices and interests. As a general observation, inclusiveness will usually depend on the instrumental need for participation of specific actors as perceived by the initiators of the rule-making process. Moreover, participants will mainly advise the board of directors rather than exert direct influence on decision-making. As a result, the quality of participation tends to be lower than in the association model presented in the next chapter.
- Due to their permanence, foundations have a stronger actor quality than commissions.⁶¹ Since they establish working relationships with other actors, devise strategies and policies, and adapt them to changing circumstances, they become more capable of shaping their own environments. To do so, they establish a bureaucracy that manages the day-to-day business of the organisation. As a consequence, the

foundation model is confronted with all the strengths and weaknesses of bureaucracies – including the challenge of holding bureaucrats accountable. In the case of the GRI this challenge is further enhanced by the rather diffuse constituencies to which both the GRI Secretariat (as the bureaucracy) and the GRI Board of Directors (as the supreme authority of the organisation) are meant to be accountable.

- Driven by a small-sized board of directors that has a relatively stable membership and operates on a consensus basis, transnational rule-making processes organised in accordance with the foundation model have a high potential for deliberative decision-making. Moreover, the organisations' permanence allows revising and adapting decisions in the light of new evidence or of a new consensus, thereby further enhancing the deliberative potential of this particular form of transnational rule-making. To realise this potential, the major challenge will be to meaningfully include individuals who represent the most relevant perspectives on a given issue in the deliberations.

6

The Forest Stewardship Council

First initiated in 1993 and formally a non-governmental organisation itself, the Forest Stewardship Council (FSC) brings together environmental and social NGOs, forest owners and private corporations 'to promote environmentally responsible, socially beneficial and economically viable management of the world's forests' (FSC 2002d: Article 1). To accomplish these goals, the FSC has established globally applicable *Principles and Criteria* for responsible forest management and a certification scheme associated with that standard. In the area of forest politics, the FSC has thereby paved the way for certification to become a widely recognised policy instrument. As of October 2006, 79.2 million hectares of forests have been certified according to FSC standards, and over 850 certificates have been issued in 74 countries (FSC 2006). Moreover, the FSC model of forest certification has been adopted by several competing schemes.

In the light of its success – some observers termed the FSC 'the most significant endeavour ever undertaken as a partnership between non-governmental organizations and private industry' (Domask 2003: 158) – studies have been undertaken to understand the emergence, functions and impacts of the FSC (Pattberg 2007) and to explain actors' preferences and strategies when choosing between the FSC and competing schemes (Cashore 2002; Cashore et al. 2004). Where studies examine the decision-making process of the FSC itself, the organisation's democratic quality is discussed controversially. Proponents see the FSC as 'perhaps the best current model of a civil regulation organization' that sets global standards 'based on a democratic decision-making process' (Murphy and Bendell 1999: 58). At the same time, critics contend that the FSC 'functions poorly as a democratic membership-based organisation' and that 'its claim to be based firmly upon multiple stakeholder principles is at least partially unjustified' (Counsell and Loraas 2002: 7).

To evaluate the merits of these positions, this chapter provides an in-depth analysis of decision-making within the FSC. As in previous chapters, I first situate the FSC in the context of global forestry politics. In

subsequent sections, I discuss the specific requirements for democratic legitimacy for the FSC and examine the organisation's performance in relation to inclusiveness, democratic control and discursive quality. In a final section, I summarise the main findings of this chapter and draw conclusions about transnational rule-making organised in the form of membership associations.

Global rules for sustainable forest management: The context

The FSC provides a global framework for certifying that forests are being managed in a responsible way. Originally established as a more constructive alternative to boycotts of tropical timber in the 1980s, the organisation is situated at the centre of a heated international debate about the management of the world's forests. To allow for a better understanding of the FSC process, I therefore begin my analysis by sketching the political context in which the idea of forest certification emerged.

Forest certification in the context of the international debate

Approximately 20 per cent of the world's tropical forests have been destroyed or converted since the 1960s. Considering the unique importance of forests as reservoirs of 50 to 80 per cent of the world's terrestrial biological diversity and as a major carbon dioxide sink, the continuing rate of deforestation in the tropics generates concerns among consumers and policy-makers (Domask 2003: 158). In particular in industrialised societies in the North, tropical deforestation is a high priority environmental issue since the 1980s.

As a result of growing public concerns, international negotiations over the world's forests were initiated in the 1980s. Yet, they advanced very slowly. Instead, they revealed that Northern and Southern societies had very different perspectives on the issue. In simple terms, the North saw deforestation as a global environmental problem that needed to be addressed. Moreover, a global forest convention was regarded as a necessary complement to an international climate convention. In contrast, many Southern governments saw forests as an integral part of their countries' natural resources. Southern governments were thus rather reluctant to sign an agreement that would weaken their sovereignty over these resources (Bass 2002: 3). As a result of these differences, governments were unable to agree on an international forest convention. The 1992 Earth Summit resulted in a weak and legally non-binding set of forest principles and subsequent efforts, including the International Panel on Forests (1995 to 1997), the International Forum on Forests (1997 to 2000) and the United Nations Forum on Forests (ongoing since 2000), have led to numerous proposals for action. Yet, they all proved unable to resolve the more fundamental differences (Humphreys 2001).

Some progress was nonetheless made in a variety of issue- or region-specific international forest policy processes. Thus, three regional processes – the Helsinki Process, the Montreal Process and the Amazonian Process – were initiated in the aftermath of the Rio summit to reach a common understanding and definition of sustainable forest management (Humphreys 1996: 237–41). Moreover, the International Tropical Timber Organisation (ITTO) aimed, since its inception in 1986, at resolving some of the conflicts associated with tropical deforestation. However, many activists saw the International Tropical Timber Agreement (ITTA) and the ITTO's policies as reflecting a minimal consensus rather than a significant contribution to addressing deforestation.

As a result, it has been argued that 'the failure of the ITTO to act decisively on the enforcement and verification of forestry standards fueled the formation of a private certification system' (Bartley 2003: 452). This formation took shape in the late 1980s when a coalition of non-state actors lobbied for the inclusion of forest certification in the framework of the ITTO. In 1989, a proposal for the labelling of sustainably produced timber had initially been elaborated by Friends of the Earth and forwarded to the ITTO by the British government. The British proposal, however, was blocked by producer countries such as Cameroon, Indonesia, and Malaysia who considered it as 'a veiled attempt (...) to encourage the current campaign of boycott' against international trade of tropical timber (Humphreys 2004: 55, citing an official ITTO document; see also Gale 2002, Humphreys 1996).

The rejection of their proposal motivated private actors to create their own transnational forum in which they could pursue their ideas independently of the international framework. The creation of private transnational forums occurred at a time when private sector participation in the forestry sector – including private ownership, private utilisation and private management – was generally increasing (Landell-Mills and Ford 1999). At a general level, Cashore et al. (2004: 9–11) have therefore explained the emergence of non-state forestry politics by reference to four trends: an increasing interest in market-oriented policy instruments and voluntary approaches; increasing demands from civil society to address environmental problems; a reduced availability of public resources for doing so; and lasting but unsuccessful international efforts to agree on a global forest convention.¹

In addition to these broader contexts, the increasing use of environmental claims by business was a second trigger for the emergence of non-state certification schemes. Similar to the GRI, a central goal behind the FSC has thus been to end the confusion that resulted from the co-existence of numerous labelling schemes whose credibility consumers were increasingly unable to judge. In the words of the FSC (2002e: Section 1.3.4.3), the 'proliferation of disingenuous and dishonest labelling initiatives damaged the credibility of all initiatives'.

In sum, the FSC therefore emerged in response to two developments: the failure of governments to address the problem of tropical deforestation and the proliferation of environmental claims attached to a variety of forest products (Domask 2003: 246; Gale 2002: 167; Humphreys 1996; Schmidt 1998). The competitive advantage of a civil society scheme lay in the credibility environmental groups had with many consumers in the North. Moreover, it was expected that such credibility could be further enhanced by applying a rigid certification system and by basing decision-making processes on norms of inclusiveness and transparency.

Towards the Forest Stewardship Council

The Forest Stewardship Council was formally established in Toronto in October 1993. Yet, the first meetings of the group that in 1993 became the FSC took place as early as 1990. At a conference organised by the Woodworkers Alliance for Rainforest Protection in San Francisco in November 1990, about thirty representatives from the timber industry and from various civil society organisations came together to discuss the potentials of a certification scheme (Meridian Institute 2001: 2). In 1991, the WWF explicitly framed the emerging FSC as a civil society alternative to cumbersome intergovernmental programmes and suggested to 'leave the ITTO behind' (Bartley 2003: 452).

A second conference held in Washington in 1992 resulted in more concrete plans for the establishment of a new organisation. The approximately fifty participants – calling themselves the 'FSC Founding Group' – agreed that the draft forest stewardship standards presented at the meeting formed 'a useful basis for the development, through a broad process of consultation, of a set of principles and guidelines for the management of forests'. In relation to the consultative process, participants noted a particular need for a more adequate representation of Southern interests and asked that further consultations to edit and refine the principles should include a strong role for indigenous people and for local forest communities. Moreover, participants elected an interim board whose task was to oversee further consultations and to prepare the founding assembly of the FSC (FSC 1992).

Over the following months, provisional consultations were held in a so-called Principles and Criteria Working Group. First results that came out of this group were presented at the Earth Summit in 1992. After several rounds of national, regional and global consultations, the interim board called for the founding assembly in Toronto in October 1993, at which the FSC was officially launched (Heap 2000: 87; Meridian Institute 2001; Schmidt 1998). About 130 representatives from over two dozen countries attended the assembly. Among the participants were representatives from organisations such as WWF, Greenpeace and Friends of the Earth, but also from labour unions, indigenous groups, retailers and the consultancy sector (Pattberg 2004a: 58). Participants unanimously agreed to establish the FSC

as a membership association, elected a board of directors and ratified the three-chamber structure of the FSC (Meridian Institute 2001: 3). In addition, the *Principles and Criteria for Natural Forest Management* were approved as a draft version. In 1994, final versions of the *Principle and Criteria* and of the FSC statutes were eventually approved by the members of the FSC.

The driving forces behind the establishment of the FSC were a coalition of the WWF and other environmental groups, but also a number of retailers who partnered with the WWF.² Environmental groups had long accused forest producers and large retailers such as Home Depot or B&Q for their complicity in destructive forestry practices. At the same time, members of environmental groups increasingly recognised that their initial strategy of boycotting tropical timber was potentially counterproductive as it contributed to the conversion of forestlands into agricultural land. In this context, the possibility to reward sustainable forest practices by setting up a credible labelling scheme seemed attractive to many groups. Among these groups, the WWF was particularly active in the early years of the FSC. It sent high-level representatives to all core meetings of the organisation and provided funding in the initial phase.³

Table 6.1 Milestones in the Development of the Principles and Criteria for Forest Stewardship

November 1990	San Francisco, USA	First meeting of the FSC Founding Group.
March 1992	Washington, USA	Second meeting of the FSC Founding Group; election of an interim board of directors; informal acceptance of draft principles and establishment of a Principles and Criteria Working Group.
October 1993	Toronto, Canada	Founding assembly of the FSC; election of the 1 st Board of Directors; acceptance of the <i>Principles and Criteria</i> as a draft version (final version ratified in by postal ballot in 1994).
1996		Addition of Principle 10 on forest plantations.
1998–1999		Revision of Principle 9 on the maintenance of high conservation value forests.
2005–2006		Revision of Principle 10 on forest plantations.

In turn, retailers were interested in a functioning and widely accepted certification scheme. Their interest was based on a growing recognition among companies that

tropical timber and forest products in general were gaining a bad reputation, and this was seriously beginning to threaten their profitability and even their survival [as substitute] materials (everything from plastics to aluminium to cement) were becoming more appealing to manufacturers and to end-of-the-line producers and retailers. (Domask 2003: 168)

In the wake of growing pressure on retailers and as a result of timber importers' realisation that they often could not demonstrate where their imported goods came from, a number of companies saw forest certification as a means to regain some of their reputation and to eventually preserve their market (Bass 2002: 3).

After its establishment in 1993, the FSC rapidly evolved. The organisation continuously increased its membership base, the amount of certificates issued and the size of forestlands certified according to its standards. The following subsection describes how the main elements of the FSC have evolved and how the FSC is currently organised.

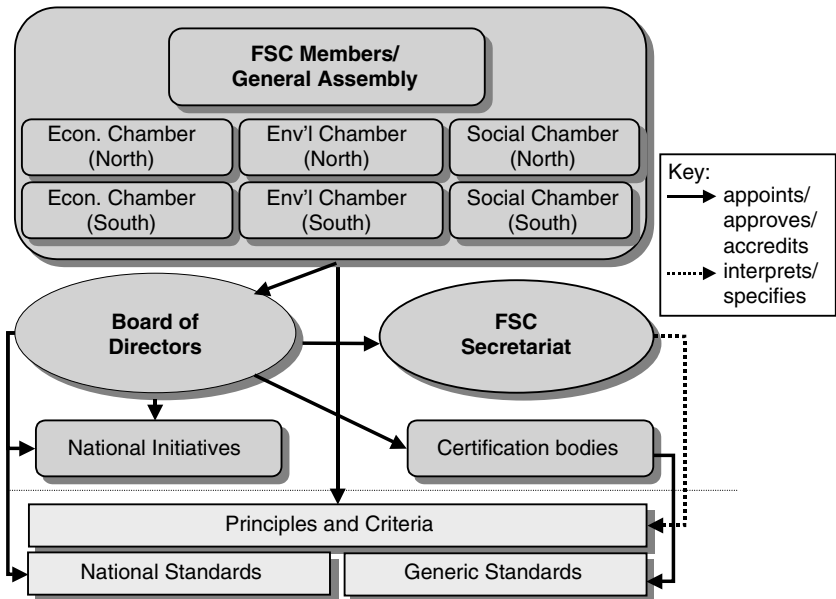


Figure 6.1 The Forest Stewardship Council: Organisational Design

The main elements of the Forest Stewardship Council: An overview

In the context of this study, the FSC represents a third distinct model of a transnational rule-making organisation. Neither a temporary commission nor a private foundation, the FSC is best classified as a membership association. Although the institutional set-up with a board of directors, an international secretariat and a stakeholder assembly resembles that of the WCD and the GRI, the organisation of the FSC as an association has implications for its decision-making structure. Most importantly, the General Assembly (GA) of all FSC members is, at least on paper, 'the supreme authority of the Association' (FSC 2002h). The GA convenes every three years to prioritise issues and decide about the general strategy of the FSC; it also retains the exclusive power to approve or reject proposed amendments to the *Principles and Criteria* and to the statutes of the organisation.

Both individuals and organisations may become members of the FSC. Each of the 617 members (as of May 2005) is assigned to one of the organisation's three chambers – the economic, environmental or social chamber. The GA takes decisions by the affirmative vote of at least two thirds of the total voting power, with voting power divided equally among chambers and between Northern and Southern members. In effect, the division of voting power thus creates Northern and Southern sub-chambers of each of the three chambers (FSC 2002d: Articles 12–15).

The day-to-day business of the FSC is entrusted to a board of directors and to an international secretariat. The Board of Directors is elected by the members of the FSC. Each chamber is represented by three board members and Northern or Southern members may account for no more than five board members at any given time. Directors are elected for three years and may serve for a maximum of two consecutive terms. Meeting three to four times per year, the Board is mainly responsible for overseeing all organisational activities of the FSC, providing strategic guidance to the secretariat, and approving the accreditation of certification bodies and of national certification standards. The Board cannot amend the *Principles and Criteria* that serve as the basis for certification of FMUs. Nonetheless, together with the secretariat, it plays an important role in the interpretation of the *Principles and Criteria*. Summarising the role of the Board of Directors, one observer stated that

The board is responsible for managing the organization, dispersing its budget, provisionally admitting members, and a host of other activities that, while nominally ministerial, have played a significant role in shaping the policies of the organization. (Meidinger 2003b: 12)

As the third key governing body, the FSC Secretariat is located in Bonn, Germany.⁴ Staffed with twenty-five employees, it administers the day-

to-day activities of the FSC, oversees the finances of the organisation, co-ordinates the activities of the regional offices and ensures consistency of FSC policies and practices worldwide. Moreover, the secretariat is also influential as an interpreter of the *Principles and Criteria* (see for instance FSC 2002g, 2003e, f) and as the author of specific standards submitted to the FSC Board of Directors for approval (see for instance FSC 2004d, 2004h).⁵ In particular the Policy and Standards Unit (PSU) of the FSC Secretariat is very active in this regard. The central role of the PSU is exemplified in its explication of the FSC policy on chemical pesticides (FSC 2002b).

As already mentioned, the *Principles and Criteria for Forest Management* constitute the core of the FSC's normative framework. They consist of ten principles on economic, environmental and social requirements that individual forest management units (FMUs) need to comply with if they wish to be certified. For instance, Principle 9 demands that

Management activities in high conservation value forests shall maintain or enhance the attributes which define such forests. Decisions regarding high conservation value forests shall always be considered in the context of a precautionary approach.⁶

In addition to the maintenance of high conservation value forests, the ten principles cover aspects such as compliance with national and international law, tenure and use rights and the rights of indigenous people. The principles themselves are specified in the form of 57 criteria. For instance, the relatively broad wording of Principle 3 on indigenous peoples' rights is specified through four criteria which, among others, spell out that indigenous peoples 'shall control forest management on their lands and territories unless they delegate control with free and informed consent to other agencies' (FSC 2004b: 3.2).

However, the criteria are still too general to serve as a basis for certifying individual FMUs. To allow for some degree of flexibility at regional and national levels, the FSC has delegated the authority to devise the standards according to which FMUs are assessed to national FSC initiatives. As of May 2005, national initiatives existed in 36 countries and, as of August 2004, 22 national and regional standards in ten countries have been approved by the FSC (2004c, 2005c). In addition, the FSC has established four regional offices in Africa, Asia Pacific, Europe, and Latin America to complement its decentralised structure. The regional offices act as service centres for national initiatives, provide training and coaching programs, and assist with fundraising (FSC 2003b).

Where national standards are not yet available, FMUs are certified according to indicators established by FSC-accredited certification bodies and approved by the FSC Board. As of April 2005, 15 certification bodies have been accredited by the FSC (FSC 2005a). By devising so-called generic

standards for FSC certification, providing first-hand experience to FSC members, directors and secretariat staff, and by exercising final authority over the issuance of FSC certificates, certification bodies wield significant influence within the FSC system.

Overall, the FSC is widely recognised as a further success case of transnational rule-making – or, as others have termed it, of non-state market-driven governance (Cashore 2002; Cashore et al. 2004). With a diverse membership of over 600 organisations and individuals, a fast growth in terms of membership, certificates, and certified area, with an inclusive policy process that attempts to balance Northern and Southern interests as well as the interests of various sectors of society, and with competing schemes built on its model, the FSC has inspired global forest politics over the last decade.

The Forest Stewardship Council as an instance of transnational rule-making

The FSC fits the definition of a transnational rule-making process as introduced in Chapter 1 very well. Thus, its *Principles and Criteria* have been consciously devised as standards for appropriate behaviour and they constitute relatively specific commands for behaviour. In addition, their normative authority as the leading standard in the issue area of global forestry and their rigid monitoring through accredited certification bodies warrant the expectation of a significant compliance level.

In line with this reading, the literature generally accedes to the view that the FSC engages in rule-making beyond the state. For instance, Stephen Bass (2002: 7) comments that

It is notable how FSC has been able to: develop norms of behaviour; develop procedures for compliance; tackle the issue of multifactor coherence; and ensure a case-based approach to judgement and appeal. In other words – to develop ‘law’.

In a similar vein, other authors have interpreted forest certification systems as ‘quasi-legislative processes that are aimed toward developing specific standards for private and public behavior’ (Shannon 2003: 180) and termed the FSC an instance of ‘global private regulation’ (Murphy and Bendell 1999: 58), of ‘law-making by global civil society’ (Meidinger 2003a) or as ‘the most advanced case of nonstate-driven rule making dynamics globally in the environmental field’ (Gulbrandsen 2004: 77).⁷

Moreover, communications of the FSC also confirm the rule-making character of the organisation. Hence, the FSC itself defines a principle as ‘an *essential rule* or element (...) of forest management’ (FSC 2004b: 9, emphasis added) while the accompanying criteria are conceived as ‘means of judging whether or not a Principle (...) has been fulfilled’. Overall, the classification of the FSC as a transnational rule-making process is therefore largely uncontroversial.

The normative context

As in the previous chapters, the interpretation of the FSC as a global rule-making process gives rise to normative demands for inclusiveness, democratic control and deliberation. To evaluate the specific requirements the FSC is facing, I examine the authorisation of the FSC process, the level of affectedness induced by its outcomes, the quality of the FSC's rules and the FSC's relation to the idea of subsidiarity.

Authorisation

The conventional narrative conceives of the FSC as a societal response to the failures of international policy processes. As a result, the organisation's ties to the latter are weak, if not entirely absent. In particular, the FSC has neither been authorised by an intergovernmental process or agency nor has it actively sought to link its policies to public policies. The detachment from governmental and intergovernmental processes is most apparent in the explicit exclusion of governmental or intergovernmental actors from the organisation's governing system. As a result, governments have played a role mainly through supporting the FSC rhetorically (for instance Germany's Federal Ministry for the Environment), considering the *Principles and Criteria* in domestic forest laws (for instance the governments of Bolivia, Guatemala and South Africa), or through donating to the FSC (for instance the Austrian, German, and Mexican governments). Moreover, the *Principles and Criteria* themselves are only weakly linked to international legal documents.⁸ Instead, it has been argued that the FSC drafted its *Principles and Criteria*

fairly autonomously, ignoring several other important treaties on forest management such as the Amazon Co-operation Treaty and the International Tropical Timber Organization guidelines for the Sustainable Management of Natural Tropical Forests. (Heap 2000: 91–2; see also Gulbrandsen 2004: 84)

Altogether, the FSC has thus deliberately and explicitly established itself as a non-governmental process independent of formal governmental and intergovernmental processes. As such, the FSC does not draw on any particular form of public authorisation of its policies, and FSC members have correctly been labelled as 'self-appointed standard setters' (Smouts 2002).

Affectedness and impacts

The FSC has a variety of impacts on international and national forest politics as well as on the behaviour of a diverse range of societal actors.⁹ Impacts include the direct effects of FSC certification, the emergence of alternative certification schemes in response to the FSC, impacts on

national policy processes and on the policies of international organisations and, finally, shifts in public debate about forest management.

FSC certification. Of the forest areas certified according to FSC-standards by May 2005, approximately 80 per cent were situated in North America and Europe. In contrast, African and Asian certified areas account for 3.5 and 1.5 per cent of the total certified area respectively (FSC 2005b). In the light of these figures, some authors therefore suggested that the FSC has primarily allowed well-managed forests in the North to become certified while having little impact on forest management in the South (Bass et al. 2001: 5).

As a result, the purchasing policies of large retailers that have committed to buy and sell wood from certified sources constitute one of the most direct effects of the FSC scheme. This commitment, as one observer noted,

has begun to turn the forest products market on its head: There is currently not nearly enough wood certified under the FSC system in the market-place to supply Home Depot, let alone Lowe's, 84 Lumber, Turner Construction, and others who recently joined the wave of FSC-related commitments. (Domask 2003: 181)

In the context of such market shifts, developing country stakeholders have voiced concerns that the normative framework established by the FSC is primarily based on ideas of Northern activists and that its main effect would be to hamper development perspectives in the South.¹⁰ Hence, FSC-certification is mainly attractive to Northern forest owners for whom certification costs are relatively low as a result of high domestic legal standards. In turn, where domestic forest laws are less demanding and/or less strictly enforced, certification costs are often prohibitive, in particular since the promise of a 'green premium' has not yet materialised (Ebeling 2005).¹¹ Consequently, FSC certification is seen by some as an obstacle to market access for tropical wood. In the words of one critic,

the main result has been to boost the comparative advantages of temperate forests on the timber marketplace. (...) Over 90 per cent of the FSC certified forests are temperate and boreal forests. Conclusion: if you feel you must have FSC certified timber, buy Scandinavian, Eastern European and North American wood, not tropical wood. If that is not a boycott, it bears a close resemblance (Smouts 2002).¹²

The emergence of alternative schemes. In response to the emergence of the FSC, industry organisations have created their own schemes (see Cashore et al. 2004; Domask 2003). In North America and Europe, the Sustainable Forestry Initiative and the Pan-European Forest Certification Council have been established as alternatives to FSC certification. Initiated by the timber industry, they have slowly evolved into multi-stakeholder processes that also include

non-industrial actors. In the South, the Lembaga Indonesia Ecolabel (Indonesia) and the National Timber Certification Council (Malaysia) have been established independently of the FSC. Overall, it is fair to say that at least the two Northern schemes would not have emerged without the FSC. In addition, once they had been established, they were immediately criticised by civil society actors for being less demanding than FSC standards. As a result of public pressures, the schemes have constantly adapted their standards and moved closer to the high standards set by the FSC. On the whole, it is therefore not only FSC certification but rather forest certification in general that, inspired by the FSC, has made a difference in global forest politics, not least by stimulating a broad dialogue about what constitutes sustainable forest management and by forcing forest owners to justify their management practices to the public.

Impacts on national forest politics. While public authorities are formally excluded from the FSC, some governments have nonetheless reacted positively to the organisation's outcomes and adopted domestic regulations that support FSC certification. In particular, a small number of Southern governments have established national legislation that is either similar to FSC regulations, requires FSC certification in exchange for long-term forest concessions, or grants exemptions from government inspections to holders of FSC certificates (Domask 2003: 176).¹³ For instance, Bolivia's 1996 forest law allows independent third party certification to replace statutory audits of compliance with national management standards in forest concessions (Bass et al. 2001: 77; Ebeling 2005: 70–5). In a similar vein, buyers of privatised South African state forests must commit to have their forests certified according to FSC standards (Pattberg 2004b: 11; Segura 2004), and in Guatemala, FSC certification is required for forest management concessions in the Mayan biosphere reserve. Finally, the Mexican government offers subsidies for certification evaluations (FSC 2004a: 11). In sum, while it would be wrong to say that governments have widely adopted forest certification as an instrument of domestic forest politics, certification has 'occasionally stimulated the implementation of a particular law or policy, or the award of dispensation from a particular legal requirement' (Bass et al. 2001: iv).¹⁴

Impacts on the policies of international organisations. In addition to these influences on domestic politics, the FSC has also – although to a lesser extent – influenced the policies of intergovernmental organisations. While the ITTO has refrained from including certification in its portfolio of policy instruments, the World Bank's Forest Alliance with the WWF constitutes an example for a policy change related to the FSC. Established in 1998, the Forest Alliance originally committed the two organisations to bring, by 2005, 200 million hectares of the world's production forests under independently certified sustainable management. As the WWF has frequently communicated that, for the time being, it considers the FSC to be the only credible system of forest certification, the Alliance

ties the World Bank's forest policies closer to the FSC framework, thereby indirectly affecting forestry politics in the Bank's client countries (Counsell and Loraas 2002: 13).¹⁵

Discursive impacts. Finally, the FSC has a strong impact on discourses about global forest politics, good forest management practices and global policy-making. Like the other cases studied here, the FSC has – through its *Principles and Criteria* – established a new frame of reference for talking about forest management. In the words of a participant in the early FSC process,

The rapid emergence over the past years of *independent third-party* forest certification programs, and of the Forest Stewardship Council (FSC), has changed the nature of the entire international forest policy debate. (...) In practical terms, it can be said that the FSC is writing the world's definition of sustainable forest management. While it's true that other organizations are writing theirs as well, the FSC is clearly setting the pace at the international level. (...) I am absolutely convinced that few other entities have changed the political debate over the world's forests – for the better – as much as has the FSC. (William E. Mankin, cited in Viana et al. 1996: 185–7)

That the discursive shifts initiated by the FSC have had an impact on the ground is, for instance, illustrated by the observation that 'even firms that denounce the FSC for one reason or another are taking precautionary steps in order to keep from falling too far behind in their operations' (Domask 2003: 178). In addition, announcements of business and governmental representatives to amend procurement policies in favour of 'FSC or equivalent' certificates indicate that the FSC is seen as the most appropriate benchmark. That governmental actors identify the FSC as a benchmark is particularly remarkable given both the exclusion of governments from the FSC process and the continuing efforts of regional intergovernmental processes to identify criteria and indicators for sustainable forest management.¹⁶

Quality of the rules

The *Principles and Criteria* are the primary normative document issued by the FSC. They comprise a hierarchy of three elements: principles, criteria and standards. A principle is defined as 'an essential rule or element (...) of forest stewardship.' In contrast, a criterion constitutes 'a means of judging whether or not a Principle (...) has been fulfilled' (FSC 2004b: 9, 11). Finally, a forest stewardship standard is defined as 'the normative document which specifies the requirements with which a forest management enterprise must conform in order to obtain certification' (FSC 2002e: part 3.2, paragraph 2.1.2). To ensure consistency, standards need to conform to the *Principles and Criteria*. To this end, any standard, whether developed by a national FSC initiative or by FSC-accredited certification bodies, must be approved by the formal governing bodies of the FSC.

As to the *degree of obligation*, FSC certification is legally voluntary. In contrast to compliance with public policies, actors may suspend their participation in a private certification scheme at any given time (Gulbrandsen 2004: 78). Nonetheless, a certain degree of social and economic pressure exists. For instance, certification is a requirement to access particular markets and the procurement policies of some of the large retailers and buyers groups exert pressure on producers. In addition, environmental NGOs and Northern consumer organisations are invoking a moral obligation to manage the world's forests in a more sustainable manner. Moreover, once owners or managers of a FMU wish to have their operations certified, the level of obligation becomes significant. The consequences of non-compliance differ in relation to the type of rule that is violated. Non-compliance with a principle will disallow the issuance of a certification. In contrast, failure to meet a criterion most often leads to the inclusion of a 'condition' or 'precondition' in the certification contract. The certified organisation will then have to meet this condition in a specified time frame to either maintain the validity of its certificate or to gain certification (Meridian Institute 2001: 22–3).

A similar distinction needs to be made with regard to the *level of precision*. Thus, the ten principles are fairly general. In the words of Errol Meidinger (1999: 135) they express 'gospel-like verities that have emerged from a variety of processes in the worldwide discussion on sustainable development'. For instance, they require that 'the legal and customary rights of indigenous peoples to own, use and manage their lands, territories, and resources shall be recognized and respected' (Principle 3) or that forest management shall 'maintain the ecological functions and the integrity of the forest' (Principle 6). Criteria, in turn, are more specific. With regard to the above-mentioned principles, they for instance demand that 'sites of special cultural, ecological, economic or religious significance to indigenous peoples shall be clearly identified in cooperation with such peoples, and recognized and protected by forest managers' (Criterion 3.1) or that the 'use of genetically modified organisms shall be prohibited' (Criterion 6.8). Finally, standards are highly specific. They contain measurable indicators and verifiers that enable certification bodies to evaluate individual forest units. For instance, the US standards contain 20 sub-criteria, 138 national indicators, 17 applicability notes, and 25 so-called verifiers (Meridian Institute 2001: 26). As a further illustration of their specificity, the German national standard demands that

Trees with woodpecker holes or other natural cavities are exempt from forestry use and left to age and decay naturally, insofar as the trees in question are not of exceptional economic value, or are in a forest site

(e.g., subsection) where more than 10 trees per hectare would have to be protected. (FSC Working Group Germany 2004: Article 6.3.c3)

As a further aspect, the *scope of the FSC's rules* is broad, both geographically and issue-wise. Hence, the *Principles and Criteria* apply to all tropical, boreal and temporal forests as well as to plantations (FSC 2002d: Article 8) and cover a broad range of aspects of forest management. In addition, while the bulk of the FSC's normative framework is substantive in that it deals with how forests should be managed, it also contains procedural prescriptions, for instance with regard to the ways in which national or regional standards may be developed.¹⁷ The *Principles and Criteria* themselves constitute a living document that FSC members may amend at any time. So far, members have made use of this opportunity on three occasions: Principle 9 has been revised in 1998–9, and Principle 10 has been added in 1996 and undergone revision between 2004 and 2006. The general flexibility, however, is limited due to the relatively strong path dependency of FSC policies. In particular, national standards developed in complex multi-stakeholder processes and legal contracts between the FSC and its certificate holders limit the options for a major overhaul of the *Principles and Criteria*. Not least given the emergence of several competing schemes, such an overhaul would put the continued influence of the FSC at severe risk.

Finally, the FSC is the only process studied here that has *delegated the adjudication* of its norms and rules to third party bodies. Most importantly, the assessment of individual FMUs' compliance with FSC rules is conducted by independent certification bodies accredited by the FSC. In addition, the FSC has established a Dispute Resolution Committee and an Accreditation Appeals Committee to which all members have access (FSC 1998a, 2003a). Finally, relations between the FSC and accredited certification bodies and between the FSC and certificate-holders are based on legal contracts, thereby providing a further option to solve legal disputes in public courts (FERN 2001: 42; Meridian Institute 2001: 37).

Subsidiarity

A final aspect in determining the normative requirements for the FSC process relates to the notion of subsidiarity. This aspect can be disaggregated into two questions: First, how convincing is the claim that global rules for forest certification are necessary? And second, to what extent is the decision-making process of the FSC sensitive to geographically or culturally diverse contexts?

Regarding the first of these questions, the definition of forest management as a global issue is contested. As Virginia Haufler (2003: 243) notes, 'forestry issues have been defined as global ones, although most people experience it as a very local phenomenon.' Obviously, forests have an important function in the global ecological system as a carbon dioxide sink

and as a reservoir for the world's biological diversity. At the same time, timber is an important commodity for numerous countries around the world. Consequently, the status of the world's forests has been the object of lasting discursive struggles in which one side sees forests as a 'heritage of mankind' while the other side insists on 'national sovereignty'. In the context of this struggle for meaning, certification schemes such as the FSC are seen by some as an 'external imposition that challenges sovereignty' (Segura 2004: 5) or as a 'market requirement imposed by external actors' that may constitute a trade barrier rather than a way to achieve sustainable forest management (ibid.: 19).

The argument for global standards for responsible forest management is therefore convincing only if it is based on a limited conception of national sovereignty. The argument that forest management is a global concern because of the potential of forests to store large amounts to CO₂ emissions is, however, weakened by the marginal efforts of industrialised societies to limit their own emission of greenhouse gases. Overall, the need for a globally harmonised approach to forest certification therefore seems to derive its justification mainly from the proliferation of eco-labels that preceded the establishment of the FSC. As the standards on which labels were based differed widely, as providers of labels were often unable to substantiate their environmental claims, and as consumers could hardly evaluate the claims associated with specific labels, the need for more clarity and credibility may be regarded as an alternative justification for a global harmonisation of forest management standards. However, this justification has a similar weakness in that eco-labels are mainly demanded by activists and consumers in the North. As a result, the call for global forest management standards is only partially convincing.

Yet, as to the second question, the FSC is rather sensitive to diverse regional contexts. While the *Principles and Criteria* constitute globally applicable norms and rules, their concrete application in the form of national or regional standards allows for flexibility. In the United States, for instance, several regional working groups were set up to develop different sets of standards for different regions. In line with the general idea of subsidiarity, the working groups 'devised their own voting structures, decided who would participate in standard setting, and had power over the scope and details of rules developed' (Cashore et al. 2004: 99; see also Domask 2003: 170).

The normative context of the Forest Stewardship Council: Summary

In sum, the discussion in this section leads to a mixed record as far as the FSC's requirements for democratic legitimacy are concerned (see also Table 6.2). On the one hand, requirements are high because the FSC process is self-mandated and cannot rely on formal authorisation from governments or intergovernmental agencies. In addition, the socio-economic

Table 6.2 The Normative Context of the Forest Stewardship Council

Criteria	High requirement for democratic legitimacy	Low or medium requirement for democratic legitimacy
Authorisation (C1)	The FSC process is self-mandated.	
Affectedness (C2)	Developing country producers fear new trade barriers.	<i>But:</i> Actual effects are still difficult to determine.
Quality of the rules (C3)	The rules are relatively specific and have a broad substantive and geographical scope; adjudication is delegated to third party bodies.	The <i>Principles and Criteria</i> are not legally binding.
Subsidiarity (C4)	The need for global rules about forest management is only partially convincing.	<i>But:</i> Harmonisation of existing eco-labels may serve as a secondary justification.

and political impacts of the FSC are affecting a wide range of actors. As the discussion in this section has revealed, forest producers in developing countries incur the highest risk to be adversely affected by policy shifts induced by the FSC. As a result, it is particularly important to include these actors in the governing process of the organisation. Finally, the norms and rules established by the FSC are relatively precise, their substantive and geographical scope is fairly broad, and adjudication has partly been delegated to independent third parties.

At the same time, actual effects of the norms and rules established by the FSC are still difficult to determine. In fact, it may thus turn out that the FSC has induced less actual changes than is often assumed – a high demand for democratic legitimation would therefore be based on the (unproven) assumption that many of the FSC's *potential* effects become *actual effects* in the future. Moreover, although the *Principles and Criteria* may command a certain level of economic or social obligation, they are not legally binding, and the FSC itself is unable to enforce compliance. Finally, while a need for global rules is not apparent, the sensitivity to national and regional contexts induced by the possibility of national certification standards positively distinguishes the FSC from the other cases studied here.

Inclusiveness and participation

The FSC has often been described as an inclusive policy process in which 'all major stakeholders in forestry from environmental, social, and economic interests come together' (Schmidt 1998: 24). To determine the accu-

racy of this statement, I analyse the scope and quality of participation in the FSC process the following subsections.

Scope of participation and inclusiveness

The FSC is grounded on norms of inclusiveness, participation and balanced representation of its various constituencies. While inclusiveness demands that the process is open to all individuals that have an interest in global forest politics, the ideas of participation and balanced representation imply that at least a significant and roughly representative share of those affected are actually taking part in the organisation's collective will-formation. Several mechanisms within the FSC process ensure that these ideational foundations are translated into actual practice. In particular, membership in the FSC, participation in the General Assembly and participation in the national FSC initiatives constitute major access points for stakeholder engagement.

Membership in the FSC. Since the FSC is a membership association, the primary entry point for interested stakeholders is to become a member of the Forest Stewardship Council. Membership in the FSC is generally open to individuals and organisations that support the mission and goals of the organisation. As an exception, government-owned legal entities or entities with governmental participation are excluded from membership in the FSC (2002h: 3).¹⁸

All members of the FSC are assigned to one of the organisation's three chambers – the economic, environmental and social chamber. Membership in the economic chamber is open to organisations and individuals that have a financial interest in forest production, including employees, consultants, certification bodies, retailers, wholesales or end-users. As a general prerequisite, members of the economic chamber must show a commitment to the *Principles and Criteria*. For instance, certification bodies must have applied for recognition by the FSC, producers must commit to have their forest property certified, and traders must commit to sell certified products.

Membership of the social and environmental chambers is open to 'not-for-profit non-governmental organizations and assigned individuals with a demonstrated commitment to environmentally appropriate, socially beneficial and economically viable forest management' and to organisations 'active in promoting environmentally appropriate, socially beneficial and economically viable forest management' (FSC 2002d: Articles 28–31, see generally Articles 28–39). As these quotes indicate, the boundaries between the social and environmental chamber are rather imprecise. In practice, indigenous organisations, labour organisations and NGOs focused on social issues are grouped in the social chamber, whereas the environmental chamber is composed of organisations whose substantive focus is on the preservation of the ecosystem functions of forests.

As of May 2005, the FSC had 617 members, of which approximately 60 per cent were organisational members and 40 per cent were individual members. Membership differs according to geographical regions and stakeholder groups. Geographically, European (34 per cent), North American (26 per cent) and Latin American (25 per cent) members dominate; together they account for approximately 85 per cent of all FSC members. In turn, membership from African and Asian countries (6.0 per cent each) as well as from Oceania (4 per cent) is comparatively low. Considering the membership trends from 1997 to 2005, it is noteworthy that the share of Southern members has increased from 24 per cent in 1997 to 43 per cent in 2005. In particular in the economic and environmental chambers, Southern participation has increased significantly (see also Table 6.3).

Table 6.3 FSC Membership by Stakeholder Group, 1997–2005 (in % of overall membership)¹⁹

		1997	1999	2001	2002	2005
Environmental	North	31.0	30.3	23.2	22.4	18.6
	South	10.5	13.2	12.5	13.4	19.4
	Total	41.5	43.5	35.7	35.8	38.1
Social	North	11.5	10.8	12.1	12.4	10.4
	South	5.5	6.2	5.3	5.6	7.4
	Total	17.0	17.0	17.4	18.0	17.8
Economic	North	33.5	29.3	37.4	35.8	28.2
	South	8.0	10.2	9.4	10.4	15.9
	Total	41.5	39.3	46.8	46.2	44.1

Sources: Counsell and Loraas (2002); Pattberg (2005).

In terms of a balance between different interests, figures have remained stable over the past eight years. As of May 2005, the 272 members (44 per cent) of the economic chamber account for the largest share of all three stakeholder groups identified by the FSC. They are followed by the environmental chamber with 235 members (38 per cent) and the social chamber with 110 members (18 per cent).²⁰

The chambers themselves, however, are relatively heterogeneous. In particular the economic chamber has a very broad membership that ranges from the FSC Association of the Swedish Church to timber companies such as Precious Woods Ltd., retailers such as B&Q, Habitat, Home Depot or IKEA and FSC-accredited certification bodies such as SGS Qualifor. Similarly, participation in the social chamber ranges from the Interethnic Association for the Development of the Peruvian Rainforest (Asociación Interétnica para el Desarrollo de la Selva Peruana) to national federations of

industrial and wood workers and indigenous organisations such as the Canadian First Nations Summit Society. Finally, the environmental chamber includes large advocacy organisations such as Greenpeace, the WWF or The Nature Conservancy as well as small single-issue groups such as BirdLife Finland and academic organisations such as the Faculty of Forestry of the University of Toronto, Canada.

The General Assembly. The nature of the FSC as a membership organisation finds its most direct expression in the central role assigned to the General Assembly (GA) of FSC members. The GA is, at least on paper, the highest decision-making organ of the FSC.²¹ Meeting every three years, it is authorised to decide any matter related to the overall FSC policy, to amend the organisation's statutes and the *Principles and Criteria*, and to elect the members of the FSC Board of Directors.

A novelty in global policy-making processes, voting power within the GA is weighted to ensure balanced representation of the interests of all three chambers as well as of Northern and Southern members. Originally, voting power in the FSC was divided between economic interests that were accorded 25 per cent of the overall voting power, and social and environmental interests that were granted 75 per cent of the voting power regardless of actual membership figures. As trade and industry players increasingly felt underrepresented in this original distribution, the FSC modified its structure in 1996. The new rules now accord equal voting power to all three chambers and assign Northern and Southern members equal voting shares within each chamber (Thorner 2003: 76–7). Finally, the by-laws of the FSC stipulate that the total voting weight of all individual FSC members is limited to ten per cent of each sub-chamber's voting weight (FSC 2002d: Article 15).²²

National FSC initiatives. In addition to membership in the FSC and participation in the GA, national FSC initiatives provide a second major entry point for stakeholder participation. Currently, national initiatives exist in 36 countries, including 13 countries in the South (FSC 2005c).²³ The FSC statutes provide that the Board of Directors must endorse national or regional standards before they become effective. Besides controlling the consistency of national or regional standards with the globally applicable *Principles and Criteria*, FSC procedures tie the approval of national standards to compliance with procedural aspects intended to ensure broad and effective participation in the making of the standards. Hence, the National Initiatives Manual (FSC 1998b: lxi) requests that:

- the consultative process incorporates 'a balance of interests, including, but not limited to, ecological, social and economic interest groups';
- no single particular interest group can dominate the design or implementation of the consultative process;
- the consultative process is co-ordinated by a working group that is independent of any one interest group;

- the working group has clearly defined, fair and democratic decision-making procedures; and
- the consultative process is transparent and accountable to working group members and to the wider public.

A report of the Meridian Institute (2001: 29) notes that in the development of the US national indicators, input from stakeholders was 'aggressively solicited' by post, email, phone and other means 'at all stages of development'. In addition, comments on the decision-making process were facilitated by a website established to collect input on standards development, and the draft national indicators and regional standards were made available for public comment for at least one month. In general, observers of the national standard-setting processes have concluded that 'national FSC Working Groups appear to have been inclusive, and not dominated by particular interests' and that 'consultation has often been broad based, inclusive and effective' (Counsell and Loraas 2002: 32).²⁴

Quality of participation and inclusiveness

In sum, the FSC has managed to bring together a relatively large group of actors in a discussion over how the world's forests ought to be managed. As can be seen from the figures presented in the previous subsection, not all constituencies participate in the FSC with equal numerical strength. However, the FSC's system of weighted voting and the organisation's social strategy (FSC 2003g) aim to address the most severe imbalances. As a result, the FSC is often invoked as an inclusive and representative policy process (see for instance Gale 2002: 292). While the previous section has described the central access points for participation in the FSC process, this section critically examines to what extent the common narrative of the FSC as 'a highly democratic and carefully balanced membership and voting system' (Domask 2003: 169) is justified. The analysis focuses on four critical aspects of decision-making in the FSC: participation in the development of the *Principles and Criteria*, the definition of relevant constituencies, balanced representation of constituencies, and voting power in the general assembly.

Participation in the development of the Principles and Criteria. Not all mechanisms for stakeholder participation described above have been in place during the initial phase of the FSC. Hence, the first draft of a so-called Forest Stewardship Charter – the document later evolved into the FSC statutes and by-laws – was presented in May 1991 at a meeting of a group of people that later initiated the FSC (FSC 2004a: 12). Participation in this meeting was by invitation and amounted to about 30 representatives of organisations that shared an interest in forest certification. In July 1991, a first draft of the so-called Forest Stewardship Standards – the original name for the *Principles and Criteria* – was presented within a similar group (ibid.).

At the Washington meeting of the FSC Founding Group in March 1992, participation was also by invitation and now amounted to approximately 50 individuals. As a member of the meeting recalls,

There was an attempt to have some kind of representation of the key international NGOs that were interested in these discussions, a limited number of retailers, and people in the South who were working on community forestry issues, social scientists as well. It was not a very representative group and I do not think it claimed to be representative, but it was a group of people that were interested in the idea.²⁵

Participants in the meeting noted that further consultations were necessary before the *Principles and Criteria* could be launched. In particular, they demanded that Southern perspectives be more adequately represented (FSC 1992).²⁶

Subsequently, a Principles and Criteria Working Group was formed in 1992. It comprised approximately fifteen individuals, mainly with Northern environmental and consultancy backgrounds, and worked on a consensus basis (FSC 1993). The group prepared several drafts of comprehensive forest management principles that were circulated for comment 'to over 1000 stakeholders worldwide' (Ervin 1996: 18). Soliciting comments has been described as 'a rather haphazard process' that involved creating mailing lists by consulting with the participants at the Washington meeting and with the FSC Interim Board, trying to ensure that all interested parties would receive the various drafts.²⁷

As a further element of the consultation process, nine country assessments provided the Interim Board and the Working Group with a more systematic overview of stakeholders' perspectives on several aspects of the *Principles and Criteria* and of the FSC, more generally. The FSC commissioned assessments in eight countries – Brazil, Ghana, Malaysia, Papua New Guinea, Peru, Sweden, Switzerland, the United Kingdom – and in the Pacific Northwest region that covers parts of the United States and of Canada. The assessments were directed by consultants hired by the FSC and usually involved consultations with local and regional stakeholders. For instance, the Brazilian study included six workshops with representatives of social, environmental and business interests and with academics. Moreover, the sixth draft of the *Principles and Criteria* was translated into Portuguese and circulated, together with a questionnaire, to 200 stakeholders (Virgilio Viana, in FSC 1993). The assessments made concrete recommendations with regard to the structure of the FSC and the content of the *Principles and Criteria*. For instance, the Malaysian and Peruvian assessments recommended developing criteria for FSC certification at the national level rather than globally. However, the role of the assessments in the development of the *Principles and Criteria* remains contested. While the FSC Interim

Board explicitly presented the draft *Principles and Criteria* as a result of the country consultations (FSC 1993), participants in the early FSC process recall that the actual role of the country assessments was marginal.²⁸

In October 1993, the founding members of the FSC approved the seventh draft of the *Principles and Criteria* as a draft version. After further revisions by the Principles and Criteria Working Group, the final version was ratified in 1994 (Ervin 1996: 18–19). In sum, the observation that the FSC ‘went to great lengths to allow multiple iterations of draft documents and adequate time for these drafts to be reviewed by various interest groups’ (Ervin 1996: 19) appears largely accurate. Nonetheless, Errol Meidinger (1999: 135) correctly observes that,

The Principles were developed and adopted early in FSC’s history, in 1994, when it was a relatively small organization made up largely of environmentalists from Europe and North America.

As a result, the FSC could indeed be criticised for its failure to seek systematic representation of the major stakeholder groups early on. The early history illustrates that between 1990 and 1993 – that is, when some of the major decisions were taken – participation was based on membership in professional and personal networks rather than on a systematic approach to stakeholder representation.

The recent revision of Principle 10, however, reveals that procedures for participation have been formalised over the years. Hence, in addition to inviting stakeholders to participate, the FSC Secretariat committed to seek funding for six national or regional stakeholder meetings to support the Plantations Review. Moreover, as with all amendments to the Principles and Criteria, a revised Principle 10 and its accompanying criteria will have to be ratified by the GA to become effective (Lindhe 2004; FSC 2004e, 2005d). At the kick-off workshop of the Plantations Review held in Bonn, Germany in September 2004, 127 individuals and representatives of organisations participated. The figures in Table 6.4 show that, compared to their relative share of FSC certified plantations, European and North American participants are particularly well represented in the wider context of the review process. However, members of the core Policy Working Group (PWG) that oversees the revision process are spread more evenly between regions. Latin American stakeholders have four representatives at the PWG, stakeholders from Europe, Oceania and North America are represented by two members each, and African and Asian stakeholders each hold one seat (FSC 2005e).

Definition of stakeholder groups. A second critique refers to the definition and delimitation of stakeholder categories on which participation in the FSC process is based. Here, the FSC suffers from the same difficulty as the processes discussed in the previous chapters. While participants in the

Table 6.4 Registered Participants at the Plantations Review Meeting in Bonn (September 2004)

	Africa	Asia	Europe	Latin America	North America	Oceania	International	Total
Participants (per cent)	10 (7.8)	7 (5.5)	45 (35.4)	34 (26.7)	10 (7.8)	7 (5.5)	14 (11.0)	127 (100)
Share of FSC certified plantations	33.1	0.9	14.1	33.8 ²⁹	0.3	17.7	n. a.	100

Sources: FSC (2004I) and Paulsen (2004).

early process perceived the identification of 'economic', 'environmental' and 'social' interests in good forest management as a logical consequence that followed from the different interests in forests,³⁰ the distinction itself appears fairly arbitrary.

For instance, it remains unclear how a line may be drawn between the different categories. As the classification of individual members shows, difficulties are not merely theoretical but also have a clear practical dimension. For instance, some actors, such as donors to the FSC or national FSC initiatives, hardly fit the organisation's definition of relevant constituencies. In addition, individual classifications like that of Cameroon Environmental Watch as a member of the social rather than the environmental chamber exemplify the practical difficulties associated with the three chamber structure.

Besides the difficulty of grouping individual members, the three-chamber structure suggests unrealistically homogeneous interest. Hence, grouping forest owners, forest managers, wood traders, retailers, and certifiers into a single 'economic' chamber has caused much concern, in particular with landowners and forest managers (see for instance Cashore et al. 2004: 202). Similarly, indigenous groups and labour unions are not particularly known for sharing similar interests in forest management, yet they constitute two of the major constituencies of the FSC's social chamber. Two examples from regional standard-setting processes illustrate that defining stakeholder groups is a highly political activity. In British Columbia, a fourth category of aboriginal communities was created to rally indigenous groups behind the FSC (Cashore et al. 2004: 69). In Ireland, timber growers were accepted as a fourth stakeholder category (Counsell and Loraas 2002: 34). Taking into consideration the diversity of interests in forests, other authors have

therefore criticised the three-chamber structure and suggested that a division into five or more stakeholder groups could more adequately reflect the actual range of views (ibid.: 31; Upton and Bass 1995).³¹

Beyond these issues related to the classification of stakeholders, the non-consideration of public authorities as a specific stakeholder group and their explicit exclusion from decision-making processes within the FSC appear problematic. The decision to exclude public actors from the governance of the FSC was based on the fear of duplicating slow intergovernmental processes and a concern that governmental participation would 'unbalance the dialogue between economic, environmental and social stakeholders' (Segura 2004: 23). However, several observers have noted that public authorities are crucial players that would need to be integrated in an inclusive policy process on forest certification. For instance, Gerardo Segura (ibid.) has argued that

Tropical country governments are often the larger landowners of forests potentially being certified and need more integral participation in the rule making process, if their interests and needs are to be met, and if they are to have an incentive to support these processes in their countries.

Moreover, not only the explicit exclusion of public actors, but also the implicit counterpart of this decision – that is, the rule-making authority accorded to private actors – has been criticised. Hence, one observers has noted that

a recurring theme among critics of the FSC is usurpation, in that environmental organizations are portrayed as self-appointed judges in a field where they have inadequate understanding, limited experience and no legitimate right to regulate in the first place. (Gulbrandsen 2004: 92)

In sum, the FSC's deliberate choice to exclude governments as the most widely accepted bearers of legitimate authority from participating in its governance system appears problematic in the light of the organisation's multi-stakeholder rhetoric.

Balanced representation of stakeholder groups. Difficulties in the definition of legitimate constituencies necessarily lead to difficulties in achieving an appropriately balanced representation of such constituencies. In the context of the FSC process, the balance between Northern and Southern interests constitutes a central challenge in this regard. As has been mentioned, the first meetings of the FSC Founding Group did not aim for representative membership, and a balance between different stakeholder groups – based on the initial distinction between Northern and Southern interests and between economic, environmental, and social interests – was only introduced for the founding assembly in 1993. Yet, once the FSC was

established, affirmative procedures – a quota for board membership, the establishment of Southern sub-chambers, and a system of weighted voting in the General Assembly – were soon incorporated into the governing structure, thus illustrating the high priority given to North-South parity in the design of the FSC process. Overall, the FSC has created a decision-making structure that is unique in the current system of global governance in its balance between Northern and Southern interests. Despite the virtues of this general structure, a closer look also reveals some critical aspects.

First, as with the definition of the fundamental constituencies – economic, environmental and social – the FSC's delimitation of 'North' and 'South' is arbitrary, at best. The FSC by-laws stipulate that

Northern organizations are those based in High Income countries (according to United Nations criteria) and Southern organizations are those based in Low, Middle and Upper-middle income countries (again according to United Nations criteria). In case of doubt the Board will have the final say on whether a member is Northern or Southern. (FSC 2002d: Article 14)

As a result of this definition, stakeholders from Croatia, the Czech Republic, Estonia, Hungary or Poland are currently classified as Southern members of the FSC. Even if the concept of 'the South' has been used flexibly in the literature, this extremely broad definition put forth by the FSC seems counterintuitive. Moreover, its consequences are ambivalent. In effect, it might even be questioned whether the current system serves to ensure effective participation of the South – as defined by the FSC – or whether it primarily ensures that stakeholders from high-income countries retain fifty per cent of the overall voting power in spite of the fact that they represent only fifteen per cent of the world population.³²

In addition, the basis for classifying individual members is not always clear – for instance, a small number of individual members from Germany, The Netherlands, the United Kingdom and the United States have been assigned to Southern sub-chambers despite their Northern origin, thus providing a further element of arbitrariness to the practical distinction between Northern and Southern FSC members. Moreover, membership from African and Asian countries has developed slowly, giving rise to concerns that the interests of these regions are misrepresented in the FSC (Thorner 2003: 77).

Voting power in the General Assembly. Finally, the FSC's system of weighted voting, while often praised as an effective instrument to achieve North-South parity, creates imbalances in the voting power of FSC members that may be challenged in the light of democratic theory. For instance, the just over 20 organisational members of the Southern social sub-chamber have the same voting power – namely 15 per cent of all votes cast on a proposed

motion – as the almost 120 organisational members of the Northern economic sub-chamber.³³ In consequence, the vote of the Brazilian Centro de Trabalhadores da Amazonia – an organisational member of the Southern social sub-chamber – counts almost six times the vote of Home Depot, an organisational member of the Northern economic sub-chamber. As a further example, the vote of the Swedish Association for Hunting and Wildlife Management (representing approximately 200,000 Swedish hunters) counts more than twice as much as a vote of WWF International (an organisation with approximately five million supporters throughout the world). While the FSC certainly had good reasons to put a strong emphasis on balancing the influence of its various constituencies, these examples illustrate that the practical implementation of such a strategy is open to challenges.

Inclusiveness and participation in the Forest Stewardship Council: Summary

Overall, the FSC process can be considered as broadly inclusive and participatory (see also Table 6.5). It includes a diverse range of individuals and organisations with an interest in sustainable forest management, and its organisational form as a membership association implies that members

Table 6.5 Inclusiveness and Participation in the Forest Stewardship Council

Criteria	Strengths	Weaknesses
Scope of participation (L1)	<p>The FSC process includes a diverse range of stakeholders.</p> <p>The General Assembly of FSC members is the supreme authority of the FSC.</p> <p>Processes for developing the <i>Principles and Criteria</i> include several entry points for participation.</p>	<p><i>But:</i> At the initial stage of developing the <i>Principles and Criteria</i>, representativity was limited.</p>
Quality of participation (L2)	<p>Affirmative procedures such as North-South parity in the Board of Directors and weighted voting in the GA allow Southern stakeholders to participate effectively.</p>	<p>The definition of economic, environmental and social interests as the relevant constituencies of the FSC is only partially convincing.</p> <p><i>But:</i> The practical implementation of weighted voting is open to challenges. In particular, FSC's definition of the South appears problematic.</p>

retain the ultimate authority over the organisation's policies. Moreover, affirmative procedures such as North-South parity in the Board of Directors and weighted voting in the General Assembly ensure that Southern stakeholders are effectively represented in decision-making processes.

However, this generally positive evaluation is subject to a number of challenges. First, the level of participation was relatively low when the original *Principles and Criteria* were developed. Given the path dependency of the *Principles and Criteria* resulting from legal contracts with owners and managers of certified forests and from the complex development of national standards that accompany the *Principles and Criteria*, this is particularly relevant. Second, the definition of economic, environmental and social interests as the relevant constituencies of the FSC is only partially convincing. In particular, boundaries between the three chambers are difficult to draw and the classification neglects the heterogeneity of interests within each chamber. Third, while the affirmative voting procedures have often been lauded, the FSC's broad definition of the South and the disparities in voting powers of individual FSC members appear problematic – although for different reasons – in the light of democratic theory.

Democratic control

Besides the scope and quality of participation and inclusiveness in the FSC process, I have identified the level of democratic control as a further dimension of the democratic legitimacy of decision-making processes in Chapter 2. As in the previous chapters, I divide the analysis of this dimension into a discussion of transparency and accountability.

Transparency

In his analysis of the FSC process, Fred Gale (2002: 293) summarises that the organisation 'ranks high (...) on the criterion of transparency'. FERN (2001: 32), a European network of NGOs working on forestry issues, supports this view and notes that,

The FSC's processes are quite transparent at all levels, from national standards-setting consultations to accreditation procedures. Public summaries of accreditation reports, accreditation monitoring reports and certification reports must all be publicly available. (...) In addition, both at national and international levels, minutes of meetings and other documentation are publicly available on request.

Beyond a general policy of making numerous documents – including the organisation's statutes and by-laws – available on the Internet, this positive reading can essentially be based on four arguments. First, the FSC's rhetoric places a strong emphasis on transparency, thus giving rise to the

expectation that practical efforts are made to live up to this rhetoric and to constantly improve the organisation's transparency record.

Second, FSC policies with regard to national standard-setting processes demand a high level of transparency. Hence, the FSC requests that 'in order for FSC as a whole to maintain its credibility and transparency, the organisation and its National Initiatives must act in an open and participatory fashion' (FSC 1998b: xxix). As a result, stakeholders who are not FSC members should be given the opportunity to attend meetings and sub-committees as observers and to comment on draft documents. In addition, the 2002 GA passed a motion that requested the FSC to list copies of all existing policy documents on its website and to develop a process for soliciting stakeholder input (FSC 2002c: policy motion no. 29).

Third, in contrast to the general FSC website where only limited information on decision-making processes is available, the website for the Plantations Review – the process of revising Principle 10 of the FSC *Principles and Criteria* – contains most, if not all, documents that are relevant for the review process or that have been developed as a part of the latter. In addition, a consultative forum has been set up and national stakeholder meetings have been envisaged as a means to further increase transparency. Finally, the facilitators of the Plantations Review inform that

Public drafts from the PWG, and later on from the Technical Working Group (TWG), will be available in English and Spanish on the Plantations web site. Drafts will be open for comments by all stakeholders, and all comments submitted on formal comments forms (see web-site) will be recorded, collated and made available to the PWG and TWG, respectively. (FSC 2005e: 2–3)

Fourth, the FSC is unique among private governance schemes in having two official languages – English and Spanish (FSC 2002d: Article 77). This bilingual character of the FSC represents a major difference between the FSC and its competitors, but also between the FSC and the other cases discussed in this study.

Despite these positive aspects, critics have challenged the transparency record of the FSC. Among other aspects, criticism has been based on the observation that records of decision-making processes – such as minutes of board meetings – are not regularly published on the Internet.³⁴ Hence, a recent evaluation of the FSC process argued that 'key FSC processes (...) have been largely obscured from the membership' (Counsell and Loraas 2002: 47). In particular, the authors of the study criticise that documents such as accreditation contracts and reports of accreditation monitoring activities are available neither to FSC members nor to the wider public. Moreover, they hold that a strategy plan for the FSC developed by an exter-

nal consultancy in 1998 was marked confidential. As a result, despite its implications for the organisation, a summary of the report was not made available until a leaked copy became available and generated upset among FSC members (Counsell and Loraas 2002: 44).

In addition, the FSC's website and newsletter have been criticised for their lack of substantive information. Thus, Simon Heap (2000: 93) likened these key instruments of communication to public relations or advertising materials and noted that,

Each time their journal FSC Notes is published, the front is emblazoned with glowing statistics of how many million more hectares of forest have been certified, how another certifying body has been accredited and the UK-based journal also contains extensive lists of where consumers can buy particular products which have been made from certified materials and where the chain of custody from tree to shop has also been certified. Yet very little information is offered as to how the processes work.

Summarising his own criticism of the FSC's transparency record, Heap (*ibid.*: 92) therefore cites a founding member of the FSC as saying that the 'FSC has failed to fulfil its commitment of transparency, professionalism and accountability'.

In sum, the transparency record of the FSC is contested. While critics hold that the Board of Directors and the Secretariat often fail to share important information with FSC members or the wider public, the general procedures for the development of FSC policies are clearly defined and information that is not available on the Internet is often available on request. Finally, the FSC's bilingual policy, while still disadvantaging those who speak neither English nor Spanish, allows a relatively wide range of stakeholders to inform themselves about the activities of the organisation.

Accountability

The accountability of decision-making in the FSC has been a main concern since the early days of the FSC. As early as 1992, participants of the Washington meeting voiced concerns about how the newly elected Interim Board could be held accountable to the FSC Founding Group and to the public at large. After extensive discussions, meeting participants agreed upon a memorandum according to which

- 1) the board was asked to take minutes at each of its meetings and make them available to all FSC Founding Group participants; 2) the board was asked to let participants know what recourses were available to them for filing disagreements and grievances over board actions; 3) the interim board was asked to submit quarterly reports to all FSC Founding Group

participants; 4) the board was asked to develop criteria for fund-raising, and to submit them to the participants. (FSC 1992)

As the FSC became institutionalised in subsequent years, a range of formal and informal control mechanisms have been built in at different levels of its governance system. First and foremost, a balance of power exists between the major governing bodies. As the FSC's executive organ, the Board of Directors is accountable to FSC members. Accountability is primarily achieved through the election of Board members by the GA. In addition, procedures have been established to recall Board members during their term of office if they act against the interests of the organisation.³⁵ In turn, the activities of the secretariat, including the financial administration of the FSC, are controlled by the Board, for instance through approval of the annual budget (Massing 2003: 71–2).

At the level of the GA, a dominance of a particular group is largely excluded by the fact that GA decisions require the consent of two thirds of the overall voting power. Similarly, at the Board level, the expectation that directors represent the views and concerns of their chambers and sub-chambers serves as a check on the power of particular interests (FSC 2002d: Article 50).

In addition to these checks and balances among and within the key governing bodies of the FSC, several other mechanisms help to render decision-making processes within the FSC accountable. These mechanisms include the organisation's formal complaints procedure governed by the Interim Dispute Resolution Protocol (FSC 1998a), the division of responsibilities among operational units – in particular the separation of standard-setting and certification – and clear and transparent procedures, for instance for the accreditation of national or regional standards (FSC 2003c).

Moreover, FSC members exert ultimate control over the policies of their organisation. Even if the GA only convenes every three years, its statutory power as the 'supreme authority of the association' serves as a check on decisions taken by the Board of Directors or by the secretariat's Policy and Standards Unit. Overall, accountability of Board members, secretariat staff or working group members to the FSC membership is therefore relatively strong.

In addition, a range of informal accountability mechanisms complements the above-mentioned formal mechanisms. For instance, the legally non-binding nature of FSC rules enables actors with a potential to threaten withdrawal to exert informal control on the content of decisions. In particular, large retailers and civil society organisations have been identified as potential veto players. With regard to the former, Counsell and Loraas (2002: 43) have argued that,

As those who have now committed to purchase wood from 'sustainable sources' include three out of the five largest global timber buyers (Home

Depot, Lowe's and Ikea), the pressures on FSC to perform according to these retailer demands are enormous.

For civil society organisations that provide the necessary moral legitimacy to the FSC Cashore, Auld and Newsom (2004: 241) have similarly held that,

If FSC's moral legitimacy granting audience withdrew its support the FSC would lose its *raison d'être* – which was to offer a version of global sustainable forestry management that differed from what environmental groups were asserting to be domestic and global 'logging charters' coming out of domestic and international governmental processes. Second, and related, it was support from environmental groups that provided a strong incentive for many companies to even consider the FSC – since these companies would then be approved by a system supported by their strongest critics.

Furthermore, the FSC has since its inception in 1993 been subject to a high level of public scrutiny, thereby extending accountability beyond its membership. The discussion over a report issued by the Rainforest Foundation in 2002 serves as a good illustration of this mechanism. The report accused the FSC of breaches of its own rules which had allegedly led to the issuance of certificates in a number of cases where they were – at least in the eyes of the report authors – not warranted (Counsell and Loraas 2002). In its response to the report, the FSC evaluated each criticism in significant detail and promised to address those issues that remained problematic (FSC 2003d, 2003h). In addition, forest enterprises criticised in the report also presented their arguments to refute the allegations (see, for instance, Gut undated). Overall, the report can thus be seen as an effective instrument of NGO monitoring of the FSC that replicates the monitoring function NGOs exert in the context of intergovernmental regimes.

Last, but not least, the FSC is accountable to those who fund the organisation. Over the years, the FSC has received funding from various sources, including the Austrian, Dutch and Mexican governments, the European Commission, the Ford Foundation, the MacArthur Foundation, WWF Netherlands, IUCN Netherlands, and the Swedish Society for Nature Conservation (Schmidt 1998: 24). The largest share of the organisation's incomes, however, stems from a relatively small number of private foundations (Meridian Institute 2001: 18).³⁶ While the FSC insists that accountability to funding institutions consists primarily in meeting objectives set out in funding agreements and stresses that it accepts 'contributions (...) as long as no restrictions are attached which would affect the independence or integrity of FSC' (FSC 2002d: Article 10), critics have argued that the strong dependence on external financial assistance has made the FSC

susceptible to donor influence (Counsell and Loraas 2002: 41–2). As in the other cases, accountability to donors is thus a control mechanism whose political desirability is contested within as well as outside the organisation.

The Forest Stewardship Council and democratic control: Summary

In sum, it can be concluded that despite some transparency gaps, the FSC process includes a number of formal and informal accountability mechanisms that effectively preclude the dominance of a single interest group within the FSC (see also Table 6.6).

In particular, the FSC makes numerous documents, including the organisation's statutes and by-laws, available on its website and has implemented a bilingual communications policy. In addition, the way the current revision of Principle 10 is organised gives rise to the expectation that the organisation's strong rhetorical commitment to transparency serves to increase transparency over time. Moreover, checks and balances between the FSC's primary governing bodies and the ultimate control FSC members

Table 6.6 The Forest Stewardship Council and Democratic Control

Criteria	Strengths	Weaknesses
Transparency (DL3)	<p>The FSC rhetoric emphasises transparency as a fundamental norm of decision-making.</p> <p>The FSC makes numerous documents available on its website.</p> <p>The FSC has implemented a bilingual communications policy.</p>	<p><i>But:</i> Records of decision-making processes are often not published.</p> <p>FSC communications often lack relevant information.</p>
Accountability (DL4)	<p>Members retain ultimate control over the FSC's policies.</p> <p>Standard-setting and certification are executed by separate actors.</p> <p>Retailers and Northern CSOs dispose of an informal veto power.</p> <p>The FSC is subject to a high level of public scrutiny.</p> <p>The FSC is accountable to funders.</p>	<p><i>But:</i> The democratic nature of this control mechanism is challenged.</p> <p><i>But:</i> The normative quality of this control mechanism is questionable.</p>

retain over the organisation's policy bring about a relatively high level of control that is further enhanced by a clear separation of responsibilities within the FSC. Finally, the FSC is accountable to a wider public that has critically followed the FSC process since its inception and to the actors who provide the necessary financial resources to run the FSC.

This latter aspect, while possibly a very effective control mechanism has given rise to some criticism since its nature is plutocratic rather than democratic. A similar criticism applies to the control exerted by a small number of powerful veto players – that is, retailers such as Home Depot, IKEA, or B&Q and civil society organisations such as WWF International. In addition, critics have expressed dissatisfaction over the fact that important documents are not available to FSC members or the public and that FSC communications often lack relevant information about the FSC process.

Discursive quality

As the third and final dimension of the democratic legitimacy of the FSC process, this section examines the discursive quality of opinion- and will-formation processes within the FSC. As in the previous chapters, I divide my analysis into an examination of the preconditions for effective deliberation within the FSC and a discussion of the extent to which the general framing is open to different discourses on global forest politics.

Deliberativeness

In examining the extent to which the design of the FSC process provides favourable conditions for a deliberative mode of communication, it seems most appropriate to disaggregate the FSC process into smaller units. The following paragraphs therefore discuss the development of the original *Principles and Criteria*, policy-making in the General Assembly, and the Plantations Review as a specific and more recent decision-making process. In sum, the discussion reveals that the FSC system includes a relatively large number of discussion forums at the national and regional level. At the global level, deliberation, however, is constrained by the central role of the General Assembly in which strategic interaction appears to predominate.

The development of the Principles and Criteria. As indicated earlier in this chapter, the *Principles and Criteria* were mainly developed during and in between a number of meetings held between 1990 and 1994. As a participant in the early FSC process recalls, FSC or pre-FSC meetings held between 1992 and 1994 mainly operated on a consensus-basis. Hence, 'when votes were formally cast, whether in meetings, working groups or by postal ballots, they often reflected near unanimity' (Ervin 1996: 19). Nonetheless, participants in the early meetings of the FSC recall that the atmosphere at these meetings was characterised by an 'enormous amount of mistrust'³⁷ that limited the deliberative quality of the process. For

instance, some environmental groups saw cooperation with industry as unacceptable. Beyond mistrust between environmental organisations and business, mutual suspicion also characterised relations between different environmental groups, between environmental and social interest groups, and between Northern and Southern civil society organisations. As a general observation, trust gradually increased as individuals got to know each other and learned that most participants, including the members of the economic chamber, were generally sincere about creating the FSC and making it work. However, the 1993 founding assembly in Toronto illustrates that, whenever the range of participants was broadened, confidence had to be built anew. Hence, one participant recalls that,

the first meeting [in Washington] was quite conflictive – yes, definitely. And there was definitely quite a lot of concern (...) and the general assembly started out quite conflictive, as well. (...) But it lasted (...) three days and by the end of the second day, there was very clearly a strong majority feeling that yes, we should go ahead and create the FSC. (...) Because there were two options: either we just drop it or we go ahead. And it definitely was a minority view that we should drop it.³⁸

At the Toronto conference itself, the over 130 participants engaged in long discussions about procedural issues. As a participant from the Solomon Islands remarked on the second day, trust among participants was relatively low as a result of the fact that individuals did not know each other and had serious reservations as to the sincerity of the interests of other participants. During the evening of the second day, the assembly held consultations in three caucus groups – an environmental, a social, and an economic interests group – to discuss membership criteria, voting procedures for the founding assembly, and the representation of economic interests within the FSC. Conflicts between Northern and Southern environmental groups eventually led to the creation of two environmental sub-caucuses and Brazilian NGOs temporarily withdrew from the assembly as they perceived the process to be controlled by Northern NGOs – a representative of the Brazilian NGOs even spoke of a ‘new colonial way of decision-making’ (FSC 1993). Yet, towards the end of the meeting, discussions became less heated and more constructive. In particular, the long debate about which rights to grant economic stakeholders in the FSC and how to define economic interests was marked by a sincere exchange of arguments (FSC 1993).³⁹

After the *Principles and Criteria* had been approved by FSC members, the development of national or regional standards quickly became one of the central areas for a further discussion and specification of FSC norms and rules. Currently, over thirty national initiatives provide institutional forums for discussions on regional aspects of forest certification. In addition, the establishment of regional offices in Africa, Asia, Europe, and Latin

America and the organisation of regular meetings of national initiatives within one region further enhance the number of deliberative forums within the framework of the FSC (Pattberg 2004a: 59). As a result, the FSC system now includes a relatively large number of decentralised discussion forums.

Deliberation in the General Assembly. Despite these positive features, the FSC's performance in terms of deliberativeness is constrained by the less favourable preconditions in the General Assembly as the association's supreme authority. Combining several hundred individuals and organisations, the GA is simply too large to allow for a meaningful exchange of arguments that deserves the label deliberative. This becomes clear when the concrete procedures for GA meetings are examined. Hence, the 1999 and 2002 assemblies voted on over 50 motions each, indicating that the time to discuss individual proposals was very limited. The procedures for the 1999 GA illustrate this point when they inform that

Each motion would be read out or shown on the screen. Each motion needs a proposer and two seconders in the room when it is proposed. The proposer may then explain the purpose of the motion for up to three minutes. Contributions of up to two minutes would follow, for and against the motion. (FSC 1999: 3)

As a result, it is precisely the nature of the FSC as a membership organisation, with the General Assembly as the supreme authority that impedes a stronger role for deliberative will-formation. Interviews confirm the general impression that the GA is dominated by a peculiar mix of arguing and bargaining that might be described as 'argument-based vote-trading'. For instance, one FSC member recalls that

I got some motions passed (...) in the General Assembly because I went and talked to friends in the economic chamber on the floor of the General Assembly and got them to promise that they would vote for this if I voted for something else. (...) You build alliances and coalitions with people a lot more easily in that kind of organisation. You have to, but also once you start doing it, you realise that (...) this guy is from this forest company and (...) normally, I wouldn't vote for this company and here they are with really good, smart ideas and they've told me something that makes a lot of sense and I kind of like them because I see them year after year.⁴⁰

In sum, the GA only fulfils one of four factors that facilitate deliberation, namely a relatively continuous membership, while a second factor – the existence of a collective identity – is at least partially present. Since the remaining factors, most notably a small size and consensus procedures, are absent, the GA is only weakly conducive to a deliberative mode of interaction.

The Plantations Review. Notwithstanding these deficits, decision-making on specific aspects of FSC policies reveals that some room for deliberations exists beyond the GA. Hence, in the context of the Plantations Review, the agenda was primarily fixed by the participants of a first stakeholder meeting held in Bonn, Germany in September 2004. In other words, no pre-selection of issues and themes had been made by the Board or Secretariat before the meeting (Wenban-Smith 2004). In total, 127 participants were registered for the Bonn meeting, and over 100 participants from more than 30 countries attended (FSC 2004k). Of 39 participants who later participated in the evaluation of the meeting, 33 said they had been given the opportunity to share their views and concerns and 30 had the impression that their views and concerns had been acknowledged by the FSC and other participants (FSC 2004f).⁴¹

Subsequent to the Bonn meeting, the Policy Working Group (PWG) that oversees the revision process has explicitly been designed as a deliberative forum. At the first meeting of the PWG held in Stockholm in March 2005, PWG members representing the same chamber first met separately to get to know each other and to gain a common understanding of the issues that were important to their constituencies. Afterwards, discussions went back and forth between chamber sessions and plenary sessions (FSC 2005e: 3). In general, the limited scope of the topic and the design of the PWG as a small group that receives input from a wider reference group provide more favourable conditions for a deliberative mode of interaction.⁴²

Discursiveness

In relation to this final criterion, the conventional narrative behind the FSC builds on two basic assumptions. First, it assumes that a credible forest certification system, by allowing consumers to make informed choices and to reward good forest practices, can significantly improve the conditions under which the world's forests are being managed. Second, the conventional FSC narrative presumes that the most appropriate venue for defining the content of responsible forest management is a global multi-stakeholder process that balances economic, environmental and social interests in forests as well as Northern and Southern interests.

To what extent does this conventional narrative exclude alternative perspectives on forest management? Or, stated differently, to what extent are critical perspectives excluded by the ideational foundations on which the FSC is built? To answer this question, I discuss two major criticisms. The first criticism relates to the FSC's reliance on market instruments; the second sees a dominance of Northern discourses within the FSC and perceives the FSC as an attempt to introduce a global forest policy based on values and norms held in industrialised societies in the North.

As to the first of these criticisms, several aspects of FSC policies have been challenged. In particular, the general idea to use market instruments to conserve tropical forests has been criticised for establishing a false

hierarchy between markets and politics. Hence, accepting capitalist markets as a fact to be dealt with and entrusting the management of the world's forest to the logic of such markets does not fit with everyone's belief system. However, even if the FSC is not built on a strict ideology of liberal markets – it itself constitutes a social intervention in such markets – arguments that reject the central role of markets for improving forest management are largely excluded from the agenda of the FSC.

Beyond this general point, critics have emphasised that forest certification fails to address the underlying causes of deforestation such as poverty or population pressure. In particular, the FSC is, these critics argue, built on the false belief 'that the consumption of timber by the "North" is the primary cause of deforestation in the Amazon' (Zhouri 2004: 78). Andréa Zhouri (*ibid.*: 76–7) has illustrated her criticism by pointing to a public advertising campaign developed by the FSC in 2000:

The advert presents a photograph of a James Bond actor, while stating: 'You don't have to be a movie star to be an action hero. Help conserve the world's forests. Look for and purchase products carrying the FSC label.' While the advert converts the act of consumption into a heroic political act, certification of forest products, mainly timber, is launched as the solution for combating forest destruction.

Challenging the message of this advert, authors such as Zhouri have further criticised the FSC for grounding its strategy on the false premise that sustainable forest management may be attained without radical change (see also Murphy and Bendell 1999: 74). In contrast to such a perspective, Humphreys (2003: 52) has, for instance, argued that while 'contemporary global environmental governance privileges the economy', protecting forest life would require 'a fundamental reorientation of international law in which life protective norms prevail over the rights of capital.'

Obviously, the FSC will have difficulties to incorporate arguments and perspectives that present a fundamental challenge to the very idea of forest certification on which the FSC is based. It is thus not surprising that such arguments – or references to them – are rarely found within FSC documents. Nonetheless, the discussion of a second critique related to the FSC's stakeholder approach reveals that the FSC does not generally block more critical perspectives from entering the decision-making process. According to this second critique, the FSC's stakeholder approach represents a major shift within the environmental movement from 'political ecology' to 'environmentalism of results':

Environmentalists who held to a counter-discourse about development and whose activities – until the 1980s – included putting pressure on the World Bank and a campaign to boycott tropical timber, were invited to

produce solutions within a 'consensus-building' atmosphere around a particular notion of sustainable development, roughly understood as economic growth along with environment protection. (Zhou 2004: 69–70)

In the eyes of the critics, environmentalists have let themselves be drawn into the logic of a watered-down notion of sustainable development that dominates decision-making in 'partnerships' or 'multi-stakeholder processes'. In addition, the consensus orientation of such partnerships and multi-stakeholder processes denies the existence of fundamentally different interests in forestry. However, critics hold that it is precisely these differences that have impeded governments from agreeing on a global forest convention. As a result, some observers perceive the FSC as a veiled attempt to expand the geographical scope of Northern forestry and sustainability norms. The following statement combines elements from the first and the second criticism mentioned above and summarises some of the Southern concerns:

Forest certification or the market are complementing other mechanisms, such as the discourse of sustainable development, the appeal to conservation ethics, and international environmental legislation, to once more convert forests into 'heritage of mankind'. As a result, countries and some social groups within the countries lose the power to dispose of their forests and to economically benefit from them. (van Dam 2002: 19, 23, my translation)

From this perspective, forest certification is in fact seen as an instrument for Northern producers to secure markets. Interestingly, however, the statement itself comes from within the FSC, namely from a Southern member of the FSC Board. Hence, even if the FSC is based on a Northern concept of sustainable development, the quote illustrates that arguments challenging such an understanding can be made – and are actually made – in the context of the FSC. Overall, the FSC can therefore be characterised as relatively open to critical perspectives. Nevertheless, arguments that challenge the fundamental assumptions on which the FSC is based necessarily face more difficulties to be listened to than arguments that share these basic assumptions.

The discursive quality of the Forest Stewardship Council: Summary

The performance of the FSC in relation to this third dimension of democratic legitimacy can be summarised as follows (see also Table 6.7): At the initial stage of developing the *Principles and Criteria*, deliberations were intense, but restricted to a small professional network. In the current FSC system, more stakeholders are involved. Yet, deliberation is constrained as the structure of the General Assembly provides limited room for communicative interaction. While decision-making at the highest level is thus

Table 6.7 The Forest Stewardship Council and Discursive Quality

Criteria	Strengths	Weaknesses
Deliberativeness (DL5)	<p>National initiatives provide multiple arenas for deliberation.</p> <p>Deliberative forums have been established on several issues, including the revision of Principle 10.</p>	<p>Preconditions for deliberation are limited in the General Assembly.</p> <p><i>But:</i> Given the economic stakes involved in national standard-setting, processes are likely to be dominated by strategic action.</p>
Discursiveness (DL6)	<p>The FSC is relatively open to including arguments that reflect more critical perspectives.</p>	<p><i>But:</i> Arguments that challenge the fundamental premises on which the FSC is based (e.g. possibility of attaining sustainable development, need for global forestry norms, reliance on market instruments) are difficult to integrate.</p>

only moderately deliberative, national initiatives and forums set up to develop specific policy issues serve as arenas for an effective exchange of arguments in the broader governance scheme of the FSC.

Moreover, in terms of its discursive balance, the FSC has been relatively open to including arguments that originate from more critical perspectives, not least as a result of its broad membership base and of the central role ascribed to members in the governance of the FSC. The discursive openness, however, has its limitations where arguments challenge the fundamental premises on which the FSC is based. These premises include, among others, the very possibility of attaining sustainable development, the need for global forestry norms as a means to realise this possibility, and the appropriateness of market instruments to improve forest management.

The democratic legitimacy of the Forest Stewardship Council: Conclusions

In this chapter, I have introduced the Forest Stewardship Council (FSC) as an example of a transnational rule-making process in the area of global forestry politics. In addition to the commission and foundation models

introduced in the previous chapters, the FSC presents a third distinct model of transnational rule-making processes. The distinguishing features of this model are the permanent nature of the organisation and the control of the organisation by its members. As this chapter has illustrated, the particular organisational form of the FSC has implications for its performance vis-à-vis various aspects of the democratic quality of its decision-making process.

After a first section that determined the normative demand for democratic decision-making in the FSC, I have characterised, in a second section, the FSC process as inclusive and participatory. However, two reservations were made. First, during the early stage of the process, crucial decisions were made by a relatively small group of founding members. While similar observations have also been made in relation to the other two case studies, the strong path dependency of the FSC process renders this reservation particularly relevant. Second, the FSC's definition of relevant constituencies is only partially convincing. On the one hand, it establishes boundaries that are difficult to implement in practice; on the other hand, it groups actors with widely different interests into single chambers or sub-chambers.

Subsequently, the discussion of democratic control within the FSC revealed that, in spite of some transparency gaps that could (and should) be remedied, the FSC process includes formal and informal accountability mechanisms that effectively impede a single body or party from dominating policy-making within the FSC. In particular, checks and balances between the FSC's governing bodies, clearly assigned responsibilities, and the powers held by FSC members serve as effective control mechanisms.

Finally, I have argued that preconditions for a deliberative style of decision-making are only moderately favourable in the case of the FSC. This evaluation was primarily grounded on the observation that the General Assembly, as the supreme authority within the FSC, is too large and convenes too infrequently to allow for a meaningful exchange of arguments among its members. Instead, interviews suggest that a system of 'argument-based vote trading' is prevalent within the assembly. Notwithstanding these deficits, the FSC has established a number of deliberative forums to deal with specific policy issues and the FSC process has been generally open to arguments from a relatively wide range of perspectives.

In sum, the FSC and its membership model of transnational rule-making thus represent a distinct type of rule-making with distinct strengths and weaknesses. As with the previous cases, the overall democratic quality of decision-making within the FSC is difficult to evaluate as a result of the multi-faceted nature of the concept of democratic legitimacy. Nonetheless, the following quote by Jason McNichol captures the overall impression gained in this chapter. McNichol (2003: 261–2) states that

the FSC still stands as one of the most determined attempts [to] reconcile sometimes seemingly insurmountable tensions between the values

and priorities of competing constituencies that rarely work well together: developed country representatives vs. developing country, big business vs. the small entrepreneur, community forestry activists vs. traditional conservationists, to name just a few. There is no doubt that the FSC's efforts to balance differences in positions and power between competing constituencies have been imperfect; but the fact that the organization has managed to try to do so for almost a decade without collapsing or becoming completely paralyzed in inaction (as have most other attempts) is worth a much closer look, indeed.

In this chapter I have taken a closer look at the FSC as the most widely known example of a transnational rule-making process organised as a membership association. From the discussion, three main lessons can be drawn regarding this distinct form of transnational rule-making:

- First, rule-making in membership associations provides for a high quality of participation in as much as it grants members a strong say in decision-making. But inclusiveness depends on the association's membership criteria. Hence, associations are not per se inclusive, but may instead exclude a large proportion of individuals and organisations from internal decision-making.
- Second, rule-making in membership associations allows for a relatively high level of accountability since members retain ultimate authority to make decisions or overthrow decisions made by other governing bodies.
- Third, in addition to those difficulties that are inherent in any multi-stakeholder process – most notably the definition of appropriate stakeholder categories – rule-making in membership associations is less conducive to a deliberative style of decision-making. Where decisions are taken by several hundred or more members, it will be inherently difficult to provide sufficient space for a meaningful exchange of arguments. This last lesson therefore points to the general tension between the criteria of inclusiveness and deliberativeness for which democratic theory needs to find a practical solution.

7

The Democratic Legitimacy of Transnational Rule-Making: Conclusions

More and more decisions are taken at the global level, and they are taken in a variety of ways. We have not yet gained a very good understanding of which types of global decision-making are desirable for a given context or how we may improve existing decision-making processes so that they may become more desirable. Addressing these questions, this study has examined the democratic legitimacy of a particular type of governance beyond the state, namely that of transnational rule-making. It thereby responds to the empirical proliferation of transnational governance schemes in which non-state actors both develop and implement standards for appropriate behaviour. This *new transnationalism* can be observed in different policy fields, including environmental, financial, economic, and human rights politics.

The research reported here illustrates that transnational rule-making may be effective *and legitimate*. Yet, not all transnational governance schemes that are effective necessarily display high levels of democratic legitimacy. As always, power disparities are central. In transnational rule-making processes, power intervenes in decisions about who is recognised as a stakeholder and about how stakeholders are grouped; moreover, it influences whether decision-makers can be held accountable by those affected and whether sincere deliberation is likely to take place. As a *normative ideal*, democratic theory thus provides a standard for the critical evaluation of contemporary global governance arrangements. Regardless of income, physical strength or knowledge, it demands that citizens of ideal democracies have equal say in collective decision-making. Where political reality deviates significantly from this ideal, it is worth to be criticised. As a *practical tool*, democratic procedures are a means to reduce existing power disparities. The case studies in Chapters 4 to 6 reveal that, by carefully crafting their decision-making procedures, transnational rule-making processes may manage to effectively include the voices of a broad range of communities affected by their decisions, achieve a high level of transparency, and base their decisions on sincere and substantive deliberations among their participants.

The World Commission on Dams – as a prototype for transnational rule-making organised in temporary commissions – based its policy principles for large dam projects on an extensive knowledge base to which a broad range of experts, affected communities and other stakeholders contributed. A common informational base and common experiences enabled commissioners to interact in an argumentative rather than a strategic mode. At the same time, the acceptance of the commission's final report was limited by concerns from stakeholders that their views had not been sufficiently included in the report, thereby illustrating the link between the inclusiveness and acceptance of transnational rule-making schemes.

The Global Reporting Initiative (GRI), then, grounds its Sustainability Reporting Guidelines on a complex organisational structure in which the Board of Directors is complemented by three additional governing bodies: the Secretariat, the Technical Advisory Council, and the Stakeholder Council. The elaborate structure of the GRI makes governing bodies accountable to each other, but it also makes it difficult for observers to follow the work of each governing body. In terms of participation, the history of the GRI demonstrates that foundations, too, can become more participatory over time. As in the other cases, the desire for public acceptance and the wish to give its addressees a sense of ownership over the decision-making process served as powerful drivers for efforts to broaden the participatory base.

Finally, in the Forest Stewardship Council (FSC) the organisation's members retain the ultimate authority over the organisation's policies. As membership is generally open, this organisational design provides the FSC with a broad participatory basis. As a further particularity, the FSC strongly emphasises North-South parity in its decision-making. The decision to assign 50 per cent of the voting power to Southern members illustrates the strong efforts to address some of the inequalities that plague contemporary global governance. As in the other cases, the quest for public acceptance is a central driver for this specific feature of the FSC.

If we conceive of transnational rule-making as a result of primarily two dynamics – the limited capacities of governments to address global challenges and the increasingly transnational organisation of societal actors – then governance schemes such as the WCD, GRI and FSC are likely to stay with us and proliferate, complementing more traditional forms of intergovernmental rule-making. Whether this is good or bad news seems to be a matter of perspectives. Are transnational policy processes an opportunity to 'close the participatory gap' (Reinicke et al. 2000) of global decision-making and to thereby render global governance more democratic? Or are they instances of 'international NGOs and transnational companies working together to set policy behind

closed doors' (Elliott 1999: 437)? In this debate, my study provides answers to three questions:

- What does it mean for rule-making beyond the state to have 'democratic legitimacy'?
- How does transnational rule-making differ from intergovernmental rule-making in terms of democratic legitimacy?
- How do different models of transnational rule-making processes differ in terms of their democratic legitimacy?

Before I present the main findings in relation to these questions in individual sections, I will reflect upon the nature of transnational rule-making. In a concluding section, I critically evaluate the theoretical contribution of my study to the wider global governance literature.

The nature of transnational rule-making

One of the fundamental premises of this study is that transnational rule-making constitutes a distinct form of governance beyond the state. This premise can be disaggregated into two assumptions – first, that some transnational policy processes actually are about rule-making and are thus *functionally equivalent* to other forms of governance beyond the state; and second, that they share characteristic features that *distinguish* them from these other forms of global governance.

Transnational rule-making as a functional equivalent to other forms of global governance. All three processes analysed exert significant effects on their addressees that make them *functionally comparable* to other forms of global rule-making (Dingwerth and Pattberg 2007). They serve to consciously devise behavioural prescriptions that regulate specific issue areas across national borders – and they are often very effective in doing so. Thus, the WCD report is widely referred to as the primary policy document on large dams, the Sustainability Reporting Guidelines are considered as the leading standard according to which business is to report its non-financial performance, and the FSC's Principles and Criteria constitute the benchmark for sustainable forest management. To become effective, all three processes rely on a mixture of rational incentives and appeals to social appropriateness. For instance, the FSC combines an instrumental 'do X to get Y' logic – in this case, comply with the *Principles and Criteria* to obtain a certificate – with the presentation of the *Principles and Criteria* as a guideline for appropriate forest management. Similarly, the GRI spends a significant share of its resources on promoting sustainability reporting as a constitutive element of socially responsible – in other words of appropriate – business behaviour while at the same time alluding to the economic benefits of corporate reporting. Finally, the WCD's normative framework relies most

heavily on notions of social appropriateness to become effective. Thus, the WCD's Policy Principles provide a basis for determining whether a given large dam project is acceptable, but they neither provide a basis for certifying large dams as 'sustainable', nor does the Dams and Development Project as the successor of the WCD maintain an inventory of large dam projects that have used the WCD guidelines as a basis for their decision-making. As a result, while all three schemes are clearly shaping the behaviour of their addressees, the mechanisms at work differ.

Beyond the cases examined here, a wide range of explicit behavioural commands are consciously developed by transnational organisations, exerting effects on individuals and groups throughout the world. They include global standards for accounting (set by the International Accounting Standards Board), fair labour (set by the Fair Labor Association), fair trade (set by national organisations organised within the Fairtrade Labelling Organisations International), organic farming (set by the International Federation of Organic Agricultural Movements) or for telecommunication technology (set by the Internet Corporation for Assigned Names and Numbers). The *new transnationalism* examined in this book is therefore not restricted to sustainability politics. Instead, the WCD, the GRI and the FSC stand for a broader phenomenon that encompasses human rights as well as economic, financial and human rights issues.

Transnational rule-making as a distinct form of governance. While different forms of global governance may be considered as functionally equivalent, they nonetheless remain distinct forms with distinct characteristics. Having defined governance as rule-based coordination, I have distinguished, in Chapter 1, between three types of governance beyond the state: First, in *intergovernmental rule-making*, governments of individual states negotiate agreements that become binding for all negotiating parties. *International bureaucratic rule-making* constitutes a variant of this first type, in which the administrative agencies of intergovernmental organisations (IGOs) create rules that govern specific policy areas. Second, in *transgovernmental rule-making*, national public actors formally or informally create and implement rules to coordinate their activities across borders. Third, in *transnational rule-making*, societal actors develop and implement transboundary rules for a given issue area.

The output of these different types of governance is similar; it consists of consciously made and at least minimally effective behavioural commands that apply to actors in different countries. The specific characteristics of transnational rule-making processes therefore do not primarily relate to their outcomes, but to the decision-making process itself. In terms of this process, similarities to intergovernmental rule-making exist in as much as the latter often invites the participation of non-governmental actors. As a result, at least some intergovernmental negotiation processes could rightly claim to be 'multi-stakeholder processes'. A

major difference between intergovernmental and transnational rule-making processes, however, lies in the status of non-governmental actors within the decision-making process. In intergovernmental processes, private actors are clearly secondary to governments – they may or may not be invited to participate. As the cases discussed in this study illustrate, transnational rule-making reverses these roles. Depending on whether or not they perceive governmental participation as necessary for their own success, the initiators of transnational rule-making processes may or may not invite public authorities to participate.

Nonetheless, it may be asked to what extent transnational rule-making processes are truly independent from the world of states. Are their participants actually devising new rules? Or are they mainly specifying existent international norms, adapting them to particular circumstances and therefore implementing rather than setting standards? The UN Global Compact is a leading case for this interpretation. It adapts broad intergovernmental principles on human rights, labour rights, sustainability and now also corruption so that they can be applied to business corporations. Technically speaking, the principles on which the UN Global Compact is based are legally binding for most states and, consequently, for corporations operating in these states. As a result, the UN Global Compact does not introduce new rules, but reiterates – and partially specifies – principles which most corporations are required to obey anyway. In two of the three cases studied here, the organisations' rhetorical efforts to link their own activities to international norms or structures suggest that a similar dynamic may apply to transnational rule-making as such. Hence, both the WCD and the GRI stress that their regulatory frameworks partly express the spirit – and occasionally even the letter – of international agreements. Moreover, they invoke the endorsement of intergovernmental organisations such as the World Bank, the World Conservation Union (IUCN) or the United Nations Environment Programme (UNEP) to enhance their public recognition.

But all three processes have been established in areas where intergovernmental rules are either absent or weak. Thus, despite the lasting controversy around large dams, intergovernmental efforts to address the issue have never been envisaged. Similarly, while corporate social responsibility has become a major issue on the agenda of sustainability politics and while the increasingly transnational activities of corporations would seem to justify the creation of an intergovernmental framework to control the consequences of corporate activities, such efforts have been weak. Finally, despite widespread concerns about the degradation of the world's forests, intergovernmental forest negotiations have made hardly any progress since their initiation in the 1980s. As a result, all three schemes can be considered as societal responses to the absence of rules rather than an implementation of existing rules. This does not necessarily mean that they respond to objective governance gaps. On the contrary, the initiators of trans-

national rule-making processes often subjectively define such gaps before identifying ways to fill them. In general, transnational processes thus constitute a means for specific societal actors to pursue their political interests in spite of a lack of governmental interest. As a result, transnational rule-making processes constitute a highly political phenomenon.

Their political nature is further enhanced by a multi-stakeholder discourse that provides the ideational foundation for most transnational rule-making processes. The discursive shift from a citizen rhetoric to a stakeholder rhetoric goes to the heart of democracy as it revolves around who should participate in the making of norms and rules. As David Humphreys (2004: 71) has aptly commented,

NGOs will use concepts such as multistakeholder governance and participation to pry open political processes for civil society. Business and private sector actors will use these same concepts to gain a louder decision making voice for themselves, while governments will be content to see other actors stepping forward to assume functions that were previously the domain of the state. The question then becomes: who has more power in such 'open' and 'transparent' dialogues?

That access, transparency and power play a pivotal role in transnational governance schemes is exemplified by a case not examined here, namely decision-making in the International Accounting Standards Board (IASB). In contrast to cases studied in this book, the IASB is a relatively closed shop in which financial sector actors dominate over other categories of business actors. Moreover, decision-making in the IASB has often been described as opaque and accessible only to a narrow circle of insiders and the success of the IASB standards is essentially linked to the support they receive from a small number of powerful states, notably the United States (Perry and Nölke 2005). Even if decision-making may be described as tentatively deliberative (McGrew and Robotti 2006), the example of the IASB suggests that transnational rule-making on sustainability issues may approach the ideal of democratic legitimacy more closely than transnational rule-making on economic and financial issues. While environmental and human rights politics are traditionally more open to claims for citizen participation, participation in economic and financial decision-making processes is commonly based on expertise rather than on being affected or on the mere claim of being a citizen. Accordingly, organisations in the sustainability field have, as we will see below, developed 'best practice' standards for democratically devising transnational rules, while a similar standard does not exist for the economic and financial sector. This indicates that the political and legitimacy cultures of a policy field are likely to influence to what extent normative standards of democratic governance are realised in transnational governance arrangements.

Homogeneity or heterogeneity? Although the category of transnational rule-making processes suggests a certain degree of homogeneity, the comments above illustrate that the phenomena that fall within its confines may vary. Beyond differences related to substantive policy areas, transnational rules also differ in terms of the number and range of actors involved. Thus, they be made unilaterally, as for instance in the case of the Puma Code of Conduct, bi-laterally as in agreements between the International Metalworkers' Federation and corporations such as DaimlerChrysler, Renault or Volkswagen, or through multilateral processes such as the ones studied here.

Moreover, the three cases also reveal differences within the organisational form of 'multilateral' transnational rule-making. As a first model, the WCD is organised as a *temporary commission*. In the commission model, a small number of experts is selected and mandated by the commission's initiators to develop specific recommendations on a politically contested issue. Commissions are usually guided by values such as expertise, rationality and impartiality. To accomplish their task, commissions may be assisted by a range of stakeholders and experts. However, these stakeholders and experts neither have an explicit right to participate in the decision-making process nor formal means to influence the commission's recommendations.

In contrast to this first model, the GRI is organised as a *foundation*. Foundations are permanent and are led by a board of directors. Like commissions, they do not have a defined membership. Accordingly, transnational rulemaking processes organised as a foundation may include a broad range of stakeholders, but they are not formally required to do so. In addition, the case study shows that the permanent nature of the organisation provides for a stronger role of the secretariat, thereby facilitating the bureaucratisation of organisational processes.

Third, the FSC is a paradigmatic case for a transnational rule-making process organised as a *membership association*. In contrast to the other models, members of the association retain the ultimate authority to make decisions about the association's policies. To exercise this authority, they convene regularly for a general assembly. Other governing bodies such as a board of directors, a secretariat or a technical advisory council may exist, but are subordinated to the general assembly of the association's members.

Transnational vs. intergovernmental: Similarities, differences and normative implications

What are the key similarities and differences of transnational and intergovernmental rule-making processes? And what implications do these differences have for the democratic legitimacy of the two forms of governance? In Chapter 2, I have argued that a transnational rule-making process is democratically legitimate when, taking into account its nor-

mative context, it is sufficiently inclusive, provides for mechanisms of democratic control and is based on an adequate discursive quality of opinion- and will-formation. The following paragraphs summarise the findings on each of these criteria. A core finding is that, if designed carefully, transnational rule-making processes can be as democratic as intergovernmental rule-making processes.

Normative Context. In terms of the normative context two fundamental differences exist. First, intergovernmental rule-making processes are authorised by participating governments and – at least in democratic political systems – by national legislative bodies. In contrast, transnational rule-making processes lack formal public authorisation. Even where they seek and establish close ties with international agencies they ultimately remain self-mandated. Second, intergovernmental rule-making is distinct from transnational rule-making in that its outcomes may become legally binding and hence enforced by state bureaucracies. In contrast, transnational rules are legally non-binding. To become effective, they either need to acquire a sense of social obligation or provide their addressees with rational incentives to follow them in practice. In sum, the two features – authorisation of the rule-making process and mandatory character of the rules – are complementary. The normative requirements for intergovernmental and transnational rule-making processes therefore do not differ fundamentally.

Inclusiveness. Intergovernmental and transnational processes differ in their inclusiveness. Most importantly, intergovernmental rule-making is based on widely accepted definition of states as the exclusive constituencies. The appeal of this solution is based on the guarantee that in intergovernmental negotiations each citizen is – at least in theory – represented by his or her government. In practice, the actual representation of citizens depends on the qualities of domestic political systems and on the capacities of their governments.

In contrast, the transnational governance processes studied here are not based on an equally simple and compelling definition of their main constituencies. While the WCD defines governments, civil society and the business sector as its core stakeholder groups, participation in the GRI is based on a distinction between civil society, labour, business, and so-called mediating institutions. Finally, the FSC distinguishes between economic, environmental and social interests and introduces a further geographical distinction between Northern and Southern stakeholders. In sum, Chapters 4 to 6 illustrate that all three schemes face severe difficulties to convincingly define and delimit stakeholder categories. Given the intricacies of this task, this is not only a challenge for the three cases studied here, but a characteristic feature of all multi-stakeholder processes.

Furthermore, the analysis of the WCD, the GRI and the FSC reveals that, while all three organisations include a broad range of actors, inclusion is usually limited to those actors deemed necessary for the success of each

initiative. As a result, Southern participation is often limited to representatives from a small number of 'anchor countries' – most notably Brazil, India, and South Africa.¹ Moreover, the case studies show that knowledge-centred elements of transnational decision-making processes are particularly dominated by Northern experts – a deficit, that however also affects many intergovernmental processes. Finally, and more positively, all three transnational rule-making processes studied include highly innovative participatory elements aimed at ensuring broad participation in decision-making. As these elements are generally applicable to intergovernmental rule-making, the latter's inclusiveness could thus be enhanced by relatively simple means, namely the inclusion of regional consultations, stakeholder forums or public comments periods as core elements of intergovernmental decision-making processes.

Democratic Control. Intergovernmental and transnational processes also differ in terms of their transparency and accountability. Transnational rule-making processes face a strong instrumental need to be transparent, not least because they need to gain credibility with stakeholders. As a result, all three processes studied here rhetorically emphasise transparency strongly. To substantiate their claims, they make relevant documents available on the Internet and distribute regular updates to stakeholders and participants in the decision-making process. Given the budgetary constraints of all three schemes, their efforts to render decision-making transparent are remarkable and appear to outperform similar efforts made in the context of intergovernmental negotiation processes.

Nonetheless, transnational rule-making faces three particular challenges in relation to transparency. First, with the notable exception of the FSC, information is usually available only in English, thereby excluding non-English speakers from obtaining first-hand information. In this regard, transnational processes should reconsider their decision to translate their outcomes – both the final report of the WCD and the Sustainability Reporting Guidelines of the GRI have been translated into numerous languages – but not their process documents.

Second, transnational rule-making processes tend to be less transparent in their early phase. Usually conceived by a small group of norm entrepreneurs, they only become more inclusive and transparent after the initial framing of the process has taken place and a number of core decisions have been taken. As the case study on the Forest Stewardship Council indicates, path dependencies induced by institutionalisation, a reliance on market instruments, and existing legal contracts with certification agencies and producers will make it difficult to reverse early decisions once the process has become more inclusive and transparent.

Third, the informal character of transnational rule-making processes becomes problematic where such processes proliferate. Most importantly, stakeholders will face high costs to follow, let alone effectively control, a

large number of processes. In contrast to intergovernmental processes that operate according to standardised procedures, the design of transnational rule-making processes varies significantly. A more coherent procedural foundation for transnational rule-making processes would help to render these processes more transparent even as they proliferate. The International Social and Environmental Accreditation and Labelling (ISEAL) Alliance – itself a transnational policy process – has recently suggested a set of criteria for the appropriate governance of transnational policy processes. Adherence to the ISEAL Code of Good Practice for Setting Social and Environmental Standards might be considered a first practical step towards a harmonisation of transnational rule-making processes, a step that ultimately serves to increase their transparency.²

In terms of accountability, formal control mechanisms are stronger in intergovernmental processes than in transnational ones. In intergovernmental processes delegates are formally accountable to their governments, governments are formally accountable to parliaments, and parliamentarians are formally accountable to electorates. In contrast, multi-stakeholder processes often do not include formal mechanisms to hold decision-makers to account. Moreover, representatives in the governing bodies of transnational rule-making processes are often equipped with weak and imprecise mandates and can therefore not be controlled effectively. The general problem has been described cogently by Virginia Haufler (2003: 243):

All alternative forms of regulation suffer from the problem of lack of accountability. In accountable systems, those who make decisions that the public deems to be wrong can be re-called, denied re-election or re-appointment, or otherwise held responsible. Both multistakeholder regulation and industry self-regulation are unaccountable. The participants are self-selected. The ill-defined 'public' in these cases can hold people accountable only through indirect means, by their choices in the market place.

Partially compensating for the lack of formal accountability relations, the case studies, however, demonstrate that transnational rule-making processes do include a broad range of informal and indirect control mechanisms.

Discursive Quality. Finally, the empirical analysis suggests that transnational rule-making processes are more conducive to a deliberative mode of interaction than their intergovernmental counterparts. While intergovernmental negotiations are characterised by a large number of participants bound by relatively strict mandates from their domestic principals, the governing bodies of transnational processes are often small, dispose of a continuous membership and a strong collective identity, and operate on the basis of consensus. Taken together, these factors strengthen the role of argumentative dynamics in transnational rule-making processes.

Moreover, all three processes analysed include a broad range of deliberative forums beyond their key governing bodies. Thus, working groups on specific issues, regional consultations, structured feedback processes and public comments periods provide considerable space for a sincere exchange of arguments on individual aspects of the decision-making process.

In sum, intergovernmental and transnational policy processes each have different strengths and weaknesses. In view of designing *transnational* rule-making processes, three recommendations can be derived:

- Transnational rule-making processes should seek the cooperation and acknowledgement of intergovernmental organisations to broaden the basis of their authority.
- Transnational rule-making processes need to increase their efforts to compensate for the fact that stakeholders' capacities differ greatly across geographical regions as well as societal strata. Despite its practical imperfection, the Forest Stewardship Council's system of weighted voting that accords Southern participants 50 per cent of the overall voting power in each chamber is a step in the right direction.
- To increase their transparency, transnational rule-making processes will need to substantially enhance their efforts to make relevant procedural and substantive information available in a timely fashion. In particular, sufficient funds should be set aside to allow for official translations of process documents into languages relevant to stakeholders. Moreover, transparency is particularly important at the early stage of decision-making processes at which crucial decisions are made.

In exchange, the strong performance of transnational processes in relation to some criteria of democratic legitimacy leads to three further recommendations for the design of *intergovernmental* rule-making processes:

- To enhance their inclusiveness and make them more conducive to deliberations, intergovernmental rule-making processes should establish participatory forums at different levels of policy-making. Such forums could include regional consultations, consultative stakeholder councils or public comments periods.
- The discussion in Chapters 3 to 6 shows that intergovernmental processes are still lagging behind in the transparency of their decision-making processes. To increase transparency, intergovernmental rule-making processes should make every effort to make relevant process documents available to the public in a timely fashion and to pursue a more active communication policy. The efforts made by transnational governance schemes such as the WCD, GRI and FSC may serve as a valuable model in this regard.
- To enhance the quality of Southern participation and to ensure that decision-making is based on the 'free and equal deliberation of all',

weighted voting schemes that establish North-South parity should be introduced and tested in some areas of decision-making. The requirement of a double-majority of Northern and Southern governments within the Global Environmental Facility illustrates that affirmative procedures can also work effectively in intergovernmental policy-making.

Beyond these policy recommendations, structural inequalities and the lack of capacity of some stakeholders – most notably governmental and non-governmental actors from the least developed countries – pose the most severe and immediate challenge for both intergovernmental and transnational rule-making processes. In this context, Chapters 4 to 6 show that transnational rule-making is anything but immune from reproducing the same inequalities that characterise intergovernmental rule-making. For both, capacity building and affirmative procedures are the primary means to alleviate power imbalances. They should be implemented wherever practical.

Transnational vs. transnational: Commissions, foundations and associations

A closer look at transnational rule-making processes reveals that differences not only exist between transnational and intergovernmental policy-making, but also within the sphere of transnational rule-making processes. To account for such variation, I have distinguished between three different models, namely commissions, foundations and associations. I will now summarise the main strengths and weaknesses of each model. Since the normative contexts are not linked to differences in the organisation of rule-making, I restrict my discussion to inclusion, control, and discursive quality. A key finding is that at the abstract level of democratic governance, the performance of commissions, foundations and associations does not differ significantly. Yet, associations tend to be more inclusive and accountable whereas commissions and foundations tend to be more deliberative.

Inclusiveness. In terms of their inclusiveness, the three transnational processes analysed share some basic characteristics. Thus, all three processes include a diverse range of actors and contain numerous participatory elements such as regional consultations (WCD and GRI), participatory case studies (WCD and FSC), working groups (GRI and FSC) and an advisory stakeholder council (WCD and GRI).

At the same time, all three schemes face an inherent difficulty to adequately define and delimit stakeholder categories. In fact, economic stakeholders are the only category that appears consistently in all three schemes; yet only the FSC gives a precise definition of who counts as an 'economic stakeholder'. Moreover, the stakeholder rhetoric that underlies all three decision-making processes conceals that different actors may have

different degrees of legitimacy. For instance, the legitimacy of business participation in the WCD appears questionable, as does the strong role of the accountancy and consultancy sector in the GRI. Furthermore, despite widespread acknowledgement that local, regional and national governments are important stakeholders in all three issue areas, the level of government engagement is low across cases. It is lowest in the case of the FSC where public authorities are explicitly excluded and where the organisation as a membership association provides an obstacle to governmental participation. Since they have the full authority to devise and implement rules they consider useful anyway, governments face little incentive to sign on to an organisation in which they formally share the same authority with non-governmental actors.

A further general observation is that all three schemes appear to include precisely that range of actors whose participation is deemed necessary for the success of the initiative. In practice, this means that processes have been less inclusive in their early phases and that Northern norm entrepreneurs dominate in most cases. In the FSC, Latin American members have recently caught up; numerically, they are now as strong as North American and European members. Nonetheless, path dependencies imply that early decisions constrain the range of decisions that may be taken at later stages.

Beyond these similarities, two core differences exist. First, the quality of participation is higher in associations. While participants in commissions (WCD) and foundations (GRI) mainly have a consultative role – for instance, through membership in the stakeholder body – members of associations (FSC) retain the ultimate authority over the organisation's policies. By and large, associations thus tend to be more inclusive than alternative models of transnational governance – although the precise level of inclusiveness always depends on the association's membership policy. Moreover, the FSC has combined its membership model with affirmative procedures to ensure effective representation of Southern interests. While the case study on the FSC has illustrated that the practical implementation of weighted voting still suffers from a number of shortcomings, the instrument itself is nonetheless highly interesting from a normative point of view.

Democratic Control. With regard to democratic control, two further distinctions can be made. First, transnational rule-making processes organised as membership associations provide for stronger accountability relations than alternative models. Because members may override decisions taken by the board of directors or by the secretariat, they exert significant control over these governing bodies. In contrast, members of the key governing bodies in the WCD and in the GRI are exposed to only weak control by their constituencies; formally, they act in their individual capacities and do not represent the views of any particular group.

Second, permanent organisations (that is, foundations and associations) are more accountable to their funders than non-permanent organisations (that is, commissions) as they seek long-term commitments. Depending on the overall number of donors and the dispersion of funds, individual donors may wield significant influence on the policies of permanent transnational organisations. Examples from the case studies include the United Nations Foundation – founded by US billionaire Ted Turner – and the WWF whose donations were crucial in the early years of the GRI and the FSC. As the case studies illustrate, accountability to donors constitutes a highly effective control mechanism. Since only a very limited range of individuals has access to this control mechanism, its nature, however, is plutocratic rather than democratic.

Two further observations are worth mentioning. First, the case studies illustrate that transparency depends on the availability of sufficient financial means. In particular with regard to translation, financial constraints constitute an obstacle to greater transparency. Nonetheless, the experience of the FSC demonstrates that a bi-lingual policy – and, by extension, a multi-lingual policy – is possible. As with other criteria analysed in this study, the bi-lingual policy of the FSC is a result of the particular needs the organisation is facing. Since environmental groups aimed at changing forest management practices in the tropics – and primarily in Latin America – they had to engage Latin American stakeholders to gain credibility. Nonetheless, even if other processes do not face similar pressures, the FSC's language policy might inspire them to consider a similar approach.

Finally, in terms of accountability, the WCD is a special case because public actors are central for the implementation of its Policy Principles. Hence, decisions on individual large dam projects will usually be taken by domestic government agencies. Regardless of whether these agencies are local, regional or federal, they will in many cases be held accountable at home. In sum, the configuration of accountability relations thus also depends on the subject of rule-making.

Discursive Quality. Complementing these findings, the case studies demonstrate that commissions and foundations are more conducive to a deliberative mode of decision-making than membership associations. Again, this observation results from the central role of the general assembly of members in the association model. Thus, key governing bodies of the WCD and the GRI facilitate deliberation through their small size, continuity of membership, a relatively strong collective identity and through the adoption of consensus procedures. In contrast, the General Assembly of the FSC – similar to other assemblies in membership associations – is less conducive to an effective exchange of arguments due to its large size, its infrequent meetings and its competitive voting procedures.

Of the other two models, the commission model seems particularly conducive to a deliberative mode of interaction, not least because commissions

are usually expected to be guided by norms of expertise, impartiality, and rationality. The WCD process is particularly noteworthy in this regard since commissioners dedicated the entire first year to establishing a common knowledge base on various socio-economic and ecological aspects of the performance of large dams. Only after this common knowledge base had been established, the commission began to develop its recommendations.

Beyond these differences, all three schemes studied involve a wide range of deliberative forums, including working groups (GRI and FSC), national initiatives (FSC), regional consultations (WCD and GRI), participatory case studies (WCD and FSC), public comments periods (WCD, GRI and FSC) and regular conferences on specific aspects of the decision-making process (GRI and FSC).

Finally, in terms of discursive balance, the case studies show that Northern mainstream conceptions of sustainability or sustainable development dominate in all three cases. At a general level, all three decision-making processes are open to a diverse range of perspectives. Nonetheless, they are framed by a particular conception of sustainable development, and arguments that challenge the fundamental premises of each of the three decision-making processes will be more difficult to integrate. This means that, for instance, arguments that contest the possibility of attaining sustainable forest management, the appropriateness of a globally harmonised set of forestry principles or the adequacy of market instruments are unlikely to be listened to within the FSC.

Some broad summary broad conclusions can be drawn with a view to designing transnational rule-making processes:

- At the aggregate level of democratic legitimacy, the performance of the different organisational models of transnational rule-making is not fundamentally different. However, relevant differences exist at the level of individual dimensions of democratic governance. Thus, membership associations have clear advantages in their inclusiveness and accountability. But they are less likely than commissions and foundations to base their decision-making on a deliberative mode of interaction.
- The nature of accountability relations partly depends on the objects of regulation. Where transnational rules are primarily directed to governments, their specification at the national, regional or local level will often be subject to domestic control mechanisms. In contrast, where transnational rules address non-governmental actors, domestic control will be more informal and is, as a result, likely to be limited to particular interest groups.
- Notwithstanding the differences in inclusiveness, control, and discursive quality, different organisational models may be suited to different tasks. For instance, the commission model lends itself to mediate in a heated and value-laden conflict such as the debate over large dams (Brinkerhoff

2002b). In contrast, the foundation model may be the preferable option for policy processes in less conflictive areas where pioneering efforts are required to pave the way for long-term changes of unsustainable social practices. In actual practice, the choice of the organisational model does not only have to take into account the procedural strengths and weaknesses of each model, but also potential trade-offs between democratic legitimacy and effectiveness.

Implications for democratic theory

Beyond these empirical findings, this study also makes a contribution to the more theoretical debate about normatively justified forms of global governance. So far, this debate has been dominated by two strands of literature, both of which only offer a partial solutions to the problem at hand. The philosophically oriented literature on democratic global governance – the works of David Held, Otfried Höffe, Jürgen Habermas and others – provides guidance on theorising about a normatively justified global order. Yet, it frequently fails to take into account the conditions under which contemporary world politics operates. In contrast, the empirically oriented literature – the works of Wolfgang Reinicke, Andrew Moravcsik, and others – provides a more realistic analysis of the conditions of contemporary world politics, but fails to develop clear and theoretically derived criteria for democratic governance. In the context of these two literatures, this work provides for a middle way. By presenting a coherent catalogue of criteria that is rooted in normative theorising about democracy *and* grounded in an appreciation of the empirical context of inter- and transnational rule-making, it combines the strengths of both approaches, which are actually complementary. Nevertheless, it seems appropriate not to conclude this study without having re-examined how the empirical evaluation may advance our understanding of democratic legitimacy beyond the state.

John Rawls' (1971) idea of a reflective equilibrium provides a valuable tool to reflect upon this question. This idea holds that moral theories are adequate when their practical application does not reveal a serious incongruence with our considered judgements. In contrast, where such incongruence exists, we basically face two options: to amend our theories or to re-examine our intuitions. In any case, the observation that our moral theory and our reflected moral intuitions do not coalesce hints at a potential deficiency of our concepts and theories.

Applied to this study, I do not see any serious mismatches. Certainly, critics might contend that some of the more critical remarks in Chapters 3 to 6 are inappropriate since, by applying normative standards based on a utopian ideal of democratic governance, they disregard the very nature of political decision-making. For instance, I have criticised that the definition of stakeholder groups is arbitrary in all three processes, that the levels of

inclusiveness and transparency are fairly low in the early phases of all three processes, and that the English-focused language policy of two of the three processes excludes large parts of the stakeholder community. This criticism, it could be argued, is putting excessive demands on policy processes that work for a good cause. Nonetheless, my criticism points to important challenges real-world transnational policy processes are facing. As a result, discomfort with some of the criticism articulated in this study does not hint at major flaws in the theoretical framework. Instead, it indicates two things – first, that observers may entertain different premises about the possibility of democratic politics, and second, that some aspects of the theoretical framework may need to be specified further. Such a specification would need to show which criteria should guide the identification and definition of relevant constituencies and the selection of participants, which values should guide the early phases of transnational policy processes, or which minimum level of transparency should be achieved at each stage of decision-making.

Beyond these general reflections, the empirical chapters indicate a number of trade-offs between individual criteria for democratic legitimacy. The analytical framework that underlies this study does not resolve these trade-offs. Accordingly, refining this framework will require guidance from political theory on a number of demanding questions: Should criteria be weighted differently? Should inclusiveness have precedence over accountability or vice versa? Or should criteria be organised in a lexical order, implying that some criteria become relevant only when other, more fundamental criteria are met? More specifically, Chapters 3 to 6 identify four trade-offs:

- *Accountability vs. deliberation:* The analysis of the WCD, the GRI and the FSC suggests that accountability and deliberativeness are negatively correlated. In other words, processes with strong accountability relations are less conducive to a deliberative mode of interaction. In contrast, processes that score high on deliberativeness perform less well in accountability. This relation is due to the notion that small-sized groups are more conducive to deliberative decision-making and that representatives with weak mandates from their constituencies are more likely to deliberate than representatives with strict mandates. Both elements, however, decrease the potential of addressees of decisions to exert control over decision-makers. An important question for the initiators of transnational rule-making processes thus is: How can accountability be achieved without limiting the opportunities for deliberation?
- *Transparency vs. deliberation:* Similarly, decision-making processes that are fully transparent are less likely to be deliberative. The reason for this trade-off is that representatives in fully transparent processes need to demonstrate to their constituencies that they are not giving in to the pressures from opposing parties. As a result, bargaining becomes more

likely than arguing. This reasoning, for instance, led the World Commission on Dams to hold commission meetings behind closed doors and to reject, despite significant criticism, the publication of meeting minutes, thereby deliberately limiting the transparency of decision-making. A crucial question for designers of governance processes thus is: How should transparency and deliberativeness be balanced?

- *Inclusiveness vs. deliberativeness*: As one result of the case studies, decision-making in the FSC not only displays the highest quality of participation, it is also least conducive to deliberation. To some extent, the evaluation of both criteria is based on the same evidence, namely the central role of the large-sized General Assembly of FSC members in the governance of the FSC. In other words, the analytical framework on which this study is based largely precludes the possibility of achieving inclusiveness and deliberativeness simultaneously. As a result, fine-tuning the framework would imply a need to first resolve the fundamental question: How may inclusiveness and deliberativeness be jointly accomplished within a single decision-making process? Given the recent popularity of deliberative democracy in the study of international relations, a theoretical clarification of this point will be essential. In other words, we need to specify what ‘deliberative democracy’ can actually mean in the context of global decision-making processes.
- *Affirmative procedures – yes or no?* Finally, the discussion in chapter 6 elucidates that affirmative procedures can be evaluated both positively and negatively from the perspective of democratic theory. The weighted voting system of the FSC allows developing country stakeholders to participate effectively in the governance of the organisation. But the voting system creates vast disparities in the voting power of individual FSC members, thereby violating a fundamental principle of democratic theory. As a result, we need to answer another question in political theory: How can we ensure effective participation in global decision-making processes without violating basic tenets of democratic governance?

On a more general note, these trade-offs indicate that the concept of democratic legitimacy may be too broad and multi-faceted to serve as a conceptual tool for the comparison of specific decision-making processes. Composed of multiple dimensions – here conceptualised as inclusiveness, democratic control and discursive quality – ‘democratic legitimacy’ is a highly abstract concept. As such, it helps to organise our thinking about what kinds of procedures are morally desirable. However, the aggregate notion of democratic legitimacy is only of limited added value. Most importantly, it is insensitive to the many idiosyncrasies of real-world decision-making processes and conceals potentially important trade-offs. Consequently, the evaluation of real-world phenomena is best served by relying on concepts addressing a lower level of aggregation. Such concepts may, for instance, include notions

of inclusiveness, accountability, transparency or discursive quality as they have been developed and applied in this study.

Concluding remarks

I have examined the democratic legitimacy of different types of rule-making beyond the state. In a first step, I clarified what 'democratic legitimacy' can actually mean for governance beyond the state. Building on different strands of democratic theory, in Chapter 2, a set of criteria and associated questions was developed that can serve as a basis for evaluating real-world decision-making processes. Subsequently, I applied these criteria to intergovernmental rule-making and to different organisational forms of transnational rule-making processes, namely commissions, foundations, and associations.

The analysis of the World Commission on Dams, the Global Reporting Initiative, and the Forest Stewardship Council shows that each of these organisations of global rule-making has its strengths and weaknesses. By specifying them, this study contributes to a growing body of literature on private authority in global governance. This literature has, as outlined in the introduction to this study, already shed light on many aspects of non-state governance beyond the state, including different types of public-private interaction in world politics, the dynamics of institutionalisation in private governance schemes and, more generally, the changing roles of private actors in world politics. In this literature, my study addresses *normative* questions related to the *process* of private global governance. On a larger scale, it contributes to a growing literature that reflects upon 'how we might live' (Boothe et al. 2001) – or, more narrowly, how we may respond to the 'need to strengthen institutions for global decision-making and make them more responsible to the people they affect' (Singer 2002: 199). In confronting the challenge of developing a suitable form of global governance scholars increasingly recognise that we need to extend our search for appropriate governance arrangements beyond the sphere of intergovernmental politics. Having ascertained that the nation-state is undergoing profound transformations (Leibfried and Zürn 2005; Hurrelmann et al. 2008), scholars are widening their search for legitimate agents and structures of global governance. According to a widely accepted narrative, this range now includes civil society organisations, trade unions, business associations, and universities, to name just a few. Still, observers keep reminding us that, even if 'the territorial state as an abstraction may eventually become redundant, the principles and values that govern democracies should not' (Reinicke 1998: 231).

Following this line of thought, Ann Florini (2005: 209) has recently argued that the transformations currently underway 'may make possible a highly democratic, albeit nonelectoral, system of transnational gover-

nance'. However, she cautions, such structures will be imperfect. In fact, they are likely to be 'inherently messy, difficult to institutionalize, subject to co-optation by the rich and powerful, and hard to explain' (ibid.). The findings in this study confirm this analysis. They illustrate that the new transnationalism we are witnessing can be democratic and undemocratic at the same time. As a result, it is imperative to come to a solid understanding of the distinct strengths and weaknesses of different forms of global governance. In the best case, it may enable decision-makers to alleviate the weaknesses and fully exploit the strengths of particular forms of governance – in short, to design better decision-making processes. In this sense, this study not only represents a scholarly attempt to understand changing patterns of world politics. It is also motivated by the desire to guide policy-makers in their laudable, but often arduous efforts to render global decision-making more democratic. Clarifying what 'democratic legitimacy' may reasonably mean in global politics and comparing the democratic potentials of different ways to make global rules are two steps in this direction. Further steps will follow.

Appendices

Annex I The World Commission on Dams' Strategic Priorities and Policy Principles¹

1. Gaining Public Acceptance

- 1.1 Recognition of rights and assessment of risks are the basis for the identification and inclusion of stakeholders in decision-making on energy and water resources development.
- 1.2 Access to information, legal and other support is available to all stakeholders, particularly indigenous and tribal peoples, women and other vulnerable groups, to enable their informed participation in decision-making processes.
- 1.3 Demonstrable public acceptance of all key decisions is achieved through agreements negotiated in an open and transparent process conducted in good faith and with the informed participation of all stakeholders.
- 1.4 Decisions on projects affecting indigenous and tribal peoples are guided by their free, prior and informed consent achieved through formal and informal representative bodies.

2. Comprehensive Options Assessment

- 2.1 Development needs and objectives are clearly formulated through an open and participatory process before the identification and assessment of options for water and energy resource development.
- 2.2 Planning approaches that take into account the full range of development objectives are used to assess all policy, institutional, management, and technical options before the decision is made to proceed with any programme or project.
- 2.3 Social and environmental aspects are given the same significance as technical, economic and financial factors in assessing options.
- 2.4 Increasing the effectiveness and sustainability of existing water, irrigation, and energy systems are given priority in the options assessment process.
- 2.5 If a dam is selected through such a comprehensive options assessment process, social and environmental principles are applied in the review and selection of options throughout the detailed planning, design, construction, and operation phases.

3. Addressing Existing Dams

- 3.1 A comprehensive post-project monitoring and evaluation process, and a system of longer-term periodic reviews of the performance, benefits, and impacts for all existing large dams are introduced.
- 3.2 Programmes to restore, improve and optimise benefits from existing large dams are identified and implemented. Options to consider include rehabilitate, modernise and upgrade equipment and facilities, optimise reservoir operations and introduce non-structural measures to improve the efficiency of delivery and use of services.

- 3.3 Outstanding social issues associated with existing large dams are identified and assessed; processes and mechanisms are developed with affected communities to remedy them.
- 3.4 The effectiveness of existing environmental mitigation measures is assessed and unanticipated impacts identified; opportunities for mitigation, restoration and enhancement are recognised, identified and acted on.
- 3.5 All large dams have formalised operating agreements with time-bound licence periods; where re-planning or relicensing processes indicate that major physical changes to facilities, or decommissioning, may be advantageous, a full feasibility study and environmental and social impact assessment is undertaken.

4. Sustaining Rivers and Livelihoods

- 4.1 A basin-wide understanding of the ecosystem's functions, values and requirements, and how community livelihoods depend on and influence them, is required before decisions on development options are made.
- 4.2 Decisions value ecosystems, social and health issues as an integral part of project and river basin development and prioritise avoidance of impacts in accordance with a precautionary approach.
- 4.3 A national policy is developed for maintaining selected rivers with high ecosystem functions and values in their natural state. When reviewing alternative locations for dams on undeveloped rivers, priority is given to locations on tributaries.
- 4.4 Project options are selected that avoid significant impacts on threatened and endangered species. When impacts cannot be avoided viable compensation measures are put in place that will result in a net gain for the species within the region.
- 4.5 Large dams provide for releasing environmental flows to help maintain downstream ecosystem integrity and community livelihoods and are designed, modified and operated accordingly.

5. Recognising Entitlements and Sharing Benefits

- 5.1 Recognition of rights and assessment of risks is the basis for identification and inclusion of adversely affected stakeholders in joint negotiations on mitigation, resettlement and development related decision-making.
- 5.2 Impact assessment includes all people in the reservoir, upstream, downstream and in catchment areas whose properties, livelihoods and non-material resources are affected. It also includes those affected by dam related infrastructure such as canals, transmission lines and resettlement developments.
- 5.3 All recognised adversely affected people negotiate mutually agreed, formal and legally enforceable mitigation, resettlement and development entitlements.
- 5.4 Adversely affected people are recognised as first among the beneficiaries of the project. Mutually agreed and legally protected benefit sharing mechanisms are negotiated to ensure implementation.

6. Ensuring Compliance

- 6.1 A clear, consistent and common set of criteria and guidelines to ensure compliance is adopted by sponsoring, contracting and financing institutions and compliance is subject to independent and transparent review.
- 6.2 A Compliance Plan is prepared for each project prior to commencement, spelling out how compliance will be achieved with relevant criteria and guidelines and

specifying binding arrangements for project-specific technical, social and environmental commitments.

- 6.3 Costs for establishing compliance mechanisms and related institutional capacity, and their effective application, are built into the project budget.
- 6.4 Corrupt practices are avoided through enforcement of legislation, voluntary integrity pacts, debarment and other instruments.
- 6.5 Incentives that reward project proponents for abiding by criteria and guidelines are developed by public and private financial institutions.

7. Sharing Rivers for Peace, Development and Security

- 7.1 National water policies make specific provision for basin agreements in shared river basins. Agreements are negotiated on the basis of good faith among riparian States. They are based on principles of equitable and reasonable utilisation, no significant harm, prior information and the Commission's strategic priorities.
- 7.2 Riparian States go beyond looking at water as a finite commodity to be divided and embrace an approach that equitably allocates not the water, but the benefits that can be derived from it. Where appropriate, negotiations include benefits outside the river basin and other sectors of mutual interest.
- 7.3 Dams on shared rivers are not built in cases where riparian States raise an objection that is upheld by an independent panel. Intractable disputes between countries are resolved through various means of dispute resolution including, in the last instance, the International Court of Justice.
- 7.4 For the development of projects on rivers shared between political units within countries, the necessary legislative provision is made at national and sub-national levels to embody the Commission's strategic priorities of 'gaining public acceptance', 'recognising entitlements' and 'sustaining rivers and livelihoods'.
- 7.5 Where a government agency plans or facilitates the construction of a dam on a shared river in contravention of the principle of good faith negotiations between riparians, external financing bodies withdraw their support for projects and programmes promoted by that agency.

Annex II The Reporting Framework of the Global Reporting Initiative²

'In accordance' Conditions:

'The decision to report in accordance with the *Guidelines* is an option, not a requirement. (...). Organisations that wish to identify their report as prepared in accordance with the 2002 GRI *Guidelines* must meet five conditions:

1. Report on the numbered elements in Sections 1 to 3 of Part C.
2. Include a GRI Content Index as specified in Section 4 of Part C.
3. Respond to each core indicator in Section 5 of Part C by either (a) reporting on the indicator or (b) explaining the reason for the omission of each indicator.
4. Ensure that the report is consistent with the Principles in Part B of the *Guidelines*.
5. Include the following statement signed by the board or CEO: "This report has been prepared in accordance with the 2002 GRI *Guidelines*. It represents a balanced and reasonable presentation of our organisation's economic, environmental and social performance." (GRI 2002k: 13).

The Reporting Principles

The eleven reporting principles are 'informed by the financial accounting tradition and adapted for reporting on economic, environmental, and social performance.' The GRI views these principles as 'integral to its reporting framework, equal in weight to the elements and indicators in Part C of the *Guidelines*. Organisations using the *Guidelines* are expected to apply these principles in their report preparation.' Accordingly, reports 'should offer some discussion of how the reporting principles have been applied' (GRI 2002k: 22). The principles are formulated as follows (GRI 2002k: 24–31):

1. Transparency: 'Full disclosure of the processes, procedures, and assumptions in report preparation are essential to its credibility.'
2. Inclusiveness: 'The reporting organisation should systematically engage its stakeholders to help focus and continually enhance the quality of its report.'
3. Auditability: 'Reported data and information should be recorded, compiled, analysed, and disclosed in a way that would enable internal auditors or external assurance providers to attest to its reliability'
4. Completeness: 'All information that is material to users for assessing the reporting organisation's economic, environmental, and social performance should appear in the report in a manner consistent with the declared boundaries, scope, and time period.'
5. Relevance: 'Relevance is the degree of importance assigned to a particular aspect, indicator, or piece of information, and represents the threshold at which information becomes significant enough to be reported.'
6. Sustainability Context: 'The reporting organisation should seek to place its performance in the larger context of ecological, social, or other limits or constraints, where such context adds significant meaning to the reported information.'
7. Accuracy: 'The accuracy principle refers to achieving the degree of exactness and low margin of error in reported information necessary for users to make decisions with a high degree of confidence.'
8. Neutrality: 'Reports should avoid bias in selection and presentation of information and should strive to provide a balanced account of the reporting organisation's performance.'

9. Comparability: 'The reporting organisation should maintain consistency in the boundary and scope of its reports, disclose any changes, and re-state previously reported information.'
10. Clarity: 'The reporting organisation should remain cognizant of the diverse needs and backgrounds of its stakeholder groups and should make information available in a manner that is responsive to the maximum number of users while still maintaining a suitable level of detail.'
11. Timeliness: 'Reports should provide information on a regular schedule that meets user needs and comports with the nature of the information itself.'

Report Content

With regard to the content of GRI reports, Part C of the *Guidelines* requires reporting organisations (1) to include information on the organisation's vision and strategy in relation to sustainability; (2) to provide a detailed description of its profile, including its products, operational structure, and stakeholders; (3) to describe its governance structure and management systems; and (4) to provide a GRI content index that identifies the 'location of each element of the GRI Report Content, by section and indicator' (GRI 2002k: 38–44, quote at p. 44).

Finally, section 5 of Part C lists the performance indicators on which organisations are asked to report. The *Core Indicators* are listed as follows (GRI 2002k: 47–56):

Economic

- EC1 Net Sales
- EC2 Geographic breakdown of markets
- EC3 Costs of all goods, materials, and services purchased.
- EC4 Percentage of contracts that were paid in accordance with agreed terms, excluding agreed penalty arrangements.
- EC5 Total payroll and benefits (including wages, pension, other benefits, and redundancy payments) broken down by country or region.
- EC6 Distribution to providers of capital broken down by interest on debt and borrowings, and dividends on all classes of shares, with any arrears or preferred dividends to be disclosed.
- EC7 Increase/decrease in retained earnings at end of period.
- EC8 Total sum of taxes of all types paid broken down by country.
- EC9 Subsidies received broken down by country or region.
- EC10 Donations to community, civil society, and other groups broken down in terms of cash and in-kind donations per type of group.

Environmental

- EN1 Total materials used other than water, by type.
- EN2 Percentage of materials used that are wastes (processed or unprocessed) from sources external to the reporting organisation.
- EN3 Direct energy use segmented by primary source
- EN4 Indirect energy use.
- EN5 Total water use.
- EN6 Location and size of land owned, leased, or managed in biodiversity-rich habitats.
- EN7 Description of the major impacts on biodiversity associated with activities and/or products and services in terrestrial, freshwater, and marine environments.

- EN8 Greenhouse gas emissions.
- EN9 Use and emissions of ozone-depleting substances.
- EN10 NOx, SOx, and other significant air emissions by type.
- EN11 Total amount of waste by type and destination.
- EN12 Significant discharges to water by type.
- EN13 Significant spills of chemicals, oils, and fuels in terms of total number and total volume.
- EN14 Significant environmental impacts of principal products and services.
- EN15 Percentage of the weight of products sold that is reclaimable at the end of the products' useful life and percentage that is actually recovered.
- EN16 Incidents of and fines for non-compliance with all applicable international declarations/conventions/treaties, and national, sub-national, regional, and local regulations associated with environmental issues.

Social

- LA1 Breakdown of workforce, where possible, by region/country, status (employee/non-employee), employment type (full time/part time), and by employment contract (indefinite or permanent/fixed term or temporary). Also identify workforce retained in conjunction with other employers (temporary agency workers or workers in co-employment relationships), segmented by region/country.
- LA2 Net employment creation and average turnover segmented by region/country.
- LA3 Percentage of employees represented by independent trade union organisations or other bona fide employee representatives broken down geographically OR percentage of employees covered by collective bargaining agreements broken down by region/country.
- LA4 Policy and procedures involving information, consultation, and negotiation with employees over changes in the reporting organisation's operations (e.g., restructuring).
- LA5 Practices on recording and notification of occupational accidents and diseases, and how they relate to the ILO Code of Practice on Recording and Notification of Occupational Accidents and Diseases.
- LA6 Description of formal joint health and safety committees comprising management and worker representatives and proportion of workforce covered by any such committees.
- LA7 Standard injury, lost day, and absentee rates and number of work-related fatalities (including subcontracted workers).
- LA8 Description of policies or programmes (for the workplace and beyond) on HIV/AIDS.
- LA9 Average hours of training per year per employee by category of employee.
- LA10 Description of equal opportunity policies or programmes, as well as monitoring systems to ensure compliance and results of monitoring.
- LA11 Composition of senior management and corporate bodies (including the board of directors), including female/male ration and other indicators of diversity as culturally appropriate.
- HR1 Description of policies, guidelines, corporate structure, and procedures to deal with all aspects of human rights relevant to operations, including monitoring mechanisms and results.
- HR2 Evidence of consideration of human rights impacts as part of investment and procurement decisions, including selection of suppliers/contractors.

- HR3 Description of policies and procedures to evaluate and address human rights performance within the supply chain and contractors, including monitoring systems and results of monitoring.
- HR4 Description of global policy and procedures/programmes preventing all forms of discrimination in operations, including monitoring systems and results of monitoring.
- HR5 Description of freedom of association policy and extent to which this policy is universally applied independent of local laws, as well as description of procedures/programmes to address this issue.
- HR6 Description of policy excluding child labour as defined by the ILO Convention 138 and extent to which this policy is visibly stated and applied, as well as description of procedures/programmes to address this issue, including monitoring systems and results of monitoring.
- HR7 Description of policy to prevent forced and compulsory labour and extent to which this policy is visibly stated and applied as well as description of procedures/programmes to address this issue, including monitoring systems and results of monitoring.
- SO1 Description of policies to manage impacts on communities in areas affected by activities, as well as description of procedures/programmes to address this issue, including monitoring systems and results of monitoring.
- SO2 Description of the policy, procedures/management systems, and compliance mechanisms for organisations and employees addressing bribery and corruption.
- SO3 Description of policy, procedures/management systems, and compliance mechanisms for managing political lobbying and contributions.
- PR1 Description of policy for preserving customer health and safety during use of products and services, and extent to which this policy is visibly stated and applied, as well as description of procedures/programmes to address this issue, including monitoring systems and results of monitoring.
- PR2 Description of policy, procedures/management systems, and compliance mechanisms related to product information and labelling.
- PR3 Description of policy, procedures/management systems, and compliance mechanisms for consumer privacy.

In addition to these fifty *Core Indicators*, Section 5 of Part C of the 2002 *Guidelines* lists another 47 *Additional Indicators* (3 on economic, 19 on environmental, and 25 on social performance). Examples of these *Additional Indicators* include EC13 – ‘The organisation’s indirect economic impacts’; EN25 – ‘Impact of activities and operations on protected and sensitive areas’; EN31 – ‘All production, transport, import, or export of any waste deemed “hazardous” under the terms of the Basel Convention Annex I, II, III, and VIII’; LA14 – ‘Evidence of substantial compliance with the ILO *Guidelines for Occupational Health Management Systems*’, or SO5 – ‘Amount of money paid to political parties and institutions whose primary function is to fund political parties or their candidates.’

Annex III Principles and Criteria for Forest Stewardship³

Principle 1: Compliance with laws and FSC Principles

Forest management shall respect all applicable laws of the country in which they occur, and international treaties and agreements to which the country is a signatory, and comply with all FSC Principles and Criteria.

- 1.1 Forest management shall respect all national and local laws and administrative requirements.
- 1.2 All applicable and legally prescribed fees, royalties, taxes and other charges shall be paid.
- 1.3 In signatory countries, the provisions of all binding international agreements such as CITES, ILO Conventions, ITTA, and Convention on Biological Diversity, shall be respected.
- 1.4 Conflicts between laws, regulations and the FSC Principles and Criteria shall be evaluated for the purposes of certification, on a case by case basis, by the certifiers and the involved or affected parties.
- 1.5 Forest management areas should be protected from illegal harvesting, settlement and other unauthorized activities.
- 1.6 Forest managers shall demonstrate a long-term commitment to adhere to the FSC Principles and Criteria.

Principle 2: Tenure and use rights and responsibilities

Long-term tenure and use rights to the land and forest resources shall be clearly defined, documented and legally established.

- 2.1 Forest managers shall demonstrate a long-term commitment to adhere to the FSC Principles and Criteria.
- 2.2 Clear evidence of long-term forest use rights to the land (e.g. land title, customary rights, or lease agreements) shall be demonstrated.
- 2.3 Local communities with legal or customary tenure or use rights shall maintain control, to the extent necessary to protect their rights or resources, over forest operations unless they delegate control with free and informed consent to other agencies.
- 2.4 Appropriate mechanisms shall be employed to resolve disputes over tenure claims and use rights. The circumstances and status of any outstanding disputes will be explicitly considered in the certification evaluation. Disputes of substantial magnitude involving a significant number of interests will normally disqualify an operation from being certified.

Principle 3: Indigenous peoples' rights

The legal and customary rights of indigenous peoples to own, use and manage their lands, territories, and resources shall be recognized and respected.

- 3.1 Indigenous peoples shall control forest management on their lands and territories unless they delegate control with free and informed consent to other agencies.
- 3.2 Forest management shall not threaten or diminish, either directly or indirectly, the resources or tenure rights of indigenous peoples.
- 3.3 Sites of special cultural, ecological, economic or religious significance to indigenous peoples shall be clearly identified in cooperation with such peoples, and recognized and protected by forest managers.

- 3.4 Indigenous peoples shall be compensated for the application of their traditional knowledge regarding the use of forest species or management systems in forest operations. This compensation shall be formally agreed upon with their free and informed consent before forest operations commence.

Principle 4: Community relations and worker's rights

Forest management operations shall maintain or enhance the long-term social and economic well-being of forest workers and local communities.

- 4.1 The communities within, or adjacent to, the forest management area should be given opportunities for employment, training, and other services.
- 4.2 Forest management should meet or exceed all applicable laws and/or regulations covering health and safety of employees and their families.
- 4.3 The rights of workers to organize and voluntarily negotiate with their employers shall be guaranteed as outlined in Conventions 87 and 98 of the International Labour Organisation (ILO).
- 4.4 Management planning and operations shall incorporate the results of evaluations of social impact. Consultations shall be maintained with people and groups (both men and women) directly affected by management operations.
- 4.5 Appropriate mechanisms shall be employed for resolving grievances and for providing fair compensation in the case of loss or damage affecting the legal or customary rights, property, resources, or livelihoods of local peoples. Measures shall be taken to avoid such loss or damage.

Principle 5: Benefits from the forest

Forest management operations shall encourage the efficient use of the forest's multiple products and services to ensure economic viability and a wide range of environmental and social benefits.

- 5.1 Forest management should strive toward economic viability, while taking into account the full environmental, social, and operational costs of production, and ensuring the investments necessary to maintain the ecological productivity of the forest.
- 5.2 Forest management and marketing operations should encourage the optimal use and local processing of the forest's diversity of products.
- 5.3 Forest management should minimize waste associated with harvesting and on-site processing operations and avoid damage to other forest resources.
- 5.4 Forest management should strive to strengthen and diversify the local economy, avoiding dependence on a single forest product.
- 5.5 Forest management operations shall recognize, maintain, and, where appropriate, enhance the value of forest services and resources such as watersheds and fisheries.
- 5.6 The rate of harvest of forest products shall not exceed levels which can be permanently sustained.

Principle 6: Environmental impact

Forest management shall conserve biological diversity and its associated values, water resources, soils, and unique and fragile ecosystems and landscapes, and, by so doing, maintain the ecological functions and the integrity of the forest.

- 6.1 Assessment of environmental impacts shall be completed – appropriate to the scale, intensity of forest management and the uniqueness of the affected resources – and adequately integrated into management systems. Assessments

shall include landscape level considerations as well as the impacts of on-site processing facilities. Environmental impacts shall be assessed prior to commencement of site-disturbing operations.

- 6.2 Safeguards shall exist which protect rare, threatened and endangered species and their habitats (e.g., nesting and feeding areas). Conservation zones and protection areas shall be established, appropriate to the scale and intensity of forest management and the uniqueness of the affected resources. Inappropriate hunting, fishing, trapping and collecting shall be controlled.
- 6.3 Ecological functions and values shall be maintained intact, enhanced, or restored, including:
 - a) Forest regeneration and succession.
 - b) Genetic, species, and ecosystem diversity.
 - c) Natural cycles that affect the productivity of the forest ecosystem.
- 6.4 Representative samples of existing ecosystems within the landscape shall be protected in their natural state and recorded on maps, appropriate to the scale and intensity of operations and the uniqueness of the affected resources.
- 6.5 Written guidelines shall be prepared and implemented to: control erosion; minimize forest damage during harvesting, road construction, and all other mechanical disturbances; and protect water resources.
- 6.6 Management systems shall promote the development and adoption of environmentally friendly non-chemical methods of pest management and strive to avoid the use of chemical pesticides. World Health Organization Type 1A and 1B and chlorinated hydrocarbon pesticides; pesticides that are persistent, toxic or whose derivatives remain biologically active and accumulate in the food chain beyond their intended use; as well as any pesticides banned by international agreement, shall be prohibited. If chemicals are used, proper equipment and training shall be provided to minimize health and environmental risks.
- 6.7 Chemicals, containers, liquid and solid non-organic wastes including fuel and oil shall be disposed of in an environmentally appropriate manner at off-site locations.
- 6.8 Use of biological control agents shall be documented, minimized, monitored and strictly controlled in accordance with national laws and internationally accepted scientific protocols. Use of genetically modified organisms shall be prohibited.
- 6.9 The use of exotic species shall be carefully controlled and actively monitored to avoid adverse ecological impacts.
- 6.10 Forest conversion to plantations or non-forest land uses shall not occur, except in circumstances where conversion:
 - a) entails a very limited portion of the forest management unit; and
 - b) does not occur on high conservation value forest areas; and
 - c) will enable clear, substantial, additional, secure, long term conservation benefits across the forest management unit.

Principle 7: Management plan

A management plan – appropriate to the scale and intensity of the operations – shall be written, implemented, and kept up to date. The long term objectives of management, and the means of achieving them, shall be clearly stated.

- 7.1 The management plan and supporting documents shall provide:
 - a) Management objectives.
 - b) Description of the forest resources to be managed, environmental limitations, land use and ownership status, socio-economic conditions, and a profile of adjacent lands.

- c) Description of silvicultural and/or other management system, based on the ecology of the forest in question and information gathered through resource inventories.
 - d) Rationale for rate of annual harvest and species selection.
 - e) Provisions for monitoring of forest growth and dynamics.
 - f) Environmental safeguards based on environmental assessments.
 - g) Plans for the identification and protection of rare, threatened and endangered species.
 - h) Maps describing the forest resource base including protected areas, planned management activities and land ownership.
 - i) Description and justification of harvesting techniques and equipment to be used.
- 7.2 The management plan shall be periodically revised to incorporate the results of monitoring or new scientific and technical information, as well as to respond to changing environmental, social and economic circumstances.
- 7.3 Forest workers shall receive adequate training and supervision to ensure proper implementation of the management plan.
- 7.4 While respecting the confidentiality of information, forest managers shall make publicly available a summary of the primary elements of the management plan, including those listed in Criterion 7.1.

Principle 8: Monitoring and assessment

Monitoring shall be conducted – appropriate to the scale and intensity of forest management – to assess the condition of the forest, yields of forest products, chain of custody, management activities and their social and environmental impacts.

- 8.1 The frequency and intensity of monitoring should be determined by the scale and intensity of forest management operations as well as the relative complexity and fragility of the affected environment. Monitoring procedures should be consistent and replicable over time to allow comparison of results and assessment of change.
- 8.2 Forest management should include the research and data collection needed to monitor, at a minimum, the following indicators:
- a) Yield of all forest products harvested.
 - b) Growth rates, regeneration and condition of the forest.
 - c) Composition and observed changes in the flora and fauna.
 - d) Environmental and social impacts of harvesting and other operations.
 - e) Costs, productivity, and efficiency of forest management.
- 8.3 Documentation shall be provided by the forest manager to enable monitoring and certifying organizations to trace each forest product from its origin, a process known as the 'chain of custody'.
- 8.4 The results of monitoring shall be incorporated into the implementation and revision of the management plan.
- 8.5 While respecting the confidentiality of information, forest managers shall make publicly available a summary of the results of monitoring indicators, including those listed in Criterion 8.2.

Principle 9: Maintenance of high conservation value forests

Management activities in high conservation value forests shall maintain or enhance the attributes which define such forests. Decisions regarding high conservation value forests shall always be considered in the context of a precautionary approach.

- 9.1 Assessment to determine the presence of the attributes consistent with High Conservation Value Forests will be completed, appropriate to scale and intensity of forest management.
- 9.2 The consultative portion of the certification process must place emphasis on the identified conservation attributes, and options for the maintenance thereof.
- 9.3 The management plan shall include and implement specific measures that ensure the maintenance and/or enhancement of the applicable conservation attributes consistent with the precautionary approach. These measures shall be specifically included in the publicly available management plan summary.
- 9.4 Annual monitoring shall be conducted to assess the effectiveness of the measures employed to maintain or enhance the applicable conservation attributes.

Principle 10: Plantations

Plantations shall be planned and managed in accordance with Principles and Criteria 1–9, and Principle 10 and its Criteria. While plantations can provide an array of social and economic benefits, and can contribute to satisfying the world’s needs for forest products, they should complement the management of, reduce pressures on, and promote the restoration and conservation of natural forests.

- 10.1 The management objectives of the plantation, including natural forest conservation and restoration objectives, shall be explicitly stated in the management plan, and clearly demonstrated in the implementation of the plan.
- 10.2 The design and layout of plantations should promote the protection, restoration and conservation of natural forests, and not increase pressures on natural forests. Wildlife corridors, streamside zones and a mosaic of stands of different ages and rotation periods, shall be used in the layout of the plantation, consistent with the scale of the operation. The scale and layout of plantation blocks shall be consistent with the patterns of forest stands found within the natural landscape.
- 10.3 Diversity in the composition of plantations is preferred, so as to enhance economic, ecological and social stability. Such diversity may include the size and spatial distribution of management units within the landscape, number and genetic composition of species, age classes and structures.
- 10.4 The selection of species for planting shall be based on their overall suitability for the site and their appropriateness to the management objectives. In order to enhance the conservation of biological diversity, native species are preferred over exotic species in the establishment of plantations and the restoration of degraded ecosystems. Exotic species, which shall be used only when their performance is greater than that of native species, shall be carefully monitored to detect unusual mortality, disease, or insect outbreaks and adverse ecological impacts.
- 10.5 A proportion of the overall forest management area, appropriate to the scale of the plantation and to be determined in regional standards, shall be managed so as to restore the site to a natural forest cover.
- 10.6 Measures shall be taken to maintain or improve soil structure, fertility, and biological activity. The techniques and rate of harvesting, road and trail construction and maintenance, and the choice of species shall not result in long term soil degradation or adverse impacts on water quality, quantity or substantial deviation from stream course drainage patterns.

- 10.7 Measures shall be taken to prevent and minimize outbreaks of pests, diseases, fire and invasive plant introductions. Integrated pest management shall form an essential part of the management plan, with primary reliance on prevention and biological control methods rather than chemical pesticides and fertilizers. Plantation management should make every effort to move away from chemical pesticides and fertilizers, including their use in nurseries. The use of chemicals is also covered in Criteria 6.6 and 6.7.
- 10.8 Appropriate to the scale and diversity of the operation, monitoring of plantations shall include regular assessment of potential on-site and off-site ecological and social impacts, (e.g. natural regeneration, effects on water resources and soil fertility, and impacts on local welfare and social well-being), in addition to those elements addressed in principles 8, 6 and 4. No species should be planted on a large scale until local trials and/or experience have shown that they are ecologically well-adapted to the site, are not invasive, and do not have significant negative ecological impacts on other ecosystems. Special attention will be paid to social issues of land acquisition for plantations, especially the protection of local rights of ownership, use or access.
- 10.9 Plantations established in areas converted from natural forests after November 1994 normally shall not qualify for certification. Certification may be allowed in circumstances where sufficient evidence is submitted to the certification body that the manager/owner is not responsible directly or indirectly of such conversion.

Notes

Chapter 1

- 1 I admit that the dichotomy between intergovernmental (or *public*) and transnational (or *private*) that underlies both this classification and the structure of this book is simplistic. Empirically, states are involved in various ways in many so-called private governance arrangements (Falkner 2003). The discussion in the empirical chapters thus discusses the role of the state in each of the three decision-making processes examined in this book. At the same time, simplification is a necessary step of any analysis. In this specific case, it allows us to compare intergovernmental (or *public*) governance and transnational (or *private*) governance as two ends of a continuum and to thereby also learn something about all the hybrid arrangements located in between these endpoints.
- 2 This definition builds on Stephen Krasner's (1983: 2) definition of rules as 'specific prescriptions or proscriptions for action'. For related definitions from the regime literature, see also Keohane (1984: 58), Young (1989: 16) and Levy et al. (1995: 273). I have added the qualification of minimal effectiveness to exclude prescriptions which addressees are unaware of or simply ignore – in other words, to distinguish actual rules from potential rules (or rules from 'would-be' rules). This distinction becomes relevant in the context of transnational politics (but not necessarily international politics), where rules are almost always legally non-binding.
- 3 Since large-n studies on the structure of transnational rule-making processes are not yet available, this classification may not encompass *all* existing processes. Given that the three models represent common types of decision-making structures, I am, however, confident that they cover a relatively broad range of transnational rule-making processes.
- 4 Of approximately forty individuals contacted, seventeen agreed to be interviewed. While commenting critically on individual aspects of the respective policy processes, respondents generally displayed a positive attitude. Overall, their responses therefore suggest that no systematic bias (negative or positive) was induced by the partial self-selection of interview partners.

Chapter 2

- 1 In one of the classical texts on legitimacy, for instance, Max Weber (1972 [1922]: 28–30) identifies rational, traditional and charismatic legitimacy as the three pure types of legitimacy. By analysing legitimacy in terms of the motivations that underlie individual action, Weber's concept of legitimacy is sociological rather than normative. For a good discussion of normative versus sociological concepts of legitimacy in the global governance literature, see also Bernstein (2001).
- 2 The relation between the material and procedural dimension of legitimacy is much debated. For the purpose of this study, it is sufficient to say that both dimensions are interrelated. For a discussion, see Mandt (1995).

- 3 See Dahl (1979) and Philp (2001) for an overview on procedural conceptions of democracy.
- 4 See also Keohane (2002: 3, emphasis added) who argues that 'rules are only legitimate if they conform to broadly democratic principles, *appropriately adapted for the context.*'
- 5 This formulation points to the difficulties in clearly delineating constitutionalist approaches from deliberative theories of democracy. As a constitutive part of the 'deliberative turn' (Dryzek 2000) in democratic theory, a number of recent works on constitutional theory explicitly emphasise deliberative ideas; see Chambers (2003: 309–12) for an overview. Upholding the distinction in this chapter thus primarily serves to accentuate the different emphases on the codification of individual rights and on deliberation, respectively.
- 6 Whereas the test of extensity refers to the 'range of peoples within and across delimited territories who are significantly affected by a collective problem and policy question'; the test of intensity relates to the 'degree to which [a policy question] impinges on a group of people(s) and, therefore, to which national, regional, or global legislation or other types of intervention are justified' (Held 1995: 236; for a discussion see Schmalz-Bruns 1999: 220).
- 7 This aspect points to the transformative nature of cosmopolitan democracy. Held argues that the principle of autonomy implies an obligation to ensure that 'those who cannot fully enjoy autonomy under existing circumstances are enabled to do so in the long term' (Held 1995: 202–3, see also pp. 201–6 and 217).
- 8 See for instance King (2003: 32–3) who argues that 'pluralist approaches of democracy (...) have the obvious virtue of applying in a straightforward way to multilateral organizations.' For a different view, see Cunningham (2002: 207) who maintains that despite some similarities on the descriptive side, 'pluralist *prescriptions* are hard to apply on a global scale' and that 'checks and balance systems of government, active promotion of global interest groups overlap, and the like would require world political coordination beyond that favoured even by cosmopolitans.' Cunningham's criticism however appears to be based on a rather state-centric account of world politics and on a formal conception of accountability. Empirical evidence suggests that transnational advocacy coalitions (Keck and Sikkink 1998; Risse et al. 1999) and other informal control mechanisms (Rosenau 1998) function without the level of 'world political coordination' that Cunningham presumes to be necessary.
- 9 For similar formulations, see Elster (1998: 5) and Bohman (1998: 401).
- 10 See also Gutmann and Thompson (2002: 156–7) who stipulate that 'a theory is "deliberative" if the fair terms of social cooperation include the requirement that citizens or their representatives actually seek to give one another mutually acceptable reasons to justify the laws they adopt.'
- 11 See also the earlier formulation of Manin (1987: 351–2) that 'the source of legitimacy is not the predetermined will of individuals, but rather the process of its formation, that is, deliberation itself.'
- 12 In addition, other authors have argued that ideal deliberations should be free from time restraints, that is, either open-ended or subject to being reassumed at any point in time; and that deliberations should extend to all matters that need to be regulated in the interest of all (Schmidt 1997: 178). On the provisional character of decisions, see, among others, Gutmann and Thompson (2002: 165) who argue that the provisional status of decisions is based on the idea that 'at least for a certain range of views they oppose, citizens should acknowledge the

possibility that the rejected view may be shown to be correct in the future.' Such corrections may be due to a shift in social norms, the availability of new evidence, or circumstances that differ from the situation in which a decision was originally made.

- 13 See also Shapiro (2002: 197) on the distinction between Rawls's essentially solipsistic 'reflective equilibrium' and a 'deliberative equilibrium' such as the one envisaged by Chambers.
- 14 See also Cohen's (1996: 106) related argument that 'the background conception of citizens as equals sets limits on permissible reasons that can figure within the deliberative process.'
- 15 For a critique of deliberative democracy, see also Sanders (1997), Stokes (1998), and Young (2001).
- 16 Here the term constituency refers to the inclusive range of individuals who will be significantly affected by a decision, and not to particular electoral constituencies of representatives.
- 17 Internal accountability exists where claims are based on authorisation or support. In contrast, external accountability exists where claims are based on impact (Keohane 2002: 14).
- 18 On different mechanisms and instruments of accountability in global governance, see also Benner et al. (2004) and Ebrahim (2003).
- 19 See also Keohane (2002: 15).
- 20 For a definition of transparency, see, for instance, Hood (2001: 701) who refers to the concept as 'government according to fixed and published rules, on the basis of information and procedures that are accessible to the public, and (...) within clearly demarcated fields of activity.' For our purposes, 'government' would have to be replaced with 'governance.' In addition, Hood (ibid.: 704) also points out that transparency should not be regarded as an absolute standard. Trade-offs exist with cooperative behaviour in bargaining situations and with individual rights in situations where 'one person's transparency (...) may be another person's privacy.'
- 21 See also Shapiro (2002: 198) who notes a trade-off between publicity and deliberation inasmuch as the former often 'rewards those with the resources to shout loudest and longest.'
- 22 Wolf includes "'authorisation" by those governed' as a fifth category. Since this a relatively vague category I do not rely on it in the empirical analyses in Chapters 3 to 6.
- 23 See, however, Joshua Cohen who maintains that 'democracy is about justifying authority, not about justifying influence' (Cohen 1996: 114, note 1).
- 24 In practice, questions about actual discursive practice will be inherently difficult to answer. As a result, the primary objective in the empirical chapters of this study is to examine whether the institutional context of a decision-making process is more or less favourable to sincere deliberations among participants. Actual discursive practice will be analysed to the extent that the quality of available information allows for a meaningful analysis.

Chapter 3

- 1 Accessions to intergovernmental agreements or to IGOs are an exception. Here, rules become binding for states even if citizens were not represented in the negotiation of their content.

- 2 In the UN Security Council, the five permanent members are given a right to veto decisions. The procedures of the World Bank and of the International Monetary Fund tie voting rights to states' financial contributions.
- 3 The European Union is a notable exception in this regard. In some areas of decision-making, the EU allows for qualified majority voting; voting power is then weighted, although not proportionately, according to the size of national populations.
- 4 The Clean Development Mechanism (CDM) is one of the three flexible instruments of the Kyoto Protocol to the United Nations Framework Convention on Climate Change. It allows parties to count reductions achieved through measures implemented in developing countries as their own reductions.
- 5 See, for instance, Nigel Durrant's (2002) case study on Guyana's participation in climate negotiations. Although the country's vulnerability to climate change is generally thought to be high, particularly among poor communities in the coastal areas, the government kept a low profile in international climate negotiations. Durrant (2002: 39) argues that the reasons were, among other factors, related to a lack of scientifically reliable data on the socio-economic consequences of climate change for Guyana, to the long-term perspective of the issue, and to 'the inability of technicians to translate the issues into practical strategies that connect with the more immediate and pressing socio-economic needs of the country'.
- 6 On participation of developing countries in international climate change negotiations, see also the case studies by Alan Bojanic (2001), Peter Frost (2001) and Nigel Durrant (2002) and the comparative study by Michael Richards (2001).
- 7 Similarly, intergovernmental organisations have frequently been criticised for their failure to provide information about internal decision-making processes (see for instance Barnett and Finnemore 2004: 170).
- 8 Numbers refer to the 2004 Human Development report issued by the United Nations Development Programme; see http://hdr.undp.org/statistics/data/indic/indic_20_1_1.html (last access 1 September 2005).
- 9 On this last aspect, see also Zürn (1998b: 233–55, 347–61). Again, the evaluation differs slightly for intergovernmental organisations where control is less direct. In the context of an increasing scope of activity of IGOs, Michael Barnett and Martha Finnemore (2004: 170) thus note that 'there is little doubt that mechanisms of accountability have not kept pace with the power and reach of international organizations.' Nonetheless, a range of mechanisms ensures that IGOs do not become too independent from member state control. Most importantly, member states of an IGO may 'secure the organization's accountability through their voting behaviour (...), by disbursing or withholding financial contributions or, even more fundamentally, by limiting an organization's scope of powers in its founding documents' (Reinisch 2001: 134). Overall, IGO accountability therefore is neither absent nor very strong. Similar to intergovernmental negotiations, it is best characterised as moderate.
- 10 One negotiator recalls that 'at least 18 different U.S. departments and agencies participated in preparations for the negotiations leading to the Montreal Protocol on ozone-layer protection' (Benedick 1993: 222).
- 11 Again, rule-making within IGOs may differ from multilateral negotiations. Hence, Christian Joerges and Jürgen Neyer (1997) have argued that decision-making in expert committees is particularly conducive to a deliberative mode of interaction. Since rules made within IGOs are often developed in small committees and since bureaucrats of IGOs share a common organisational culture, the

basic conditions can be assumed to be favourable to a deliberative style of interaction. However, deliberations may often be limited to only a small group of experts within an IGO, thus calling the democratic nature of deliberations into question.

Chapter 4

- 1 I distinguish between the WCD as an organisation comprising the twelve-member commission, a secretariat and a stakeholder forum, and the WCD process as the decision-making process that led to the commission's recommendations for future dam-building projects included in the final report *Dams and Development*.
- 2 Large dams are conventionally defined as dams with a height of 15 meter or more, or with a height between ten and 15 meters and a crest length of over 500 meters, a spillway discharge of over 2000 cubic meters, or a reservoir volume of more than one million cubic meters (Oud und Muir 1997: 19).
- 3 For an overview of the arguments for and against large dams, see also Parasuram and Sengupta (2001: 1881–3).
- 4 According to the World Bank's own count, the Bank assisted in only 3 per cent of dams built in developing countries (World Bank Operations Evaluation Department 1996). However, the Bank's early involvement in dam-building and its more general role in financing large-scale infrastructure projects turned it into a strong symbol for adversaries of this type of development (Khagram 2004).
- 5 The numbers are taken from Baur and Rudolph (2001); other sources report 'more than 2000 organisations' as signatories of the declaration (Imhof et al. 2002: 5). As a follow-up to the Manibeli Declaration, a similar call was also issued by the participants of a meeting of dam-affected people three years later and shortly before the Gland workshop which preceded the establishment of the WCD (Declaration of Curitiba 1997).
- 6 Personal interview with a staff member of the IUCN, 13 September 2004. See also McCully (2001b: 1458–60) for a detailed account of the events leading up to the Gland workshop. McCully also reports that immediately before the Gland workshop, a coalition of forty-four NGOs had written an open letter to World Bank President James Wolfensohn asking him to reject the conclusions of the OED report and to set up an independent commission to review past World Bank-lending for large dams. The content and the timing of the letter provoked much criticism from the dam-industry, some of whose members saw the incident as a further illustration of the uselessness of sitting together with dam critics (see for instance van Robbroeck undated).
- 7 For a discussion of actors' motivations to sign up to this proposal, see McCully (2001b: 1460–3).
- 8 The envisaged status of the standards and guidelines was not specified by the workshop participants. While the term 'internationally acceptable' may be interpreted as charging the commission with the task of working towards the ultimate objective of a potential multilateral agreement, the composition as well as the character of the commission leave no doubt that the more immediate goal of the commission's work could not go beyond the development of non-binding recommendations.
- 9 See WCD (2000a: 397–8) for a full list of permanent and temporary staff members.

- 10 A third meeting was held in Cape Town in February 2001, that is, after the delivery of the final report; see WCD (2001a) for a detailed report.
- 11 Funding for the WCD came from 53 (inter-)governmental agencies, private businesses and civil society organisations. The total budget amounted to approximately 10 million USD (WCD 2001b: 20–1).
- 12 See WCD (1999e) for a comprehensive overview of the work programme.
- 13 See for instance Gedion Asfaw's (2000) statement that 'it seems that developing countries are going to be faced with yet another stumbling block in the development of their water resources'. On the reactions to the report, see among others Baur (2001: 26); Beffert and Benner (2004); Dubash et al. (2001: 110–12); see also www.dams.org/media and www.dams.org/report/reaction (last access 29 October 2004). For a comprehensive documentation of the reactions of the International Commission on Large Dams (ICOLD) and its national chapters, see <http://www.icold-cigb.net/turki.htm> (last access 29 October 2004).
- 14 For an overview see <http://www.unep.org/dams/> (last access 1 December 2006).
- 15 For an overview of national initiatives see WCD (2001b: 18); UNEP Dams and Development Project (2003: 22–6; 2005; 2006).
- 16 For a third reading which interprets the WCD primarily in terms of a mediation process, see Brinkerhoff (2002a; 2002b).
- 17 Later on, the mandate was criticised from various perspectives. Thus, critics argued that the WCD's mandate carried a 'pre determined and preconceived connotation' in as much as the explicit call for including alternatives in its assessment already conveyed a bias against dams as instruments of water and energy development (Asfaw 2000). Accordingly, a formulation in former ICOLD president van Robbroeck's report on the early history of the WCD process avoids this language and recalls that the commission's mandate as agreed in Gland was 'to review the development effectiveness of large dams and to develop standards, criteria, and guidelines to advise future decision-making' on large dams (van Robbroeck undated). On the other hand, observers who accepted the mandate criticised that the final report of the WCD was not in line with this mandate. Hence, one observer commented that 'the report (...) remains preoccupied with modern "growth and development" related paradigms while exceeding the brief of the Terms of Reference' (Thatte 2001: 345).
- 18 For a more detailed account of the social consequences of large dams, see Scudder (1997) as well as the Thematic Reviews written for the World Commission on Dams (Adams 2000; Bartolome et al. 2000; Colchester 2000).
- 19 Personal interview with a member of the World Commission on Dams, 13 September 2004.
- 20 Notably, Knigge et al. (2003: 42, note 112) explain this singularity by reference to the fact that a senior staff member of the Swiss ECA had also been a member of the WCD Forum.
- 21 See also Pottinger (2001: 51) who challenges the Sardar Sarovar and Ilisu projects in India and Turkey for allegedly violating the WCD guidelines.
- 22 Personal interview with a senior manager of Hydro-Québec (24 January 2005); see also Fortin (2001).
- 23 Personal interview with a member of the World Commission on Dams, 13 September 2004.
- 24 Personal interview with a member of the World Commission on Dams, 13 September 2004.
- 25 For a full list of the strategic priorities and policy principles, see Annex I at the end of this book.

- 26 The non-binding nature of the WCD recommendations was also re-stated by international bodies such as the 8th Conference of the Parties to the Ramsar Convention on Wetlands (2002: §9).
- 27 Dubash et al. (2001: 31) report that the IUCN made the inclusion of all conflicting parties a precondition to its joint hosting of the workshop with the World Bank.
- 28 Personal interview with a member of the World Commission on Dams, 13 September 2004.
- 29 ICOLD acts as an interest group for the international dam building industry. Veltrop replaced former ICOLD president Wolfgang Pircher who was originally selected as a Commissioner but resigned after only a short period (Dubash et al. 2001: 42).
- 30 The Indian government, however, perceived both Indian commissioners as predisposed against large dams. Accordingly, government participation on the WCD process remained marginal (Dubash et al. 2001: 43).
- 31 Dubash et al. (2001: 44–5) maintain that the selection of secretariat staff was guided by professional expertise rather than balanced representation. However, most interviewees for this study suggested that the composition of the secretariat basically reflected the composition of the commission.
- 32 Personal interview with a member of the World Commission on Dams, 13 September 2004.
- 33 Personal interviews with members of the World Commission on Dams, September and October 2004.
- 34 The third Forum meeting (February 2001) in Spier Village near Cape Town was not part of the original WCD process. The meeting served to discuss the final report and possible follow-up measures (see WCD 2001a).
- 35 While many studies incorporated experiences of a broad basis of local stakeholders (see for instance Soils Incorporated (Pty) Ltd and Chalo Environmental and Sustainable Development Consultants 2000; WCD 1999a), some took a less participatory approach (see for instance Norwegian Institute for Nature Research and Eastern Norway Research Institute 2000).
- 36 Judging by the official reports, the secretariat's selection of presenters did not induce a systematic substantive bias (WCD 1998, 1999c, 1999d). Moreover, neither the author's own interviews nor public submissions to the WCD suggest that specific stakeholder groups were dissatisfied with the selection process for regional consultations.
- 37 The WCD claims that 1400 individuals took part in the regional consultations alone (WCD 2000a: ix). When we add commission and the secretariat staff, the authors of and contributors to the case studies and thematic reviews, the members of the stakeholder forum, and the authors of the well over nine hundred public submissions, the number is likely to exceed 2000. The exact number is difficult to estimate since lists of participants do not exist for all events and since a number of individuals will have contributed to more than one element of the work programme.
- 38 The Dublin Statement on Water and Sustainable Development essentially shaped the water chapter of the Agenda 21 (Hoering 2003: 33). Principle 3 of the Statement reads: 'Women play a central part in the provision, management and safeguarding of water: This pivotal role of women as providers and users of water and guardians of the living environment has seldom been reflected in institutional arrangements for the development and management of water resources. Acceptance and implementation of this principle requires positive policies to

address women's specific needs and to equip and empower women to participate at all levels in water resources programmes, including decision-making and implementation, in ways defined by them' (International Conference on Water and Sustainable Development 1992).

- 39 On the positively affected, see also a critical comment by Gedion Asfaw (2000): 'The WCD Report puts very high value in participatory decision making. I wonder how many of these long distance trekking women in search of water who reside in all of the developing countries have participated in the deliberation of the WCD which focused on the review and assessment of water resources and energy development.' This comment can best be read as a criticism that 'other project-affected people', whether beneficiaries or adversely affected, have not been included in the WCD process as much as they should have been.
- 40 Since no explicit information is available on the way stakeholder input was incorporated in the various elements of the work programme as well as the final report, it is however difficult to evaluate the accuracy of this criticism.
- 41 Similarly, Brazilian dam opponents challenged the legitimacy of the WCD because they perceived José Goldemberg as too supportive of dams and hence as 'preempting a fair hearing of their views' (Khagram 1999: 10).
- 42 Thus, while acknowledging the difficulties to find a consensus if the governments of India and China had cooperated with or participated more actively in the WCD, commissioners mentioned the failure to engage these countries as one of the big mistakes of the early stages of the WCD process. The failure was generally ascribed to the novelty of the process and the lack of experience with global multi-stakeholder dialogues (personal interviews with members of the World Commission on Dams).
- 43 Personal interview with a member of the World Commission on Dams, 13 September 2004.
- 44 According to one source, the share of people with access to the Internet was 59 per cent in the US, and 36 per cent in Germany, but only 3 per cent in China, 0.67 per cent in India, and 0.02 per cent in Congo around the time of the WCD (Graff 2002). Another source reports that the whole African continent does not have more phone lines than Tokyo or Manhattan and roughly as many Internet connections as Lithuania (Chéneau-Loquay 2002: 28).
- 45 The criticism generally points to the problem of North-South differences in the degree of alphabetisation and education, which work to undermine equal access to control mechanisms at a global policy level. On language barriers within the WCD process, see also McCully (2001b: 1473) who discusses the problem with regard to inclusiveness and criticises the 'elitism' of the WCD process: 'Despite the claims of inclusiveness, only those individuals proficient in English and able to access large amounts of electronic documentation were able to have substantive input. Only a handful of WCD documents were available in non-English languages, and most of these documents were merely general background brochures.' McCully however concedes that it would have been impossible to translate all documents within the tight time and financial constraints that were characteristic features of the WCD. As for the WCD's efforts to reach non-English speakers, the Interim Report (WCD 1999b: 18) mentions that information folders in English, Portuguese, French and Spanish had been prepared and 'distributed through stakeholder networks, international conferences, and to stakeholders on the WCD database.' In addition, the commission acknowledged the difficulties associated with its Internet-based communications approach

when it recognised 'that not all stakeholders have access to the Web' and that this was 'particularly true of affected peoples' groups.' In order to mitigate the resulting imbalance, the WCD stated that it would consult these people in the case studies and their NGO representatives in the thematic reviews and in commission hearings (WCD 1999i).

- 46 The decision not to make the minutes of commission meetings available to the public was made early on in the process by the commission itself. The reasoning behind this decision was that the commission should be enabled to freely and openly discuss any issues that might be put on the agenda. Had the minutes been made available to the public, commissioners feared that discussions would have been directed to individual commissioners' constituencies rather than to fellow commissioners (personal interview with a member of the World Commission on Dams, 13 September 2004). The argument thus refers to a general tension between the competing demands for public control and for a deliberative style of decision-making.
- 47 See http://www.dams.org/news_events/media.htm (last access 20 December 2006).
- 48 Personal interview with a member of the World Commission on Dams, 13 October 2004.
- 49 Personal interviews with members of the World Commission on Dams, September 2004.
- 50 On the latter point, see also Brinkerhoff (2002b: 1303) who concludes her analysis of the WCD process with the statement that 'transnational society has a new advocacy tool – the moral authority of a process which representatives of all major stakeholder groups once endorsed.'
- 51 For a similar argument see also McCully (2001b: 1475) who maintains that 'marginalizing states from the WCD's negotiations does nothing to reduce the importance of states and international organizations as the main bodies charged with the responsibility of implementing the report's (non-binding) recommendations.'
- 52 Personal interview with a member of the World Commission on Dams, 13 September 2004.
- 53 Personal interview with a member of the World Commission on Dams, 13 September 2004. On monitoring by NGOs see also Brinkerhoff (2002a: 331), noting that 'several NGOs were actively involved in monitoring the WCD process to ensure its independence and neutrality.'
- 54 While fundraising was a difficult and time-consuming activity in particular during the WCD's first year, the WCD's funding sources were eventually rather diverse. In the end, the overall budget of roughly 10 million USD was spread over fifty-three organisations, including governments, international organisations, corporations, non-governmental organisations and charities (WCD 2001b). The diversity of financial sources and the fact that donors did, as a general rule, not tie their support to specific requirements, made the Commission relatively independent from single actors.
- 55 Personal interview with a member of the World Commission on Dams, 27 September 2004.
- 56 Again, Dubash et al. (2001: 89) illustrate this point by quoting one commissioner who said that 'we realised what would be at stake if no agreement would be reached.'
- 57 Personal interviews with members of the World Commission on Dams. In practice, an extensive e-mail exchange between commissioners allowed many

- consensus-building processes to occur before the actual commission meetings. As a result, meetings could focus on those issues where consensus was the most difficult to achieve and discuss divergent opinions in greater depth.
- 58 Personal interviews with members of the World Commission on Dams, September and October 2004.
- 59 Personal interview with a member of the World Commission on Dams, 13 September 2004.
- 60 Personal interview with a member of the World Commission on Dams, 13 October 2004.
- 61 Review comments were also used to challenge validity claims and arguments. For instance, a staff member of the World Bank criticised a draft version of one study because in his view, the 'paper looks biased against new and large projects without a demonstrated stated reason' (Gonzalez, in Sanmuganathan et al. 2000: 228). Overall, the analysis is based on a review of all review comments made on the seventeen thematic studies of the WCD Knowledge Base. Authors received between five and 23 comments from experts and stakeholders. As different papers were frequently reviewed by the same individuals, the overall number of reviewers is limited.
- 62 Personal interview with a member of the World Commission on Dams, 27 September 2004.
- 63 This new paradigm is expressed both in the final report of the WCD as well as in numerous statements from government, business and civil society representatives and academics.
- 64 Iyer (2001: 2279) for instance quotes a 'distinguished Indian engineer (...) and recipient of a prestigious national award' as saying 'it is we engineers who make a positive contribution; social scientists make no contribution; they can only question and criticise.'
- 65 In the context of establishing the identity and mandate of the WCD, it seems interesting to note that the name of the commission was also subject to debate. At the Gland meeting, then ICOLD president Theo van Robbroeck objected to the proposed name of a 'World Commission on Dams'. He instead suggested the commission to be named 'World Commission on Water Resources Development', but could not muster sufficient support for his proposal (van Robbroeck undated). It seems plausible to assume that a 'World Commission on Water Resources Development' would have had a different focus and composition and eventually also a different output.

Chapter 5

- 1 See for instance British Prime Minister Tony Blair's statement that 'We need to improve the information going to legislators, investors, and civil society to help improve accountability' and that 'the Global Reporting Initiative is one useful route'; cited in GRI (2004g).
- 2 I refer to the GRI as an organisation and to the GRI process as the decision-making process on the structure of that organisation and on the purpose, structure and content of the Sustainability Reporting Guidelines.
- 3 The definition is adapted from Berthoin Antal et al.'s (2002: 3) definition of environmental reporting.
- 4 For a critique, see White (1999) who points out that 'for financial markets, sustainability information remains at best a curiosity' and that 'environmental,

- social, and nonfinancial economic information is rarely used in investment, lending, and underwriting decisions.'
- 5 On the business case for sustainability reporting, see also Bavaria (1999) and Hedberg and von Malmborg (2003). For a recent and more critical study on the prospects of non-financial reporting, see Palenberg et al. (2006).
 - 6 On the relative contributions of the two founding organisations, Waddell (2002: 19) remarks that 'although CERES is often associated with the birthing of GRI, in fact Tellus' role was likely equally important. CERES did not have the global reach and networks of Tellus, nor did it have Tellus' very helpful reputation as a producer of good environmental science.'
 - 7 Personal interview with a former member of the GRI Steering Committee, 11 April 2005.
 - 8 For a comparison of the scope and contents of the GRI and other approaches, see Oliviero and Simmons (2003: 95–7).
 - 9 As of August 2005; cf. <http://www.globalreporting.org/about/secretariat.asp>, last access 26 August 2005.
 - 10 In addition to the Guidelines, the GRI has extended its portfolio of documents and currently produces three additional types of complementary documents. First, *Technical Protocols* are intended to assist reporting organisations in measuring indicators listed in the Guidelines. They 'address a specific indicator or set of indicators by providing detailed definitions, procedures, formulae and references to ensure consistency across reports' (GRI 2004a: 1). Second, *Sector Supplements* address issues that are specific to individual sectors and are therefore not directly addressed in the *Guidelines*. Third, so-called *Resource Documents* 'provide additional information or examples on specific topics of interest to GRI users' and are considered as 'a source of additional ideas, expertise, and knowledge to inspire both individual users and future GRI working groups' (GRI undated-g). For an overview of the GRI family of documents see also GRI (2003b: 8).
 - 11 The indicators have been slightly restructured in the new 2006 Guidelines. They now include 49 core and 30 additional indicators related to the economic, environmental, labour, human rights, social and product responsibility performance of reporting organisations (GRI 2006b).
 - 12 The 2006 Guidelines now demand reporting organisations to declare to what extent they have applied the GRI Guidelines in preparing their sustainability report. To this end, they develop a three-level scheme (A, B, and C) and allow organisations to add a plus sign to their application level (that is, 'A+' or 'B+') if their report has been externally verified (GRI 2006b).
 - 13 See <http://www.corporateregister.com/gri> (last access 14 December 2006).
 - 14 Funding for the organisation was initially provided mainly by US-based foundations, including the United Nations Foundation (through a grant extended to UNEP), Ford Foundation, MacArthur Foundation, and the Charles Stewart Mott Foundation. In addition, the United States Environmental Protection Agency (EPA) and Spencer T Oil contributed to the GRI's initial funding base (Stakeholder Forum for Our Common Future 2001; see also GRI undated-b). On becoming an independent organisation in 2002, the GRI also began to seek financial support from so-called 'charter group members' and 'benefactors' who contributed between US\$ 25,000 and US\$ 1,000,000 each. For charter group members and for benefactors, financial contributions were not linked to governance rights. This is different from the current structure where so-called Organisational Stakeholders (OS) contribute a membership fee in return for a right to elect the members of the GRI Stakeholder Council. The annual budget of

- the GRI amounted to approximately € 1.45 million in 2000 and 2001 and rose to over € 2 million in later years. Contributions from OS and benefactors account for approximately € 550,000 to € 750,000 per year (GRI 2003b).
- 15 For instance, Pax Christi Netherlands (2000) criticised the 2000 version of the Guidelines for excluding corporate behaviour with regard to violent conflict from the reporting framework.
 - 16 That the Guidelines have a strong normative dimension is also reflected in comments the World Business Council on Sustainable Development (WBCSD) made on a draft version of the 2002 Guidelines. In particular, the WBCSD expresses concerns ‘that despite the use of the word “Guidelines” in the title, the 2002 Guidelines appear to be “standards”, a significant departure from the [2000] Guidelines. In the world of policy, guidelines provide broad direction and offer recommendations. On the other hand, standards are detailed descriptions of and requirements for how something should be designed or performed, which is essentially how the 2002 Guidelines are written’ (World Business Council for Sustainable Development 2002). For similar concerns see also Siemens (2002).
 - 17 Personal interview with a participant in the GRI process, 13 December 2004.
 - 18 Bill Birchard, cited in *Corporate Europe Observer* (2002).
 - 19 Personal interview with a former member of the GRI Steering Committee, 11 April 2005.
 - 20 Fortune 250 includes the 250 top-ranked companies in the Fortune 500 ranking. Published annually by the Fortune magazine, Fortune 500 ranks the 500 largest US corporations as measured by gross revenue.
 - 21 In addition, the GRI notes a number of further government initiatives in Japan, the US, the United Kingdom, France and the Netherlands (GRI undated-a). A more recent independent review however suggests that ‘interest among governments in a mandatory approach to reporting (...) is currently on the decline’ (Palenberg et al. 2006: 34).
 - 22 For an overview of the complete reporting framework, see Annex II at the end of this book.
 - 23 See also GRI (1999a: 5) which states that the Steering Committee acted as ‘an informally constituted group’ that guided the GRI, and kept ‘the Board of CERES informed through the CERES Director, who serves as Steering Committee chair’.
 - 24 Personal interview with a former member of the GRI Steering Committee, 8 April 2005.
 - 25 As of June 2001, the full list of members included representatives from the Association of Chartered Certified Accountants (United Kingdom), the Canadian Institute of Chartered Accountants, the Colombian Business Council for Sustainable Development, the Centre for Science and Environment (India), CERES, the Council on Economic Priorities (United States), the Environmental Auditing Research Group (Japan), General Motors Corporation (United States), the Green Reporting Forum (Japan), the Institute of Social and Ethical Accountability (United Kingdom), the Investor Responsibility Research Center (United States), ITT Flygt (Sweden), the New Economics Foundation (United Kingdom), Sustainability (United Kingdom), UNEP, the World Business Council for Sustainable Development, and the World Resources Institute (USA) (Waddell 2002: Appendix B).
 - 26 Personal interview with a former member of the GRI Steering Committee, 8 April 2005.
 - 27 Personal interview with a former member of the GRI Steering Committee, 11 April 2005.

- 28 On the 1st international symposium of the GRI, see UNEP et al. (1999).
- 29 The MWG co-chairs were Christopher Tuppen (British Telecom), Ivo Knoepfel (Sustainability Asset Management, Switzerland) and Chandra Bhushan (Centre for Science and Environment, India).
- 30 Personal interview with a member of the Revisions Working Group, 8 April 2005.
- 31 On the whole, Board influence on the 2002 Guidelines, however, was not very significant. As one Board member recalls, 'when I came in, the Guidelines were more or less set, so it was more on how to make it function in practice' (personal interview with a member of the GRI Board of Directors, 15 March 2005).
- 32 The full list included Jacqueline Aloisi de Lardere (UNEP), Roger Adams (Association of Chartered Certified Accountants, UK), Fabio Feldmann (Brazilian Climate Forum, Brazil), Toshihiko Goto (Environmental Auditing Research Group, Japan), Judy Henderson (Australian Ethical Investment Ltd., Australia), Hanns Michael Hölz (Deutsche Bank, Germany), Jamshed J. Irani (Tata Sons Ltd., India), Robert K. Massie (CERES, USA), Lindiwe Mokate (South African Human Rights Commission, South Africa), Mark Moody-Stuart (Royal Dutch/Shell, UK), Anita Normark (International Federation of Building and Wood Workers), Barbara Shailor (American Federation of Labor-Congress of Industrial Organizations, USA), Peter H. Y. Wong (Deloitte Touche Tohmatsu, Hong Kong), Björn Stigson (WBSCD) and Ernst Litgeringen (The Netherlands) as the CEO of the GRI Secretariat.
- 33 In preparation of the third generation of the Guidelines released in 2006, the GRI Secretariat received 112 responses to its questionnaire. In addition, 416 organisations participated in the regional roundtables. Of the latter, 47 (11 per cent) were classified as CSOs, while 240 (58 per cent) were business organisations. In the case of the European roundtable, business representatives accounted for 41 of 53 (77 per cent) while only one participant (2 per cent) was identified as a representative of civil society (GRI 2004c: 7–8).
- 34 In addition, a geographical layer has been added to ensure balanced representation not only among stakeholder groups, but also among regions. According to the so-called 'Goto rule', there needs to be at least one council member per stakeholder group and region. The classification of regions was initially adopted from the United Nations (Africa, East Asia/Pacific, North America/Europe, Latin America/Caribbean, West Asia); see GRI (undated-i). However, some of the more recent GRI documents deviate from this scheme and list six regions (Africa, Asia, Europe, North America, Oceania, South America).
- 35 A paper prepared on this issue by the Stakeholder Council Working Group (SCWG) displays a high awareness of the problems associated with defining and delimiting stakeholder categories within the context of the GRI. The paper not only discusses the treatment of labour organisations, but also identifies similar concerns and difficulties in classifying other stakeholder groups. For example, it raised the question whether it was appropriate to place faith-based groups in the civil society category and consultants and accountancy firms under mediating institutions (GRI Stakeholder Council Working Group 2002: 3).
- 36 The numbers are based on the list of Steering Committee members provided in Waddell (2002: Appendix B).
- 37 Numbers refer to the members of the initial GRI Board.
- 38 The category includes multi-stakeholder initiatives, actors from the SRI community, and actors that could not be grouped easily in one of the above categories, either because they fell in between individual categories or because insufficient information on members did not allow classification.

- 39 Numbers are based on the author's own calculations made on the basis of GRI documents.
- 40 Beyond the key GRI bodies, a relative dominance of business can also be observed at the regional roundtables held as a part of the current round of revisions. Hence, of the 416 participants at these roundtables, only 47 (11 per cent) were classified as representatives of civil society organisations, while 240 (58 per cent) represented business organisations. At the European roundtable, business even accounted for 41 of 53 participants (77 per cent) while only one attendant was identified as a representative of civil society (GRI 2004c: 7–8).
- 41 Membership as of June 2001; numbers are calculated based on Waddell (2002: Appendix B).
- 42 Numbers are based on the initial Board of Directors.
- 43 Numbers are based on information provided in GRI (2005a).
- 44 Membership as of June 2004; calculation based on information provided on the GRI's website. URL: www.globalreporting.org/governance/SC/Scmembers.asp (access 14 June 2004).
- 45 The total number of MWG members amounted to 141; the difference is due to the fact that for some names available information did not allow classification.
- 46 See, for instance the related NGO criticism reported in O'Brien et al. (2000).
- 47 Personal interviews with members of the GRI Board of Directors, March 2005.
- 48 As of May 2005, the Sustainability Reporting Guidelines are available in Chinese, Dutch, French, German, Italian, Japanese, Portuguese, Romanian, Russian and Spanish (cf. <http://www.globalreporting.org/guidelines/translations.asp>; last access 16 May 2005).
- 49 On financial support for the organisation see also GRI (2003b; undated-b).
- 50 Personal interview with a former member of the GRI Steering Committee, 8 April 2005.
- 51 Personal interview with a former member of the GRI Steering Committee, 11 April 2005.
- 52 Personal interview with a former member of the GRI Steering Committee, 11 April 2005.
- 53 Personal interview with a former member of the GRI Steering Committee, 8 April 2005.
- 54 Personal interview with a former member of the Measurement Working Group, 10 March 2005.
- 55 Personal interview with a former member of the Measurement Working Group, 10 March 2005.
- 56 Where no consensus can be reached, Board decisions may also be taken by 'near, but not full, consensus'. In such cases, dissenting opinions may be recorded (GRI undated-j)
- 57 Personal interview with a member of the GRI Board of Directors, 8 March 2005.
- 58 Personal interview with a member of the GRI Board of Directors, 8 March 2005.
- 59 Personal interviews with members of the GRI Board of Directors, March 2005.
- 60 Personal interviews with a member of the GRI Board of Directors, 8 March 2005 and with a former member of the GRI Steering Committee, 11 April 2005.
- 51 I owe this observation to Steffen Bauer.

Chapter 6

- 1 See also Bartley (2003: 434) who identifies two causes of the emergence of private transnational certification, namely social movement campaigns against

- specific business actors and an 'international institutional context of neo-liberalism and free trade, which led both state and nonstate actors to support private, rather than public, forms of regulation'.
- 2 In addition, private foundations provided financial support to the FSC and were hence crucial to the success of the FSC in its early stage.
 - 3 Personal interviews with participants in the early FSC process, July 2005.
 - 4 From 1994 to 2003, the Secretariat was located in Oaxaca, Mexico. The decision to move to Europe was primarily a result of the organisation's desire to interact more closely with international policy processes.
 - 5 On the responsibilities of the FSC Secretariat, see also FSC (2002d: Articles 60–70).
 - 6 For the complete text of the Principles and Criteria, see Annex III at the end of this book.
 - 7 Similar views are also expressed in Domask (2003: 169), Ebeling (2005: 28), Massing (2003: 62), Pattberg (2004a).
 - 8 More recently, however, the organisation has begun to explore linkages between FSC policies and international norms. For instance, a FSC policy paper demands those who seek or hold a certificate to comply with all ILO conventions that are directly relevant to forest management (FSC 2002f).
 - 9 For a more comprehensive analysis of the impacts of the FSC, see also Bass et al. (2001), Meidinger (1999: 164–82) and Segura (2004). For an analysis of local impacts in the Amazon region, see Viana (2003).
 - 10 In addition, small and medium-size enterprises (SMEs) face similar difficulties as developing country producers – for instance, higher costs per unit of certified wood. In response to this problem, the FSC has developed regulations for so-called small and low-intensity managed forests (SLIMF) (FSC 2003i, 2003j).
 - 11 See also Bass et al. (2001: 93) and DG-VIII Forest Certification Advisory Group (1997: 10).
 - 12 See also Elliott and Viana (1996: 139–40) and van Dam (2002: 19–23).
 - 13 In addition, forestry and community programmes of industrialised countries' development assistance agencies may include certification as an explicit goal and tie development assistance grants to the adoption of that goal by recipients. I owe this point to Johannes Ebeling.
 - 14 A second, more indirect effect of the FSC has been the establishment of national dialogues in countries where national FSC initiatives have been set up to develop standards. Hence, it has been noted that 'one of certification's most relevant contributions to positive policy developments has been the introduction of a new culture of multi-stakeholder processes' (Segura 2004: 7; see also Bass 2002: 5; and Mankin, in Viana et al. 1996: 187). Moreover, FSC certification has occasionally empowered local and indigenous groups, for instance in retrieving their land rights (FERN 2001: 38).
 - 15 See also Segura (2004: 17) who notes that the World Bank has adopted an operational policy on SFM that partially resembles the FSC's Principle and Criteria. Segura argues that policy change within the World Bank can at least partially be attributed to the success of certification as a new policy instrument.
 - 16 In addition, the Principles and Criteria have successfully introduced new concepts such as 'high conservation value forests' to global forest policy discourses. The FSC has also influenced discourses about global decision-making in promoting the idea of non-state multi-stakeholder processes as an appropriate alternative to intergovernmental negotiations.

- 17 In particular these latter standards, however, introduce some flexibility in the interpretation of the global norms. For instance, the board's chemical pesticides committee allowed temporary derogations from the Principles and Criteria (FSC Board Committee on Chemical Pesticides 2002, 2003, 2004; FSC 2004i).
- 18 However, the 2002 General Assembly allowed publicly managed or state-owned forest enterprises to join the FSC (Massing 2003: 68–70).
- 19 Numbers are based on Counsell and Loraas (2002: 33) and Pattberg (2005: 8).
- 20 Numbers represent the author's calculations based on FSC (2005c).
- 21 In practice, interviewees noted that the influence of the GA is limited in issues in which both the board and the secretariat only show a weak interest and that the GA therefore, at least to some extent, constitutes a 'political showcase' rather than the actual centre of decision-making within the FSC (personal interview with a participant in the early FSC process, 25 July 2005).
- 22 As individual members represent more than 10 per cent of the membership in each of the six sub-chambers, this additional rule in effect implies a 9:1 voting power ratio for organisational members compared to individual members (FSC 2002d: Article 15).
- 23 The thirteen Southern countries with national FSC initiatives are Argentina, Bolivia, Brazil, Cameroon, Chile, Colombia, Ecuador, Ghana, Mexico, Mozambique, Papua New Guinea, Peru and Vietnam.
- 24 Beyond these major access points for stakeholder participation, a number of additional opportunities for participation exist within the FSC scheme. First, with the exception of representatives of certification bodies and of industry associations, any FSC member may stand for election to the organisation's board of directors. Moreover, open stakeholder meetings at the regional level provide another opportunity to get involved with the FSC. See, for instance, stakeholder meetings to discuss the FSC's plantations policy held in Brazil in 2004 (FSC 2004j: 2) or Board consultations with regional stakeholders in South Africa in March 2004 (*ibid.*: 4).
- 25 Personal interview with a former member of the Interim Board of the FSC, 5 July 2005.
- 26 At the founding assembly of the FSC in Toronto in October 1993, a more explicit attempt at representation was made and, as a result, participation was broadened and roughly balanced between North and South and between economic, environmental and social interests (FSC 1993).
- 27 Personal interviews with participants in the early FSC process, 25 July 2005 and 22 August 2005.
- 28 Personal interview with a participant in the early FSC process, 22 August 2005.
- 29 The number indicates the share of certified plantations for South America.
- 30 Personal interview with a founding member of the Forest Stewardship Council, 4 July 2005.
- 31 For a more elaborate model to identify stakeholder groups and prioritise the demands of different interests in forests, see Colfer (1995).
- 32 As stated by a 2001 UN report, the population of high income countries according to UN criteria amounts to approximately 900 million (<http://www.un.org/reports/financing/summary.htm>, last access 12 September 2005). Based on a world population of 6.1 billion as of 2001, this represents less than 15 per cent of the world's population.
- 33 The voting power is calculated by dividing the number of all votes by the number of sub-chambers and by deducing the voting power of the individual members of the sub-chamber.

- 34 The FSC statutes only require that Spanish and English versions of the minutes of board meetings 'shall be prepared and distributed among all the members of the Board of Directors', but not among the members of the organisation (FSC 2002h: 8).
- 35 Moreover, the FSC Board of Directors is also legally accountable to public authorities in its host country (FSC 2002d: Article 48).
- 36 For the financial year 2001, 84 per cent of the total budget of FSC International (amounting to US \$ 2.3 million) originated from either foundations (61 per cent) or from other donors (23 per cent). In contrast, the membership dues and accreditation fees accounted for only 13 per cent of the total budget. National FSC organisations are even more dependent on donations – in the case of the FSC–U.S., donations from foundations (98 per cent) and individuals accounted for 100 per cent of the operating budget for 2001 (US \$ 2.1 million) (Meridian Institute 2001: 18).
- 37 Personal interview with a founding member of the Forest Stewardship Council, 4 July 2005. The general impression that initial meetings were characterised by a high level of mistrust was also shared by other interviewees.
- 38 Personal interview with a former member of the Interim Board of the FSC, 5 July 2005.
- 39 As a result of the partial mistrust in the sincerity of business participation in the FSC, the founding assembly limited the voting power of economic stakeholders to 25 per cent of the overall voting power in the FSC and allocated only two of nine seats to the economic chamber. The decision was revised by the first General Assembly which gave all three chambers equal voting rights and equal representation on the board of directors.
- 40 Personal interview with a participant in the early FSC process, 11 July 2005.
- 41 See also FSC (2004g).
- 42 In addition, deliberative forums exist on other issues such as including the development of a social strategy for the FSC (FSC 2001: 8; 2002a, 2003g) and of a policy on non-timber forest products (NTFPs) (Brown et al. 2002: 6–8).

Chapter 7

- 1 On the notion of anchor countries, see Stamm (2004).
- 2 ISEAL is an umbrella organisation of international standard-setting, certification and accreditation organisations that focus on social and environmental issues. It currently has seven full members: the FSC, the International Federation of Organic Agriculture Movements, the Fairtrade Labelling Organizations International, the Marine Aquarium Council, the Marine Stewardship Council, Social Accountability International, and the Rainforest Alliance. See also <http://www.isealliance.org> (last access 20 December 2006).

Appendices

- 1 Source: WCD (2000a); reprinted with permission from Earthscan Publishers and the United Nations Environment Programme.
- 2 The summary is based on GRI (2002k).
- 3 Source: FSC (2004b); reprinted with permission from the Forest Stewardship Council. ©1996 Forest Stewardship Council, A.C. All rights reserved.

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