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ACCESS TO INFORMATION, PUBLIC PARTICIPATION AND ACCESS TO JUSTICE IN INTERNATIONAL FORUMS

Addendum

SURVEY OF SELECTED ACCESS TO INFORMATION, PUBLIC PARTICIPATION, AND ACCESS TO JUSTICE RULES AND PRACTICES IN INTERNATIONAL FORUMS*/

Introduction

This addendum to the document Environmental Access to Information, Public Participation and Access to Justice in International forums (CEP/2002.13 and MP.PP/2002/18) provides a review of some of the rules and practices to facilitate access to information, public participation, and access to justice in the international forums surveyed for this report. For each organization it reviews a selection of rules and practices, including in various subsidiary forums. Neither the organizations and processes selected nor the specific practices and rules documented are meant to be comprehensive.

The purpose of this addendum is primarily to document where access to information, public participation and access to justice is occurring. It is not meant to be a critique of the overall policies of these organizations, nor does it review compliance with the Aarhus Convention.

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*/ This document has been prepared by a consultant and has not been formally edited.

Introduction

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I. EUROPEAN UNION

1. The European Union is unique among the international forums discussed in this paper. Unlike the other international organizations, it is a regional economic integration organization with a certain amount of sovereignty. The European Union has signed the Aarhus Convention and when it ratifies the Convention, the Convention will apply to the EU as a public authority.[1] The EU does not yet meet all the criteria of the Aarhus Convention, but it is developing proposals to do so. However, for the purposes of this study, the European Union – especially the European Commission (EC) – provides relevant examples of public participation practices in international forums.

2. The European Commission formulates policy, prepares legislative proposals, manages the EU budget, implements EU policies and monitors implementation of EU legislation by the Member States. This brief overview of access to information, public participation, and access to justice in the European Union as an international forum will focus primarily on the European Commission.

A. Access to Information

3. As of 2001, the EU has started to implement new public access to information rules applying to the European Parliament, Council and Commission.[2] This regulation does not yet meet Aarhus Convention standards and the Environment Directorate-General intends to propose a new instrument that provides for those parts of the Aarhus Convention access to information provisions that are not covered by the 2001 regulation.[3]

4. EU citizens, residents, and people with offices registered in the EU have the right to access the documents of EU institutions without having to give a reason. Others have the right to access documents only if EU institutions specifically grant them the right.[4] Public right of access laws apply to documents drawn up and received by the Commission and the Council, including common foreign policy, security policy, and police and judicial cooperation in criminal matters, as long as each institution respects its security rules with regards to these documents.[5] There are certain restrictions and cases where the right to access documents will not be granted. These restrictions are related to public security, defense and military matters, international relations, financial, monetary or economic policies, individual privacy, commercial interests, court proceedings and legal advice, and inspections, investigations and audits.[6]

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[1] Aarhus Convention, Article 2(d) (Definition of public authority) and Article 17 (Signature) and Article 19 (Ratification).
[2] Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, http://europa.eu.int/eur-lex/pri/en/oj/dat/2001/l_145/l_14520010531en00430048.pdf.
[3] European Commission, Report from a meeting with environmental NGOs and the Directorate ENV.A on 31 January 2002 page 2.
[4] Article 2, Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. As long as there is no general decision that this limitation does not apply to information falling under the jurisdiction of the Aarhus Convention, this distinction violates the Aarhus Convention.
[5] Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, http://europa.eu.int/eur-lex/pri/en/oj/dat/2001/l_145/l_14520010531en00430048.pdf
[6] Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, http://europa.eu.int/eur-lex/pri/en/oj/dat/2001/l_145/l_14520010531en00430048.pdf

[***Box: EC Public Access to Information Principles***[7]

- *All documents should be accessible to the public, with certain exceptions to protect public and private interests.*
- *Rules should ensure the easiest possible exercise of the right of public access to documents.*
- *To fully protect the right of access, a two stage administrative procedure applies with the additional possibility of court proceedings or complaints to the Ombudsman.*
- *Public shall have access to registers of documents.*
- *Exceptions are specific and determined in a balancing test with the public interest in disclosure where possible.*
- *Applications for information shall be handled promptly with a requirement for acknowledgement and specific time limits for response.*
- *Applicants have the right to ask that a negative response be reconsidered and this reconsideration process also has specific time limits.*
- *Refusals of information after a reconsideration request must be in writing and state the reason and remedies open to the applicant.*
- *Access shall be through on the spot consultation, receiving a copy, or electronically.*
- *Consultation, small copies and direct electronic access shall be free of charge. Other costs shall not exceed real costs of producing and sending the copy.*
- *The public shall have access to a register of documents, noting where the document is located whenever possible.*
- *Documents should be directly accessible in electronic form.*
- *The public must be told about their rights to information.*
- *The EU institutions must develop good administrative practices and issue annual reports documenting cases of refusal of access to documents and the reasons for the refusals.]*

5. Requests for access to a document must be made in writing to the relevant Commission department at its headquarters, Commission Offices in the Member States or Commission Delegations in non-member countries. The request may be in any of the eleven official Community languages.[8] The relevant official must inform the applicant within fifteen working days if the application has been granted or if the intention is to refuse access.[9] In the latter case, the applicant has fifteen working days to apply to the Secretariat-General of the Commission for review of the intention to refuse access. The Secretariat-General will decide on applications for review in agreement with the relevant Member of the Commission.

6. EU institutions have to publish an annual report that includes the number of cases where access to documents was refused, the reasons for refusing access, and the number of sensitive documents not contained in the register.[10]

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[7] Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

[8] European Commission, *Access to European Commission Documents: A Citizen's Guide* , http://europa.eu.int/comm/secretariat_general/sgc/citguide/en/citgu.htm

[9] Annex, Article 2, Commission Decision of 5 December 2001 amending its rules of procedure (2001/937/EC, ECSC, Euratom), http://europa.eu.int/eur-lex/pri/en/oj/dat/2001/l_345/l_34520011229en00940098.pdf

[10] Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, http://europa.eu.int/eur-lex/pri/en/oj/dat/2001/l_145/l_14520010531en00430048.pdf

7. The EC website assists members of the public in accessing EC published documents, internal and preparatory documents, legal acts, bulletins, reports, archives, and recent case law.[11] The institutions are required to provide the public with access to an electronic register of documents.[12] For example, the EC has a Register of Commission documents on its website.[13] For each document, the register includes the identifier or reference number, the title of the document, the date of the document, the languages in which the document is available, and the department responsible for drafting the document. For published documents, the identifier provides the link to the document text in the Eur-lex database. The register does not provide direct access to internal documents, however it provides a form through which internal documents can be requested. The Commission has published a guide for the public explaining how to obtain a document.[14]

8. The Register connects those looking for information to the main sources of publications in electronic form. These include the Official Journal (specific legislative documents), Eur-Lex (all EU legislative instruments), CELEX (database of community legislation), and Pre-Lex (Commission database of inter-institutional procedures and major stages of decision-making processes).

B. Public Participation in Decision-Making

9. Public participation in EU decision-making takes place on an informal and *ad hoc* basis and largely at the discretion of the European institutions, rather than following set rules and procedures.[15] This means that environmental organizations cannot depend on the EU organizing public participation opportunities consistently throughout decision-making processes that are relevant to the environment, such as agriculture, transport, and energy. Several of the EU mechanisms for involving the public in decision-making include the publication of Green and White Papers on specific issues for comments and a new web-based "Interactive Policy-Making Initiative."

Green and White Papers

10. The Commission offers an opportunity for public comment through Green and White papers.[16] Green Papers are communications published by the Commission on a specific policy area. They are generally issued in advance of legislative initiative on an issue and are meant to be consultative documents to solicit public comment. They tend to be addressed to interested parties, organizations, and individuals who are invited to participate in a process of public comment and debate. Green papers tend to explicitly solicit comments, including a due date and a contact person. For example, a Green paper on greenhouse gas emissions trading

[11] *See*, http://europa.eu.int/comm/secretariat_general/sgc/acc_doc/index_en.htm
[12] Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, http://europa.eu.int/eur-lex/pri/en/oj/dat/2001/l_145/l_14520010531en00430048.pdf
[13] See, http://europa.eu.int/comm/secretariat_general/regdoc/registre.cfm?CL=en&testjs=1
[14] European Commission, *Access to European Commission Documents: A Citizen's Guide,* http://europa.eu.int/comm/secretariat_general/sgc/citguide/en/citgu.htm
[15] Even the EC's most recent developments concerning "consultation and dialogue" do not commit the Commission to institutionalize public participation procedures. *See*, Commission of the European Communities, Communication from the Commission: Consultation Document: Towards a Reinforced Culture of Consultation and Dialogue – Proposal for General Principles and Minimum Standards for Consultation of Interested Parties by the Commission, 5.6.2002, COM(2002) 277 final. *See also*, http://europa.eu.int/comm/governance/index_en.htm
[16] EC Green Papers and White Papers, http://europa.eu.int/comm/off/index_en.htm. These papers are also addressed to the European Parliament and the Council of Ministers, as they also serve to promote new policies within these two decision-making bodies or to test the ground for new policy ideas.

distributed in March 2000 requested comments by September 2000,[17] while a March 2001 Green paper on the future of the common fishery policy requested comments by September and announced a June public hearing.

White Papers are documents containing proposals for Community action in a specific area. They often follow a Green Paper published to launch a consultation process at the Community level. White papers set out a range of ideas presented for public discussion and debate.

Interactive Policy Making Initiative

11. The Commission is developing a new public participation mechanism, the Interactive Policy Making (IPM) Initiative. IPM, which is expected to be fully working by mid-2002, uses the internet to gather, analyze, and take into account reactions from stakeholders in the EU about existing and proposed policies and initiatives.[18] The IPM website is for the use of citizens, consumers and businesses. It will be open to anybody with access to the Internet and will be available in all 11 languages of the EU.

12. IPM will involve two Internet-based mechanisms to collect information from the public. A feedback mechanism will help gather spontaneous reactions and a consultation mechanism will receive and store a rapid and structured collection of stakeholders' reactions to new initiatives. There are three different types of sampling involved: passive, active, and combination. In passive sampling, all visitors to the website (or every Nth visitor) are invited to take part in a survey by clicking on a link that takes them to a page hosting the survey. In active sampling, the European Commission contacts random or specific groups of individuals by post, e-mail, or another method, to take part in the survey. The respondents may be required to log on with a password in order to participate. Combination sampling takes elements from both passive and active sampling forms. For example, visitors to a website may be invited to register for a survey and record certain demographic information. A certain proportion of these respondents (e.g. a nationally representative sample) could then be targeted separately. Access to results can be open or restricted.

C. Access to Justice and Review

13. Access to justice in the context of the European Union occurs in several different forums, including the Commission's complaints procedure, the European Ombudsman, and the Court of Justice and the Court of First Instance. Access to justice procedures can be divided into two main types: 1) procedures that are available at the community level to challenge decisions or acts taken by Member States; and 2) procedures that are available at the community level to challenge decisions or acts taken by the European Union institutions.[19] Each level has clear rules about who has access to justice and what procedures they must follow. The non-judicial access to justice procedures, such as the Commission's complaints procedure and the European Ombudsman, are fairly accessible and used for environmental issues. The judicial procedures are more difficult for the public to access and use to solve environmental complaints.

[17] Commission of the European Communities, *Green Paper on Greenhouse Gas Emissions Trading within the European Union*, Brussels, 8.3.2000, COM(2000) 87 final.
[18] From the IPM homepage, http://ipmmarkt.homestead.com/IPM_faq~ns4.html
[19] European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL Network), *Complaint Procedures and Access to Justice for Citizens and NGOs in the Field of the Environment within the European Union*, Final Report, May 2000. http://europa.eu.int/comm/environment/impel/access_to_justice.pdf .

Commission's Complaints Procedure

14. Anyone may lodge a complaint with the Commission about any measure or practice which they consider incompatible with a provision or principle of Community law.[20] As of 2000, the process has become more accessible with the publication of the EU Code of Good Administrative Behaviour that governs EU staff relations with the public.[21] People can lodge complaints about the Commission with the Secretariat-General of the Commission by writing a letter or by filling out the form available on the website and sending it in electronically or on paper. It will be forwarded to the relevant department, and the Director-General or Head of Department will investigate the complaint and reply to the complainant in writing within two months.[22] If dissatisfied, the complainant then has one month to send a confirmatory application to the Secretary-General of the Commission to review the outcome. The Secretary –General must answer the request for review within one month.[23] If the Commission decides to close a complaint file, it will inform the complainant of this. The complainant may comment on that intention, but may no longer pursue or appeal the matter through the confirmatory application process. At the maximum, the Commission will endeavor to take a decision on the substance of the complaint (either to open infringement proceedings or to close the case) within twelve months.[24]

15. Anyone may also lodge a complaint with the Commission against a Member State. The procedure is similar to the one described above. If the Commission adopts a complaint, it will start a discussion with the Member State and if not satisfied, may start an infringement procedure.[25] A complaint may eventually prompt the Commission to bring a case before the European Court of Justice.[26]

European Ombudsman

16. The public has the resource of the European Ombudsman for access to justice in cases where the institutions of the European Union have acted wrongly or denied rights such as access to information incorrectly.[27] The Ombudsman is appointed by the European Parliament for the duration of the Parliament's term of office. He or she is empowered to receive complaints concerning instances of maladministration – when an institution has either failed to do something it should have done, done something in the wrong way, or done something it ought not to have done, including refusing access to information. The Ombudsman also can carry out studies on its own initiative.

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[20] *See*, Commission webpage at http://europa.eu.int/comm/secretariat_general/sgb/lexcomm/index_en.htm

[21] Code of Good Administrative Behaviour: Relations with the Public, 13 September 2000, Official Journal of the European Communities: OJ L 267, 20.10.2000. http://europa.eu.int/comm/secretariat_general/code/index_en.htm. Following the development of the Code of Good Administrative Behaviour, the Nice meeting of the European Council in December 2000 included a right to good administration for citizens as a fundamental right in the new Charter of Fundamental Rights.

[22] Code of Good Administrative Behaviour: Relations with the Public, 13 September 2000, Official Journal of the European Communities: OJ L 267, 20.10.2000. http://europa.eu.int/comm/secretariat_general/code/index_en.htm

[23] Code of Good Administrative Behaviour: Relations with the Public, 13 September 2000, Official Journal of the European Communities: OJ L 267, 20.10.2000. http://europa.eu.int/comm/secretariat_general/code/index_en.htm

[24] Standard Form for Complaint to the Commission of the European Communities Concerning Failure to Comply with Community Law (explanatory note). *See*, http://europa.eu.int/comm/sg/lexcomm

[25] Article 226, Consolidated Version of the Treaty Establishing the European Community.

[26] Article 226, Consolidated Version of the Treaty Establishing the European Community.

[27] *See*, the European Ombudsman Homepage, www.euro-ombudsman.eu.int/home/en/default.htm

17. Where the Ombudsman establishes an instance of maladministration, he or she refers the matter to the institution concerned, conducts an investigation, seeks a solution to redress the problem and, if necessary, submits draft recommendations to which the institution is required to reply in the form of a detailed report within three months.

18. Members of the public make a complaint by writing to the Ombudsman. The complaint must be made within two years of the date when the complainant became aware of the facts of the case. Complainants need not be individually affected by the maladministration. They must have already contacted the institution or body concerned. The Ombudsman does not deal with matters that are currently before a court or that have already been settled by a court.

19. In 2000, the European Ombudsman received 1732 complaints, 237 closed with a reasoned decision and of those, 223 saw an inquiry initiated.[28] Reasoned decisions are published on the Ombudsman webpage.

20. As with access to information in the European Union, members of the public who are not citizens or residents or who do not have registered offices in the European Union are not allowed to make a complaint to the European Ombudsman.

European Court of Justice and Court of First Instance

21. The European Court of Justice (ECJ) and the Court of First Instance make up the judicial branch of the EU.[29] In theory, individuals have some access to the Court of Justice and the Court of First Instance in cases where they are directly addressed or individually concerned in order to challenge the legality of acts or decisions of the EU institutions.[30] However, in practice, the requirement to show "direct and individual concern" is a barrier to individuals and NGOs. For example, in a 1998 case concerning Greenpeace, the ECJ ruled that natural persons and associations only have standing before the Court if they are individually concerned by the act.[31] The ECJ has interpreted this to mean that as long as the specific situation of the applicant of a case under Article 230 of the Treaty establishing the European Community has not been taken into consideration in the adoption of the decision, the decision concerns the plaintiff only in a general and abstract fashion.

[28] The European Ombudsman Annual Report 2000.

[29] The Court of Justice has jurisdiction to hear disputes to which Member States, EU Institutions and individuals are parties. The Court of First Instance was established in order to relieve the heavy caseload of the Court of Justice and to allow the Court of Justice to concentrate on the uniform interpretation of EU law. The Court of First Instance has jurisdiction to deal with all actions brought by individuals and companies against decisions of the EU institutions and agencies. Cases decided in the Court of First Instance can be appealed to the Court of Justice on questions of law. The Court of Justice mainly hears direct actions brought by either EU Institutions or a Member State, but in some circumstances, the Court of Justice can hear cases brought by natural or legal persons.

[30] Article 230, Consolidated Version of the Treaty establishing the European Community. Paragraph 4 reads: "Any natural or legal person may (…) institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former."

[31] *Stichting Greenpeace Council and Others v. Commission*, Court of First Instance: Case T-585/93, [1995] ECR II-205. European Court of Justice: Case C-321/95P), 1998.

22. One type of proceeding before the ECJ where third parties, such as interested environmental associations, have been given a role to play is preliminary rulings.[32] Such cases typically concern matters pending before national courts and concerning the implementation of EC law. For example, the ECJ heard a preliminary rulings case brought by the World Wildlife Fund and other environmental organizations against the Autonome Provinz Bozen regarding the interpretation of a European Council Directive concerning environmental impact assessment.[33]

II. ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (OECD)

23. The Organization for Economic Cooperation and Development (OECD) is an international organization with 30 member countries.[34] It focuses on economic and social issues including trade, education, development, and environment. The OECD produces internationally agreed instruments, decisions and recommendations to facilitate country progress in a globalized economy. The OECD is governed by the Council made up of representatives of member countries. The Council provides guidance on the work of the OECD committees. OECD actions are taken by consensus among the member countries.

24. The OECD attaches great importance to its own consultation and dialogue with civil society organizations (including business and labor).[35] In addition, the OECD works on "government-citizen relations" by reviewing Member countries' efforts to strengthen access to information, opportunities for consultation and encourage the active participation of citizens in shaping public policies.[36] The OECD is authorized to invite non-member governments or organizations to participate in its activities[37] and invites participation by members of the public on an *ad hoc* basis.

A. Access to Information

25. The OECD access to information policy makes all OECD documents publicly accessible unless specifically designated as classified for official use or as confidential.[38] Any public OECD document is accessible through the OECD website or on request.[39] The OECD website contains information relating to all the OECD work areas, including decisions, decision-recommendations, declarations, guidelines, and reports.[40]

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[32] European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL Network), *Complaint Procedures and Access to Justice for Citizens and NGOs in the Field of the Environment within the European Union*, Final Report, May 2000. *See*, for example, Case C-118/94, [1996] ECR I-1223, *Associazione Italiana per il WWF*; Case C-435/97, Common Market Law Reports 2000: 149-180, *WWF v. Autonome Provinz Bozen*.

[33] *World Wildlife Fund (WWF) and Others v. Autonome Provinz Bozen and Others,* Case C-435/97, Judgment of the European Court of Justice, 16 September 1999, C366/4 Official Journal of the European Communities 18.12.1999, (1999/C 366/07).

[34] *See*, www.oecd.org

[35] Meggan Dissly, NGO Liaison Officer, Public Affairs Division, OECD, personal communication, 14 June 2002.

[36] OECD, *Citizens as Partners: Information, Consultation and Public Participation in Policy-Making*.

[37] Article 12, Convention on the Organisation for Economic Co-operation and Development, Paris, 14 December 1960.

[38] Annex: Guidelines for Implementation: OECD Council Resolution on the Classification and Declassification of Information, C(97)64/FINAL (adopted 10 July 1997). "Classified for official use" means that the information should not be communicated except for official purposes. "Confidential" means that the unauthorized disclosure would seriously prejudice the interest of the OECD or any of its Member countries.

[39] Matt Brosius, Head of Center for Marketing and Administration, OECD, US Office, personal communication, 7 June 2002.

[40] *See*, www.oecd.org and for specific decisions: http://webdomino1.oecd.org/horizontal/oecdacts.nsf

Although there are no guidelines for response time to a public request for information, in general each Department has a person responsible for handling email requests for information. Email requests generally receive an acknowledgment within 24 working hours.[41]

26. In 1998, the OECD Council made a specific recommendation concerning environmental information.[42] The recommendation instructs the OECD Environmental Policy Committee (EPOC) to strengthen its work to develop environmental and sustainable development information, especially to improve the quality and comparability of information, develop accounting systems and indicators for assessment of sustainable development progress, and to make relevant work on environmental indicators publicly available.[43]

Classification Rules

27. In general, OECD information includes documents and other materials produced or disseminated by the OECD for consideration of Member countries, including material received from Member countries for the same purpose.[44] All OECD documents are publicly accessible unless specifically designated as classified for official use or classified as confidential.[45] "Classified for official use" means that the information should not be communicated except for official purposes. "Confidential" means that the unauthorized disclosure would seriously prejudice the interest of the OECD or any of its Member countries.

28. Unless a Member objects or the Secretary-General decides otherwise, after three years, classified documents are automatically downgraded to a level of greater accessibility.[46] For example, after three years *confidential* documents are automatically downgraded to the *for official use* level and after another three years, declassified. However, on some occasions, classified information is made accessible to allow for public comment.[47]

29. The OECD archives documents with potential historical interest. After a period of ten years, the Organization must facilitate public access to these historical archives – even to documents still classified.[48]

[41] Meggan Dissly, NGO Liaison Officer, Public Affairs Division, OECD, personal communication, 14 June 2002.
[42] See, OECD Recommendation of the Council on Environmental Information, 3 April 1998 – C(98)67/Final. http://webdomino1.oecd.org/horizontal/oecdacts.nsf/linkto/C(98)67
[43] See, OECD Recommendation of the Council on Environmental Information, 3 April 1998 – C(98)67/Final, Section IV. http://webdomino1.oecd.org/horizontal/oecdacts.nsf/linkto/C(98)67
[44] OECD Council Resolution on the Classification and Declassification of Information, C(97)64/FINAL (adopted 10 July 1997).
[45] Annex: Guidelines for Implementation: OECD Council Resolution on the Classification and Declassification of Information, C(97)64/FINAL (adopted 10 July 1997).
[46] OECD Council Resolution on the Classification and Declassification of Information, C(97)64/FINAL (adopted 10 July 1997).
[47] Meggan Dissly, NGO Liaison Officer, Public Affairs Division, OECD, personal communication, 14 June 2002.
[48] OECD Council Resolution on the Classification and Declassification of Information, C(97)64/FINAL (adopted 10 July 1997).

B. Public Participation in Decision-Making

Business and Labor Participation

30. OECD has formal relations with business and labor organizations through the Business and Industry Advisory Committee (BIAC) and the Trade Union Advisory Committee (TUAC), both of which participate in OECD's activities through bureau and informal consultations, the Labour/Management Programme, and informal contacts.[49] The OECD Council meets with these committees during the annual Liaison Committee meetings and during pre-ministerial consultations. The BIAC was established in 1962 as an independent organization officially recognized by the OECD as being representative of business and industry. TUAC was originally established as a trade union advisory committee to the European Recovery Programme and later continued working with the OECD.

Civil Society Organization Participation

31. Over the past decade, OECD has increased its dialogue and consultations with other parts of civil society. NGOs and other members of civil society participate in OECD work mainly through informal activities, including consultations, conferences, seminars and workshops.[50] For example, in June 2000 OECD governments adopted an updated version of the OECD Guidelines for Multinational Enterprises. Civil society organizations were involved early in this process in 1998. Once negotiations began, civil society consultations were held at each negotiating session. As they were developed, drafts of the revised Guidelines were placed on the OECD webpage for comments. Civil society organizations then continued to be involved in implementation of the Guidelines. The OECD indicates that NGO participation influenced the final result.[51]

32. In general, the various OECD Departments have developed contacts and relationships with interested NGOs for consultations. The participation of international and national environmental NGOs in the OECD's Environment Policy Committee (EPOC) and the OECD Chemicals Committee is facilitated and sometimes co-ordinated by the European Environmental Bureau (EEB).[52] The EPOC holds consultations with the three stakeholder groups (BIAC, TUAC, and other civil society organizations) at most of its meetings and invited stakeholder representatives to participate in its High Level meeting in April 2000.

OECD Forum

33. Since 2000, the OECD Forum has been held as a multi-stakeholder consultation which provides civil society input into the annual OECD Ministerial Summit. For example, at the OECD Forum 2001, approximately 1,500 representatives of civil society, government, business and labor convened to discuss policy challenges of sustainable development.

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[49] *See*, www.biac.org and www.tuac.org
[50] OECD Policy Brief, *Civil Society and OECD*, 2001, http://www.oecd.org/pdf/M00018000/M00018283.pdf
[51] OECD Policy Brief, *Civil Society and OECD*, 2001, http://www.oecd.org/pdf/M00018000/M00018283.pdf
[52] *See*, www.eeb.org/activities/OECD/main.htm. EEB does not want to limit in any way direct relations between individual NGOs and the OECD. It coordinates participation of NGOs from throughout the OECD region – beyond the EEB network.

C. Access to Justice and Review

34. In general, the OECD does not provide mechanisms for access to justice for review of its decisions or of Member State implementation. However, in the 2000 OECD Guidelines for Multinational Enterprises, implementation procedures for the Guidelines explicitly provide a role for NGOs.[53] Along with business and labor, civil society organizations have the possibility of raising concerns with the implementation of the Guidelines before relevant national institutions.

OECD Guidelines for Multinational Enterprises

35. As part of the new implementation provisions of the Guidelines, countries must establish National contact points, responsible for, *inter alia*, handling enquiries.[54] The Guidelines oblige national contact points to respond to enquiries from the business community, employee organizations, other non-governmental organizations and the public.[55] National contact points report to the Committee on International Investment and Multinational Enterprises.

36. According to the Guidelines, the national contact point has the task of contributing to the resolution of issues that arise relating to implementation of the Guidelines in specific instances and must do so in an efficient and timely manner and in accordance with applicable law.[56] The national contact point makes an assessment of whether the issues raised merit further examination and respond to the party raising them. The national contact point then conducts an investigation if warranted and tries to facilitate access to consensual and non-adversarial means of settling the dispute. If the parties involved cannot reach agreement, the national contact point must issue a statement and make recommendations on the implementation of the Guidelines. The results of these procedures are publicly available, however, aspects of the investigations themselves are confidential, although the Guidelines recognize that it is important to strike a balance between transparency and confidentiality.[57]

37. This public complaint process is not yet fully tested, however there already are twenty ongoing instances of complaints registered with the national contacts in various countries, including the United States, the United Kingdom and France.[58] Fifteen of these cases were brought by trade unions and five have been brought by NGOs. It is too soon to say how the procedure will work in practice from the point of view of NGOs. The procedures are unclear, left to the discretion of individual national contact points in each country. Without clearly defined time-limits and other procedures, the complaint process lacks transparency and accountability.

[53] OECD Policy Brief, *Civil Society and OECD*, 2001, http://www.oecd.org/pdf/M00018000/M00018283.pdf
[54] OECD, The OECD Guidelines for Multinational Enterprises, Revision 2000.
[55] Procedural Guidance, OECD, The OECD Guidelines for Multinational Enterprises, Revision 2000.
[56] Procedural Guidance, OECD, The OECD Guidelines for Multinational Enterprises, Revision 2000.
[57] OECD, Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises, 2000.
[58] Meggan Dissly, NGO Liaison Officer, Public Affairs Division, OECD, personal communication, 10 June 2002.

III. COMMISSION FOR ENVIRONMENTAL COOPERATION OF NORTH AMERICA (CEC)

38. The Commission for Environmental Cooperation (CEC) is an international organization created by Canada, Mexico and the United States under the North American Agreement on Environmental Cooperation (NAAEC).[59] It was established to address regional environmental concerns in North America, help prevent potential trade and environment conflicts, and promote the effective enforcement of environmental law.[60]

39. The NAAEC preamble emphasizes the importance of public participation in environmental protection. Each of the CEC's bodies: the Council, the Secretariat, and the Joint Public Advisory Committee (JPAC) have developed mechanisms for disseminating information and consulting with the public of North America. The CEC defines the term "public" inclusively to mean all persons, organizations or groups of people in North America.[61]

A. Access to Information

40. The CEC has an open public access to information policy and posts most documents, including decisions, reports, drafts for comment, and meeting minutes on its website. All decisions and recommendations of the Council (composed of the environment ministers of North America), Secretariat and Joint Public Advisory Committee (JPAC) are public, unless confidentiality is requested to protect proprietary information.[62] Documents to be discussed at an open meeting are made available to all interested stakeholders no less than thirty days in advance.

Citizen Submission Registry

41. NGOs and other members of the public can follow the status of a citizen submission on enforcement matters (discussed below) through a web-based registry established by the Secretariat.[63] The registry lists all the submissions, a summary of the Party's response, a summary of certain notifications, the Secretariat's explanation for why a factual record is needed, and the Council's decision on the factual record. The Secretariat does not disclose identifying information or confidential information from NGOs and members of the public who are making submissions.[64]

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[59] North American Agreement on Environmental Cooperation between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America, 1993.
[60] http://www.cec.org/who_we_are/index.cfm?varlan=english
[61] CEC, Framework for Public Participation in Commission for Environmental Cooperation Activities, 22 October 1999. C/DIR/01/Rev.11.
[62] North American Agreement on Environmental Cooperation between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America, 1993, Secretariat for the Commission for Environmental Cooperation, Article 9, Article 11, Article 16.
http://www.cec.org/pubs_info_resources/law_treat_agree/naaec/download/Naeec-e.doc
[63] Council Resolution 99-06, June 28, 1999, Adoption of the Revised Guidelines for Submissions on Enforcement Matters Under Articles 14 and 15 of the North American Agreement on Environmental Cooperation, www.cec.org/files/english/Newg1-e.doc, www.cec.org/citizen/guide_submit/index.cfm?varlan=english
[64] North American Agreement on Environmental Cooperation between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America, 1993, Secretariat for the Commission for Environmental Cooperation, Article 11, http://www.cec.org/pubs_info_resources/law_treat_agree/naaec/download/Naeec-e.doc

Annual Report

42. The CEC publicly releases an annual report that covers the Commission's activities, expenses for the previous year, approved program and budget for the following year, each Party's actions relating to the NAAEC, including data on the Party's environmental enforcement activities, relevant NGOs' views and information submissions, recommendations, and other matters in the scope of the Agreement that the Council wants included.[65]

B. Public Participation in Decision-Making

43. The CEC encourages public participation in most of its activities, meetings and other decision-making processes.[66] In addition, NAAEC includes advisory committees, such as the Joint Public Advisory Committee and the National Public Advisory Committees that include members of the public.

General Public Participation Process

44. When a decision is coming up, the CEC contacts interest groups to ask them for input. In addition to holding public meetings and through the Internet, the CEC my also notify these groups by mail, through its quarterly bulletin (available on the web and in hard copy), and through the media. If the interest groups are located in a remote area and cannot access the meeting, the CEC tries to hold the meeting near that location so that they can be involved. The CEC uses a variety of methods to target groups: they may choose groups from the list they have compiled; they may consult various networks to get lists; or they may hire a consultant to figure out which groups should be contacted. The public comment period lasts for a minimum of 30 days.[67] Comments made during the public meeting are summarized and posted on the website along with any submitted written comments.

45. In the case of public meetings, the public notice of the meeting provides information on how the public can participate and on any restriction that might apply. Open public meetings are open to participation by all without restriction, subject only to space availability. Some meetings are fully or partially open to the public as observers. A third type of meeting includes members of the public by invitation. The CEC may hold closed meetings if it decides that this is necessary.

46. The CEC is supposed to provide public notice no less than thirty days before any public meeting.[68] Members of the public may submit written comments to the appropriate CEC division even if unable to attend the meeting. Written comments received within five days after the meeting will have the same status as verbal comments made during a public meeting. The written comments are posted on the website. The CEC keeps records of public meetings that contain minutes of the meetings.[69]

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[65] North American Agreement on Environmental Cooperation between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America, 1993, Secretariat for the Commission for Environmental Cooperation, Article 12, http://www.cec.org

[66] CEC, Framework for Public Participation in Commission for Environmental Cooperation Activities, 22 October 1999. C/DIR/01/Rev.11

[67] CEC, Framework for Public Participation in Commission for Environmental Cooperation Activities, 22 October 1999. C/DIR/01/Rev.11

[68] CEC, Framework for Public Participation in Commission for Environmental Cooperation Activities, 22 October 1999. C/DIR/01/Rev.11

[69] CEC, Framework for Public Participation in Commission for Environmental Cooperation Activities, 22 October 1999. C/DIR/01/Rev.11.

47. The CEC provides interpretation services at all of its public meetings in the three languages of the Commission (French, English, and Spanish).[70] Under certain circumstances, the participants may decide that one or more of the official languages are not required two weeks before the meeting.

48. Decisions on financial support to public participants are made within each committee or work group in accordance with the annual work program and budget. The CEC has guidelines for selecting candidates for financial support, including the need to ensure a wide range of views, demonstrated expertise, and ability to present constructive proposals.[71] For example, based on these criteria, a JPAC working group decides which NGOs or individuals will receive financial assistance to attend public meetings organized in conjunction with the Council annual meetings.[72]

49. In addition to public meetings, the CEC also obtains information from the public on specific issues via questionnaires, interviews, forums, seminars, community and site visits, focus groups, and Internet exchanges.

50. In order to ensure accountability of the public participation process to the public, the CEC tries to ensure that: 1) clear objectives for public participation are set in advance of meetings; 2) it provides the public with information on next steps and decisions relevant to the areas under discussion; 3) it informs the public of how and when their comments will be considered; and 4) it evaluates the effectiveness of the public meetings.[73]

Joint Public Advisory Committee

51. The Joint Public Advisory Committee (JPAC) is composed of fifteen non-governmental members, five appointed by each Party, each serving in a voluntary capacity.[74] JPAC provides advice to the CEC Council on any matter within the scope of the NAAEC.[75] It also performs any other functions that the Council may direct. For example, JPAC may provide policy, technical, scientific or other information to the Secretariat including for the purposes of developing factual records under the CEC citizen complaint mechanism. Part of JPAC's mandate is to ensure active public participation and transparency in the actions of the Commission.[76]

52. JPAC meets four to five times a year rotating among the countries. As part of these regular sessions where administrative issues and potential advice to the Council are discussed, JPAC organizes a plenary session with the public on current aspects of the CEC Program Plan. The main purpose of this public consultation is to reach a broader spectrum of the public and to give participants a chance to express and discuss their views both orally and in writing.[77] All comments and briefs provided during a public consultation are analyzed by the JPAC in order to provide advice to the Council.[78]

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[70] For example, for the JPAC, *see*, CEC, Joint Public Advisory Committee: Rules of Procedure, Rule 9 Languages.
[71] CEC, Framework for Public Participation in Commission for Environmental Cooperation Activities, 22 October 1999. C/DIR/01/Rev.11.
[72] Manon Pepin, JPAC Liaison, personal communication on May 31, 2002.
[73] CEC, Framework for Public Participation in Commission for Environmental Cooperation Activities, 22 October 1999. C/DIR/01/Rev.11.
[74] CEC, Joint Public Advisory Committee: Rules of Procedure, Rule 2: Joint Public Advisory Committee Structure.
[75] JPAC, http://www.cec.org/who_we_are/jpac/vision/index.cfm?varlan=english
[76] JPAC, http://www.cec.org/who_we_are/jpac/vision/index.cfm?varlan=english
[77] JPAC Public Consultation Guidelines.
[78] CEC, http://www.cec.org/who_we_are/jpac/pub_consult/index.cfm?varlan=english

53. One of these meetings is held in conjunction with the regular session of the Council in June. These annual Council sessions provide an opportunity for the public to interact directly with the Council members and also for JPAC to meet directly with the Council, bringing forward matters that it considers important for the CEC to address.[79] In addition, JPAC has the opportunity to meet with the Alternate Representatives (Ministers Representatives) during in-camera sessions to discuss JPAC advice, CEC programs, and other matters as well as to respond to any direct requests from the Council. The Chair of JPAC also participates in all meetings of the Alternate Representatives (approximately ten meetings each year).

54. The JPAC website for any issue undergoing a public consultation provides the full text of JPAC Advice to Council, responses from the Council, public reviews, calls for comments, and the text of the public comments received in the course of a consultation. For example, a JPAC public review of specific issues related to Articles 14 and 15 of NAAEC (citizen submission process) started in July 2000 with an initial call for comments that were integrated into a background document for discussion at the October 2000 JPAC session. The initial call for comments was sent to 5,800 persons from various sectors through the CEC databank.[80] These sectors included NGO, government, academic, business, labor, indigenous, media, and individuals. The call was also made public through several websites.[81] In addition, the JPAC Chair sent a letter to former and current submitters involved in Articles 14 and 15 encouraging them to provide comments.[82] This consultation has been followed by a public workshop and finalized by a JPAC Advice to Council.[83]

Council

55. The Council has the discretion to ask for advice from an expert advisory committee.[84] For example, the Council established in 2002 an Expert Advisory Board composed of environment and health experts selected by the Parties to advise the Council on issues concerning children's health and the environment.[85]

Secretariat

56. In the majority of its activities, the Secretariat collects information from NGOs that influences the work of the CEC and cooperates closely with JPAC. When preparing a report for the Council, the Secretariat is allowed to draw upon information from public consultations, including conferences, seminars, and symposia.[86] These reports are also available to the public.

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[79] Manon Pepin, JPAC Liaison Officer, personal communication. 14 June 2002.
[80] JPAC, Public Consultation on the Draft JPAC Public Review of Issues Concerning the Implementation and Further Elaboration of Articles 14 and 15 of the North American Agreement on Environmental Cooperation: Executive Summary of Public Comments Received, October 2000.
[81] Websites included: CECNet, the Border Environmental Commission (BECC), Infoterra, the Environmental News Network, the Environmental Law Professors site, and others.
[82] This letter went to the 90 organizations that signed a letter sent to the CEC Council about the citizen submissions process and a letter to the National Advisory Committees.
[83] Manon Pepin, JPAC Liaison Officer, personal communication. 14 June 2002.
[84] North American Agreement on Environmental Cooperation between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America, 1993, Secretariat for the Commission for Environmental Cooperation, Article 9.
[85] Council Resolution 00-10 (2002).
[86] North American Agreement on Environmental Cooperation between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America, 1993, Secretariat for the Commission for Environmental Cooperation, Article 13.

National Public Advisory Committees

57. The national advisory committees (NAC) advise their signatory governments on the implementation and further elaboration of the NAAEC.[87] The NACs are made up of members of the public selected for their experience and ability to contribute. For example, the U.S. NAC includes academics, environmental NGOs, businesses, and private citizens.

C. Access to Justice and Review

Citizen Submission Process

58. Under Article 14 of the NAAEC, the mechanism for "citizen submissions on enforcement matters" allows the public to submit claims to the CEC alleging that a member country government is failing to enforce its environmental laws effectively. NGOs and individuals in the United States, Mexico, and Canada can make submissions to the Secretariat of the CEC.[88] After reviewing the submission, the CEC may investigate the matter and publish a factual record of its findings, subject to approval by the CEC Council. To provide additional guidance to members of the public and to CEC staff with the submission process, the CEC developed guidelines for submissions on enforcement matters.[89]

59. Thirty-four submissions have been received since 1995. They are publicly accessible on the CEC website, along with the Secretariat's determinations and the concerned government Party's responses.[90] For example, in January 1996, a coalition of Mexican NGOs submitted a citizen complaint requesting that a factual record be established addressing the alleged failure of Mexican authorities to effectively enforce environmental laws during the evaluation process of the construction of a public harbor terminal on the Mexican island of Cozumel.[91] Within five days, the CEC sent an acknowledgment to the submitters and in February began reviewing the submission, determined that the submission met the criteria, and requested a response from Mexico. In March, the CEC received a response from Mexico and began consideration of whether to recommend a factual record. In June, the Secretariat informed the Council that it considered that a factual record was warranted and in August, the Council voted to instruct the Secretariat to develop a Factual Record. In April 1997, the Secretariat submitted a draft factual record to the Council for a 45-day comment period – comments were received from Canada, Mexico and the US in July. In October 1997, the final factual record was made publicly available.

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[87] North American Agreement on Environmental Cooperation between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America, 1993, Article 17.

[88] Council Resolution 99-06, 28 June 1999, Adoption of the Revised Guidelines for Submissions on Enforcement Matters Under Articles 14 and 15 of the North American Agreement on Environmental Cooperation, www.cec.org/files/english/Newg1-e.doc, www.cec.org/citizen/guide_submit/index.cfm?varlan=english; North American Agreement on Environmental Cooperation between the Government of Canada, the Government of the United Mexican States and the Government of the United States of America, 1993, Secretariat for the Commission for Environmental Cooperation, Article 14, http://www.cec.org/pubs_info_resources/law_treat_agree/naaec/download/Naeec-e.doc

[89] CEC, *Guidelines for Submissions on Enforcement Matters under Articles 14 and 15 of the North American Agreement on Environmental Cooperation*, revised 28 June 1999.

[90] http://www.cec.org/citizen/status/index.cfm?varlan=english

[91] *See*, www.cec.org: Cozumel case record, submission id: SEM-96-001, 17 January 1996.

60. A recent JPAC *Lessons Learned* report on the citizen submissions process found that citizen submissions play an essential role in achieving the goals of the NAAEC.[92] The report stressed the importance of timeliness in handling citizen submissions and the importance of ensuring open, informed and reasoned decision-making.

VI. UNITED NATIONS ECONOMIC AND SOCIAL COUNCIL (ECOSOC)

61. The United Nations Economic and Social Council (ECOSOC) operates under the authority and guidance of the UN General Assembly to coordinate and monitor all UN operations in the field of economic and social work, including environment. ECOSOC may make arrangements for consultations with international and national NGOs concerned with matters relating to ECOSOC's area of competence.[93] In 1996, ECOSOC updated its consultative arrangements and these form the main legal basis for NGO involvement with ECOSOC and most other UN bodies.[94] The ECOSOC consultative arrangements provide the model for participation of NGOs in all areas of the work of the United Nations, although other UN bodies, conferences and conventions are free to adopt their own additional rules. Currently, there are approximately 2,150 NGOs in consultative status with ECOSOC.

A. Access to Information

62. UN documents designated as "General Distribution Documents" are final or draft documents that any member of the public may access. General distribution documents are publicly available through UN depositary libraries that are required to make their UN collections available to the public. In addition, a large selection of UN documents is available through the web.[95]

63. The UN may offer NGOs in consultative status with ECOSOC "prompt and efficient" access to UN documents, access to UN press documentation services, use of UN libraries, and appropriate arrangements for obtaining documents at public meetings of the General Assembly.[96] Although rights of participation may vary among NGOs depending on the type of consultative status (general, special and roster), organizations in all three categories are entitled to receive copies of the provisional agenda for ECOSOC meetings.[97]

B. Public Participation in Decision-Making

64. The United Nations has been trying to improve its process for public participation in meetings, conferences, and decisions. In addition to updating the public participation rules, the Secretary General has encouraged institutional support for public participation, such as NGO liaison officers in each office.[98]

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[92] CEC JPAC, *Lessons Learned: Citizen Submissions under Articles 14 ad 15 of the North American Agreement on Environmental Cooperation: Final Report to the Council of the Commission on Environmental Cooperation*, 6 June 2001.
[93] United Nations Economic and Social Council Charter, Article 71. *See*, http://www.un.org/esa/coordination/ecosoc/charter.htm
[94] Arrangements for Consultation with Non-Governmental Organizations, ECOSOC Res. 1996/31.
[95] *See*, http://www.un.org/
[96] Arrangements for Consultation with Non-Governmental Organizations, ECOSOC Res. 1996/31, para. 67.
[97] Arrangements for Consultation with Non-Governmental Organizations, ECOSOC Res. 1996/31, paras. 27 & 33.
[98] UN Secretary General, Renewing the United Nations: A Programme for Reform," A/51/950, 1997.

ECOSOC Consultative Arrangements

65. ECOSOC recognizes three categories of consultative relationships: "general," "special," and "roster" status. The Consultative Arrangements address the rights and privileges of each category and participation in international conferences convened by the UN. The decision to grant an NGO consultative status is made by ECOSOC upon the recommendation of the Committee on Non-Governmental Organizations.

66. To qualify for general consultative status, an organization must be concerned with most of the activities of ECOSOC and demonstrate that (1) it has substantive and continued contributions to make to UN objectives; (2) it is closely involved in the economic and social life of the people in the areas it represents; and (3) its membership is broadly representative of major segments of society in a large number of countries.[99] Applications for consultative status must be received by June 1 of the year preceding the year the NGO wants to be considered for recommendation by the Committee on Non-Governmental Organizations. However, most UN conferences, in addition to accepting NGOs accredited with ECOSOC, have their own accreditation process. For example, the 2002 International Conference on the Financing for Development even extended its own registration process almost up to the opening of the conference.[100]

67. Organizations in *general consultative status* enjoy the greatest participation rights. These organizations may propose that certain items of special interest be placed on the provisional agenda, designate representatives to sit as observers at public meetings, and submit written statements to ECOSOC on subjects in which they have a special expertise.[101] In addition, organizations in general consultative status are permitted to make oral presentations to ECOSOC whenever an item proposed by the organization is included in the agenda.[102]

68. Organizations in *special consultative status* enjoy the same substantive rights as those in general consultative status. Unlike general consultative status, however, organizations in special consultative status are concerned with only a few areas of activity covered by ECOSOC.[103] In consultations with ECOSOC and the Commissions, these organizations may designate representatives to sit as observers at public meetings,[104] file written statements on subjects in which they have a special expertise,[105] and may be asked by the Committee on Non-Governmental Organizations to make an oral presentation on a subject within its field of interest.[106]

69. Organizations in *roster status* enjoy the fewest rights. These organizations consist of organizations that the Secretary-General and ECOSOC believe can make occasional and useful contributions to the work of the ECOSOC.[107] Organizations on the roster will be available for consultation at the request of ECOSOC and may have representatives present at public meetings. Unlike organizations in general and special consultative status, there is no express right for roster organizations to submit written statements. Instead, the Secretary-General or

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[99] Arrangements for Consultation with Non-Governmental Organizations, ECOSOC Res. 1996/31, at para. 22.
[100] Office of the President of the Millenium Assembly, *Reference Document on the Participation of Civil Society in United Nations Conferences and Special Sessions of the General Assembly During the 1990s*, Version 1, August 2001.
[101] Arrangements for Consultation with Non-Governmental Organizations, ECOSOC Res. 1996/31, paras. 28, 29, 30, 34, 35, and 36.
[102] Arrangements for Consultation with Non-Governmental Organizations, ECOSOC Res. 1996/31, para. 32(b).
[103] Arrangements for Consultation with Non-Governmental Organizations, ECOSOC Res. 1996/31, para. 23.
[104] Arrangements for Consultation with Non-Governmental Organizations, ECOSOC Res. 1996/31, paras. 29 & 35.
[105] Arrangements for Consultation with Non-Governmental Organizations, ECOSOC Res. 1996/31, paras. 30 & 36.
[106] Arrangements for Consultation with Non-Governmental Organizations, ECOSOC Res. 1996/31, para. 32(a). There is, however, a serious restriction on this privilege. An organization in special consultative status will receive such a request only in the absence of a subsidiary body of ECOSOC with jurisdiction in the area (*Id.* para. 32(a)).
[107] Arrangements for Consultation with Non-Governmental Organizations, ECOSOC Res. 1996/31, para. 24.

ECOSOC may invite these organizations to submit written statements.[108] In addition, there is no express provision allowing organizations on the roster to make oral presentations in consultations with ECOSOC; however, in consultations with Commissions, these organizations may make statements at the request of the Commission.[109]

70. In addition to defining various consultative levels, the ECOSOC Consultative Arrangements address the issue of NGO participation in international conferences.[110] Most UN conferences do not require any further information from NGOs than their ECOSOC accreditation. For example, at both the 1992 UN Conference on Environment and Development and the 2002 International Conference on the Financing for Development, no additional information was required.[111] An NGO granted accreditation to attend a session of the preparatory committee may attend all future sessions and the conference itself.[112]

71. Although the ECOSOC Consultative Arrangements point out that due to the "intergovernmental" nature of the conference, active participation by NGOs does not entail a negotiating role,[113] NGOs may submit written statements during the preparatory process[114] and, at the discretion of the chairperson and the body concerned, briefly address the preparatory committee and the conference in plenary meetings.[115] It has become established practice that the secretariat would provide a briefing for accredited NGOs one or two days before a meeting.[116] As NGOs usually also organize side meetings, including daily morning briefing sessions, it is practice for the UN to make separate meeting space available for NGOs. Increasingly, representatives of Member States and the Bureau of the Preparatory Committee attend these events to meet and brief NGOs.[117]

V. UNITED NATIONS COMMISSION ON SUSTAINABLE DEVELOPMENT (CSD)

72. The Commission on Sustainable Development (CSD) was established to continue the work started at the 1992 United Nations Conference on Environment and Development.[118] The CSD is composed of 53 members elected for terms of office of three years and meets annually for a period of two to three weeks.[119]

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[108] Arrangements for Consultation with Non-Governmental Organizations, ECOSOC Res. 1996/31, paras. 31(f) & 37(f). These statements are subject to the same restrictions as statements submitted by organizations in special consultative status.
[109] Arrangements for Consultation with Non-Governmental Organizations, ECOSOC Res. 1996/31, para. 38(b).
[110] Arrangements for Consultation with Non-Governmental Organizations, ECOSOC Res. 1996/31, part VII.
[111] Office of the President of the Millenium Assembly, *Reference Document on the Participation of Civil Society in United Nations Conferences and Special Sessions of the General Assembly During the 1990s*, Version 1, August 2001.
[112] Arrangements for Consultation with Non-Governmental Organizations, ECOSOC Res. 1996/31, para. 49.
[113] Arrangements for Consultation with Non-Governmental Organizations, ECOSOC Res. 1996/31, para. 50.
[114] Arrangements for Consultation with Non-Governmental Organizations, ECOSOC Res. 1996/31, para. 52.
[115] Arrangements for Consultation with Non-Governmental Organizations, ECOSOC Res. 1996/31, para. 51.
[116] Office of the President of the Millenium Assembly, *Reference Document on the Participation of Civil Society in United Nations Conferences and Special Sessions of the General Assembly During the 1990s*, Version 1, August 2001.
[117] Office of the President of the Millenium Assembly, *Reference Document on the Participation of Civil Society in United Nations Conferences and Special Sessions of the General Assembly During the 1990s*, Version 1, August 2001.
[118] The Commission on Sustainable Development was established by ECOSOC decision 1993/207. Its functions are set out in General Assembly resolution 47/191 of 22 December 1992.
[119] *See*, http://www.un.org/esa/sustdev/csdback.htm

73. As a functional commission of ECOSOC, the CSD follows the same rules of procedure for the functional commissions of the UN's Economic and Social Council.[120] However, supplementary arrangements pertaining solely to the CSD, including procedures for representation of and consultation with non-governmental organizations, have also been established.[121]

A. Access to Information

74. CSD resolutions, recommendations and other formal decisions are made publicly available in the same way as other UN documents (see UN/ECOSOC section).[122] NGOs can receive the printed text of formal decisions and reports after the close of each CSD session.[123] After publication, members of the public can consult records of public meetings.[124] In some cases, the CSD also makes records of private meetings publicly available.[125]

B. Public Participation in Decision-Making

75. Approximately 1000 NGOs are accredited to participate in the Commission's work.[126] The CSD typically lists issues for discussion on the website and asks for written NGO comments. For example, the Secretary-General's report for CSD-9 (April 2001) needed to be finalized by 1 December 2000. A call for comments was posted on the website in August 2000, requesting comments by October 2000.[127]

76. In addition to the consultative arrangements under the ECOSOC rules, the CSD includes representatives of "major groups," including NGOs, in its deliberations in a "multi-stakeholder dialogue."

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[120] Rules and Procedures of the Functional Commissions of the Economic and Social Council, http://www.unhchr.ch.html/menu2/2/rules.htm

[121] Economic and Social Council, Organizational session for 1993, February 12, 1993, Res. 1993/215, Procedural Arrangements for the Commission on Sustainable Development.

[122] Rules and Procedures of the Functional Commissions of the Economic and Social Council, Rule 32 and Rule 34, http://www.unhchr.ch.html/menu2/2/rules.htm

[123] Rules and Procedures of the Functional Commissions of the Economic and Social Council, Rule 38, http://www.unhchr.ch.html/menu2/2/rules.htm

[124] Rules and Procedures of the Functional Commissions of the Economic and Social Council, Rule 35, http://www.unhchr.ch.html/menu2/2/rules.htm

[125] Rules and Procedures of the Functional Commissions of the Economic and Social Council, Rule 36, http://www.unhchr.ch.html/menu2/2/rules.htm

[126] *See*, http://www.un.org/esa/sustdev/csdgen.htm

[127] UN Commission on Sustainable Development, Information on CSD-9 Reporting Process. *See*, http://www.un.org/esa/sustdev/mgroups/csd9guid2.htm

CSD Multi-Stakeholder Dialogues

77. Multi-stakeholder dialogues are used by the CSD to gain public input into major themes under discussion in each annual CSD session (i.e., 1998: industry; 1999: tourism; 2000: sustainable agriculture). For example, in 2001, the multi-stakeholder dialogue at CSD-9 focused on Energy and Transport for Sustainable Development.[128] The dialogue segment had four sessions scheduled in the early part of the two-week CSD session. Each session started with a brief presentation from the NGO, trade union, local authority, business, and scientist delegations, followed by reactions from governments and ending with a moderated discussion.

78. The agenda and the goals are set by the UN, but informed by the stakeholders. Participants in any given year include trade unions, industry, local government, NGO (including women and indigenous peoples), and farmers. Participation is limited to stakeholders and not open to the general public, although the members of the public can follow the substance of the dialogue through the UN website.[129] The dialogues are linked to the official CSD process and high-level ministerial meetings or negotiating sessions are usually held the same or following week.[130]

79. The design of the CSD multi-stakeholder dialogues is developed in consultation with the stakeholder groups themselves.[131] For each dialogue, key major group networks are invited to form a steering committee. For example, the organizing partners for the Energy and Transport segment, in 2001, included the NGO Caucus on Climate Change and Energy and the NGO Caucus on Sustainable Transportation.[132] The organizing partners in turn consult with their network to prepare dialogue "starter" papers, identify the individuals to represent their major group at the dialogues, and coordinate and facilitate their group's contribution.[133] In the Energy and Transport dialogue, each major group participated with a delegation of 16-20 representatives from their network.[134] CSD gives each stakeholder group equal weight in the process and for NGOs and trade unions, CSD offers some travel funding.[135]

80. Each year, the CSD issues guidelines for major group participation. For example, in preparation for the April 2001 CSD-9 meeting, the CSD Secretariat notified major group organizations directly and through the posting on its website of the session agenda, milestone dates for contributions to the session, related inter-sessional meetings, and useful contacts.[136]

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[128] UN Commission on Sustainable Development, Official Meetings of CSD-9: Multi-stakeholder Dialogue on Energy and Transport. *See*, http://www.un.org/esa/sustdev/mgroups/csd9guid4.htm
[129] Hemmati, Minu, *Multi-Stakeholder Processes for Governance and Sustainability – Beyond Deadlock and Conflict*, London, Earthscan 2001 at 128.
[130] Hemmati, Minu, *Multi-Stakeholder Processes for Governance and Sustainability – Beyond Deadlock and Conflict*, London, Earthscan 2001 at 128.
[131] Hemmati, Minu, Multi-Stakeholder Processes for Governance and Sustainability – Beyond Deadlock and Conflict, London, Earthscan 2001 at 128.
[132] UN Commission on Sustainable Development, Official Meetings of CSD-9: Multi-stakeholder Dialogue on Energy and Transport. *See*, http://www.un.org/esa/sustdev/mgroups/csd9guid4.htm
[133] UN Commission on Sustainable Development, Official Meetings of CSD-9: Multi-stakeholder Dialogue on Energy and Transport. *See*, http://www.un.org/esa/sustdev/mgroups/csd9guid4.htm
[134] UN Commission on Sustainable Development, Official Meetings of CSD-9: Multi-stakeholder Dialogue on Energy and Transport. See, http://www.un.org/esa/sustdev/mgroups/csd9guid4.htm
[135] Hemmati, Minu, *Multi-Stakeholder Processes for Governance and Sustainability – Beyond Deadlock and Conflict*, London, Earthscan 2001 at 128.
[136] UN Commission on Sustainable Development Secretariat, Guidelines for Major Group Participation in CSD-9, August 31, 2000. See, http://www.un.org/esa/sustdev/mgroups/csd9guid_intro.htm

VI. UNITED NATIONS ECONOMIC COMMISSION FOR EUROPE (UNECE)

81. The United Nations Economic Commission for Europe (UNECE) was established in 1947 by ECOSOC. It is one of five regional commissions of the United Nations. Its primary goal is to encourage greater economic cooperation among its members.[137] It focuses on economic analysis, environment and human settlements, statistics, sustainable energy, trade, industry and enterprise development, timber and transport. UNECE activities include policy analysis, development of conventions, regulations and standards, and technical assistance. UNECE has 55 member states.

82. The UNECE includes the Secretariats of five regional environmental agreements: the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention); Convention on the Transboundary Effects of Industrial Accidents; Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention); Convention on Long-range Transboundary Air Pollution; and the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention).

83. The ECOSOC Consultative Arrangements apply to the UNECE, as a subsidiary body. NGOs wishing to participate in UNECE discussions usually also have consultative status under the ECOSOC rules.[138] Over 70 international professional organizations and other NGOs that have consultative status with ECOSOC take part in UNECE activities.[139] In addition, UNECE has its own rules of procedure that provide for public participation.[140] Subsidiary bodies of the UNECE, such as the Convention Conferences of the Parties, further adopt their own rules of procedure.

A. Access to Information

84. Many of UNECE's documents can be found through its website, including the Convention texts and related documents, Committee documents, drafts of instruments under preparation, and other reports and published information.[141] Part of the UNECE's mandate is to undertake or sponsor the collection, evaluation, and dissemination of economic, technological, and statistical information.[142]

EMEP: Long-range Transboundary Air Pollution Database

85. EMEP data is developed under the UNECE Long-range Transboundary Air Pollution Convention.[143] EMEP was initiated by UNECE in 1977 and its database contains information concerning atmospheric monitoring and modeling, emission inventories and emission projections, and integrated assessment modeling. Information contained in the EMEP website database is publicly accessible and provides air pollution data in an aggregated form.[144]

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[137] *See*, www.unece.org
[138] UNECE, Terms of Reference of the Commission, para. 13, www.unece.org/oes/about/terms.htm
[139] UNECE, Mandate and Role, www.unece.org/oes/about/mandate.htm.
[140] UNECE, Terms of Reference of the Commission, para. 15 and Rules of Procedure of the Commission, www.unece.org/oes/about/terms.htm
[141] *See*, www.unece.org
[142] UNECE, Terms of Reference of the Commission, para. 1(c), www.unece.org/oes/about/terms.htm
[143] *See*, http://www.unece.org/env/emep/welcome.html
[144] *See*, http://www.emep.int/

EnImpas: EIA Information Database

86. EnImpAs (Environmental Impact Assessment in the Transboundary Context) is being developed as a web-based, database collecting information concerning project proposals encompassed by the UNECE Convention on Environmental Impact Assessment in a Transboundary Context.[145] The database is being designed to provide interested parties and members of the public with data on past EIA that may have a significant transboundary importance and will contain information on legal regulations in the countries parties to the Convention. The database is still under development, but some information can already been accessed through the web site.

B. Public Participation in Decision-Making

General Consultation Rules

87. The UNECE mandate includes a requirement to consult with NGOs.[146] UNECE meetings are held in public, unless otherwise decided.[147] Similar to the ECOSOC Consultative Arrangements, representatives from NGOs in categories I and II (similar to the ECOSOC "general" and "special" categories) are allowed to observe public UNECE meetings.[148] Representatives from NGOs on the roster are allowed to observe a public UNECE meeting if issues specific to their organization are being discussed.[149]

88. NGOs in category I are allowed to give written statements and comments directly to members of the UNECE.[150] NGOs in category II and on the roster are allowed to give written statements and suggestions on issues specific to their organization to the Executive Secretary, who compiles a list of these communications and a brief description of their content and distributes them at each session of the UNECE.[151]

89. NGOs in categories I and II and on the roster can be consulted by the UNECE on issues specific to their organization at the UNECE's invitation or the NGO's request.[152] Consultations with NGOs in category I are usually held with the UNECE itself, while consultations with NGOs in category II and on the roster are held with either the UNECE or through an *ad hoc* committee. Subsidiary bodies of the UNECE are supposed to consult with NGOs in category I and, if appropriate, representatives from these organizations should be invited to observe at the meetings of subsidiary bodies of the UNECE.[153]

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[145] *See*, https://www.mos.gov.pl/enimpas/
[146] UNECE, Terms of Reference of the Commission, para. 13, www.unece.org/oes/about/terms.htm
[147] Rules of Procedure of the United Nations Economic Commission for Europe, Rule 46, http://www.unece.org/oes/about/terms.htm. "Public" in this case means that NGOs may participate, not that the meeting is open to non-accredited members of the general public
[148] Rules of Procedure of the United Nations Economic Commission for Europe, Rule 48, http://www.unece.org/oes/about/terms.htm
[149] Rules of Procedure of the United Nations Economic Commission for Europe, Rule 48, http://www.unece.org/oes/about/terms.htm
[150] Rules of Procedure of the United Nations Economic Commission for Europe, Rule 48, http://www.unece.org/oes/about/terms.htm
[151] Rules of Procedure of the United Nations Economic Commission for Europe, Rule 48, http://www.unece.org/oes/about/terms.htm
[152] Rules of Procedure of the United Nations Economic Commission for Europe, Rule 49, http://www.unece.org/oes/about/terms.htm
[153] Rules of Procedure of the United Nations Economic Commission for Europe, Rule 53, http://www.unece.org/oes/about/terms.htm

Committee on Environmental Policy and the "Environment for Europe" Process

90. The Committee on Environmental Policy (CEP) provides policy direction in the area of environment and sustainable development.[154] It prepares ministerial meetings, develops international environmental law and supports international initiatives in the region.[155] The CEP guides the "Environment for Europe" process (see below) and guides the overall effectiveness of environmental conventions and the exchange of experience on their implementation. Part of the mandate of the CEP is to encourage public participation in environmental decision-making.[156] The Committee meets annually and NGOs are invited to participate in those meetings.

91. Every few years the Environment Ministers of the UNECE meet to discuss regional environmental issues, formulate environmental policy, and negotiate environmental treaties. This "Environment for Europe" process involves NGO and public participants throughout the preparatory process and in the Ministerial Meetings and parallel NGO conferences.[157]

92. There is a certain amount of formal and informal public participation during preparations for the Environment for Europe conferences. For example, the ad hoc preparatory Working Group of Senior Officials (WGSO) for the Kiev meeting is consulting with NGOs in its preparations.[158] The UNECE may invite NGOs in consultative status with UN-ECOSOC to participate in a consultative capacity.[159] For example, NGOs were represented at the September 2000 meeting of the WGSO by ECO Forum which reported on its activities and proposed issues for the Fifth Ministerial Conference agenda.[160] The ECO Forum participated as observers in the Executive Committee of the Working Group of Senior Officials.[161] The Executive Committee of the WGSO developed guidelines for NGO participation in the 2003 Environment for Europe conference.[162] Based on space and the number of governmental delegates expected, the WGSO Executive Committee has proposed that approximately 200 NGO representatives could be invited to attend a joint session with Ministers in Kiev and that approximately 50 NGO representatives might be present at all official sessions. In addition, no more than two members from the same organization would be permitted to attend and the guidelines suggest that ECO Forum could nominate NGO representatives according to set criteria, including geographic representation, expertise, and language. The WGSO Executive Committee expressed a desire that NGOs represent all sub-regions of the UNECE. In addition to participation in these formal organizing sessions, NGOs are able to comment on the Kiev agenda in writing. Some of these comments have been compiled by the UNECE on its website.[163]

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[154] UNECE Committee on Environmental Policy. See, http://www.unece.org/env/cep/contents.html
[155] UNECE Committee on Environmental Policy, Terms of Reference (1994). *See*, http://www.unece.org/env/cep/tor.htm
[156] UNECE Committee on Environmental Policy, Terms of Reference (1994), para. 7. *See*, http://www.unece.org/env/cep/tor.htm
[157] Environment for Europe Ministerials include: Dobris, Czech Republic (1991), Lucerne, Switzerland (1993), Sofia, Bulgaria (1995), Aarhus, Denmark (1998), and Kiev, Ukraine (2003). *See*, http://www.unece.org/env/europe
[158] UNECE Provisional Agenda for the First Session of the Ad Hoc Preparatory Working Group of Senior Officials Environment for Europe (first session Geneva, 29 September 2000), CEP/AC.11/2000/1, 10 July 2000.
[159] UNECE Terms of Reference, paras 11, 12, and 13.
[160] UNECE, Committee on Environmental Policy, Ad Hoc Preparatory Working Group of Senior Officials Environment for Europe, Report of the First Session, CEP/AC.11/2000/2, 18 October 2000.
[161] UNECE, Committee on Environmental Policy, Ad Hoc Preparatory Working Group of Senior Officials Environment for Europe, Report of the First Session, CEP/AC.11/2000/2, 18 October 2000.
[162] UNECE, Ad Hoc Preparatory Working Group of Senior Officials Environment for Europe Executive Committee, Participation of NGOs in the Kiev Conference, Working Paper CEP/AC.11/EXECOM-5/2002/3, 27 May 2002.
[163] *See*, http://www.unece.org/env/wgso/ngo.htm

93. The 1998 Environment for Europe conference in Aarhus set precedent for NGO participation during the conference with an NGO-organized discussion as part of the formal Ministerial meeting.[164] At this NGO session, environmental organizations set the agenda, determined the speakers and lead a discussion with the government participants concerning the proposed Aarhus Convention.

UNECE Convention on Access to Information, Public Participation in Decision-Making, and Access to Justice in Environmental Matters (Aarhus Convention)

94. The UNECE developed innovative approaches to public participation in convention negotiations during the drafting of the Aarhus Convention. The negotiation process took place over two years, the starting point being the adoption by the UNECE of Guidelines for Public Participation in Environmental Decision-Making[165] and culminating in the signature of the Convention at the Environment for Europe Ministerial Meeting in Aarhus, Denmark in June 1998.

95. In January 1996, the CEP established a Working Group for the preparation of the Convention. It also formed a "friends of the secretariat" group to assist the process. NGOs were invited to participate, both in this group and more broadly in the process. Due in part to organization of environmental citizen organizations from throughout the UNECE region into the European ECO Forum coalition, many NGOs from throughout the UNECE region were able to have a substantive impact through focused, directed interventions in the negotiation process. Although not negotiators, the role of NGOs went beyond that of merely being consulted.[166] Since the Aarhus Convention negotiations, a similar process has emerged in other environmental treaty negotiations.

96. The Aarhus Convention provides a good example of public participation in task forces and working groups meant to facilitate implementation and the further development of the Convention. The Aarhus Convention Signatories organized a series of task forces and working groups concerning compliance mechanism, access to justice, genetically modified organisms, electronic information tools, and pollutant release and transfer registers.[167] All of these task forces and intergovernmental working groups include NGO representatives. NGOs have been active participants in the work of the task forces and working groups, submitting comments on drafts and taking part in all meetings and electronic discussions. Through the trust fund of the Convention, donor countries finance the participation of NGO representatives in all meetings under the Convention.

97. The first Meeting of the Parties of the Aarhus Convention will adopt rules of procedure.[168] Following agreement by the second Meeting of the Signatories to the Aarhus Convention, an open-ended intergovernmental working group has been set up, to provide the first Meeting of the Parties with draft rules of procedure.[169] The Meeting agreed that NGOs should be invited to this working group, and should be allowed to be involved in the negotiations. The draft rules of procedure include innovative elements, reflecting the subject matter of the Aarhus Convention and the participatory negotiating and implementation process under

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[164] UNECE Provisional Agenda for the Fourth Ministerial Conference, ECE/CEP/40, Rev. 2 (1998). *See*, http://www.mem.dk/aarhus-conference/issues/agenda.htm
[165] UNECE Guidelines for Public Participation in Environmental Decision-Making, adopted at the 1995 Environment for Europe Ministerial Meeting in Sofia, Bulgaria. ECE/CEP/24 (1995).
[166] Hemmati, Minu, *Multi-Stakeholder Processes for Governance and Sustainability – Beyond Deadlock and Conflict*, London, Earthscan 2001 at 121. *See*, http://www.earthsummit2002.org/msp/book.htm
[167] *See*, http://www.unece.org/env/pp
[168] Aarhus Convention, Article 10(h).
[169] UN/ECE CEP/WG.5/2000/2 of 19 July 2000.

the Convention.[170] The final draft to be presented for adoption by the Parties at their first meeting requires that a representative of NGOs will be invited to the all meetings of the Bureau[171].

UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention)

98. The UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention) is intended to strengthen national measures for the protection and ecologically sound management of transboundary surface waters and groundwaters.[172] The Convention obliges Parties to prevent, control and reduce water pollution from point and non-point sources. The Convention also includes provisions for monitoring, research and development, consultations, warning and alarm systems, mutual assistance, institutional arrangements, and the exchange and protection of information, as well as public access to information.
Its 1999 Protocol on Water and Health extensively draws on provisions of the Aarhus Convention, and establishes, for example, in its article 16, that the Parties shall:

> "Establish the modalities for the participation of other competent international governmental and non-governmental bodies in all meetings and other activities pertinent to the achievement of the purposes of this Protocol" and "Consider the need for further provisions on access to information, public participation in decision-making and public access to judicial and administrative review of decisions within the scope of this Protocol, in the light of experience gained on these matters in other international forums."[173]

99. Under the Rules of Procedure of the Water Convention, international NGOs that are specially qualified to deal with issues relating to the Convention can observe meetings if a majority of the Parties present at a meeting approve.[174] These observers are allowed to participate, but not vote during the meetings if they are invited to by the meeting of the Parties. In practice, however, competent international NGOs are "non-voting active participants to implement the Convention" rather than "observes without the right to vote."[175]

100. Following established practice, the Parties to the Convention invite competent NGOs to participate in the meetings and other activities under the Convention. An open-ended list of "competent" NGOs has been established by the Parties in consultation with UNED-UK, and includes, currently: the Peipsi Centre for Transboundary Cooperation (Estonia), ECOTERRA (Russia), MAMA-86 (Ukraine) and PERZENT (Uzbekistan) as part of the European ECO-FORUM, the NGO Lake Ohrid (TFYR Macedonia and Albania), and the Environmental Public Advocacy Centre (Armenia). In many cases, the Parties to the Convention cover travel costs for participation of these NGOs in meetings under the Convention.[176]

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[170] Bombay, Peter, *The Role of Environmental NGOs in International Environmental Conferences and Agreements: Some Important Features*, 228 European Environmental Law Review, July 2001.
[171] UN/ECE MP.PP/2002/2 at http://www.unece.org/env/pp/mop1.htm
[172] The Convention was signed in Helsinki on 17 March 1992. *See*, http://www.unece.org/env/water/
[173] UNECE Protocol on Water and Health to the 1992 Convention on the Protection and Use of Transboundary Watercourses and International Lakes, (London), 17 June 1999. MP.WAT/2000/1, 18 October 1999.
[174] Rules of Procedure for the Meetings of the Parties to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, Rule 7, http://www.unece.org/env/water/status/lega2.htm
[175] Rainer Enderlein, Secretary, Convention on the Protection and Use of Transboundary Watercourses and International Lakes, personal communication, 13 June 2002.
[176] Rainer Enderlein, Secretary, Convention on the Protection and Use of Transboundary Watercourses and International Lakes, personal communication, 13 June 2002.

101. Following this practice, NGOs were also invited to assist in the implementation of the Convention's work plan, and helped organizing workshops and conferences. Examples include the 1999 workshop on transboundary lake management (organized jointly by Estonia and the Peipsi Centre for Transboundary Cooperation), the first and second international conferences on sustainable water management in Europe (1997 and 2002) which relied on the assistance of the Peipsi Centre for Transboundary Cooperation, and the preparation of the 2000 "Guidance on public participation in water management and framework for compliance with agreements on transboundary waters" by the ECE/UNEP network of experts on public participation and compliance.[177] Currently, ECOTERRA assists UNECE and UNEP in carrying out a study on transboundary water management in NIS countries.

102. Under the Convention, the International Water Assessment Centre (IWAC) was established in the Netherlands in 2000. The Steering Committee of the Centre includes a representative of the NGO Peipsi Centre for Transboundary Cooperation in addition to two governmental representatives and staff from leading European Water Institutes.[178] In addition, the web-based discussion forums run by IWAC is another example of public participation in implementation of the Convention.

103. NGOs participated on an equal footing in the negotiations of the 1999 Protocol on Water and Health and are actively involved in the current negotiation process of a legally binding instrument on civil liability for damage caused by industrial accidents on transboundary waters.

104. Following decisions by the Parties to the Convention, a manual on public participation in transboundary water management is currently being prepared with the involvement of the above NGOs. Under the Protocol on Water and Health, work started to (a) draft rules of procedure for the Meeting of the Parties to the Protocol; and (b) draft a guidance document on modalities for the participation of competent international governmental and non-governmental bodies in all meetings and other activities pertinent to the achievement of the purposes of the Protocol. Also to these activities, the above NGOs will provide their input.

UNECE Convention on Environmental Impact Assessment in a Transboundary Context (EIA Convention)

105. The UNECE Convention on Environmental Impact Assessment in a Transboundary Context (EIA Convention) (Espoo, 1991) obliges Parties to assess the environmental impact of certain activities and notify and consult neighboring States on all major projects under consideration that are likely to have a significant adverse environmental impact across boundaries.[179] NGOs participate in the work under the EIA Convention.[180] For example, the Parties decided, at their second meeting to take public participation into account in its workplan.[181] Under the Espoo Convention, any NGOs that work with environmental impact assessment and wish to be represented at the Convention's meetings can inform the Convention's secretariat

[177] Guidance on public participation in water management and framework for compliance with agreements on transboundary waters, UNECE and UNEP/ROE, 2000; *see* http://www.unece.org/env/water/publications/documents/guidance.pdf
[178] Rainer Enderlein, Secretary, Convention on the Protection and Use of Transboundary Watercourses and International Lakes, personal communication, 14 June 2002.
[179] *See*, http://www.unece.org/env/eia/welcome.html
[180] *See*, http://www.unece.org/env/eia/welcome.html
[181] Decision on Public Participation in Environmental Impact Assessment in a Transboundary Context, ECE/MP.EIA/4 at page 57, Annex III, Decision II/3. *See*, http://www.unece.org/env/documents/2001/eia/ece.mp.eia.4.e.pdf

and receive access.[182] The Convention secretariat notifies all interested NGOs of the Convention's meetings and representatives from interested NGOs are able to observe the meetings, assuming that no more than one-third of the Parties at the meeting objects.[183] For example, several NGOs attended the first meeting of the Parties to the Espoo Convention.[184] NGO observers are able to participate, but not vote, at the Meetings of the Parties and in meetings of subsidiary bodies.[185]

106. NGOs participate in the negotiation of a Protocol concerning Strategic Environmental Assessment under the EIA Convention. For example, at the February 2002 meeting, six NGOs were present.[186] These NGOs can take the floor, make interventions, and prepare proposals for provisions in the Protocol to circulate among the negotiating delegates and present during the negotiations.[187] Most of the participating NGOs' travel to the negotiations of the SEA Protocol is financially supported by funds made available for this purpose by donor countries.[188]

UNECE Convention on Long Range Transboundary Air Pollution (LRTAP Convention)

107. Adopted in 1979 and entering into force in 1983, the Convention on Long-range Transboundary Air Pollution (LRTAP Convention) establishes a framework of international cooperation and an institutional framework linking science and policy for addressing long-range air pollution problems in the UNECE region.[189] The Convention has been extended by eight protocols identifying specific obligations or measures to be taken by Parties.[190] The Convention's scientific Working Groups, the Working Group on Effects and the

[182] Rules of Procedure of the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context, Rule 7, Report of the First Meeting of the Parties, Annex I, Decision I/1, Distr. GENERAL ECE/MP.EIA/2 1O November 1998, *See*, http://www.unece.org/env/eia/report.htm
[183] Rules of Procedure of the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context, Rule 7, Report of the First Meeting of the Parties, Annex I, Decision I/1, Distr. GENERAL ECE/MP.EIA/2 1O November 1998, *See*, http://www.unece.org/env/eia/report.htm
[184] Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context: Report of the First Meeting, Oslo, Norway, 18-20 May 1998, ECE/MP.EIA/2, 10 November 1998.
[185] Rules of Procedure of the Meeting of the Parties to the Convention on Environmental Impact Assessment in a Transboundary Context, Rule 7, Report of the First Meeting of the Parties, Annex I, Decision I/1, Distr. GENERAL ECE/MP.EIA/2 1O November 1998, *See*, http://www.unece.org/env/eia/report.htm
[186] Report of the Fourth Session of the *Ad hoc* Working Group on the Protocol on Strategic Environmental Assessment, MP.EIA/AC.1/2002/2, 26 March 2002. *See*, http://www.unece.org/env/documents/2002/eia/ac1/mp.eia.ac.1.2002.2.pdf
[187] Wiecher Schrage, Secretary, EIA Convention, personal communication, 17 June 2002.
[188] Wiecher Schrage, Secretary, EIA Convention, personal communication, 17 June 2002.
[189] *See*, http://www.unece.org/env/lrtap/
[190] The eight protocols include: (1) The 1999 Protocol to Abate Acidification, Eutrophication and Ground-level Ozone; 31 Signatories and 4 ratifications. Not yet in force. (2) The 1998 Protocol on Persistent Organic Pollutants (POPs); 36 Signatories and 9 ratifications. Not yet in force. (3) The 1998 Protocol on Heavy Metals; 36 Signatories and 10 ratifications. Not yet in force. (4) The 1994 Protocol on Further Reduction of Sulphur Emissions; 25 Parties and a further 4 Signatories. Entered into force 5 August 1998. (5) The 1991 Protocol concerning the Control of Emissions of Volatile Organic Compounds or their Transboundary Fluxes; 21 Parties and a further 6 Signatories. Entered into force 29 September 1997. (6) The 1988 Protocol concerning the Control of Nitrogen Oxides or their Transboundary Fluxes; 28 Parties and a further 1 Signatory. Entered into force 14 February 1991. (7) The 1985 Protocol on the Reduction of Sulphur Emissions or their Transboundary Fluxes by at least 30 per cent; 22 Parties. Entered into force 2 September 1987. (8) The 1984 Protocol on Long-term Financing of the Cooperative Programme for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe (EMEP); 39 Parties. Entered into force 28 January 1988.

Steering Body of EMEP[191] and their Task Forces and international centres address the issues that enable the Convention to develop the science-based policies and control measures in its protocols.

108. NGOs may participate in meetings under the LRTAP Convention in accordance with the UNECE rules. In the past, NGOs interested in participating, but not accredited with UNECE have been allowed to participate with special permission of the meeting Chair.[192] The operation of the various Task Forces is left to the discretion of the Chair and the lead country: they have discretion to invite experts.[193]

UNECE Convention on the Transboundary Effects of Industrial Accidents (Industrial Accidents Convention)

109. The Convention on the Transboundary Effects of Industrial Accidents (Industrial Accidents Convention) was signed by twenty-six UNECE member countries and the European Community and entered into force on 19 April 2000.[194] The Convention aims at preventing industrial accidents by reducing their frequency and severity and by mitigating their effects. It promotes active international cooperation between the contracting Parties, before, during and after an industrial accident.

110. Under the Industrial Accidents Convention, international NGOs that are specially qualified to deal with issues relating to the Convention and wish to be represented at the Convention's meetings can inform the Convention's secretariat that they wish to participate in the Convention's public meetings.[195] Representatives from these NGOs can also be approved by the Conference of the Parties to the Convention to be observers in its private meetings. Meetings are usually public, but the Conference of the Parties can decide to hold all or part of a meeting in private.[196] NGO observers are allowed to participate, but not vote or make decisions during meetings.[197]

VII. UNITED NATIONAL ENVIRONMENT PROGRAMME (UNEP)

111. The United Nations Environment Programme (UNEP) was established in 1972 and works to encourage sustainable development through sound environmental practices. Its activities cover a wide range of issues, from atmosphere and terrestrial ecosystems, the promotion of environmental science and information, to an early warning and emergency response capacity to deal with environmental disasters and emergencies.[198]

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[191] Established in 1977, EMEP is a cooperative program for monitoring long range transmission of air pollutants in Europe. *See*, http://www.unece.org/env/emep/welcome.html

[192] Keith Bull, LRTAP Convention Secretariat, person communication, 26 June 2002.

[193] LRTAP Convention, Guidelines for Expert Groups, 2001.

[194] *See*, http://www.unece.org/env/teia/intro.htm

[195] Conference of the Parties to the Convention on the Transboundary Effects of Industrial Accidents, First meeting, 22-24 November 2000, Draft Rules of Procedure for the Meetings of the Conference of the Parties, Rule 7, http://www.unece.org/env/documents/2000/teia/cp.teia.2000.2.e.pdf

[196] Conference of the Parties to the Convention on the Transboundary Effects of Industrial Accidents, First meeting, 22-24 November 2000, Draft Rules of Procedure for the Meetings of the Conference of the Parties, Rule 26, http://www.unece.org/env/documents/2000/teia/cp.teia.2000.2.e.pdf

[197] Conference of the Parties to the Convention on the Transboundary Effects of Industrial Accidents, First meeting, 22-24 November 2000, Draft Rules of Procedure for the Meetings of the Conference of the Parties, Rule 8, http://www.unece.org/env/documents/2000/teia/cp.teia.2000.2.e.pdf

[198] UNEP divisions include secretariats of many of the multilateral environmental agreements, such as the Convention on Persistent Organic Pollutants, the Convention on Prior Informed Consent, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes, the Convention on Biological Diversity, the Convention on

In addition, UNEP has regional offices in Asia and the Pacific, West Asia, Africa, Europe, North America and Latin America and the Caribbean.

112. UNEP has long recognized the benefits of public participation in its activities. The United Nations General Assembly in establishing UNEP at 1972 Stockholm Conference on the Human Environment invited "those non-governmental organizations that have an interest in the field of the environment to lend their full support and collaboration to the United Nations with a view to achieving the largest possible degree of cooperation."[199] The Stockholm Action Plan, in Recommendation 97, stated that, "the programme must provide means of stimulating active participation by the citizens, and of eliciting interest and contributions from non-governmental organizations for the preservation and development of the environment." Agenda 21 calls on UNEP to raise "general awareness and action in the area of environmental protection through collaboration with the general public, non-governmental entities and intergovernmental institutions."[200] Successive UNEP Governing Council resolutions have re-emphasized the need for working with the widest possible range of public organizations.[201] In addition, UNEP is formulating a strategy for enhancing the engagement of civil society in the work of UNEP.[202]

113. This survey of UNEP does not attempt to provide a comprehensive picture of how the public interacts with UNEP programs, projects, policy-making, international law development and environmental treaty implementation. Instead it will focus on selected examples of access to information, public participation and access to justice from the UNEP programs.

A. Access to Information

114. The UN policy on access to information is to facilitate public access to UNEP documents whenever possible. UNEP does not have established procedures for handling requests for information, but it does post most of its decisions, drafts for comment, meeting reports and background documents on its website.

115. UNEP has established several information networks and monitoring systems with public information accessible through the UNEP website. These information sources include: the Global Resource Information Database (GRID); the International Register of Potentially Toxic Chemicals,[203] an inventory of information sources on chemicals; and UNEP.net,[204] a web-based interactive catalogue and multifaceted portal that offers access to environmentally relevant geographic, textual and pictorial information. UNEP's latest state-of-the-environment report is the Global Environment Outlook - 3 or GEO-3.[205]

International Trade in Endangered Species, the Convention on Migratory Species, and the Convention for the Protection of the Ozone Layer.

[199] Resolution 2997 (XXVII) of 15 December 1972 (paragraph IV.5).

[200] Chapter 28, Agenda 21, United Nations Conference on Environment and Development, 1992.

[201] Notably, GC.18/4 ("The role of non-governmental organizations in UNEP") of 1995 calls on UNEP to develop a policy framework and appropriate mechanisms for working with NGOs.

[202] Draft Strategy on Enhancing the Engagement of Civil Society in the Work of UNEP (2001). *See*, http://www.unep.org/dpdl/csngo/Files_under_Guidelines_link/Draft_Strategy_on_Enhancing_the_Engagement_of_Civil_Society_in_the_Work_of_UNEP.htm

[203] IRPTC, http://irptc.unep.ch/irptc/why.html.

[204] See, www.unep.net

[205] GEO-3.

Cartagena Protocol on Biosafety: Biosafety Clearing-House

116. UNEP houses the Secretariat for the Protocol on Biosafety. In January 2000, the Convention on Biological Diversity Conference of the Parties adopted the Cartegena Protocol on Biosafety recognizing the increasing impact of biotechnology on the natural world. The Protocol aims to avoid negative impacts on biological diversity that could result from living modified organisms ("LMOs"), by employing measures such as an advance informed agreement ("AIA") that ensures countries have the information they need to make an informed decision before importing organisms, including through application of the precautionary principle.[206]

117. The Biosafety Protocol established the Biosafety Clearing-House ("BCH") which is the primary mechanism for access to information about the Protocol.[207] The goal of the BCH is two-fold: facilitate the exchange of information on LMOs, and assist parties in implementing the Protocol. At its first meeting in December 2000, the Intergovernmental Committee for the Cartegena Protocol ("ICCP") recommended developing a pilot phase of the BCH. UNEP views the pilot as a tool for the future development of the BCH and an opportunity to gain experience and receive feedback, and identify and address the needs of the Parties. The pilot is not comprehensive and its accuracy is not guaranteed.[208]

118. The pilot phase of the Biosafety Clearing-House is available online.[209] It contains information concerning operation of the Biosafety Protocol and allows for submission of comments. Included in the first section is contact information for National Focal Points, which are responsible for managing the communication between the Secretariat to the Convention, the government of the given country, and the public, and Competent National Authorities which perform the administrative functions for each country. It also links to National Biosafety Databases.[210]

119. Material found in the other four sections includes the existing laws, regulations and guidelines for implementation of the Protocol or applicable to the import of living modified organisms intended for direct use as food or feed, or for processing.[211] The database also includes decisions made regarding AIA,[212] and current BCH news regarding new membership-countries and relevant meetings.[213]

120. Access to most of the pilot phase BCH is open to anyone, however while NGOs, private companies, research institutes, and others can post some material, such as capacity building projects and information about related websites, most posting authorization is limited to designated government representatives.

121. One other feature of the pilot phase that is intended to increase access to information is the capacity building section.[214] This effort, which grew out of the fifth meeting of the Conference of the Parties to the Convention, is intended to help members build the technical and scientific expertise necessary to implement the Protocol. To define this component, the ICCP invited Parties, governments, NGOs, and the private sector to submit recommendations; later the ICCP also invited these groups to begin implementing the capacity building action plan.

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[206] http://www.biodiv.org/biosafety/background.asp
[207] Biosafety Protocol, Article 20.
[208] http://bidiv.org/bch/history.asp
[209] http://bch.biodiv.org,
[210] http://bch.biodiv.org/Pilot/Contacts.asp. Currently, only 18 databases are accessible from this page, most of which are European.
[211] http://bch.biodiv.org/Pilot/Laws.asp
[212] http://bch.biodiv.org/Pilot/Decisions.asp
[213] http://bch.biodiv.org/Pilot/LatestAdditions.asp and http://bch.biodiv.org/Pilot/Meetings.asp
[214] http://bch.biodiv.org/Pilot/CapacityBuilding.asp

B. Public Participation in Decision-Making

122. UNEP is trying to improve its policy of involving NGOs and other members of the public in its decision-making processes.[215] In 1996, the UNEP Executive Director issued a policy statement concerning NGO involvement that documented this trend and called for continued efforts.[216]

123. UNEP treats NGOs and other members of the public as key stakeholders, directly or indirectly, on most environmental issues.[217] The 1992 United Nations Conference on Environment and Development (UNCED) identified as partners for governments and the international system key sectors in society, which it referred to as "Major Groups." UNCED's Agenda 21, noting the need for new forms of participation and addressing the means for moving towards real social partnership in support of sustainable development, mentions as Major Groups: women, children and youth, indigenous people, farmers, local authorities, business and industry, the scientific and technological community, workers and trade unions, and non-governmental organizations. UNEP recognizes that NGOs are the organizational form used by most of the Major Groups such as scientific and professional associations, service clubs, community-based organizations (CBOs) and grassroots organizations (GROs), consumer unions and environmental citizen organizations (ECOs).

124. UNEP views the role of NGOs as partners in program and project planning, implementation and evaluation; cost-effective channels for disseminating environmental information and for bringing evolving issues and civil society perspectives to UNEP's attention; and allies in advocacy to improve global governance.[218] UNEP has pledged to institutionalize NGO participation in project design, implementation and evaluation and support the participation of NGOs in policy development and governance of the organization.[219]

125. With the 1996 policy statement, UNEP made a series of commitments to work with NGOs including promotion of NGO participation in Governing Council sessions; information exchange between UNEP and NGOs; improved day-to-day access of NGOs to different program units; and involvement of NGOs in the design and implementation of UNEP's work program.[220] Institutionally, in 1973, UNEP established an NGO office and

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[215] *See*, http://www.unep.org/dpdl/csngo/Overview_UNEP_and_Civil_Society.shtml

[216] UNEP Policy on NGOs and Other Major Groups, Memorandum from Elizabeth Dowdeswell, UNEP Executive Director, 30 October 1996, UNEP/PS/1996/5. *See*, http://www.unep.org/dpdl/csngo/Files_under_Overview_link/1996UNEP_Policy_on_NGOs_and_Other_Major_Groups.htm

[217] UNEP Policy on NGOs and Other Major Groups, Memorandum from Elizabeth Dowdeswell, UNEP Executive Director, 30 October 1996, UNEP/PS/1996/5. *See*, http://www.unep.org/dpdl/csngo/Files_under_Overview_link/1996UNEP_Policy_on_NGOs_and_Other_Major_Groups.htm

[218] UNEP Policy on NGOs and Other Major Groups, Memorandum from Elizabeth Dowdeswell, UNEP Executive Director, 30 October 1996, UNEP/PS/1996/5. *See*, http://www.unep.org/dpdl/csngo/Files_under_Overview_link/1996UNEP_Policy_on_NGOs_and_Other_Major_Groups.htm

[219] UNEP Policy on NGOs and Other Major Groups, Memorandum from Elizabeth Dowdeswell, UNEP Executive Director, 30 October 1996, UNEP/PS/1996/5. *See*, http://www.unep.org/dpdl/csngo/Files_under_Overview_link/1996UNEP_Policy_on_NGOs_and_Other_Major_Groups.htm

[220] UNEP Policy on NGOs and Other Major Groups, Memorandum from Elizabeth Dowdeswell, UNEP Executive Director, 30 October 1996, UNEP/PS/1996/5. *See*, http://www.unep.org/dpdl/csngo/Files_under_Overview_link/1996UNEP_Policy_on_NGOs_and_Other_Major_Groups.htm

in 1999, the GC 20 called for establishment of NGO Civil Society unit. The NGO/CSO Unit became operational in 2000.[221]

UNEP Governing Council Meetings

126. Public participation in UNEP Governing Council meetings is officially limited to "international" NGOs with "an interest in the field of the environment."[222] However, UNEP works closely with national NGOs as well and has recognized a need to revise the Rules of Procedures of the Governing Council accordingly. This is reflected in the 2002 UNEP Governing Council decision to establish a working party to propose revisions to the rules concerning civil society participation in UNEP Governing Council meetings, based on recommendations for UNEP's interactions with civil society (see below in section concerning UNEP consultations on the role of civil society).[223]

127. However at present, only international NGOs referred to in section IV, paragraph 5, of General Assembly resolution 2997 (XXVII) are allowed to choose representatives to sit as observers at public meetings of the UNEP Governing Council and its subsidiary organs. Under the Governing Council Rules of Procedure, international NGOs are allowed to make oral statements on "matters within the scope of their activities," if they are invited to by the President or Chairman and their invitation is approved by the Governing Council or subsidiary organ.[224] They are allowed to provide written statements related to agenda items of the Governing Council and subsidiary bodies. The secretariat circulates the written statements to Governing Council and subsidiary body members in the amount and language in which the statements were made available.[225]

128. According to the Rules of Procedure, when making the provisional agenda, the UNEP Executive Director should consider suggestions from international environmental NGOs with designated representatives.[226] International NGOs with designated representatives are given the final copy of the provisional agenda by the Executive Director at the same time as when other involved parties are notified.[227] International NGOs with designated representatives are also notified of the dates of sessions at the same time as when other involved parties are notified.[228]

129. In practice UNEP Governing Council meetings have grown more inclusive of NGOs. For example, UNEP convened an NGO Forum in conjunction with the First Global Ministerial Environment Forum/Sixth Special Session of the Governing Council of UNEP in Malmo, Sweden. The Forum (which brought together 45 national and international NGOs) was the first formal mechanism established by the UNEP Governing Council to solicit civil society input into its deliberations.[229] UNEP continued this method of NGO involvement with more than 100 representatives of NGOs and other civil society organizations meeting in Nairobi on 1-2 February 2001 immediately prior to the twenty-first Governing Council and deliberated issues such as the World Summit on Sustainable Development, civil society's engagement in UNEP's work,

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[221] *See*, http://www.unep.org/dpdl/csngo/About_the_CS_NGO_Unit.shtml
[222] UNEP Governing Council, Rules of Procedure, Rule 69 (1988).
[223] UNEP Governing Council Decision, SS.VII/5, 15 February 2002, "Enhancing civil society engagement in the work of the United Nations Environment Programme". *See also*, UNEP and Civil Society, 2001. http://www.unep.org/dpdl/csngo/Files_under_Overview_link/UNEP%20and%20Civil%20Society%20in%202001.htm
[224] UNEP Governing Council, Rules of Procedure, Rule 69 (1988).
[225] UNEP Governing Council, Rules of Procedure, Rule 69 (1988).
[226] UNEP Governing Council, Rules of Procedure, Rule 9 (1988).
[227] UNEP Governing Council, Rules of Procedure, Rule 10 (1988).
[228] UNEP Governing Council, Rules of Procedure, Rule 7 (1988).
[229] Malmo NGO Statement, 28 May 2000. *See*, http://www.unep.org/dpdl/csngo/Files_under_Docs_and_Recs_from_CSOs%20link/Malmo_NGO_Statement.htm

environmental conventions, trade and environment and poverty and environment.[230] NGOs then presented a statement to the 21st Governing Council.[231] Similarly at the Seventh Special Session of the Governing Council in February 2002 in Cartegena, Colombia, there was active NGO participation with a preceding NGO forum and presentation of a statement to the Governing Council session.[232]

UNEP Consultations on the Role of Civil Society

130. In February 2001 at its 21st session, the Governing Council adopted a decision (GC 21/19) requesting UNEP to consult with the civil society, including the private sector, on the ways and means to enhance the engagement of civil society in UNEP's work.[233] In the fall of 2001, a draft strategy for enhancing civil society participation was drafted for the next Governing Council meeting, as required in the decision.[234] The draft strategy provides an overview of UNEP's civil society engagement and examines the strengths and weaknesses of their affiliation, while introducing recommendations for further action for enhancing civil society participation in UNEP's work.

131. The participants recommended that Rule 69 of the Rules of Procedure of the Governing Council should be amended to grant consultative status to any non-governmental organization having an interest in the field of the environment which is able to make a substantial contribution to the work of UNEP.[235] Further, it was also recommended that UNEP should establish an NGO advisory body, which should serve not as a gatekeeper, but as a facilitating body to advise the Executive Director on the views and perspectives of the civil society. Finally, it was recommended that information on UNEP's meetings be disseminated to all registered civil society organizations in a timely fashion, and that information on programs, activities, projects and decisions of UNEP be made available broadly to all stakeholders.

132. The Committee of Permanent representatives approved a draft strategy for enhancing the engagement of civil society in UNEP's work in November 2001. This was presented to the Special Session of UNEP Governing Council in Cartagena, Columbia in February 2002 as a part of the report of the Executive Director on the implementation of GC decision 21/19.[236] At Cartegena, the Governing Council issued a further decision concerning "enhancing civil society engagement in the work of the United Nations Environment Programme."[237] The decision institutionalised the practice of convening a civil society forum in conjunction with the meetings of the Governing Council/Global Ministerial Environment Forum in close consultation with civil society. The decision also mandated the further development of the strategy for engaging civil society in

[230] UNEP and Civil Society, 2001. *See*, http://www.unep.org/dpdl/csngo/Files_under_Overview_link/UNEP%20and%20Civil%20Society%20in%202001.htm
[231] Statement on behalf of NGOs and Other Civil Society Organizations, Global Ministerial Environmental Forum, 1-2 February 2001. *See*, http://www.unep.org/dpdl/csngo/Files_under_Docs_and_Recs_from_CSOs%20link/Civil_Society_Forum_%20Statement_to_the_GC_21.htm
[232] UNEP, Report of the Governing Council on the Work of its Seventh Special Session/Global Ministerial Environment Forum, 13-15 February 2002, UNEP/GCSS.VII/6, 5 March 2002.
[233] GC 21/19.
[234] Draft Strategy on Enhancing the Engagement of Civil Society in the Work of UNEP (2001). *See*, http://www.unep.org/dpdl/cso/docs/revised_CSO_strategy_paper_draft3c.doc
[235] Currently, participation is limited to international NGOs. UNEP and Civil Society, 2001. *See*, http://www.unep.org/dpdl/csngo/Files_under_Overview_link/UNEP%20and%20Civil%20Society%20in%202001.htm
[236] UNEP, Report of the Governing Council on the Work of its Seventh Special Session/Global Ministerial Environment Forum, 13-15 February 2002, UNEP/GCSS.VII/6, 5 March 2002.
[237] UNEP Governing Council Decision, SS.VII/5, 15 February 2002, "Enhancing civil society engagement in the work of the United Nations Environment Programme".

UNEP activities – stating that the strategy should provide "clear direction" to the secretariat to ensuring that UNEP programs involve multi-stakeholder participation in design, implementation, monitoring of activities and dissemination of all outputs. The decision established a work group to examine the amendment of rule 69 of the Governing Council's Rules of Procedure and to report on possible revisions at the twenty-second session.

International Environmental Governance Public Dialogue

133. Over the last few years, UNEP has convened a ministerial-level intergovernmental process, established by the UNEP Governing Council, addressing issues and options for strengthening international environmental governance, including civil society participation in UNEP's affairs.

134. The February 2001 Governing Council (GC) meeting adopted a decision concerning international environmental governance.[238] In May 2001, UNEP organized civil society consultations as part of the implementation of this decision. Approximately 56 civil society representatives attended the meeting. It was agreed that the plenary would be facilitated by co-facilitators representing the participants and the secretariat.[239] The participants of the May 2001 meeting endorsed the need for strengthening of UNEP.[240] The purpose of the meeting was for public participants to give their views on international environmental governance in general, and specifically on a report on the subject prepared by the Executive Director of UNEP.[241] The views expressed by the representatives of civil society would be taken into account by the Executive Director in the subsequent stages of the review process. Concerns were expressed in particular regarding the fragmentation of the environmental agenda into various institutions and processes, and especially the pressure it places on the civil society organizations and governments from the South for effective participation.[242]

135. Participants at the meeting proposed that UNEP should move towards a full integration of NGOs and civil society as equal partners with governments in the governance system of UNEP. It was also suggested that civil society be involved directly in reporting, monitoring, verification, and enforcement of compliance.[243]

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[238] GC decision 21/21 (international environmental governance) (2001).
[239] Report on Civil Society Consultations on International Environmental Governance, Nairobi 22-23 May 2001. *See also*, http://www.unep.org/dpdl/csngo/Files_under_Docs_and_Recs_from_CSOs%20link/CIVIL_SOCIETY_CONSULTATIONS_on_IEG_Nairobi_May_22_23_2001.htm
[240] They belonged to institutions from a wide diversity of institutions and stakeholders, including Major Groups (NGOs, Business Associations, Faith Based Groups, Youth, and Media), and from all regions. *See*, Report on Civil Society Consultations on International Environmental Governance, Nairobi 22-23 May 2001. *See also*, http://www.unep.org/dpdl/csngo/Files_under_Docs_and_Recs_from_CSOs%20link/CIVIL_SOCIETY_CONSULTATIONS_on_IEG_Nairobi_May_22_23_2001.htm.
[241] UNEP/IGM/1/2.
[242] UNEP and Civil Society, 2001. *See*, http://www.unep.org/dpdl/csngo/Files_under_Overview_link/UNEP%20and%20Civil%20Society%20in%202001.htm
[243] UNEP and Civil Society, 2001. *See*, http://www.unep.org/dpdl/csngo/Files_under_Overview_link/UNEP%20and%20Civil%20Society%20in%202001.htm

[***Box: Milestones in UNEP's relations with civil society***

- 1972 - UN General Assembly resolution 2997, calling for the establishment of UNEP
- 1973 - NGO office established in UNEP
- 1988 - Establishment of Youth Advisory council
- 1995 - Governing Council resolution GC 18/4 calling for the development of a policy framework and appropriate mechanisms for working with the civil society, private sector and other major groups
- 1996 - Policy statement concerning NGO participation in UNEP's activities, also section on NGOs incorporated in UNEP's project manual
- 1999 - GC 20 calling for establishment of NGO Civil Society unit; NGO/CSO Unit fully operational in 2000
- 2000 - The Malmo Declaration, recognition of the importance of Civil Society on a par with governments and the private sector.[244]
- 2001 - GC decision 21/19 calling for the Executive Director to submit a draft strategy for the active engagement of the civil society, private sector and other major groups in the work of the United Nations Environment programme, to the Governing Council at its seventh special session in 2002.
- 2002 – GC decision SS.VII/5 "Enhancing civil society engagement in the work of the United Nations Environment Programme" *inter alia* continuing the work on a draft strategy for civil society engagement in UNEP activities.]

Convention on Biological Diversity: The Global Biodiversity Forum

136. UNEP hosts the secretariats for a number of multi-lateral environmental agreements, including the Convention on Biological Diversity (Biodiversity Convention). Adopted at the 1992 Earth Summit in Rio de Janeiro, the Biodiversity Convention commits member governments to a variety of measures intended to protect the world's biodiversity. The Convention's three main goals are: "the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits from the use of genetic resources."[245] The Convention, which is legally binding on its more than 175 Parties, presents decision-makers with information about the vitality of biodiversity, and provides guidance for them to use in their efforts to preserve biodiversity within their own countries and avoid doing irreparable damage to these resources outside their borders.

137. The Global Biodiversity Forum, a multi-stakeholder forum, which first met Nairobi, Kenya in January 1992, is the primary vehicle for public participation in the governance of the Convention. The Global Biodiversity Forum ("GBF") seeks to "provide a mechanism to foster analysis and critical dialogue among a wide range of stakeholders on key ecological, economic, social and institutional issues related to biodiversity."[246] The Forum's broad objectives are to: 1) assist with policy making and implementation of the Convention; 2) promote cooperation and coordination between the various constituents involved in the Convention; 3) encourage the formation of partnerships within and between various societal groups; and 4) raise awareness about and foster participation in the Convention.

[244] Malmo NGO Statement, 28 May 2000. *See*, http://www.unep.org/dpdl/csngo/Files_under_Docs_and_Recs_from_CSOs%20link/Malmo_NGO_Statement.htm
[245] http://www.biodiv.org/doc/publications/guide.asp
[246] http://www.gbf.ch/whatisgbf.htm

138. The Forum has held twenty-five sessions so far, sixteen of which were global. Many of these sessions were in conjunction with meetings of different international bodies concerning biological diversity which have included over 2900 people from 70 countries.[247] These meetings have covered a range of topics, including general subjects like "The Convention on Biological Diversity: National Interests and Global Imperatives," and specific, substantive topics like "Exploring Options for Incorporating Indicators and Targets into National Implementation Reports required under the Convention on Biological Diversity."[248] The Conference of the Parties to the Convention on Biological Diversity ("COP") has recognized the valuable role that GBF plays in providing an opportunity for public participation in the Convention.[249]

C. Access to Justice and Review

139. UNEP does not provide access to justice in the sense of appeal of its decisions or regulation implementation. However, the implementation of some of its Conventions includes citizen participation in enforcement – which can be included under a broad interpretation of "access to justice."

Convention on International Trade of Endangered Species of Wild Fauna and Flora: Citizen Monitoring

140. A voluntary, multilateral international agreement, the Convention on International Trade of Endangered Species of Wild Fauna and Flora ("CITES") entered into force in 1975. CITES regulates international trade of endangered species of plants and animals. CITES maintains relationships with several independent bodies and NGOs which provide reporting and scientific consultation services. Among these entities are: the UNEP World Conservation Monitoring Centre which manages CITES's database of trade transactions, the International Tropical Timber Organization, the World Conservation Union (IUCN), and TRAFFIC, an NGO.

141. The wildlife-monitoring program for the World Wildlife Fund For Nature and the World Conservation Union, TRAFFIC plays a particularly important role in CITES. TRAFFIC was founded in the mid 1970s to assist in the implementation of CITES. Now, though still cooperating with CITES, TRAFFIC has broadened its mission to "ensur[ing] that trade in wild plants and animals is not a threat to the conservation of nature." The organization operates through twenty-two offices in eight regions. One of TRAFFIC's role is to monitor the trade in wild plants and animals and to bring violations of CITES to the attention of the Parties. For example, a July 2002 TRAFFIC report showed that illegal trade in elephants and the sale of their products continues in Asia.[250]

[247] http://www.gbf.ch/whatisgbf.htm
[248] http://www.gbf.ch/documents/liste_sessions.pdf
[249] (CPO Decision V.21).
[250] TRAFFIC Online Report No. 2, *"An assessment of the illegal trade in elephants and elephant products in Viet Nam,"* 15 July 2002, http://www.traffic.org/news/eleph_products.html

VIII. WORLD TRADE ORGANIZATION (WTO)

142. The World Trade Organization (WTO) is a global international organization dealing with the rules of trade between nations. It provides a forum for negotiation of trade agreements and for dispute settlement under those agreements. It also provides Member governments with a forum for policy-making concerning trade, international economic regimes, and globalization. The WTO was established 1 January 1995 by the Uruguay Round negotiations. As of 1 January 2002, it had 144 country Members.

143. In July 1996, the WTO General Council adopted the Guidelines for Arrangements on Relations with Non-Governmental Organizations,[251] as was suggested in the agreement establishing the WTO (Marrakesh Agreement).[252] The Guidelines state that the Secretariat will make more information about WTO activities available to the public by speeding up the document derestriction process and posting publicly available documents online. In addition, the WTO Secretariat is supposed to engage with NGOs through means such as symposia on WTO-related issues, informal receiving of information from NGOs and continuing to respond to general information requests and briefings.

A. Access to Information

144. The WTO policy on public access to information includes a process for derestricting documents and posting most final documents and documents intended for public comment on its website. However, WTO does not have procedures for public requests for information, nor does it publicly release documents in the course of negotiations or in the course of dispute settlement procedures unless the relevant Member governments agree.

Public Access through WTO Website

145. The WTO website has a searchable document database containing the publicly accessible WTO documents. The "trade resources" section of the WTO website make general information on international trade issues publicly accessible, including recent research, public comments and statements on trade issues, academic papers and reports, statistics, and historical facts.[253] WTO "Documents Online" database provides access to legal texts of WTO agreements from 1995 onwards and selected material from 1986 – 1994. The WTO meetings schedule is also available on-line. In addition to listing General Council, committee, and working group meetings, it lists seminars, symposia, and workshops convened by the WTO.[254]

Derestriction of Documents

146. In May 2002, the WTO adopted new procedures for the circulation and derestriction of WTO documents.[255] These replaced the former 1996 procedures.[256] The WTO development of derestriction

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[251] Guidelines for arrangements on relations with Non-Governmental Organizations, Decision adopted by the General Council on July 23, 1996, WT/L/162, http://www.wto.org/english/forums_e/ngo_e/guide_e.htm

[252] Agreement establishing the World Trade Organization, Article V. "The General Council may make appropriate arrangements for consultation and cooperation with non-governmental organizations concerned with matters related to those of the WTO." *See*, http://www.wto.org/english/forums_e/ngo_e/estwto_e.htm#ngo

[253] Trade Resources, http://www.wto.org/trade_resources/index.htm

[254] http://www.wto.org/english/news_e/news_e.htm#WhatsOn

[255] Procedures for the Circulation and Derestriction of WTO Documents, WT/L/452, 16 May 2002 (Decision of 14 May 2002). *See*, http://www.wto.org/english/forums_e/ngo_e/bernie_derestrictiontext_e.htm

procedures has shown a steady movement towards greater public access to documents. Under the General Agreement on Tariffs and Trade, documents were always restricted, requiring action by the Contracting Parties to derestrict them.[257] Under the 1996 procedures, official WTO document were to be circulated as unrestricted, unless they were of a type specifically identified in the Addendum to the Decision as restricted.[258] However, the documents listed as restricted in the Addendum included most of the documents pertaining to pending policy decisions, causing the most important documents, from a public participation point of view, to remain unaccessible.[259]

147. The new 2002 Decision attempts to improve transparency and public access to WTO documents and focuses primarily on speeding up the process by which documents become publicly accessible.[260] In addition, the new procedures eliminate the Addendum of restricted documents, making all official documents unrestricted with certain exemption criteria and a process for derestriction.[261] However, although the 2002 procedures shift the burden to Members to affirmatively restrict documents, it still gives Members discretion to restrict documents without explanation or criteria and keeps most negotiation documents restricted until negotiations are completed. The new procedures apply to documents as of May 2002, while the 1996 procedures continue to apply to documents prior to that date.

148. Under the 2002 Decision, WTO country Members may still submit documents as "restricted."[262] However documents that contain only publicly available information or information required to be published by the WTO Agreement, may not be restricted at any time. When a Member submits a document as restricted, the document will be automatically derestricted after its first consideration by the relevant body or 60 days after the date of circulation – whichever is earlier.[263] If the Member wishes to avoid derestriction at this point, the Member must make a special request every 30 days for a further 30 days of restricted status for the document. This same process applies to documents prepared by the Secretariat at the request of a Member – with the exception that Secretariat documents can only remain restricted through the first 30 day period – after that derestriction happens automatically. Thus, Secretariat documents will be publicly accessible between two – three months after they are circulated to Members. This compares favorably with the average time of eight – nine months under the 1996 procedures.[264]

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[256] The former WTO Procedures for the Circulation and Derestriction of WTO Documents (WT/L/160/Rev.1) were adopted by the General Council on July 18, 1996.
[257] Van Dyke, Brennan and Weiner, John Barlow, *An Introduction to the WTO Decision on Document Restriction,* Public Participation International Trading Series, International Centre for Trade and Sustainable Development (1997). *See*, http://www/ictsd.org/html/number1.htm
[258] WTO Procedures for the Circulation and Derestriction of WTO Documents, WT/L/160/Rev.1 (22 July 1996) (General Council Decision of 18 July 1996).
[259] Van Dyke, Brennan and Weiner, John Barlow, *An Introduction to the WTO Decision on Document Restriction,* Public Participation International Trading Series, International Centre for Trade and Sustainable Development (1997). *See*, http://www/ictsd.org/html/number1.htm
[260] Procedures for the Circulation and Derestriction of WTO Documents, WT/L/452, 16 May 2002 (Decision of 14 May 2002). *See*, http://www.wto.org/english/forums_e/ngo_e/bernie_derestrictiontext_e.htm
[261] Procedures for the Circulation and Derestriction of WTO Documents, WT/L/452, 16 May 2002 (Decision of 14 May 2002). *See*, http://www.wto.org/english/forums_e/ngo_e/bernie_derestrictiontext_e.htm
[262] Procedures for the Circulation and Derestriction of WTO Documents, WT/L/452, 16 May 2002 (Decision of 14 May 2002). *See*, http://www.wto.org/english/forums_e/ngo_e/bernie_derestrictiontext_e.htm
[263] Procedures for the Circulation and Derestriction of WTO Documents, WT/L/452, 16 May 2002 (Decision of 14 May 2002). *See*, http://www.wto.org/english/forums_e/ngo_e/bernie_derestrictiontext_e.htm
[264] WTO, Explanatory Note on Old and New Procedures for the Circulation and Derestriction of WTO Documents (May 2002). *See*, http://www.wto.org/english/forums_e/ngo_e/derestr_explane_e.htm

149. Under the 2002 Decision, minutes of meetings (including records, reports, and notes) are restricted, but will be automatically derestricted 45 days after the date of circulation.[265] Circulation usually takes place within three weeks after a meeting of a WTO body is held. Minutes of the Trade Policy Review Body will continue to circulate as unrestricted.

150. Documents concerning modification or renegotiation of concessions or specific commitments pursuant to Article XXVIII of the GATT 1994 or Article XXI of the GATS respectively are explicitly restricted under the 2002 Decision and automatically derestricted only upon certification of completion of the negotiations. Similarly, documents relating to working parties on accession are restricted and will only be derestricted on adoption of the report of the working party.

WTO Briefings

151. In the last few years, the WTO Secretariat has regularly organized briefings for NGOs on the outcome of WTO meetings of interest to them.[266] The briefings are performed by a representative of the relevant WTO Secretariat division at the WTO offices in Geneva. Participants need to register and participation is based on space availability. For example, in 2001, the Secretariat held briefings *inter alia* concerning the Special Session of the Committee on Agriculture, the TRIPS Council, the Committee on Trade and Environment, and the Special Session of the Council for Trade in Services.

B. Public Participation in Decision-Making

152. The WTO acts as a forum for international rule-making and multi-lateral negotiations in international trade. It encompasses broad areas of economic and development policy including services, agriculture, and intellectual property rights. Civil society is very interested in having a say in this type of international decision-making. However, although the WTO has moved towards increased transparency in recent years, its method of involving members of the public and taking their comments into account in decision-making is still *ad hoc* and informal.

WTO initiatives to improve public participation in decision-making include *inter alia* NGO Guidelines, NGO attendance at WTO Ministerial Conferences, public symposia, interactive mechanisms on the WTO website, and better access for Members to NGO position papers.

WTO NGO Guidelines

153. The 1996 General Council guidelines on NGO involvement encourage a dialogue with civil society.[267] The guidelines specifically recommend that the Secretariat improve its direct contact with NGOs. According to the guidelines, the contact should be developed through various means, including, "organization on an *ad hoc* basis of symposia on specific WTO-related issues" and "informal arrangements to receive the information

[265] This derestriction time is down from eight months under the 1996 procedures. WTO, Explanatory Note on Old and New Procedures for the Circulation and Derestriction of WTO Documents (May 2002). *See*, http://www.wto.org/english/forums_e/ngo_e/derestr_explane_e.htm

[266] WTO, WTO Briefings for Non-Governmental Organizations. *See*, http://www.wto.org/english/forums_e/ngo_e/briefs_e.htm

[267] Guidelines for arrangements on relations with Non-Governmental Organizations, Decision adopted by the General Council on July 23, 1996, WT/L/162, http://www.wto.org/english/forums_e/ngo_e/guide_e.htm

NGOs may wish to make available for consultation by interested delegations."[268] NGOs are not allowed to be directly involved in the WTO's work or meetings.[269]

154. Since 1996, arrangements for NGOs have focused on attendance at Ministerial Conferences, participation in issue-specific symposia, and day-to-day contact between the WTO Secretariat and NGOs.

WTO Ministerial Meetings

155. Immediately after adopting the 1996 guidelines on NGO involvement, WTO Members agreed on procedures for NGOs to attend the Singapore Ministerial Conference.[270] NGOs would be allowed to attend plenary sessions of the Conference if they met the criteria that their activities were "concerned with matters related to those of the WTO."[271] The Singapore Ministerial Conference in December 1996 was the first such Conference with official NGO attendance. In total, 159 NGOs registered with 108 present at the Conference in Singapore, including representatives from environment, development, consumer, business, trade union, and farmer interests. WTO provided an NGO center with meeting space and computer facilities. This process of NGO involvement has continued at all following Ministerial Conferences – each with its own, similar rules for NGO participation. At the Geneva Ministerial (1998), 128 NGOs participated. Throughout the three-day event, NGOs were briefed regularly by the WTO Secretariat on the progress of the informal working sessions (to which they did not have access). A similar process applied in Seattle (1999) and in Doha (2001).[272]

Public Symposia

156. In connection with recent Ministerial Conferences, the WTO has organized public symposia. For example, the WTO hosted a symposium in Seattle in 1999 in conjonction with the third WTO Ministerial Conference.[273] Participants included representatives of more than 700 NGO organizations which had been accredited to the third WTO Ministerial Conference as well as representatives of WTO Member States, intergovernmental organizations, and journalists for a total of approximately 1500 delegates.[274] The WTO emphasizes the fact that the symposium took place outside the formal structure of the WTO and of the Ministerial Conference.[275]

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[268] Paragraph VI, Guidelines for arrangements on relations with Non-Governmental Organizations, Decision adopted by the General Council on July 23, 1996, WT/L/162, http://www.wto.org/english/forums_e/ngo_e/guide_e.htm
[269] Paragraph VI, Guidelines for arrangements on relations with Non-Governmental Organizations, Decision adopted by the General Council on July 23, 1996, WT/L/162, http://www.wto.org/english/forums_e/ngo_e/guide_e.htm
[270] WTO, *Relations with Non-Governmental Organizations/Civil Society*, http://www.wto.org/english/forums_e/ngo_e/intro_e.htm
[271] Agreement establishing the World Trade Organization, Article V.
[272] It should be mentioned that the fourth Ministerial Conference in Doha, Qatar (2001) restricted NGO participation to one representative per NGO due to space limitations. This problem had already been foreseen by the NGO community which had early protested the choice of Doha for the fourth Ministerial Conference as being too limiting to allow sufficient NGO participation.
[273] Seattle Symposium on International Trade Issues in the First Decades of the Next Century, 29 November 1999. *See*, http://www.wto.org/english/thewto_e/minist_e/min99_e/english/ngo_e/ngo_e.htm. The third Ministerial Conference was held from 30 November – 3 December 1999.
[274] Seattle Symposium on International Trade Issues in the First Decades of the Next Century, 29 November 1999. *See*, http://www.wto.org/english/thewto_e/minist_e/min99_e/english/ngo_e/ngo_e.htm. *See also*, International Institute for Sustainable Development, *Summary Report of the Seattle Symposium on International Trade Issues in the First Decades of the Next Century*, Sustainable Developments Volume 34, Number 1, Wednesday, 1 December 1999.
[275] Seattle Symposium on International Trade Issues in the First Decades of the Next Century, 29 November 1999. *See*, http://www.wto.org/english/thewto_e/minist_e/min99_e/english/ngo_e/ngo_e.htm

157. For the fourth Ministerial Conference, the WTO hosted a follow-up meeting with the public concerning the impact of the Doha Ministerial Conference. This public symposium took place from 29 April to 1 May 2002 on the challenges and opportunities arising from the Doha Ministerial Declaration.[276] Again, the WTO stressed that the symposium was "not an official or formal WTO event."[277] It included participants from governments, parliaments, civil society, academia and the media.

WTO NGO Section Website

158. A special NGO Section has been established on the WTO website.[278] The new NGO section includes mechanisms for gathering public input. For example, the WTO on-line forum hosts discussions in which it encourages member of the public to give their views.[279] The topics cover WTO issues and will either be chosen by the WTO or suggested by the WTO audience. For each WTO-initiated discussion, there will be panelists from within the WTO and experts from outside invited to participate as well. For example, in October 2000 the WTO and the World Bank invited government officials, business representatives, students, NGOs and others interested in trade matters to participate in a month-long online forum concerning trade and sustainable development.

WTO Member Access to NGO Positions

159. A list of NGO position papers received by the Secretariat is circulated to the Members and is available on the WTO website.[280] Only position papers related to the activities of the WTO are included in the list. These lists have generated interest among Members, many of whom have requested copies of the full text of the documents.[281]

C. Access to Justice and Review

160. Unlike most other international treaties, the GATT/WTO agreements not only bind nations with regard to the definition of common objectives, but their implementation is enforced through an effective dispute settlement mechanism. Any Member can request that a panel be formed to settle disputes concerning application of WTO regulations.[282] Although NGOs and members of the public cannot request such panels or initiate dispute settlement actions, they can intervene in panel deliberations through *amicus* or friend-of-the-court briefs.

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[276] WTO, WTO Public Symposium: The Doha Development Agenda and Beyond. *See*, http://www.wto.org/english/tratop_e/dda_e/symp_devagenda_02_e.htm
[277] WTO, WTO Public Symposium: The Doha Development Agenda and Beyond. *See*, http://www.wto.org/english/tratop_e/dda_e/symp_devagenda_02_e.htm
[278] Community/forums, http://www.wto.org/english/forums_e/forums_e.htm
[279] *See*, http://www.wto.org/english/forums_e/chat_e/chat_e.htm
[280] In accordance with the WTO Director General's initiatives on greater transparency. See, WTO, NGO Position Papers Received by the WTO Secretariat at http://www.wto.org/english/forums_e/ngo_e/pospap_e.htm
[281] WTO, The WTO and Civil Society: Comments by the Director General to US NGOs at http://www.wto.org/english/forums_e/ngo_e/ngospe_e.htm
[282] *See* generally, http://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm

161. The WTO is in the process of reviewing its dispute settlement rules for possible revision and the 2001 Doha Ministerial Conference agreed to negotiate to improve and clarify the Dispute Settlement Understanding.[283] Whether and to what extent such revisions would facilitate the submission of *amicus* briefs remains to be seen.

NGO Access to Dispute Settlement Panels

162. While Article 13.2 of the WTO Dispute Settlement Understanding allows for technical contributions of NGOs,[284] in practice, WTO panels have only requested such contributions in very few instances. For example, in the recent dispute *United States – Import Prohibition of Certain Shrimp and Shrimp Products*, the WTO Panel requested advice from a group of experts, including some affiliated to the IUCN, an international NGO. It received two *amicus* briefs submitted by NGOs. The panel informed the parties that it did not intend to take these documents into consideration since it had not requested them and that accepting non-requested information would be in conflict with the Dispute Settlement Understanding. However, this decision was overturned by the Appellate Body which found that panels have discretionary authority either to accept or reject information whether requested or not. The Appellate Body then accepted an NGO brief. This decision has triggered a debate in the context of the review process of the Dispute Settlement Understanding, as several countries argue that Article 13.2 should be clarified. Referring to the decision of the Appellate Body on Shrimps and Sea-turtles, the WTO Director General said that it is "now clear that panels should accept *amicus* briefs and then decide how to treat this information."[285]

IX. EUROPEAN REGIONAL FORUMS

163. There are many European regional forums that have developed in sub-regions, around a natural resource, such as a river or a sea, or bilaterally. This report has selected two for a brief survey of access to information and public participation rules and practices: the International Commission for the Protection of the Rhine and the Helsinki Commission.

164. In January 1950, the Rhine bordering countries – Switzerland, France, Luxembourg, Germany, and the Netherlands – created the International Commission for the Protection of the Rhine (ICPR) to address water protection of the Rhine River area. These countries later signed the Convention on the International Commission for the Protection of the Rhine Against Pollution in 1963, which forms the basis of international law governing these efforts.[286] In 1999, the Convention on the Rhine ("Convention") replaced the 1963 Convention; the ICPR is the implementing body of the Convention. The ICPR implements the Convention through the operation of three permanent workgroups – Water Quality, Ecology and Emissions – and temporary project groups – currently Sustainable Development and Flood Protection. These groups report to a Co-ordination Group, which in turn reports to the President and Plenary Assembly; the Commission is supported by a permanent Secretariat. Member states, officials from which comprise the ICPR, are intended to implement decisions made by the Commission; the Commission's decisions themselves are not legally binding.[287]

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[283] *See*, http://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm
[284] Article 13.2, Dispute Settlement Understanding. "Panels may seek information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter …"
[285] Director General, Mr. Renato Ruggiero at a meeting he held in Washington, D.C. *See*, WTO, The WTO and Civil Society: Comments by the Director General to US NGOs at http://www.wto.org/english/forums_e/ngo_e/ngospe_e.htm
[286] http://iksr.firmen-netz.de/icpr/1uk.htm
[287] http://iksr.firmen-netz.de/icpr/3uk.htm

165. The Convention on the Protection of the Marine Environment of the Baltic Sea Area, more commonly known as the Helsinki Convention, covers the entire Baltic Sea area was signed in 1974, and subsequently replaced in 1992. The Convention creates commitments from the Contracting Parties to "conserve natural habitats and biological diversity and to protect ecological processes."[288] As the governing body of the Helsinki Convention, the Helsinki Commission ("HELCOM") seeks to coordinate the environmental protection and pollution prevention efforts of Denmark, Estonia, the European Community, Finland, Germany, Latvia, Lithuania, Poland, Russian, and Sweden.[289] HELCOM, which consists of delegates from the member countries, meets annually. On an operational level, the Helsinki Convention is implemented by the Programme Implementation Task Force ("PITF") and five working groups: 1) Monitoring and Assessment Group ("HELCOM MONAS"), 2) Land-based Pollution Group ("HELCOM LAND"), 3) Sea-based Pollution Group ("HELCOM SEA"), 4) Nature Conservation and Coastal Zone Management Group ("HELCOM HABITAT"), and 5) Strategy Group ("HELCOM STRATEGY").[290] A permanent Secretariat also supports HELCOM.

A. Access to Information

International Commission for the Protection of the Rhine—ICPR

166. Article 8 of the Convention charges the ICPR with "inform[ing] the public as to the state of the Rhine and the results of its work."[291] Despite this broad mandate, the Convention allows the ICPR to decide the extent to which it drafts and publishes its reports.[292] The Commission's website contains information about water quality that can be easily accessed in French, English, German or Dutch. It also provides a list of the ICPR's publications; however, the website does not include direct links to these publications.[293] Moreover, the website does not appear to be recently updated, which suggests the value of this information to the public may be limited.[294]

The Helsinki Commission

167. According to Article 17 of the Helsinki Convention, member states "shall ensure that information is made available to the public on the condition of the Baltic Sea and the waters in its catchment area, measures taken or planned to be taken to prevent and eliminate pollution and the effectiveness of those measures."[295] Toward this end, parties are to make information available to the public regarding: 1) permit issuance and required conditions for receiving them; 2) water quality from monitoring and results of efforts aimed at achieving the Convention's goals and/or permit conditions; and 3) water quality objectives.[296] Much of this information appears to be accessible through the "Publications" link on HELCOM's website.[297]

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[288] http://www.helcom.fi/helcom/aboutus.html
[289] http://www.helcom.fi/helcom/aboutus.html
[290] http://www.helcom.fi/helcom/groupstaskforce.html
[291] http://iksr.firmen-netz.de/Convention%20on%20the%20Protection%20of%20the%20Rhine.doc
[292] Id.
[293] http://iksr.firmen-netz.de/icpr/
[294] For example, the home page includes a link to "Current Matters," the most recent of which is from a January 2000 conference.
[295] http://www.helcom.fi/helcom/convention.html
[296] http://www.helcom.fi/helcom/convention.html
[297] http://www.helcom.fi/helcom/publications.html. This page includes links to HELCOM publications, other related publications, and documentation from HELCOM's Baltic Sea Environment Proceedings.

B. Public Participation

International Commission for the Protection of the Rhine—ICPR

168. Article 14 of the Convention provides the ICPR with flexibility regarding the extent to which it facilitates public participation.[298] The Commission is free to cooperate with other groups and address their recommendations, and may invite non-governmental groups that are involved in related activities to observe meetings, however it is not required to do any of this. If the ICPR allows observers, they may submit information relevant to the Convention, and may be invited to participate but not vote. In addition, at its discretion, the Commission may consult with outside "specialists representing the recognized non-governmental organizations or other experts and invite them to its meetings."[299] The ICPR has involved NGOs in the development of plans, such as the Action Plan on Flood Defense.[300]

The Helsinki Commission

169. Article 24 of the Helsinki Convention describes the relationship between HELCOM and members of the science and technology community. The Article provides for cooperation between the member states and the outside community directly, or through appropriate intermediaries, for the purposes of the Convention.[301] Thus, the Parties maintain substantial flexibility in deciding the extent to which the scientific or NGO community is involved in implementing the Convention. International NGOs from throughout Europe are involved in the work of HELCOM as observers.[302]

170. HELCOM's working groups involve other international groups in HELCOM's activities.[303] For example, HELCOM LAND works with non-governmental organisations.[304] HELCOM SEA organizes regular meetings involving officials responsible for maritime transportation and response to pollution incidents at sea as well as representatives from inter-governmental and non-governmental organizations.[305] HELCOM HABITAT works with NGOs, such as WWF. The Programme Implementation Task Force (PITF) works with members of the NGO community. The PITF terms of reference include a mandate "to assure an interactive role with multilateral banks, bilateral financial institutions and/or national, regional, municipal governments, non-governmental organizations etc." and to "co-operate with competent intergovernmental and non-governmental international bodies related to its mandate, invited or wishing to attend to HELCOM PITF meetings as Observers applying the procedural rules of the Helsinki Commission." [306] NGOs have participated in PITF-organized Regional Workshops and in the development and implementation of the Baltic Sea Joint Comprehensive Environmental Action Program, which is organized and implemented by the Task Force.[307]

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[298] http://iksr.firmen-netz.de/Convention%20on%20the%20Protection%20of%20the%20Rhine.doc
[299] http://iksr.firmen-netz.de/Convention%20on%20the%20Protection%20of%20the%20Rhine.doc
[300] http://iksr.firmen-netz.de/icpr/11uk7.htm
[301] http://www.helcom.fi/helcom/groupstaskforce/helcomhabitat.html
[302] Environmental NGO observers listed on the HELCOM website include BirdLife International, European Union for Coastal Conservation, and WWF. In addition, NGO observers include maritime, agricultural, chemical, oil and gas, and local community interests. *See*, http://www.helcom.fi/helcom/observers.html
[303] http://helcom.fi/helcom/convention/html
[304] http://www.helcom.fi/helcom/groupstaskforce/helcomland.html
[305] http://www.helcom.fi/helcom/groupstaskforce/helcomsea.html
[306] Terms of Reference for the Programme Implementation Task Force, (Ref. HELCOM PITF 16/2000, 13/1, Annex 4), Section B (b) and Section B (d), http://www.helcom.fi/helcom/groupstaskforce/helcompitf.html#terms
[307] http://www.helcom.fi/helcom/groupstaskforce/helcompitf.html