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Organizational Summary

The Role of Nongovernmental Organizations in the Climate Change Negotiations*

Chiara Giorgetti**

I. INTRODUCTION

The role of nongovernmental organizations (NGOs) in monitoring the implementation of international treaties, their relevance in the organization of development projects,¹ and their importance in the representation and education of civil society has been acknowledged and valued by both international organizations and national governments. Nongovernmental actors also play an important role in the negotiations of international agreements. Moreover, many UN agencies work closely with NGOs. NGOs have played an important part in numerous environmental conventions, and their role is becoming more clearly defined. The presence of NGOs has also been instrumental in the evolution and development of many international environmental agreements.

* This article is part of a larger project that the author undertook at the New York University School of Law. The entire project is on file with the author.

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1. About 41% of the projects approved by the World Bank in fiscal year 1995 included provisions on NGOs, compared to the period between 1973 and 1988, when the average was 6%. *See* WORLD BANK, *NGOS AND THE BANK: INCORPORATING PROGRESS REPORT ON COOPERATION BETWEEN THE WORLD BANK AND NGOS I* (1996) (on file with the *Colorado Journal of International Environmental Law and Policy*). The World Bank is also committed to increasing communication and cooperation with NGOs. *See id.* Priorities include consultation on policy issues and improvement in document dissemination as well as additional funding to strengthen NGO sectors in borrowing countries. *See id.* at ii, 10.

This summary provides an overview of the role and increasing importance of NGOs.² It then introduces nonbusiness NGOs and business NGOs and analyzes their common and differing characteristics. Finally, this analysis focuses on the role that NGOs are playing in the climate change negotiations.

II. DEVELOPMENT OF NGOS

NGOs are a phenomenon characteristic of contemporary society.³ NGOs have grown exponentially in the last forty years; currently there are an estimated 275,000 NGOs in the United Kingdom alone.⁴ NGOs, unlike governmental or for-profit enterprises, emphasize community values. They support themselves through membership fees, donations, and grants by public or private structures. Because NGOs are nonprofit organizations, they undertake activities for the social development of communities. The services they provide (for example, research and advocacy) are offered for a nominal or less-than-market fee. Even business NGOs (BNGOs), which represent the interests of for-profit economic sectors, do not seek profits for themselves.

Four societal crises led to the development of this voluntary sector: the crises of the modern welfare state, development, socialism, and environmental globalism.⁵ The first crisis, the crisis of the modern welfare state, arose when states failed to provide social welfare. Continued public

2. This article focuses on the two types of nongovernmental organizations recognized by the Secretariat of the UN Conference on Environment and Development (UNCED): nonbusiness NGOs (specifically, environmental NGOs) and business NGOs. See THOMAS PRINCEN & MATTHIAS FINGER, *Environmental NGOs in World Politics: Linking the Global and the Local* (1994) 200. However, other parties recognize a greater number of NGO types. See I PHILIPPE SANDS, *PRINCIPLES OF INTERNATIONAL ENVIRONMENTAL LAW* 95 (1995). Mr. Sands identifies six kinds of nongovernmental actors: the scientific community, environmental organizations, legal groups, the corporate sector, academics, and individuals. See *id.*

This article takes this distinction into consideration and addresses all these groups in their specific role in the climate debate. The scientific community plays a fundamental role in this issue, and its different views are presented as they are considered by the Framework Convention on Climate Change Secretariat, and how they are interpreted by environmental and business NGOs. Similar to the scientific community, academics are considered in their role as experts on particular complicated issues of the negotiations. Relevant individuals that participated in the negotiations are considered as representatives either of governments or of business or environmental NGOs. See *id.* at 99.

3. See Robert Cassani, *Financing Civil Society for a Global Responsibility*, 27 *FUTURES* 215 (1995).

4. See Lester M. Salamon, *The Rise of the Non-Profit Sector*, 73 *FOREIGN AFF.* 109, 111 (1994).

5. See *id.* at 115-17.

perception of the states' failure to provide this assistance resulted in public groups forming to take up these duties that were once considered the prerogative of the states.⁶

The development crisis arose as a consequence of the oil shocks and became evident in the late 1980s and early 1990s.⁷ In the least-developed parts of the world, economic performance declined; the average output per person dropped five percent between 1970 and 1990.⁸ The awareness that governments and international organizations failed to find a solution to poverty opened the door to exploring new solutions in both the North and the South. The new solutions are based on participatory development and the engagement of grassroots organizations of both underdeveloped and developed nations.⁹ Even international organizations like the World Bank now consult NGOs, and they have a major role in distributing and organizing development assistance.¹⁰

The crisis of socialism arose after the communist system failed to meet social and economic demands.¹¹ To replace an "increasingly discredited state," market-oriented enterprises and NGOs arose to meet these demands.¹² The final crisis, the environmental global crisis, arose when the public learned about the extent of environmental degradation. Frustration with governments' lack of initiative to address this problem led to groups creating their own initiatives to safeguard the environment.¹³

Two other elements were instrumental in the development of this nonprofit sector: the worldwide economic growth experienced after the end of WWII, which created a middle class that reacted to the present economic crisis,¹⁴ and the increase in literacy and education and the development of sophisticated modes of communication, such as computers, facsimile machines, the Internet, and other such means that connected the global community more efficiently and inexpensively than in the past.¹⁵

6. *See id.* at 115–16. Sometimes the pressure to form nonprofit organizations to take up states' duties came from the governments themselves. Ronald Reagan and Margaret Thatcher, for example, supported the expansion of a voluntary sector to reduce their governments' social spending. *See id.* at 114–15. Salamon also suggests that pressures to form NGOs can come from outside the public structure (for example, the Catholic Church in Latin America) or from outside the nation state (international institutions). *See id.* at 114.

7. *See id.* at 116.

8. *See id.*

9. *See id.*

10. In 1992, for example, NGOs distributed \$5.5 billion in grants, making them the fifth largest donor after the United States, Japan, France, and Germany. *See Cassani, supra* note 3, at 218.

11. *See Salamon, supra* note 4, at 117.

12. *Id.*

13. *See id.* at 116–17.

14. *See id.* at 118.

15. *See id.* at 118.

III. TYPES OF NGOS

A. Nonbusiness Nongovernmental Organizations

Nonbusiness NGOs (NonB-NGOs) are generally recognized as representing civil society.¹⁶ In this capacity, one role of the NonB-NGOs is to emphasize alternative and diverse views on certain issues and to play some of the public roles outside the apparatus of the state. NonB-NGOs are diverse and are involved in many sectors of social and economic life.

Three factors differentiate NonB-NGOs: focus or goals, location, and methods of activities. First, NonB-NGOs are active in a variety of different domains. Their activities are generally geared to the progress of society toward solidarity and equity, and they include development assistance, the implementation of human and economic development projects, human rights and awareness, and environmental defense. Some NonB-NGOs, especially those in the South, are involved in more than one of these activities.

NonB-NGOs are also differentiated by geographic focus. First, NonB-NGOs can work at a national or international level. Greenpeace,¹⁷ Amnesty International,¹⁸ and Oxfam¹⁹ are all international NonB-NGOs with different focuses of activity. Similarly, there are national NonB-NGOs, such as the Environmental Defense Fund²⁰ and the Natural Resources Defense Council.²¹ Second, NonB-NGOs can either be based in developed or developing countries. This difference is important, because NonB-NGOs from developed countries generally have more financial means and therefore, can be more active in international lobbying activities.²²

16. This view, however, is not immune from criticism. See generally Cassani, *supra* note 3, for the connection between the phenomenon of NGOs and civil society.

17. See *Introduction to Greenpeace* (visited Nov. 7, 1997) <<http://www.greenpeace.org:80/gpi.html>>.

18. See YOUR RESOURCE GUIDE TO ENVIRONMENTAL ORGANIZATIONS 41-43 (John Seredich, ed., 1991) [hereinafter RESOURCE GUIDE].

19. See OXFAM (visited Nov. 8, 1997) <<http://www.who.org/programmes/ina/ngo/ngo147.htm>>. Oxfam's objectives are to "relieve poverty, distress and suffering in any part of the world, and to educate the public concerning the nature, causes and effects of poverty." *Id.*

20. See EDF, *About EDF* (visited Nov. 7, 1997) <http://www.edf.org/AboutEDF/b_atglance.html> [hereinafter EDF].

21. See Natural Resources Defense Council, NRDC (visited Nov. 9, 1997) <<http://www.nrdc.org/comm/about.html>>.

22. See PRINCEN & FINGER, *supra* note 2, at 34.

The third and most important factor to differentiate NonB-NGOs is the method of actions used to accomplish goals or activities. There are operational and advocacy NonB-NGOs and research institutes.²³ Operational NonB-NGOs implement community development projects; for example, they build schools or provide education. Operational NonB-NGOs include international NonB-NGOs (mostly located in developed countries), national NonB-NGOs, and local or community-based NonB-NGOs.²⁴ Advocacy NonB-NGOs are focused on advocating a specific concern or point of view through litigation, lobbying, and media coverage.²⁵ They are primarily based in developed countries. Amnesty International and Greenpeace are two different examples of advocacy NonB-NGOs that work with different objectives, the former on the defense of human rights, the latter on environmental issues.²⁶ Research institute NonB-NGOs, such as the WorldWatch Institute²⁷ and Resources for the Future,²⁸ provide unbiased, scientific research. Research institute NonB-NGOs may engage in political activity through lobbying, or they may criticize research groups that engage in political activities.²⁹

Environmental NGOs

Interest in the environment has increased substantially since the 1980s. In the United States, environmentalism has become a "consensual value."³⁰ The increased interest in the environment has led to the rise of environmental NGOs (ENGOS), one of the most numerous and important

23. See WORLD BANK, COOPERATION BETWEEN THE WORLD BANK AND NGOS, FY94 PROGRESS REPORT (1995) (on file with the *Colorado Journal of International Environmental Law and Policy*).

24. See *id.*

25. See *id.*

26. See RESOURCE GUIDE, *supra* note 18, at 41-43; *Introduction to Greenpeace*, *supra* note 17.

27. See WorldWatch Institute, *Mission Statement* (visited Nov. 11, 1997) <<http://www.worldwatch.org/wi/index.html>>.

28. Resources for the Future (RFF) is an independent, nonprofit research organization. See Resources for the Future, *About RFF* (visited Nov. 9, 1997) <<http://www.rff.org/HOMEABT.HTM>> [hereinafter *About RFF*].

29. Interview with Mike Toman, Director of Climate Economics and Policy Program, Resources for the Future, in Washington, D.C. (Mar. 11, 1997). Research groups engaged in political activities are criticized because such activities are viewed as contrary to the tenets of research institutes. See *id.*

30. See WALTER A. ROSENBAUM, ENVIRONMENTAL POLITICS AND POLICY (3d ed. 1995) 37. Rosenbaum divides the "environmental era" in two. The first era began in the 1960s. See *id.* at 5. The second began when the environmental movement "regained the initiative in the closing days of the Reagan administration." *Id.* at 38. Rosenbaum also believes that environmentalism is a passive consensus, because not many people are actively involved in environmental protection, nor do we do know the depth of the value, as environmentalism has not experienced economic depression. See *id.* at 37, 39, & 99.

categories of NonB-NGOs. ENGOS vary in organizational duration, size of budget and staff, range of activities, ideological orientations, cultural and organizational characteristics, legal status, and means and goals.³¹

ENGOS are divided into three groups.³² The first group, the "ideological mainstream," comprises ENGOS that try to reach their objectives by influencing public policy and attempt to achieve environmental protection within the framework of existing institutions.³³ The second group, the "deep ecologists," comprises ENGOS that challenge fundamental institutional structures and social values.³⁴ The third group, the "radical environmentalists," includes ENGOS that are militant and, which, despite a commitment to nonviolence, often "betray an ambivalence, if not a tolerance, about forms of violence . . . condemned from within and without the environmental movement."³⁵

ENGOS play a role in the "establishment and enforcement of environmental priorities."³⁶ Not only are ENGOS helping to overcome deficiencies in classic international law, they now play different roles in "priority setting and the enforcement of international norms."³⁷ ENGOS are able to fill a niche in international law created by the state-centered notion of international law because of three advantages that they have over nation states. First, they can "articulate powerful universal, single-purpose standards," because they do not have to trade off for other

31. See PRINCEN & FINGER, *supra* note 2, at 4.

32. See ROSENBAUM, *supra* note 30, at 24-26.

33. See *id.* at 24.

34. See *id.* at 25-26.

35. *Id.* at 26. Rosenbaum also points out the following interesting elements: (1) in the United States, social support for the environment is broadly based, and organizational membership is mostly middle-to upper-class, white, well-educated, and affluent; (2) the growing professionalization of leadership among mainline groups has provoked accusations from many environmentalists that the national organizations have lost their vision; and, (3) many scholars think that environmentalism represents a profound redefinition of social values. See *id.* at 28. The author, though, underlines that the verdict is not yet certain, as the economic situation has been unexpectedly prosperous since the environment became a common value.

36. A. Dan Tarlock, *The Role of Non-Government Organizations in the Development of International Environmental Law*, 68 CHI.-KENT L. REV. 61, 61 (1992).

37. *Id.* Tarlock suggests that "as they acquire more real power, [NGOs] must be brought into established legal systems so that they can be subjected to standards of accountability. NGOs should not be held to the standards of national states or international organizations, but minimum norms of responsible environmental participation should be developed to monitor their performance . . . NGOs activities must adhere to some higher standard than simply 'interest' if they are to maintain their legitimacy." *Id.* at 75-76.

objectives.³⁸ Second, they have “little incentive to subordinate science to other political or economical considerations.”³⁹ Finally, they can often cooperate with local environmental groups.⁴⁰

ENGOS also perform at least four related functions. They contribute “new information and perspectives to policy formulation”⁴¹ and articulate universal perspectives.⁴² Additionally, ENGOS directly participate in the enforcement of international environmental standards by lobbying, monitoring, and denouncing states’ behavior and by allocating resources.⁴³

ENGOS also play an important function in world politics⁴⁴ by performing two key roles: as independent bargainers and as agents of social learning.⁴⁵ As independent bargainers, their assets include their access to funds, their ability to attract media attention, their promotion of communication, and their provision of relevant information.⁴⁶ The essential assets of ENGOS, however, are qualities of legitimacy and transnationalism and their important role in enhancing the transparency of dominant actors.⁴⁷ ENGOS use their bargaining leverage to gain access to decision making and to engage in the “formation and reform of international institutions.”⁴⁸ ENGOS’ influence is built on a “niche that other international actors are ill-equipped to fill.”⁴⁹

ENGOS are also agents of social learning. They contribute to societal transformation by framing the issues, building communities, and setting examples:

NGOs free themselves from traditional politics, change the reference point and privileged means of action, grow in numbers and interconnectedness, and become increasingly transnational,

38. *See id.* at 65. Because NGOs are not political enterprises, they do not have to trade off environmental objectives to satisfy powerful constituencies. *See id.*

39. *Id.*

40. *See id.*

41. *Id.* at 69. This function gained legitimacy in the Stockholm Conference on Environment and Development and can be seen in the role that ENGOS acquired after the restructuring of the World Bank. *See id.* at 69–71.

42. *See id.* Tarlock suggests that this function is sometimes correlated with intransigence for others’ opinions and point of views. *See id.* at 72–73. For this reason, critics of ENGOS have at times compared them to fundamentalist religious movements, a typical example of intransigence. When interviewed, for example, many representatives indicated that ENGOS have a sort of moral superiority and feel they stand for moral values rather than economic interests. *See* Interview with Kelly Sims, Science Director of Ozone Action, in Washington, D.C. (Jan. 21, 1997) [hereinafter Sims Interview].

43. *See* Tarlock, *supra* note 36, at 73–74.

44. *See generally* PRINCEN & FINGER, *supra* note 2.

45. *See id.* at 41.

46. *See id.* at 34.

47. *See id.* at 34–36.

48. *Id.* at 36.

49. *Id.* at 41.

they contribute to societal change and transformation in yet another way: they become agents of social learning and therefore significant contributors to learning our way out. Indeed, rather than focusing on traditional politics, how to influence it and how to mobilize for it, environmental NGOs build communities, set examples, and increasingly substitute for traditional political action. They become agents of social learning, whereas social movements were actors of political change only. Taking traditional politics as the cultural model prevented social learning from taking place. Yet, their active role in fostering social learning is probably the most characteristic feature of environmental NGOs today.⁵⁰

By creating "transnational linkages," ENGOs "make their contribution when they translate biophysical change under conditions of global ecological crisis into political change and do so both at the local and global levels";⁵¹ that is, ENGOs create new linkages, from biophysical to political, and from local to global.

B. Business Nongovernmental Organizations

Business nongovernmental organizations (BNGOs) are coalitions of nongovernmental actors that campaign to promote a specific industrial perspective. BNGOs are effective because they are able to provide their members with collective and noncollective benefits.⁵²

Although similar to ENGOs, BNGOs differ in focus, location, and sector represented. Moreover, industry groups can represent either a single sector of industry, like the American Mining Congress,⁵³ or a cross section

50. *Id.* at 64–65.

51. *Id.* at 232.

52. See MANCUR OLSON, *THE LOGIC OF COLLECTIVE ACTION: PUBLIC GOODS AND THE THEORY OF GROUPS*, 145 (1971). Collective benefits result from lobbying for specific purposes decided by the group, such as non-legally binding commitments in the FCCC negotiations. The success and impact on governmental representatives of the positions supported by business NGOs depend in part on the relative representation of the industry sector by the group and the importance of the economic sector in the national economy. For example, industry groups that represent transportation or fossil fuels companies will have a higher impact than the renewable energy sector, because a very large percentage of energy used is produced by fossil fuels.

Members of BNGOs also benefit from noncollective benefits. See *id.* at 145. Noncollective benefits come in the forms of commissions, distribution of relevant studies and data, organizations of conventions, conferences on specific issues of interests, and distribution of sector-specific reports. See *id.* These are benefits that are not available to free riders. Members of BNGOs also have increased access to government and other businesses. Moreover, BNGOs can have substantial financial resources, and some BNGOs also have a relatively good access to decision making at both national and international levels.

53. The American Mining Congress represents the interests of the mining sector.

of many sectors, such as the US Council for International Business (USCIB).⁵⁴ Furthermore, BNGOs can represent both national and international interests, such as the Global Climate Coalition, a national industry group that represents the national and international interests of US fossil fuels and transportation companies.⁵⁵ Another example is the World Business Council for Sustainable Development (WBCSD), an international BNGO that represents the interests of international businesses in environmental issues.⁵⁶

Some industry groups are a coalition of other industry groups. For example, the US Chamber of Commerce is formed by local Chambers of Commerce,⁵⁷ and it is also a member of the International Chamber of Commerce.⁵⁸ Industry groups can also be sector-specific, representing all issues of concern to a specific sector (for example, the American Mining Congress, which represents the interests of the mining sector),⁵⁹ or they can be issue-specific and represent more than one sector on a single issue (the Global Climate Coalition, for example, represents the interests of the fossil fuels and transportation sectors in the negotiation on climate change).⁶⁰

BNGOs normally comprise a relatively small number of companies, which are usually required to pay fees.⁶¹ BNGOs may take a more conservative position on issues than their individual members. Because BNGOs are coalitions of businesses or sectors, the lowest common denominator usually prevails. Leading positions in industry associations

See American Mining Congress (visited Nov. 9, 1997) <<http://www.crest.org/renewables/eerg/amc.html>>.

54. Members of US Council for International Business (USCIB) include approximately 190 corporations (such as Coca-Cola, Colgate-Palmolive, 3M, Microsoft, Philip Morris, and Time-Warner), 60 law firms, and 26 organizations. *See generally* UNITED STATES COUNCIL FOR INTERNATIONAL BUSINESS, 1995–1996 ANNUAL REPORT [hereinafter USCIB ANNUAL REPORT].

55. *See* James E. Beard, Comment, *An Application of the Principles of Sustainability to the Problem of Global Climate Change: An Argument for Integrated Energy Services*, 11 J. ENVTL. L. & LITIG. 191, 204 (1996). *See also* Global Climate Coalition, *Statement of Purposes and Principles* (visited Nov. 9, 1997) <<http://www.worldcorp.com/dc-online/gcc/whoware.html>> [hereinafter *GCC Statement*].

56. *See What Is the WBCSD?* (Nov. 7, 1997) <<http://www.wbcd.ch/whatis/whatisthewbcd.html>>.

57. *See About the United States Chamber of Commerce* (visited Nov. 8, 1997) <<http://www.uschamber.org/about/aboutorg.html>>.

58. *See International Chamber of Commerce* (visited Nov. 9, 1997) <<http://www.imex.com/uscib/global/icc.htm>>.

59. *See American Mining Congress*, *supra* note 53.

60. *See GCC Statement*, *supra* note 55.

61. Supporter members (the majority) of the Global Climate Coalition pay an annual subscription fee of \$20,000; other members pay \$2,500. *See* Interview with Eric Holdsworth, Associate Director of the Global Climate Coalition (GCC), in Washington, D.C. (Jan. 23, 1997) [hereinafter Holdsworth Interview].

are normally covered by representatives of small, conservative companies, while the financial means of the associations are provided by big corporations.⁶² This is particularly important for issues such as climate change, where industry groups support positions that are often more conservative than those of governments and ENGOs. Furthermore, the positions of companies cannot always be identified by the identity of the group to which they belong; in fact, many companies choose to become members of several groups that support different platforms.⁶³

BNGOs interested in environmental issues have been formed both at the national and international levels. However, BNGOs have differing motivations for their interest in environmental issues. Some industry groups represent renewable energy producers and natural gas companies, which lobby for more stringent environmental regulations that would support the expansion of their sector.⁶⁴ Other BNGOs represent sectors that, even though they do not have a direct economic interest in environmental matters, have an interest in environmental issues for such reasons as company development and public consensus.⁶⁵ Other BNGOs represent a more conservative point of view and are interested in environmental legislation insofar as it affects the sector they represent; such BNGOs have embraced only limited actions to protect the environment.

IV. THE GROWING IMPORTANCE OF NGOS IN INTERNATIONAL NEGOTIATIONS

NGOs have developed scientific expertise and lobbying skills that allow them to be effective participants in the negotiations of environmental treaties. NGOs are also acquiring a defined legal role in international

62. See OLSON, *supra* note 52, at 147.

63. For example, many US oil companies are members of Global Climate Commission (GCC) and World Business Council for Sustainable Development (WBCSD), two BNGOs that support relatively different views on climate change. See *WBCSD Member Companies* (Oct. 9, 1997) <<http://www.wbcds.ch/>>; Memorandum from the Global Climate Coalition, *Global Climate Coalition Membership* [hereinafter GCC Membership Memorandum] (both on file with the *Colorado Journal of International Environmental Law and Policy*); see also *GCC Statement*, *supra* note 55.

64. See discussion *infra* Part V.b.2.

65. These groups can bring about a change in industry behavior by proposing that an industry address environmental concerns in its agenda. One such group is the World Business Council for Sustainable Development (WBCSD), an international group that represents companies from a variety of economic sectors. See *What Is the WBCSD?*, *supra* note 56. The WBCSD was formed in 1991 when the Swiss industrialist Stephen Schmideheiny was appointed as the principal business advisor to UNCED Secretary-General Maurice Strong. Schmideheiny enlisted a group business leaders to provide "advice and guidance to the UNCED secretariat on activities undertaken by business and industry with respect to the preparatory process for the 1992 [Rio] Conference." PRINCEN & FINGER, *supra* note 2, at 201-02.

environmental law. In 1992, the OSPAR Marine Environment Convention recognized the importance of their presence for the first time. Without differentiating among the actors, it granted "observers status" to NGOs along with nonparty states and international organizations, all of which may be admitted as observers, participate in meetings, and present relevant information or reports.⁶⁶

Another significant moment in the evolving role of nongovernmental actors in international law was the 1992 United Nations Conference on Environment and Development (UNCED). The UNCED is often taken as an example of how NGOs can participate in the negotiating system and provide valuable expertise. At the UNCED, as with the OSPAR Marine Environment Convention, BNGOs held the same status as other nonprofit organizations; nearly 1,500 NGOs were accredited to attend formal meetings and some informal meetings.⁶⁷ They were also permitted to lobby governmental representatives, present documents, and meet among themselves.⁶⁸ Agenda 21, a non-legally binding agreement that sets the environmental and development objectives for governments, also sets forth the importance of the participation of NGOs in international law.⁶⁹

66. See *Convention for the Protection of the Marine Environment of the North-East Atlantic*, art. 11.1, reprinted in IIA PHILIPPE SANDS, DOCUMENTS IN INTERNATIONAL ENVIRONMENTAL LAW 474, 481 (1995). See also SANDS, *supra* note 2, at 95–96.

67. See Kal Raustiala, Note, *The "Participatory Revolution" in International Environmental Law*, 21 HARV. ENVTL. L. REV. 537, 552 (1997).

68. The UNCED identifies nine major groups that contributed significantly to the UNCED process and will continue to do so in the follow-up phase. These groups are: women, children and youth, indigenous people, nongovernmental organizations, local authorities, workers and trade unions, business and industry, scientific and technological communities, and farmers. Environmental and business NGOs play a more relevant role in the Framework for Climate Change Convention (FCCC) than other major UNCED groups. This has been recognized by the Framework Convention on Climate Change Secretariat itself, which is developing consultative mechanisms NGOs.

The Secretariat has taken three groups into consideration: environmental NGOs, business groups, and local authorities. A workshop to discuss the possible scope and structure of a nongovernmental advisory committee and/or a business consultative mechanism was held in March 1996. See *Decisions Adopted by the Conference of the Parties: The Subsidiary Bodies Established by the Convention*, Framework Convention on Climate Change Conference of the Parties, 1st Sess., Decision 6/CP.1, Annex 1, UN Doc. FCCC/CP/1995/7/Add.1 (June 6, 1995) reprinted in 34 I.L.M. 1693, 1693.

69. See *U.N. Conference on Environment and Development, Agenda 21*, U.N. Doc. A/CONF. 151/4 (1992), reprinted in THE EARTH SUMMIT: THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT (UNCED) 125–508 (Stanley P. Johnson ed., 1993) [hereinafter *Agenda 21*]. Article 38.42 states that "relevant non-governmental organizations . . . should be given opportunities to make their contributions and establish appropriate relationships with the United Nations system." *Id.* at 497. Article 38.43 provides that the UN system, in consultation with NGOs, should take measures to design effective means for the participation of NGOs, take into account the findings of review systems and evaluation processes of NGOs. See *id.* Furthermore, Article 38.44 states that the UN should take measures to establish procedures for an expanded role of NGOs. See *id.* at 497–98.

V. NGOS IN THE UN FRAMEWORK CONVENTION ON CLIMATE CHANGE

At the Earth Summit in Rio in June 1992 (Rio Conference),⁷⁰ 153 states and the European Union entered into the UN Framework Convention on Climate Change (FCCC), a legally binding international treaty aimed at stabilizing the emissions of greenhouse gases and slowing down climate change caused by human-induced interference.⁷¹

The Rio Conference is generally recognized as one of the first events that acknowledged the role of nongovernmental actors in environmental negotiations and served as an impetus for their inclusion in future conferences.⁷² Although the NGOs met in locations separate from national and international governmental representatives, they had frequent contact with representatives and were kept informed on the progress of the negotiations. In Rio and at subsequent climate change negotiations, NGOs addressed the plenary from the floor. NGOs also made fruitful use of their scientific expertise in climate change and used mass media skillfully.

Furthermore, the FCCC formally recognized the importance of the role that NGOs played in the Convention. Article 7.6, which sets out the rule for admission at the proceedings, states that "[a]ny body, or agency, whether national or international, governmental or non-governmental, which is qualified in matters covered by the Convention, and which has informed the secretariat of its wish to be represented at a session of the Conference of the Parties as an observer, may be so admitted unless at least one-third of the Parties present object."⁷³

Articles 4.1.i and 7.2.1 address the role of NGOs in the FCCC. Article 4.1.i recognizes that NGOs are important to stimulate and increase public awareness on climate change. The article states that all Parties shall "[p]romote and cooperate in education, training and public awareness related to climate change and encourage the widest participation in this process, including that of non-governmental organizations."⁷⁴ Article 7.2.1 addresses the issue of supervising the implementation of the Convention by the Conference of the Parties (COP); to this end, the COP shall "seek

70. United Nations Conference on Environment and Development, June 3–14, 1992, in Rio de Janeiro, *reprinted in* 31 I.L.M. 814.

71. *See* UN Conference on Environment and Development: Framework Convention on Climate Change, May 9, 1992, 31 I.L.M. 849 (entered into force Mar. 21, 1994) [hereinafter FCCC].

72. *See Tarlock, supra* note 36, at 63. At the Rio Conference, the ratio of NGO participants to UN and government officials was one to one.

73. *See* FCCC, *supra* note 71, art. 7.6, 31 I.L.M. 862.

74. *See id.*, art. 4.1.i, 31 I.L.M. 856.

and utilise, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies.”⁷⁵

A. Environmental NGOs and the Climate Change Debate

NGOs played a major role in the FCCC negotiations by becoming involved in the negotiations at a very early stage. Approximately one hundred representatives of thirty different NGOs attended the Conferences of the Parties; in general, fewer NGO delegates participated in intermediate meetings.⁷⁶ The most influential and active NGOs were advocacy groups representing both mainstream and deep-ecologist ideologies, and representing both international and national perspectives. Some of the NGOs were legal entities with significant expertise in litigation and international treaty drafting. Research institutes and project-focused NGOs were also present.

The NGOs that played a significant role in the evolution of the negotiations were the Climate Action Network (CAN), the World Wildlife Fund (WWF), Greenpeace, the Environmental Defense Fund, the Sierra Club, Ozone Action, and the WorldWatch Institute.

The Climate Action Network (CAN) is an umbrella NGO comprising a coalition of NGOs involved in FCCC negotiations.⁷⁷ It is divided into eight regional focal groups, which coordinate CAN efforts in Africa, Europe, Asia, Latin America and US; these regional coalitions then constitute a global coalition, the Climate Action Network.⁷⁸ CAN coordinates the positions of NGOs during the negotiations and expresses the views of its members. CAN has a unique role in the negotiations, as it allows environmental NGOs to express one single position at the negotiations. Moreover, because of its large membership, it has an important impact on the negotiations process.

The World Wildlife Fund (WWF) is the world's largest independent conservation organization.⁷⁹ It has national organizations in fifty countries around the world and has established conservation projects in 100 countries.

75. See *id.*, art. 7.2.1, 31 I.L.M. 861.

76. For example, only 34 representatives participated in AGBM3, while about 90 went to ABGM6 in Bonn in March 1997. See *NGO Representatives* (visited Oct. 24, 1997) <<http://www.unfccc.de/fccc/events/sbfeb97/ngo.htm>>. However, the NGOs' participation in meetings also depended on the issues discussed.

77. See Climate Action Network, *About the Climate Action Network* (visited Nov. 7, 1997) <<http://www.igc.org/climate/AboutCAN.htm>>.

78. See *id.*

79. See *WWF* (visited Nov. 7, 1997) <http://www.panda.org/resources/factsheets/general/fct_wwf2.htm>.

The WWF was initially established to protect wildlife and endangered species, and it is generally perceived as an apolitical organization. Notwithstanding, it has, in the past years, directed much of its efforts toward international policy issues and has been very active at the negotiations of the FCCC. It supports measures to cut the greenhouse gas (GHG) emissions by twenty percent over 1990 levels by the year 2005 (Alliance of Small Island States (AOSIS) protocol).⁸⁰ The WWF is also involved in the FCCC negotiations both as a member of CAN and as an independent organization.

As an independent organization, it financed a study at Utrecht University in the Netherlands that quantifies the costs of GHG reductions in the EU.⁸¹ The study concludes that twenty percent GHG reductions by 2005 are achievable in the EU at negative or limited costs.⁸² Moreover, because of its broad presence and its image as an apolitical organization, the WWF has access to a wide range of players in the negotiations in the national, international, and business communities. It is also engaged in a dialogue with economic sectors with a goal of creating support among businesses for emissions reduction in the negotiations at Kyoto. And the WWF is addressing the transportation, heavy industry, and building sectors.⁸³

Greenpeace is perhaps the most well-known of the "advocacy" ENGOs, especially in its skillful use of the mass media and confrontational activities.⁸⁴ Greenpeace is the fastest growing ENGO, with more than 3.3 million members in twenty countries.⁸⁵ Based in Amsterdam, with local groups active in Europe and the United States, Greenpeace engages in creative and innovative campaigns and has mastered the use of modern communication technologies for advertising its tenets.⁸⁶ A member of CAN, Greenpeace has been actively involved in the negotiations on climate change from the early stages. Greenpeace supports the AOSIS protocol and supports a shift toward renewable energies such as wind and solar.⁸⁷

80. See WWF Climate Change Campaign, *Policies and Measures to Reduce CO2 Emissions by Efficiency and Renewables: A Preliminary Survey for the Period to 2005* (1996) 15 [hereinafter *WWF Survey*].

81. See generally *id.*

82. See *id.*

83. See *id.*

84. See RESOURCE GUIDE, *supra* note 18, at 198–201.

85. GARETH PORTER & JANET WELSH BROWN, *GLOBAL ENVIRONMENTAL POLITICS* 51 (2d ed., 1996).

86. See RESOURCE GUIDE, *supra* note 18, at 198–201.

87. See Greenpeace, *Greenpeace International Climate Campaign* (visited Nov. 7, 1997) <<http://www.greenpeace.org/~climate/climatesum.html>>.

The Environmental Defense Fund (EDF) is a “mainstream” ENGO that mostly deals with policy and legal issues.⁸⁸ It is a national US ENGO, but it is also actively involved in international issues such as climate change. The EDF is an important player in international negotiations, because, contrary to most ENGOs, it supports market-based economic measures.⁸⁹ This position facilitates EDF’s discussions with government and businesses representatives. However, its support for economic measures has at times created tensions in the environmental community; the EDF has been criticized by “deep ecologist” NGOs as being too close to the interests of businesses.

The EDF has collaborated extensively with the US delegation to the FCCC to produce the proposal of a protocol to be negotiated by the Parties in Kyoto. The proposal provides each Party with a ten-year emissions budget with the possibility of borrowing (with a penalty) from future budgets, using emissions surplus for future budgets, or selling the surplus to other Parties. The budget proposal was criticized by other US ENGOs and has created tensions within the ENGO community.

One of the oldest ENGOs, the Sierra Club was formed at the turn of the century as a conservation organization. With 600,000 members in the United States, the Sierra Club is now a “deep ecologist” organization with policy positions similar to those of Greenpeace. The Sierra Club supports the AOSIS protocol and supports more severe emissions reductions in the United States (twenty-five percent by the year 2005). To reduce GHG emissions, the Sierra Club supports policies that increase the standards of the Corporate Average Fuel Economy (CAFE) so that less gas is consumed for transportation.⁹⁰ The Sierra Club has been less involved in the FCCC negotiations in the last three years. However, it is directing its attention and effort to increase public awareness of the issue of climate change.

Ozone Action is a small US “deep ecologist” ENGO with its headquarters in Washington, D.C.⁹¹ Although it is not a member of CAN,⁹² it played an important role in the negotiations.⁹³ The position of NGOs at the Sixth Session of the Ad Hoc Group on the Berlin Mandate (AGBM6) (March 1997, Bonn) was read by one of its representatives. Ozone Action has also collaborated extensively on the publication of *ECO*, the ENGOs’

88. See EDF, *supra* note 20.

89. See *id.*

90. See Jeanne L. Newlon, Note, *New Requirements for Alternative Fueled Automobiles: Fuel Economy Labeling and the CAFE Program*, 1 ENVTL. LAW. 891, 897 (1995).

91. See Sims Interview, *supra* note 42. See also Ozone Action, *Background and Publications* (visited Nov. 7, 1997) <<http://www.ozone.org/backII.html>>.

92. See Sims Interview, *supra* note 42.

93. See *id.*

daily publication of FCCC meetings. Ozone Action is also contacting East Coast beach and tourist resorts to demonstrate the effects of global warming on these sectors, trying to stimulate these sectors to join negotiation to reduce emissions.⁹⁴

The WorldWatch Institute (WWI), a member of CAN, is a research institute ENGO that is heavily involved in the negotiations on climate change.⁹⁵ It participated in the formation of the Business Council for a Sustainable Energy (BCSE),⁹⁶ an industry group formed by representatives of renewable energy and natural gas industries.⁹⁷ The WWI publishes an annual "State of the World" publication that is regarded as among the most important publications of its kind.⁹⁸ It is also involved in research on the impact of weather-related disasters on the insurance industry.⁹⁹

In addition to these primary players, other ENGOs participated to various degrees in the FCCC negotiations. The Natural Resources Defense Council (NRDC) participated actively and provided important support to advocacy ENGOs throughout the negotiations. Resources for the Future (RFF)¹⁰⁰ and the World Resources Institute (WRI),¹⁰¹ two scientific and economic think tanks, were instrumental in providing unbiased scientific and economic studies to negotiators.

B. Business NGOs in the Climate Change Debate

Many business NGOs are involved in the negotiations of the FCCC. Their involvement in the debate about climate change is becoming more substantive as the possibility of legally binding commitments becomes more concrete.¹⁰² At some of the negotiations, the number of industry representatives present was almost double that of their ENGOs counterparts.¹⁰³

94. *See id.*

95. Interview with Chris Flavin, Senior Vice President and Director of Research of WorldWatch Institute, in Washington, D.C. (Jan. 21, 1997) [hereinafter Flavin Interview].

96. A member of WWI still sits on the board of directors of BCSE. *See id.*

97. *See* John G. Hemphill, *Six Principles for a Sustainable Energy Future*, UN CLIMATE CHANGE BULLETIN (1995) (visited Nov. 9, 1997) <<http://www.unep.ch/iucc/bulltn8.html#art4>>.

98. *See* RESOURCE GUIDE, *supra* note 18, at 434-36.

99. *See* Flavin Interview, *supra* note 95.

100. *See* About RFF, *supra* note 28.

101. The World Resources Institute is an "independent center for policy research and technical assistance on global environmental and development issues." World Resources Institute, *About WRI* (visited Nov. 9, 1997) <<http://www.wri.org/wri/wri.html>>.

102. Mr. Holdsworth noted that "sometime after COP1, industry representatives became more numerous than environmental NGO representatives." *See* Holdsworth Interview, *supra* note 61.

103. At AGBM6 in Bonn in March 1997, there were more than 150 representatives from about 35 industry groups. About 90 representatives of environmental NGOs went to Bonn, from about 25 organizations. *See* NGO Representatives, *supra* note 76.

BNGOs represent different points of views and different sectors. This section will describe the position of BNGOs that played a major role in the FCCC negotiations. Because BNGOs very often represent one industrial sector, the description is divided into industrial activities; it will, however, take into account both single industry sectors and groups representing them.

1. Coal and Oil Companies and the Energy-Intensive Industries

The use of fossil fuels (oil, coal, and gas) contributes substantially to GHG emissions.¹⁰⁴ Fossil fuels producers are the major industrial stakeholder in the negotiations of the FCCC; oil and coal companies have participated in both the debate on global warming and the negotiations of the FCCC from its beginning.¹⁰⁵ Because of the importance of fossil fuel energy in the economy, many industrial sectors are stakeholders in negotiations that may impact the use of fossil fuels.¹⁰⁶ Other stakeholders in fossil fuels negotiations include energy-intensive sectors such as aluminum producers, the iron and steel industry, paper companies, and plastics producers.¹⁰⁷

During the negotiations of the FCCC and its subsequent meetings, the interests of many fossil fuels companies were represented by more than one BNGO. Two conservative BNGOs that represent such interests are

104. See Kevin Jardine, *Finger on the Carbon Pulse: Climate Change and the Boreal Forest*, 24 *ECOLOGIST* 220, 220 (Nov-Dec. 1994).

105. See Frank McDonald, *Oil and Coal Lobby Feel the Heat as Greenhouse Gas Debate Warms Up*, *IRISH TIMES*, July 20, 1996, available in LEXIS, World Library, ALLWLD File.

106. See *id.*

107. Oil and coal sectors will be most affected by a more stringent GHG emissions policy. The US coal industry is active in negotiations to avoid legally binding reduction agreements and to agree only on nonregret and voluntary reduction measures. Irl Engelhart, chairman of Peabody Holding Co., a coal company that controls 10% of US production, recently declared that "if global climate change restrictions are imposed, the coal industry will not have an opportunity to adjust." *International Gas Report: US Coal Chief Concedes Gas Edge*, *FIN. TIMES LIMITED* 1994, May 13, 1994, available in 1994 WESTLAW 9220425.

Oil companies share similar concerns, and during negotiations, usually lobby from a similar standpoint. In fact, of all fossil fuels, coal has the highest CO₂ emission per unit of energy, at about 25 kg. carbon per giga joule (C/GJ), while oil has 20 kg. C/GJ and natural gas has only 14 kg. C/GJ. Moreover, fuels that contain less carbon can, in general, be converted more efficiently than fuels with a higher content of carbon. Even if natural gas releases CH₄, new approaches exist to reduce the emission of CH₄ from both pipelines and gas wells. See *CLIMATE CHANGE 1995: IMPACTS, ADAPTATIONS AND MITIGATION OF CLIMATE CHANGE: SCIENTIFIC-TECHNICAL ANALYSIS* 596 (Marufu C. Zinyowera, ed., 1995). The same IPCC report indicates that "present assessment of reserves and resources of oil and gas are well below cumulative emissions permitted for stabilization at 500 ppmv or higher," thus underlining the environmental economic advantage of oil companies over coal companies. *Id.* Furthermore, some oil companies have interests in natural gas, the use of which will boom if GHG emissions restrictions are imposed.

the Climate Council¹⁰⁸ and the Global Climate Coalition (GCC).¹⁰⁹ Other BNGOs represent similar interests. The American Petroleum Institute (API) represents the positions of US oil companies on many issues.¹¹⁰ The API actively participated in negotiations. Additionally, it financed a study analyzing the costs of implementing reduction targets.¹¹¹

In many cases, companies are members of multiple groups that represent diverse views. There are at least two reasons for this phenomenon: first, multinational companies can have more than one interest (for example, they can produce fuels from oil, gas, and coal or be interested in expanding their chemicals business) and, as such, need to be represented by more than one sector's BNGO. Second, as briefly outlined earlier, their position may vary from country to country.

108. The Climate Council's membership is not known. Don Pearlman, an attorney who represents the group at the negotiations, tries to prevent any kind of agreement and helped OPEC representatives in writing interventions and in suggesting ways to block and delay decisions. Environmental NGOs regard Pearlman as a great lobbyist, even if they do not agree with his views or with his methods. *See* Sims Interview, *supra* note 42.

109. The GCC has 42 board members and 17 general members. *See* GCC Membership Memorandum, *supra* note 63. Board members include the Air Transport Association, Aluminum Association, Inc., Atlantic Richfield Coal Company, Chemical Manufacturers Association, Chevron, Exxon, Ford, GM, Texaco, and others. *See id.* General members include Amoco, BHP minerals, Dow Chemicals, Goodyear Tire & Rubber Co., and Shell Oil Company. *See id.*

This group is based in Washington, D.C., and has financed numerous alternative economic studies on the impacts and costs of proposed cuts on the economy. In the first phase of the Climate Change Negotiations, the GCC tried to discredit the scientific evidence of global warming by saying that the findings were incorrect and the proceedings doubtful. *See* Kelly Sims, *Gone Completely Crazy*, Ozone Action (visited Nov. 8, 1997) <<http://www.igc.org/climate/c2.1.gcc.html>> [hereinafter *Gone Completely Crazy*]. The GCC now recognizes that the IPCC is the most authoritative source of scientific evidence for climate change, but it wishes to collect more evidence before taking action. Both the GCC and the Climate Council are heavily criticized by ENGOs for their conservative position.

110. *See* American Petroleum Institute, *What Is API?* (visited Nov. 8, 1997) <<http://www.api.org/ThursdayLaunch/whoapi.htm>>. The American Petroleum Institute (API) has strongly attacked President Clinton's proposals to reduce GHG emissions and has voiced skepticism about the science of climate change and the costs on the economy. *See* American Petroleum Institute on Global Climate Change, PRNewswire, Oct. 22, 1997, <<http://pathfinder.com/@@Y1J14QYA.../latest/press/PW/1997Oct22/2315.html>>.

111. The International Petroleum Industry Environmental Conservation Association (IPIECA) is the petroleum industry's principle channel of communication with the UN. *See* Lee Solsbery, *Projected Greenhouse Emissions*, IPIECA SYMPOSIUM ON CRITICAL ISSUES IN THE ECONOMICS OF CLIMATE CHANGE (1996). Although it is not an active participant in the negotiations, it organizes highly specialized conferences and workshops. *See id.* For example, the IPIECA organized a symposium on Critical Issues in the Economics of Climate Change in Paris in the summer of 1996 where experts, scientists, and business representatives discussed the issue of the costs of emissions reductions. *See id.*

Other BNGOs that represent fossil fuels, transportation, and energy-intensive sectors exist. They include the World Business Council for Sustainable Development,¹¹² the US Council for International Business,¹¹³ and the International Chamber of Commerce.¹¹⁴ Some of these BNGOs are members of other BNGOs, making it difficult to differentiate between the BNGOs and their positions. The GCC, for example, is a member of the US Council for International Business;¹¹⁵ the API is a member of the GCC.¹¹⁶ Sometimes, these groups also share top managers. William O'Keefe, for example, is the former executive vice-president of API and current chairman of the GCC.¹¹⁷

2. Renewable Energy Industry

Renewable energy producers will benefit the most from a reduction of the world's dependence on fossil fuels. The renewable energy sector includes solar and wind energy producers, cogeneration, and energy-efficiency companies.¹¹⁸

This sector is represented in the United States by the US Business Council for Sustainable Energy (USCSE) and in Europe by the European Business Council for a Sustainable Energy Future (E5).¹¹⁹ At COP2, for the first time, the renewable energy industry presented a separate intervention from the floor at the Plenary session.¹²⁰ Similarly, at AGBM6, the following meeting, industry groups representing renewables and natural gas presented a separate statement. At AGBM6, the USCSE and E5 proposed as priorities for the Parties "setting clear near-term targets and time frames[,] using market-based tools to account for 'external costs' of energy, which would allow each Party to select suitable options[,] and reducing and eliminating institutional barriers, such as subsidies and tax exemptions."¹²¹

112. See *What Is the WBCSD?*, *supra* note 56.

113. See USCIB ANNUAL REPORT, *supra* note 54, at 30–31. The USCIB is the US affiliate of the International Chamber of Commerce and the Business and Industry Advisory Committee to the Organization for Economic Cooperation and Development (OECD). See *id.* at 1.

114. See *International Chamber of Commerce*, *supra* note 58.

115. See USCIB ANNUAL REPORT, *supra* note 54, at 31.

116. See GCC Membership Memorandum, *supra* note 63.

117. See *Gone Completely Crazy*, *supra* note 109.

118. See *Greenhouse Gas Technology Information Exchange* (visited Nov. 10, 1997) <<http://www.greentech.org/class/class0.htm>>; *Climate Solutions* (visited Nov. 10, 1997) <<http://www.igc.org/climate/Climatesolutions.html>>.

119. See *Sustainable Success* (visited Nov. 7, 1997) <<http://www.igc.apc.org/climate/c2.8sustain.html>>.

120. Interview with Kirk Brown at Business Council for Sustainable Energy, in Washington, D.C. (Jan. 21, 1997).

121. See Chad Carpenter et al., *Report of the Sixth Session of the Ad Hoc Group on*

3. Chemical Industry

The chemical sector became involved in the climate change debate at an early stage, when concerns were raised about the warming effects of chlorofluorocarbons (CFCs) and possible substitute gases. The Montreal Protocol provides for a complete phaseout of CFCs by its signatory parties.¹²² It is believed that this will substantially decrease the impact of CFCs in the atmosphere. However, scientists demonstrated that substitutes developed by industry to replace CFCs also have warming potential.¹²³

At the FCCC negotiations, the chemical sector was mostly represented by the International Climate Change Partnership (ICCP), a group based in Virginia.¹²⁴ The ICCP is an industry group that represents chemical, air conditioning, appliance, and communication companies, and other industry sectors. Some members of the GCC are also members of the ICCP even if its position is less conservative than the one supported by the GCC. BP,

the Berlin Mandate, EARTH NEGOTIATIONS BULLETIN (Mar. 10, 1997) <<http://www.iisd.ca/linkages/download/asc/enb1245e.txt>>.

122. See Montreal Protocol on Substances That Deplete the Ozone Layer, Sept. 16, 1987, 26 I.L.M. 1550 (entered into force Jan 1, 1989).

123. The chemical sector was thoroughly involved in the negotiation of the Montreal Protocol on Substances That Deplete the Ozone. Their involvement in the climate change negotiations will bring valuable expertise in negotiations. Moreover, if chemicals or other industry sectors see relative comparative advantage in supporting emissions reductions at the negotiations, as happened in Montreal, the FCCC negotiations could change their status considerably. Du Pont, for example, had developed a substitute for CFCs and was active during the negotiations of the Montreal Protocol, because it thought it could gain a comparative advantage. See Hilary F. French, *Learning from the Ozone Experience*, in STATE OF THE WORLD 1997 151, 161-62 (Linda Starke, ed., 1997).

The Montreal Protocol is generally considered a successful example of industry sector involvement in an environmental treaty, as the participation of the chemical sector was fundamental in arriving at a solution. In fact, during the negotiations of the Montreal Protocol, producers of ozone-depleting substances announced that they had found substitutes for CFCs and supported measures to phase out CFCs. This greatly facilitated the conclusion of an agreement over the Montreal Protocol. The substitutes (HCFCs and hydrofluorocarbons- HFCs) are now recognized as having a high warming potential, and negotiators consider their limitation. See *id.* at 170-71.

124. Members of the ICCP include: 3M Company, Air Conditioning and Refrigeration Institute, AT&T, BP America, Dow, Dupont, Elf Atochem, European Fluorocarbon Technical Committee, and General Electric. See International Climate Change Partnership, *ICCP Supports U.S. Call for Long-Term Focus on Climate Change Issue* (press release July 17, 1996) [hereinafter *ICCP Supports*] (on file with the *Colorado Journal of International Environmental Law and Policy*). More conservative chemical companies are also members of the GCC (e.g. Dow Chemicals). See *id.*; *supra* note 109.

for example, has been a member of the two and maintained its membership in ICCP when it left the GCC.¹²⁵ The ICCP supports long-term comprehensive goals and market-based solutions.¹²⁶

4. Insurance and Reinsurance Industry

Insurance and reinsurance companies belong to a sector interested in the FCCC negotiations, because they are affected by global warming if the projections of climate change are accurate.¹²⁷ In the last decade, insurance and reinsurance industries have, in fact, experienced unprecedented losses due to weather disasters.¹²⁸ In the future, climate change has the potential to unsettle the insurance market if the patterns of climatic change are not understood, or if the risks are misinterpreted or underestimated.¹²⁹

The insurance and reinsurance sectors do not share a common position on the issue of climate change.¹³⁰ US companies, on the one hand, are not involved in the negotiations.¹³¹ Instead, their efforts of addressing climatic disasters are directed toward a better understanding of hurricane patterns and a reconsideration of risk assessment.¹³² On the other hand, European insurance and reinsurance companies are interested in the FCCC negotiations and in the issue of climate change.¹³³ In 1990 these companies began to link financial losses attributable to bad weather conditions to the change of climate patterns. A U.K. scientific panel prepared a report

125. The position of BP on climate change is outlined in British Petroleum, *Global Climate Change* (visited Nov. 24, 1997) <<http://www.bp.com/hse/where/climate.html>>.

126. See *ICCP Supports*, *supra* note 124.

127. See Franklin W. Nutter, *Insurance and the Natural Sciences: Partners in the Public Interest*, Casualty Actuarial Society, Special Interest Seminar on Catastrophe Issues (Apr. 15, 1996), at 2–3 (on file with the *Colorado Journal of International Environmental Law and Policy*). There are more than \$2 trillion of insured assets in the US coastlines alone. See Mark Hertsgaard, *Insurance Firms, Banks Battle Big Oil*, SACRAMENTO BEE, Feb. 4, 1996, at FO1 available in WESTLAW, SCRMTO-BEE Database.

128. See Nutter, *supra* note 127, at 2.

129. See Jeremy Leggett, *Climate Change and the Insurance Industry: Solidarity Among the Risk Community*, GREENPEACE, Feb. 1993, at 2.

130. Interview with Franklin Nutter, President of the Reinsurance Association of America, in Washington, D.C. (Mar. 12, 1997) [hereinafter Nutter Interview].

131. See *id.*

132. Franklin Nutter, president of the Reinsurance Association of America, states that the position of some insurers in waiting for a scientific assessment of the effect of global warming on climate and weather before taking corrective measures is “ill-advised.” Nutter, *supra* note 127, at 4. In addition to undertaking catastrophe modeling calls, education, building code revisions, and so on, Mr. Nutter calls for “an insurance rating system reflective of the scientific knowledge of climate and climate change and seismic assessment.” *Id.* at 4–5.

133. See Nutter Interview, *supra* note 130.

warning British insurers of the effects of climate change.¹³⁴ Munich Reinsurance Company (Munich Re), the world's largest reinsurance company,¹³⁵ "has long been pleading for measures to be taken with a view to curbing man-made changes in the environment"¹³⁶ because "in many regions of the world the increasingly discernible changes in the environment and climate are leading to a greater probability of new extremes in terms of temperatures, amounts of precipitation, water levels, wind velocities, and other parameters that are often finally reflected in catastrophes."¹³⁷

Similar positions have been taken by General Accidents and Swiss Reinsurance Company.¹³⁸ Furthermore, a group of sixty insurers, under the auspices of the UN, signed a statement committing the insurers to cooperate in addressing climate change.¹³⁹ The risk sector is, in fact, financially very powerful, and a decision by some of its members to actively support a reduction in emissions could shift the equilibrium of the negotiations in favor of action.

VI. CONCLUSION

Nongovernmental organizations are a typical contemporary phenomenon. They play an important social and economic role in the development of society. Additionally, NGOs are important actors in international and national politics. They provide scientific information and alternative policy options and also provide assistance in monitoring the implementation of international agreements. The importance of their contributions is recognized by governments and international organizations alike, some of which are developing programs to institutionalize the support of NGOs.

134. See Edwin Unsworth, *Exposure Heats Up: Climate Change to Raise Claims: Study*, BUS. INS., July 15, 1996 available in 1996 WESTLAW 7532910.

135. See Munich Re, *1996 Another Year of Natural Catastrophes: Floods, Windstorms, Earthquakes, Volcanic Eruptions Claim 11,000 Lives and Cause Losses Exceeding US\$ 60 bn/Bill for the Insurance Industry Worldwide Only US\$ 9bn* (press release Dec. 23, 1996) <http://www.munichre.com/public/publications/press/eng_961223_f.htm>.

136. See *id.*

137. See *id.*

138. See Nutter, *supra* note 127, at 4. Similarly, Carlos Joly, a spokesman for Norway's largest insurer, UNI Storoerbrand, and the leader of a UN task force on climate issues, declared that "global warming to many of us in the industry is not a question of if it will happen, but what is happening now." *Global Warming Spurs New Development in Insurance, Banking*, GLOBAL WARMING NETWORK ONLINE TODAY, July 18, 1995, available in 1995 WESTLAW 2265919.

139. See Nutter, *supra* note 127, at 4.

However, NGOs are a heterogeneous group. They differ in their activities, methods, and focus of interest. Another important element that defines NGOs is their political perspective. An important distinction between different groups of NGOs are business NGOs (BNGOs) and nonbusiness NGOs (NonB-NGOs). Generally, BNGOs represent the interests of industry and business. NonB-NGOs, such as ENGOs, often represent opposing views from BNGOs. ENGOs have become particularly important because they create linkages between the scientific community and the public, and between global and the local societies. They also play a fundamental role in providing scientific research and advocacy and by lobbying support for common environmental concerns.

Although BNGOs and NonB-NGOs differ in many respects, both groups played an important role in the negotiation of the FCCC. Although the objectives of BNGOs and ENGOs are often opposed, both groups will continue to influence the outcome of the FCCC.

