



As conceptions of sovereignty have evolved, global watchdog institutions have assumed broader oversight roles in international affairs. But they still must operate in an environment constrained by states' prerogatives and political realities. For the IAEA, that means balancing competing agendas among member states. The ICC must find ways to pursue its mandate while remaining dependent on states' cooperation to carry it out. And NGOs, though increasingly an integral part of the global governance system, nevertheless struggle with questions of legitimacy and formal status.

Global Watchdogs: Adapting Roles to Realities

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THE IAEA'S POLITICAL BALANCING ACT

BY MILES A. POMPER AND MICHELLE E. DOVER



As the International Atomic Energy Agency held its Board of Governors meeting and annual General Conference over the past two weeks, the members of this often-overlooked United Nations body found themselves thrust again into the public limelight and burdened with a rapidly expanding agenda. Governments jostled over how to craft new approaches to deal with the aftermath of the nuclear accident at Fukushima, divvy up the agency's budget and deal with controversial nuclear programs in the Middle East. The debates took place among a membership bitterly divided between those states with advanced nuclear capabilities and those that lack them, divisions that are likely to persist even after the agency turns the page on this year's meetings.

Charged with navigating this terrain is Director General Yukiya Amano, a veteran Japanese diplomat who took the helm of the agency two years ago. Compared to his more outspoken predecessor -- Mohamed ElBaradei, who is now running for president of Egypt -- Amano has struck a low profile while taking care to establish close ties with leading nuclear powers including the United States and the European Union. They have applauded him, for example, for being more willing to use blunt language and take more forceful actions in challenging Iran and Syria for their failure to comply with IAEA and U.N. Security Council directives. However, Amano has also been criticized by some IAEA insiders for refusing to use certain tools in the IAEA toolbox, while many member states have faulted the IAEA's hesitant response to Fukushima as well as Amano's unwillingness to push his native country's government to be more transparent about the disaster. On top of these challenges, the agency's budget has barely grown over the past three decades, while its mission has mushroomed, leaving few IAEA members satisfied with the share of the IAEA budget that is allocated to their priorities.

How Amano and the agency handle these tasks is of no small importance. The U.N. "atomic agency" must respond to a broad spectrum of challenges, and worst-case scenarios appear treacherous. Clumsy maneuvers in dealing with cases of noncompliance could hasten a nuclear arms race or military conflict in the Middle East. Failure to address concerns about nuclear security would put the agency at odds with its largest donor, the United States. The IAEA also plays a significant role in assisting states to develop an appropriate regulatory infrastructure and technical knowledge for their planned or existing nuclear energy programs, a particularly crucial area given post-Fukushima shifts in public perceptions about nuclear energy's risks. As Amano begins the third year of his tenure, the agency's ongoing evolution rests in large measure on his ability to skillfully balance member states' conflicting priorities in a difficult financial and diplomatic environment.

AMANO'S INHERITANCE

When the IAEA was established in 1957, it was tasked with supporting both international efforts in nonproliferation and development of nuclear energy for peaceful purposes.* Since then, the agency has struggled to ensure that both activities remain equally funded and equally recognized. More

widely known as the U.N.'s nuclear "watchdog" than as its nuclear development agency, the IAEA has nonetheless attempted to fulfill both charges.

Over the past quarter-century the "peaceful uses" portion of the agency's mandate, especially in safety and security, has gained importance given the number of high-profile accidents, the increased influence of nonstate actors and the growing number of countries interested in acquiring nuclear technology. The Technical Cooperation Fund supports the agency's work in peaceful applications of nuclear technology, which extends beyond nuclear energy to the use of radioactive isotopes in medicine and industry. The agency began assuming a higher profile in safety after the Chernobyl meltdown in 1986. It subsequently became the depository for binding international conventions, including the Convention on Nuclear Safety, and expanded its activities to provide a wide range of services and assistance to help member states improve the safety of their nuclear activities. In 2001, the Sept. 11 attacks pushed the agency to put a greater emphasis on the need to secure nuclear material and facilities from attack by substate actors. In March 2002, the agency's Board of Governors approved a three-year plan for the IAEA to increase activities in nuclear security and established the Nuclear Security Fund [to support activities to](#) "prevent, detect and respond to nuclear terrorism." The fund has since been renewed twice, through 2013.

The agency's most recognized work, however, remains its investigations of cases of alleged proliferation and noncompliance with safeguards agreements. A decade after its creation, the IAEA was charged with enforcing safeguards under the newly hatched Nuclear Non-Proliferation Treaty. Safeguards are intended to ensure that nuclear materials cannot be diverted from peaceful uses to military means without being detected by the international community in sufficient time for an international response. Primarily enforced with regard to the treaty's 185 non-nuclear-weapon states, safeguards are the IAEA's principal tool in its efforts to verify states' declarations and detect covert nuclear weapons programs. The safeguards program currently receives the largest portion of the agency's regular budget.

The 1991 Gulf War exposed the blind spots of the existing safeguards regime. Previously, the IAEA had largely stuck to merely confirming states' declarations, rather than probing deeper for hidden nuclear secrets. The limitations of safeguards when applied in this manner were made perfectly clear by the discovery in the war's aftermath of Iraq's hidden uranium enrichment program, components of which were located in sites that [had been previously visited by IAEA inspectors](#) (.pdf).

During the 1990s, the IAEA developed an expanded safeguards toolbox to give it a greater ability to detect diversion. The 1997 model Additional Protocol, a voluntary supplement to the traditional safeguards agreement, gives agency inspectors greater access to undeclared nuclear sites and documents, and permits the use of new techniques, such as environmental sampling. While 110 members have implemented an Additional Protocol, notable exceptions include Iran, Syria, Egypt, Brazil and Argentina. Nonetheless, toward the end of the 20th century, the agency appeared to have significantly gained in stature due to strong leadership by former Director General Hans Blix, a conducive international atmosphere following the end of the Cold War and the Gulf War, and North Korea's willingness at that time to freeze its plutonium production program.

The Iraq War in 2003 subsequently led to a backlash against the United States and Western interests from many states in the Non-Aligned Movement (NAM), which considers itself a representative of the interests of many non-nuclear-weapons states. These states --and the agency -- were angered that the United States pushed ahead with the invasion of Iraq without giving the IAEA time to complete its inspections work there. Some states also believed that the Bush administration used the pretext of WMD in Iraq to support efforts to dominate less-powerful countries, bolstering traditional resentments by the "nuclear have-nots" against the nuclear "haves."

The backlash was apparent at the 2005 NPT Review Conference, which ended in failure largely because the Bush administration had shown little commitment to Article VI of the Nuclear Non-

Proliferation Treaty that calls for nuclear-weapon states to make good-faith efforts toward disarmament. The administration further angered many IAEA members when it [struck a nuclear deal with India](#), a state with nuclear weapons that has refused to sign the NPT. Iran and North Korea were able to take advantage of the discord by expanding their nuclear ambitions, while the IAEA board and the U.N. Security Council were delayed and often weakened in responding to Tehran and Pyongyang due to reduced support by non-nuclear weapons states.

When Amano took over leadership of the IAEA in 2009, he was faced with the twin challenges of rebuilding a consensus on the IAEA board and increasing the agency's effectiveness in all areas, despite working with a budget that had seen zero real growth for 18 years followed only recently by small increases.

THE IAEA AND NONCOMPLIANCE CASES

Amano quickly made clear that there would be differences, at least in rhetoric, from his predecessor in how the agency handles the highest-profile proliferation cases.

Iran. Amano appears to be willing to take a firmer stance than his predecessor against Iran's efforts to deny the IAEA access and information about its nuclear program. The language of IAEA inspection reports on Iran has been characterized as "blunt," though Amano insists he is simply following IAEA regulations. He has said that he perceives the role of the director general and the IAEA as being an implementer of safeguards and as bound by IAEA statutes, not an intermediary between Iran and the West in [coming to a political agreement](#). While Iran has stymied international attempts to curb its production of enriched uranium, the IAEA has continued to pursue its goal of complete information on and access to Iranian facilities and scientists to determine the program's intentions and past history.

The IAEA Board of Governors [had already found Iran in noncompliance](#) with its safeguards obligations after European Union-led negotiations broke down in 2006. The agency referred Iran to the U.N. Security Council, which has since passed five resolutions condemning Tehran's actions and demanding it halt its uranium enrichment activities. Despite these measures and three rounds of sanctions, Iran proceeded to expand its activities and began enriching uranium to an even higher concentration -- 20 percent -- in 2010. The most recent report by Amano to the IAEA board, released at the beginning of September, indicated growing concern over Iran's refusal to respond to evidence provided by member states suggesting Tehran has pursued technologies that [would support the creation of a nuclear weapon](#) (.pdf).

Syria. Earlier this year, Amano presented a report to the agency's Board of Governors stating that the al-Kibar site in Syria, destroyed by an Israeli attack in 2007, was "very likely" a nuclear reactor and "should have been declared by Syria [pursuant of its Safeguards Agreement and Code 3.1](#) (pdf)." Despite last-minute offers of cooperation from the Syrian nuclear agency, the Board of Governors [found Syria to be in noncompliance](#) with its safeguards obligations and [reported the country to the U.N. Security Council in June 2011](#). Although the Security Council has not acted on the report, the IAEA has continued to pressure Syria about its activities. For its part, Syria has continued to stonewall, [claiming it will not be able to provide more information](#) to counter the assessment until October, after the Board of Governors meeting and General Conference.

The agency's response set off a debate over whether the board should have called for a special inspection -- which would give the IAEA the authority to examine any site it suspected of being related to Syria's nuclear program -- before referring the matter to the Security Council for noncompliance. Gregory Schulte, former U.S. ambassador to the agency, has argued that a special inspection could help uncover remaining evidence of a covert nuclear program, as well as [expose illegal nuclear supplier networks](#). The discussion was hardly new: In 2009, an article by James Acton, Mark Fitzpatrick and former Deputy Director General of the IAEA Pierre Goldschmidt maintained that a request for a special inspection [would support the IAEA more broadly in inves-](#)

tigating cases of noncompliance. The largest perceived risks of a special inspection have been that Syria might refuse the inspection and potentially withdraw from the treaty and IAEA, as North Korea did in 1994, or that Syria would **stall the process long enough to prevent action.** Other experts, like Bennett Ramberg, have argued that referring the matter to the U.N. Security Council **is the most effective answer,** whether in addition to or in lieu of a special inspection. However, it appears unlikely the U.N. Security Council will impose sanctions, due to lack of support from China and Russia, which have economic ties to Syria. As a result, the entire incident illustrates the risk the IAEA runs by not using all of the tools at its disposal.

The focus on Syria and Iran has raised the ire of some member states that see Israel's nuclear program as getting a free pass. The fact that Israel, a non-NPT member, has a nuclear weapons program has long been derided as a double standard by many members of the Non-Aligned Movement. The Syrian case is an especially bitter one in this regard, given Israel's role in destroying the al-Kibar site.

THE IAEA AND FUKUSHIMA

Some Western states as well as media organizations within Japan **have criticized Amano and the IAEA's response** to the Fukushima crisis for being too slow, too confusing and too dependent on information from Japan. According to IAEA officials, some of the criticisms **have arisen from a misunderstanding of the agency's mandate,** under which nuclear safety standards are voluntary, unlike safeguards. Following the earthquake and tsunami in Japan on March 11, 2011, the IAEA notified member states and international organizations of the emergency; facilitated the exchange and provision of official information; and provided states, organizations and the public with frequent briefings and updates as it received information from Japan. Once Japan requested help with environmental monitoring, the agency **helped coordinate international assistance** (.pdf).

Amano visited Japan shortly following the earthquake and **stressed the need for transparency from Japanese officials.** After his visit, Amano proposed a ministerial-level conference on nuclear safety to provide an initial assessment of the accident and work to strengthen the response to nuclear accidents and emergencies. The conference, which took place in June, called for the director general to prepare a draft action plan to **address relevant issues in nuclear safety.** News reports indicate that early drafts proposed that countries with nuclear power plants **host at least one IAEA review mission,** a change from Amano's initial call for the IAEA to inspect 10 percent of the world's nuclear reactors over three years. Member states removed the binding nature of the provisions, **making hosting the missions "voluntary"** in the final draft approved by the Board of Governors and unanimously adopted by the General Conference.

Some of this resistance comes from member states that see an increased IAEA mandate in nuclear safety as impinging on sovereignty. At least one industry body has warned that new regulatory measures must be "cost-effective," though Amano **dismissed concerns** that new IAEA activities would seriously increase costs beyond "some voluntary financial contributions." There remains a strong impetus from several Western states to expand IAEA responsibilities in nuclear safety. At the General Conference, France proposed that the IAEA **establish a rapid-response team** for nuclear emergencies and a system to train plant operators in crisis management.

THE IAEA AND THE NUCLEAR SECURITY SUMMIT

The IAEA raised its visibility in nuclear security through its participation at the 2010 Washington Nuclear Security Summit and its expected participation at the 2012 summit in Seoul. At the 2010 summit, Amano detailed the IAEA resources that are available to member states regarding security, primarily in the areas of information, advice, education, technical support and assistance. Also during the summit, the IAEA committed to publishing its latest draft of a key nuclear physical security guidance document, **which it did in early 2011.**

The 2010 Nuclear Security Summit further highlighted the role the IAEA plays in promoting best practices in nuclear security and [called for a strengthened role for the institution](#) (.pdf). The agency provided input into the final Communiqué and Work Plan, which [called on all participating states to cooperate](#) with the IAEA in efforts to secure nuclear materials.

Meanwhile, at the General Conference, member states were once again [pushed by Amano to ratify the amendment](#) to the Convention on the Physical Protection of Nuclear Material. Drafted in 2005, the amendment requires states parties to protect nuclear facilities and material in all stages, and encourages expanded cooperation between states to recover stolen or smuggled material and respond to sabotage. Currently only 49 states have ratified the amendment out of the required 97 needed to bring it into force. The United States has not yet ratified the amendment, since Congress [has not approved](#) the necessary implementation legislation, in part because it would make changes to the scope of federal offenses that carry the death penalty. Many of the countries that have not ratified the amendment have indicated they are waiting for the United States to ratify it first.

It is not clear the IAEA has fully taken advantage of the role that the Nuclear Security Summit urged for it. The group of 47 states endorsing the summit documents offers a credible mandate, as it represents a cross-section of states -- both nuclear “haves” and “have-nots” -- across many regions. Nonetheless, the agency, including Amano, seems to have been unwilling to risk a confrontation with the NAM by devoting more resources and attention at the agency to nuclear security, a subject that the NAM countries consider a low priority.

BUDGET POLITICS

As the IAEA leadership continues to try to raise the agency’s profile and expand its role in nonproliferation, safety and security, attempts to substantially increase the agency’s budget to meet its new responsibilities have run into fierce opposition. The deep political divisions between member states, by which non-nuclear-weapons states look to the IAEA for technical support and cooperation, while others think its primary job should be safeguards, are evident in debates over the biennial budget. Uneasy compromises over which areas of the agency’s budget should receive priority in terms of funding have left all parties unsatisfied. The debate over the 2012-2013 budget, which took its final form at the General Conference in September, was no exception.

The politics surrounding the IAEA budget are similar to those seen in other U.N. agencies whose budgets are made up of both regularly assessed and voluntary contributions. Regularly assessed contributions are those required from all member states, as determined by a complex formula for U.N. contributions. Voluntary contributions take a number of forms, from payments into specific funds -- the Nuclear Security Fund, the Technical Cooperation Fund and the Major Capital Investment Fund, among others -- to the placement of experts free of charge by member states where the IAEA needs further support. If countries decide not to give to voluntary funds, whether for political or financial reasons, the programs that rely on these contributions stand a chance of going unfunded.

Zero Real Growth. Although the IAEA has been charged with increased responsibilities in safety and security and has worked to overhaul its safeguards activities, its regular budget has barely grown in real terms since the mid-1980s. In 1985, the Geneva Group -- the largest contributing members to the U.N. budget -- imposed a “zero growth” policy on U.N. agencies, by which the organization’s regular budget [does not increase year-to-year](#) beyond an adjustment for inflation. Until 2003, the IAEA’s regular budget was held to this standard of zero growth, though since then it has received some modest increases as a result of U.S. pressure.

However, the years without regular budget increases necessary to meet growing demands and responsibilities left the IAEA hobbled by its dependence on voluntary contributions. Often the contributions come with specific directions on where the money is to be used, which IAEA officials argue limits their ability to allocate resources according to need. Further, there are always

countries that fail to pay all that they pledge, whether to voluntary funds or regularly assessed contributions. Such variations make it even more difficult for the agency to fulfill its mandate. In an attempt to cushion the agency from the uncertainty of the biennial budget, the IAEA began its Major Capital Investment Fund in 2009, which acts as a reserve fund to ensure that major long-term infrastructure programs are not at the mercy of a fickle Board of Governors.

Despite the small increases seen since 2003, lack of secure resources [continues to be a pressing problem](#) for the agency's operations. Amano has been less outspoken than ElBaradei on the issue, though at the June 2011 Board of Governors meeting he [did propose a 2.8 percent increase](#) to the regular budget, in addition to a 1.1 percent price adjustment in the draft budget for 2012-2013 circulated to the board. This increase was reduced by member states to a 2.2 percent increase for 2012, or a total assessed budget of \$457.5 million, while the 2013 budget is again being held to a zero-growth policy.

How to Spend? Whether programs get funded by regularly assessed or voluntary contributions is another persistent aspect of this acrimonious debate. Lack of a coherent budgeting process creates resentment among member states. Developing countries and the Non-Aligned Movement often protest that the distribution of the regular budget unfairly reflects the developed world's preoccupation with nuclear safeguards. Of the [IAEA's 2012-2013 regular budget](#) (.pdf), 39 percent was allocated to the Nuclear Verification program, while [only 10 percent went to](#) (.pdf) the Nuclear Safety and Security program. This appears to be a gross imbalance of funding -- until voluntary contributions are included. For instance, the Technical Cooperation Fund, the most established and largest recipient of voluntary contributions, will provide an estimated \$108 million in 2012 for nonsafeguards work, such as in nuclear safety. Other extrabudgetary funds are targeted to contribute \$180 million. These numbers, however, are far from certain. Safeguards and technical cooperation both enjoy strong support from certain influential groups within the Board of Governors and the General Conference. Nuclear security, by contrast, is often not considered a high priority among many member states. As a result, the funding for nuclear security is much less secure than either program, since 80 percent of its budget is underwritten by voluntary contributions to the Nuclear Security Fund, an extrabudgetary fund that receives much less in such contributions than the Technical Cooperation Fund. Making the budget debate even more difficult is the fact that it is impossible to know exactly how much extrabudgetary help each program gets, as some countries offer the services of laboratories and personnel whose costs do not appear on the balance sheet.

Additionally, the agency is under pressure from certain parties within the U.S. government with respect to how resources are used. A bill was introduced into the House of Representatives in late-August that would withhold portions of voluntary and assessed contributions to U.N. agencies that provided support to members, entities or interests running counter to U.S. policy interests. The bill also has the larger goal of moving the U.N. budget toward greater reliance on voluntary contributions. For the IAEA, this means the U.S. would withhold voluntary contributions to the Technical Cooperation Fund, since it provides support to countries deemed by the U.S. to be sponsors of terrorism as well as to countries that are in noncompliance or are being investigated for being in noncompliance with their safeguards agreement. This move, suggested in a 2009 Government Accountability Office report evaluating the Technical Cooperation Fund, is heavily opposed by the State Department. In its response, State noted that the Technical Cooperation Fund often supports projects related to human health and development in emergent countries, and therefore withholding contributions could have a widespread impact on disadvantaged populations and further reinforce the view that the U.S. [uses the IAEA to implement its policy goals](#) (.pdf). While the Senate would likely block the bill if were ever introduced, H.R. 2829 is a clear example of the vulnerability of the IAEA budget to unreliable voluntary contributions.

CONCLUSION

The IAEA has shown resilience and flexibility in working to fulfill its mandate while responding to political and financial pressures. And, since taking the helm, Amano has proved willing to sup-

port the agency's growth into new areas in the nuclear field.

However, with both the Board of Governors meeting and the IAEA General Conference now concluded, it is clear that the IAEA still faces serious challenges in its efforts to safeguard the world's supply of nuclear fuel, promote nuclear safety and security, and balance the interests of its members. Syria still refuses to cooperate with the IAEA's investigation into its illicit activities, and Iran has stonewalled IAEA attempts to learn more about its uranium enrichment program. Amano's plan to give the IAEA enforcement power in nuclear safety standards has been substantially watered down by countries that fear both its cost and intrusion by the agency. Convincing countries to fund nuclear security projects remains a perennial problem.

Nonetheless, Amano's greatest challenge is likely to be the growing politicization of the agency between nuclear-weapon and non-nuclear-weapon states. The most controversial issue at the September sessions was neither nuclear safeguards, nuclear safety nor the tough nonproliferation cases of Iran, Syria and North Korea. Instead, member states found themselves preoccupied with whether Arab states would move to pass a resolution calling on Israel to join the Nuclear Non-Proliferation Treaty. They did not do so, perhaps in part due to Amano's apparently successful efforts to organize a meeting of Middle East states in November on lessons gleaned from successful regional nuclear-weapons-free zones. While the maneuver may serve as an example of how Amano can help alleviate some of the deadlock, given the large and diverse forum, it is easy for technical concerns to take a back seat to political agendas, and Amano will be hard-pressed to diminish the political divide.

The IAEA's future effectiveness as an organization arguably depends on Amano's ability to navigate this difficult landscape. He has been noted for his quiet diplomatic style, but in order to maintain the IAEA's role in the international regime, he may need to advocate for full application of the agency's existing tools, using more of the blunt language and dedication that he has displayed in dealing with Syria and Iran. A failure to do so would leave the agency hard-pressed to fulfill its most fundamental missions, let alone expand its role to adapt to a changing world. □

**Editor's note: The original version of this article incorrectly stated that the IAEA was established in 1953. WPR regrets the error.*

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Photo: Members of the International Atomic Energy Agency Fact-Finding Mission in Japan visit the Fukushima Daiichi Nuclear Power Plant, Fukushima, Japan, May 27, 2011 (U.N. photo by Greg Webb).

EVALUATING THE INTERNATIONAL CRIMINAL COURT

BY BEN SCHIFF



Nine years after its launch in July 2002, the International Criminal Court has made a promising though problematic start. Some of its difficulties are inherent in its mission and context. Others have been generated by states' and officials' behavior. Carrying out the court's mandate to prosecute the perpetrators of humanity's worst crimes would be difficult even in ideal circumstances. Circumstances are not ideal: The ICC is an international organization that many important states have not joined; it commands a limited budget; it is subject to the political and personal foibles common to international organizations; and finally, its independence is constrained by states' sovereignty. In short, it faces huge challenges as it struggles to build international legitimacy.

The ICC has jurisdiction over genocide, crimes against humanity and war crimes that take place on the territory of states that have acceded to its founding document, the Rome Statute of 1998, as well as crimes that are committed by citizens of states party to the statute or that take place in conflict situations referred to the court by the United Nations Security Council. The ICC is meant to be a venue of last resort when domestic justice systems genuinely fail to investigate and prosecute perpetrators of the crimes over which it has jurisdiction. Although it is formally a legal-judicial institution, its actions can have major political ramifications, and states may seek to use it for political ends. It has no enforcement capacity and depends upon states to apprehend suspects and to permit collection of information on their territories. It has been the target of harsh criticism and fervent support. Adding to the complexity of its mission, in 2010, the Assembly of States Parties to the Rome Statute (ASP) amended the statute to make a fourth crime, the individual crime of aggression, potentially prosecutable in the future.

Despite its complicated international standing, the ICC is still relatively robust in some ways. It employs more than 750 people; has an annual budget of more than \$135 million; will see construction of its permanent headquarters in The Hague begin in 2012; and has been making international headlines as it investigates suspects in Uganda, the Democratic Republic of the Congo (DRC), the Central African Republic, Sudan, Kenya, Côte D'Ivoire and, most recently, Libya. It also has broad support from international nongovernmental human rights organizations.

Detracting from its dynamic image, the court has yet to conclude its first trial, begun in 2006 [against Thomas Lubanga Dyilo](#). Its most notorious suspects -- Lord's Resistance Army head Joseph Kony of Uganda and [Sudanese President Omar al-Bashir](#) -- remain at large with little likelihood of apprehension. Its prosecutor, Argentinian lawyer Luis Moreno-Ocampo, has been criticized for mismanagement, poor judgment and political grandstanding, and its judges impugned for lack of professionalism. Although African states were originally among the most enthusiastic supporters of the ICC, the African Union recently urged its members not to cooperate with the court in its pursuit of suspects in Sudan, Kenya and Libya.

After nearly a decade in operation, with elections of both new judges and a new chief prosecutor

about to take place, now is an opportune time to consider the record, achievements, shortcomings of and prospects for the ICC.

MEMBERSHIP AND COOPERATION

As of September 2011, 118 countries have joined the Rome Statute, including the overwhelming majority of European and Latin American states, and 32 of the African Union's 54 members. However, the holdouts are significant, in that they include powerful and highly populated countries such as the United States, China, Russia and India. The Middle East and North Africa are also unrepresented, except for Jordan and Tunisia. Among Asian states, only Afghanistan, Bangladesh, Cambodia, Japan, Mongolia, the Philippines, South Korea and Tajikistan have joined, along with East Timor and some Pacific island nations. Since it ultimately seeks to enforce international law against individuals for misdeeds carried out inside states, the court is in the paradoxical position of challenging sovereignty and needing to appear independent of states, while ultimately being dependent upon them.

ICC jurisdiction can be triggered by a referral from the U.N. Security Council, and the council has already referred two situations to the court -- Darfur and Libya. However, as three of the council's five permanent members are not parties to the Rome Statute and are thus not subject to the court, this arrangement gives the court the appearance of built-in hypocrisy. Although in theory the Security Council could refer a conflict situation to the court that involved one of the five permanent members, their veto power makes this extremely unlikely. Because reform of the U.N. Security Council through expansion, balancing or procedural modifications remains unlikely, the court's legitimacy suffers from being bound to perceptions of the Security Council. The court has little leverage over this matter, although even Security Council referrals are subject to the prosecutor's determination of whether to seek approval from the Pre-Trial Chambers to investigate further. As a result, the ICC has been accused of being an instrument of neo-colonialism, although that charge is most frequently leveled by those it has made uncomfortable, such as Sudanese authorities in reaction to the court's issuance of warrants for suspected crimes in Darfur. The Office of the Prosecutor (OTP) argues that its evaluation of situations hinges upon the gravity of alleged crimes and the degree of responsibility of the alleged perpetrators. But neither of these criteria is clearly defined, and the considerations undertaken by the OTP's Jurisdiction Complementarity and Cooperation Division are necessarily confidential.

As further evidence of bias, critics point to the fact that all the situations now before the ICC are in Africa. In addition to the two situations referred by the Security Council, the active situations include three referred by the states themselves -- Uganda, the DRC and the Central African Republic -- as well as one, Kenya, where the prosecutor proceeded on his own authority after national authorities [failed to pursue prosecutions](#). Moreno-Ocampo argues that the crimes he is investigating in Africa are truly atrocious and that, presented with comparable criminality in other areas where it has jurisdiction, the court would proceed similarly. Indeed, regional "balance" would be an inappropriate criterion for choosing what situations to investigate.

A COMPLICATED MANDATE

According to the statute's preamble, the ICC exists to end the impunity of those who commit atrocities "that deeply shock the conscience of humanity," and thus to "contribute to the prevention of such crimes." The ICC is intended to be a backup mechanism to domestic jurisdictions, investigating and prosecuting crimes only when states with jurisdiction fail to do so. This is called the court's principle of "complementarity." At the same time, the court is also directed by the statute to protect victims and witnesses, to include victims' "views and concerns" in court proceedings and to establish mechanisms for victim reparations, restitution, compensation and rehabilitation. Thus, under the statute, it is intended to pursue both retributive and restorative justice. The complementarity principle and the missions of retribution and restoration each entails its own complexities.

With regard to complementarity, the court itself determines when states with jurisdiction are failing to investigate or prosecute, a mission called “negative complementarity.” Since domestic resolution of atrocity crimes is generally seen as the best outcome, some observers argue that the court should instead seek to emphasize “positive complementarity” -- actions to encourage states themselves to investigate and prosecute or to build their capacities to do so. As the court’s resources are limited, the dual objectives -- court investigations and prosecutions, on the one hand, and efforts to aid states on the other -- stand in operational tension with each other. The ASP and court officials have been mostly reluctant to get into the business of judicial capacity-building.

Regarding retribution and restoration, with its ornate jurisdictional and trial mechanisms, the court is primarily an institution of retributive justice; in contrast, the restorative aspects of the statute are sketchy. While supported strongly by NGOs, the focus on victims appears secondary to the retributive mission. Implementing each duty is difficult; balancing and coordinating them is additionally complicated.

In operation, both retributive and restorative operations have long ways to go to build interlocutors’ confidence in the court. On the retributive side, investigations have been criticized as slow, poorly organized and too narrowly focused. For example, the prosecutor took two and a half years before deciding to open a formal investigation after a request from the Central African Republic to do so. Similarly, following the Security Council’s referral of the Darfur situation to the court in March 2005, replete with a report naming 55 likely suspects, it took more than two years for the prosecutor to issue the first two summonses, and a further two years for warrants to be issued for Bashir. Former officials of the OTP complained that the investigatory strategies regarding Darfur and the DRC were frequently changed, chaotic and poorly planned. In the case of the warrant for Lubanga, NGO commentators criticized the OTP for focusing too narrowly on charges of child-soldier recruitment and employment, while ignoring accusations of widespread killings and rapes. The OTP argued that it was seeking to focus its investigations and charges to be assured of efficient and effective prosecutions and convictions.

Regarding the court’s mandate to protect victims, resource constraints limit its outreach into conflict zones. NGOs have sought to fill the gaps, working with the ICC locally to provide information and build understanding of the court’s role and procedures. Still, the court’s remote location in The Hague, its highly formalized procedures and small local footprint limit its effect on the ground. Some commentators have proposed that the court forgo trials in The Hague and travel to the locations of the alleged crimes instead; others suggest that developing mixed international-local tribunals would be more effective.

The tension between the dual missions of helping victims and maintaining due process rights for suspects is alleviated somewhat by the creation under the statute of the Trust Fund for Victims (VTF). The VTF has been authorized by judicial decision to provide assistance in situation areas even in advance of any conviction of particular suspects of specified crimes. However, because it is voluntarily funded by states, the VTF’s resources are limited. The problem of determining who is an appropriate recipient of aid, and what kinds of aid to administer, remain areas of discussion and development for the court.

To build legitimacy, the court needs to impress those observers that are most interested in its retributive mission that it is efficiently pursuing the investigation and prosecution of the world’s worst perpetrators of atrocity crimes -- and that those indicted will actually face justice, either in domestic courts or in the ICC itself. Those most interested in the restorative mission measure the court by its impact in helping victims, in part through the cathartic value of trying perpetrators, but also through efforts to rehabilitate victims -- psychologically, by including them in the process of retribution; materially, by securing reparations; and spiritually, by promoting their reintegration into society.

The court’s mandate under the Rome Statute is thus broad and, inasmuch as it must be imple-

mented with a limited budget, in some ways internally contradictory. The ASP and the officials of the court have yet to strike a balance in the court's activities to build the ICC's legitimacy among its most important constituencies.

TASKS

The ICC, like the Yugoslavia and Rwanda tribunals before it, is faced with the task of carrying out investigations in areas where atrocity crimes are suspected, and these are generally areas where major violent conflict either recently took place or continues. Investigations under these circumstances are extremely challenging, and entail two main avenues of approach. The first is to gain access to the area in question and the people involved, and thereafter employ normal investigation methods. However, this is sometimes impossible, as in Darfur, where the Sudanese government refused to cooperate. The alternative is to seek interviews with victims and witnesses in exile and to acquire data from intelligence or other external sources. Each method requires government cooperation, whether from that of the conflict area or from external governments. Thus despite being an independent judicial actor, the court remains beholden to governments. State assistance to the court is crucial for its effectiveness, **but if the cooperation is provided by nonmembers** -- such as the U.S. offering intelligence, for instance -- it opens the court up to the accusation of being instrumentalized for politically motivated objectives.

This raises the related issue of how the court ought to proceed with investigations and prosecutions that may have important political ramifications. Technically, it is not the court's responsibility to consider whether its pursuit of a case might impinge upon other worthy objectives, such as peace negotiations or government stability. But, in reality, the atrocity crimes tend to take place in areas where negotiations for cease-fires or peace agreements are actively being sought or are already under way; people central to the fighting and conflict-resolution efforts may be suspected perpetrators or closely tied to them. Thus pursuit of international criminal justice may clash, at least in the short run, with the objectives of stability and peace. Although much of the "transitional justice" literature now argues that peace can only come with justice, short-run cessation of violence may appear to necessitate political accommodations with alleged criminals.

For example, in Uganda, Kony made the lifting of ICC arrest warrants a condition of his continued participation in peace talks with the government. Similarly, some observers argued that the ICC warrants against Bashir for crimes in Darfur reduced his inclination to genuinely pursue peace or to relinquish power democratically.

STATE COOPERATION

Under the Rome Statute, member states accept the requirement to cooperate with the court. However, the form of that cooperation is ultimately up to the states themselves. For example, states pledge to make requested information available to the court, but may withhold it on national security grounds. States also pledge to assist in delivering suspects, but the most the court can do in instances of noncooperation is to report them to the Assembly of States Parties and the Security Council.

Like any international organization, the ICC serves as a temptation and a risk for countries that deal with it: It is tempting for state actors to use the court to demonize political opponents, but they run the parallel risk of being targeted themselves by the court should they be implicated in atrocity crimes. Hewing to a maximally depoliticized course of action is thus one of the prosecutor's primary responsibilities -- and it is a hard one to carry out. In 2004, for example, in his eagerness to demonstrate the court's relevance by taking up the possibility of a self-referral by Uganda to the court, Moreno-Ocampo appeared with Ugandan President Yoweri Museveni at a press conference that made it appear that only government adversaries -- rather than all perpetrators of atrocity crimes -- would be investigated. More compromising in the longer run was that Museveni sought to use the threat of the ICC investigation to motivate Lord's Resistance Army

personnel to negotiate peace and seek amnesty. His public statements repeatedly implied that he could order the withdrawal of ICC warrants, when in fact he had no control over them.

Member states of the ICC, under the Rome Statute, and members of the U.N., under the U.N. Charter, are formally required to cooperate with the court. However, exactly what they are obligated to do to carry out ICC warrants, especially when these run at cross purposes with domestic legislation or other international law, remains something of a gray area. For example, ICC warrants for Sudan's Bashir would appear to obligate states parties under the statute, and non-states parties under the charter, to apprehend him if possible and to transfer him to the court. Nonetheless, Bashir has visited both categories of states without incident, and the African Union has called upon its member states not to cooperate with the court in enforcing the warrants. In his semi-annual reports to the Security Council on the Darfur situation, the chief prosecutor has repeatedly called upon states to carry out their obligations, but clearly the interests of states in maintaining relations with the Sudanese government have overridden their obligations as Moreno-Ocampo understands them.

PERSONNEL

The assertion of legal objectivity does not guarantee its practice, even were it possible. Similarly, the political-judicial division of labor between the Security Council and the ICC does not answer the question of which conflict situations, cases and charges should be pursued by the court. The prosecutor makes the initial determination of what situations and cases to pursue, unless the situation is referred to the court by the council. Yet, even in the event of a referral, the prosecutor still has wide latitude in determining the course of the investigation. Prosecutorial decision-making is thus crucial, and the credibility and legitimacy of the court hinges significantly upon its interlocutors' confidence in the chief prosecutor.

Moreno-Ocampo, the court's first and to date only chief prosecutor, has become a highly controversial figure. He has been accused of personal misdeeds, mismanaging his office, choosing situations out of convenience rather than careful legal analysis, investigating some parties in conflicts but not others, pursuing some investigations too slowly and others too quickly and sloppily, drawing charges too narrowly at times and too grandiosely at others, quarreling needlessly with the court's judges and registry, and speaking inappropriately in some instances. In 2006, he was accused of sexually harassing a South African journalist. The charge was dropped when the alleged victim refused to press charges. However, Moreno-Ocampo was found in violation of personnel regulations after he summarily fired the OTP public information officer who brought the charges to the court. In 2008, Human Rights Watch noted what it considered to be excessive employee turnover and low morale in the OTP, and other reports have accused the chief prosecutor of personal vindictiveness, micromanagement and chaotic and unexplained changes in investigative strategies. More publicly, Moreno-Ocampo is regarded by some observers as an unfortunate spokesperson for the court, posturing aggressively in his public statements and thereby setting the court up for possible embarrassment. A recent unsuccessful initiative by Japan to get the ASP to consider reducing the length of the prosecutor's term from its current nine years and a decision by the ASP to implement a new "internal oversight mechanism" are seen as direct responses to dissatisfaction with Moreno-Ocampo.

The court's judges have also come under fire. Under the statute, the judges, like the chief and deputy prosecutors, are elected by the ASP. The statute spells out the necessary qualifications for the judges based on two general categories -- those with criminal trial experience and those with knowledge of international criminal law -- and sets gender and regional representational requirements. But the record of elections shows that political factors tend to outweigh competency, with diplomatic horse-trading and national campaigning playing major roles in the selection process. Despite having distinguished diplomatic careers, several of the judges have been criticized for having little basic familiarity with either trial procedure or international criminal law.

THE COURT'S LEGITIMACY AND FUTURE

International criminal justice remains a difficult, flawed and uneven set of processes.

The ICC is charged with retributive and restorative justice responsibilities under the statute, and it has mechanisms for implementing both. Implementation, however, raises a series of dilemmas regarding resource allocation and conflicts between rival imperatives, while the ostensibly legal-judicial mandate of the court must be executed in highly politicized environments. The criteria of “gravity” and “responsibility” have not and perhaps cannot be made so transparent and consistent as to reduce them to purely legal criteria, and the likelihood of securing state cooperation with the court must inevitably be a consideration when the OTP considers what situations and cases to pursue.

Perhaps more important than the court’s operational challenges, however, is the perception that it is unworthy of trust. The first prosecutor’s penchant for grandstanding, alleged mismanagement of the OTP and dubious personal qualities have made him an easy target for those who would besmirch the entire ICC effort. While the court’s current focus on Africa may be appropriate, the ICC and its supporters need to more effectively counter the charge that the ICC has become a tool of neocolonial states in their political manipulation of the weak.

The court’s legitimacy will improve as additional states join, particularly if they include some of the larger, more powerful ones that have so far remained outside. NGOs continue vigorously campaigning for further accessions to the statute; their effectiveness in assisting the court would in turn would be boosted were the court’s reputation to improve.

The selection of the next prosecutor could be a key step in this direction. The two current leading candidates are both from Africa, and both have substantial experience in international criminal law. However, regardless of who is appointed, the appointment must not be perceived as having been made for representational reasons so much as for the individual’s capacity to organize and run the OTP effectively and to establish an international profile that emphasizes probity, responsibility, personal integrity and absolute fairness. Similarly, the ongoing selection of judges needs to emphasize judicial temperament, experience and knowledge worthy of an international court.

Even as work begins on the ICC’s permanent headquarters in 2012, more effort needs to be focused upon constructing the edifice of the court’s legitimacy. However, it bears noting that the ICC is still a youthful organization. Other international institutions have taken decades to gain their constituencies’ confidence. Legitimacy can wax and wane depending upon political conditions and the wisdom of choices made by organization leaders. To gain stature, the ICC must perform the difficult tasks assigned to it, while projecting the appearance of stability, efficiency and gravity. □

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Photo: The International Criminal Court in The Hague (photo by Wikimedia user Handhil, licensed under the Creative Commons ShareAlike 3.0 Agreement).

THE ROLE OF NGOS IN GLOBAL GOVERNANCE

BY PETER WILLETTS



It has become fashionable to assert that the role of nongovernmental organizations (NGOs) in world politics has grown in importance since the early 1990s. This assertion is true, but not because of the end of the Cold War nor because there is anything new about NGOs exercising influence, as is often claimed.

Consider the success of the following campaign: A man, shocked by an event he witnessed, decided that change was an urgent moral imperative. He wrote a book that triggered the creation of an international NGO. The group lobbied all the major governments and, just five years after the initial event, its efforts resulted in an international treaty addressing its concerns. The man was Henri Dunant, and the NGO was the International Committee of the Red Cross. Its campaign to adopt the first Geneva Convention in 1864 led to the development of a new field of international law, namely international humanitarian law. Even today, any NGO would be proud of such a rapid, successful innovatory campaign.

Take another example: the Internet. Contrary to popular belief, its origins lie not in a military-developed command-and-control communications system, but in the vision and technical innovation of a small number of NGO activists in the 1980s who realized the potential of electronic communications to enhance the work of all NGOs. It is true that, in the 1960s, the Pentagon's Advanced Research Projects Agency funded university computer science departments to create a computer network. However, people-to-people, email networks -- mainly for university staff and students -- evolved in the 1970s as an unplanned outcome and initially were not open to the public. The first global NGO electronic network, Interdoc, was built in 1984 by the International Coalition for Development Action (ICDA), at the request of their African and Latin American NGO members. This too was for private use by ICDA members only. In 1986, PeaceNet/EcoNet in San Francisco and GreenNet in London became Internet service providers and took the first step in opening global email and electronic conferencing to the public. By 1990, before Tim Berners-Lee had produced the first Web page, these NGO pioneers had linked to advanced networks in five other countries and by telephone connections to many more. They went on to form the Association for Progressive Communications (APC), which provided a global public network for NGO activists. Their technical lead meant both the World Bank and the U.N. first went onto the Internet by using the APC servers.

The transnational movement of revolutionary ideas in politics, religion, science, technology and the arts has been a feature of the global landscape for hundreds of years. The abolition of slavery, the fight for democracy, the rise of nationalism and the breakup of empires in the 19th and 20th centuries were just as much transnational processes as the fall of communism and the struggles of the Arab Spring today.

Nevertheless, there have been some significant changes in recent years. In all countries, there are

more NGOs than there used to be. The end of communism in Eastern Europe and the Soviet Union and the fall of military regimes in Latin America and Africa resulted in a substantial expansion of the numbers of NGOs in these parts of the world. The new NGOs have taken their place in global civil society. In addition, the revolution in global telecommunications has connected the most remote areas to the global media and, with it, to global politics. The change in the speed of communication has been dramatic. Just as important, but rarely acknowledged, is that email, the Web and applications such as Facebook and Twitter are extremely inexpensive to operate. Global communications can for the first time be used by the poor as well as the rich, as evidenced by the global campaign waged over the Internet by the peasants of Narmada to halt World Bank funding of a hydroelectric project that would have flooded their lands.

It is obvious that the Internet has been of great advantage to NGOs. They can communicate more efficiently, more cheaply and more quickly to their members, their supporters and the wider world. In dealing with the general public, they no longer have to rely on the news media, but have their own unfiltered, uncensored communication channels. This immensely enhances their ability to mobilize. Of course, the effect should not be exaggerated. There would have been no Arab Spring without the existence of a young generation of disaffected, educated, unemployed individuals, who were willing to risk their lives by responding to the calls made on the Internet for them to demonstrate.

NGOS IN THE UNITED NATIONS SYSTEM

The first success of NGOs in influencing the U.N. occurred in 1945, at the San Francisco conference that drafted the U.N. Charter, when NGOs strengthened wording covering the U.N.'s role on human rights, economic and social questions, and equality for women. Most important, from their perspective, a new article was added providing for NGOs to have consultative status with the Economic and Social Council (ECOSOC). Initially, it was expected that this would only be taken up by a small number of global commercial organizations and trade union federations. However, there were soon many more groups, and a broader diversity of them, than had been expected.

Today, about 3,400 NGOs are recognized by the U.N., and over time their participation rights have increased. They receive all U.N. documents and circulate their own statements to government delegates. They hold their own meetings as "side events" to the official proceedings, and they can often make their own oral presentations at the start or the end of the diplomatic meetings. At times, they even table their own agenda items and open the debate. Overall, NGOs exercise far greater rights at the U.N. than they do at parliaments within individual countries.

Initially NGOs were limited to ECOSOC and most of its related specialized agencies, but now they have permanent formal participation rights in a General Assembly body, the Human Rights Council, and at all special U.N. conferences. However, NGOs have no formal rights in the policymaking bodies where governments are most sensitive about their prerogatives, such as in the U.N. Security Council and in the global economic institutions -- the World Trade Organization, the International Monetary Fund and the World Bank. Even so, there are flexible informal procedures that give them access both to the staff of the international organizations and to government delegates. NGOs have the greatest influence on environmental policy, women's issues, development and human rights. In these issue areas, they use the media and lobbying of individual governments to set the U.N.'s agenda; they lobby in New York and Geneva to obtain U.N. endorsement of their policy goals; and they undertake detailed committee work, contributing text to strengthen international treaties.

NGOs have learned that gaining support for their issue areas through U.N. resolutions and the creation of legal commitments through treaties is not enough. Even when government support is genuine, lack of resources, opposition back home, agenda overload and lack of expertise may result in governments failing to implement their commitments. Some governments may have joined the consensus merely to avoid the embarrassment of isolation. In these situations, NGOs switch from being lobbyists on policymaking to being monitors. Here their political position is unassailable,

because NGOs are simply demanding that governments implement the policies that they have already officially endorsed.

The U.N. provides three monitoring mechanisms for NGOs to use. First, U.N. secretariats may be asked to produce annual reports on progress. NGOs with high status and high expertise can assist the secretariats in the production of these reports, produce parallel reports or generate media attention and coverage of the reports. Second, specialized U.N. conferences often have five-year review conferences, and global treaties usually include articles for regular conferences of the parties (COPs). These often require governments to prepare their own reports on progress made, and they can at times generate media interest, with journalists seeking NGO assistance in writing their stories. The third and strongest mechanism occurs when the U.N. establishes specialist committees. These meet annually with the sole purpose of reviewing the implementation record of each government over a regular reporting cycle. Again, NGOs are built into the review process and can hold governments to account, both in the committee work and in the media.

There is a wide spectrum in the extent to which NGOs exercise influence. On environmental issues and women's issues, NGOs and governments collaborate comfortably, with NGOs enjoying full legitimacy as part of the political system. For example, in the Global Environment Facility, it is common to talk of the "GEF family," and NGOs are always included as members of that family. However, in some issue areas, such as disarmament, NGOs are sometimes kept at the margins. That said, the International Campaign to Ban Landmines and the Cluster Munition Coalition were the prime movers in achieving the drafting and ratification of the treaties on those two issues.

In contrast, on human rights issues, NGOs have had to fight every step of the way. In 1945, NGOs successfully lobbied to have the U.N.'s purposes, as listed in the U.N. Charter, include the promotion of human rights. However, until 1970, the principles of sovereignty and noninterference in domestic affairs were rigorously maintained at the U.N., preventing it from responding to complaints about human rights abuses. The first breakthrough came in May 1970, when the "1503 procedure" was established to determine whether complaints revealed "a consistent pattern of gross and reliably attested violations." From then onward, a variety of treaty and reporting mechanisms were created, with NGOs promoting the treaties and providing most of the rapporteurs.

In 1984, the "sovereignty barrier" was shattered when Amnesty International's decade-long campaign against torture resulted in the agreement for a Convention against Torture. Those who ratified the convention gained the right to put on trial and imprison torturers, regardless of which country they were from and where the torture had occurred, so long as their own citizens were the victims. In 1998, the statute for the International Criminal Court was agreed upon, and in 2002, the necessary 60 ratifications were achieved for the court to be established. At the ICC, again, sovereignty is subordinated to the international community's overriding interest in prosecuting those who commit war crimes, genocide or crimes against humanity when their own government proves unwilling or unable to do so. The efforts to guarantee that the court was established, led by the NGO Coalition for the ICC, overcame opposition first from the Clinton administration, which attempted to prevent the creation of a strong, independent court; and subsequently from the Bush administration, which mounted a determined and sustained campaign to prevent ratifications. Simply put, were it not for NGOs, there would be no international law of human rights and no U.N. machinery to protect them.

NGOS AND DEMOCRACY

Some NGO activists naively assert that NGOs can act as the "voice of the people," calling governments to account and extending democracy to global diplomacy. A more sophisticated institutional expression of this aspiration takes the form of calls for a "People's Assembly" to be created alongside the U.N. General Assembly. However, in the foreseeable future, it will be impossible to hold elections for a global parliamentary assembly, and the alternative of an assembly of NGOs would not extend democracy to global governance. Many NGOs are very small and represent very few

people, while many highly respected NGOs do not have any mechanisms for internal democracy. For example, neither Greenpeace nor Oxfam has any formal membership, and their supporters have no direct voice in the organizations' policies. Faith-based NGOs base their claims of legitimacy on their moral authority and make no claim to democratic authority. Scientific, technical and professional NGOs are restricted to people with the relevant qualifications. They represent an elite voice offering expertise, rather than a democratic voice. Other NGOs, such as Amnesty International and the trade unions, have millions of members and democratic assemblies, but they too are unrepresentative of the population as a whole. Whatever their size, each NGO still represents a self-selecting minority. No collection of NGOs would provide a representative policymaking or advisory body.

To give a small number of NGOs a decision-making role would be elitist and hence anti-democratic. To give a large number of NGOs a role would require organizing them into wider constituencies, with a spokesperson for the group. This does occur, especially in global environment politics, where NGOs are organized into nine "Major Groups" for stakeholder dialogues. But even there, the outcome underscores the difficulty of achieving a representative balance. The groupings include women, children and youth, indigenous people, local authorities, business and industry, the scientific and technological community, trade unions and farmers. It is a strange and illogical list -- including the young but not the elderly, for example, and unions but not professional associations -- and the arrangement as a whole is a variant on the profoundly anti-democratic doctrine of corporatism. It only avoids being highly authoritarian because the groups are self-organizing and because, bizarrely, the ninth Major Group of NGOs is called "nongovernmental organizations" themselves, a residual category that allows for the inclusion of any NGO that is not in one of the other eight groups.

Just as misguided as the naive idealism regarding NGOs is the hostility toward them found among a minority of delegates to the U.N., who argue that NGOs are arrogant and unrepresentative. Some delegates from democracies say NGOs have little legitimacy when compared to governments acting as the voice of their voters. Other delegates from authoritarian regimes say diplomacy is the prerogative of sovereign states and that NGOs have no legitimate role to play in global policymaking. Some ultra-nationalist regimes label NGOs as the agents of a Northern neo-imperialism or assert that free association and free expression are not in accord with so-called "Asian values." In practice, a few NGO leaders may be arrogant, but the great majority are not. A few represent no more than themselves, but the majority of them speak for a significant constituency. Democratic governments may have been elected, but they should still be accountable on a daily basis in global affairs, as they are in domestic affairs. And in an interdependent world, where global diplomacy deals with all aspects of economics, health, education, social policy and human rights, the doctrine of absolute sovereignty does not accord with the reality of political practice.

The accusation that NGOs are Northern is particularly peculiar. It is mainly based on the fact that most global NGOs have their headquarters in Europe. But many organizations based in London, Brussels, Paris or Geneva could just as easily be called Southern, because the majority of their members are from developing countries. In reality, there are far more Southern NGOs than there are Northern NGOs, and they are active on all global issues. The only difference is that Southern NGOs are less likely to have the resources to act independently at the global level. As a result, they are more likely to act through their membership of an international NGO or a transnational network. The real aim of governments -- such as Malaysia, Singapore, Russia and Zimbabwe -- that criticize NGOs as meddling foreigners is to inhibit the activities of local NGOs and local branches of global NGOs. As for the "Asian values" argument, its invalidity was demonstrated in March 1993, when Asian governments convened the Bangkok Asian Regional Meeting in preparation for the Vienna World Conference on Human Rights. To their surprise, they were confronted with a vigorous forum of local Asian NGOs, who argued strongly for universal values.

THE ROLE OF NGOS

While NGOs have many rights at the U.N., they do not have the right to vote in any of the principal

organs. They do not possess democratic legitimacy in decision-making, as it is not their role to be representatives for anybody except themselves. But accepting these limitations can still leave them with a major role to play in enhancing democracy in global governance.

When we talk of democracy, we often over-emphasize the criteria of free elections and policy that is in accord with the wishes of the majority. However, there are two other essential features to democracy. Between elections, the system must be transparent, with the free flow of information about the policymaking process. In addition, there must be a free political debate. NGOs contribute to global democracy in these two ways. NGOs immensely enhance the flow of information in global governance. They report information about domestic politics to the world beyond a nation's borders, and, in the reverse direction, they bring global concerns and perspectives to the national and local levels. NGOs also give voice to a broad constituency, so that the diplomatic debate considers all issues within a wider context and policy is less likely to have unintended consequences. It is not necessary in democratic debate to be representative of society as a whole. It is only necessary for an NGO to have something coherent to say for it to have the right to be heard.

Until the 1990s, we used to speak of international regimes and intergovernmental relations. Now we speak of global governance. The new terminology represents a recognition that NGOs are central to global political processes. The manner in which they have fought for participation rights at the U.N. and for the construction of the Internet as a global system for public communications has transformed the world of diplomacy. Indeed, the defining difference between traditional diplomacy and the diplomacy of global governance is the participation of NGOs. □

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Photo: UNHCR and NGO workers unloading a cargo plane in rural Kenya, December 2006 (U.S. Navy photo by Spc. Robert Palomares).

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