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## Summary

The task of this report is a structured comparison of civil society participation in the European Union (EU) and the World Trade Organization (WTO) in the field of biotechnology regulation. More specifically, the goal is to assess to what extent the current participation of civil society organizations (CSOs) fulfils the democratizing potential inherent in new forms of participatory governance. Accordingly, section II of this report takes issue with the democratizing potential of civil society participation in the policy-making process of international organizations. It highlights two different potentials: the function of CSOs as a ‘watchdog’ that observes and critically comments on the policy process; and the role of CSO representatives as deliberators who directly participate in the policy process, thus working closely with national governmental delegates, international civil servants, and experts. Section III presents the results of a comparative study of participatory practices in the EU and WTO. We find empirical evidence in the field of biotechnology regulation that the different roles assigned to civil society organizations as watchdogs and deliberators are hard to reconcile, at least in some cases. This evidence is discussed further in section IV. On the basis of this discussion we conclude that we need to set priorities: we can either have participatory practices that enhance accountability, transparency, and control over governmental actors; or deliberative bodies that contribute to a high level of epistemic quality of decisions. The last section of the report is a normative outlook that highlights the role of CSOs in creating a transnational public sphere, which has been inadequately tackled by the literature so far.

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## I. Introduction<sup>1</sup>

Since the 1990s the democratic legitimacy of traditional forms of international governance has come under strain. The crisis of ‘executive multilateralism’, shorthand for cooperation among diplomats and government-appointed experts, is traced back to a lack of inclusiveness, participation, and public accountability (Zürn 2004). One of the possible remedies suggested in the debate about the ‘democratic deficit’ of international governance is an enhanced participation of organized civil society in international organizations and EU bodies (e.g. Payne & Samhat 2004; Scholte 2004; Steffek & Nanz 2007). Especially in the European context there is a remarkable semantic change from traditional notions of representative democracy towards decentralised and participatory forms of governance that rely heavily on the participation of ‘organized civil society’ (Magnette 2006). New modes of governance are called for in order to combine the benefits of wider participation and deliberative modes of decision-making.

So far, the debate about the appropriate role of non-state actors in democratizing international politics has been marked by a trend towards generalization and simplification (Collingwood & Logister 2005: 186). Judgments are often made in a *tout court* fashion. Authors either generally advocate civil society participation, or they are generally sceptical about it. In our view, there is need for a more subtle treatment of the potential benefits of enhanced participation. We ought to be more precise about what exactly we expect organized civil society to contribute to the democratic quality of governance beyond the state. In this paper we suggest a more sophisticated and empirically informed approach to the question of whether, how, and under what conditions civil society participation can contribute to the democratic quality of European and global governance. We argue that participatory practices may make two distinct contributions to the democratization of international governance: First, civil society participation may contribute to the *public accountability* of international organizations and regimes. Second, civil society participation may improve the *epistemic quality* of decisions made within these international organizations. In this paper, we call these two distinct arguments the accountability claim, and the epistemic claim, respectively.

In the first, largely theoretical section of the paper we will scrutinize the two claims and explain the differences between them. In the second section we will turn to the empirical record. We seek to show why our theoretical distinction is important and how it affects potential strategies of involving civil society in European and global governance. We draw our evidence from a comparative study of the regulation of biotechnologies at the European and global level. The case is particularly relevant because it involves technological issues in which the epistemic dimension of decisions is particularly pronounced. In addition, the regulation of biotechnologies is of high concern to citizens and has spurred notable international conflict. At both levels of policy-making, we empirically find that some participatory procedures are mainly geared towards the epistemic quality of regulatory decisions, while others are playing a greater role in rendering governance mechanisms more accountable, and therefore more legitimate. We also find some evidence suggesting that the different roles assigned to civil society organizations as deliberators and watchdogs may be incompatible. To explore this problem further we discuss findings from deliberation in domestic political settings reported in the literature.

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<sup>1</sup> Parts of this report have been presented at the conference ‘Adapting to Integration in an Enlarged European Union’, Bulgarian European Community Studies Association (BECSA), Sofia, 31 May-1 June 2007. I wish to thank the conference participants for their comments. Special thanks to Maria Paola Ferretti for sharing her expertise on civil society participation in the European Union with me.

We conclude that we probably will need to devise different participatory institutions for promoting either transparency and democratic accountability, or deliberative input into processes of international rule-making. With regard to the first task, non-state actors are instrumental as watchdogs that expose intergovernmental bargaining processes to public scrutiny. With regard to the second task, non-state actors and citizens may contribute to the quality of international norms and rules that are discussed in small institutions of the committee type. No single participatory institution is likely to maximize both goals at the same time. If we wish to improve European and global governance through civil society participation we will therefore need to define exactly what new or revised participatory institutions are supposed to achieve.

## **II. The democratizing functions of organized civil society**

Contemporary political theory has devoted great efforts to advocating greater involvement of citizens in governance and participation in different areas of our social and political life. In particular, practices are advanced that can combine the advantages of citizen participation and procedures of deliberative decision-making. Such deliberative-participatory practices can take on many forms: deliberative polling (Ackerman & Fishkin 2004), focus groups (Dürrenberger et al. 1999), citizens' juries (Finney 2000), science shops (Fischer et al. 2004) or electronic participation (Rowe & Gammak 2004). Given the potential benefits of enhanced participation and deliberation, this combination has also been suggested as a strategy for democratizing the institutions of international governance. By international governance we mean the more or less formalized procedures of political decision-making beyond the state that are geared towards resolving problems arising from international interdependence.

In its traditional form, which has been labelled 'executive multilateralism' (Zürn 2004) international governance has been state-centric, elite-driven and technocratic. It featured a pronounced democratic deficit: parliamentary oversight, citizen participation and public accountability were particularly underdeveloped. Intergovernmental multilateralism, therefore, is increasingly regarded '[...] as a social construction of the 20th century, which is becoming increasingly problematic. The view that agreement by states, according to institutionalized rules, guarantees legitimacy relies on a deeply statist normative theory. [...] Demands for multilateral organizations to become more accountable to "civil society" rather than simply to states have proliferated' (Keohane 2006: 3). In addition, especially in the realm of functional regulation, international institutions are under the accusation of passing on decisions to experts and forgetting their political nature, thus further weakening the link with the people that are affected by those decisions. The specific threat to the democratic self-governance of citizens that international governance poses therefore may be defined as a combination of intergovernmentalism and technocracy.

In recent years, enhanced public participation has been promoted as a way of re-establishing the link between citizens and internationalized policy-making (e.g. Charnovitz 1996, 2004; Esty 1998, 2002; Nye 2001; Scholte 2004). In that debate, it has been argued that civil society organizations (CSOs) may serve as a 'connective tissue' between citizens and international institutions of policy-making, providing both input from citizens and accountability towards citizens. The conception of civil society to be found in much of that literature comes close to the following: 'Civil society is composed of those more or less spontaneously emergent associations, organizations, and movements that, attuned to how societal problems resonate in the private life spheres, distill and transmit such reactions in amplified form to the public sphere' (Habermas 1996: 367). It is this notion of transnational civil society as an essentially organized sphere of social action that we adopt in this essay. We therefore do not envisage direct citizen participation in international politics although it has been suggested by some political

theorists and there are some rare instances of it in current political practice (see section on the European setting below).

What reasons are there for advocating civil society participation in public policy-making? We deem it useful to distinguish between two types of claims that are typically made in this debate. The first claim we refer to as the ‘*accountability claim*’. Democratic accountability requires that citizens are able to scrutinize political decision-making processes and to hold decision-makers to account for their choices. ‘At its heart, the idea of public accountability seems to express a belief that persons with public responsibilities should be answerable to “the people” for the performance of their duties’ (Dowdle 2006: 3). It pertains to the post hoc evaluation of governance outcomes. Unlike democratic input, accountability is essentially retrospective (Bovens 2006). One of the key symptoms of the democratic deficit of internationalized governance is a lack of public accountability thus conceived (Held & Archibugi 2005). International governance is characterized by a spread of decision-making competence over various levels of policy-making, from regional to Europe-wide in scope. In addition, it relies on networks that involves both public and private bodies and that builds heavily on informal relations among political actors (Slaughter 2004). Due to the public-private mix and the networked character, the origins of political choices are often obscure and responsibility is at times hard to establish (Lord 2004: 195).

What exactly can organized civil society contribute to a democratization of international governance in this respect? First of all, CSOs make negotiations more transparent, monitor the consequences of international political decisions for citizens and press international organizations to disclose their documents (Scholte 2004: 219/20). By means of shaming and campaigning organized civil society contributes to the creation of a global public sphere in which political choice are exposed to public scrutiny (Nanz & Steffek 2004). Through their own publications or the mass media CSOs raise public awareness of global governance. They show how exactly current developments in international governance impinge on peoples’ every day lives (Glasius 2002: 150). In sum, at the core of the accountability claim is the idea that organized civil society can help citizens to maintain democratic control over internationalized decision-making. Although CSOs cannot punish decision-makers for flawed choices they can mobilize public resistance against them. By public campaigns they enable citizens to scrutinize public governance and to arrive at informed opinions about them.

The claim that we refer to as ‘*epistemic*’ is stronger and more specific than the generic claim that public institutions should be accountable to their constituency and justify their choices. Instead, it pertains to the content of the decisions taken, and their problem-solving potential. Technical problems are increasingly at the core of internationalized political decisions. Public health, nuclear safety, biotechnologies, climate change are but some examples of fields in which it is not possible to make sound political choices without grounding them in technical and scientific expertise. Many domains of political decision-making rely for their functioning on continual input from expert knowledge. No matter whether those specialised actors are natural scientist, legal experts, or economist, lay people are progressively removed from the core decision making, which requires highly technical skills. This tendency is visible within states but also in international policy-making.

On the one hand, often the use of expertise itself became the ground to confer authority to political decisions (Gieryn 1995). On the other hand, scientific expertise is also increasingly contested (CEC 2001). First, experts often fail to provide reliable policy advice because of the incompleteness of their knowledge that may be either due to the inherent uncertainty of the subject under regulation, or persistent disagreement among experts. Second, failure of experts to give effective guidance on occasions such as the Chernobyl disaster and the BSE scandal

have raised question over the reliability of scientific expertise and its independence from industry lobbies and interest groups. With expertise becoming disenchanted (Beck 1999) some came to argue that lay people can contribute to produce better regulation and therefore should be involved in decision-making. In order to have good rules, we should bring into the decision making process the experiences, reasons and perspectives that diplomats and government-appointed experts would not consider otherwise (Wynne 1987). Inputs from ordinary people are necessary to have better rules, and the idea of ‘better rules’ here explicitly includes also rules and decisions that appropriately reflect people’s values, preferences and concerns.

For this reason public participation has been regarded as a necessary ingredient of a deliberative process to reach better decision outcomes. Deliberation is ‘an unconstrained exchange of arguments that involves practical reasoning and always potentially leads to a transformation of preferences’ (Cooke 2000: 948). Lay public participation brings to the deliberative forum arguments derived from local knowledge and everyday experience that specialised actors would otherwise ignore. In this way, arguably, the final regulatory output fits better the needs and preferences of the constituency. In sum, the epistemic claim, which is particularly prominent in the literature on internationalized risk regulation, is that by considering a broad range of additional information from and normative evaluations by citizens, deliberative public procedures will be capable of delivering better rules – justified and effective.

Some theorists, in particular those emanating from a deliberative model of democratic theory, have come to argue that public participation can simultaneously achieve democratic accountability and a high quality of decisions (Gutmann & Thompson 1996). The reason is that public deliberation is conceptualized as a cooperative learning exercise that prepares the grounds for political decisions that will be accepted and legitimate because they are the outcome of a cooperative process. Under ideal conditions, governance by good arguments is epistemically sound and democratic self-governance.

We do not wish to challenge theories of deliberative democracy on theoretical grounds here. We are rather concerned with the current practice of public participation in real world politics and the possibilities of realizing the democratizing potential(s) inherent in it. We seek to provide some empirical grounding of the optimistic but largely abstract proposals for a deliberative reform of international governance. We thus echo McGrew and Robotti who find that ‘[i]nterestingly few studies have sought to explore how deliberative practices have become institutionalized in global governance arrangements and what this might tell us about the conditions for, and limits to, deliberative designs’ (2006: 8). The key point is that public deliberation, as described by e.g. Gutmann and Thompson, has important institutional requirements. To date, most international negotiation processes do not provide ideal conditions for deliberation (Ellis 2002: 292; Deitelhoff & Müller 2005; Steffek 2005). We argue that in the face of these definitely non-ideal conditions of real world governance, it may be useful to keep legitimacy and epistemic claims distinct, and to ask whether any existing procedure is able to achieve both goals at the same time. Our considerations are hence pragmatic in nature. In the following section we present evidence from two case studies in order to illustrate the usefulness of our theoretical distinction. We will analyse participatory procedures at the European and global level in the field of biotechnology regulation. The aim is to critically assess to what extent they provide CSOs with opportunities for a) fostering public accountability and b) enhancing the epistemic quality of decisions in deliberative settings.

### III. Civil society and international biotechnology regulation

The policy field that we have chosen for this empirical enquiry is the regulation of biotechnology in general, and of genetically modified organisms (GMOs) in particular. This is an appropriate topic as the issue involves the regulation of risk, which makes the epistemic dimension paramount. Moreover, it has mobilized wide parts of civil society, such as environmentalist CSOs, but also the industry. The regulation of agri-biotechnologies has also caused international tension, not least because of the different weight given to public opinion and citizen preferences in it (Bernauer 2003). The notorious ‘EC Biotech dispute’ in the *World Trade Organization* (WTO) testified to this potential. In the following paragraphs we will scrutinize existing mechanisms for citizen participation in regulatory policy-making concerning biotechnologies. We will first discuss access points at the Community level and then turn to the global political setting.

#### III.1 The European setting

Observers have remarked that in the last decades the European Union institutions, despite the diffuse criticism of being affected by a ‘democratic deficit’, have increasingly strengthened the representation of citizens’ interests, providing more institutional spaces for public participation (Vogel 2001:12; Borrás 2006). GMO regulation in particular has been influenced by the emphasis on consumer affairs under the Commission Prodi and the new focus on food safety and precaution generated in the aftermath of the BSE crisis. The *White Paper on Food Safety* (CEC 2000a), the working document *Science, Society and the Citizen* (CEC 2000b), and the report of the working group *Democratising Expertise and Establishing Scientific Reference Systems* (CEC 2001), envisage more inclusive decision making processes and ‘make a strong commitment to more input-oriented, communicative approaches, that is, more citizen participation as a key for making EU policy on biotechnology more effective’ (Abels 2005: 348). In particular, the regulative framework for GMOs inaugurated at the beginning of this decade includes ‘consumer interests’ and ethical concerns as legitimate considerations that should be included in the process of authorisation of GM products in the EU market.

The EU institutional setting provides civil society with a quite remarkable access point for influencing regulation, mainly through representation within expert advisory bodies, through ad hoc consultations, and internet pages open to public comment. Since 1990 the European Commission has adopted institutional strategies as a way to channel societal disagreement over GMOs into participatory practices. The Deliberate Release Directive (22/90) mandated public disclosure of notifications for both GMO field trials and product authorisation, thereby ensuring a possibility to scrutinise and challenge the work of the national competent authorities (CAs). Indeed the 90’s were characterised by a highly controversial climate in which GMOs rejection from part of the public was at the core of boycotts, court hearings, national bans on products that had already obtained EU wide authorisation (Levidow et al. 2005). Under the 2001 revision of the Deliberate Release Directive (18/2001/EC) and the subsequent Directive 1829/2003/EC (regulating GM food and feed) requirements of public participation were strengthened. National competent authorities are required to consult the public on each notification for release into the environment, so as to grant CSOs and individual citizens the opportunity to express their opinion, which should be given “due consideration”. Risk assessment and risk management remain two distinct tasks, in which the former is mainly conceived as a scientific and epistemic enterprise, whilst the latter is genuinely a political task; yet public participation should be granted at both levels.

Under this new regulatory framework, GMO products are licensed through quite complicated and stringent procedures that involve the Member States, the applicant company, the Euro-

pean Commission, the Council of Ministers, and the European Food Safety Agency (EFSA).<sup>2</sup> The absolute novelty is that for the first time citizens can take part in authorisation procedures of individual products (Ferretti 2006). This means that alongside the twice-yearly stakeholder consultative platform, the annual stakeholder colloquium, and the periodical scientific colloquia and public consultations organised by the EFSA, CSOs have the opportunity to intervene into the authorisation procedure of any product submitted to the EU national authorities.

How does this procedure work in practice? When an application dossier is notified by the applicant company to a national competent authority, all interested parties are invited to contribute with facts and evidence in order to express their opinion on the submitted document and, when they judge it opportune, to rebut the arguments presented by the applicant on the basis of facts, evidence and argument. Civil society is consulted through the Internet: in the 30 days following the publication both of the summary notification and of the assessment report by the competent national authority, the general public is invited to send comments, via a website (<http://gmoinfo.jrc.it>, hereafter *Gmoinfo*) provided by the Joint Research Centre of the EC (based in Ispra, Italy) with the support of DG Environment (for products to be authorised under Directive 18/2001/EC) and provided by DG SANCO for products to be authorised under Directive 1829/2003/EC.

The competent authority should act as a neutral arbiter between the parties, appraise the evidence and pronounce a verdict. In this system it is not expected, as in idealized deliberative practices, that actors are open to change their preferences through new information, dialogue and mutual learning (Elster 1998; Fishkin 1991). It rather is a court-like situation, in which every party defends its own case, and the verdict establishes winners and losers, without space for mediation and conciliation (McGarity 1990; Ferretti 2006). The underlying principle is that the best argument wins, but only the competent agency is to decide what counts as the best argument – by following the basic rules of logic, but also the guidelines legally established for the process of risk assessment. Therefore, this practice provides little space for learning and persuasion through deliberation as envisaged in deliberative democratic theory.

In addition there are major asymmetries among the participants involved. In practice, the agenda is shaped by who prepares the document/proposal to be submitted to appraisal of the interested parties. In the case of GMOs, the dossier application is produced by the applicant company, following a standard format requested by the EC. The rationale is to ensure ex-ante accountability and put the strains of justification on the applicant. However, this also puts the company in a position of advantage compared to other parties. The data contained in dossier applications is based on studies commissioned by the applicant company. Paradoxically, it is the applicant company that is in the best position to put its products to test. This is primarily because big GMO companies can attract scientists of excellence and employ vast resources. However, being in charge of the presentation of data and materials, the company can conceal unfavourable evidence and information.

The EFSA and the national authorities are in the position to request additional information on the dossier application, or to object to the information provided. However, time constrains and the right to commercial secret often prevent a thorough investigation of the company's dossier. The EFSA even can decide to conduct additional tests on the product, but it relies pre-

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<sup>2</sup> The EFSA is an independent scientific body, established by European Parliament and Council Regulation 178/2002/EC of 28 January 2002. Its task is to meet the demand for sound and independent scientific advice to the Commission (Lafond 2001). In particular the EFSA's scientific GMO Panel deals with questions of genetically modified organisms as defined in Directive 18/2001/EC (regulating deliberate release of GMOs into the environment) and 1829/2003/EC (regulating GM food and feed).

dominantly on the applicant's sources of information. The recent case of Monsanto's genetically modified maize MON 863, in which a wide scientific disagreement concerned the evidence provided by a study commissioned by the applicant company, exemplifies this problem well. Both those who were persuaded of the statistical interpretation produced by the study, and its critics had only the evidence and data produced by Monsanto to rely on (Ferretti 2006). This provides us with an indication of the conspicuous influence that a company has on the authorisation procedure.

The procedure under exam, along with giving publicity to the documents produced in the assessment procedure, has the ambition of involving the general public in the decision making, being open to 'inputs from below'. However, it is very difficult to see how lay people could make meaningful contributions to decision making under Directive 18/2001/EC. Within the time limit of 30 days set by the directive the public should find the means and resources to challenge the opinions of the competent authority and the claims of the applicant company. Given the highly technical character of the dossier, reacting in such short periods of time would require either particular expertise at hand, or financial resources to fund that expertise.

Looking at the various SNIFs published by *Gmoinfo* and people's reactions to them, comments written by lay people have decreased in number from an average of circa 21 comments per summary report in 2003 to an average of circa 4 comments in 2004. Over time, comments have increasingly become technical, and considerations of ethical nature, or based on common sense have almost disappeared (Consiglio dei Diritti Genetici 2005). Not surprisingly, the *Gmoinfo* forum therefore has been progressively colonised by specialised non-profit organisations. These organisations are necessary to facilitate public participation as only they can overcome the obstacles to public engagement, namely the difficulty to collect the necessary information from the various institutions involved (national authorities, DG Environment, DG SANCO, EFSA), to translate the technicalities of the official documents into a language widely accessible, and to voice citizens' dissatisfaction with the ways in which the institutionalised spaces for participation are managed.

This progressive technicalisation of the *Gmoinfo* website may also be due to the limits set by Directive 18/2001/EC to the contributions that can be brought to the discussion forum. Indeed some comments on the first SNIFs read like this one: "*Are you crazy? As if nature is not beautiful enough*" (SNIF C/NL/04/02). Another comment, submitted in the authorisation procedure for a new variety of carnations, asked rhetorically whether there were no more urgent tasks that scientist should address than modifying the colour of a flower. The Dutch competent agency, which was in charge of the respective notification, commented that all these concerns fall outside the standards set by Directive 18/2001/EC. In fact, the objection that most comments written by lay people fall outside the scope of the directive - and therefore are not pertinent - is quite recurrent in the assessment reports produced by the national authorities (e.g. C/NL/04/01, insect resistant cotton, events 281-24-263 and 3006-210-23).

Admitting the public into forums that were before reserved to expert deliberations (as for risk assessment) requires an 'expertisation' of the public. This participatory mechanism is not designed to capture what people take to be a risk, their ethical concerns and methodological perplexities, unless expressed under the guise of technical matters. On the one hand, the fact that arguments explicitly based on ethical or political preferences are not considered valid in the discussion is consistent with the distinction between risk assessment and risk management, which presupposes a de-politicization of the assessment procedure. On the other hand, restriction of the participatory forum to technical discussion has given way to expert interventions that in the most recent dossiers have taken the form of actual scientific counter-expertise.

The same pattern is observable in the ad hoc consultations open by the ESFA (e.g. consultation on the new guidelines for risk assessment, in which the general public is represented by specialised CSOs or by independent experts rather than by lay people. This does not come as a surprise, since it is unimaginable to think that lay people have time and energies to spend in acquiring the competences and the knowledge to meaningfully participate to such technical debates. However the role of CSOs acquires a multifaceted dimension. Several CSOs play on the one hand the game of epistemic participation and present themselves as reliable interlocutors of the institutions. On the other hand through their webpages, press campaign and action in the civil society they are highly critical of those same institutions and of the possibility of actually working together (Friends of the Earth 2004). On an extremely oppositional topic such as GMOs taking side pro or contra GMOs seems inevitable. Most CSOs active in this field build their relation with the public by exposing the alleged partiality of European institution towards the biotech industry and what they regard in general an excessively liberal approach to GMOs, and by fighting the GMO industry through boycotts and press campaigns.

In sum, although the procedures in place at the European level provide civil society with access to authorisation procedures their input is often marginalized, due to the institutional defects and shortcomings described here. Not least for this reason have CSOs turned to public campaigning and street action. We are faced with a paradox here: While the European setting is supposed to facilitate civil society input it at present only manages to achieve better visibility of governance and to facilitate public control over decision-making. The findings confirm other studies that have highlighted the very limited achievements of public interest CSOs in channelling their concerns into European decision-making (Dür & de Bièvre 2007; Friedrich 2007).

### III.2 The global setting

With regard to civil society participation, the WTO has made some progress over the last ten years when compared with its predecessor, the 1947 GATT. The organization now officially acknowledges civil society actors as significant and legitimate interlocutors. It has devised some guidelines on how to relate to non-state actors, even if these still remain rudimentary. The most notable evolution has taken place with respect to external *transparency*: access to official WTO documents has been liberalized and its website caters them to the public in a remarkably user-friendly way. This disclosure of the organization's documentary record is contrasted, however, by the extremely limited *access* of observers to its policy-making process (Steffek & Kissling 2006). The WTO conceives of itself as an intergovernmental forum in which direct involvement of CSOs would not be appropriate.<sup>3</sup>

At the WTO, conversation between civil society and government representatives takes place mainly in the form of 'outreach activities', such as public symposia. However, it needs to be stressed that such discussions remain detached from the WTO's regular policy-making process. There is no way in which non-state actors could enter a regular dialogue with policy-makers on concrete regulatory proposals, or exchange views with the assembly of national delegates as a whole. Except for the possibility to observe the Plenary Meetings of Ministerial Conferences, intergovernmental and non-state areas remain clearly separated. Two WTO committees are concerned with the GMO issue – the *Committee on the Agreement on the Application of Sanitary and Phytosanitary Measures* (SPS Committee) and the *Committee on the Agreement on Technical Barriers to Trade* (TBT Committee). Yet to none of these commit-

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<sup>3</sup> The WTO guidelines for relations with non-state actors were established by a 1996 General Council decision, see WTO Doc. WT/L/162, 23 July 1996, Paragraph VI.

tees do non-state actors have any access. In this respect, NGOs and other exponents of a global civil society clearly are at the margins of WTO although one could argue that their expertise could be beneficial there. The WTO remains a club-organization (Keohane & Nye 2001) in which problems of democratic accountability and control remain paramount.

These adverse conditions quite obviously have repercussions on the strategies by which CSOs try to influence WTO policy-making. Many CSOs do not seek any direct discussion with WTO policy-makers. They rather concentrate on awareness-building, addressing the public, and on campaigning, addressing the WTO. CSO activists do not see themselves in a position to transport the concerns of civil society *into* the WTO, but see themselves only able to enhance public knowledge *about* the WTO (Steffek & Ehling 2007). In sum, there is very little empirical evidence of a dialogue taking place between the WTO and organized civil society, and certainly very little that would amount to deliberation and could enhance the epistemic quality of decisions. CSOs at the WTO act primarily as *watchdogs*, and perceive themselves as such.

Nevertheless, there is a forum in which non-state actors might have a chance to directly influence the regulatory process concerning GMOs at the global level: the *Codex-Alimentarius Commission* (CAC), sponsored jointly by the *World Health Organization* (WHO) and the *UN Food and Agriculture Organization* (FAO). Its task is to produce internationally recognized food standards to protect the health of consumers, but also to facilitate international trade in foodstuffs and harmonize national regulatory approaches in this field. Codex standards are an important benchmark referred to in Article 3 of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). Countries that wish to maintain a cautionary approach towards food and health issues (and thus GMOs) face the pressure to conform to global standards that are also used by the WTO Appellate Body (the juridical branch of its dispute settlement system) as reference points when food safety rules are subject of a trade dispute.

Given the importance of global standards, CSO presence in the CAC and its various committees may potentially be a safeguard against the dominance of purely scientific risk assessment in the negotiation of such standards. In the CAC, CSOs also enjoy participatory rights that enable them to observe the negotiation process and make their own positions heard (Razzaque 2007). Their role as deliberators is officially acknowledged by CAC in the ‘Codex Strategic Framework 2003-2007’. It states that ‘the participation of all members and relevant intergovernmental and non governmental organizations is critical to sound decision-making and ensuring that Codex standards and related texts take account of the full range of interest and viewpoints’.<sup>4</sup> Therefore, the official aim of participation here is an epistemic one: a wide range of interests and expertise is conducive to the quality and acceptability of the regulatory decisions reached. ‘Given the strong public interest in food safety and regulatory issues, the involvement and input of consumers and non governmental groups at the international and national levels is essential to build public confidence in international standards and assure the strong public input, acceptance and support for Codex standards, guidelines and recommendations as a basis for domestic regulation and trade.’<sup>5</sup>

Thus, CAC potentially provides a deliberative forum for interaction between state representatives and organized civil society (Livermore 2006: 781). ‘Potentially’, because it currently has

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<sup>4</sup> See Codex Alimentarius Commission, Strategic Framework 2003-2007, para 16, available at <http://www.fao.org/DOCREP/004/Y2361e/y2361e00.htm> (accessed 8 February 2007).

<sup>5</sup> Ibidem, para 17.

some defects with regard to deliberative equality. There is an imbalance between heavily represented industry associations and public interest and consumer CSOs (Sklair 2002: 150; Razzaque 2007: 154/55). In addition, the responsiveness of governmental delegates towards civil society's concerns is a cause for concern (Hüller & Maier 2006: 280). In sum, CAC nevertheless appears to be a policy arena that due to its focus on risk, standards and technical expertise is particularly suitable for deliberative and inclusive modes of decision-making. In this context, representatives of civil society may have a role to play in contributing to a high quality of decisions. The performance of the forum as a deliberative setting is obstructed by the very limited resources that CSOs command when compared to industry lobbyists.

As the CAC is only an advisory body it does not issue binding political decisions but technical recommendations. Its standards can function only indirectly, when, for example, the dispute settlement body (DSB) of WTO adopts them as reference points in determining the legality of restrictions to international trade in GMOs. A remarkable feature of the WTO with regard to biotechnology regulation is its strengthened dispute settlement body (DSB). The aim of the DSB is to resolve conflicts among WTO member states which arise from violations of multilateral trade agreements or uncertainty regarding their interpretation. Hence the DSB has been hailed by some as a triumph of the law over state power and a chance for deliberative decision-making (Eckersley 2005). Unlike the hearings of other international judicial bodies, such as the International Court of Justice, the deliberations of the WTO dispute settlement system are closed to the public.<sup>6</sup> The access point for non-state actors, expert individuals and organizations, is the possibility of submitting *amicus curiae* briefs to the appellate body (the judicial branch of the system whose decisions can be overruled politically only by unanimous vote and hence with the consent of the winning party). This at least in theory allows CSOs to make their arguments heard by the panellists and has led some to speak of 'a fruitful site of entry into the WTO by civil society' (Eckersley 2005: 3). The practice is contested and some would argue that the influence of amici briefs is overstated (Mavroidis 2002). However, it may prove to be an inroad into the cloistered bodies of the WTO.

In the field of GMO products, a WTO dispute was initiated by the United States in May 2003, supported by Argentina and Canada. In this so-called *EC Biotech case* (Boisson de Chazournes & Mbengue 2004), the claimants argued that the European authorization system of GMOs was in violation of several WTO agreements. Additionally, national safeguard measures of Austria, France, Greece, Germany and Luxembourg were challenged.<sup>7</sup> In this case, three *amicus curiae* briefs were submitted to the DSB. Two came from public interest NGOs, and one from independent researchers.<sup>8</sup> They all tried to put forward some arguments, which they see under-represented in the submissions by the parties to the dispute. The DSB, like in past cases, accepted the briefs. However, in the EC Biotech case an unusual move for enhancing publicity of panel proceedings took place. In February 2006 the confidential interim report of the panel leaked and crucial passages were posted on several NGO websites. The panellists

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<sup>6</sup> In 2005, hearings were opened to the public for the first time in the *Continued suspension of obligations in the EC Hormones dispute*. Seats for a closed circuit broadcast of the panels' hearings in a separate viewing room were granted to the public and WTO members, see the Communication from the chairman, WTO Doc. WT/DS320/8 and WT/DS321/8, 2 August 2005. So far, however, this has not become a general practice.

<sup>7</sup> See *European Communities – Measures Affecting the Approval and Marketing of Biotech Products*, WTO Docs. WT/DS291 (US), WT/DS292 (Canada), and WT/DS293 (Argentina), 13 May 2004.

<sup>8</sup> For the briefs, see <http://www.trade-environment.org/page/theme/tewto/biotechcase.htm>, accessed 10 July 2005.

criticized the violation of confidentiality but were not able to establish where the leak occurred. They incorporated this criticism in their final report on the case.<sup>9</sup>

‘It should be noted, in addition, that the Institute for Agriculture and Trade Policy and Friends of the Earth submitted *amicus curiae* (friend-of-the-court) briefs, requesting the Panel to accept and consider their briefs. The Panel acknowledged receipt of these briefs, shared them with the Parties and Third Parties, and accepted them as such. In the light of this, it is surprising and disturbing that the same NGOs which claimed to act as *amici*, or friends, of the Panel when seeking to convince the Panel to accept their unsolicited briefs subsequently found it appropriate to disclose, on their own websites, interim findings and conclusions of the Panel which were clearly designated as confidential.’<sup>10</sup>

This statement exemplifies the problems that CSOs face when they seek to simultaneously contribute by argumentative means to small-group deliberation and to enhance the public visibility of governance. Small-group deliberation requires high degrees of trust and confidentiality among the partners. When CSOs wish to take part in it they need to abide by the rules. Acting as a watchdog requires them to make information public and to expose governance processes to public scrutiny. By making the *Biotech* interim report public CSOs probably compromised their chances of having their *amicus curiae* briefs considered by WTO panellists in the future. So there seems to be a trade-off between CSOs acting as watchdogs, and CSOs acting as knowledgeable participants in deliberative settings.

#### **IV. Incompatibilities between the two roles of CSOs**

In sum, the empirical discussion has shown that organized civil society avails of multiple access points to the international regulation of biotechnologies at the European and the global level. In the EU and in the CAC case we found that CSOs were directly involved in procedures of risk-assessment and may hence potentially contribute to the epistemic quality of decisions reached there. However, these participatory practices do not provide anything remotely like deliberative settings, in which only the better argument counts, status differences are unimportant, and in which participants are open to being persuaded by others. At the WTO we found a striking lack of participatory opportunities and that, as a consequence, organized civil society is mainly trying to raise public awareness and to expose secretive decision-making to public scrutiny. In their choice of political strategy, CSOs clearly follow the opportunity structures provided by intergovernmental settings.

The choice of one strategy has also repercussions on the ability of CSOs to perform the other. The row over the leaked appellate body report in the *EC Biotech* case highlighted the potential incompatibility between the creation of public visibility through ‘naming and shaming’ and simultaneous attempts to contribute directly to decision-making processes. Such empirical findings seem to confirm the relevance of our initial theoretical distinction regarding the twofold role of civil society in democratizing global governance. Our findings from the realm of international politics can also be linked back to scholarly work on civil society and the state that has come to similar conclusions. Taking issue with the literature on deliberative democracy, Hendriks (2006) argues that organized civil society has a dual role to play within the state. In what she calls micro conceptions of deliberation civil society is directly involved in deliberative settings. In macro conceptions that centre on a wider public discourse civil society is contesting political decisions and political power in public, thus acting as a counter-

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<sup>9</sup> Cf. WTO Doc. WT/DS291/R, WT/DS292/R, WT/DS293/R, p. 280-2, paragraphs 6.183-6.196

<sup>10</sup> WTO Doc. WT/DS291/R, WT/DS292/R, WT/DS293/R, p. 282, paragraph 6.196.

weight to the state. With reference to empirical material mainly from Australia, Hendriks goes on to argue that the two roles are empirically hard to reconcile.

Additional evidence supporting our conclusion can also be found in the burgeoning literature on the strategies of non-state actors in international politics. Close collaboration with international organizations leads to a professionalization of advocacy groups, as shown in the case of the UN (Martens 2005) and the EU (Saurugger 2006). Some even see corporatist arrangements on the rise as international organizations pick their privileged partners among CSOs (Ottaway 2001). While privileged access provides CSOs with precious opportunities for direct debate and attempts at persuasion it creates a disincentive to engage in public shaming and radical critique of international institutions (Beyeler 2006). Therefore, fears of co-optation do not seem to be without foundations. CSOs that cooperate closely in small-scale deliberative settings at international organizations may in the end lose their independence and their ability to publicly challenge states and intergovernmental organizations (Greenwood & Halpin 2005). Close collaboration and concomitant professionalization ‘have affected the work of NGOs in that they increasingly subordinate their aims to pragmatic politics instead of proposing radical alternatives. (...) Such criticism has been particularly strong in the environmental and developmental sectors. Moreover, the formalisation of relations might also reduce NGO creativity, and NGOs increasingly adapt to official politics’ (Martens 2001: 391).

## **V. Outlook: organized civil society and the transnational public sphere**

The remainder of this report is dedicated to an exploration of public accountability and in particular to the role of civil society in creating it. The rationale for having this extra section of the report is that the role of CSOs as deliberators is quite well-described in the literature, and, as was explained above, generally acknowledged. The role of CSOs as watchdogs and creators of a transnational public sphere, in contrast, is much less explored in the literature. Since the notion of a public sphere is so central in this respect, a further clarification is in order. As described above, the starting point here is a notion of the public sphere as a necessary ingredient for democratic governance, and the account of the public sphere endorsed here is the one presented by Jürgen Habermas. However, it should be stressed that the emphasis on a public sphere is not peculiar to deliberative theories of democracy. Rather, it has a systematic place in many variants of democratic theory. ‘There is a close link between theories of the public sphere and democratic theory more generally. Democratic theory focuses on accountability and responsiveness in the decision-making process; theories of the public sphere focus on the role of communication in facilitating or hindering this process’ (Ferree et al. 2002: 289).

Let us explore the idea of a public sphere in some more detail: in the work of Habermas who in turn often refers to Bernhard Peters, a crucial distinction is made between the centre of a democratic political system and the periphery. Situated at the centre are the sites of democratic decision-making and judicial review, hence parliaments, governments and the court system. The periphery consists of processes of public communication that surround these core institutions of democratic decision-making. This communicative space, in which opinions on governance are formed and demands articulated, is also called the wider public sphere. The crucial point is that this public sphere basically develops in civil society, beyond the state and the economy. The existence of a non-governmental and non for profit realm is therefore essential for the functioning of a democracy. It is here that new issues and concerns arise, and it is here that new political demands are formulated (Peters 1993: 340f; Habermas 1996: 367).

We will now turn to the idea of a European public sphere. Most authors agree that the term European public sphere denotes a transnational communicative space. We may speak of a

‘communicative infrastructure between the EU and its citizens’ in this respect (Sifft et al. 2007: 128). The existence of national public spheres is rather uncontroversial and usually taken for granted (Fraser 2005). But is a transnational public sphere equally real? Some authors, such as Bohman (1998) or Payne and Samhat (2004) already see them at work in global politics. For Europe, ironically, many analysts are much more sceptical. This has to do, as we will see, with their definition of what a European public sphere actually is.

Most researchers on the European public sphere would look for it in the mass media, because this is ‘what the general public gets to see’ (van de Steeg 2002: 507). To date there are few genuinely European mass media and their audience is limited. Gerhards (2000) has therefore suggested thinking of the European public sphere not in terms of a unified public sphere, but of the Europeanization of various national public spheres. A European public discourse, if it emerges at all, would emerge primarily within them. This idea is widely accepted in the scholarly community.<sup>11</sup> The question now is what exactly one would need to find empirically in order to speak of such ‘Europeanization’.

Eder and Kantner have argued that we would need to find a common European ‘frame of reference’ (Eder & Kantner 2000). Others argue that we would need to find an intensified ‘discursive interaction’ between different countries (van de Steeg 2002). Comparative research on media coverage has revealed that there are relatively high national similarities in certain EU-focused debates such as the discussion about the participation of Jörg Haider’s party in the Austrian government (van de Steeg 2006); or about EU scandals such as the alleged nepotism and corruption in the Santer Commission in 1999 (Meyer 1999; Trenz 2000). Others, however, assert that such studies of salient issues and events have overestimated the general trend towards a Europeanization of national public spheres. In a case study on Germany for the years 1950-1995, Gerhards has found no evidence of a progressive Europeanization of media coverage (2001). In a comparative study on five EU member states, Sifft et al. (2007) differentiate between several dimensions of Europeanization. They find an increase in the monitoring dimension, that is, media reporting and comment on political events at the European level. However, they do not find evidence for an increase in what they call ‘mutual observation’ and ‘discursive interaction’ between national public spheres in Europe. Koopmans and Erbe (2004) report that the degree and forms of Europeanization of political communication vary considerably among policy fields. They argue that media reporting quite accurately reflects the Europeanization of policy making, with an emphasis on those policy fields where a clear-cut transfer of competencies to the supranational EU level has taken place. In sum, it seems fair to conclude that empirical research on the European public sphere in the mass media so far has been inconclusive (Trenz 2005).

Is, however, national mass media reporting the right place to look for an emergent European public sphere? Splichal has powerfully argued that the notion that the equation of mass media and the public sphere is generally too restrictive (Splichal 2006). Historically, the emergence of the modern public sphere began in a culture of discussion and societal debate in the public spaces of the salons and coffee shops. True, these were the conditions of the distant past. Yet, in the age of electronic communication we might be on the way back to forms of public communication that do not take place in the mass media (Bohman 1998; Fraser 2005). Weblogs, for instance, are turning into a locus of political criticism and societal debate that needs to be taken seriously. Weblogs are not just vehicles of private chatting and ranting. There is evidence that journalists use them as a source, link their online publications up to them, and that weblogs in turn link back to the content of professional media sites (Schmidt 2007: 25).

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<sup>11</sup> Some question if this parallel emergence is sufficient, see Conrad 2006.

There is a part of the public sphere out there that plays an increasingly important role in flagging issues of political relevance which are in turn taken up by the mass media and thus reach citizens as ultimate rule-addressees.

Some have therefore come to speak not of a unified public sphere but of a patchwork of sectoral publics that are interwoven. Habermas introduced the idea of a network of ‘Teilöffentlichkeiten’, overlapping discursive arenas that taken together constitute the public sphere of modern societies (1996). They are overlapping, intersecting, and mutually informing each other. This is not only true for the national society but also and increasingly so for the emergence transnational arenas of communication. Nancy Fraser, although critical of its ability to effectively control internationalized governance has described the transnationalization of the public sphere in the following words:

‘In general, then, public spheres are increasingly transnational or postnational with respect to each of the constitutive elements of public opinion. The who of communication, previously theorized as a Westphalian-national citizenry, is now a collection of dispersed subjects of communication. The what of communication, previously theorized as a Westphalian-national interest rooted in a Westphalian-national economy, now stretches across vast reaches of the globe, in a transnational community of fate and of risk, which is not however reflected in concomitantly expansive solidarities and identities. The where of communication, once theorized as the Westphalian-national territory, is now deterritorialized cyberspace. The how of communication, once theorized as Westphalian-national print media, now encompasses a vast translinguistic nexus of disjoint and overlapping visual cultures’ (Fraser 2005: 5).

There hence seems to be a possibility for the public sphere to overcome national boundaries and to find a genuinely transnational basis. If such a transnational public sphere is de facto effective in creating public accountability in the same way that national publics did in the Westphalian past is an empirical question. Such a conception also transcends the fixation on journalists as creators of the public sphere. If we take the public sphere as ‘a realm of our social life in which something approaching public opinion can be formed’ than our conception of it should include more actors and avenues of communication than just the mass media. Therefore, the position adopted here is that the European public sphere consists to a good deal of communication flows in the mass media, but that there are also other relevant actors that contribute to the emergence of such a transnational public sphere. In the remainder of this chapter I will outline the specific contributions that organized civil society can make to the emergence of a public sphere in Europe.

The second function that CSOs may perform is a contribution to an emerging public sphere in global politics. This function of organized civil society is symbolized by the lateral ramifications of communication processes outlined in figure 1. The campaign against the international monetary institutions, for example, was publicized through the media and triggered transnational public debate on the activities of these organizations. The legitimacy of global governance is questioned in a public discourse on international organizations and their policies (Steffek 2003: 271). The empirical evidence also suggests that non-governmental actors play a key role in triggering transnational public debates on global governance, thus making international governance more transparent and accountable (Scholte 2004: 217). Organized civil society is instrumental in creating public accountability in at least three different ways that will be discussed in the following:

1. Monitoring public governance;
2. Translating highly technical discourse;
3. Flagging issues, framing issues, and formulating alternatives.

### *Monitoring*

Monitoring the conduct of power-holders is one of the key problems associated with democratic accountability. Many citizens do not have the time, the capacity, and the specialized knowledge in order to follow the conduct of their policy-makers first hand. They therefore typically need to rely on the media to report problematic decisions and denounce misdemeanours of office holders. Media coverage alone, however, will hardly be sufficient for a close supervision of office holders. In addition, we rely on a broad variety of social actors, from social movements to religious congregations and organized interest groups to flag problematic topics and decisions. These organizations communicate either directly to their membership base or seek to feed information and critical comment into the media channels. Therefore, a lively and attentive third sector is an asset to monitoring. Non-state actors act as watchdogs and thus expose power-holders, both political and administrative, to wider public scrutiny. The need for them is even more pronounced in the realm of internationalized policy-making, as media coverage is sluggish and many of the issues discussed at the European level are of a highly technical character.

CSOs do more than just briefing journalists about international politics: they also directly publish conference reports or newsletters that expose the proceedings of diplomatic negotiations to wider public scrutiny. For example, the Canadian NGO *International Institute for Sustainable Development* (IISD) since 1992 has published an electronic newsletter to cover international negotiations related to environment and development, called the Earth Negotiations Bulletin.<sup>12</sup> The initiative was launched by three activists during the preparatory meetings of the United Nations Conference on Environment and Development (UNCED) and continued since then. The Bulletin is published in two ways. A one-page, two-sided leaflet is distributed each day to participants directly at the site of the conference. In addition to the hard-copy version, the Earth Negotiations Bulletin is available in electronic format on IISD website and distributed by electronic mail. At the conclusion of each conference session, the Earth Negotiations Bulletin team writes a 10-18,000-word summary and analysis of the meeting, which is circulated in electronic format. The editors estimate that electronic distribution has expanded the readership of the Earth Negotiations Bulletin to an estimated 35,000 people worldwide.<sup>13</sup>

Another excellent example for the publicity creating function of CSOs is the *International Centre for Trade and Sustainable Development* (ICTSD), established in Geneva in 1996.<sup>14</sup> The ICTSD aims to contribute to a better understanding of development and environment concerns in the context of international trade. It publishes a variety of periodicals on related issues, most notably the newsletter *Bridges* that comes as a weekly news digest and as a monthly review. While the weekly newsletter contains up to date information on ongoing negotiations, the monthly review focuses on analysis and background stories. In order to reach readership in developing countries, in particular in Africa and Latin America, there are also editions in French, Spanish, and Portuguese.

To be sure, these specialized publications do not have an outreach comparable to the mass media. They cater to specialists all over the world, rather than lay people. However, many of these specialists disseminate this information further by using it in their own publications, seminars or public speeches. In reporting and commenting on developments in international

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<sup>12</sup> <http://www.iisd.ca/volto.html> (accessed 20 April 2007).

<sup>13</sup> Source: <http://www.iisd.ca/enbvol/enb-background.htm> (accessed 20 April 2007).

<sup>14</sup> See <http://www.ictsd.org/> (accessed 20 April 2007).

governance CSOs perform the function of journalists. They thus fill the void of a detailed reporting that most professional journalists of the mass media would not care about, as space available in their general interest publications is just too limited.

### *Translating*

This brings us to the second function of CSOs: translation. European governance is obviously elite-driven, taking place in multi-level networks that comprise diplomats, experts and lobbyists to varying degrees. In addition, much of European regulatory policy-making is extremely technical in character and definitely too technical for lay people to comprehend what is really at stake. Therefore CSOs may act as interface between lay people and the institutions of governance that translates between specialized and general discourses. A good example to illustrate this phenomenon is Ferretti's recent study of citizen participation in the authorisation of GMO products for marketing in the EU (2006) who finds that citizens' comments are routinely dismissed by the authorities. They are regarded as 'not pertinent' to the authorisation process because they are not formulated in the highly technical jargon of scientific risk analysis. As a consequence, the forum has been taken over by specialised non-profit organisations, whose are able to translate the technicalities of the official documents into a language widely accessible (Ferretti 2006: 17).

It is obvious that 'translating the technicalities of official documents' is a precondition for citizens to hold policy-making to account. Citizens need an intermediary agent that is able to explain the relevance of issues and decisions for the daily lives of average people, and in turn translate the concerns voiced by citizens into the technical jargon of international governance.

CSOs obviously not only pass information on to their constituencies. They also critically discuss current political developments and highlight their own position on the subject, thus contributing to the alternatives that are seen as available.

### *Flagging issues, framing issues, formulating alternatives*

In this section I will turn to the functions of civil society in flagging and framing issues, and in formulating or highlighting political alternatives. Flagging issues means to draw public attention to problems and thereby creating pressure on policy-makers to deal with them. There is a vast literature on the role of NGOs and social movements in world politics that underscores and illustrates precisely this function (Keck & Sikkink 1998). Members of civil society were crucial in triggering transnational concern with and eventually political action against anti-person landmines (Price 1998: 619). Transnational activism was equally crucial in the abolition of slavery and the discreditation of apartheid in South Africa (Klotz 2002; Crawford 2002). As especially the events of the 1990s have shown, efforts by NGO activists and transnational social movements have been quite successful in bringing the adverse consequences of globalization and global governance into the media and onto the political agenda (Kaldor 2000; Tarrow 2005). Public protests triggered an unprecedented media debate on the merits and limits of globalization. The critical reappraisal of global political institutions such as the World Bank, the IMF or the WTO, and more generally the neoliberal tendencies underlying global governance and European integration, would just not have been thinkable without civil society actors. The flagging of issues, the articulation of grievances, and contestation of political and social practices is exactly the function that Habermas would assign to civil society. These strategies function through the mobilization of public communication about them.

Framing is a discursive process through which meaning is constructed and many of these processes take place in civil society (Benford & Snow 2000). Framing is strategically employed by the campaigning parts of civil society, domestic or transnational, in order to change the public perception of certain issues and to trigger political action on it. Strategic framing

thus is a way of demanding political action on marginal topics or suggesting alternatives to current policies. For example, Joachim (2003) has shown how activist NGOs have reframed the issue of violence against women as a human rights problem which proved to be a powerful frame for mobilizing an international constituency. By doing so, they highlighted alternatives to current policies and governmental action. In sum, the role of organized civil society in bringing about a transnational public sphere of European or even global reach is one of the most fascinating subjects to be studied in the area of international or European governance.

## **VI. Conclusion**

This report has discussed new forms of civil society participation in European and global governance in the field of biotechnology regulation. The aim was to assess to what extent already existing forms of civil society participation can enhance the democratic quality of decision-making at the European and global level. In order to set the stage for such a normative evaluation, two potentially democratizing functions of civil society participation were developed. Civil society participation may enhance the public accountability of new modes of governance. CSOs make governance processes public, engage in naming and shaming and promote alternative frames, or courses of political action. Thus they also contribute to the creation of a transnational public sphere of governance. The second major function of civil society participation is direct input into regulatory processes. By doing so, representatives of civil society directly approach the decision-makers and feed into their discussions information from the societal base of their organizations. Taking such expertise and local knowledge into account will then enhance the epistemic quality of the decisions taken in international institutions.

The empirical section of this report then related the theoretical distinction to the analysis of regulatory decision-making in the field of biotechnology, both at the European and the global level. It emerged from the discussion that in both settings we can find participatory practices that serve the two democratizing functions outlined in the theoretical section. However, we also found that it sometimes does not seem to be unproblematic to reconcile the two functions in practice. Participation in deliberative processes requires a high degree of trust and confidentiality among the partners that may be jeopardized by public shaming and radical criticism. There is, hence, a potential trade-off between the two democratizing functions of civil society involvement.

Therefore, the conclusion seems warranted that in order to maximize the gains from civil society participation we will need two different types of participatory institutions. Those that would enable CSOs to act as critical observers, or watchdogs, without too much involvement in the intergovernmental proceedings; and those that would enable them to contribute as experts to deliberation. Participatory institutions that create visibility and public scrutiny, and hence accountability and democratic control, are not necessarily conducive to deliberation. Observer status often confines representatives of civil society to a passive role that enables them to pass on information, but not to contribute actively to the course of negotiations. In its role as an observer, organized civil society thus is not in the position to make argumentative input that would directly influence ongoing discussions in the intergovernmental setting. However, it enables civil society organizations to act as independent watchdogs. Watchdogs help to expose international organizations to public scrutiny, and hence render international organizations more accountable to their constituency.

As deliberators, by contrast, organized civil society should be involved in the early stages of a decision-making process where chances of being heard are generally higher (Price 2003: 588).

In such a context, for example committee meetings, CSO representatives may indeed help improve the epistemic quality of deliberation and hence the problem-solving capacity of the decisions taken. They can do so by directly voicing citizens' values and interests into committees or commissions where crucial decisions are being discussed. Again, and as especially the EC case has shown, they serve as translators who re-formulate citizens' concerns and preferences into the highly technical language of internationalized risk regulation. However, as we have shown, where this objective gets entangled with epistemic questions, as in the case of procedures for authorisation of GMOs, what works for the sake of publicity, openness and information does not automatically contribute to the epistemic quality of decisions.

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