Understanding Civil Society’s Power in Global Governance: the Role of Non-State Actors in the WTO Fisheries Negotiations

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Paper prepared for the ECPR Joint Sessions, Lisbon, 14-19 April, 2009
Workshop 29: Civil Society, Democracy and Global Governance.

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Abstract
To identify both the influence of civil society actors on global policy-making and their democratic potential is not an easy task. Because of the often informal character of the factual interaction between civil society, governments and international organizations, it is analytically difficult to measure non-state actors’ influence on global policy-making processes. And yet, this is the basis for asking questions about their democratic credentials. Such analyses can provide valuable insights into the political activities of non-state actors, changes in global power structures and the role of both state and non-state actors in global governance. Despite theoretical and methodological challenges, these analyses should receive much more scholarly attention.

Without understanding civil society’s power and influence on global policy-making processes, we cannot discuss democratic aspects of the interaction between civil society, governments and international organizations. We should therefore not only ask the question of whether civil society engaging in global governance is representative, legitimate or democratic but also whether they are indeed powerful actors and justify their legitimizing function through their influence on global policy-making processes.

This paper wants to contribute to theoretical reflections on the global governance concept by discussing the issue from a trans-disciplinary perspective of international political economy while adopting a reflectivist-oriented constructivist approach. The theoretical insights to be gained will be applied to a case study on the World Trade Organizations’s (WTO) negotiations on fisheries subsidies. These negotiations have the potential to create a win-win-win solution, i.e. to bring about a positive outcome for the economy, environment and development. They therefore receive much attention from a wide range of civil society groups such as environmental organizations or social advocacy networks. The objective of this paper is to highlight various facets of the interaction between civil society actors, governments and the WTO from diverse perspectives.

Introduction
Motivated by the World Conferences in the 1990s, global governance has received much attention as a concept of a newly evolving world order at the end of the Cold War. It soon became to be viewed as “a new paradigm in analyses of the organization of the international system and global problem-solving” (Fuchs 2005: 13). Thereby, actor-specific and institutional pluralism are core elements of the global governance concept and the major challenge of it at the same time. While pursuing the objective of being comprehensive in describing and
analyzing new forms of governance in the age of globalization, the concept still lacks a theoretical basis and a clear and widely accepted definition of what its aims at. Consequently, it is controversially discussed among scholars and practitioners who “agree about little except that new actors are participating in political decision-making” (ibid.: 13). And yet, to identify both the influence of these new actors, including civil society, on global policy-making and their democratic potential is not an easy task. Because of the often informal character of the factual interaction between civil society, governments and international organizations, it is challenging to measure non-state actors’ influence on global policy-making processes. Doris Fuchs argues that “the political power of interest groups in general […] is difficult to capture, which is one of the reasons debates on this topics never managed to establish themselves in mainstream International Relations research” (ibid.: 62). Nevertheless, we should not shy away from such an analysis because it can provide valuable insights into the political activities of non-state actors, changes in global power structures and both the positive and negative impact non-state actors might have on global governance. Finally, by understanding non-state actors’ power, we can also ask questions about legitimacy and their democratic credentials, too.

The objective of this paper is to outline theoretical reflections on the role of civil society and the power it can unfold within the structure of global governance. The meaning of civil society, including the definition of non-governmental organizations (NGO) as an integral part of the concept, is heavily debated. There is a wide range of differing definitions. Even though a significant number of literature on NGOs already exists, it can still be argued that NGOs “are not adequately recognized or understood” and that the confusion about the term itself stems “from poor knowledge of the politics behind its introduction and function” (Götz 2008: 233). Even more confusing is the fact that civil society is often used synonymously with reference to virtually the complete range of NGOs. But we should bear in mind that they are not the only civil society actors in global governance. Local and grassroots organizations, social movements, transnational advocacy networks, campaigns and individuals could also be subsumed under this term (Green 2007). And yet, there is the question of what kind of institution qualifies as an advocacy network or social movement in comparison to an NGO – which distinctions can or should be made?

As this discussion is not the primary objective of this paper, I will use the term NGOs based on a definition by Beyer, i.e. an NGO will be understood as “non-state, non-profit, non-violent organizations with the main objective of pursuing political and/or social change without striving for governmental power” (Beyer 2007: 514). When we speak of NGOs, most people think of organizations like the World Wide Fund for Nature (WWF), Greenpeace or Oxfam.
The reason why most literature focuses on rather prominent NGOs like these can be found in the fact that their activities in international organizations are often more visible compared to, for instance, local grassroots organizations. Consequently, their role is easier to define and interactions between NGOs, international organizations and their member states are often more transparent. I will follow the aforementioned definition of NGOs and concentrate on their role in my case study of the WTO negotiations on fisheries subsidies.

If we ask questions about the role of NGOs in global governance, we raise the questions of their power and influence in global policy-making. Thereby, we come to the question of the sources of power of civil society actors and consequently their legitimate basis for their activities in global governance. Civil society actors are praised for the democratic potential in global governance because they are societal actors in contrast to political actors. They represent society. Their participation in international policy-making processes is supposed to make political decisions more acceptable or legitimate within society. But what does legitimacy mean? We can distinguish between input and output legitimacy (Atack 1999). The latter refers to effectiveness and empowerment. Here, we ask questions about power and influence. Input legitimacy focuses on representativeness, accountability and distinct values.

This paper will primarily focus on civil society’s influence on international negotiations. In a subsequent step, I will address the aspect of legitimacy based on an analysis of power. The following questions will guide this analysis:

- **Power and Influence**: Do civil society actors have the power to impact on WTO negotiations? How do they seek influence? Which opportunities to participate in negotiations are provided to them by policy-makers?
- **Legitimacy**: Does the integration of civil society into the negotiating process make political decisions more legitimate? Do civil society actors finally qualify as legitimate actors in global governance?

Without understanding civil society’s power and influence on global policy-making processes, we cannot discuss democratic aspects of the interaction between civil society, governments and international organizations. It is crucial not only to ask the question of whether civil society engaging in global governance is representative, legitimate or democratic but also whether they are in fact powerful actors and justify their legitimizing function through their influence on global policy-making processes.
The first part will outline theoretical reflections on civil society’s power in global governance. Starting from an International Political Economy (IPE) perspective and asking questions about power in international relations, I will discuss various theoretical concepts of power. This serves as a basis for the elaboration of research categories for the analysis of civil society’s power in international relations. As I will focus on the role of civil society, a reflectivist-orientated constructivist approach offers some valuable ideas for a comprehensive analysis of their function in global governance. Furthermore, I will elaborate factors that will not only help to assess civil society’s influence, but also to address the question of their legitimacy. The case study on WTO negotiations on fisheries subsidies will primarily focus on the interaction between governments of the member states, primarily New Zealand as one of the leading governments in these negotiations, and NGOs, here predominantly the WWF International as a very active civil society actor in these negotiations.

**Understanding Civil Society in Global Governance**

The World Conferences of the 1990s were certainly the catalyst for NGO engagement in global governance. Thousands of NGOs attended these events to advocate their interests (see also Fues/Hamm 2001; Messner/Nuscheler 1996). They sought to participate in the construction of a perceived new world order. In their view, processes arising from globalization had to be regulated. It is often argued that the efficiency and legitimacy of international organizations and international decision-making processes could be achieved through the integration of NGOs in these processes (Beyer 2007: 514). But, as Williams correctly observed, “[t]he increased visibility of civil society actors and the attention to civil society by policy makers and analysts is not sufficient in itself to indicate the importance of civil society in the determination of outcomes in the global political economy” (Williams 2005: 345).

The role of NGOs in global governance is critically assessed from a heterodox IPE perspective. Brand et al. (2000) argue that the mere existence of NGOs acting on an international level does not automatically mean that they guarantee democratic processes. Although NGOs are often praised for their legitimizing function, they are criticized at the same time for not having any democratic legitimacy to participate in global politics. Indeed, some of the NGOs reveal even undemocratic features within their own structure (Beisheim 2005: 242; see also Altvater/Brunnengräber 2000).

In addition to the question of legitimacy, Brand criticizes a lack of a theoretical underpinning of the global governance concept with regard to power. Proponents of the global governance concept often tend to see globalization as an unchangeable process which is
generated by technological innovations and external powers. Consequently, states lose their regulating power. They often neglect that globalization itself is a politically generated process based on power struggles between the actors involved. This is an important aspect and should be taken into account when analysing global governance. (Brand 2005) The same is true for the international level. The global governance concept as it is now does not further specify the international power constellations and assumes equality between and among the various actors, which is in fact not the case (Bieling 2007: 164). But how can we define the power of these actors and, as a result, how can we determine their factual influence on the decision- and policy-making process? In the following section I will discuss this by illustrating some concepts of power and how they can be applied to civil society’s activities in global governance.

The Many Facets of Power in Global Governance

The problem in defining power not only lies in the different actors using their power but also under which structural and situational circumstances they do so. Many attempts have already been made to analyse international negotiations and to find suitable analytical frameworks (see Iklé 1987; Hampson 1995). All of them start with a definition of power, which is developed for specific actors and situations, often limited to states as the main actors in international negotiations. Barnett and Duvall argue that most scholarly debates on power in international relations are embedded in realist conceptions and refer to traditional definitions inspired by Weber (1947) or Dahl (1957), which consider power as “the ability of states to use material resources to get others to do what they otherwise would not” (Barnett/Duvall 2005: 40). There is no agreed definition of power and therefore any attempt to define the term remains open to many interpretations regarding the sources and exercise of power and is thus “relationally and sociologically amorphous” (Fuchs 2005: 76).

Many political scientists have tried to find an all-encompassing definition of power, a quest which has finally been too rigorous and not been appropriate to explain political reality (see Weber 1968; Bacharach/Boratz 1970; Keohane/Nye 1977; Katzenstein 1978). Power is often categorized into five different elements: force, persuasion, authority, coercion and manipulation (McLean/McMillan 1996: 398). Power seen as political power mostly refers to the cost of compliance, i.e. social control is the aim and the degree of power needed to maintain control. Other explanations refer to the ability of one party to dominate another, to control the political agenda or to have hegemonic control. Game theory, for example, considers power only in structural terms, which means that it concentrates on the two sides’ fixed values. This implies that during negotiations, there would be no room for altering or modifying values, which seems
to be rather unrealistic in practical terms. If values were considered as truly fixed, there would be no need to negotiate. Furthermore, game theory determines power structure only in terms of weighted values but not in terms of resources and tactics. (see Scharpf 1989, 2000; Mayntz 1993) Habeeb therefore argues that only little relevance for the dynamic process of international negotiation can be derived from game theory (Habeeb 1988: 11). Concession or convergence theories of negotiations (see Contini 1958; Cross 1969, 1977; Bartos 1974) and psychological-behavioural approaches (see Deutsch 1974; Rubin/Brown 1975) face similar criticism.

An overview of the various definitions of power shows that power is defined as either a *possession* or an *ability*. All concepts consider power as something static rather than a process. But viewing power as a process acknowledges that power is often circumstantial, i.e. that it is used in specific interactions, events or within a political regime. Two vital components in terms of power as a process are resources and change. Resources are used to create outcomes, meaning that both political and societal actors use their resources to control political conflicts between elites. This implies that power has to be seen as something in between its resources and its results. The final outcomes reflect the various changes that have happened in the power balance during the negotiation process. This includes alterations in the actor’s positions, values, attitudes, aims and expectations. Describing power as a causal process seems to be a suitable one in analysing power in negotiation. In addition, it concentrates on one actor’s ability to cause preferred outcomes in interaction with another actor and is thus relational. Finally, this definition encompasses both a structural explanation of power by focussing on resources and a behavioural conception of power by emphasizing the ability of the actors involved (Audley 1997: 11; Habeeb 1988: 14-16; see also Dahl 1961). This concept thus follows an instrumentalist and structural approach, which means that, on the one hand, it explores how various actors impact on the formal decision-making process, i.e. on the policy output while at the same time taking the “input side of policy and politics and the predetermination of the behavioural options of political decision-makers” into account (Fuchs 2005: 79, 81).

There exist various types of power that are interdependent. Inspired by many studies on power and conceptual frameworks, Barnett and Duvall emphasize the necessity to distinguish two analytical dimensions of power. These refer to “the kinds of social relations through which power works; and the specificity of social relations through which effects on actors’ capacities are produced” (Barnett and Duvall 2005: 42). Based on these assumptions, they developed a taxonomy of power, which includes four types of power: compulsory power, institutional power, structural power and productive power (ibid.: 48). Most theoretical discussions on power can be subsumed under one of these categories. Compulsory power
mainly includes ideas from realist thinking and emphasizes the role of resources as a means to control another actor’s actions or circumstances. Barnett and Duvall however argue that compulsory power includes not only material resources but also normative resources. This means that non-state actors like NGOs can also possess compulsory power if they use strategies such as shaming to make governments change their policies (ibid.: 50). Whereas compulsory power means exercising power directly, institutional power focuses on indirect ways of exerting power through institutional arrangements. An actor works “through the rules and procedures that define those institutions, guides, steers, and constrains the actions (or nonactions) and conditions of the existence of others” (ibid.: 51). The third dimension of power, structural power, focuses on the “direct and mutual constitution of the capacities of actors” (ibid.: 52), i.e. “that the structural position, A, exists only by virtue of its relation to structural position, B” (ibid.: 53). Structural power overlaps with the fourth type of power, productive power. The latter emphasizes “systems of signification and meaning […] and […] networks of social forces perpetually shaping one another” (ibid: 55). Discursive action becomes an important element of productive power, which influences the actors’ ideas and interests. This type of power is therefore sometimes called discursive power (Fuchs 2005: 83). Power is thereby “seen to be a function of norms, ideas and societal institutions. It is reflected in discourse, communicative practices, and cultural values and institutions” (ibid.: 83; based on Koller 1991). This concept can be further complemented by Susan Strange’s (1996) knowledge structure. She argues that knowledge and information are important sources of power. Helen Milner (1997), too, sees the distribution of information as a crucial factor in international policy-making. The knowledge structure as developed by Strange implies convictions, i.e. moral guidelines, and practical knowledge but also the communicative channels through which this knowledge and ideas are delivered (Bieling 2003: 375). But she fails in developing a concept that is not merely descriptive but instead systemically analyses how, who and to what extent national and global structures are created through discourse (Bieling 2003: 385). These aspects should however all be part of an analysis of productive or discursive power because such an analysis illustrates that the exercise of power does not have to result in the carrying out of specific actions but can also lead to the broader and more fundamental result of the acceptance of certain ideas, norms, and values. In other words, discursive approaches highlight the power resting in the definition of social and political possibilities. Thereby, they demonstrate how normative and ideational boundaries constrain and enable actions. The main difficulty associated with the third dimension of power is its identification and assessment in empirical research. Due to its reliance on persuasion, the perception of legitimacy, and voluntary compliance rather than coercion and
hierarchies of legally assigned responsibility, the exercise of discursive power frequently will not even be perceived as an exercise of power and therefore not be questioned. (Fuchs 2005: 86)

Even though there is a potential for NGOs to use compulsory power, productive power appears to be more relevant in the analysis of NGOs’ impact on global governance. NGOs’ capacity to influence global policy-making processes lies in their information and expertise and their potential to “inspire normative change and provide transparency” (Beyer 2007: 513). Even though NGOs have shown “the ability to use rhetorical and symbolic tools, as well as shaming tactics, to get states, multinational corporations, and others to comply with the values and norms that they advance” (Barnett/Duvall 2005: 60), productive power can have a significant impact on “the conditions of meaningful collective action” (ibid.: 61) in global governance and the legitimacy of collective decisions.

The taxonomy of Barnett and Duvall is a promising starting point for the analysis of power in global governance. As I will focus on the power of NGOs in global governance, I will concentrate on the aspect of productive power. Based on the precedent discussion of power, two components of productive power of NGOs can be identified: decisional power and discursive power. Decisional power refers to “the power to realize preferences in political decisions by committing to the political process” (Beyer 2007: 515). Forms of exertion include lobbying, advocacy, monitoring, protest and participation. Here, the dissemination of information and the use of NGOs’ expertise become crucial. Discursive power means “the power to frame debates and to thus have an impact on ideas and norms”, i.e. to bring about normative change and to foster learning of international organizations and their member states (ibid.: 516). Focussing on decisional and discursive power means to emphasize the normative and ideational aspects of power. A constructivist perspective concentrates on these aspects and states that ideational, cultural and historical factors shape policy-makers’ and civil society actors’ attitudes towards global issues and also impact on the power constellations among these actors. Governments and civil society actors have different perceptions of power depending on their cultural and historical background. Power is perceived differently, for example, in Asia or in Africa compared to Europe. Understanding the cultural and historical roots of conceptions of power can also help to understand the North-South bias in the NGO community and the strategies NGOs develop in influencing international policy-making processes. Here, a reflectivist-oriented constructivism seems to be a promising approach to the analysis of civil society’s productive power for several reasons. A constructivist analysis of interactive patterns between different actors in global governance faces the challenge of not only integrating material factors but, more importantly, ideational influences, i.e. norms, ideas, value systems, gender and/or
identities. The challenge here is twofold: on the one hand, these ideational factors can be found in written texts; on the other hand, these texts are related to different interpretations regarding the influence of these factors on political and social behaviour (Weller 2005: 35). This type of constructivism therefore seeks to incorporate a second analytical dimension. This approach aims at reflecting the construction of the researcher’s own analysis, i.e. to include what Niklas Luhmann called “second-order observations” (Luhmann 1997). This means that the researcher asks about how and why the researcher chose specific categories to analyse political and social behaviour and to what extent the cultural and normative background of the researcher impacts on the analysis. This reflectivist perspective enables the researcher to reflect on, for instance, a Western-centric way of analysing international relations and to be aware of the fact that research categories are always subject to the researcher’s own background, but also to make an attempt to integrate norms and values in the analysis that would not be part of the researcher’s own value system. This would enrich the analysis of international relations regarding the power of international institutions but also of civil society actors’ power in international relations and consequently on their influence on global policy-making processes (Weller 2005: 36).

The following analysis of the interaction between governments and NGOs on the WTO negotiations on fisheries subsidies starts from an IPE perspective. It asks the question of how “politics shape societal decisions about how to allocate resources” (Oatley 2008: 14), i.e. how do both political and societal actors use their power in order to achieve beneficial outcomes. The case selected addresses the allocation of fish stocks. Here, the understanding of the interaction between the WTO, the organization’s member states and societal actors becomes crucial. We have to ask the question of who has the power to shape ideas and transform them into actual policies, which finally impacts on the global fish stocks. If we assume that civil society plays a significant role in global governance we need to understand civil society’s potential to influence trade negotiations. We can then ask whether they are legitimate actors to do so. The constructivist perspective helps to understand not only the aspect of resource power but also the role of productive power, which is decisive in terms of NGOs’ power. I will identify to what extent NGOs use their decisional and discursive power to shape policy makers’ perceptions on fisheries subsidies and consequently the decision-making process. In a subsequent step, I will use the insights gained on NGOs power in international negotiations to discuss their legitimizing potential in global governance. This analysis is based on official WTO documents, information provided by NGOs on their websites and insights gained through personal interviews with government officials and representatives from NGOs. The interviewees will remain anonymous (see also Fritz Carrapatoso 2007).
Having a Say? The Role of Civil Society in WTO Negotiations

Since the WTO is a state-centric organization, states can be considered as the key “gatekeeper[s] of information, ideas, proposals, and policy” (Barton et al. 2006: 182). This would suggest that non-state actors can only play a marginal role in international trade negotiations. Barton et al. argue that

domestic institutional processes of trade policymaking may suffer from a democratic deficit and may be improved by institutionalizing new avenues for the articulation of interests by the new nonstate actors. At the international level, however, complete democratization is infeasible. In the international context, improved representation of ideas and information from the new nonstate actors may strengthen the WTO […]. The challenge facing the WTO is therefore to modify trade institutions so as to accommodate the representation of new nonstate actors’ interests, ideas, and relevant information in a way that is more democratic at the domestic level and functional at the international level. (ibid.: 182-183)

This refers to Putnam’s argument of the two-level games, which means that negotiations always take place on both the national and international level and that the interrelationship between these two levels impact on the outcomes of international negotiations (Putnam 1988). It can therefore be argued that non-state actors primarily seek to influence national governments on the domestic level to influence international negotiations. International non-state actors such as international NGOs have to lobby specific government delegations that are willing to cooperate. This argument is supported by empirical findings like, for example, NGOs’ involvement in the WTO fisheries negotiations.

There are important distinctions to be made between the various non-state actors. The business sector has always been a traditional and very active player in trade negotiations. Even though there is no such thing as the business interest, the business community shares the idea of maximization of the economic benefit. As the performance of exporting industries impacts on the national economies of WTO member states, the business lobby normally finds a variety of mechanisms to influence trade negotiations. Their compulsory power is traditionally higher than that of civil society actors. While their institutional power is comparatively low in trade negotiations, they show far more potential in structural and productive power. Their structural power depends on the position of the specific exporting industry in the national economy. Their productive power becomes explicit in public statements and submissions made to the government. In total, the business community is a strong actor in trade negotiations.

And yet, non-traditional trade issues have become more relevant in the WTO. This impacts on the trade agenda and coalition structures within the WTO. The relationship between
developing and developed countries has become more important in the last decade, which is shown by the fact that the current trade agenda is called *Doha Development Agenda* (DDA). This relationship shapes both the DDA negotiations in general and and negotiations on issues like labour standards or environmental protection. It is not surprising that NGOs being active in trade policy mostly stem from environmentalist or social advocacy groups that often consider themselves as the voice of developing countries. NGOs have a different position in trade negotiations compared to business. The reason for this can be found in the power balance.

Environmental NGOs have compulsory power in terms of their normative function. But many of these NGOs lack resources to fully concentrate on WTO negotiations and to use all their resources as a threat potential in this specific case. Their productive power is more relevant, i.e. their power to shape the public discourse and to thus increase pressure on governments. But there are differences in their use of power or, better to say, their means to influence trade negotiations. First of all, we have to differentiate whether an NGO can be seen as an insider or an outsider. Insider NGOs normally have good access to government officials because they are considered as non-threatening and their expertise is valued. They often make “concrete proposals for substantive and procedural reforms at the WTO, whereas antiglobalization activists more frequently oppose altogether the freer movement of goods and capital” (Barton et al. 2006: 184). The latter often remain outsiders by choice because they want to raise public awareness and seek open conflict with governments rather than being collaborators. They remain more credible for their members and the public if they use their compulsory and productive power to achieve their goals from an outsider perspective. With regard to insider NGOs, we have to make a further distinction, namely whether they mainly cooperate with developing or developed countries. These NGOs mostly seek cooperation with both types of states, thus taking the position to defend developing countries’ interests while at the same time cooperating with developed nations to realize these preferences. Because of their scarce resources, NGOs finally have to decide where they put their most effort into, i.e. in which cooperative frameworks do they mostly engage. In context of the WTO negotiations on fisheries subsidies, insider NGOs like the WWF cooperate with those states that are most active in these negotiations such as, for example, New Zealand.

The WWF International presents itself as a very active player in these negotiations. While they certainly take developing countries’ interests into account, it has become explicit that they interact with, for instance, New Zealand more frequently with regard to the fisheries negotiations. This underlines the argument that NGOs have to act through specific government delegations to achieve their objectives, i.e. pursuing their interests through offering their
expertise. Further large NGOs that show strong interest in the environmental aspects of WTO negotiations are the International Centre for Trade and Sustainable Development (ICTSD), the Center for International Environmental Law (CIEL), Oceana, Greenpeace and Oxfam. The case study will primarily give a general picture of NGOs’ commitment to subsidies negotiations and briefly illustrate the interaction between the New Zealand government delegation and the WWF International. Other NGOs activities will be briefly outlined to provide a more comprehensive picture of lobbying mechanisms.

Getting the Catch – Why Fisheries Subsidies Are an Issue

Fisheries subsidies had been discussed in the WTO Committee on Trade and Environment (CTE) before they were put on the agenda of the Negotiating Group on Rules in 2002 (Fritz Carrapatoso 2007: 211). The Ministerial mandate from Hong Kong states “that the Group should strengthen disciplines on subsidies in the fisheries sector, including through the prohibition of certain forms of fisheries subsidies that contribute to overcapacity and overfishing” (WT/MIN(05)/Dec, Annex D) while at the same time “formulating appropriate and effective special and differential treatment that addresses the interests and concerns of developing Members” (TN/RL/W/236, Dec08). A vigorous debate between member states centers upon the question which subsidies contribute to overcapacity and overfishing and, consequently, which of these subsidies should be prohibited or not. Further questions arise on implementation, monitoring and surveillance. The Chair’s most recent submission on fisheries subsidies, the “Roadmap for Discussions” (TN/RL/W/236), provides guiding questions for future negotiations within the Group on the following issues:

- **Prohibition**: The key task is to find a common understanding of what is meant by subsidies that contribute to overcapacity and overfishing. The suggestion is a bottom-up approach which lists specific subsidies that should be prohibited.

- **General Exceptions**: Some subsidies are considered as beneficial. These include subsidies that help to reduce overcapacity and overfishing or that improve conditions in marine wild capture fisheries.

- **Special and Differential Treatment**: Developing countries do not want to have a “blank check” which allows them any subsidization. They aim at finding mechanisms that help to develop their fisheries sector while at the same time avoiding subsidies that lead to overcapacity and overfishing.
- **General Discipline/Actionability**: Member states have to agree on guidelines that enable a member to challenge another member’s subsidies if those are responsible for overcapacity and/or overfishing.

- **Fisheries Management Conditionalities**: Members shared the view that exceptions should not be unconditional. Main conditionalities should therefore refer to fisheries management. But it is not clear which role WTO rules should play in this respect.

- **Transparency**: To improve transparency with regard to fisheries subsidies is decisive in guaranteeing disciplines that are operated effectively. Transparency should also refer to fisheries management. Here, the question arises how this could be implemented.

- **Dispute Settlement**: The solution of disputes on fisheries subsidies requires fisheries expertise in the dispute settlement process. The question is here whether a specific mechanism has to be established, which can guarantee such expertise.

- **Implementation**: An effective implementation is based on a certain degree of institutional infrastructure, expertise and resources. The specific backgrounds of the various member states have to be taken into account when implementing new and comprehensive rules.

- **Transition Rules**: Developing countries should be granted a longer transition phase compared to developed countries.

The members now have to discuss the detailed questions laid down in the Chair’s roadmap for discussions. These discussions will be accompanied by consultations with stakeholders, i.e. business and civil society groups, and other international organizations such as the Food and Agriculture Organization (FAO) or the United Nations Environment Program (UNEP). Many WTO submissions that have been made since 1999 in addition to NGO position papers and workshop reports document this interaction. This consultation process and its impact on the WTO negotiations will be discussed in the following section. NGOs’ strategies to impact on these negotiations will become more explicit, which helps to analyse their power and influence in this respect.

**NGOs and Their Impact on the WTO Fisheries Negotiations**

NGOs have various channels through which they can seek influence on these negotiations: the public, government delegations, the WTO as an organization and other international organizations. The WTO has opened up to NGOs (see WT/L/162) and created new opportunities for lobbying activities. Day-to-day contact with the Secretariat, public symposia
or the attendance of Ministerial Conferences are additional means to express NGOs’ interests. But still, the WTO is considered a very secretive organization which is “almost entirely closed to public scrutiny or participation” (CIEL 2005). In addition to the aforementioned possibilities, the WTO allows the public to observe the dispute settlement and appellate body proceedings, invites NGOs to participate in environment-related discussions of WTO committees, councils or negotiating groups, and developed a consultation process between all stakeholders, delegations and the WTO (ibid.).

In total, there are several strategies to raise both public awareness and that of delegates, other NGOs and international organizations:

- Publications (e.g. press releases, reports, factsheets, background papers), dissemination of information through websites (regular updates on the negotiations through, for example, email alerts and newsfeed)

- Campaigns

- Lectures, seminars, public symposia, workshops with government delegations, other NGOs and international organizations (e.g. UNEP, FAO)

- Participation in WTO initiated public consultations and events

- Consultations with international organizations (UNEP, FAO)

- Consultations with delegations

- Participation in Ministerial Conferences

Starting with the latter aspect, there are two possibilities to attend Ministerial Conferences – either as officially registering for the conference at the WTO or as a member of a government delegation, which is by invitation of the specific government. The latter is especially interesting for domestic NGOs. A New Zealand environmental NGO – The Royal Forest and Bird Protection Society – was part of the New Zealand delegation to the Hong Kong Ministerial Conference. This was relatively new, particularly the fact that the delegation paid for the NGO’s travel arrangements. In addition to the possibility to meet with other

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1 See, for example, WWF 2005c, 2007, 2007a, 2009; ICTSD 2008, 2009. ICTSD regularly releases the organization’s newsletters Bridges, Bridges Weekly Trade News Digest, Bridges Trade BioRes and Bridges Trade BioRes Review. These newsletters give updates on the Doha Round in general and WTO negotiations and their impact on sustainable development in particular. ICTSD has a separate news section on fisheries, which includes the whole range of fisheries issues, including subsidies (http://ictsd.net/programmes/environment/fisheries, 23.03.09).

2 See, for example, WWF 2008, Greepeace 2008, Oceana 2008 for general campaigns addressing the problem of overfishing.

3 See, for example, outline of the parallel process, listing joint workshops organised by the WWF, ICTSD, UNEP and Oceana, WWF 2009.
NGOs, daily briefings of the whole delegation were crucial for the NGO because more information on the progress of negotiations could be obtained through these consultations (personal interview, Wellington 2006). This again shows that the exchange of information and ideas in direct contact with negotiators is a promising path to exert some influence on these negotiations. The domestic consultation process has an impact on the Government’s negotiating position as well. But as interaction with the WWF in Geneva on fisheries subsidies is more frequent, the domestic interaction will not be elaborated any further. It should nevertheless be mentioned that pressure exerted by domestic NGOs further shapes a government’s negotiating position and can be used as a tactical means by negotiators to improve their bargaining position.

With regard to the Hong Kong Ministerial Conference, most of the active NGOs at the WTO attended the Ministerial Conference. The list of NGOs which participated in the conference documents the involvement of WWF, Greenpeace, Oxfam, CIEL – to name those being active in fisheries issues. It is interesting to observe which organizations are listed as NGOs at the WTO. The list includes, for example, farmers’ associations and other business groups in addition to sections of regional organizations such as the SAARC Chamber of Commerce and Industry. This again illustrates how heterogeneous perceptions are with regard to a definition of NGOs. Depending on which definition we apply, NGOs’ attendance of WTO Ministerial Conference can be seen as either numerous or relatively low.

In any case, participation in a Ministerial Conferences is another opportunity for NGOs to lobby different delegations, to be regularly informed about the progress of negotiations, to exchange information and experiences with other NGOs and to form coalitions. Through coalition-building, NGOs can increase their compulsory power because they can reach a critical mass to effectively apply strategies like shaming of governments. This is often done through public protest and campaigns or press releases and reports. NGOs’ level of influence not only depends on their ability to mobilize the public, to use their compulsory power through coalition-building and campaigning, but also on their productive power, i.e. to shape discourses, to offer expertise, to actively disseminate information both to the public and, more importantly, to government delegations at the WTO. This normally means that they need good access to governments whose interests largely converge with those of the respective NGO.

Through the aforementioned mechanisms, NGOs can shape public discourse and raise awareness for fisheries issues and the consequences of unregulated subsidies. In addition to ICTSD, CIEL and Oceana, the WWF International can be identified as one of the key players

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4 WTO 2005b.,
in the NGO community. Discussions with delegates and the WWF support this observation (personal interview, Geneva 2005; discussion round, Geneva 2008). The WWF is an insider NGO and has relatively good access to government delegations that are in favor of a broad ban of fisheries subsidies. Here, the New Zealand government becomes an important access point for the WWF because, first, New Zealand is very active in the fisheries negotiations, and, second, the WWF and New Zealand share similar interests. In contrast to insider groups, outsider groups as part of the anti-globalization movement often keep distance voluntarily and normally have or seek less or no access to government delegations. Most NGOs choose something in between, but the extent to which they can be influential often depends on their primary strategy, i.e. whether they decide to be more an insider or an outsider group. The WWF uses all kinds of productive power and use both insider and outsider strategies. But they put emphasis on cooperation with government and business actors, which finally makes them more of an insider. Greenpeace, for instance, is more of an outsider because their priority is confrontation and public campaigning. A comparison of the various environmental NGOs also reveals that they show different priorities with regard to fisheries issues. Greenpeace concentrates more on the NAMA (Non-Agricultural Market Access) negotiations that include the liberalization of fish and fish products. The WWF pursues a comprehensive approach on fisheries issues and engages both in NAMA and in the Rules Group’s negotiations. And yet, in contrast to Greenpeace, fisheries subsidies seem to be of more importance to them than fisheries in NAMA. Because of the relatively close cooperation between the WWF and New Zealand, I will give an example of these two actors’ interaction, which impacted on the negotiation process.

A comparison of WWF reports with the New Zealand delegation’ submissions to the WTO showed that both sides identified common interests\(^5\). Going back to the “broad ban approach”, both the New Zealand government and the WWF were in favour of broad disciplines and preferred a negative-list approach. The latter supported the idea of “red box” and “green box” subsidies, i.e. to ban the most harmful fishing subsidies while allowing subsidies that benefit the environment. At the same time, they agreed on the necessity of relaxing some of the prohibitions to allow developing countries to adjust to new circumstances in order to remain or become competitive on the world market. (Fritz Carrapatoso 2007, Chapter 5.5). The most recent WWF document once again states the organization’s interests (WWF 2009):

- ban the most harmful fishing subsidies (especially those that directly encourage overcapacity and overfishing, or that contribute to illegal or unregulated fishing)
- allow certain kinds of beneficial fishing subsidies, such as those for adopting cleaner fishing techniques or for reducing oversized fishing fleets
- give developing countries special treatment to support the sustainable development of their fishing industries, and to create a more level playing field in the global market for fish products
- subject all allowable fishing subsidies to stringent new disciplines based on “sustainability criteria”
- increase the public transparency of fishing subsidy programmes through significantly strengthened WTO reporting requirements
- create mechanisms to involve intergovernmental bodies with responsibility for fisheries policy in the administration of new WTO fishing subsidies rules

These aspects are featured in the Chair’s “Roadmap for Discussions” (TN/RL/W/236), which has been illustrated earlier. This shows that WWF’s interests converge with those of influential governments in these negotiations. It further emphasizes that governments use NGOs’ expertise to base their decisions on. But it also demonstrates that NGOs have to use all their discursive power to achieve such outcomes. The WWF’s interests, for instance, are regularly articulated through reports, press releases, position papers and public campaigns. In addition, the organization’s head office is close to Geneva, which means that WWF staff can regularly meet with government officials based in Geneva. Discussions with delegates and WWF staff showed that, depending on the progress of negotiations on fisheries subsidies, “regularly” could mean once a week (personal interview, Geneva 2005). Moreover, the WWF not only consults with government delegations but is also regularly in touch with UNEP, which in turn consults with the WTO and government delegations. Again, discussions with staff from UNEP, WWF, the WTO and delegates support the assumption, that regular exchange between NGOs, international organizations and delegations takes place on a regular basis and helps to widen mutual understanding of the issues to be negotiated (discussion round, Geneva 2008).

To sum up, the WWF uses a very comprehensive lobbying approach, including the release of written documents, public campaigns, consultations with government officials, consultations with international organizations involved in fisheries issues and the organization
of joint workshops with other NGOs and international organizations, for example with UNEP, ICTSD and Oceana (WWF 2009). WWF’s use of productive power can clearly be identified. They try to shape the discourse on the factual or potential harms of fisheries subsidies and to deliver their interests to government officials through direct consultations. They carefully choose the delegations for their interactions by identifying convergent interests. By consulting with delegates, an NGO can increase its decisional power. The WWF will never be part of any concrete negotiations within the WTO. But they can indirectly influence these negotiations as insiders by framing delegates’ and consequently governments’ ideas and preferences.

**Conclusion: Civil Society, Power and Legitimacy**

Even though civil society actors can have some compulsory power, productive power seems to be their most important source to influence international negotiations. The case of the WTO negotiations on fisheries subsidies has briefly illustrated that NGOs are well aware of their potentials and act accordingly. The NGOs engaging in these negotiations have a significant amount of decisional power, which means that they can realize their preferences through commitment to the negotiation process. Particularly the WWF shows this potential because the organization has coherently engaged in these negotiations, as a remarkable number of publications on fisheries subsidies demonstrate. ICTSD and CIEL, too, have already published various reports and briefings on this issue. Oceana’s commitment can be traced back to joint workshops with the WWF and UNEP. Other NGOs such as Greenpeace that show interest in fisheries issues concentrate more on other negotiations such as those on Non-Agricultural Market Access (NAMA), which do not directly address the issue of subsidies. Coming back to the WWF as the most active NGO in this respect, they regularly engage in consultations with the New Zealand government. They also discuss subsidies with other delegations, but New Zealand seems to be their best access point (discussion round, Geneva 2008). The WWF participates in Ministerial Conferences if the WTO allows them to do so and in WTO symposia. In addition, they organise workshops and symposia themselves, often in cooperation with other NGOs or international organizations – most preferably with UNEP. And finally, the WWF organises campaigns to make the public aware of the problem of overfishing through trade and subsidies. A comparison of WWF documents, WTO submissions and the Chair’s “Roadmap for Discussions” also exemplified that the WWF has discursive power, i.e. the organization has the potential to frame debates through consultations with influential governments and regular publications which are made available to
delegations. The WWF’s strategy of acting as an insider group and thus combining all dimensions of decisional power gives them a relatively strong standing in the NGO community. But we should not overestimate this power. In the end, the bargaining process between member states is the most decisive aspect in these subsidies negotiations. NGOs can only assist those governments that share similar ideas and interests in shaping their negotiating position through offering their expertise. In addition to public campaigns and information policy, NGOs can increase their productive power through building strong coalitions with all actors involved – governments, international organizations and NGOs. If NGOs have these windows of opportunity to effectively use their power, the question finally arises whether this makes them legitimate actors in global governance.

If we base the question of legitimacy of NGOs in global governance on their power, we mainly refer to output legitimacy. This means that we primarily ask about NGOs’ effectiveness and empowerment. In contrast, input legitimacy asks about representativeness, accountability and distinct values. (Atack 1999: 858) The WTO negotiations on fisheries subsidies illustrated that committed NGOs can use their productive power to impact on the negotiation process. To what extent NGOs’ engagement is effective is nevertheless hardly measurable. This is also because there are still no “agreed standards and methods for evaluating the results of NGO activity” (Atack 1999: 861). The effectiveness of NGOs often depends on their “operational success, experience and basic competence” (ibid.: 861). This in turn impacts on their credibility and consequently the public perception of their role as legitimate actors in global governance. The NGOs discussed in this paper showed a comprehensive strategy in the attempt to realize their preferences. Discussion rounds and personal interviews supported the assumption that their expertise and experience is valued among government officials. A comparison of WTO submissions and NGO documents showed further that NGOs’ ideas are partly integrated in WTO negotiations. Empowerment becomes relevant in the field of development. NGOs that are active in fisheries issues normally assist developing countries, particularly on the local scale, to develop and implement sustainable fisheries management systems. As fisheries management systems are discussed alongside the subsidies negotiations, NGOs such as the WWF can be considered as experts and potential cooperation partners in this respect. Their cooperation can become crucial when it comes to the implementation of new rules because NGOs are closer to the people affected than governments. And yet, NGOs cannot replace governments in policy-making and decision-making processes. They can merely act as assistants.
To sum up, even though output legitimacy in terms of effectiveness and empowerment is difficult to evaluate, the Rules Group’s negotiations on fisheries subsidies demonstrated that NGOs can be effective. This would imply that they can gain legitimacy through their output legitimacy. But in order to qualify as legitimate actors in global governance, we have to ask questions about their input legitimacy as well. And then, we come to the problematic nature of representativeness, the tension between NGOs from the North and the South, the question of accountability and finally the values they pursue and seek to realize in global policy-making. The purpose of this paper was to analyse civil society’s power and effectiveness in global governance and to set a basis for further analysis of civil society’s influence and finally their legitimacy.

The case study of the WTO negotiations on fisheries subsidies raised further questions with regard to the theoretical underpinnings of such analyses. It showed that in the relationship between governments and civil society actors, productive power becomes decisive in civil society’s influence on international negotiations. Dealing with discursive and decisional power means to get to the cultural and ideational roots of power concepts as well. Different perceptions of power can impact on cooperative behaviour of both governments and civil society. This again can influence the extent to which civil society can be effective in global governance. The same can be attributed to civil society groups’ legitimacy. A reflectivist-oriented constructivist approach helps to address these questions and to focus on ideational aspects that are promoted through discourse on systemic and subsystemic levels. The awareness of these discourses is influenced by the analyst’s own cultural and ideational background. Comprehensive studies should therefore try to include second-order observations.

Finally, it has become explicit that an analysis of civil society’s influence in global governance has to address the question of both power and legitimacy. Moreover, more attempts have to be made to develop standards and research categories to evaluate civil society’s power, i.e. effectiveness, in international negotiations and rule-making procedures and to define their role in terms of their legitimacy. Otherwise, civil society in general and NGOs in particular will remain not only the most obscure but also the most overestimated actors in global governance.
Bibliography


Keohane, Robert O. (2002). Global Governance and Democratic Accountability. Department of Political Science, Duke University, Durham,


WTO Documents

TN/RL/GEN/100
TN/RL/GEN/36
TN/RL/GEN/54
TN/RL/GEN/70
TN/RL/GEN36
TN/RL/W/12
TN/RL/W/154
TN/RL/W/161
TN/RL/W/166.
TN/RL/W/184
TN/RL/W/196
TN/RL/W/236
TN/RL/W/236, Dec08
TN/RL/W/3
TN/RL/W/58
WT/L/162
WT/MIN(05)/Dec, Annex D